

**STATE OF MINNESOTA
DEPARTMENT OF REVENUE**

**IN THE MATTER OF THE PROPOSED RULES OF)
THE DEPARTMENT OF REVENUE GOVERNING THE) Statement of Need and
VALUATION AND ASSESSMENT OF RAILROAD) Reasonableness
OPERATING PROPERTY)**

This document has been prepared as a verbatim affirmative presentation of the facts necessary to establish 1) the statutory authority; 2) need for; and 3) reasonableness of the proposed new rules. It is submitted pursuant to Minnesota Rules 2000.0400 which requires a Statement of Need and Reasonableness.

General Information

The above captioned rules are being proposed in order to fulfill a charge given to the Department of Revenue by the Minnesota Legislature. Article VII of the Omnibus Tax Bill passed by the 1979 Legislature deals with ad valorem (property), taxation of railroads. Part of the Article, later codified as Minn. Stat. 270.81, Subd. 5, instructs the Commissioner of Revenue to promulgate both temporary and permanent rules necessary to implement the various provisions of the law.

This was accomplished; temporary rules were approved for use by the Attorney General's Office on March 6, 1980 and permanent valuation rules were approved, after hearing, on October 15, 1980. During 1981 the agency also added to the body of railroad valuation rules by promulgating rules dealing with the apportionment of the railroad property values to the various taxing jurisdictions. In 1983 the rules were revised slightly to provide for a small adjustment in the valuation process.

Subsequently, in 1983 the Minnesota Tax Court in its decision concerning the matter of the Soo Line Railroad Company vs. the Commissioner of Revenue (Docket Nos. 3388 and 3465, Order dated November 2, 1983) found... "The evidence produced at the trial of this matter indicated that Rules 13 MCAR Section 1.0024 (now recodified into MR 8105) adopted by the Commissioner of Revenue to determine valuation of railroad property do not properly reflect the valuation and to the extent that they conflict with this decision the rules are overturned."

Rather than attempt to speculate on which portion of the rules conflicted with the Court's decision and which did not, the agency chose to suspend, and later repeal, all of Minnesota Rules Chapter 8105. The agency then acted under the authority given it by the Minnesota Legislature in Laws of 1984, Chapter 502, Article 9, Section 2 and adopted emergency rules governing the valuation and assessment of railroads which replaced the suspended rules. These rules were adopted on September 10, 1984 and were subsequently extended for 180 days as provided for in Minn. Stat. Section 14.35. These extended emergency rules were later modified in April of 1985. These modified emergency rules were adopted for use in June 5, 1985; however, since the 180 day extension period has now run, the agency currently has no railroad valuation rules in place and therefore proposes these rules to rectify this situation.

A Notice of Intent to Solicit Outside Opinion Regarding Proposed Rules Governing the Valuation and Assessment of Railroads was published in the State Register on November 11, 1985, prior to the preparation of these proposed rules. Two open forum-type discussion meetings were held on October 30, 1985 and December 11, 1985 to discuss these rules. These meetings were attended by members of the Department of Revenue, representatives of the railroad industry, county assessors, city assessors, and members of Senate Tax Research. Various suggestions and comments made at these meetings were received and duly considered by the agency.

Authority to Adopt Rules

Minn. Stat. Section 270.04 (14) states that the ... "Commissioner of Revenue may promulgate rules and regulations for the administration and enforcement of the property tax. Such rules and regulations shall have the force and effect of law..." Clearly, the above rules are encompassed within this authority.

Further, Minn. Stat. Section 270.11, Subd. 1 and 6 give the Commissioner of Revenue the authority to review, modify, revise, raise or lower the assessed valuation of the real or personal property of any individual, copartnership, company, association or corporation. This authority certainly would include railroad property.

Specifically, Minn. Stat. Section 270.81, Subd. 1 states that, "The operating property of every railroad company doing business in Minnesota shall be valued by the commissioner..." In addition, Subd. 5 requires the commissioner to..."exercise temporary rule-making authority...solicit information and opinions from outside his department," and adopt permanent rules pursuant to Chapter 15 in order to implement the provisions of this act. Minn. Stat. Section 270.84 also states that... "The commissioner may promulgate emergency rules adopting valuation procedures under Sections 14.29 to 14.36." If the commissioner has the authority to promulgate emergency rules, it would follow that he has sufficient authority to also promulgate permanent rules.

Finally, Minn. Stat. Section 270.86, Subd. 1 charges the commissioner to ... "apportion such (railroad) value to the respective counties and to the taxing districts therein in conformity with fair and reasonable rules and standards to be established by the commissioner." This statute, therefore, not only gives the commissioner the authority to adopt rules but also the duty and responsibility to do so.

Need for the Proposed Rules

The preceding section recites reference to Minn. Stat. Sections 270.81 and 270.86, quoting specific language which requires the commissioner to adopt rules which deal with the valuation and assessment of operating railroad property. As previously noted, the commissioner has adopted permanent rules, first suspended then repealed them and subsequently promulgated emergency rules. These emergency rules have now expired, thus there currently are no rules governing the valuation and assessment of railroad operating property in place even though the legislature has deemed there is a need for such rules. Therefore, these rules are being proposed in order to fill that void. Clearly, rules are needed to regulate the valuation and assessment of railroad operating property and these rules satisfy that need.

Reasonableness of the Proposed Rule

These proposed permanent rules are rather unique in that they have been in use, as emergency rules, for two years and have been found to be workable and reasonable in both their nature and scope.

The proposed rules follow legislative guidelines in that they employ generally accepted appraisal principles and practices which may include the unit method of determining value (Minn. Stat. 270.84). This unit method is employed by the rules to value railroad operating property as are other generally accepted appraisal practices such as allowances for obsolescence and the capitalization of income.

Additionally, and more importantly this same statute - Minn. Stat. 270.84 - requires the commissioner to... "report to the legislature in February of 1985 and February of 1986 on the formula which he has used to determine the value of railroad operating property pursuant to Laws 1984; Chapter 502, Article 9. This report shall also contain the valuation for payable 1985 and 1986 by company and the taxes payable in 1985 and 1986 by company based upon the valuation of operating property. The legislature may review the formula, the valuation, and the resulting taxes and may make changes in the formula that it deems necessary." This report has been made for both 1985 and 1986 based on the valuation results achieved through the application of the emergency rules. This legislature has considered this report and has chosen to suggest no changes or revisions to the valuation method.

The agency can only interpret this to mean that the legislature believes the valuation method utilized by the emergency rules to be workable and reasonable. Since these proposed rules are based entirely on the emergency rules we also believe that the proposed rules are reasonable.

The rules as now proposed contain only one noticeable difference from the emergency rules which were used for the 1985 assessment year. That variance is in the area of the equalization of the apportioned railroad value. The emergency rules state that in the absence of six valid sales of commercial and industrial property within a county during the prescribed study period the median ratio of all property within the county would be used as a basis to estimate the current year median commercial and industrial sales ratio. The proposed rules state that the weighted median sales ratio of all property will be used. The language was adopted after consulting with various county assessors who believed that the use of the weighted median would provide for a more equitable equalization of the railroad's property values with the values of other commercial and industrial property.

In summary, these proposed rules are considered to be reasonable and workable not only by the agency which is proposing them, but by the legislature which has received two reports on the results produced by the rules and has found these results satisfactory; and finally by the railroads themselves who have been valued and assessed according to the provisions of the rules which have been essentially the same for the past two assessment periods and as of this writing are not pursuing any appeals of these valuations.