

Minnesota Attorney General: Administrative Rules Proceedings

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Version 3
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STATE OF MINNESOTA

Office of the Attorney General

TO : MARYANNE HRUBY
Legislative Commission to
Review Administrative Rules

DATE : December 4, 1992

FROM : AMY V. KVALSETH
Special Assistant
Attorney General

PHONE : 296-9422

SUBJECT : **Harmless Error--Department of Revenue Rules**

On November 25, 1992, this Office approved the permanent rules relating to disclosure of return information in investigation adopted by the Department of Revenue. Minn. Rules pt. 8170.0100. We applied the harmless error rule to the following two situations:

1. The Notice of Intent to Adopt a Rule Without a Public Hearing was mailed to persons and associations specified in the Department of Revenue's rulemaking mailing list on September 23, 1992, nine days after the notice was published in the State Register. Because of this delay, the Department of Revenue provided all persons receiving the notice by mail with an extended comment period (as specified in the notice as mailed), until October 28, 1992 such that all interested persons had at least 30 days to submit comments or request a hearing. Since all interested persons had 30 days to submit comments or request a hearing, and since no comments were received, no one was deprived of participating in the rulemaking process. The agency did take corrective action to cure the error. Thus, the error constituted harmless error.

2. The Notice of Intent to Adopt a Rule Without a Public Hearing as mailed was prepared under the signature of Michael E. Boekhaus, but it did not contain his handwritten signature. The lack of a handwritten signature did not deprive any person of an opportunity to participate meaningfully in the rulemaking process since all persons had at least 30 days to comment and the mailed notice clearly specified that it was issued under Mr. Boekhaus' authority. Moreover, his handwritten signature does appear on the Findings of Fact, Conclusions of Law and Order Adopting Rule Without a Public Hearing. He does have the requisite authority. Thus, the error constituted harmless error.

If you have any questions regarding this approval, please contact me.

AVK:cr.kval.al9

AVK
11-16-92

RULE REVIEW CHECKLIST

File No. 1968
DATE RECEIVED 11-16-92
REVIEW DATE 11-25-92
DUE DATE 11-30-92
~~(DIS)~~APPROVED 11-25-92
WITHDRAWN _____

Docket No. 50009, 0735
ADOPTED W/O HEARING _____
EMERGENCY RULE _____
TO REVISOR ON 11-16-92
REVISOR (DIS)APPROVED 11/24
FILED W/SEC. OF STATE 11-25-92
RETURNED TO AGENCY 11-25-92

✓ Rule as adopted (4 copies)

N/A Notice to Solicit Outside Information/Opinion (if applicable)
N/A Date published in State Register
N/A Comments

N/A Petition for Adoption of a Rule

N/A Board's Authorizing Resolution
_____ Date adopted

✓ Proposed Rule
8/28/92 ✓ Revisor's Certificate

✓ mailed notice 9-22-92 Notice of Intent to Adopt Rule
270B.19 ✓ Statutory Authority
✓ Small Business Statement
_____ Expenditure of public money statement
~~Pro~~ only sign. block Signature see if he was delegated the authority → yes

Problem, harmless error

✓ Statement of Need and Reasonableness (if applicable)
none Small Business Statement
none Fees - § 16A.128

✓ Affidavit of Mailing Notice of Intent to Adopt Rule
9/23/92 Dated 30/25 days before adoption
? Notice attached indicates it is attached
✓ Copy of rule or summary attached (says it was, anyway)

✓ Publication in State Register
9/14/92 Date 30/25 days before adoption

_____ 180-day deadline from:
N/A Effective date of law requiring rule (14.12) (both rules) amendments don't apply
O.K. end of comment period (§ 14.26) (rules without hearing)
N/A effective date of statutory authority (§ 14.29) (emergency rules)

N/A Resolution Adopting
N/A Date adopted

✓ Findings of Fact, Conclusions & Order Adopting
11-4-92 Date

✓ Written Requests, Submissions or Comments

✓ Declaration of Attorney
(Heller) Name of SAAG representing agency

no requests Notice of Submission to Attorney General (if applicable)

N/A Affidavit of Mailing Notice to Attorney General (if applicable)

STATE OF MINNESOTA

Office of the Attorney General

TO : RICHARD L. WALZER, ATTORNEY
Appeals, Legal Services and
Criminal Investigation Division
10 River Park Plaza
St. Paul

DATE : November 25, 1992

FROM : AMY V. KVALSETH
Special Assistant
Attorney General

PHONE : 296-9422

SUBJECT : In the Matter of the Adopted Rule Relating to Disclosure of Return Information in Investigation

The above-referenced rule has been approved as to its legality by the Attorney General on November 25, 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

AVK:jj.rules.bd6

Department of Revenue

Adopted Permanent Rules Relating to Disclosure of Return Information in Investigation

Rules as Adopted

8170.0100 DISCLOSURE IN INVESTIGATION; THIRD PARTY RETURNS.

Subpart 1. **Disclosure of return information.** Return information of a taxpayer can be disclosed to taxpayers under investigation if it is pertinent return information of a third party.

Subp. 2. **Definitions.** For purposes of Minnesota Statutes, section 270B.06, subdivision 2, and this part, the definitions in items A and B apply.

A. "Investigation" means an inquiry by the Department of Revenue into whether a taxpayer is liable for a state tax, or whether a taxpayer's return or refund claim is correct. The investigation is not concluded until the taxpayer is found not to be liable, the taxpayer's return or refund claim is accepted, the taxpayer's liability or deficiency is satisfied, or the taxpayer's appeal is finally determined.

B. "Pertinent return information of a third party" means information regarding the liability or refund of one taxpayer which affects another taxpayer's liability or refund.

Examples of such information are:

(1) where more than one taxpayer is or may be liable for the same tax types, periods, and amounts, information regarding personal liability under Minnesota Statutes, section 270.101, including whether a personal liability assessment has been made against a taxpayer; whether the assessment has been appealed administratively or judicially, and the status of the appeal; whether any amounts have been collected from the taxpayer, and whether the taxpayer is still being pursued for collection; and whether a settlement has been made with the taxpayer and for how much, unless the settlement agreement

prohibits disclosure;

(2) information regarding the sales tax liability of a taxpayer which affects the use tax liability of another taxpayer;

(3) information used as a basis for a sales tax assessment against a taxpayer that is obtained from other taxpayers, such as statements from the purchasers of a vendor, or the sales tax history of a previous owner of the taxpayer's business;

(4) whether amounts claimed by an employer as a withholding tax refund have been claimed as a credit by the employees of the employer on their individual income tax returns;

(5) when taxpayers are married and filing separate individual income tax returns, whether either spouse itemized deductions, and if so, how much of the state income tax deduction had to be included in the Minnesota taxable income of either spouse;

(6) whether two or more taxpayers are claiming the same dependent on their individual income tax returns;

(7) information regarding items of expense, deduction, credit, or loss on the individual income tax return of a taxpayer which affects the amount of income that should be reported on the individual income tax return of another taxpayer;

(8) information from the corporate franchise tax return or tax records of a corporation needed to determine the correctness of a corporate franchise tax return of a unitary group with which the corporation is no longer affiliated;

(9) whether a taxpayer filing a property tax refund return has been claimed as a dependent on the individual income tax return of another taxpayer;

(10) information from the individual income tax returns of taxpayers who live in the home of a taxpayer filing a property tax refund return that is needed to determine household income;

(11) when a taxpayer's business accounts receivable have been acquired by a financial institution or other third party pursuant to an assignment, sale, security agreement, or liquidation, information from the sales tax returns of the taxpayer necessary for the financial institution or third party to determine the sales taxes it must collect and remit as it collects the accounts receivable;

(12) whether alimony claimed as a deduction on the individual income tax return of one ex-spouse has been reported as income on the individual income tax return of the other ex-spouse; and

(13) information regarding the allocation of the purchase price of a business among the various kinds of assets sold, when the method of allocation reported on the individual income tax return of the seller is different from the allocation reported on the individual income tax return of the purchaser.

STATE OF MINNESOTA
DEPARTMENT OF STATE
FILED
NOV 23 1992
Secretary of State

APPROVED AS TO FORM AND LEGALITY

11-25 1992

HUBERT H. HUMP III
ATTORNEY GENERAL

BY Amy V. Kvalseth
SPECIAL ASSISTANT ATTORNEY GENERAL

STATE OF MINNESOTA
DEPARTMENT OF STATE
FILED
NOV 25 1992
Joan Anderson Growe
Secretary of State

2:25 PM
PB

In the Matter of the Adoption of
Permanent Rules of the State of
Minnesota Governing Disclosure in
Investigation: Third Party Returns

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.

In examining the rule, I noted the following:

1) The Notice of Intent to Adopt a Rule Without a Public Hearing was mailed to persons and associations specified in the Department of Revenue's rulemaking mailing list on September 23, 1992, 9 days after the Notice was published in the State Register. However, the Department of Revenue provided all persons receiving the Notice by mail with an extended comment period (as specified in the Notice as mailed), until October 28, 1992, such that all interested persons had at least 30 days to submit comments or request a hearing; and

2) The Notice of Intent to Adopt a Rule Without a Public Hearing as mailed is prepared under the signature of Michael E. Boekhaus, but it does not contain his handwritten signature.

It does not appear that either of the foregoing matters deprived any person of an opportunity to participate meaningfully in the rulemaking process, in that, among other reasons, 1) all persons, whether receiving mailed or published notice of the rule, had at least 30 days to comment or request a hearing, and 2) the mailed notice clearly specified that it was issued under Mr. Boekhaus's authority and his handwritten signature does appear on the Findings of Fact, Conclusions of Law and Order Adopting Rule Without A Public Hearing.

Dated: November 13, 1992

Barry R. Greller

BARRY R. GRELLER
Special Assistant
Attorney General

brg.do0

STATE OF MINNESOTA

DEPARTMENT OF REVENUE

In the Matter of the Proposed Adoption Without a Public Hearing of the Rule Governing Disclosure of Third Party Return Information

STATEMENT OF NEED AND REASONABLENESS

This document has been prepared to establish the statutory authority, need for, and reasonableness of the proposed rule. It is submitted pursuant to Minnesota Statutes, section 14.23 and Minnesota Rules, part 2010.0700 requiring a statement of need and reasonableness.

Authority to Adopt Rules.

Minnesota Statutes, section 270B.19 provides that the Commissioner of Revenue may adopt rules necessary for the enforcement and administration of state tax data disclosure laws.

Minnesota Rules, part 8170.0100.

Minn. Stat. § 270B.06, subd. 2 governs the disclosure of third party return information. Pertinent information from another taxpayer's return can be disclosed to a taxpayer who is under tax administration investigation "if the treatment of an item reflected on the third party return is or may be related to the resolution of an issue in the investigation." The purpose of this rule is to provide two definitions which are not in the statute, and to list the types of situations in which disclosure under the statute is permitted.

The rule is necessary to resolve any potential disputes between the Department of Revenue and a taxpayer as to whether release of return information of that taxpayer to another taxpayer was proper.

Currently, Department employees have no guidelines as to when third party return information can be disclosed.

The rule is also necessary because the Department cannot assess or collect the correct tax due and owing from two or more taxpayers in a multiple taxpayer case, unless all relevant information regarding a mutual issue or issues affecting those taxpayers can be gathered, evaluated and compared. This can only be done with a free exchange of such information, unimpaired by the fear of making an unlawful disclosure.

Subpart 1 defines "investigation" and "pertinent return information of a third party". The definition of investigation is needed to provide a time frame in which information can be disclosed under Minn. Stat. § 270B.06, subd. 2. The definition of "pertinent return information of a third party" is needed to clarify which taxpayers are affected by the statute and to what extent the statute will be applied by the Department.

Subpart 2 is a list of examples of when the need to disclose third party return information arises. The list is intended to be comprehensive, but not inclusive. Thus, if a situation not contemplated by this subpart arises, until the rule is updated the Department's determination on whether to release third party return information is based on its interpretation of § 270B.06, subd. 2 and of subpart 1.

STATE OF MINNESOTA
DEPARTMENT OF REVENUE
APPEALS AND LEGAL SERVICES DIVISION

IN THE MATTER OF THE PROPOSED ADOPTION OF PERMANENT RULES RELATING TO DISCLOSURE IN INVESTIGATION; THIRD PARTY RETURNS

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 23rd day of September, 1992.

That on the 23rd day of September, 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 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
23rd day of September 1992

Wayne L. Sather
WAYNE L. SATHER

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

Department of Revenue

Proposed Permanent Rules Relating to Disclosure of Return Information in Investigation

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 rules without a public hearing following the procedures set forth in the Administrative Procedures Act for adopting rules without a public hearing in *Minnesota Statutes*, section 14.22 to 14.28. The statutory authority to adopt the proposed rules is *Minnesota Statutes*, section 270B.19.

All persons have until 4:30 p.m. on October 14, 1992, in which to submit comment in support of or in opposition to the proposed rules or any subpart of the proposed rules. Comment is encouraged. Each comment should identify the portion of the proposed rules addressed, the reason for the comment, and any change proposed.

Any person may make a written request for a public hearing on the rules until 4:30 p.m. on October 14, 1992. Any requests or comments must be received by the Department of Revenue no later than 4:30 p.m. on October 14, 1992. If 25 or more persons submit a written request for a public hearing by 4:30 p.m. on October 14, 1992, a public hearing will be held unless a sufficient number withdraw their request in writing. Any person requesting a public hearing must include his or her name and address, and must identify the portion of the proposed rules addressed, the reason for the request, and any change proposed. If a public hearing is required, the agency will proceed under *Minnesota Statutes*, sections 14.131 to 14.20.

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

Richard L. Walzer, Attorney
Appeals, Legal Services, and
Criminal Investigation Division
10 River Park Plaza
Mail Station 2220
St. Paul, MN 55146-2220
(612) 296-1902, Extension 134

The proposed rules may be modified if the modifications were supported by data and views submitted to the Department of Revenue and do not result in a substantial change in the proposed rules 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 rules and identifies the data and information relied upon to support the proposed rules has been prepared and is available upon request from Richard L. Walzer at the address and telephone number listed above.

In preparing these rules, the Department has considered the requirements of *Minnesota Statutes*, section 14.115 in regard to the impact of the proposed rule on small business. The adoption of the rule will not adversely affect small businesses.

Minnesota Statutes, section 14.11, subd. 1 does not apply because adoption of the rules will not result in additional spending by local public bodies in excess of $100,000 per year for the first two years following adoption of the rules. *Minnesota Statutes*, section 14.11, subd. 2, does not apply because adoption of the rules will not impact agricultural land. *Minnesota Statutes*, section 16A.128, subds. 1a and 2a do not apply because the rules do not fix fees.

If no hearing is required, upon adoption of the rules, the rules 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 of this material 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 rules, must submit the written request to Richard L. Walzer at the address and telephone number listed above.

Dated: 31 August 1992

Michael E. Boekhaus, Director
Appeals, Legal Services, and
Criminal Investigation Division

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.

Rules as Proposed (all new material)

8170.0100 DISCLOSURE IN INVESTIGATION; THIRD PARTY RETURNS.

Subpart 1. **Disclosure of return information.** Return information of a taxpayer can be disclosed to taxpayers under investigation if it is pertinent return information of a third party.

Subp. 2. **Definitions.** For purposes of *Minnesota Statutes*, section 270B.06, subdivision 2, and this part, the definitions in items A and B apply.

A. "Investigation" means an inquiry by the Department of Revenue into whether a taxpayer is liable for a state tax, or whether a taxpayer's return or refund claim is correct. The investigation is not concluded until the taxpayer is found not to be liable, the taxpayer's return or refund claim is accepted, the taxpayer's liability or deficiency is satisfied, or the taxpayer's appeal is finally determined.

B. "Pertinent return information of a third party" means information regarding the liability or refund of one taxpayer which affects another taxpayer's liability or refund.

Examples of such information are:

(1) where more than one taxpayer is or may be liable for the same tax types, periods, and amounts, information regarding personal liability under *Minnesota Statutes*, section 270.101, including whether a personal liability assessment has been made against a taxpayer; whether the assessment has been appealed administratively or judicially, and the status of the appeal; whether any amounts have been collected from the taxpayer, and whether the taxpayer is still being pursued for collection; and whether a settlement has been made with the taxpayer and for how much, unless the settlement agreement prohibits disclosure;

(2) information regarding the sales tax liability of a taxpayer which affects the use tax liability of another taxpayer;

(3) information used as a basis for a sales tax assessment against a taxpayer that is obtained from other taxpayers, such as statements from the purchasers of a vendor, or the sales tax history of a previous owner of the taxpayer's business;

(4) whether amounts claimed by an employer as a withholding tax refund have been claimed as a credit by the employees of the employer on their individual income tax returns;

(5) when taxpayers are married and filing separate individual income tax returns, whether either spouse itemized deductions, and if so, how much of the state income tax deduction had to be included in the Minnesota taxable income of either spouse;

(6) whether two or more taxpayers are claiming the same dependent on their individual income tax returns;

(7) information regarding items of expense, deduction, credit, or loss on the individual income tax return of a taxpayer which affects the amount of income that should be reported on the individual income tax return of another taxpayer;

(8) information from the corporate franchise tax return or tax records of a corporation needed to determine the correctness of a corporate franchise tax return of a unitary group with which the corporation is no longer affiliated;

(9) whether a taxpayer filing a property tax refund return has been claimed as a dependent on the individual income tax return of another taxpayer;

(10) information from the individual income tax returns of taxpayers who live in the home of a taxpayer filing a property tax refund return that is needed to determine household income;

(11) when a taxpayer's business accounts receivable have been acquired by a financial institution or other third party pursuant to an assignment, sale, security agreement, or liquidation, information from the sales tax returns of the taxpayer necessary for the financial institution or third party to determine the sales taxes it must collect and remit as it collects the accounts receivable;

(12) whether alimony claimed as a deduction on the individual income tax return of one ex-spouse has been reported as income on the individual income tax return of the other ex-spouse; and

(13) information regarding the allocation of the purchase price of a business among the various kinds of assets sold, when the method of allocation reported on the individual income tax return of the seller is different from the allocation reported on the individual income tax return of the purchaser.

Department of Revenue

Proposed Permanent Rules Relating to Sales and Use Tax; Utilities and Fuels

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

DEPARTMENT OF REVENUE

Proposed Permanent Rules Relating to Disclosure in Investigation; Third Party Returns

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 rules (1) without a public hearing following the procedures set forth in the Administrative Procedures Act for adopting rules without a public hearing in *Minnesota Statutes*, section 14.22 to 14.28. The statutory authority to adopt the proposed rules is *Minnesota Statutes*, section 270B.19.

All persons have until 4:30 p.m. on October 28, 1992, in which to submit comment in support of or in opposition to the proposed rules or any subpart of the proposed rules. (2) Comment is encouraged. (3) Each comment should identify the portion of the proposed rules addressed, the reason for the comment, and any change proposed.

Any person may make a written request for a public hearing on the rules until 4:30 p.m. on October 28, 1992. Any requests or comments must be received by the Department of Revenue no later than 4:30 p.m. on October 28, 1992. (4) If 25 or more persons submit a written request for a public hearing by 4:30 p.m. on October 28, 1992, a public hearing will be held unless a sufficient number withdraw their request in writing. (6) Any person requesting a public hearing must include his or her name and

address, and must identify the portion of the proposed rules addressed, the reason for the request, and any change proposed. If a public hearing is required, the agency will proceed under *Minnesota Statutes*, sections 14.131 to 14.20.

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

Richard L. Walzer, Attorney
Appeals, Legal Services, and
Criminal Investigation Division
10 River Park Plaza
Mail Station 2220
St. Paul, MN 55146-2220
(612) 296-1902, Extension 134

The proposed rules may be modified if the modifications were supported by data and views submitted to the Department of Revenue and do not result in a substantial change in the proposed rules 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 rules and identifies the data and information relied upon to support the proposed rules has been prepared and is available upon request from Richard L. Walzer at the address and telephone number listed above.

In preparing these rules, the Department has considered the requirements of *Minnesota Statutes*, section 14.115 in regard to the impact of the proposed rule on small business. The adoption of the rule will not adversely affect small businesses.

Minnesota Statutes, section 14.11, subd. 1 does not apply because adoption of the rules will not result in additional spending by local public bodies in excess of $100,000 per year for the first two years following adoption of the rules. *Minnesota Statutes*, section 14.11, subd. 2, does not apply because adoption of the rules will not impact agricultural land. *Minnesota Statutes*, section 16A.128, subds. 1a and 2a do not apply because the rules do not fix fees.

If no hearing is required, upon adoption of the rules, the rules 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 rules, must submit the written request to Richard L. Walzer at the address and telephone number listed above.

Dated: 22 September 1992

Michael E. Boekhaus, Director
Appeals, Legal Services, and
Criminal Investigation Division

MINNESOTA Department of Revenue

APPEALS, LEGAL SERVICES AND CRIMINAL INVESTIGATION DIVISION

Mail Station 2220
St. Paul, Minnesota 55146-2220
Phone (612) 296-1902, ext. 134
Facsimile (612) 296-8229

November 13, 1992

The Office of the Attorney General
Public Finance Division
Capitol Office Building
525 Park Street
St. Paul, Minnesota 55103

Re: **In the Matter of the Proposed Adoption of Permanent Rules Relating to Disclosure in Investigation; Third Party Returns.**

Dear Sir or Madam:

Enclosed herein are the following:

(1) A copy of the proposed rule with a certificate of approval as to form by the revisor of statutes attached.

(2) The notice of intent to adopt the rule without a public hearing as mailed. (Please note that the notice was not mailed at the time of publication in the State Register as required. As a result, the comment period for persons on the mailing list was extended.)

(3) The statement of need and reasonableness.

(4) The affidavit of mailing the notice of intent to adopt the rule without a public hearing.

(5) A copy of the notice of intent to adopt the rule without a public hearing as published in the State Register.

(6) Four copies of the rule as adopted.

(7) The findings of fact, conclusions, and order adopting the rule.

(8) The Declaration of Counsel of Barry R. Greller, Special Assistant Attorney General.

An equal opportunity employer


RECEIVED
NOV 16 1992
Office of the Attorney General
Government Services Section
Capitol Office Bldg., Suite 5F
525 Park Street
St. Paul, MN

A copy of the statement of need and reasonableness was mailed to the Legislative Commission to Review Administrative Rules when it became available to the public, as required by Minn. Stat. § 14.23.

These documents are submitted for your final approval pursuant to Minn. Stat. ch. 14 and Minn. Rules ch. 2010. If the rule is approved and filed with the Secretary of State, please notify me.

Sincerely,

Richard Walzer

Richard L. Walzer, Attorney
Legal Services Section

RLW/ml
Enclosure

Department of Revenue

Proposed Permanent Rules Relating to Disclosure of Return Information in Investigation

Rules as Proposed (all new material)

8170.0100 DISCLOSURE IN INVESTIGATION; THIRD PARTY RETURNS.

Subpart 1. **Disclosure of return information.** Return information of a taxpayer can be disclosed to taxpayers under investigation if it is pertinent return information of a third party.

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B. "Pertinent return information of a third party" means information regarding the liability or refund of one taxpayer which affects another taxpayer's liability or refund.

Examples of such information are:

(1) where more than one taxpayer is or may be liable for the same tax types, periods, and amounts, information regarding personal liability under Minnesota Statutes, section 270.101, including whether a personal liability assessment has been made against a taxpayer; whether the assessment has been appealed administratively or judicially, and the status of the appeal; whether any amounts have been collected from the taxpayer, and whether the taxpayer is still being pursued for collection; and whether a settlement has been made with the taxpayer and for how much, unless the settlement agreement

Approved by Revisor

prohibits disclosure;

(2) information regarding the sales tax liability of a taxpayer which affects the use tax liability of another taxpayer;

(3) information used as a basis for a sales tax assessment against a taxpayer that is obtained from other taxpayers, such as statements from the purchasers of a vendor, or the sales tax history of a previous owner of the taxpayer's business;

(4) whether amounts claimed by an employer as a withholding tax refund have been claimed as a credit by the employees of the employer on their individual income tax returns;

(5) when taxpayers are married and filing separate individual income tax returns, whether either spouse itemized deductions, and if so, how much of the state income tax deduction had to be included in the Minnesota taxable income of either spouse;

(6) whether two or more taxpayers are claiming the same dependent on their individual income tax returns;

(7) information regarding items of expense, deduction, credit, or loss on the individual income tax return of a taxpayer which affects the amount of income that should be reported on the individual income tax return of another taxpayer;

(8) information from the corporate franchise tax return or tax records of a corporation needed to determine the correctness of a corporate franchise tax return of a unitary group with which the corporation is no longer affiliated;

(9) whether a taxpayer filing a property tax refund return has been claimed as a dependent on the individual income tax return of another taxpayer;

(10) information from the individual income tax returns of taxpayers who live in the home of a taxpayer filing a property tax refund return that is needed to determine household income;

Approved
by Revisor _____

(11) when a taxpayer's business accounts receivable have been acquired by a financial institution or other third party pursuant to an assignment, sale, security agreement, or liquidation, information from the sales tax returns of the taxpayer necessary for the financial institution or third party to determine the sales taxes it must collect and remit as it collects the accounts receivable;

(12) whether alimony claimed as a deduction on the individual income tax return of one ex-spouse has been reported as income on the individual income tax return of the other ex-spouse; and

(13) information regarding the allocation of the purchase price of a business among the various kinds of assets sold, when the method of allocation reported on the individual income tax return of the seller is different from the allocation reported on the individual income tax return of the purchaser.

Approved
by Revisor _____

Office of the Revisor of Statutes

Administrative Rules

TITLE: Proposed Permanent Rules Relating to Disclosure of Return Information in Investigation

AGENCY: Department of Revenue

MINNESOTA RULES: Chapter 8170

The attached rules are approved for publication in the State Register

Janet M. Rahm
Assistant Deputy Revisor

MINNESOTA Department of Revenue

Appeals, Legal Services, and Criminal Investigation Division

Mail Station 2220 St. Paul, MN 55146-2220
Phone (612) 296-1022 Fax (612) 296-8229

September 23, 1992

Re: Proposed Permanent Rules Relating to Sales and Use Tax; Utilities and Residential Heating Fuels

Proposed Permanent Rules Relating to Innocent Spouse Relief and Liability of Divorced Spouses for Individual Income Tax

Proposed Permanent Rules Relating to Disclosure in Investigation; Third Party Returns

This mailing includes the three proposed rules listed above. Also included are the corresponding Notices of Intent to Adopt a Rule Without a Public Hearing.

Copies of these notices and proposed rules were not mailed to you at the time of publication in the State Register as required. As a result of this error, the time allowed to submit comments or request a public hearing has been extended.

You have until **October 28, 1992,** to submit comments or a written request for a public hearing. Comments, requests for hearing, or questions should be directed to the attorney listed in the Notice of Intent to Adopt a Rule Without a Public Hearing.

Sincerely

Joan M Tujetsch

Joan M. Tujetsch, Attorney
Legal Services Section

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STATE OF MINNESOTA
DEPARTMENT OF REVENUE

In the Matter of the Proposed Adoption of the Rule of the State of Minnesota Governing Disclosure in Investigation; Third Party Returns.	FINDINGS OF FACT, CONCLUSIONS, AND ORDER ADOPTING RULE WITHOUT PUBLIC HEARING

Notice of the agency's intent to adopt the above-entitled rule was published in the State Register on September 14, 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, subdivision 1a and 14.22 on September 23, 1992. 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.

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

No written comments on the rule were received by the agency. One verbal comment was received and was resolved over the telephone. 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.

NOW, THEREFORE, IT IS ORDERED that the rule identified as part 8170.0100 is adopted this 4th day of November, 19 92, pursuant to authority vested in me by Minnesota Statutes, section 270B.19.

Dorothy A. McClung
Commissioner of Revenue

By _____
Michael E. Boekhaus, Director
Appeals, Legal Services and
Criminal Investigation Division