

Minnesota Attorney General: Administrative Rules Proceedings

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Version 3
August 20, 2018

STATE OF MINNESOTA

Office of the Attorney General

TO : MARYANNE HRUBY
Legislative Commission to
Review Administrative Rules

DATE : December 18, 1992

FROM : AMY V. KVALSETH
Special Assistant
Attorney General

PHONE : 296-9422

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

On December 16, 1992, this Office approved the permanent rules relating to Income Tax Liability of Spouses adopted by the Department of Revenue. Minn. Rules pt. 8160.0500. We have applied the harmless error rule to the following situations:

1. The Notice of Intent to Adopt a Rule Without a Public Hearing was mailed two days after the Notice was published in the State Register. The Department of Revenue did provide all persons receiving notice by mail with an extended comment period (as specified in the notice as mailed), until October 28, 1992. All interested persons did have then 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 is prepared under the signature of Michael E. Boekhaus, but it does 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. Mr. Boekhaus does have the requisite authority. Thus, the error constituted harmless error.

3. The text of the rule as originally published in the State Register skipped a line of material from subp. 4 that should have been included. This omission was corrected by publication of a "correction" in 17 S.R. 1274 (November 23, 1992) containing the complete text of subp. 4. The left out material was obvious from a reading of subp. 4, since it did not seem to make sense without that material. No member of the public called the omission to the attention of the agency. All persons interested did have 30 days to submit comments. If they had read the rule, they would have noticed the error and if they were concerned, they would have notified the Department. Thus, no one was deprived of participating in

the rulemaking process. The agency did take corrective action to cure the error. The error constituted harmless error.

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

AVK:jj.kval.an6

STATE OF MINNESOTA

Office of the Attorney General

TO : BARRY GRELLER
Special Assistant
Attorney General
Tax Litigation

DATE : December 18, 1992

FROM : AMY V. KVALSETH AVK
Special Assistant
Attorney General

PHONE : 296-9422

SUBJECT : **Harmless Error--Department of Revenue Rules Relating to Income Tax Liability of Spouses**

Barry, I appreciate the way you detail in your Declaration of Counsel the procedural errors you find in the rules submitted from the Department of Revenue. I did want to ask if you could please contact the Department of Revenue and ask them to put more effort into writing their Statement of Need and Reasonableness. In this case although the Statement did seem to provide information as to why the rule was necessary, it was awfully sparse on why it was reasonable. I realize a lot of these have gone through without your looking at them but perhaps putting a word in their ear that they should flesh out the reasonableness of the rules would help.

Thanks for any help you can give us in this regard. Call me if you have any questions.

AVK:jj.kval.an7

AVK
12-3-92

RULE REVIEW CHECKLIST

File No. 1976
DATE RECEIVED 12-2-92
REVIEW DATE 12-11-92
DUE DATE 12-16-92
~~(DIS)~~APPROVED 12-16-92
WITHDRAWN _____

Docket No. 05 0009 0735
ADOPTED W/O HEARING _____
EMERGENCY RULE _____
TO REVISOR ON 12-3-92
REVISOR (DIS)APPROVED either 12/7 or 12/8
FILED W/SEC. OF STATE 12-16-92
RETURNED TO AGENCY 12-16-92

✓ Rule as adopted (4 copies)

✓ Notice to Solicit Outside Information/Opinion (if applicable)
March 9, 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
290.06 (13) Statutory Authority
✓ Small Business Statement
✓ Expenditure of public money statement
~~September 22, 1992~~ Signature not signed

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

✓ Affidavit of Mailing Notice of Intent to Adopt Rule
~~September 23, 1992~~ Dated (30)/25 days before adoption reproduced part
_____ Notice attached indicates it is Nov 23, 1992 attached
_____ Copy of rule or summary attached

✓ Publication in State Register
~~September 21, 1992~~ Date (30)/25 days before adoption
see notes

✓ 180-day deadline from:
✓ Effective date of law requiring rule (14.12) (both rules) amendments don't apply
✓ 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
Nov 30, 1992 Date

NA Written Requests, Submissions or Comments

_____ Declaration of Attorney
Barry Diller Name of SAAG representing agency has some exceptions

_____ Notice of Submission to Attorney General (if applicable)

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

STATE OF MINNESOTA

Office of the Attorney General

TO : RICHARD L. WALZER
Appeals, Legal Services and Criminal Investigation Division
10 River Park Plaza
Mail Station 2220
St. Paul

DATE : December 16, 1992

FROM : AMY V. KVALSETH
Special Assistant
Attorney General

PHONE : 296-9422

SUBJECT : In the Matter of the Adopted Rule Relating to Income Tax Liability of Spouses

The above-referenced rule has been approved as to its legality by the Attorney General on December 16, 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.be6

Department of Revenue

Adopted Permanent Rules Relating to Income Tax Liability of Spouses

Rules as Adopted

8160.0500 INNOCENT SPOUSE RELIEF AND LIABILITY OF DIVORCED SPOUSES FOR INDIVIDUAL INCOME TAX.

Subpart 1. **General rule.** For all joint returns, and for combined returns for taxable years 1981 through 1984, the liability of a husband and wife for unpaid individual income taxes is joint and several.

Subp. 2. **Innocent spouse relief.** Either spouse, whether the marriage has been dissolved or not, can apply to the Department of Revenue for innocent spouse relief from joint and several liability. The spouse must qualify for relief under the conditions prescribed in section 6013(e) of the Internal Revenue Code, and the regulations and federal court cases interpreting that code section.

If either spouse is found to qualify for innocent spouse relief from payment of an income tax amount, the other spouse is then solely liable, in full, for that amount.

Subp. 3. **Liability of divorced spouses; calculation.** In the case of divorced spouses, either spouse may apply to the Department of Revenue for a division of their joint income tax liability into two separate liabilities due from each spouse. Application must be made, in writing, by providing a copy of the decree of dissolution of marriage. The formula for dividing the liability between the divorced spouses is based upon a calculation of what their proportionate shares of the tax would be if they had filed separate returns.

Solely for the purpose of apportioning the liability between the divorced spouses, the criteria in items A and B shall be used.

A. Income, deductions, credits, exemptions, estimated

payments, tax payments, and tax refunds attributable to, earned by, paid by, or paid to, solely one spouse shall be assigned to that spouse.

B. All of the items in item A that are attributable to, earned by, or paid to both spouses jointly, or paid from joint funds of both spouses, shall be divided equally between the divorced spouses.

If innocent spouse relief is granted from liability for an additional assessment of income tax, the additional assessment is not included in the calculation of the separate return formula. For example, H and W file a return without remitting the tax. Then, an additional assessment is made, and one of the spouses is granted innocent spouse relief from payment of the assessment. If the spouses are divorced, their divorced spouse liabilities are their shares of the tax not remitted with the return, and that amount is apportioned as follows:

$$\frac{\text{Spouse's separate liability calculated on original return only}}{\text{Total of both spouses' separate liabilities calculated on original return only}} \times \text{Unpaid balance due on original return}$$

Subp. 4. **Election of remedies; effect of innocent spouse relief and divorced spouse liability determinations.** The separate return formula for calculating the liability of divorced spouses can be applied both to taxes reported on a return but not paid and to additional assessments of income tax. Innocent spouse relief applies only to additional assessments.

In the case of additional assessments, when an innocent spouse claim is allowed, the divorced spouse liability calculation is not available; conversely, when a divorced spouse liability calculation is allowed, innocent spouse relief is not available.

An innocent spouse relief determination or divorced spouse liability calculation, or any combination thereof, does not increase or reduce the amount of the underlying tax liability owed jointly by both spouses, whether married or divorced, that

was owing prior to the granting of relief or calculation of the formula.

Subp. 5. **Notice requirements; appeal rights.** When either spouse applies for a divorced spouse liability calculation, the Department of Revenue must mail a copy of the application to the other spouse at his or her last known address. The notice to the other spouse shall not be considered a disclosure violation under Minnesota Statutes, chapter 270B. The other spouse then has 30 days from the date of mailing of the notice in which to contest the divorced spouse liability calculation shown in the application. If the other spouse applies for innocent spouse relief, the department must make the innocent spouse determination first.

If either spouse applies for innocent spouse relief, the relief cannot be granted unless the department first gives notice to the other spouse of its intent to grant the relief. The other spouse then has 30 days in which to contest the granting of innocent spouse relief to the applicant spouse. If the other spouse applies for a divorced spouse liability calculation, the department must make the innocent spouse determination first.

A denial of innocent spouse relief or an apportionment of a liability between divorced spouses is not appealable administratively, but is appealable to the Minnesota tax court in the manner provided in Minnesota Statutes, chapter 271.

APPROVED AS TO FORM AND LEGALITY

12-16 19 92

HUBERT H. HUMPHREY, III
ATTORNEY GENERAL

BY Timothy V. Kvalseth
SPECIAL ASSISTANT ATTORNEY GENERAL

STATE OF MINNESOTA
DEPARTMENT OF STATE
FILED

DEC 16 1992

Joan Anderson Growe
Secretary of State

9:30 AM

PB

STATE
DEPAR

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Joan
Se

STATE OF MINNESOTA

DEPARTMENT OF REVENUE

In the Matter of the Proposed Adoption Without a Public Hearing of the Rule Governing Innocent Spouse Relief and Liability of Divorced Spouses for Individual Income Tax

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 270.06(13) provides that the Commissioner of Revenue may adopt rules for the administration and enforcement of state tax laws.

Minnesota Rules, part 8160.0500.

This rule is necessary to define and clarify how the calculation of the liability of divorced spouses is made, to what situations innocent spouse relief or divorced spouse liability apply, what the effect of a determination as to one spouse is on the other spouse, what kind of notice the Department of Revenue must give to the other spouse, and what the appeal rights are of both spouses. These issues are not dealt with in the statute authorizing innocent spouse relief and divorced spouse liability, Minn. Stat. § 289A.31, subd. 2.

Subpart 1. Prior to 1981, the liability of a husband and wife for unpaid taxes on a combined return was separate for each. In 1981 the

law was changed to make the liability joint and several, and at the same time, the federal innocent spouse rule was adopted. Then, in 1984 combined returns were repealed. For joint returns, however, the liability has always been joint and several. Thus, the general rule is as stated in this subpart.

Subpart 2. This subpart clarifies that innocent spouse relief applies both to married and divorced spouses, but the requirements of the Internal Revenue Code must be met to qualify for the relief.

Subpart 3. This subpart provides that for purposes of calculating the liability of divorced spouses, items of joint income, deductions, payments, and refunds are divided equally. Thus, the need to determine each spouse's contributions to each individual item of joint property or expense figured into the separate return formula is eliminated.

Also, this subpart clarifies that if innocent spouse relief is granted as to an additional assessment, the additional assessment is not included in the separate return formula. Otherwise, the spouse found to be innocent would be subject to a proportionate share of the liability for the same additional assessment for which he or she has already been determined not to be liable.

Subpart 4. This subpart clarifies what happens when the first spouse applies for either innocent spouse or divorced spouse relief, the relief is granted, and then the second spouse applies for the other type of relief. In order for this situation to be workable, there must be an election of remedies provided for.

Subpart 5. Because an innocent spouse determination or a divorced spouse liability calculation directly affects the liability of the

other spouse, he or she is entitled to some type of notice from the Department of Revenue. Thus, notice is provided for in this subpart.

By giving both spouses an opportunity to be involved in the innocent spouse or divorced spouse liability determination made by the Department, and by giving both spouses the right to appeal the determination to Tax Court, there can be no question of lack of due process for either party. Also, the evidence presented by the parties may be conflicting, and thus more facts are brought to light and examined by the Department or the Tax Court. Finally, the process is more efficient, because duplicate determinations or duplicate appeals on the same issues are eliminated.

Stat Authority 270.06 (13)
administer and enforce the assessment
and collection of state taxes and,
time to time make publish, and
distribute rules for the administration
and enforcement of state tax laws.
The rules have the force of laws.

- end of comment period October 28, 1992
  in written notice
- end of comment period in Notice Oct 21, 1992

made another publication on 11-23-92
correcting the error

The authority they cited has been
cited before - I know Amy had
that rule. The authority is
a little shaky

people that were mailed

- Note difference in comment
period - Notice end of comment period oct 21
mailed extended it to oct 28
letter was sent out September 23, 1992

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

December 2, 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 Innocent Spouse Relief and Liability of Divorced Spouses for Individual Income Tax.**

Dear Sir or Madam:

Enclosed herein are the following:

(1) A copy of the Notice of Solicitation of Outside Information or Opinions as published in the State Register.

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

(3) 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.)

(4) The statement of need and reasonableness.

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

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

(7) Four copies of the rule as adopted.

RECEIVED

DEC 02 1992

...ffice of the Attorney Gener...
Government Services Sectior
...pitol Office Bldg., Suite ...
525 Park Street
...Paul, MN ...

(8) A copy of the errata notice published in the State Register. (This was necessary because certain language was omitted from Subpart 4 of the rule when the notice of intent to adopt without a public hearing was printed in the State Register.)

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

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

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

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

An equal opportunity employer

STATE OF MINNESOTA

DEPARTMENT OF REVENUE

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

NOTICE OF INTENT TO ADOPT A RULE WITHOUT A PUBLIC HEARING

(1) **NOTICE IS HEREBY GIVEN THAT** the Minnesota Department of Revenue intends to adopt the above entitled 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 270.06(13).

(2) 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. 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. (7) If a public hearing is required, the agency will proceed under *Minnesota Statutes*, sections 14.131 to 14.20.

(6) 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

(8) 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.

(12) 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.

(14) 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.

(15) *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.

(9) 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 related 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

Department of Revenue

Proposed Permanent Rules Relating to Income Tax Liability of Spouses

Rules as Proposed (all new material)

8160.0500 INNOCENT SPOUSE RELIEF AND LIABILITY OF DIVORCED SPOUSES FOR INDIVIDUAL INCOME TAX.

Subpart 1. **General rule.** For all joint returns, and for combined returns for taxable years 1981 through 1984, the liability of a husband and wife for unpaid individual income taxes is joint and several.

Subp. 2. **Innocent spouse relief.** Either spouse, whether the marriage has been dissolved or not, can apply to the Department of Revenue for innocent spouse relief from joint and several liability. The spouse must qualify for relief under the conditions prescribed in section 6013(e) of the Internal Revenue Code, and the regulations and federal court cases interpreting that code section.

If either spouse is found to qualify for innocent spouse relief from payment of an income tax amount, the other spouse is then solely liable, in full, for that amount.

Subp. 3. **Liability of divorced spouses; calculation.** In the case of divorced spouses, either spouse may apply to the Department of Revenue for a division of their joint income tax liability into two separate liabilities due from each spouse. Application must be made, in writing, by providing a copy of the decree of dissolution of marriage. The formula for dividing the liability between the divorced spouses is based upon a calculation of what their proportionate shares of the tax would be if they had filed separate returns.

Solely for the purpose of apportioning the liability between the divorced spouses, the criteria in items A and B shall be used.

A. Income, deductions, credits, exemptions, estimated

Approved by Revisor _____

payments, tax payments, and tax refunds attributable to, earned by, paid by, or paid to, solely one spouse shall be assigned to that spouse.

B. All of the items in item A that are attributable to, earned by, or paid to both spouses jointly, or paid from joint funds of both spouses, shall be divided equally between the divorced spouses.

If innocent spouse relief is granted from liability for an additional assessment of income tax, the additional assessment is not included in the calculation of the separate return formula. For example, H and W file a return without remitting the tax. Then, an additional assessment is made, and one of the spouses is granted innocent spouse relief from payment of the assessment. If the spouses are divorced, their divorced spouse liabilities are their shares of the tax not remitted with the return, and that amount is apportioned as follows:

$$\frac{\text{Spouse's separate liability calculated on original return only}}{\text{Total of both spouses' separate liabilities calculated on original return only}} \times \text{Unpaid balance due on original return}$$

Subp. 4. **Election of remedies; effect of innocent spouse relief and divorced spouse liability determinations.** The separate return formula for calculating the liability of divorced spouses can be applied both to taxes reported on a return but not paid and to additional assessments of income tax. Innocent spouse relief applies only to additional assessments.

In the case of additional assessments, when an innocent spouse claim is allowed, the divorced spouse liability calculation is not available; conversely, when a divorced spouse liability calculation is allowed, innocent spouse relief is not available.

An innocent spouse relief determination or divorced spouse liability calculation, or any combination thereof, does not increase or reduce the amount of the underlying tax liability owed jointly by both spouses, whether married or divorced, that

Approved by Revisor _____

was owing prior to the granting of relief or calculation of the formula.

Subp. 5. **Notice requirements; appeal rights.** When either spouse applies for a divorced spouse liability calculation, the Department of Revenue must mail a copy of the application to the other spouse at his or her last known address. The notice to the other spouse shall not be considered a disclosure violation under Minnesota Statutes, chapter 270B. The other spouse then has 30 days from the date of mailing of the notice in which to contest the divorced spouse liability calculation shown in the application. If the other spouse applies for innocent spouse relief, the department must make the innocent spouse determination first.

If either spouse applies for innocent spouse relief, the relief cannot be granted unless the department first gives notice to the other spouse of its intent to grant the relief. The other spouse then has 30 days in which to contest the granting of innocent spouse relief to the applicant spouse. If the other spouse applies for a divorced spouse liability calculation, the department must make the innocent spouse determination first.

A denial of innocent spouse relief or an apportionment of a liability between divorced spouses is not appealable administratively, but is appealable to the Minnesota tax court in the manner provided in Minnesota Statutes, chapter 271.

Approved
by Revisor _____

Office of the Revisor of Statutes

Administrative Rules

TITLE: Proposed Permanent Rules Relating to Income Tax Liability of Spouses

AGENCY: Department of Revenue

MINNESOTA RULES: Chapter 8160

RECEIVED
DEC 02 1992
Office of the Attorney General
Government Services Section
Capitol Office Bldg., Suite 500
525 Park Street
St. Paul, MN 55101

The attached rules are approved for publication in the State Register

Janet M. Rahm
Assistant Deputy Revisor

STATE OF MINNESOTA
DEPARTMENT OF REVENUE
APPEALS AND LEGAL SERVICES DIVISION

IN THE MATTER OF THE PROPOSED ADOPTION OF PERMANENT RULES RELATING TO INNOCENT SPOUSE RELIEF AND LIABILITY OF DIVORCED SPOUSES FOR INDIVIDUAL INCOME TAX

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

(15) *Federal Register*, Vol. 57, No. 127, dated July 1, 1992: "Update of Addresses for Obtaining Technical Manuals (1910.1450 and 1910.1500); Corrections."

[For text of subps 3 to 5, see M.R.]

Subp. 6. **Part 1926.** Part 1926: Construction Safety and Health Regulations as published in Part VII, Volume 44, No. 29 of the *Federal Register* on February 9, 1979, which incorporates changes, additions, deletions, and corrections made up to October 17, 1978, and includes General Industry Occupational Safety and Health Standards (29 CFR Part 1910) which have been identified as applicable to construction work; and subsequent changes made prior to ~~December 1, 1991~~ July 1, 1992:

[For text of items A to G, see M.R.]

H. *Federal Register*, Volume 57:

[For text of subitem (1), see M.R.]

(2) *Federal Register*, Vol. 57, No. 110, dated June 8, 1992: "Occupational Exposure to Asbestos, Tremolite, Anthophyllite and Actinolite (1926.58); Final Rule."

(3) *Federal Register*, Vol. 57, No. 126, dated June 30, 1992: "Occupational Exposure to Asbestos, Tremolite, Anthophyllite and Actinolite (1926.58); Correction."

[For text of subp 7, see M.R.]

5205.1230 ~~SCOPE AND APPLICATION~~ PERSONNEL PLATFORMS SUSPENDED FROM CRANES AND DERRICKS.

~~The standards in parts 5205.1230 to 5205.1300 apply to the hoisting of personnel platforms on the load line or other line off the boom of friction or hydraulic portal, tower, crawler, locomotive, truck, and wheel mounted cranes or derricks. No crane or derrick function may be performed while an employee is on a personnel platform attached to a load line on such equipment unless the requirements of parts 5205.1230 to 5205.1300 are met. The practice of hoisting employees on such equipment is only permitted under the specific circumstances defined in part 5205.1290~~ The design, construction, testing, use, and maintenance of personnel platforms and the hoisting of personnel platforms on the load lines of cranes or derricks shall meet the requirements of *Code of Federal Regulations*, title 29, 1926.550, paragraph (g).

5207.0410 PERSONNEL PLATFORMS SUSPENDED FROM CRANES AND DERRICKS.

~~This part applies to the hoisting of personnel platforms on the load line of friction or hydraulic portal, tower, crawler, locomotive, truck, and wheel mounted cranes or derricks.~~

~~No crane or derrick function may be performed while an employee is on a personnel platform attached to a load line on such equipment unless the requirements of parts 5205.1240 to 5205.1300 are met. The practice of hoisting employees on such equipment is only permitted under the specific circumstances defined in part 5205.1290~~ The design, construction, testing, use, and maintenance of personnel platforms and the hoisting of personnel platforms on the load lines of cranes or derricks shall meet the requirements of *Code of Federal Regulations*, title 29, 1926.550, paragraph (g).

REPEALER. *Minnesota Rules*, parts 5205.1240, 5205.1250, 5205.1260, 5205.1270, 5205.1280, 5205.1290, and 5205.1300, are repealed.

Department of Revenue

Proposed Permanent Rules Relating to Income Tax Liability of Spouses

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 270.06(13).

All persons have until 4:30 p.m. on October 21, 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.

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.

Any person may make a written request for a public hearing on the rule until 4:30 p.m. on October 21, 1992. Any requests or comments must be received by the Department of Revenue no later than 4:30 p.m. on October 21, 1992. If 25 or more persons submit a written request for a public hearing by 4:30 p.m. on October 21, 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 noted. 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 Attorny 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: 4 September 1992

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

Rules as Proposed (all new material)

8160.0500 INNOCENT SPOUSE RELIEF AND LIABILITY OF DIVORCED SPOUSES FOR INDIVIDUAL INCOME TAX.

Subpart 1. **General rule.** For all joint returns, and for combined returns for taxable years 1981 through 1984, the liability of a husband and wife for unpaid individual income taxes is joint and several.

Subp. 2. **Innocent spouse relief.** Either spouse, whether the marriage has been dissolved or not, can apply to the Department of Revenue for innocent spouse relief from joint and several liability. The spouse must qualify for relief under the conditions prescribed in section 6013(e) of the Internal Revenue Code, and the regulations and federal court cases interpreting that code section.

If either spouse is found to qualify for innocent spouse relief from payment of an income tax amount, the other spouse is then solely liable, in full, for that amount.

Subp. 3. **Liability of divorced spouses; calculation.** In the case of divorced spouses, either spouse may apply to the Department of Revenue for a division of their joint income tax liability into two separate liabilities due from each spouse. Application must be made, in writing, by providing a copy of the decree of dissolution of marriage. The formula for dividing the liability between the divorced spouses is based upon a calculation of what their proportionate shares of the tax would be if they had filed separate returns.

Solely for the purpose of apportioning the liability between the divorced spouses, the criteria in items A and B shall be used.

A. Income, deductions, credits, exemptions, estimated payments, tax payments, and tax refunds attributable to, earned by, paid by, or paid to, solely one spouse shall be assigned to that spouse.

B. All of the items in item A that are attributable to, earned by, or paid to both spouses jointly, or paid from joint funds of both spouses, shall be divided equally between the divorced spouses.

If innocent spouse relief is granted from liability for an additional assessment of income tax, the additional assessment is not included in the calculation of the separate return formula. For example, H and W file a return without remitting the tax. Then, an additional assessment is made, and one of the spouses is granted innocent spouse relief from payment of the assessment. If the spouses are divorced, their divorced spouse liabilities are their shares of the tax not remitted with the return, and that amount is apportioned as follows:

$$\frac{\text{Spouse's separate liability calculated on original return only}}{\text{Total of both spouses' separate liabilities calculated on original return only}} \times \text{Unpaid balance due on original return}$$

Subp. 4. **Election of remedies; effect of innocent spouse relief and divorced spouse liability determinations.** The separate return formula for calculating the liability of divorced spouses can be applied both to taxes reported on a return but not paid and to additional assessments of income tax. Innocent spouse relief applies only to additional assessments.

In the case of additional assessments, when an innocent spouse claim is allowed, the divorced spouse liability calculation is not available; conversely, when a divorced spouse liability calculation, or any combination thereof, does not increase or reduce or reduce the amount of the underlying tax liability owed jointly by both spouses, whether married or divorced, that was owing prior to the granting of relief or calculation of the formula.

Subp. 5. **Notice requirements; appeal rights.** When either spouse applies for a divorced spouse liability calculation, the Department of Revenue must mail a copy of the application to the other spouse at his or her last known address. The notice to the other spouse shall not be considered a disclosure violation under *Minnesota Statutes*, chapter 270B. The other spouse then has 30 days from the date of mailing of the notice in which to contest the divorced spouse liability calculation shown in the application. If the other spouse applies for innocent spouse relief, the department must make the innocent spouse determination first.

If either spouse applies for innocent spouse relief, the relief cannot be granted unless the department first gives notice to the other spouse of its intent to grant the relief. The other spouse then has 30 days in which to contest the granting of innocent spouse relief to the applicant spouse. If the other spouse applies for a divorced spouse liability calculation, the department must make the innocent spouse determination first.

A denial of innocent spouse relief or an apportionment of a liability between divorced spouses is not appealable administratively, but is appealable to the Minnesota tax court in the manner provided in *Minnesota Statutes*, chapter 271.

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.

Errata

Department of Revenue

Correction of Error in Printed Rule

There was an error in the Department of Revenue rules published in the Volume 17 #12 21 September 1992. Subpart of Rules as Proposed (all new material) **8160.0500 Innocent Spouse Relief and Liability of Divorced Spouses for Individual Income Tax,** was not fully reproduced. The complete Subpart 4 reads as follows:

Subp. 4. **Election of remedies; effect of innocent spouse relief and divorced spouse liability determinations.** The separate return formula for calculating the liability of divorced spouses can be applied both to taxes reported on a return but not paid and to additional assessments of income tax. Innocent spouse relief applies only to additional assessments.

In the case of additional assessments, when an innocent spouse claim is allowed, the divorced spouse liability calculation is not available; conversely, when a divorced spouse liability calculation is allowed, innocent spouse relief is not available.

An innocent spouse relief determination or divorced spouse liability calculation, or any combination thereof, does not increase or reduce the amount of the underlying tax liability owed jointly by both spouses, whether married or divorced, that was owing prior to the granting of relief or calculation of the formula.

Emergency Rules

Proposed Emergency Rules

According to Minn. Stat. of 1984, §§14.29-14.30, state agencies may propose adoption of emergency rules if: 1) expressly required; 2) authorized by statute; or 3) if the manner permitted by a directive (given by statute, federal law or court order) does not allow for compliance with sections 14.14-14.28. The agency must, however, publish a notice of intent to adopt emergency rules, along with the rules themselves, in the *State Register*. The notice must advise the public:

1) that a free copy of the proposed emergency rule is available upon request from the agency;
2) that notice of the date that the rule is submitted to the attorney general will be mailed to persons requesting notification;
3) that the public has at least 25 days after publication of the proposed emergency rule to submit data and views in writing; and
4) that the emergency rule may be modified if the data and views submitted support such modification.

Adopted Emergency Rules

Emergency rules take effect five working days after approval by the attorney general, and after compliance with Minn. Stat. §§14.29-14.365. As soon as possible, emergency rules are published in the *State Register* in the manner provided for in section 14.18.

Emergency rules are effective for the period stated in the notice of intent to adopt emergency rules. This may not exceed 180 days.

Continued/Extended Emergency Rules

Adopted emergency rules may be continued in effect (extended) for an additional 180 days. To do this, the agency must give notice by: 1) publishing notice in the *State Register*; and 2) mailing the same notice to all persons who requested notification on rulemaking. No emergency rule may remain in effect 361 days after its original effective date. At that point, permanent rules adopted according to Minn. Stat. 14.14-14.28 supercede emergency rules.

Department of Natural Resources

Adopted Emergency Game and Fish Rules; Spring Turkey Hunt and Elm Creek Park Reserve Deer Provisions

Notice of Adoption of Rules

NOTICE IS HEREBY GIVEN that the above entitled proposed rules have been adopted through the process prescribed by *Minnesota Statutes*, section 14.29, subd. 4(b). The statutory authority for the contents of these rules is *Minnesota Statutes*, sections 97B.305, 97B.311, and 97B.711, subd. 1. The form, content, and adoption procedure for these rules have been approved by the Office of the Revisor of Statutes and the Minnesota Attorney General's Office.

Dated: 13 November 1992

Rodney W. Sando, Commissioner
Department of Natural Resources

STATE OF MINNESOTA
DEPARTMENT OF REVENUE

In the Matter of the Proposed Adoption of the Rule of the State of Minnesota Governing Innocent Spouse Relief and Liability of Divorced Spouses for Individual Income Tax	FINDINGS OF FACT, CONCLUSIONS, AND ORDER ADOPTING RULE WITHOUT PUBLIC HEARING

(1) Notice of the agency's intent to adopt the above-entitled rule was published in the State Register on September 21, 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. Subpart 4 of the rule was republished in the State Register on November 23, 1992 to correct an error made in the first publication, which was omitting certain language from the subpart. (2) The statement of need and reasonableness was prepared before the notice of intent to adopt a rule without a public hearing was mailed to all persons on the rulemaking mailing list and published in the State Register and was available to the public.

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

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

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

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

NOW, THEREFORE, IT IS ORDERED that the rule identified as part 8160.0500 is adopted this 30th day of November, 19 92, pursuant to authority vested in me by Minnesota Statutes, section 270.06(13).

Dorothy A. McClung
Commissioner of Revenue

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

Metropolitan Waste Control Commission

Public Notice for Statements of Interest for Engineering Services

The Metropolitan Waste Control Commission is soliciting statements of interest for engineering services in support of in-house projects prepared by Commission staff. The Commission intends to engage 5 firms—a Minority Business Enterprise (MBE), a Women's Business Enterprise (WBE), a Small Business in Rural Areas (SBRA), and 2 majority firms. The type of work envisioned for these firms includes assistance to Commission staff in the preparation of design reports and the detailed design of projects. The disciplines comprising the required services include architectural, structural, civil, environmental, mechanical, and electrical.

Firms interested in being considered for this work are to submit a letter denoting such interest and asking for the Request for Qualifications (RFQ) submittal package. Such letters are to be submitted no later than **March 20, 1992.** Statements of interest, are to be directed to Joseph H. Edwards, PE, CCS, CSI, Manager, Contracts and Drafting Division, Metropolitan Waste Control Commission, Mears Park Centre, 230 E. 5th St., St. Paul, MN 55101.

Dated: 10 March 1992

Metropolitan Waste Control Commission
Gordon O. Voss, Chief Administrator

Public Employees Retirement Association

Board of Trustees Meeting and Public Safety Officers' Meeting

The next regular monthly meeting of the **Board of Trustees** of the Public Employees Retirement Association (PERA) will be on **Thursday, March 12, 1992, at 9:30 a.m. in the Association offices, 514 St. Peter Street, Suite 200—Skyway Level, St. Paul, Minnesota.**

A **Public Safety Officers'** meeting will be held on **Wednesday, March 18, at 1:00 p.m. in the Association offices.**

Department of Revenue

Appeals, Legal Services, and Criminal Investigation Division

Notice of Solicitation of Outside Information or Opinions Regarding Proposed Rules Governing Individual Income Tax Liability of Divorced Spouses and Innocent Spouse Relief

NOTICE IS HEREBY GIVEN that the State Department of Revenue is seeking information or opinions from sources outside the agency in preparing the rule governing Individual Income Tax Liability of Divorced Spouses and Innocent Spouse Relief. The adoption of the rule is authorized by *Minnesota Statutes*, section 270.06, clause (13) which permits the agency to make, publish, and distribute rules for the administration and enforcement of 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:

Richard L. Walzer
Department of Revenue
Appeals, Legal Services, and Criminal Investigation Division
10 River Park Plaza
Mail Station 2220
St. Paul, MN 55146-2220

Oral statements will be received during regular business hours over the telephone at (612) 296-1902 Extension 134 and in person at the above address.

All statements of information and opinions shall be accepted until March 23, 1992. Any written material received by the State Department of Revenue shall become part of the rulemaking record to be submitted to the attorney general or administrative law judge in the event that the rule is adopted.

Richard L. Walzer
Attorney

In the Matter of the Adoption of
the Rule of the State of Minnesota
Governing Innocent Spouse Relief and
Liability of Divorced Spouses for
Individual Income Tax

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, 2 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 to request a hearing;

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; and

3) The text of the rule as originally published in the State Register omitted certain material from Subpart 4. This omission was corrected by publication of a "correction" in 17 S.R. 1274 (Nov. 23, 1992), containing the complete text of Subpart 4.

It does not appear that any 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, 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, and 3) the omission of material from the original State Register publication did not deprive persons of notice of the subject matter of the rule, nor did any member of the public call the omission to the attention of the agency.

Dated: December 1, 1992.

Barry R. Greller

BARRY R. GRELLER
Special Assistant
Attorney General

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