

Minnesota Attorney General: Administrative Rules Proceedings

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Version 3
August 20, 2018

DEPARTMENT: Office of the Attorney General

STATE OF MINNESOTA

OFFICE MEMORANDUM

DATE: August 6, 1990

TO: JOHN JAMES
Commissioner of Revenue

FROM: MARTHA J. CASSERLY mjC
Special Assistant
Attorney General

PHONE: 296-9421

SUBJECT: In the Matter of the Adopted Rule Relating to
Single Return Filing by Affiliated Corporations

The above-referenced rule has been approved as to its legality by the Attorney General on August 3, 1990.

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

Also enclosed are any petitions, requests, submissions or comments along with any extra copies of documents which you submitted to the Attorney General.

Your next step is to arrange for publication of the Notice of Adoption in the State Register. In a day or two, you should receive from the Revisor's Office three copies of the notice of adoption of your rule. You should submit two copies of the Notice of Adoption to the State Register for publication. A permanent rule without a hearing does not become effective until five days after a notice of adoption is published 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.

CBE:sc

Enclosures

cc: Thomas Muck
William Brown, Chief Judge
MaryAnn Hruby

Department of Revenue

Adopted Permanent Rules Relating to Single Return Filing by Affiliated Corporations

Rule as Adopted

8019.0405 UNITARY GROUP FRANCHISE TAX RETURN.

Subpart 1. **Filing of a single return.** Members of a unitary group required to be included on a combined report may elect to file a single corporate franchise tax return for the group.

Subp. 2. **Definitions.** The following definitions apply to this part.

A. "Unitary group" means two or more corporations that are part of a unitary business, as defined in Minnesota Statutes, section 290.17, subdivision 4, and are required or permitted to file a combined report under Minnesota Statutes, section 290.34 and part 8019.0300.

B. "Designated member" means the member of the affiliated group designated by the unitary group as provided in subpart 4. The designated member must have nexus with Minnesota under Minnesota Statutes, section 290.015.

C. "Member" means a corporation that is part of a unitary group that elects to file a single return as provided in this part.

D. "Single return" means one return filed by the designated member on behalf of all members of a unitary group.

E. "Single return year" means a taxable year for which a single return is filed or required to be filed by a unitary group.

Subp. 3. **Taxable year.** A single return must be filed on the basis of the designated member's taxable year. Each member must adopt the designated member's annual accounting period for the first and subsequent single return years in which the member is included in the unitary group.

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When a corporation becomes a member of the unitary group during the taxable year, its ~~tax~~ taxable year must end on the same date as the designated member. When a corporation ceases to be a member of the unitary group during the taxable year, its ~~tax~~ taxable year must begin on the same date as the designated member's ~~tax~~ taxable year.

Subp. 4. **Election.** In order to elect to file a single return as provided in subdivision 1, all members of ~~the~~ a unitary group that are subject to Minnesota franchise taxes must make a written election ~~to file a single return~~. The election must be filed with the single return in the form prescribed by the commissioner of revenue and contain:

A. the names of all members;

B. the Minnesota and federal employer identification numbers for each member; and

C. a statement appointing one member as the designated member and granting power of attorney to the designated member to represent the unitary group for all tax matters related to the single return.

The election to file a single return and the appointment of a designated member are binding for all subsequent tax years and may be rescinded or modified only on a form as prescribed by the commissioner.

Subp. 5. **Filing requirements.** The designated member is responsible for filing the single return. The return must be signed by a person who is authorized by the designated member and who has knowledge of the contents of the return.

The single return must include an explanation of changes in the unitary group's membership in the single return year, if any.

~~Subp. 6. Payment of tax. All taxes, penalties, interest, or additions to tax must be paid by the designated member on behalf of the unitary group. The designated member is responsible for the payment of all changes in tax liability or assessments for the taxable year.~~

Subp. ~~7.~~ 6. **Liability for tax.** Every corporation that ~~was~~ is a member of a unitary group during any part of a single

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return year is severally liable for the taxes, penalties, interest, or additions to tax of the unitary group for that taxable year provided, however, that the designated member is primarily responsible for payment of the taxes, penalties, interest, or additions to tax for the taxable year. ~~The commissioner may make assessment and collect a tax deficiency from a former member in an amount not exceeding the part of the deficiency which the commissioner determines to be allocable to the former member, based upon the proportion of the former member's taxable net income over the unitary group's taxable net income, if:~~

~~A. the corporation has ceased to be a member as the result of a bona fide sale or exchange of its stock for fair value;~~

~~B. the sale or exchange occurred prior to the date of the assessment of the deficiency; and~~

~~C. the commissioner believes that the assessment or collection of the balance of the deficiency is not jeopardized.~~

The tax liability prescribed in this part cannot be reduced by an agreement entered into by one or more members with another member or with another person.

Subp. 7. **Exception.** A former member may be less than severally liable, as provided in subpart 6, for an assessment of a tax deficiency in an amount not exceeding the portion of the deficiency which the commissioner determines to be allocable to the former member, based upon the proportion of the former member's taxable net income over the unitary group's taxable net income, if:

A. the corporation has ceased to be a member as the result of a bona fide sale or exchange of its stock for fair value;

B. the sale or exchange occurred prior to the date of the assessment of the deficiency; and

C. the commissioner believes that the assessment or collection of the balance of the deficiency is not jeopardized.

Subp. 8. **Refunds.** Claims for refund are filed by the

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by Revisor _____

designated member on behalf of the members. Refunds are paid to the designated member.

Subp. 9. **Computation of tax.** Each member must compute its separate franchise tax for the taxable year and combine those amounts for the unitary group's franchise tax liability for the taxable year in which a single return is filed.

Subp. 10. **Estimated payments.** The designated member must make quarterly payments of estimated taxes for the unitary group, as provided in Minnesota Statutes, section ~~290.933~~ 289A.26.

In applying the provisions of Minnesota Statutes, section ~~290.934~~ 289A.26, a unitary group electing to file a single ~~combined~~ return is treated as if it were a single corporation.

For purposes of the first taxable year in which an election is made under this part, the amount used as the tax liability for the prior taxable year to calculate the required installment under Minnesota Statutes, section ~~290.934~~ 289A.26, subdivision ~~3a~~ 7, paragraph (b), clause (2), will be calculated using the total of the prior taxable year's tax liabilities of all the members.

If the members make separate estimated tax payments for the taxable year, then the provisions of this subpart do not apply and the provisions of Minnesota Statutes, ~~sections 290.933 and~~ ~~290.934~~ section 289A.26, are applied to each member separately.

Subp. 11. **Forms and schedules.** The single return must include the forms and schedules prescribed by the commissioner.

Subp. 12. **Extensions.** A request for an extension in the time for filing a single return must be made by the designated member on behalf of the other members.

Subp. 13. **Interest.** Interest due on an underpayment or assessment of tax is calculated as if the unitary group were a single corporation.

Subp. 14. **Applicability.** This part applies to elections made for tax years beginning after December 31, 1989.

Approved
by Revisor _____

REPEALER. Minnesota Rules, part 8019.0400 is repealed.

Approved
by Revisor _____

APPROVED AS TO FORM AND LEGALITY

August 3 19 90

HUBERT H. HUMPHREY, III
ATTORNEY GENERAL

BY MJ Carsely
SPECIAL ASSISTANT ATTORNEY GENERAL

STATE OF MINNESOTA
DEPARTMENT OF STATE
FILED

AUG 3 1990 2:45 P. M.

Joan Anderson Growe
Secretary of State

MJC

RULE REVIEW CHECKLIST

File No. 1719
DATE RECEIVED 7-24-90
REVIEW DATE 8/2/90
DUE DATE 8/7/90
(DIS)APPROVED 8-3-90 mjc
WITHDRAWN

Docket No. 05.009.0735
ADOPTED W/O HEARING ✓
EMERGENCY RULE
TO REVISOR ON 7/26/90
REVISOR (DIS)APPROVED 8-1-90
FILED W/SEC. OF STATE 8/3/90
RETURNED TO AGENCY 8/6/90

✓ Rule as adopted (4 copies)

✓ Notice to Solicit Outside Information/Opinion (if applicable)

Nov 27, 1989 Date published in State Register

NA Comments

NA Board's Authorizing Resolution

Date adopted

✓ Proposed Rule

✓ Revisor's Certificate

✓ Notice of Intent to Adoppt Rule, subds. 4 and 11

290.52 Statutory Authority 290.37 1(a)

NA Small Business Statement

NA Expenditure of public money statement

Feb 15, 1990 Signature

✓ Statement of Need and Reasonableness (if applicable)

NA Small Business Statement

Fees - § 16A.128

✓ Affidavit of Mailing Notice of Intent to Adopt Rule

March 28, 1990 Dated 30/25 days before adoption

✓ Notice attached indicates it is attached

Copy of rule or summary attached

✓ Publication in State Register

March 5, 1990 Date 30/25 days before adoption

180-day deadline from:

✓ Effective date of law requiring rule (14.12) (both rules) see my notes

✓ end of comment period (§ 14.26) (rules without hearing)

effective date of statutory authority (§ 14.29) (emergency rules)

1989 SP session
not 180 deadline

NA Resolution Adopting

Date adopted

✓ Findings of Fact, Conclusions & Order Adopting

July 24, 1990 Date

✓ Declaration of Attorney

Thomas Muck Name of SAAG representing agency

E affid?

NOTICE OF INTENT TO ADOPT A RULE WITHOUT A PUBLIC HEARING.

Department of Revenue

In the Matter of the proposed Adoption of the Rule of the Minnesota Department of Revenue Governing Administration of Income and Excise Taxes: The Filing of Single Return for Members of a Unitary Group of Corporations	NOTICE OF INTENT TO ADOPT A RULE WITHOUT A PUBLIC HEARING

(1) Notice is hereby given that the Minnesota Department of Revenue intends to adopt the above-entitled rule without a public hearing following the procedures set forth in the Administrative Procedure Act for adopting rules without a public hearing in Minnesota Statutes, sections 14.22 to 14.28. The statutory authority to adopt the rule is Minnesota Statutes sections 290.52 and 290.37, subdivision 1(a).

(2) All persons have 30 days in which to submit comment in support of or in opposition to the proposed rule or any part or subpart of the rule. Comment is encouraged. (3) Each comment should identify the portion of the proposed rule addressed, the reason for the comment, and any change proposed.

Any person may make a written request for a public hearing on the rule within the 30-day comment period. (4) 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 unless a sufficient number withdraw their request in writing. (6) Any person requesting a public hearing should state his or her name and address, and is encouraged to identify the portion of the proposed rule addressed, the reason for the request, and any change proposed. (7) If a public hearing is required, the agency will proceed pursuant to Minnesota Statutes, sections 14.131 to 14.20.

(5) Comments or written requests for a public hearing must be submitted to:

Stephen E. Krenkel, Attorney
Business Tax Unit
Appeals and Legal Services Division
10 River Park Plaza
Mail Station 2220
St. Paul, MN 55146-2220
(612) 296-3438

(8) The proposed rule may be modified if the modifications are supported by data and views submitted to the agency and do not result in a substantial change in the proposed rule as noticed.

(11) A copy of the proposed rule is attached to this notice.

(12) A Statement of Need and Reasonableness that describes the need for and reasonableness of each provision of the proposed rule and identifies the data and information relied upon to support the proposed rule has been prepared and is available from Stephen E. Krenkel upon request.

(9) If no hearing is required, upon adoption of the rule, the rule and the required supporting documents will be submitted to the Attorney General for review as to legality and form to the extent the form relates to legality. Any person may request notification of the date of submission to the Attorney General. 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 adopted rule, must submit the written request to Stephen E. Krenkel.

February 15, 1990
Date

[Name]
[Title]

SEK:cak:strules\adminint

Department of Revenue

Proposed Permanent Rules Relating to Single Return Filing by Affiliated Corporations

Rule as Proposed (all new material)

8019.0405 UNITARY GROUP FRANCHISE TAX RETURN.

Subpart 1. **Filing of a single return.** Members of a unitary group required to be included on a combined report may elect to file a single corporate franchise tax return for the group.

Subp. 2. **Definitions.** The following definitions apply to this part.

A. "Unitary group" means two or more corporations that are part of a unitary business, as defined in Minnesota Statutes, section 290.17, subdivision 4, and are required or permitted to file a combined report under Minnesota Statutes, section 290.34 and part 8019.0300.

B. "Designated member" means the member of the affiliated group designated by the unitary group as provided in subpart 4. The designated member must have nexus with Minnesota under Minnesota Statutes, section 290.015.

C. "Member" means a corporation that is part of a unitary group that elects to file a single return as provided in this part.

D. "Single return" means one return filed by the designated member on behalf of all members of a unitary group.

E. "Single return year" means a taxable year for which a single return is filed or required to be filed by a unitary group.

Subp. 3. **Taxable year.** A single return must be filed on the basis of the designated member's taxable year. Each member must adopt the designated member's annual accounting period for the first and subsequent single return years in which the member is included in the unitary group.

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When a corporation becomes a member of the unitary group during the taxable year, its tax year must end on the same date as the designated member. When a corporation ceases to be a member of the unitary group during the taxable year, its tax year must begin on the same date as the designated member's tax year.

Subp. 4. **Election.** All members of the unitary group that are subject to Minnesota franchise taxes must make a written election to file a single return. The election must be filed with the single return in the form prescribed by the commissioner of revenue and contain:

A. the names of all members;

B. the Minnesota and federal employer identification numbers for each member; and

C. a statement appointing one member as the designated member and granting power of attorney to the designated member to represent the unitary group for all tax matters related to the single return.

The election to file a single return and the appointment of a designated member are binding for all subsequent tax years and may be rescinded or modified only on a form as prescribed by the commissioner.

Subp. 5. **Filing requirements.** The designated member is responsible for filing the single return. The return must be signed by a person who is authorized by the designated member and who has knowledge of the contents of the return.

The single return must include an explanation of changes in the unitary group's membership in the single return year, if any.

Subp. 6. **Payment of tax.** All taxes, penalties, interest, or additions to tax must be paid by the designated member on behalf of the unitary group. The designated member is responsible for the payment of all changes in tax liability or assessments for the taxable year.

Subp. 7. **Liability for tax.** Every corporation that was a member of a unitary group during any part of a single return year is severally liable for the taxes, penalties, interest, or

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additions to tax for that year. The commissioner may make assessment and collect a tax deficiency from a former member in an amount not exceeding the part of the deficiency which the commissioner determines to be allocable to the former member, based upon the proportion of the former member's taxable net income over the unitary group's taxable net income, if:

A. the corporation has ceased to be a member as the result of a bona fide sale or exchange of its stock for fair value;

B. the sale or exchange occurred prior to the date of the assessment of the deficiency; and

C. the commissioner believes that the assessment or collection of the balance of the deficiency is not jeopardized.

The tax liability prescribed in this part cannot be reduced by an agreement entered into by one or more members with another member or with another person.

Subp. 8. **Refunds.** Claims for refund are filed by the designated member on behalf of the members. Refunds are paid to the designated member.

Subp. 9. **Computation of tax.** Each member must compute its separate tax for the taxable year and combine those amounts for the unitary group's franchise tax liability for the taxable year in which a single return is filed.

Subp. 10. **Estimated payments.** The designated member must make quarterly payments of estimated taxes for the unitary group, as provided in Minnesota Statutes, section 290.933.

In applying the provisions of Minnesota Statutes, section 290.934, a unitary group electing to file a single combined return is treated as if it were a single corporation.

For purposes of the first taxable year in which an election is made under this part, the amount used as the tax liability for the prior taxable year to calculate the required installment under Minnesota Statutes, section 290.934, subdivision 3a, will be calculated using the total of the prior taxable year's tax liabilities of all the members.

If the members make separate estimated tax payments for the

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by Revisor _____

taxable year, then the provisions of this subpart do not apply and the provisions of Minnesota Statutes, sections 290.933 and 290.934, are applied to each member separately.

Subp. 11. **Forms and schedules.** The single return must include the forms and schedules prescribed by the commissioner.

Subp. 12. **Extensions.** A request for an extension in the time for filing a single return must be made by the designated member on behalf of the other members.

Subp. 13. **Interest.** Interest due on an underpayment or assessment of tax is calculated as if the unitary group were a single corporation.

Subp. 14. **Applicability.** This part applies to elections made for tax years beginning after December 31, 1989.

REPEALER. Minnesota Rules, part 8019.0400 is repealed.

Approved
by Revisor _____

Stat Auth 290.52
The commissioner shall administer and enforce the assessment and collection of the taxes imposed by this chapter and may, from time to time, make, publish, and distribute rules in enforcing its provisions.

290.37 subd 1(9)
A taxpayer shall file a return for each taxable year the taxpayer is required to file a return under section 6012 of the Internal Revenue Code of 1986, as amended through Dec. 31, 198
. . . . The commissioner may adopt rules for the filing of one return on behalf of the members of an affiliated group of corporations that are required to file . . .

Statement of need quotes authority not contained in 290.37 1(9)
I could not find in 290.37 1(9) what they have quoted. There is authority but it is what I have put down.

Changes were made I don't understand the d. change stated in the Statement of Need and Reasonableness

≠180- the statutory authority I noted states the commissioner may promulgate rules, however the SONAR states 290.37 1(9) as the commissioner shall promulgate rules

Department of Revenue

Appeals and Legal Services Division

Notice of Solicitation of Outside Information or Opinions Regarding Proposed Rules Governing Administration of the Income and Excise Taxes: The Filing of a Single Return for Members of an Affiliated Group of Corporations

NOTICE IS HEREBY GIVEN that the State Department of Revenue is seeking information or opinions from sources outside the agency in preparing to propose the amendment of the rules governing the filing of one return on behalf of the members of an affiliated group of corporations that are required to file a combined income report. The adoption of these rules are authorized by *Minnesota Statutes*, section 290.37, subd. 1(a) which requires the agency to promulgate rules for the administration and enforcement of *Minnesota Statutes*, sections 290.07 to 290.9742 not inconsistent with its provisions.

The State Department of Revenue requests information and opinions concerning the subject matter of the rule. Interested persons or groups may submit data or views on the subject matter of concern in writing or orally. Written statements should be addressed to:

Stephen E. Krenkel
Department of Revenue
Appeals and Legal Services Division
10 River Park Plaza
Mail Station 2220
St. Paul, MN 55146-2220

Oral statements will be received during regular business hours over the telephone at (612) 296-1022 and in person at the above address.

All statements of information and opinions shall be accepted until December 15, 1989. Any written material received by the state Department of Revenue shall become part of the rulemaking record to be submitted to the Attorney General or Administrative Law judge in the event the rule is adopted.

Dated: 15 November 1989

Stephen E. Krenkel
Attorney

State Contracts and Advertised Bids

Pursuant to the provisions of Minn. Stat. §14.10, an agency must make reasonable effort to publicize the availability of any services contract or professional and technical services contract which has an estimated cost of over $2,000.

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

Commodities contracts with an estimated value of $15,000 or more are listed under the Procurement Division, Department of Administration. All bids are open for 7-10 days before bidding deadline. For bid specifics, time lines, and other general information, contact the appropriate buyers whose initials appear in parentheses next to the commodity for bid, by calling (612) 296-6152.

Awards of contracts and advertised bids for commodities and printing, as well as awards of professional, technical and consulting contracts, appear in the midweek STATE REGISTER Contracts Supplement, published every Thursday. Call (612) 296-0931 for subscription information.

Department of Administration: Materials Management Division

Contracts and Requisitions Open for Bid

Call 296-2600 for information on a specific bid, or to request a specific bid.

July 24, 1990

STATE OF MINNESOTA

DEPARTMENT OF REVENUE

Ms. Christie Eller
Assistant Attorney General
Office of the Attorney General
Capitol Office Building
525 Park Street, Suite 500
St. Paul, MN 55103

Dear Ms. Eller:

Enclosed please find the following documents in the matter of the proposed rule of the Department of Revenue allowing the filing of a single return for members of a unitary group of corporations:

1. notice of solicitation of outside opinion as published in the State Register;

2. proposed rule as originally noticed and the certificate of approval as to form from the Revisor of Statutes;

3. notice of intent to adopt a rule without a public hearing as mailed;

4. statement of need and reasonableness;

5. affidavit of mailing the notice of intent;

6. notice of intent as published in the State Register;

7. four copies of the rule as proposed, reflecting all modifications and approved as to form by the Revisor of Statutes;

8. Findings of Fact, Conclusion and Order adopting the rule;

9. the written submission and comment received by the Department of Revenue; and

10. Declaration of Counsel.

These documents are submitted for your review in accordance with Minnesota Statutes, section 14.26, and Minnesota Rules Part 2010.0300. There were no requests for notification of this submission.

Sincerely,

Michael E. Boekhaus
Appeal and Legal Services Division
10 River Park Plaza
St. Paul, MN 55146
(612)297-1452

Enclosures

AN EQUAL OPPORTUNITY EMPLOYER

FINDINGS OF FACT, CONCLUSIONS, AND ORDER ADOPTING THE RULE WITHOUT PUBLIC HEARING.

STATE OF MINNESOTA

DEPARTMENT OF REVENUE

In the Matter of the Proposed Adoption of the Rule of the Minnesota Department of Revenue Governing Administration of Taxes: The Filing of Single Return for Members of a Unitary Group of Corporations	FINDINGS OF FACT, CONCLUSIONS, AND ORDER ADOPTING RULE WITHOUT PUBLIC HEARING

(1) Notice of the Commissioner of Revenue's intent to adopt the above-entitled rule was published in the State Register on March 5, 1990, and was sent by United States mail to all persons on the list maintained by the agency pursuant to Minnesota Statutes, sections 14.14, subdivision 1a and 14.22 on March 28, 1990. (2) The statement of need and reasonableness was prepared before the notice of intent to adopt a rule without a public hearing was mailed to all persons on the rulemaking mailing list and published in the State Register and was available to the public.

(4) All persons were given the opportunity to submit comment on the rule for 30 days after notice of proposed rulemaking. (5) No requests for a public hearing on the rule were received by the agency.

(7) One comment on the rule was received by the agency. No requests for notice of submission to the attorney general were received by the agency.

(6) Based on the comments and evidence in the record before the agency, I find the following:

1. Changes to the proposed rule as originally noticed are as follows:

a. page 2, lines 2, 5 and 6 change the term "tax year" to "taxable year" so that the latter phrase is used consistently throughout the rule;

b. page 2, lines 7, 8 and 10 make it explicit that the election referred to in subpart 4 of the proposed rule as noticed is the election to file a single return provided in subpart 1;

c. page 2, line 14 is a grammatical correction inserting the word "the" in the sentence;

d. page 2, lines 30 through 36 and page 3, lines 2 through 18 and lines 22 through 35 are a rearrangement of the original provisions of the proposed rule as noticed. The proposed rule as noticed contained a general rule for the payment of tax in subpart 6 and a general rule for the liability for tax in subpart 7. Subpart 7 also contained an exception to the general rule for the liability for tax. The changes place

the general rules for liability and payment of tax in subpart 6 and the exception to the general rule for liability for tax in subpart 7. The purpose of these changes is to make it clear that the language contained in subpart 7 is an exception to the general rule for liability contained in subpart 6;

e. page 2, lines 35 and 36 is a grammatical correction changing the word "was" to "is;"

f. page 4, line 4 inserts the word "franchise" so that the phrase "franchise tax" is used consistently throughout the rule; and

g. page 4, lines 9, 10, 12, 18, 19, 24 and 25 change references to statutes that were repealed and recodified in Laws of Minnesota 1990, Chapter 480, Article 1, sections 12 and 45.

2. The changes do not constitute substantial change from the proposed rule as noticed because the changes clarify provisions of the proposed rule as noticed, correct grammatical errors, update statutory references and do not:

a. affect classes of persons who could not reasonably have been expected to comment on the proposed rule as originally noticed;

b. introduce significant subject matter which a reasonable person, on the basis of the proposed rule as originally noticed, would not have anticipated would occur in the rulemaking proceeding; or

c. make a major substantive change that was not raised by the proposed rule as originally noted in such a way as to invite reaction.

(8) The above-captioned rule is needed and reasonable.

NOW, THEREFORE, IT IS ORDERED that the rule identified as Minnesota Rules Part 8019.0405 as modified is adopted this 24 day of July 1990, pursuant to authority vested in me by Minnesota Statutes, sections 290.52 and 290.37, subdivision 1(a).

(9)

John James

Commissioner of Revenue
of the State of Minnesota

MEB:ctrules\singfacts.

STATE OF MINNESOTA
DEPARTMENT OF REVENUE

In the Matter of the Proposed Adoption of a New Rule Governing Administration of Income and Excise Taxes: The Filing of Single Return for Members of a Unitary Group of Corporations

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 the administration of income and excise taxes, filing of a single return for members of a unitary group of corporations was published in the State Register on November 27, 1989. The notice specifically mentioned this rule and invited interested persons to submit comments or suggestions orally or in writing to the Department by December 15, 1989. No one has commented either in writing or orally.

IMPACT ON SMALL BUSINESS.

The impact of this rule on small business has been considered. The proposed rule is not mandatory and therefore is not expected to place any financial or administrative burden on small

business. Small businesses which do not elect to file a tax return under this rule 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. Additionally, Minnesota Statutes section 290.37, subd. 1(a) requires that "The commissioner shall adopt rules for the filing of one return on behalf of the members of a unitary group of corporations that are required to file a combined report."

RULE 8019.0405, SUBPART 1.

This subpart is necessary because it refers to the general statutory requirements for filing a combined income report. The statute only permits the filing of a single return if a combined report is required. This section is reasonable because its language regarding a unitary group reflects both the statute, M.S. sec. 290.17; and rule, Rule 8019, which require combined income reports of a unitary group. This subpart sets forth the basic required relationship between corporate members which must be understood to accurately apply the rest of the rule. It sets forth the general requirements for the election to file a single combined return.

SUBPART 2 DEFINITIONS.

This subpart sets out definitions of terms used in the rule.

Definitions are necessary to adequately inform taxpayers of whether they are eligible to make the election to file one return, and to indicate what is meant by the words and phrases used in the rule, which are particular to this rule.

SUBPART 2, ITEM A.

This item is necessary because it defines the unitary group required to file a single combined income report as the statute defines corporations affiliated by stock ownership required to file a combined income report. It is reasonable because it follows the statutory definition and refers the user of this rule to the statute and rule where the requirements for a combined income report are set forth.

SUBPART 2, ITEM B.

This subpart is necessary because the Department of Revenue must know who is responsible for filing the return on behalf of the unitary group. Each taxpayer is required generally by statute to file a return signed by a person designated by it. Although a single filing will be accepted by the Department of Revenue on behalf of the corporations in the unitary group, it is still necessary that the return be signed by a designee of the filing corporation. This designee, the designated member must be responsible for the filing when it signs the return to be filed, so a power of attorney must be filed. The second sentence of Item B is necessary because the commissioner must have jurisdiction to enforce the provisions of this rule

specifically, and Minnesota tax laws generally.

SUBPART 2, ITEM C.

This item is reasonable because it defines a member of a unitary group of corporations in a manner consistent with the definition of a unitary business in Minnesota Statutes section 290.17, subd. 4. A unitary business is a prerequisite for filing a combined income report, and the ability to file a combined income report is a requisite for filing a single return.

SUBPART 2, ITEM D.

This item is reasonable, because it defines the term single return as it is used in this rule.

SUBPART 2, ITEM E.

This item is necessary because the designated member of a unitary group of corporations are required to file a return for the entire group. It is reasonable to define single return year as the rule does to distinguish between a single return year and a tax year for a corporation filing a combined report on a separate basis for a tax year.

SUBPART 3.

The first paragraph is necessary because it sets forth the basic requirements for filing a single return, that each member's tax year must be the same as the designated member's. The single

return is filed one time to cover every member, so it is reasonable for the filing date to be the same date for each member. Because filing a single return for each member of a unitary group requires a single tax year shared by each member, the same fiscal year or accounting year is also required in order to have a common measure for income for the year.

The second paragraph is necessary because it sets forth the rules for the tax year of a member added to a unitary group or a member removed from a unitary group. It is reasonable because it relates the filing requirements of a combined income report with the particular requirements of filing one return on behalf of the members of a unitary group.

SUBPART 4.

This item is necessary because it sets forth the mechanical requirements for a single return filing. The listed requirements are reasonable because the first and second requirements, the names of the members whose tax is filed by the single return and the Minnesota and federal identification numbers of each member, allow the Department of Revenue to identify each member of the unitary group covered by the filing and properly credit their accounts for taxes paid. The third requirement, that each member execute a power of attorney to the designated member is reasonable because Minnesota Statutes section 290.37 requires that each taxpayer corporation file a return, and that the return be signed by a person designated by the corporation. The power of attorney authorizes the

designated corporation to sign the return of and for the member. These requirements parallel the requirements that would be imposed on a corporation when it filed a separate return and are necessary for identification and to meet statutory execution requirements.

This subpart also notifies the electing unitary group members of the requirements of Minnesota Statutes section 290.37, that modification of a unitary group filing a single return may be accomplished only on a form prescribed by the commissioner. The power of attorney executed to effect a single return must be rescinded, and notification is necessary to insure that payments are properly credited to the responsible persons.

SUBPART 5.

This subpart clarifies that the designated member is responsible for filing the tax return on behalf of each member of the unitary group. Coupled with the responsibility for filing, it is reasonable that the authorized signatory have knowledge of the contents of the return.

The second paragraph is reasonable in as much as the single return must be filed for the unitary group. It is necessary to report to the commissioner any corporation leaving an electing unitary group because the returns and payments must be matched by the Department to individual corporations which are ultimately responsible for returns and payments. The explanation of changes, both newly included corporations and

excluded corporations, limits the possibility that the Department may improperly credit payments to corporations.

SUBPART 6.

Subpart 6 is reasonable and necessary, because it clearly sets forth the responsibility of the designated member. A single return is predicated on the designated member having responsibility for filing a return and paying taxes, penalty, and interest. This subpart establishes that the designated member is the primary source for payment.

SUBPART 7.

This section is a provision for collection of delinquent taxes penalties, interest, and additions to tax. It is reasonable because it is based on the unitary theory of taxation, that income of interrelated corporations defined as a unitary group derive their income as a part of the affiliated group, and are controlled as a unitary group. The common control of the various corporations is the underlying reason for allowing the filing of a single return and payment of tax liability of multiple corporations with a single payment. The single payment which is made with a single return is not divisible to the members so that some members have no remaining liability and some do have remaining liability. The single payment is several amongst the corporations, so the additional tax penalties, interest, and additions to tax are several.

The second sentence of this item provides relief from several liability for a deficiency assessment against a former member of the affiliated group. The commissioner may reduce the assessment and collection amount from several liability for the entire amount to the portion which is properly allocable to the former member based upon the ratio of former member's taxable net income to the group's taxable net income. It is reasonable for the rule to include this provision because it both allows members to leave the affiliated group with some tax finality and protects the interests of the state in the continued assessment and collection of taxes.

The qualifications for this relief are designed to require that a former member has truly left the affiliated group of corporations in a bona fide transaction with a third party or parties and that there is no intent to avoid tax. Thus the requirements that a former member has ceased to be member in a bona fide sale or exchange of stock for fair value and that the transaction occur prior to the assessment are necessary. The last requirement for application of the relief provision is that the commissioner believes that the relief will not jeopardize the assessment or collection of the balance of the tax deficiency. This requirement is reasonable because the state should not forego taxes which would otherwise be due but for this relief.

The last sentence states the rule that a taxpayer cannot contract with a third party to relieve itself of tax liability to the state. Because subpart 7 generally addresses corporate

acquisitions and dispositions, it is reasonable to restate this black letter principle as a reminder of limitations that exist in any purchase or sale of a business.

SUBPART 8.

This subpart is reasonable because it parallels subparts 5 and 6 which require the designated member to file and pay the tax for all of the electing members. Also, the distribution of refunds by the Department of Revenue to the members at the time of refund would require additional processing and analysis by the Department of Revenue which would unnecessarily delay the issuance of refunds.

SUBPART 9.

This subpart is reasonable and necessary because it alerts the electing unitary group of corporations that although a single return is allowed upon election, the computation methods are not changed. A consolidated return is not permitted as part of the election to file a single return. Other governmental units allow consolidation when a single return is filed, but this subpart should dispel any confusion on this point. A combined income report as required by Minnesota Statutes section 290.17 is required regardless of whether the returns are filed separately or as a single return.

SUBPART 10.

This subpart is reasonable because the estimated tax return is included in the scope Minnesota Statues section 290.37. It is necessary because the estimated tax payments made throughout the tax year for each member must be matched up with the single tax return filed by the designated member.

This subdivision follows subdivisions 5, 6, 8, and 13 in treating the single payments made by the designated member as made by a single corporation. Sentence three establishes the procedure for payment of estimated tax in the first year of election. The netting of tax liability of members in the year prior to election is necessary to establish the basis for the payment of estimated taxes in the first year.

The last paragraph is reasonable because if the group makes separate payments, the Department of Revenue will calculate penalties and interest on the same basis as the payment. This provision puts taxpayers on notice that the estimated tax payments will be processed by the Department as filed by the taxpayer.

SUBPART 11, FORMS AND SCHEDULES.

This subpart is reasonable and necessary, as this rule will require forms and schedules for the calculation of the net tax liability of the affiliated group and a schedule of members of the affiliated group which are not necessary for the filing of a separate combined income report. The commissioner has the statutory authority to promulgate forms as set forth in

Minnesota Statutes section 290.39.

SUBPART 12, EXTENSIONS.

This subpart is reasonable because it follows the structure which is required by the statute, that members are identified with their affiliated group, and that filings, payments, and refunds are made by the designated member for the members. It is necessary to file an extension in this manner, because members are identified with the affiliated group, and a filing by the designated member will allow the Department to correctly identify those corporations included in the extension.

SUBPART 13, INTEREST.

This subpart is necessary because it explicitly states how interest calculated under Minnesota Statutes section 290.53 will be calculated for a unitary group filing a single return. This provision may lower the interest payments because interest is calculated on net tax due for the affiliated group, rather than the tax due from each member without regard to refunds due because of overpayments of tax. The subpart is reasonable because it treats tax due and interest calculations consistently with the filing and other provisions of this rule and the statute.

SUBPART 14.

This subpart establishes the effective date for tax years

beginning after December 31, 1989.

Repealer. The repealer repeals Minnesota Rule 8019.0400, which applied to the filing of one tax return for members of a unitary group which included a bank, and will be subject to the proposed, more general rule.

SEK:cak:snr:admininc:07/06/90

Office of the Revisor of Statutes

Administrative Rules

TITLE: Proposed Permanent Rules Relating to Single Return Filing by Affiliated Corporations

AGENCY: Department of Revenue

MINNESOTA RULES: Chapter 8019

The attached rules are approved for publication in the State Register

Janet C. Rahm
Senior Assistant Revisor

Department of Revenue

Proposed Permanent Rules Relating to Single Return Filing by Affiliated Corporations

Rule as Proposed (all new material)

8019.0405 UNITARY GROUP FRANCHISE TAX RETURN.

Subpart 1. **Filing of a single return.** Members of a unitary group required to be included on a combined report may elect to file a single corporate franchise tax return for the group.

Subp. 2. **Definitions.** The following definitions apply to this part.

A. "Unitary group" means two or more corporations that are part of a unitary business, as defined in Minnesota Statutes, section 290.17, subdivision 4, and are required or permitted to file a combined report under Minnesota Statutes, section 290.34 and part 8019.0300.

B. "Designated member" means the member of the affiliated group designated by the unitary group as provided in subpart 4. The designated member must have nexus with Minnesota under Minnesota Statutes, section 290.015.

C. "Member" means a corporation that is part of a unitary group that elects to file a single return as provided in this part.

D. "Single return" means one return filed by the designated member on behalf of all members of a unitary group.

E. "Single return year" means a taxable year for which a single return is filed or required to be filed by a unitary group.

Subp. 3. **Taxable year.** A single return must be filed on the basis of the designated member's taxable year. Each member must adopt the designated member's annual accounting period for the first and subsequent single return years in which the member is included in the unitary group.

Approved by Revisor

When a corporation becomes a member of the unitary group during the taxable year, its tax year must end on the same date as the designated member. When a corporation ceases to be a member of the unitary group during the taxable year, its tax year must begin on the same date as the designated member's tax year.

Subp. 4. **Election.** All members of the unitary group that are subject to Minnesota franchise taxes must make a written election to file a single return. The election must be filed with the single return in the form prescribed by the commissioner of revenue and contain:

A. the names of all members;

B. the Minnesota and federal employer identification numbers for each member; and

C. a statement appointing one member as the designated member and granting power of attorney to the designated member to represent the unitary group for all tax matters related to the single return.

The election to file a single return and the appointment of a designated member are binding for all subsequent tax years and may be rescinded or modified only on a form as prescribed by the commissioner.

Subp. 5. **Filing requirements.** The designated member is responsible for filing the single return. The return must be signed by a person who is authorized by the designated member and who has knowledge of the contents of the return.

The single return must include an explanation of changes in the unitary group's membership in the single return year, if any.

Subp. 6. **Payment of tax.** All taxes, penalties, interest, or additions to tax must be paid by the designated member on behalf of the unitary group. The designated member is responsible for the payment of all changes in tax liability or assessments for the taxable year.

Subp. 7. **Liability for tax.** Every corporation that was a member of a unitary group during any part of a single return year is severally liable for the taxes, penalties, interest, or

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by Revisor _____

additions to tax for that year. The commissioner may make assessment and collect a tax deficiency from a former member in an amount not exceeding the part of the deficiency which the commissioner determines to be allocable to the former member, based upon the proportion of the former member's taxable net income over the unitary group's taxable net income, if:

A. the corporation has ceased to be a member as the result of a bona fide sale or exchange of its stock for fair value;

B. the sale or exchange occurred prior to the date of the assessment of the deficiency; and

C. the commissioner believes that the assessment or collection of the balance of the deficiency is not jeopardized.

The tax liability prescribed in this part cannot be reduced by an agreement entered into by one or more members with another member or with another person.

Subp. 8. **Refunds.** Claims for refund are filed by the designated member on behalf of the members. Refunds are paid to the designated member.

Subp. 9. **Computation of tax.** Each member must compute its separate tax for the taxable year and combine those amounts for the unitary group's franchise tax liability for the taxable year in which a single return is filed.

Subp. 10. **Estimated payments.** The designated member must make quarterly payments of estimated taxes for the unitary group, as provided in Minnesota Statutes, section 290.933.

In applying the provisions of Minnesota Statutes, section 290.934, a unitary group electing to file a single combined return is treated as if it were a single corporation.

For purposes of the first taxable year in which an election is made under this part, the amount used as the tax liability for the prior taxable year to calculate the required installment under Minnesota Statutes, section 290.934, subdivision 3a, will be calculated using the total of the prior taxable year's tax liabilities of all the members.

If the members make separate estimated tax payments for the

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by Revisor _____

taxable year, then the provisions of this subpart do not apply and the provisions of Minnesota Statutes, sections 290.933 and 290.934, are applied to each member separately.

Subp. 11. **Forms and schedules.** The single return must include the forms and schedules prescribed by the commissioner.

Subp. 12. **Extensions.** A request for an extension in the time for filing a single return must be made by the designated member on behalf of the other members.

Subp. 13. **Interest.** Interest due on an underpayment or assessment of tax is calculated as if the unitary group were a single corporation.

Subp. 14. **Applicability.** This part applies to elections made for tax years beginning after December 31, 1989.

REPEALER. Minnesota Rules, part 8019.0400 is repealed.

Approved
by Revisor _____

STATE OF MINNESOTA
DEPARTMENT OF REVENUE
APPEALS AND LEGAL SERVICES DIVISION

IN THE MATTER OF THE PROPOSED ADOPTION OF THE RULE OF THE STATE OF MINNESOTA GOVERNING ADMINISTRATION OF INCOME AND EXCISE TAXES: THE FILING OF SINGLE RETURN FOR MEMBERS OF A UNITARY GROUP OF CORPORATIONS

AFFIDAVIT OF MAILING THE NOTICE OF INTENT TO ADOPT A RULE WITHOUT A PUBLIC HEARING

STATE OF MINNESOTA)
)ss.
COUNTY OF RAMSEY)

Margaret A. Connolly, being sworn says:

I hereby certify that the list of persons and associations who have requested, pursuant to Minnesota Statutes, sections 14.14, subdivision 1a and 14.22 or 14.30, that their names be placed on the state Department of Revenue rulemaking mailing list is accurate, complete, and current as of this 28th day of March, 1990.

That on the 28th day of March, 1990, at the City of St. Paul, County of Ramsey, State of Minnesota, I mailed the attached Notice of Intent to Adopt A Rule Without a Public Hearing by depositing in the State of Minnesota Central Mail System for United States mailing, a copy thereof, with postage prepaid, to all persons and associations on the aforementioned mailing list.

Subscribed and sworn to
before me this
28th day of March, 1990

Margaret A. Connolly
MARGARET A. CONNOLLY

197 mailed

PATRICK J. FINNEGAN
NOTARY PUBLIC — MINNESOTA
HENNEPIN COUNTY
My commission expires Oct. 25, 1990

NOTICE OF INTENT TO ADOPT A RULE WITHOUT A PUBLIC HEARING.

Department of Revenue

In the Matter of the proposed Adoption of the Rule of the Minnesota Department of Revenue Governing Administration of Income and Excise Taxes: The Filing of Single Return for Members of a Unitary Group of Corporations	NOTICE OF INTENT TO ADOPT A RULE WITHOUT A PUBLIC HEARING

Notice is hereby given that the Minnesota Department of Revenue intends to adopt the above-entitled rule without a public hearing following the procedures set forth in the Administrative Procedure Act for adopting rules without a public hearing in Minnesota Statutes, sections 14.22 to 14.28. The statutory authority to adopt the rule is Minnesota Statutes sections 290.52 and 290.37, subdivision 1(a).

All persons have 30 days in which to submit comment in support of or in opposition to the proposed rule or any part or subpart of the rule. Comment is encouraged. Each comment should identify the portion of the proposed rule addressed, the reason for the comment, and any change proposed.

Any person may make a written request for a public hearing on the rule within the 30-day comment period. 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 unless a sufficient number withdraw their request in writing. Any person requesting a public hearing should state his or her name and address, and is encouraged to identify the portion of the proposed rule addressed, the reason for the request, and any change proposed. If a public hearing is required, the agency will proceed pursuant to Minnesota Statutes, sections 14.131 to 14.20.

Comments or written requests for a public hearing must be submitted to:

Stephen E. Krenkel, Attorney
Business Tax Unit
Appeals and Legal Services Division
10 River Park Plaza
Mail Station 2220
St. Paul, MN 55146-2220
(612) 296-3438

The proposed rule may be modified if the modifications are supported by data and views submitted to the agency and do not result in a substantial change in the proposed rule as noticed.

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

A Statement of Need and Reasonableness that describes the need for and reasonableness of each provision of the proposed rule and identifies the data and information relied upon to support the proposed rule has been prepared and is available from Stephen E. Krenkel upon request.

If no hearing is required, upon adoption of the rule, the rule and the required supporting documents will be submitted to the Attorney General for review as to legality and form to the extent the form relates to legality. Any person may request notification of the date of submission to the Attorney General. 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 adopted rule, must submit the written request to Stephen E. Krenkel.

February 15, 1990
Date

[Name]
[Title]

SEK:cak:strules\adminint

Department of Revenue

Proposed Permanent Rules Relating to Single Return Filing by Affiliated Corporations

Rule as Proposed (all new material)

8019.0405 UNITARY GROUP FRANCHISE TAX RETURN.

Subpart 1. **Filing of a single return.** **Members of a unitary group required to be included on a combined report may** elect to file a single corporate franchise tax return for the **group.**

Subp. 2. **Definitions.** **The following definitions apply to** this part.

A. "Unitary group" means two or more corporations that are part of a unitary business, as defined in Minnesota Statutes, section 290.17, subdivision 4, and are required or permitted to file a combined report under Minnesota Statutes, section 290.34 and part 8019.0300.

B. "Designated member" means the member of the affiliated group designated by the unitary group as provided in subpart 4. The designated member must have nexus with Minnesota under Minnesota Statutes, section 290.015.

C. "Member" means a corporation that is part of a unitary group that elects to file a single return as provided in this part.

D. **"Single return" means one return filed by the** designated member on behalf of all members of a unitary group.

E. **"Single return year" means a taxable year for** which a single return is filed or required to be filed by a unitary group.

Subp. 3. **Taxable year.** **A single return must be filed on** the basis of the designated member's taxable year. **Each member** must adopt the designated member's annual accounting period for the first and subsequent single return years in which the member is included in the unitary group.

Approved by Revisor

When a corporation becomes a member of the unitary group during the taxable year, its tax year must end on the same date as the designated member. When a corporation ceases to be a member of the unitary group during the taxable year, its tax year must begin on the same date as the designated member's tax year.

Subp. 4. **Election.** All members of the unitary group that are subject to Minnesota franchise taxes must make a written election to file a single return. The election must be filed with the single return in the form prescribed by the commissioner of revenue and contain:

A. the names of all members;

B. the Minnesota and federal employer identification numbers for each member; and

C. a statement appointing one member as the designated member and granting power of attorney to the designated member to represent the unitary group for all tax matters related to the single return.

The election to file a single return and the appointment of a designated member are binding for all subsequent tax years and may be rescinded or modified only on a form as prescribed by the commissioner.

Subp. 5. **Filing requirements.** The designated member is responsible for filing the single return. The return must be signed by a person who is authorized by the designated member and who has knowledge of the contents of the return.

The single return must include an explanation of changes in the unitary group's membership in the single return year, if any.

Subp. 6. **Payment of tax.** All taxes, penalties, interest, or additions to tax must be paid by the designated member on behalf of the unitary group. The designated member is responsible for the payment of all changes in tax liability or assessments for the taxable year.

Subp. 7. **Liability for tax.** Every corporation that was a member of a unitary group during any part of a single return year is severally liable for the taxes, penalties, interest, or

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by Revisor _____

additions to tax for that year. The commissioner may make assessment and collect a tax deficiency from a former member in an amount not exceeding the part of the deficiency which the commissioner determines to be allocable to the former member, based upon the proportion of the former member's taxable net income over the unitary group's taxable net income, if:

A. the corporation has ceased to be a member as the result of a bona fide sale or exchange of its stock for fair value;

B. the sale or exchange occurred prior to the date of the assessment of the deficiency; and

C. the commissioner believes that the assessment or collection of the balance of the deficiency is not jeopardized.

The tax liability prescribed in this part cannot be reduced by an agreement entered into by one or more members with another member or with another person.

Subp. 8. **Refunds.** Claims for refund are filed by the designated member on behalf of the members. Refunds are paid to the designated member.

Subp. 9. **Computation of tax.** Each member must compute its separate tax for the taxable year and combine those amounts for the unitary group's franchise tax liability for the taxable year in which a single return is filed.

Subp. 10. **Estimated payments.** The designated member must make quarterly payments of estimated taxes for the unitary group, as provided in Minnesota Statutes, section 290.933.

In applying the provisions of Minnesota Statutes, section 290.934, a unitary group electing to file a single combined return is treated as if it were a single corporation.

For purposes of the first taxable year in which an election is made under this part, the amount used as the tax liability for the prior taxable year to calculate the required installment under Minnesota Statutes, section 290.934, subdivision 3a, will be calculated using the total of the prior taxable year's tax liabilities of all the members.

If the members make separate estimated tax payments for the

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by Revisor _____

taxable year, then the provisions of this subpart do not apply and the provisions of Minnesota Statutes, sections 290.933 and 290.934, are applied to each member separately.

Subp. 11. **Forms and schedules.** The single return must include the forms and schedules prescribed by the commissioner.

Subp. 12. **Extensions.** A request for an extension in the time for filing a single return must be made by the designated member on behalf of the other members.

Subp. 13. **Interest.** Interest due on an underpayment or assessment of tax is calculated as if the unitary group were a single corporation.

Subp. 14. **Applicability.** This part applies to elections made for tax years beginning after December 31, 1989.

REPEALER. Minnesota Rules, part 8019.0400 is repealed.

Approved
by Revisor _____

C. cause the likelihood of confusion or of misunderstanding as to affiliation, connection, or association with, or certification by another;

D. use deceptive representations or designations of geographic origin in connection with goods or services;

E. represent that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities that they do not have or that a person has a sponsorship, approval, status, affiliation, or connection that the person does not have;

F. represent that goods or services are of a particular standard, quality, or grade if they are of another; and

G. disparage the goods, services, or business of another by false or misleading representation of fact.

1556.0127 LABELING.

A product that is labeled Minnesota certified organic or with any derivative of that term must meet Minnesota organic standards contained in parts 1555.0005 to 1555.0013. If a product is labeled "certified organic" or with any derivative of that term the name of the certifying person or organization must be stated on the label.

A handler of certified organic products shall maintain records that allow the product to be traced to its origin and show proof of compliance with the standards indicated on the product's label.

REPEALER. *Minnesota Rules*, parts 1555.0005, subparts 2 and 13; 1555.0011; and 1555.0013, are repealed.

Department of Revenue

Proposed Permanent Rules Relating to Single Return Filing by Affiliated Corporations

Notice of Intent to Adopt a Rule Without a Public Hearing

NOTICE IS HEREBY GIVEN that the Minnesota Department of Revenue intends to adopt the above-entitled rule without a public hearing following the procedures set forth in the Administrative Procedure Act for adopting rules without a public hearing in *Minnesota Statutes*, sections 14.22 to 14.28. The statutory authority to adopt the rule is *Minnesota Statutes* sections 290.52 and 290.37, subdivision 1(a).

All persons have 30 days in which to submit comment in support of or in opposition to the proposed rule or any part or subpart of the rule. Comment is encouraged. Each comment should identify the portion of the proposed rule addressed, the reason for the comment, and any change proposed.

Any person may make a written request for a public hearing on the rule within the 30-day comment period. 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 unless a sufficient number withdraw their request in writing. Any person requesting a public hearing should state his or her name and address, and is encouraged to identify the portion of the proposed rule addressed, the reason for the request, and any change proposed. If a public hearing is required, the agency will proceed pursuant to *Minnesota Statutes*, sections 14.131 to 14.20.

Comments or written requests for a public hearing must be submitted to:

Stephen E. Krenkel, Attorney
Business Tax Unit
Appeals and Legal Services Division
10 River Park Plaza
Mail Station 2220
St. Paul, MN 55146-2220
(612) 296-3438

The proposed rule may be modified if the modifications are supported by data and views submitted to the agency and do not result in a substantial change in the proposed rule as noticed.

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

A STATEMENT OF NEED AND REASONABLENESS that describes the need for and reasonableness of each provision of the proposed rule and identifies the data and information relied upon to support the proposed rule has been prepared and is available from Stephen E. Krenkel upon request.

If no hearing is required, upon adoption of the rule, the rule and the required supporting documents will be submitted to the Attorney General for review as to legality and form to the extent the form relates to legality. Any person may request notification of the date of

submission to the Attorney General. 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 adopted rule, must submit the written request to Stephen E. Krenkel.

Dated: 15 February 1990

John P. James, Commissioner
Department of Revenue

Rule as Proposed (all new material)

8019.0405 UNITARY GROUP FRANCHISE TAX RETURN.

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B. "Designated member" means the member of the affiliated group designated by the unitary group as provided in subpart 4. The designated member must have nexus with Minnesota under *Minnesota Statutes*, section 290.015.

C. "Member" means a corporation that is part of a unitary group that elects to file a single return as provided in this part.

D. "Single return" means one return filed by the designated member on behalf of all members of a unitary group.

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A. the names of all members;

B. the Minnesota and federal employer identification numbers for each member; and

C. a statement appointing one member as the designated member and granting power of attorney to the designated member to represent the unitary group for all tax matters related to the single return.

The election to file a single return and the appointment of a designated member are binding for all subsequent tax years and may be rescinded or modified only on a form as prescribed by the commissioner.

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The single return must include an explanation of changes in the unitary group's membership in the single return year, if any.

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Subp. 7. **Liability for tax.** Every corporation that was a member of a unitary group during any part of a single return year is severally liable for the taxes, penalties, interest, or additions to tax for that year. The commissioner may make assessment and collect a tax deficiency from a former member in an amount not exceeding the part of the deficiency which the commissioner determines to be allocable to the former member, based upon the proportion of the former member's taxable net income over the unitary group's taxable net income, if:

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.

A. the corporation has ceased to be a member as the result of a bona fide sale or exchange of its stock for fair value;

B. the sale or exchange occurred prior to the date of the assessment of the deficiency; and

C. the commissioner believes that the assessment or collection of the balance of the deficiency is not jeopardized.

The tax liability prescribed in this part cannot be reduced by an agreement entered into by one or more members with another member or with another person.

Subp. 8. **Refunds.** Claims for refund are filed by the designated member on behalf of the members. Refunds are paid to the designated member.

Subp. 9. **Computation of tax.** Each member must compute its separate tax for the taxable year and combine those amounts for the unitary group's franchise tax liability for the taxable year in which a single return is filed.

Subp. 10. **Estimated payments.** The designated member must make quarterly payments of estimated taxes for the unitary group, as provided in *Minnesota Statutes*, section 290.933.

In applying the provisions of *Minnesota Statutes*, section 290.934, a unitary group electing to file a single combined return is treated as if it were a single corporation.

For purposes of the first taxable year in which an election is made under this part, the amount used as the tax liability for the prior taxable year to calculate the required installment under *Minnesota Statutes*, section 290.934, subdivision 3a, will be calculated using the total of the prior taxable year's tax liabilities of all the members.

If the members make separate estimated tax payments for the taxable year, then the provisions of this subpart do not apply and the provisions of *Minnesota Statutes*, sections 290.933 and 290.934, are applied to each member separately.

Subp. 11. **Forms and schedules.** The single return must include the forms and schedules prescribed by the commissioner.

Subp. 12. **Extensions.** A request for an extension in the time for filing a single return must be made by the designated member on behalf of the other members.

Subp. 13. **Interest.** Interest due on an underpayment or assessment of tax is calculated as if the unitary group were a single corporation.

Subp. 14. **Applicability.** This part applies to elections made for tax years beginning after December 31, 1989.

REPEALER. *Minnesota Rules*, part 8019.0400 is repealed.

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.

Public Employment Relations Board

Adopted Permanent Rules Relating to Public Employees; Arbitration

The rules proposed and published at *State Register*, Volume 14, Number 22, pages 1305-1313, November 27, 1989 (14 S.R. 1305) are adopted with the following modifications:

Office of the Revisor of Statutes
Administrative Rules

Janet M. Rahm
Senior Assistant Revisor
296-0952

700 State Office Building
100 Constitution Avenue
St. Paul, MN 55155-1297

May 18, 1990

Michael Boekhaus
Appeals and Legal Services Division
Department of Revenue
10 River Park Plaza - Eighth Flr
St. Paul, MN 55146-2220

RE: File No. 1641

Dear Mr. Boekhaus:

Enclosed are four copies of your rule with the modifications you requested.

Please submit the rules to the Attorney General or the Office of Administrative Hearings, as appropriate.

If you have any questions or need further modifications, please call me.

Very truly yours,

Janet M. Rahm

MAILROOM
FEB 12 1990

CARGILL
TAX DEPARTMENT

15407 McGinty Road
Minnetonka, Minnesota
Mail Address: Box 9300
Minneapolis, Minnesota 55440

(612) 475-6425

February 9, 1990

Mr. Stephen E. Krenkel
Appeals and Legal Services
MN Department of Revenue
Mail Station 2220
St. Paul MN 55146-2220

Dear Mr. Krenkel:

RE: Proposed Permanent Rules Relating to Single Return Filing by Affiliated Corporations; and

Statement of Need and Reasonableness . . .

We looked over the two documents you sent over for our review and have no objections or additions to propose. The documents define some terms and give the commissioner the authority needed to administer single return filings.

We are also very interested in the forms design including the instruction and will look forward to seeing your revised proposals.

The commitment to this project by you and others in the Department of Revenue are appreciated.

Sincerely,

CARGILL, INCORPORATED

Laurence M. Neer

Laurence M. Neer
Manager of State Income Taxes

LMN:mjb

STATE OF MINNESOTA

DEPARTMENT OF REVENUE

In the Matter of the Proposed Adoption of the Rule of the Minnesota Department of Revenue Governing Administration of Taxes: The Filing of Single Return for Members of a Unitary Group of Corporations

DECLARATION OF COUNSEL

I, **THOMAS R. MUCK, Deputy Attorney General,** do hereby declare that I have examined the above-captioned rule, and the supporting rulemaking record, and that, based on my examination, the Administrative Procedure Act and Minnesota Rules, chapter 2010 have been followed. Any exceptions are listed below. For Attorney General billing purposes, the four-digit docket client code is 0735.

Dated: 7/24, 1990.

THOMAS R. MUCK
Deputy Attorney General

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