

Minnesota Attorney General: Administrative Rules Proceedings

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Version 3
August 20, 2018

7/25 MJC

RULE REVIEW CHECKLIST

File No. 1840
DATE RECEIVED 7-24-91
REVIEW DATE 8/2/91
DUE DATE 8/7/91
(DIS)APPROVED 8-5-91 mjc
WITHDRAWN _____

Docket No. 05.1009.0735
ADOPTED W/O HEARING _____
EMERGENCY RULE _____
TO REVISOR ON 7-25-91
REVISOR (DIS)APPROVED 7-30-91
FILED W/SEC. OF STATE 8-5-91
RETURNED TO AGENCY 8-8-91

✓ Rule as adopted (4 copies)

✓ Notice to Solicit Outside Information/Opinion (if applicable)
May 6, 1991 Date published in State Register
_____ Comments

_____ Petition for Adoption of a Rule

_____ Board's Authorizing Resolution
_____ Date adopted

✓ Proposed Rule
✓ Revisor's Certificate

✓ Notice of Intent to Adopt Rule
270.06 (13) Statutory Authority
✓ Small Business Statement
✓ Expenditure of public money statement
May 13, 1991 Signature

_____ Statement of Need and Reasonableness (if applicable)
_____ Small Business Statement
_____ Fees - § 16A.128

✓ Affidavit of Mailing Notice of Intent to Adopt Rule
May 22, 1991 Dated (30)/25 days before adoption
✓ Notice attached indicates it is attached
_____ Copy of rule or summary attached

✓ Publication in State Register
May 28, 1991 Date (30)/25 days before adoption

✓ 180-day deadline from: check
✓ Effective date of law requiring rule (14.12) (both rules) amendments don't apply not new
✓ end of comment period (§ 14.26) (rules without hearing)
_____ effective date of statutory authority (§ 14.29) (emergency rules)

_____ ~~Resolution Adopting~~
_____ ~~Date adopted~~

✓ Findings of Fact, Conclusions & Order Adopting
July 19, 1991 Date

~~Written Requests, Submissions or Comments~~

✓ Declaration of Attorney
Barry Greller Name of SAAG representing agency

_____ Notice of Submission to Attorney General (if applicable)

_____ Affidavit of Mailing Notice to Attorney General (if applicable)

Department of Revenue

Adopted Permanent Rules Relating to Annual Withholding Return

Rules as Adopted

8092.1400 ANNUAL RETURNS.

Subpart 1. **General rule.** If an employer deducts and withholds an amount required by Minnesota Statutes, chapter 290, for a base year and the amount required is $500 or less, the employer, for the qualifying year, may elect to file an annual return and make an annual payment of the amount required to be deducted and withheld in that calendar year and is thereafter relieved from filing quarterly returns and making quarterly payments. The annual return and payment are due on or before February 28 of the calendar year following the calendar year the amounts were deducted and withheld. The annual return will serve as the reconciliation required in Minnesota Statutes, section 289A.09, subdivision 2, paragraph (d), for those employers who have elected to file an annual return. The Department of Revenue, applying the criteria of this part, will annually determine which employers are eligible to file an annual return and notify those employers who qualify. Employers who have not filed all withholding tax returns required for the base year are not eligible to file an annual return. Only those employers so notified by the Department of Revenue are eligible to elect to file an annual return. At the time of notification, eligible employers may still elect to file returns and make deposits quarterly. Employers who make such election are required to make all returns and deposits required by Minnesota Statutes, chapter 289A, and will be subject to all applicable penalties.

Subp. 2. **Base year.** "Base year" means the most recent period of four consecutive quarters for which the Department of Revenue has compiled data on all employers withholding tax for that period. The first base year is the four-consecutive

quarter period beginning January 1990 and ending December 1990.

Subp. 3. **Qualifying year.** "Qualifying year" means the calendar year for which the Department of Revenue notifies the employer that it is eligible to file an annual return. The first qualifying year is the 1992 calendar year.

Subp. 4. **Accelerated deposits.** If, at the end of any calendar month other than the last month of the calendar year, the aggregate amount of undeposited withholding tax withheld by an employer who has elected to file an annual return exceeds $500, the employer must deposit the aggregate amount with the Department of Revenue within 30 days after the close of the calendar month.

Notwithstanding any other provision of this part, employers are subject to the eight-monthly period deposit requirements of Minnesota Statutes, section 289A.20.

In the event an employer who has elected to file an annual return pursuant to this part permanently ceases to pay wages for which withholding of tax is required, the employer must file a final return and deposit any undeposited tax on or before the last day of the month following the month in which the discontinuance of such activity occurred.

Subp. 5. **Maximum withholding amount.** The commissioner of revenue shall annually recalculate the maximum withholding amount for annual filing, using the percentage calculated pursuant to Minnesota Statutes, section 290.06, subdivision 2d, paragraph (b). If the maximum withholding amount so calculated is more than $100 above the maximum withholding amount for annual filing then in effect, the maximum withholding amount for annual filing must be increased by $100. If the maximum withholding amount so calculated is less than $100 above the maximum withholding amount then in effect, there shall be no change in the maximum withholding amount then in effect. When the maximum withholding amount is adjusted by the commissioner under this subpart, the maximum withholding amounts referred to in subparts 1 and 4 must be adjusted by the same amount by the commissioner.

APPROVED AS TO FORM AND LEGALITY

August 5 19 91

HUBERT H. HUMPHREY, III
ATTORNEY GENERAL

BY M J Cassedy

SPECIAL ASSISTANT ATTORNEY GENERAL

STATE OF MINNESOTA
DEPARTMENT OF STATE
FILED

AUG 5 1991

Joan Anderson Growe

Secretary of State

3:40 P.M.

M

F

DEPARTMENT: Office of the Attorney General **STATE OF MINNESOTA**

OFFICE MEMORANDUM

DATE: August 7, 1991

TO: FRAN GERTEN
Appeals and Legal Services Division
10 River Park Plaza

FROM: MARTHA J. CASSERLY
Special Assistant
Attorney General

PHONE: 296-6839

SUBJECT: In the Matter of the Adopted Rule Relating to Annual Withholding Return

The above-referenced rule has been approved as to its legality by the Attorney General on August 5, 1991.

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.

MJC:sc

cc: Barry Greller
William Brown, Chief Judge
MaryAnn Hruby

Stat. Authority 270.06 (13)

(13) The Commissioner of Revenue shall administer and enforce the assessment and collection of state taxes and, from time to time, make, publish, and distribute rules for the administration and enforcement of state tax laws. The rules have the force of law.

Findings of Fact

Findings indicate Notice was published on May 27, 1991 should be May 28, 1991

STATE OF MINNESOTA
DEPARTMENT OF REVENUE

In the Matter of the Proposed Adoption of a New Rule Relating to the Annual Filing of Withholding Tax Returns and Payment of Withheld Tax By Employers Who Withhold $500 or Less in One Year (Minnesota Rules Part 8092.1400)

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 withholding tax was published in the State Register on May 6, 1991. The notice specifically mentioned this rule and invited interested persons to submit comments or suggestions in writing to the Department by May 21, 1991.

IMPACT ON SMALL BUSINESS

The impact of this rule on small business has been considered. The proposed rule does not impose a new filing or payment requirement on small businesses and therefore is not expected to place any additional financial or administrative burden on small businesses. Reporting and deposit requirements for eligible small businesses have been simplified and

consolidated. Small businesses which do not elect to file an annual return under this rule will not be subject to this rule.

AUTHORITY TO ADOPT RULES

Minnesota Statutes section 270.06(13) requires that the Commissioner of Revenue promulgate rules concerning the administration of state tax laws. Additionally, Minnesota Statutes section 289A.09, subd. 1(a) provides that "(a)n employer who is required to deduct and withhold tax under section 290.92, subdivision 2a or 3 . . . must file a return with the commissioner for each quarterly period unless otherwise prescribed by the commissioner." [Emphasis added.] Additionally, Minnesota Statutes Section 289A.20, subd. 2(a) and (b) prescribes the due dates for making payment of withholding tax, and provides in subd. 2(c) that "(t)he commissioner may prescribe by rule other return periods or deposit requirements. In prescribing the reporting period, the commissioner may classify payors according to the amount of their tax liability and may adopt an appropriate reporting period for the class that the commissioner judges to be consistent with efficient tax collection. In no event will the duration of the reporting period be more than one year."

SUBPART 1. GENERAL RULE.

This subpart introduces the rule and sets forth the general terms of the election to file an annual withholding tax return. The purpose of the rule is to simplify the filing and payment requirements for employers with a small payroll while, at the same time, reducing the state's administrative costs.

The maximum withholding amount for qualification under the rule, $500 annually, is intended to limit the application of the rule to employers with a small payroll.

Employers who qualify under the rule are not required to file returns and pay tax quarterly, as required by current law. Rather they are eligible to file one return and make one payment annually on February 28th in the year following the calendar year in which the tax was withheld. Qualifying employers are also relieved from filing the annual reconciliation of the quarterly returns because the annual return will contain substantially the same information. The employers will simply submit their W-2 forms with their annual return. This will significantly lessen the administrative burden on the employers since they will be required to file just one return annually instead of five. It will also lessen the administrative costs of the Department of Revenue. There will be fewer forms to produce, mail, and process, and fewer demands to produce and mail quarterly to nonfilers. In addition, this will enable Department personnel to process other returns in a more timely manner, and reduces the number of physical and electronic records the Department must store.

The Department of Revenue will determine which employers qualify to file an annual return and notify them of their eligibility. This is necessary to enable the Department to maintain a record of which employers are in the group filing annual returns. In order to make the determination, the Department will need to examine all four quarterly returns or the annual return for those employers already on the annual filing system. This is the only practical way to verify that the employer is withholding $500 or less.

This is one reason that the rule provides that employers who have not filed all required returns are not eligible to elect to file an annual return. Another reason is that the Department is less likely to secure payment of tax and compliance with filing requirements if due dates are extended for an employer currently delinquent in filing a return.

The rule is not mandatory. Employers may elect to file quarterly returns. Those who so elect are subject to all applicable payment and filing requirements. This is necessary to ensure that all employers in the quarterly system are similarly treated.

SUBPART 2. BASE YEAR.

This subpart defines "base year" to be the most recent four consecutive quarters for which the Department has compiled data on all employers and provides that the first base year is calendar year 1990. This definition is necessary to inform employers of the time period the Department will look at to determine the employers' eligibility.

SUBPART 3. QUALIFYING YEAR.

This subpart defines "qualifying year" to be the year for which the Department notifies the employer that it is eligible to file an annual return and provides that the first qualifying year is the 1992 calendar year. This definition is necessary to inform employers of the year in which they will be eligible to file an annual return. Although the first year for which the employer may file an annual return begins one year subsequent to the end of

the first base year, over time the Department foresees being able to compile the relevant data more quickly.

SUBPART 4. ACCELERATED DEPOSITS.

The first two paragraphs of subpart 4 provide for the deposit of taxes by annual filers whose withholding tax amount exceeds $500 in a calendar year. This requirement is reasonable because the rule is designed to apply only to those employers who withhold $500 or less.

The third paragraph of subpart 4 provides that if an employer permanently ceases to pay wages subject to withholding, the employer must file a final return and deposit any undeposited tax by the last day of the month following the cessation. It is reasonable and necessary to require a prompt final accounting of tax withheld while persons with knowledge of the payroll are still connected with the business and while funds are still available.

SUBPART 5. MAXIMUM WITHHOLDING AMOUNT.

This subpart provides for a recalculation of the maximum amount an employer can withhold and still be eligible to file an annual return under this rule. A formula is provided to automatically increase the maximum amount without going through a rule change. The formula is based on Minnesota Statutes section 290.06, subd. 2d which is used by the Commissioner to adjust income tax rate brackets for inflation. The formula is also used to adjust maximum liability amounts for quarterly and annual filing of sales tax returns. Minn. R. 8130.7300, subpart 2B (1990). This

formula is necessary because it allows a mechanism for the withholding amount to increase with inflation without going through the rulemaking process. This positively impacts small businesses by increasing the amount of withholding tax they can collect and still be eligible to file on an annual basis, instead of having to file each quarter, thus reducing their administrative paperwork. The Department has estimated that, based on historical inflation factor data, the $100 trigger amount is expected to be reached every 4 - 5 years.

Department of Revenue

Proposed Permanent Rules Relating to Annual Withholding Return

Rules as Proposed (all new material)

8092.1400 ANNUAL RETURNS.

Subpart 1. **General rule.** If an employer deducts and withholds an amount required by Minnesota Statutes, chapter 290, for a base year and the amount required is $500 or less, the employer, for the qualifying year, may elect to file an annual return and make an annual payment of the amount required to be deducted and withheld in that calendar year and is thereafter relieved from filing quarterly returns and making quarterly payments. The annual return and payment are due on or before February 28 of the calendar year following the calendar year the amounts were deducted and withheld. The annual return will serve as the reconciliation required in Minnesota Statutes, section 289A.09, subdivision 2, paragraph (d), for those employers who have elected to file an annual return. The Department of Revenue, applying the criteria of this part, will annually determine which employers are eligible to file an annual return and notify those employers who qualify. Employers who have not filed all withholding tax returns required for the base year are not eligible to file an annual return. Only those employers so notified by the Department of Revenue are eligible to elect to file an annual return. At the time of notification, eligible employers may still elect to file returns and make deposits quarterly. Employers who make such election are required to make all returns and deposits required by Minnesota Statutes, chapter 289A, and will be subject to all applicable penalties.

Subp. 2. **Base year.** "Base year" means the most recent period of four consecutive quarters for which the Department of Revenue has compiled data on all employers withholding tax for that period. The first base year is the four-consecutive

Approved by Revisor

quarter period beginning January 1990 and ending December 1990.

Subp. 3. **Qualifying year.** "Qualifying year" means the calendar year for which the Department of Revenue notifies the employer that it is eligible to file an annual return. The first qualifying year is the 1992 calendar year.

Subp. 4. **Accelerated deposits.** If, at the end of any calendar month other than the last month of the calendar year, the aggregate amount of undeposited withholding tax withheld by an employer who has elected to file an annual return exceeds $500, the employer must deposit the aggregate amount with the Department of Revenue within 30 days after the close of the calendar month.

Notwithstanding any other provision of this part, employers are subject to the eight-monthly period deposit requirements of Minnesota Statutes, section 289A.20.

In the event an employer who has elected to file an annual return pursuant to this part permanently ceases to pay wages for which withholding of tax is required, the employer must file a final return and deposit any undeposited tax on or before the last day of the month following the month in which the discontinuance of such activity occurred.

Subp. 5. **Maximum withholding amount.** The commissioner of revenue shall annually recalculate the maximum withholding amount for annual filing, using the percentage calculated pursuant to Minnesota Statutes, section 290.06, subdivision 2d, paragraph (b). If the maximum withholding amount so calculated is more than $100 above the maximum withholding amount for annual filing then in effect, the maximum withholding amount for annual filing must be increased by $100. If the maximum withholding amount so calculated is less than $100 above the maximum withholding amount then in effect, there shall be no change in the maximum withholding amount then in effect. When the maximum withholding amount is adjusted by the commissioner under this subpart, the maximum withholding amounts referred to in subparts 1 and 4 must be adjusted by the same amount by the commissioner.

Approved by Revisor _____

Office of the Revisor of Statutes

Administrative Rules

TITLE: Proposed Permanent Rules Relating to Annual Withholding Return

AGENCY: Department of Revenue

MINNESOTA RULES: Chapter 8092

The attached rules are approved for publication in the State Register

Janet M. Rahm
Senior Assistant Revisor

STATE OF MINNESOTA

DEPARTMENT OF REVENUE

In the Matter of the Proposed Adoption of the Rule of the Minnesota Department of Revenue Governing the Annual Filing of Withholding Tax Returns and Payment of Withheld Tax by Employers Who Withhold $500 or Less in One Year

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 May 27, 1991, and was sent by United States mail to all persons on the list maintained by the agency pursuant to Minnesota Statutes, §§14.14, subdivision 1a and 14.22 on May 22, 1991. (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) No submissions or comments on the rule were received by the agency. No requests for notice of submission to the attorney general were received by the agency.

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

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

(9) NOW, THEREFORE, IT IS ORDERED that the rule identified as Minnesota Rules, part 8092.1400 is adopted this 19th day of July, 1991, pursuant to authority vested in me by Minnesota Statutes, §§270.06(13), 289A.09, subd. 1(a) and 289A.20, subd. 2(c).

Dorothy A. McClung

Commissioner of Revenue
of the State of Minnesota

NOTICE OF INTENT TO ADOPT A RULE WITHOUT A PUBLIC HEARING

Department of Revenue

In the Matter of the Proposed Adoption of a New Rule Relating to the Annual Filing of Withholding Tax Returns and Payment of Withheld Tax By Employers Who Withhold $500 or Less is One Year (Minnesota Rules Part 8092.1400)	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 section 270.06, subdivision 13 (1990).

(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, section 14.131 to 14.20 (1990).

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

Fran Gerten, Attorney
Appeals and Legal Services Division
10 River Park Plaza
Mail Station 2220
St. Paul, MN 55146-2220
(612) 296-1902 Extension 117

(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. A free copy of the rule is also available upon request from:

Fran Gerten, Attorney
Appeals and Legal Services Division
10 River Park Plaza
Mail Station 2220
St. Paul, MN 55146-2220
(612) 296-1902 Extension 117

(12) A Statement of Need and Reasonableness that describes the need for an 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 Fran Gerten upon request.

(13) Promulgation of the proposed rule will not result in the expenditure of public monies by local public bodies, fix or adjust any fees, or have an impact on agricultural land. The affect, if any, that the proposed rule may have on small businesses is further discussed in the Statement of Need and Reasonableness.

(14) The proposed rule will only have an impact on small businesses which elect to take advantage of the simplified procedures offered by the rule. This rule will not impart competitive advantage to a company that is not a small business.

The qualitative impact of the proposed rule on small businesses will be positive as a result of simplification of the reporting and deposit requirements for withheld income tax. For employers with a small payroll, who are also likely to be small businesses, the rule eliminates three of the four return and deposit requirements. The quantitative impact will be minimal, since the proposed rule will not result in an economic impact on small businesses.

(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:

Fran Gerten, Attorney
Appeals and Legal Services Division
10 River Park Plaza
Mail Station 2220
St. Paul, MN 55146-2220
(612) 296-1902 Extension 117

May 13, 1991

Dorothy A. McClung
Commissioner of Revenue of the
State of Minnesota

4667.0025 FEE LIMITATION.

A provider is subject to one registration fee, regardless of the number of distinct programs through which home care services are provided. The fee shall be based on the total revenue of all home care programs.

4667.0030 FEE SCHEDULE.

A. The fee for class A, class B, and class D providers shall be determined according to the following schedule:

(1) for annual revenues greater than $1,500,000, a fee of $4,000;

(2) for annual revenues greater than $1,275,000 and no more than $1,500,000, a fee of $3,500;

(3) for annual revenues greater than $1,100,000 and no more than $1,275,000, a fee of $3,000;

(4) for annual revenues greater than $950,000 and no more than $1,100,000, a fee of $2,500;

(5) for annual revenues greater than $850,000 and no more than $950,000, a fee of $2,250;

(6) for annual revenues greater than $750,000 and no more than $850,000, a fee of $2,000;

(7) for annual revenues greater than $650,000 and no more than $750,000, a fee of $1,750;

(8) for annual revenues greater than $550,000 and no more than $650,000, a fee of $1,500;

(9) for annual revenues greater than $450,000 and no more than $550,000, a fee of $1,250;

(10) for annual revenues greater than $350,000 and no more than $450,000, a fee of $1,000;

(11) for annual revenues greater than $250,000 and no more than $350,000, a fee of $750;

(12) for annual revenues no more than $250,000, a fee of $500; and

(13) for class D providers with annual revenues no more than $25,000, a fee of $250.

B. The fee for class C providers shall be determined according to the following schedule:

(1) for annual revenues greater than $1,000, a fee of $50; and

(2) for annual revenues no more than $1,000, a fee of $20.

C. The fee for class E providers is $500.

D. The fee for a provider whose principal business is the sale or rental of medical supplies and equipment, regardless of the provider's class, is $500.

Department of Revenue

Proposed Permanent Rules Relating to Annual Withholding Return

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* section 270.06, subdivision 13 (1990).

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*, section 14.131 to 14.20 (1990).

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

Fran Gerten, Attorney
Appeals and Legal Services Division
10 River Park Plaza
Mail Station 2220
St. Paul, MN 55146-2220
(612) 296-1902 Extension 117

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 free copy of the rule is also available upon request from:

Fran Gerten, Attorney
Appeals and Legal Services Division
10 River Park Plaza
Mail Station 2220
St. Paul, MN 55146-2220
(612) 296-1902 Extension 117

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 Fran Gerten upon request.

Promulgation of the proposed rule will not result in the expenditure of public monies by local public bodies, fix or adjust any fees, or have an impact on agricultural land. The affect, if any, that the proposed rule may have on small businesses is further discussed in the Statement of Need and Reasonableness.

The proposed rule will only have an impact on small businesses which elect to take advantage of the simplified procedures offered by the rule. This rule will not impart competitive advantage to a company that is not a small business.

The qualitative impact of the proposed rule on small businesses will be positive as a result of simplification of the reporting and deposit requirements for withheld income tax. For employers with a small payroll, who are also likely to be small businesses, the rule eliminates three of the four return and deposit requirements. The quantitative impact will be minimal, since the proposed rule will not result in an economic impact on small businesses.

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:

Fran Gerten, Attorney
Appeals and Legal Services Division
10 River Park Plaza
Mail Station 2220
St. Paul, MN 55146-2220
(612) 296-1902 Extension 117

Dated: 13 May 1991

Dorothy A. McClung
Commissioner of Revenue of the
State of Minnesota

Rules as Proposed (all new material)

8092.1400 ANNUAL RETURNS.

Subpart 1. **General rule.** If an employer deducts and withholds an amount required by *Minnesota Statutes*, chapter 290, for a base year and the amount required is $500 or less, the employer, for the qualifying year, may elect to file an annual return and make an annual payment of the amount required to be deducted and withheld in that calendar year and is thereafter relieved from filing quarterly returns and making quarterly payments. The annual return and payment are due on or before February 28 of the calendar year following the calendar year the amounts were deducted and withheld. The annual return will serve as the reconciliation required in *Minnesota Statutes*, section 289A.09, subdivision 2, paragraph (d), for those employers who have elected to file an annual return. The Department of Revenue, applying the criteria of this part, will annually determine which employers are eligible to file an annual return and notify those employers who qualify. Employers who have not filed all withholding tax returns required for the base year are not eligible to file an annual return. Only those employers so notified by the Department of Revenue are eligible to elect to file an annual return. At the time of notification, eligible employers may still elect to file returns and make deposits quarterly. Employers who make such election are required to make all returns and deposits required by *Minnesota Statutes*, chapter 289A, and will be subject to all applicable penalties.

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.

Subp. 2. **Base year.** "Base year" means the most recent period of four consecutive quarters for which the Department of Revenue has compiled data on all employers withholding tax for that period. The first base year is the four-consecutive quarter period beginning January 1990 and ending December 1990.

Subp. 3. **Qualifying year.** "Qualifying year" means the calendar year for which the Department of Revenue notifies the employer that it is eligible to file an annual return. The first qualifying year is the 1992 calendar year.

Subp. 4. **Accelerated deposits.** If, at the end of any calendar month other than the last month of the calendar year, the aggregate amount of undeposited withholding tax withheld by an employer who has elected to file an annual return exceeds $500, the employer must deposit the aggregate amount with the Department of Revenue within 30 days after the close of the calendar month.

Notwithstanding any other provision of this part, employers are subject to the eight-monthly period deposit requirements of *Minnesota Statutes*, section 289A.20.

In the event an employer who has elected to file an annual return pursuant to this part permanently ceases to pay wages for which withholding of tax is required, the employer must file a final return and deposit any undeposited tax on or before the last day of the month following the month in which the discontinuance of such activity occurred.

Subp. 5. **Maximum withholding amount.** The commissioner of revenue shall annually recalculate the maximum withholding amount for annual filing, using the percentage calculated pursuant to *Minnesota Statutes*, section 290.06, subdivision 2d, paragraph (b). If the maximum withholding amount so calculated is more than $100 above the maximum withholding amount for annual filing then in effect, the maximum withholding amount for annual filing must be increased by $100. If the maximum withholding amount so calculated is less than $100 above the maximum withholding amount then in effect, there shall be no change in the maximum withholding amount then in effect. When the maximum withholding amount is adjusted by the commissioner under this subpart, the maximum withholding amounts referred to in subparts 1 and 4 must be adjusted by the same amount by the commissioner.

Board of Technical Colleges

Proposed Permanent Rules Relating to Postsecondary Program Teacher Licenses

Notice of Intent to Adopt a Rule Without a Public Hearing

NOTICE IS HEREBY GIVEN that the State Board of Technical Colleges 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*, Section 14.22 to 14.28. The statutory authority to adopt the rules is *Minnesota Statutes* 136C.04, Subdivision 9.

All persons have 30 days until 4:30 p.m., Friday, June 28, 1991, 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 either:

Glenda Moyers, Supervisor
State Board of Technical Colleges
100 Capitol Square Building
550 Cedar Street
St. Paul, MN 55101
Telephone: 612-296-9446

Georgia Pomroy, License Revision Specialist
State Board of Technical Colleges
100 Capitol Square Building
550 Cedar Street
St. Paul, MN 55101
Telephone: 612-296-0680

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 Glenda Moyers or Georgia Pomroy at the above address and phone, upon request.

STATE OF MINNESOTA

DEPARTMENT OF REVENUE

Appeals and Legal Services Division
Mail Station 2220
St. Paul, Minnesota 55146-2220
(612) 296-1022

July 23, 1991

Rec 24

Christie B. Eller
Assistant Attorney General
Public Finance Division
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 regarding annual withholding returns.

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

2. a copy of the proposed rule with certificate of approval as to form by the revisor of statutes;

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

4. the statement of need and reasonableness;

5. the affidavit of mailing the notice of intent;

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

7. four copies of the rule as adopted, approved as to form by the revisor of statutes;

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

9. the Declaration of Counsel.

The Department of Revenue received no written submissions or comments on the rule. The Department of Revenue received no requests for notice of submission to the attorney general.

The above listed documents are submitted for your review and approval pursuant to Minnesota Statutes, Chapter 14.

Sincerely,

Mark D. Pederson

Mark D. Pederson, Attorney
Appeals and Legal Services Division

MDP/lao

Enclosure

Department of Labor & Industry

Labor Standards Division

Notice of Correction to Prevailing Wage Rates

The prevailing wage rate certified April 1, 1991 for labor classifications 420—Roofer for Commercial construction in the following county has been corrected, Winona.

Copies of the corrected certifications may be obtained by contacting the Minnesota Department of Labor and Industry, Prevailing Wage Section, 443 Lafayette Road, St. Paul, Minnesota 55155, or calling (612) 296-6452.

John Lennes, Commissioner
Department of Labor and Industry

Public Employees Retirement Association

Notice of Meetings

The next regular monthly meeting of the Board of Trustees of the Public Employees Retirement Association (PERA) is scheduled to be held on Thursday, May 9, 1991, at 9:30 a.m. in the Association offices, 514 St. Peter Street, Suite 200, St. Paul, Minnesota.

A Finance Committee meeting will be held on Tuesday, May 21, at 9:30 a.m. in the Association offices.

Meetings of the Public Safety Officers and Information Forum are scheduled to be held Wednesday, May 22, beginning at 1:00 p.m. in the Association offices.

Department of Revenue

Appeals and Legal Services Division

Notice of Solicitation of Outside Information or Opinions Regarding Proposed Rule Governing Income Taxation: Annual Payment and Returns for Employers Who Withhold $500 or Less in One Year

NOTICE IS HEREBY GIVEN that the Minnesota Department of Revenue is seeking information or opinions from sources outside the agency in preparing to propose a rule governing annual payment and returns of withheld income tax for employers who withhold $500 or less in one year. The adoption of this rule is authorized by *Minnesota Statutes*, section 270.06 (13) which requires the commissioner of revenue to promulgate rules for the administration and enforcement of state tax laws.

The Minnesota Department of Revenue requests information and opinions concerning 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:

Fran Gerten
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 May 21, 1991. Any written material received by the Minnesota Department of Revenue shall become part of the rulemaking record to be submitted to the Attorney General or Administrative Law Judge in the event that the rule is adopted.

Dated: 25 April 1991

Fran Gerten
Attorney

Department of Revenue

Proposed Permanent Rules Relating to Annual Withholding Return

Rules as Proposed (all new material)

8092.1400 ANNUAL RETURNS.

Subpart 1. **General rule.** If an employer deducts and withholds an amount required by Minnesota Statutes, chapter 290, for a base year and the amount required is $500 or less, the employer, for the qualifying year, may elect to file an annual return and make an annual payment of the amount required to be deducted and withheld in that calendar year and is thereafter relieved from filing quarterly returns and making quarterly payments. The annual return and payment are due on or before February 28 of the calendar year following the calendar year the amounts were deducted and withheld. The annual return will serve as the reconciliation required in Minnesota Statutes, section 289A.09, subdivision 2, paragraph (d), for those employers who have elected to file an annual return. The Department of Revenue, applying the criteria of this part, will annually determine which employers are eligible to file an annual return and notify those employers who qualify. Employers who have not filed all withholding tax returns required for the base year are not eligible to file an annual return. Only those employers so notified by the Department of Revenue are eligible to elect to file an annual return. At the time of notification, eligible employers may still elect to file returns and make deposits quarterly. Employers who make such election are required to make all returns and deposits required by Minnesota Statutes, chapter 289A, and will be subject to all applicable penalties.

Subp. 2. **Base year.** "Base year" means the most recent period of four consecutive quarters for which the Department of Revenue has compiled data on all employers withholding tax for that period. The first base year is the four-consecutive

Approved by Revisor _____

quarter period beginning January 1990 and ending December 1990.

Subp. 3. **Qualifying year.** "Qualifying year" means the calendar year for which the Department of Revenue notifies the employer that it is eligible to file an annual return. The first qualifying year is the 1992 calendar year.

Subp. 4. **Accelerated deposits.** If, at the end of any calendar month other than the last month of the calendar year, the aggregate amount of undeposited withholding tax withheld by an employer who has elected to file an annual return exceeds $500, the employer must deposit the aggregate amount with the Department of Revenue within 30 days after the close of the calendar month.

Notwithstanding any other provision of this part, employers are subject to the eight-monthly period deposit requirements of Minnesota Statutes, section 289A.20.

In the event an employer who has elected to file an annual return pursuant to this part permanently ceases to pay wages for which withholding of tax is required, the employer must file a final return and deposit any undeposited tax on or before the last day of the month following the month in which the discontinuance of such activity occurred.

Subp. 5. **Maximum withholding amount.** The commissioner of revenue shall annually recalculate the maximum withholding amount for annual filing, using the percentage calculated pursuant to Minnesota Statutes, section 290.06, subdivision 2d, paragraph (b). If the maximum withholding amount so calculated is more than $100 above the maximum withholding amount for annual filing then in effect, the maximum withholding amount for annual filing must be increased by $100. If the maximum withholding amount so calculated is less than $100 above the maximum withholding amount then in effect, there shall be no change in the maximum withholding amount then in effect. When the maximum withholding amount is adjusted by the commissioner under this subpart, the maximum withholding amounts referred to in subparts 1 and 4 must be adjusted by the same amount by the commissioner.

Approved
by Revisor _____

Office of the Revisor of Statutes

Administrative Rules

TITLE: Proposed Permanent Rules Relating to Annual Withholding Return

AGENCY: Department of Revenue

MINNESOTA RULES: Chapter 8092

The attached rules are approved for publication in the State Register

Janet M. Rahm
Senior Assistant Revisor

STATE OF MINNESOTA
DEPARTMENT OF REVENUE
APPEALS AND LEGAL SERVICES DIVISION

IN THE MATTER OF THE PROPOSED ADOPTION OF A NEW RULE RELATING TO THE ANNUAL FILING OF WITHHOLDING TAX RETURNS AND PAYMENT OF WITHHELD TAX BY EMPLOYERS WHO WITHHOLD $500 OR LESS IN ONE YEAR

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

STATE OF MINNESOTA)
)ss.
COUNTY OF RAMSEY)

Margaret A. Connolly, being sworn says:

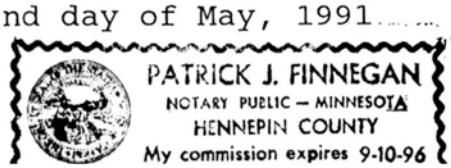
I hereby certify that the list of persons and associations who have requested, pursuant to Minnesota Statutes, sections 14.14, subdivision 1a and 14.22 or 14.30, that their names be placed on the state Department of Revenue rulemaking mailing list is accurate, complete, and current as of this 22nd day of May, 1991.

That on the 22nd day of May, 1991, 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 two hundred thirty-four persons and associations on the aforementioned mailing list.

Margaret A. Connolly
MARGARET A. CONNOLLY
SECRETARY, SENIOR TYPIST 4

Subscribed and sworn to
before me this
22nd day of May, 1991.

Patrick J. Finnegan
PATRICK J. FINNEGAN



In the Matter of the Adoption
of the Rule of the Minnesota
Department of Revenue Governing
the Annual Filing of Withholding
Tax Returns and Payment of
Withheld Tax by Employers Who
Withhold $500 or Less in One Year

DECLARATION
OF COUNSEL

I, Barry R. Greller, Special Assistant 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.

Barry R. Greller

BARRY R. GRELLER
Special Assistant
Attorney General

Dated: July 22, 1991.
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