

Minnesota Attorney General: Administrative Rules Proceedings

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Version 3
August 20, 2018

MJM
6-19-92

RULE REVIEW CHECKLIST

File No. 1922
DATE RECEIVED 6-17-92
REVIEW DATE 6-26-92
DUE ~~DATE~~ 7/1/92
~~(DIS)~~APPROVED
WITHDRAWN 7/1/92

Docket No. 05000907 38
ADOPTED W/O HEARING
EMERGENCY RULE
TO REVISOR ON 6-19-92
REVISOR (DIS)APPROVED
FILED W/SEC. OF STATE 7-1-92
RETURNED TO AGENCY 7-1-92

✓ Rule as adopted (4 copies)

___ Notice to Solicit Outside Information/Opinion (if applicable)
August 13, 1992 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 subd 13 Statutory Authority
___ Small Business Statement
___ Expenditure of public money statement
April 24, 1992 Signature

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

✓ Affidavit of Mailing Notice of Intent to Adopt Rule
May 4, 1992 Date (30/25 days before adoption)
✓ Notice attached indicates it is attached
___ Copy of rule or summary attached

✓ Publication in State Register
May 11, 1992 Date 30/25 days before adoption

✓ 180-day deadline from:
✓ Effective date of law requiring rule (14.12) (both rules) amendments don't apply not new mat part of 8017.
✓ 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
June 11, 1992 Date

___ Written Requests, Submissions or Comments

✓ Declaration of Attorney
Barry Keller Name of SAAG representing agency

___ Notice of Submission to Attorney General (if applicable)

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

Rules rel

STATE OF MINNESOTA

Office of the Attorney General

TO : MICHAEL E. BOEKHAUS
Appeals and Legal Services Division
Minnesota Department of Revenue
Eighth Floor
10 River Park Plaza

DATE : July 1, 1992

FROM : MARY JO MURRAY
Special Assistant
Attorney General

PHONE : 296-3258

SUBJECT : In the Matter of the Adopted Rule Relating to Taxation; Income; Air Carriers

The above-referenced rule has been approved as to its legality by the Attorney General on July 1, 1992.

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.

Enclosures
cc: Barry R. Greller
William Brown, Chief Judge
MaryAnn Hruby
MJM:jj.Rules.ax8

Department of Revenue

Adopted Permanent Rules Relating to Taxation; Income; Air Carriers

Rules as Adopted

8017.6000 APPORTIONMENT OF NET INCOME OF AIR CARRIERS.

Subpart 1. **General information.** Minnesota Statutes, section 290.17, subdivision 3, provides that the net income of a trade or business carried on partly in and partly out of this state must be apportioned between this state and other states. Minnesota Statutes, section 290.191, provides general rules for the apportionment of the net income of a trade or business carried on partly in and partly out of this state. Minnesota Statutes, section 290.20, provides that if the methods prescribed by Minnesota Statutes, section 290.191, do not fairly reflect the net income allocable to this state, the commissioner of revenue may require the use of another method. The nature of the air carrier business requires use of a method other than those prescribed by Minnesota Statutes, section 290.191.

Subp. 2. **Definitions.** The definitions in this subpart apply to this part.

A. "Air carrier" means a person engaged in the paid carriage of passengers, cargo, or mail on regularly scheduled flights of aircraft.

B. "Aircraft" means a contrivance used or designed for the navigation of flight in the air.

C. "Airport-to-airport mileage" means the mileage, as determined by the United States Department of Transportation, between airports that are the point of origination and termination of a flight in service.

D. "Cargo ton mile" means the paid carriage of one ton of cargo for one mile.

E. "Departures" means departures of an aircraft while operating a flight in revenue service.

F. "Fixed property and payroll" means all property and payroll not defined as flight property or flight payroll.

G. "Fleet type" means each series within an aircraft model.

H. "Flight in revenue service" means the flight of an aircraft for the paid carriage of cargo, mail, or passengers.

I. "Flight payroll" means the payroll of persons engaged as staff, such as pilots and flight attendants, on the air carrier's aircraft.

J. "Flight property" means aircraft ready for flight, spare engines, and spare parts inventory that rotates into aircraft. Inventory that rotates is inventory that consists of aircraft parts that are replacements for defective or worn parts and may be placed into an aircraft for use more than one time.

K. "Mail ton mile" means the paid carriage of one ton of mail for one mile.

L. "Minnesota cargo ton mile" means the paid carriage of one ton of cargo for one Minnesota plane mile.

M. "Minnesota departures" means departures of aircraft from Minnesota facilities for flights in revenue service.

N. "Minnesota mail ton mile" means the paid carriage of one ton of mail for one Minnesota plane mile.

O. "Minnesota passenger ton mile" means the paid carriage of one ton of passengers for one Minnesota plane mile.

P. "Minnesota plane mile ratio" means the resultant ratio of Minnesota plane miles divided by total plane miles. A separate plane mile ratio must be computed for each fleet type.

Q. "Minnesota plane miles" means the number of miles on completed flights in revenue service using airport-to-airport mileage flown from a departure point in Minnesota to the border of the state or flown from the border of Minnesota to a destination within the state. Minnesota plane miles are calculated by multiplying the airport-to-airport mileage by the percentage resulting from the division of the Minnesota distance by total distance for each flight in revenue service. The

Minnesota plane miles of a flight in revenue service from a Minnesota departure point to a Minnesota destination is the airport-to-airport mileage.

(1) Minnesota distance is the distance from the Minnesota airport to the Minnesota border and the Minnesota border to the Minnesota airport measured on a straight line between the originating airport and the destination airport.

(2) Total distance is the distance from the originating airport to the destination airport on a straight line using the same map that was used to measure Minnesota distance.

(3) Minnesota distance and total distance must be measured on a conformal conic projection map, used for aviation purposes, meeting the standards for accuracy of the Global Navigation and Planning Chart, United States Defense Mapping Agency, Lambert Conformal Conic Projection Map.

R. "Passenger ton mile" means the paid carriage of one ton of passengers for one mile. For this purpose, each passenger is considered to weigh 200 pounds.

S. "Plane miles" means the number of miles flown on completed flights in revenue service using airport-to-airport mileage. Plane miles must be accumulated on a fleet type basis.

Subp. 3. **Formula.** Except as provided in this part, the method of apportionment prescribed in Minnesota Statutes, section 290.191, governs the apportionment of the net income of air carriers by this state.

Subp. 4. **Property factor.** Items A to D govern inclusion of property for purposes of the property factor in Minnesota Statutes, section 290.191.

A. The denominator of the property factor must include the property permitted to be included under Minnesota Statutes, section 290.191, subdivisions 9 and 10.

B. Fixed property owned or rented and actually used by the air carrier in this state in carrying on business in this state must be included in the numerator of the property factor.

C. All flight property owned or rented by the

taxpayer must be included in the numerator of the property factor by multiplying the original cost of the flight property by the Minnesota plane mile ratio. This calculation must be made on a fleet type basis.

D. Fixed and flight property that is rented by an air carrier is valued at eight times the net annual rental, as set forth in Minnesota Statutes, section 290.191, subdivision 10, paragraph (e).

Subp. 5. **Payroll factor.** The payroll factor must be determined under Minnesota Statutes, section 290.191, subdivision 12, except that flight payroll must be included in the numerator by multiplying the total flight payroll times the Minnesota plane mile ratio. This calculation must be made on a fleet type basis.

Subp. 6. **Receipts factor.** Items A and B govern inclusion of receipts for purposes of the receipts factor in Minnesota Statutes, section 290.191.

A. The denominator of the receipts factor includes all receipts from the paid carriage of passengers, cargo, and mail.

B. The numerator must be 85 percent of the sum of the amounts calculated in subitem (1) plus 15 percent of the sum of the amounts calculated in subitem (2). The Minnesota passenger, cargo, and mail revenue must be determined on a fleet type basis by:

(1)(i) multiplying the total gross revenue from the carriage of passengers by the ratio of Minnesota passenger ton miles to total passenger ton miles; (ii) multiplying the total gross revenue from the carriage of cargo by the ratio of Minnesota cargo ton miles to total cargo ton miles; and (iii) multiplying the total gross revenue from the carriage of mail by the ratio of Minnesota mail ton miles to total mail ton miles;

(2)(i) multiplying the total gross revenue from the carriage of passengers by the ratio of Minnesota departures to total revenue departures; (ii) multiplying the total gross revenue from the carriage of cargo by the ratio of Minnesota

departures to total departures; and (iii) multiplying the total gross revenue from the carriage of mail by the ratio of Minnesota departures to total departures; and

(3) if records of either actual passenger revenue, freight revenue, or mail revenue generated by fleet type are not maintained, for purposes of subitems (1) and (2), passenger revenue, cargo revenue, and mail revenue must be allocated to aircraft types based on the ratios of the passenger ton miles, cargo ton miles, and mail ton miles of that fleet type to total system passenger, cargo, and mail ton miles. The computation for each fleet type is as follows:

$$\frac{\text{Passenger Ton Miles for that Fleet Type}}{\text{Total Passenger Ton Miles for all Fleet Types}} \times \text{Total Passenger Revenue} = \text{Passenger Revenue for that Fleet Type}$$

$$\frac{\text{Cargo Ton Miles for that Fleet Type}}{\text{Total Cargo Ton Miles for all Fleet Types}} \times \text{Total Cargo Revenue} = \text{Cargo Revenue for that Fleet Type}$$

$$\frac{\text{Mail Ton Miles for that Fleet Type}}{\text{Total Mail Ton Miles for all Fleet Types}} \times \text{Total Mail Revenue} = \text{Mail Revenue for that Fleet Type}$$

APPROVED AS TO FORM AND LEGALITY
July 1 1992
HUBERT H. HUMPHREY, III
ATTORNEY GENERAL
BY
SPECIAL ASSISTANT ATTORNEY GENERAL

STATE OF MINNESOTA
DEPARTMENT OF STATE
FILED
JUL 01 1992
Joan Anderson Growe
Secretary of State

10:37
RC

Stat Authority 270.06 subd 7(13)

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

Rules - General Statement:

Office of the Revisor of Statutes

Administrative Rules

Craig E. Lindeke
Senior Assistant Revisor
296-0946



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

May 11, 1992

Stephen E. Krenkel, Attorney
Department of Revenue
10 River Park Plaza - 8th Floor
St. Paul, MN 55146-2220

RE: File No. 1961

Dear Mr. Krenkel:

Enclosed are stripped copies of your proposed rules as published in the State Register. The copy shows the text of the rules as you proposed them with the stricken text deleted and the underscoring removed.

If your emergency rules or rules adopted without public hearing are adopted without modification, please submit the required number of copies of this document to the Attorney General for final approval. If these rules are to be modified, please use this copy to indicate the modifications you wish to make. Our office will then input the changes, approve the document as to form, and provide you with copies to submit to the Attorney General.

If your rules are adopted after public hearing without modification, please submit one copy of this document to our office for final approval as to form. If these rules are to be modified, please use this copy to indicate the modifications you wish to make. Our office will input the changes, approve the document as to form, and provide you with copies.

Very truly yours,

CEL/cs

Craig E. Lindeke

MINNESOTA Department of Revenue

APPEALS, LEGAL SERVICES AND CRIMINAL INVESTIGATION DIVISION

Mail Station 2220
St. Paul, Minnesota 55146-2220
Phone (612) 296-1902, ext. 135
Facsimile (612) 296-8229

June 17, 1992

HAND DELIVERED

Ms. Christie Eller
Assistant Attorney General
Capitol Office Building
525 Park Street
St. Paul, Minnesota 55103

Rec. 6-17-92

Re: **Proposed Permanent Rule of the State Governing Apportionment of Net Income of Air Carriers**

Dear Ms. Eller:

Enclosed please find the following documents in the matter of the proposed rules of the Department of Revenue adopting rules of the state governing apportionment of net income of air carriers.

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 to adopt the rule;

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

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

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

9. a written comment of Northwest Airlines, Inc., as representative of the Air Transport Association of America in support of the rule received by the Department of Revenue; and

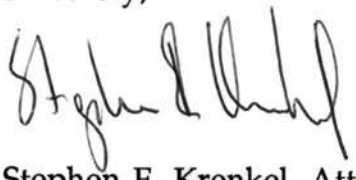
10. the Declaration of Counsel.

No person requested a copy of the notice of submission of the rule to the Attorney General.

I have also enclosed a copy of the Notice of Delegation of Authority authorizing John O. Lally to exercise and perform all of the powers and duties of the Commissioner of Revenue in her absence. The Commissioner of Revenue was absent when the Notice of Intent to Adopt a Rule and the Findings of Fact, Conclusions, and Order adopting rule were executed.

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

Sincerely,



Stephen E. Krenkel, Attorney
Legal Services Section

SEK/ml
Enclosures

STATE OF MINNESOTA
DEPARTMENT OF REVENUE

In the Matter of the Proposed Adoption of
Permanent Rules for the Apportionment of
Income of Air Carriers

STATEMENT OF NEED AND REASONABLENESS

A Notice of Intent to Solicit Outside Opinion regarding the Proposed Rules Governing Franchise Tax Apportionment of Business Income of Interstate Air Carriers was published in the State Register on August 13, 1990. The notice specifically mentioned this rule and invited interested persons to submit comments or suggestions orally or in writing to the Department by October 15, 1990. The Air Transport Association of America commented in writing and orally.

IMPACT ON SMALL BUSINESS.

The impact of this rule on small business has been considered. The proposed rule is not expected to place any additional financial or administrative burden on small business. Corporate franchise tax reporting requirements are mandatory under Minnesota Statutes, chapter 290, so they cannot be made less stringent by a rule. The proposed rule does not impose any additional reporting requirements or deadlines on small businesses beyond those already in required by statute. The proposed rule does not establish any performance standards. The proposed rule does not add any reporting burden in addition to those already required by statute. If a small business air carrier is affected by the rule, the rule will not create a competitive advantage for either large or small businesses. There are no new reporting requirements, filing fees, or compliance requirements in the rule. The proposed rule does apply to small business air carriers but,

it is not expected to impact them qualitatively or quantitatively, economic, or otherwise.

Subpart 1. **General statement.** Minnesota Statues 1990, section 290.02 imposes a franchise tax on corporate taxpayers who exercise their franchise to engage in contacts with the State of Minnesota. The tax is measured by taxable income and the alternative minimum tax base. Taxable income is defined by Minnesota Statutes 1990, section 290.01, subdivision 19, with the additions and subtractions specified in subdivisions 19c and 19d.

Minnesota Statutes 1990, section 290.191, subdivision 1 provides that the net income of a trade or business carried on partly within and partly without Minnesota must be apportioned according to the rules set out in the statute. The basic apportionment formula is the total of 70 percent of the ratio of sales made within this state, 15 percent of the ratio of tangible property within this state, and 15 percent of the ratio of payroll paid or incurred within this state. There is a special apportionment formula for financial institutions in subdivision 3 and another special formula for the mail order business in subdivision 4. However, there is no special formula for the air carriers. The methods prescribed by Minnesota Statutes 1990, section 290.191 are presumed to fairly reflect the taxpayer's taxable net income assignable to Minnesota. Minnesota Statutes section 290.20, subdivision 1. This section further states that if the methods set forth in Minnesota Statutes 1990, 290.191 do not fairly reflect taxable net income allocable to this state, the commissioner may require another method that fairly reflects Minnesota taxable net income.

The United States Supreme Court has stated the two components of fairness under the Constitution in Container Corporation of America v. Franchise Tax Board, 463 U.S. 159, 169, 103 S.Ct. 2933, 2942 as:

1. Internal consistency. "The formula if applied in every jurisdiction, it would result in no more than all the unitary business income being taxed."

2. External consistency. "The factor or factors must actually reflect a reasonable sense of how income is generated." (Emphasis added.) At 468 U.S. 183, 103 S.Ct. 2949, the Court stated:

"The three-factor formula used by California has gained wide approval precisely because payroll, property, and sales appear in combination to reflect a very large share of the activities by which value is generated."

Minnesota has sought under the corporate franchise tax to tax corporations to the extent constitutionally possible. Although an apportionment formula must be fair, it need not be exact. In NCR Corporation v. Commissioner of Revenue, 438 N.W.2d 86 (Minn. 1989), the Court, speaking of apportionment, stated at 438 N.W.2d 91:

"However, a state need not show that its statute results in the precise allocation of income resulting from activities of the taxpayer occurring within its jurisdiction."

The proposed rule attempts to fairly apportion income of air carriers. The rule recognizes that while air carriers derive income from carrying passengers, freight, and mail, some component of income is attributable to the situs of an air carrier's ground bases. That air carriers generate income by carrying passengers and freight from one point to another over distance is axiomatic. In general, although exceptions do exist, the revenue derived by an air carrier is related to the distance traveled and that is evident in the normal pricing of airline tickets. Air carriers earn nothing if nothing is transported. The miles traveled should therefore form a part of any formula designed to fairly apportion

income of airlines. Revenue miles is a principal measurement of an airline's operations. Because of this dual nature of the income earning activity of air carriers, it is necessary to bifurcate the formula to apportion income fairly. The proposed rule, following Container Corporation, attempts to reflect a reasonable sense of how income is generated by air carriers. The proposed rule does this while also following the constitutionally approved three-factor formula.

The proposed rule uses a standard airline measure of income, revenue ton miles, in conjunction with the three-factor formula. By joining the apportionment formula that follows the statutory method of apportionment, and the industry measure of income, no more than all of the unitary income of the business will be taxed. Other states have arrived at the same apportionment method and impose their franchise tax on airlines on the basis of mileage and situs elements.

For example, California, in Cal. Admin. Code, Title 18, section 25137-7(1991) apportions flight payroll of airline companies on the basis of the ratio of time the aircraft spends in the state performing services to total time spent in performing services. It determines the sales factor numerator by weighting the ratio of time aircraft spend in that state to total air time, by aircraft type and weighting the ratio of arrivals and departures in that state to total arrivals and departures.

Colorado arrives at a property factor numerator by including aircraft based on the weighted ratio of Colorado air miles to total air miles, plus the weighted ratio of Colorado arrivals and departures to total arrivals and departures. Flight payroll and sales are included in the Colorado numerator using the same percentage derived, for apportioning aircraft. 1 Colo. Code Regs. section 201-2(1982).

Ohio weights the ratio of air miles in Ohio to total air miles and Ohio arrivals and departures to total arrivals and departures and applies them in each of the three factors. The ratios are applied to aircraft ready for flight to arrive at a property factor numerator, flight personnel to calculate a payroll factor numerator, and to gross receipts from passenger and freight revenue to arrive at a sales factor numerator. Ohio Admin. Code section 5703-05-09(1989).

Each of these rules was promulgated to apportion income of an airline company using the three-factor formula.

Subp. 2. **Definitions.**

A. "Air carrier" is a reasonable definition because it follows the commonly accepted definition of the industry which is the subject of the rule. Not all corporations which hold themselves out as "airlines" meet the definition of air carrier as used in the proposed rule, so use of another term was necessary to avoid confusion.

B. "Aircraft" is a reasonable definition because it generally defines devices that are or may be operated by air carriers to produce revenue.

C. "Cargo ton mile" is defined in accordance with the generally accepted usage in the airline industry. It is reasonable to use a standard definition which will be understood and can readily be applied in calculating activity of an air carrier in this state.

D. "Departure" is defined to follow the commonly understood usage both within the airline industry and generally.

E. "Airport-to-airport mileage" is a reasonable definition because it sets forth a standard measurement which will approximate mileage of flights in service for the purpose of apportionment. More precise measurements can be made, but would require actual tracking of each flight. Measurement on the basis of actual flights would impose a heavy administrative burden on airline companies. It would require plotting and measuring each

change in course during the flight path of each revenue flight in service.

F. "Fixed property and payroll" is a necessary definition, for it classifies all property and payroll which is not subject to treatment as flight property and payroll because of the mobile nature of the property and payroll.

G. "Fleet type" is reasonable because it is the standard definition in the industry and necessary because each series of aircraft may have different passenger capacities and values.

H. "Flight in revenue service" is a required definition because it limits the apportionment measures to revenue producing activity, excluding maintenance and testing activity.

I. "Flight payroll" reasonably defines compensation paid to those persons whose job performance is not tied to a fixed situs and whose service is required in flight to produce revenue for the paid carriage of passengers, cargo, and mail.

J. "Flight property" is defined as aircraft and spare parts which may be subject to repair or rebuilding and repeated placement in an aircraft. Spare parts which cannot be used repeatedly after repair or rebuilding are not defined as rotating spare parts and are not included in flight property.

K. "Mail ton mile" is reasonable as defined by the rule because it follows both the industry standard for measurement and follows common sense definition. It is used to compute the receipts factor.

L. "Minnesota cargo ton mile", as defined, is the result of two other defined terms.

M. "Minnesota departures", as defined, is a logical usage following the definition of "departures" above.

N. "Minnesota plane miles" clearly defines plane miles which are attributed to Minnesota to apportion income under this formula. The definition is necessary to obtain a plane mile ratio for apportionment. The Minnesota plane miles approximates the actual mileage flown by an aircraft in Minnesota, using U. S. Department of Transportation mileage. The mileage is computed on

an airport of origination-airport of destination basis (city pair basis), using U. S. Department of Transportation airport to airport mileage. Minnesota distances are measured utilizing standard aviation maps to accurately arrive at the distance that each flight travels in Minnesota. The Global Navigation and Planning Chart is produced by the U. S. Defense Mapping Agency, is the standard chart used by air carriers and is available to air carriers and the public at flight shops. The Global Navigation and Planning Charts are great circle projections which measure flight miles. Other charts which show airports and are equally accurate are acceptable. Standard projections do not measure flight miles, but measure flat miles, not compensating for the curvature of the earth. Airport-to-border distances measured using charts of this accuracy will be uniform, and both the air carriers and Department of Revenue can compute distance based on these charts.

O. "Minnesota mail ton mile", as defined, is the result of two other defined terms.

P. "Minnesota passenger ton mile", as defined, is the result of two other defined terms.

Q. "Passenger ton mile" is reasonable as defined for the rule because it follows both the industry standards and is a common sense definition. It is used to calculate the receipts factor.

R. "Minnesota plane mile ratio" is a necessary definition because it is applied to flight property and flight payroll to determine what portion of that property and payroll is includable in the numerator to obtain an apportionment percentage.

S. "Plane miles" defines mileage which is includable in the denominator to obtain the plane mile ratio. It is necessary to have an approximate standard mileage because actual flight mileage would have to be kept on each flight to get more accurate mileage. The administrative burden of keeping actual mileage for each flight in an airline system is excessive, as the Air Transport Association carriers flew approximately 7,000,000 flight segments (legs between take-offs and landings) in 1990.

Subp. 3. **Formula.** This subpart is necessary because companies who are primarily in the airline business may have other divisions or subsidiaries which are not in the airline business. This subpart states that those divisions or subsidiaries are subject to taxation in the same manner as any similar business not owned by airline companies.

Subp. 4. **Property factor.** This subpart necessarily divides property into two categories, property without a fixed situs and property with a fixed situs. In the rule this property is called flight property and fixed property respectively. It is also reasonable that property which does not have a fixed situs be apportioned to the various states where it is used in determining the property factor. The method in the rule that apportions flight property to Minnesota for the property factor is the application of the Minnesota plane mile ratio. The Minnesota plane mile ratio is a ratio derived from mileage flown in income producing flight. The Minnesota plane mile ratio is, therefore, an appropriate method of assigning income producing flight property in this factor. It is reasonable to assign all property with a fixed situs to the state of situs while determining the property factor.

The rental capitalization rate is the statutory rate, as set forth in Minnesota Statutes, section 290.191, subdivision 10(e). The rule follows legislative judgment on a proper rental capitalization rate.

Subp. 5. **Payroll factor.** This subpart reasonably situses fixed payroll at a fixed location following the precepts set forth in the statute. The income of flight personnel is earned ratably while in service over the airline company's system. It is reasonable then to attribute to Minnesota that portion of flight payroll that is earned in Minnesota. This is accomplished in the

rule by multiplying total flight payroll by the Minnesota plane mile ratio.

Subp. 6. **Receipts factor.** The receipts factor recognizes that two components are necessary for an air carrier to earn income. One part is the location from which flights originate and terminate. The second part is the performance of the transportation service between those locations. The rule gives weight to each component of the income producing activities of an airline company. The denominator includes all receipts from paid transportation. The numerator adds income from the two component parts to arrive at the receipts factor for apportionment.

The first component, in subpart 6B(1), of the rule, allocates receipts to Minnesota using the mileage component of the income producing activities. Each segment of income produced by flight activity is separately multiplied by the ton mileage ratio arrived at for that income activity. Thus passenger, cargo, and mail revenue is apportioned to the Minnesota numerator on the basis of Minnesota passenger, cargo, and mail revenue ton miles to total passenger, cargo and mail revenue ton miles. The receipts generated are multiplied by the receipt producing mileage to accurately measure Minnesota receipts derived from flight activity.

The second component, in subpart 6(B)(2) allocates receipts to Minnesota using the ground component of the income producing activities. It is not appropriate to measure receipts from situs based activities by revenue ton miles. Revenue ton miles measure performance of the service giving rise to the receipts over the routes flown. The more accurate measure for situs based performance of a service is the ratio of Minnesota departures to total departures. This ratio applied to total revenue measures the situs based economic activities for inclusion of situs based receipts in the numerator of the receipts factor. It is used in this rule.

SEK:caw:snr:airline1-2/4/92:04/29/92

Room 208 Transportation Building
St. Paul, MN 55155

Oral statements will be received during regular business hours over the telephone at (612) 296-2608 and in person at the above address.

Any written material received by the State Department of Public Safety 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.

Paul J. Tschida, Commissioner
Department of Public Safety

Department of Revenue

Appeals and Legal Services Division

Notice of Solicitation of Outside Information or Opinions Regarding Proposed Rule Governing the Apportionment of Business Income of Interstate Air Carriers

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 adoption of a rule governing the apportionment of business income of interstate air carriers. The adoption of the rule is authorized by *Minnesota Statutes*, section 290.52, which permits the agency to make rules to enforce and administer state tax laws.

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:

Michael E. Boekhaus
Appeals and Legal Services Division
Minnesota Department of Revenue
Eighth Floor
10 River Park Plaza
Mail Station 2220
St. Paul, Minnesota 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 will be accepted until October 15, 1990. Any written material received by the State Department of Revenue will 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: 2 August 1990

Michael E. Boekhaus
Attorney

Minnesota State Retirement System

Board of Directors, Regular Meeting

A regular meeting of the Board of Directors, Minnesota State Retirement System, will be held on Friday, August 17, 1990 at 9:00 a.m. in the office of the System, 529 Jackson Street, St. Paul, Minnesota.

Board of Water and Soil Resources

Notice of Regular Monthly Meeting in Spicer

The Board of Water and Soil Resources will hold their regularly scheduled monthly meeting on Wednesday, August 22, 1990, at the Safari South, in Spicer, Minnesota. The meeting will convene at 9:00 a.m.

STATE OF MINNESOTA

DEPARTMENT OF REVENUE

NOTICE OF DELEGATION OF AUTHORITY

KNOW ALL PERSONS BY THESE PRESENTS, that I, Dorothy A. McClung, Commissioner of Revenue, by virtue of the authority vested in me by statute and particularly by Minn. Stat. 1988, § 270.02, subd. 3, do hereby authorize and empower JOHN O. LALLY, in the absence of the Commissioner of Revenue, to exercise and perform all of the powers and duties imposed upon and vested in the Commissioner of Revenue.

This delegation of authority shall remain in force until revoked, amended or withdrawn at the pleasure of the Commissioner of Revenue, and supersedes any and all prior delegations of authority heretofore filed with the Secretary of State.

Dated at St. Paul, Minnesota, this 20th day of June, 1991.

Dorothy A. McClung
Commissioner of Revenue

Authorized Signature of
John O. Lally

Office of the Revisor of Statutes

Administrative Rules

Craig E. Lindeke
Senior Assistant Revisor
296-0946

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

April 21, 1992

Stephen E. Krenkel, Attorney
Department of Revenue
10 River Park Plaza - 8th Floor
St. Paul, MN 55146-2220

RE: File No. 1961

Dear Mr. Krenkel:

I am enclosing six copies of your rules, approved as to form. Please submit two copies to the State Register for publication.

If you have any questions, please call me.

Very truly yours,

Craig E. Lindeke

Department of Revenue

Proposed Permanent Rules Relating to Taxation; Income; Air Carriers

Rules as Proposed (all new material)

8017.6000 APPORTIONMENT OF NET INCOME OF AIR CARRIERS.

Subpart 1. **General information.** Minnesota Statutes, section 290.17, subdivision 3, provides that the net income of a trade or business carried on partly in and partly out of this state must be apportioned between this state and other states. Minnesota Statutes, section 290.191, provides general rules for the apportionment of the net income of a trade or business carried on partly in and partly out of this state. Minnesota Statutes, section 290.20, provides that if the methods prescribed by Minnesota Statutes, section 290.191, do not fairly reflect the net income allocable to this state, the commissioner of revenue may require the use of another method. The nature of the air carrier business requires use of a method other than those prescribed by Minnesota Statutes, section 290.191.

Subp. 2. **Definitions.** The definitions in this subpart apply to this part.

A. "Air carrier" means a person engaged in the paid carriage of passengers, cargo, or mail on regularly scheduled flights of aircraft.

B. "Aircraft" means a contrivance used or designed for the navigation of flight in the air.

C. "Airport-to-airport mileage" means the mileage, as determined by the United States Department of Transportation, between airports that are the point of origination and termination of a flight in service.

D. "Cargo ton mile" means the paid carriage of one ton of cargo for one mile.

E. "Departures" means departures of an aircraft while operating a flight in revenue service.

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F. "Fixed property and payroll" means all property and payroll not defined as flight property or flight payroll.

G. "Fleet type" means each series within an aircraft model.

H. "Flight in revenue service" means the flight of an aircraft for the paid carriage of cargo, mail, or passengers.

I. "Flight payroll" means the payroll of persons engaged as staff, such as pilots and flight attendants, on the air carrier's aircraft.

J. "Flight property" means aircraft ready for flight, spare engines, and spare parts inventory that rotates into aircraft. Inventory that rotates is inventory that consists of aircraft parts that are replacements for defective or worn parts and may be placed into an aircraft for use more than one time.

K. "Mail ton mile" means the paid carriage of one ton of mail for one mile.

L. "Minnesota cargo ton mile" means the paid carriage of one ton of cargo for one Minnesota plane mile.

M. "Minnesota departures" means departures of aircraft from Minnesota facilities for flights in revenue service.

N. "Minnesota mail ton mile" means the paid carriage of one ton of mail for one Minnesota plane mile.

O. "Minnesota passenger ton mile" means the paid carriage of one ton of passengers for one Minnesota plane mile.

P. "Minnesota plane mile ratio" means the resultant ratio of Minnesota plane miles divided by total plane miles. A separate plane mile ratio must be computed for each fleet type.

Q. "Minnesota plane miles" means the number of miles on completed flights in revenue service using airport-to-airport mileage flown from a departure point in Minnesota to the border of the state or flown from the border of Minnesota to a destination within the state. Minnesota plane miles are calculated by multiplying the airport-to-airport mileage by the percentage resulting from the division of the Minnesota distance by total distance for each flight in revenue service. The

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by Revisor _____

Minnesota plane miles of a flight in revenue service from a Minnesota departure point to a Minnesota destination is the airport-to-airport mileage.

(1) Minnesota distance is the distance from the Minnesota airport to the Minnesota border and the Minnesota border to the Minnesota airport measured on a straight line between the originating airport and the destination airport.

(2) Total distance is the distance from the originating airport to the destination airport on a straight line using the same map that was used to measure Minnesota distance.

(3) Minnesota distance and total distance must be measured on a conformal conic projection map, used for aviation purposes, meeting the standards for accuracy of the Global Navigation and Planning Chart, United States Defense Mapping Agency, Lambert Conformal Conic Projection Map.

R. "Passenger ton mile" means the paid carriage of one ton of passengers for one mile. For this purpose, each passenger is considered to weigh 200 pounds.

S. "Plane miles" means the number of miles flown on completed flights in revenue service using airport-to-airport mileage. Plane miles must be accumulated on a fleet type basis.

Subp. 3. **Formula.** Except as provided in this part, the method of apportionment prescribed in Minnesota Statutes, section 290.191, governs the apportionment of the net income of air carriers by this state.

Subp. 4. **Property factor.** Items A to D govern inclusion of property for purposes of the property factor in Minnesota Statutes, section 290.191.

A. The denominator of the property factor must include the property permitted to be included under Minnesota Statutes, section 290.191, subdivisions 9 and 10.

B. Fixed property owned or rented and actually used by the air carrier in this state in carrying on business in this state must be included in the numerator of the property factor.

C. All flight property owned or rented by the

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taxpayer must be included in the numerator of the property factor by multiplying the original cost of the flight property by the Minnesota plane mile ratio. This calculation must be made on a fleet type basis.

D. Fixed and flight property that is rented by an air carrier is valued at eight times the net annual rental, as set forth in Minnesota Statutes, section 290.191, subdivision 10, paragraph (e).

Subp. 5. **Payroll factor.** The payroll factor must be determined under Minnesota Statutes, section 290.191, subdivision 12, except that flight payroll must be included in the numerator by multiplying the total flight payroll times the Minnesota plane mile ratio. This calculation must be made on a fleet type basis.

Subp. 6. **Receipts factor.** Items A and B govern inclusion of receipts for purposes of the receipts factor in Minnesota Statutes, section 290.191.

A. The denominator of the receipts factor includes all receipts from the paid carriage of passengers, cargo, and mail.

B. The numerator must be 85 percent of the sum of the amounts calculated in subitem (1) plus 15 percent of the sum of the amounts calculated in subitem (2). The Minnesota passenger, cargo, and mail revenue must be determined on a fleet type basis by:

(1)(i) multiplying the total gross revenue from the carriage of passengers by the ratio of Minnesota passenger ton miles to total passenger ton miles; (ii) multiplying the total gross revenue from the carriage of cargo by the ratio of Minnesota cargo ton miles to total cargo ton miles; and (iii) multiplying the total gross revenue from the carriage of mail by the ratio of Minnesota mail ton miles to total mail ton miles;

(2)(i) multiplying the total gross revenue from the carriage of passengers by the ratio of Minnesota departures to total revenue departures; (ii) multiplying the total gross revenue from the carriage of cargo by the ratio of Minnesota

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by Revisor _____

departures to total departures; and (iii) multiplying the total gross revenue from the carriage of mail by the ratio of Minnesota departures to total departures; and

(3) if records of either actual passenger revenue, freight revenue, or mail revenue generated by fleet type are not maintained, for purposes of subitems (1) and (2), passenger revenue, cargo revenue, and mail revenue must be allocated to aircraft types based on the ratios of the passenger ton miles, cargo ton miles, and mail ton miles of that fleet type to total system passenger, cargo, and mail ton miles. The computation for each fleet type is as follows:

$$\frac{\text{Passenger Ton Miles for that Fleet Type}}{\text{Total Passenger Ton Miles for all Fleet Types}} \times \text{Total Passenger Revenue} = \text{Passenger Revenue for that Fleet Type}$$

$$\frac{\text{Cargo Ton Miles for that Fleet Type}}{\text{Total Cargo Ton Miles for all Fleet Types}} \times \text{Total Cargo Revenue} = \text{Cargo Revenue for that Fleet Type}$$

$$\frac{\text{Mail Ton Miles for that Fleet Type}}{\text{Total Mail Ton Miles for all Fleet Types}} \times \text{Total Mail Revenue} = \text{Mail Revenue for that Fleet Type}$$

Approved by Revisor _____

Office of the Revisor of Statutes

Administrative Rules

TITLE: Proposed Permanent Rules Relating to Taxation; Income; Air Carriers

AGENCY: Department of Revenue

MINNESOTA RULES: Chapter 8017

The attached rules are approved for
publication in the State Register

Craig E. Lindeke
Senior Assistant Revisor

DEPARTMENT OF REVENUE

In the Matter of the Proposed Adoption of Permanent Rules of the State of Minnesota Governing the Proposed Permanent Rules Relating to Taxation; Income; Air Carriers; Apportionment of New Income of Air Carriers	NOTICE OF INTENT TO ADOPT A RULE WITHOUT A A PUBLIC HEARING

NOTICE IS HEREBY GIVEN that the State of 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*, section 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. The 30 day comment period runs through June 10, 1992. 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 changes proposed. If a public hearing is required, the agency will proceed pursuant to *Minnesota Statutes*, sections 14.131 to 14.20 (1990).

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

Stephen E. Krenkel
Department of Revenue
Appeals, Legal Services, and Criminal Investigation Division
10 River Park Plaza
Mail Station 2220
St. Paul, MN 55146-2220
(612) 296-1902 Extension 135

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. (3)

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

A STATEMENT OF NEED AND REASONABLENESS that describes (12) 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.

(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. (4) The proposed rule could have an impact on small businesses to the extent that the business is a small business air carrier. The rule will not create a competitive advantage to either large or small businesses. There are no new reporting, filing, fee, or compliance requirements in the proposed rule. The rule is not expected to impact small businesses, qualitatively or quantitatively, economic or otherwise.

(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, Attorney
Department of Revenue
Appeals, Legal Services, and Criminal
Investigation Division
10 River Park Plaza
Mail Station 2220
St. Paul, MN 55146-2220
(612) 296-1902, Extension 135

Dated: April 24, 1992

Deputy Commissioner

Dorothy A. McClung
Commissioner of Revenue
State of Minnesota

SEK:caw:proposednotices:aircarrier/adopt:04/23/92

STATE OF MINNESOTA
DEPARTMENT OF REVENUE
APPEALS AND LEGAL SERVICES DIVISION

IN THE MATTER OF THE PROPOSED ADOPTION OF PERMANENT RULES OF THE STATE OF MINNESOTA GOVERNING THE PROPOSED PERMANENT RULES RELATING TO TAXATION; INCOME; AIR CARRIERS APPORTIONMENT OF NET INCOME OF AIR CARRIERS

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 4th day of May, 1992.

That on the 4th day of May, 1992, 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 fifty-nineipersons and associations on the aforementioned mailing list.

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

Subscribed and sworn to
before me this
4th day of May, 1992
Wayne L. Sather
WAYNE L. SATHER

WAYNE L. SATHER
NOTARY PUBLIC--MINNESOTA
DAKOTA COUNTY
My Commission Expires MAY 30, 1997

7510.5500; .5510; .5520; .5530; .5540; .5550; .5560; .5570 (proposed) 2402

Public Utilities Commission

7810.8100; .8200; .8300; .8400; .8500; .8600; .8605; .8610; .8615; .8620; .8625; .8630; .8635; .8640; .8645; .8650; .8655; .8660; .8665; .8670; .8675; .8680; .8685; .8690; .8700; .8705; .8710; .8715; .8720; .8725; .8730; .8735; .8740; .8745; .8750; .8755; .8760; .8800; .8805; .8810; .8815; .8900; .8905; .8910; .8915; .8920; .8925; .8930; .8935; .8940 (adopted) 2163

Revenue Department

8017.6000 (proposed) 2438

Water and Soil Resources Board

8410.0010; .0020; .0030; .0040; .0050; .0060; .0070; .0080; .0090; .0100; .0110; .0120; .0130; .0140; .0150; .0160; .0170; .0180 (proposed) 2193

Minnesota Racing Commission

7890.0100; .0130; .0140; .0150; .0160; 7892.0120 (adopted) 2207

Teaching Board

8700.5505 (adopted) 2165

Transportation Department

8840.5100; .5300; .5400; .5500; .5600; .5650; .5700; .5800; .5900; .5910; .5925; .5940; .5950; .5975; .6000; .6100; .6200; .6300 (proposed) 2145

8840.5200; .5700 s.3 (proposed repealer) 2162

8895.0100; .0200; .0300; .0400; .0500; .0600; .0700; .0800; .0900; .1000; .1100 (proposed) 2309

Human Services Department

9525.1800; .1810; .1820; .1830; .1840; .1850; .1860; .1870; .1880; .1890; .1900; .1910; .1920; .2010 (adopted) ... 2238

9525.1800 s.4,16, and 19; .1860 s.2 and 5; .1930 s.2 (repealed) 2238

Welcome wildlife to your property



Landscaping for Wildlife. Attract wildlife to your land and gardens, farms and woodlots by spreading nature's welcome mat. Songbirds, butterflies, hummingbirds, pheasants, deer and other wildlife are drawn through these gardening tips and landscaping techniques that add natural beauty to your property and habitat for wildlife. Over 70 color photos and 144 pages give you simple, enjoyable, and inexpensive methods for adding the right touches for a "wildlife party" on your grounds, whether urban or rural. Stock #9-15, $8.95 plus tax.

Woodworking for Wildlife. Songbirds, owls, ducks, geese, loons and other wildlife will show appreciation for your skills by adding a "wild" dimension to your property. Carefully illustrated with a variety of game bird and mammal box designs, this booklet provides important tips on the placement of nest in proper habitat areas and maintenance requirements. Construction diagrams included. 47 pp. Stock #9-14, $3.95 plus tax.

Wildlife Set. Order both books above as a set and save 15%. Stock #9-20, $10.95 plus tax.

TO ORDER: Send to Minnesota's Bookstore, 117 University Avenue, St. Paul, MN 55155. Call (612) 297-3000, or toll-free in Minnesota: 1-800-657-3757. Minnesota residents please include 6½% sales tax. On all orders, add $2.00 per order for postage and handling. Prepayment is required. Please include daytime phone. VISA/MasterCard, American Express and Discover orders accepted over phone and through mail. ***Prices are subject to change.*** FAX: (612) 296-2265.

Publication editors: As a public service, please reprint this ad in your publication as is, reduced, enlarged, or redesigned to suit your format. Thank you.

Getaway in Style



Room at the Inn Wisconsin. Includes hard-to-find lodgings in out-of-the-way places, as well as in Wisconsin's major metropolitan areas and most popular vacation destinations. 224pp. Stock #19-3, $12.95 plus tax.

Room at the Inn Minnesota. Looking for a weekday or weekend get-away? For a business meeting or simply pleasure? This is the only guide to more than 60 historic "Bed & Breakfast" homes, hotels, and country inns. 160pp. Stock #19-72, $9.95 plus tax.

Roughing It Elegantly. A guide for the canoe camper visiting the BWCA, Voyageurs Park and Quetico Provincial Park. Full of practical tips and information: planning, organizing, packing, site location, and camp set-up. Simple, creative, enjoyable meals are a major feature. 159pp. Stock #9-3, $9.95 plus tax.

A Paddler's Guide to the Boundary Waters Canoe Area, 78 pages of detailed maps and descriptions of 31 wilderness canoe routes in the Superior National Forest of Northern Minnesota. Includes what to bring along on canoe trips, regulations, canoe tips and detailed information for self-guided tours. Stock #19-17, $4.95.

TO ORDER: Send to Minnesota's Bookstore, 117 University Avenue, St. Paul, MN 55155. Call (612) 297-3000, or toll-free in Minnesota: 1-800-657-3757. Minnesota residents please include 6½% sales tax. On all orders, add $2.00 per order for handling. Prepayment is required. Please include daytime phone. VISA/MasterCard, American Express and Discover orders accepted over phone and through mail. ***Prices are subject to change.*** FAX: (612) 296-2265.

Publication editors: As a public service, please reprint this ad in your publication, either as is, reduced, or redesigned to suit your format.

Proposed Rules

Pursuant to Minn. Stat. §§ 14.22, an agency may propose to adopt, amend, suspend or repeal rules without first holding a public hearing, as long as the agency determines that the rules will be noncontroversial in nature. The agency must first publish a notice of intent to adopt rules without a public hearing, together with the proposed rules, in the *State Register*. The notice must advise the public:

1. that they have 30 days in which to submit comment on the proposed rules;
2. that no public hearing will be held unless 25 or more persons make a written request for a hearing within the 30-day comment period;
3. of the manner in which persons shall request a hearing on the proposed rules; and
4. that the rule may be modified if the modifications are supported by the data and views submitted.

If, during the 30-day comment period, 25 or more persons submit to the agency a written request for a hearing of the proposed rules, the agency must proceed under the provisions of §§ 14.14-14.20, which state that if an agency decides to hold a public hearing, it must publish a notice of intent in the *State Register*.

Pursuant to Minn. Stat. §§ 14.29 and 14.30, agencies may propose emergency rules under certain circumstances. Proposed emergency rules are published in the *State Register* and, for at least 25 days thereafter, interested persons may submit data and views in writing to the proposing agency.

Department of Revenue

Proposed Permanent Rules Relating to Taxation; Income; Air Carriers

Notice of Intent to Adopt a Rule Without a Public Hearing

NOTICE IS HEREBY GIVEN that the State of 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*, section 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. The 30 day comment period runs through June 10, 1992. 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 changes proposed. If a public hearing is required, the agency will proceed pursuant to *Minnesota Statutes*, sections 14.131 to 14.20 (1990).

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

Stephen E. Krenkel
Department of Revenue
Appeals, Legal Services, and Criminal Investigation Division
10 River Park Plaza
Mail Station 2220
St. Paul, MN 55146-2220
(612) 296-1902 Extension 135

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.

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 proposed rule could have an impact on small businesses to the extent that the business is a small business air carrier. The rule will not create a competitive advantage to either large or small businesses. There are no new reporting, filing, fee, or compliance requirements in the proposed rule. The rule is not expected to impact small businesses, qualitatively or quantitatively, economic or otherwise.

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, Attorney
Department of Revenue
Appeals, Legal Services, and Criminal
Investigation Division
10 River Park Plaza
Mail Station 2220
St. Paul, MN 55146-2220
(612) 296-1902, Extension 135

Dated: 24 April 1992

Dorothy A. McClung
Commissioner of Revenue
State of Minnesota

Rules as Proposed (all new material)

8017.6000 APPORTIONMENT OF NET INCOME OF AIR CARRIERS.

Subpart 1. **General information.** *Minnesota Statutes*, section 290.17, subdivision 3, provides that the net income of a trade or business carried on partly in and partly out of this state must be apportioned between this state and other states. *Minnesota Statutes*, section 290.191, provides general rules for the apportionment of the net income of a trade or business carried on partly in and partly out of this state. *Minnesota Statutes*, section 290.20, provides that if the methods prescribed by *Minnesota Statutes*, section 290.191, do not fairly reflect the net income allocable to this state, the commissioner of revenue may require the use of another method. The nature of the air carrier business requires use of a method other than those prescribed by *Minnesota Statutes*, section 290.191.

Subp. 2. **Definitions.** The definitions in this subpart apply to this part.

A. "Air carrier" means a person engaged in the paid carriage of passengers, cargo, or mail on regularly scheduled flights of aircraft.

B. "Aircraft" means a contrivance used or designed for the navigation of flight in the air.

C. "Airport-to-airport mileage" means the mileage, as determined by the United States Department of Transportation, between airports that are the point of origination and termination of a flight in service.

D. "Cargo ton mile" means the paid carriage of one ton of cargo for one mile.

E. "Departures" means departures of an aircraft while operating a flight in revenue service.

F. "Fixed property and payroll" means all property and payroll not defined as flight property or flight payroll.

G. "Fleet type" means each series within an aircraft model.

H. "Flight in revenue service" means the flight of an aircraft for the paid carriage of cargo, mail, or passengers.

I. "Flight payroll" means the payroll of persons engaged as staff, such as pilots and flight attendants, on the air carrier's aircraft.

J. "Flight property" means aircraft ready for flight, spare engines, and spare parts inventory that rotates into aircraft. Inventory that rotates is inventory that consists of aircraft parts that are replacements for defective or worn parts and may be placed into an aircraft for use more than one time.

K. "Mail ton mile" means the paid carriage of one ton of mail for one mile.

L. "Minnesota cargo ton mile" means the paid carriage of one ton of cargo for one Minnesota plane mile.

M. "Minnesota departures" means departures of aircraft from Minnesota facilities for flights in revenue service.

N. "Minnesota mail ton mile" means the paid carriage of one ton of mail for one Minnesota plane mile.

O. "Minnesota passenger ton mile" means the paid carriage of one ton of passengers for one Minnesota plane mile.

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.

P. "Minnesota plane mile ratio" means the resultant ratio of Minnesota plane miles divided by total plane miles. A separate plane mile ratio must be computed for each fleet type.

Q. "Minnesota plane miles" means the number of miles on completed flights in revenue service using airport-to-airport mileage flown from a departure point in Minnesota to the border of the state or flown from the border of Minnesota to a destination within the state. Minnesota plane miles are calculated by multiplying the airport-to-airport mileage by the percentage resulting from the division of the Minnesota distance by total distance for each flight in revenue service. The Minnesota plane miles of a flight in revenue service from a Minnesota departure point to a Minnesota destination is the airport-to-airport mileage.

(1) Minnesota distance is the distance from the Minnesota airport to the Minnesota border and the Minnesota border to the Minnesota airport measured on a straight line between the originating airport and the destination airport.

(2) Total distance is the distance from the originating airport to the destination airport on a straight line using the same map that was used to measure Minnesota distance.

(3) Minnesota distance and total distance must be measured on a conformal conic projection map, used for aviation purposes, meeting the standards for accuracy of the Global Navigation and Planning Chart, United States Defense Mapping Agency, Lambert Conformal Conic Projection Map.

R. "Passenger ton mile" means the paid carriage of one ton of passengers for one mile. For this purpose, each passenger is considered to weigh 200 pounds.

S. "Plane miles" means the number of miles flown on completed flights in revenue service using airport-to-airport mileage. Plane miles must be accumulated on a fleet type basis.

Subp. 3. **Formula.** Except as provided in this part, the method of apportionment prescribed in *Minnesota Statutes*, section 290.191, governs the apportionment of the net income of air carriers by this state.

Subp. 4. **Property factor.** Items A to D govern inclusion of property for purposes of the property factor in *Minnesota Statutes*, section 290.191.

A. The denominator of the property factor must include the property permitted to be included under *Minnesota Statutes*, section 290.191, subdivisions 9 and 10.

B. Fixed property owned or rented and actually used by the air carrier in this state in carrying on business in this state must be included in the numerator of the property factor.

C. All flight property owned or rented by the taxpayer must be included in the numerator of the property factor by multiplying the original cost of the flight property by the Minnesota plane mile ratio. This calculation must be made on a fleet type basis.

D. Fixed and flight property that is rented by an air carrier is valued at eight times the net annual rental, as set forth in *Minnesota Statutes*, section 290.191, subdivision 10, paragraph (e).

Subp. 5. **Payroll factor.** The payroll factor must be determined under *Minnesota Statutes*, section 290.191, subdivision 12, except that flight payroll must be included in the numerator by multiplying the total flight payroll times the Minnesota plane mile ratio. This calculation must be made on a fleet type basis.

Subp. 6. **Receipts factor.** Items A and B govern inclusion of receipts for purposes of the receipts factor in *Minnesota Statutes*, section 290.191.

A. The denominator of the receipts factor includes all receipts from the paid carriage of passengers, cargo, and mail.

B. The numerator must be 85 percent of the sum of the amounts calculated in subitem (1) plus 15 percent of the sum of the amounts calculated in subitem (2). The Minnesota passenger, cargo, and mail revenue must be determined on a fleet type basis by:

(1)(i) multiplying the total gross revenue from the carriage of passengers by the ratio of Minnesota passenger ton miles to total passenger ton miles; (ii) multiplying the total gross revenue from the carriage of cargo by the ratio of Minnesota cargo ton miles to total cargo ton miles; and (iii) multiplying the total gross revenue from the carriage of mail by the ratio of Minnesota mail ton miles to total mail ton miles;

(2)(i) multiplying the total gross revenue from the carriage of passengers by the ratio of Minnesota departures to total revenue departures; (ii) multiplying the total gross revenue from the carriage of cargo by the ratio of Minnesota departures to total departures; and (iii) multiplying the total gross revenue from the carriage of mail by the ratio of Minnesota departures to total departures; and

(3) if records of either actual passenger revenue, freight revenue, or mail revenue generated by fleet type are not maintained, for purposes of subitems (1) and (2), passenger revenue, cargo revenue, and mail revenue must be allocated to aircraft types based on the ratios of the passenger ton miles, cargo ton miles, and mail ton miles of that fleet type to total system passenger, cargo, and mail ton miles. The computation for each fleet type is as follows:

Passenger Ton Miles for that Fleet Type / Total Passenger Ton Miles for all Fleet Types	X	Total Passenger Revenue	=	Passenger Revenue for that Fleet Type
Cargo Ton Miles for that Fleet Type / Total Cargo Ton Miles for all Fleet Types	X	Total Cargo Revenue	=	Cargo Revenue for that Fleet Type
Mail Ton Miles for that Fleet Type / Total Mail Ton Miles for all Fleet Types	X	Total Mail Revenue	=	Mail Revenue for that Fleet Type

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.

Department of Agriculture

Adopted Permanent Rules Relating to Wholesale Produce Dealers

The rules proposed and published at *State Register*, Volume 16, Number 31, pages 1737-1741, January 27, 1992 (16 SR 1737), are adopted with the following modifications:

Rules as Adopted

1500.0601 FINANCIAL STATEMENTS.

B. ~~The financial statement must be accompanied by a compilation report of the financial statement that is prepared by a person or firm approved by the commissioner or by an independent public accountant, according to standards established by the American Institute of Certified Public Accountants.~~

~~C.~~ The financial statement must be accompanied by a certification by the chief executive officer or the chief executive officer's designee of the licensee, under penalty of perjury, that the financial statement accurately reflects the financial condition of the licensee for the period specified in the statement.

~~D.~~ C. The commissioner may refuse to issue or renew a license or may suspend a license upon determining, based upon the financial statement filed under this part or other financial information obtained by the commissioner, that the applicant or the licensee is not financially able to properly perform the services and operate the business for which the license is issued.

~~E.~~ D. The copies of contracts required by *Minnesota Statutes*, section 27.04, subdivision 2, paragraph (b), do not have to contain price schedules and charges. If the same contract is given to more than one seller, only one copy of that contract is required.

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.

Withdrawn Rules

Pollution Control Agency

In the Matter of the Proposed Adoption of Rule Amendments Governing the Management of Waste at Wood Preserving Operations and the Exemption of Chlorofluorocarbons Which Are to be Reclaimed from the Hazardous Waste Rules

Notice of Order Withdrawing Proposed Rule Amendments

NOTICE IS HEREBY GIVEN that the Minnesota Pollution Control Agency has issued an Order Withdrawing Proposed Rule Amendments for the proposed rule amendments regarding waste management at wood preserving facilities, *Minnesota Rules* pts. 7001.0623, 7045.0020, 7045.0292, 7045.0528, 7045.0546, 7045.0628, and 7045.0644. These rule amendments appeared at 16 *State Register* 1531-1543, Monday, December 23, 1991. The proposed rule amendments to *Minnesota Rules* pts. 7045.0120, 7045.0135, 7045.0139, 7045.0141, and 7045.0145 are not withdrawn.

Persons having questions about this matter may contact Glenn Skuta at the Minnesota Pollution Control Agency, 520 Lafayette Road North, St. Paul, Minnesota, 55155-3898, telephone (612) 297-8319.

Charles W. Williams
Commissioner

Commissioners' Orders

Department of Natural Resources

Commissioner's Order No. 2423: Regulations for the Taking and Possession of Freshwater Mussels (Clams); Superseding Commissioner's Order No. 2378

PURSUANT TO AUTHORITY vested in me by *Minnesota Statutes* §§ 97A.045, 97C.701, 97C.705, 97C.711 and other applicable law, I, Rodney W. Sando, Commissioner of Natural Resources, hereby prescribe the following regulations for the taking and possession of freshwater mussels (clams).

Section 1. HARVESTING FOR PERSONAL USE.

Any person possessing a valid resident or nonresident angling license or who are exempt from licensing may take and possess at any time during the open season not more than 24 live, whole or 48 shell halves of freshwater mussels (clams) for personal use only. Mussels may be harvested in waters of the state where fish may be taken by angling. Mussels must be harvested by hand picking only and may not be purchased or sold. The open season for personal use is from May 16 through the last day of February. Species listed in Sec. 9 may not be harvested.

Sec. 2. SEASON FOR COMMERCIAL HARVEST.

(a) The open season for taking mussels is from May 16 through August 31.

(b) Mussels may be harvested from sunrise to sunset only.

Sec. 3. PERMITS FOR COMMERCIAL HARVEST.

(a) *Permit required*. A person may not take or possess more than 24 live, whole or 48 shell halves of freshwater mussels without first obtaining a written permit to harvest mussels from the commissioner.

(b) *Permit issuance*. Commercial harvest permits will be issued subject to the following criteria:

(1) Application must be submitted to the local area or regional fisheries office on forms provided by the commissioner.

(2) Approved permits will be issued only to Minnesota residents who possess a valid Minnesota resident angling license or who are exempt from licensing.

(3) Application forms must be signed by the applicant. All requested information must be provided. Failure to properly and fully complete an application form will result in its rejection.

(c) *Permit duration*. Permits are valid for one season only, as defined in Sec. 2 of this order. Permits may be issued for periods of time shorter than one season, at the discretion of the commissioner.

(d) *Permit revocation*. In addition to the penalties set forth in Sec. 10, the commissioner may revoke any permit upon 48 hours' written notice to protect aquatic resources.

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 State Department of Revenue Governing Apportionment of Net Income of Air Carriers	FINDINGS OF FACT CONCLUSIONS, AND ORDER ADOPTING RULE WITHOUT PUBLIC HEARING

(1) Notice of the Commissioner's intent to adopt the above-entitled rule was published in the State Register on May 11, 1992, and was sent by United States mail to all persons on the list maintained by the agency pursuant to Minnesota Statutes, sections 14.14, sub division 1a and 14.22 on May 4, 1992. (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 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 for a public hearing. (5) No requests for a public hearing on the rule were ever received by the agency.

(7) No requests for notice of submission to the attorney general were received by the agency.

One comment was received by the agency. Based on the comment and evidence in the record before the agency, I find the following:

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

NOW, THEREFORE, IT IS ORDERED that the rule identified as Rules Relating to Taxation; Income; Air Carriers and Apportionment of Net Income of Air Carriers is adopted this 11 day of June, 1992, pursuant to authority vested in me by Minnesota Statues, section 270.06.

Dorothy A. McClung
Commissioner of Revenue

REVENUE
MAY 14 1992

Kenneth S. Levinson, Esq.
Vice President
Tax

Northwest Airlines, Inc.
Department A4450
5101 Northwest Drive
St. Paul MN 55111-3034

612 726-4000
612 727-4280 Fax

NORTHWEST AIRLINES

May 12, 1992

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

RE: Notice of Proposed Rule
8017.6000 Apportionment of Net Income of Air Carriers

Dear Mr. Krenkel:

This is in response to the PROPOSED PERMANENT RULE RELATING TO TAXATION; INCOME; AIR CARRIERS which was published in the State Register on Monday, May 11, 1992.

Northwest Airlines, Inc. is the taxation coordinator for the State of Minnesota for the Air Transport Association of America (ATA). In that capacity, Northwest is hereby responding to the subject Proposed Rule as the ATA's representative.

The Airline Industry (Industry) is pleased to have this opportunity to provide comments relative to the above mentioned Proposed Rule and wishes to formally communicate its support for the Rule. The Industry believes that this Rule will result in a reasonable and administrable allocation of our corporate net income to the State of Minnesota. This Rule will also provide much needed consistency for all carriers serving Minnesota. The Industry supports the Rule and your efforts to have it implemented at the earliest opportunity.

If we can be of any assistance regarding this matter, please contact Jim DeLaHunt, Northwest Airlines at 726-7397.

Very truly yours,

Kenneth S. Levinson

KSL/skr

cc:
Robert L. Mandel, ATA
James R. DeLaHunt, NW
ATA Carriers Serving Minnesota

In the Matter of the Proposed Adoption of the Rule of the State Governing Apportionment of Net Income of Air Carriers.

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 0738.

Dated: June 17, 1992.

Barry R. Greller

BARRY R. GRELLER
Special Assistant
Attorney General

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