

STATE OF MINNESOTA
DEPARTMENT OF REVENUE

In the Matter of the Proposed
Adoption of a New Rule Governing
Administration of Income and Excise
Taxes: The Filing of Single Return
for Members of a Unitary Group
of Corporations

STATEMENT OF NEED
AND REASONABLENESS

This document has been prepared as a verbatim affirmative presentation of the facts necessary to establish the statutory authority, need for and reasonableness of the proposed new rule. It is submitted pursuant to Minnesota Statutes section 14.23 and Minnesota Rules Part 1400.0500 requiring a Statement of Need and Reasonableness.

A Notice of Intent to Solicit Outside Opinion regarding the administration of income and excise taxes, filing of a single return for members of a unitary group of corporations was published in the State Register on November 27, 1989. The notice specifically mentioned this rule and invited interested persons to submit comments or suggestions orally or in writing to the Department by December 15, 1989. No one has commented either in writing or orally.

IMPACT ON SMALL BUSINESS.

The impact of this rule on small business has been considered. The proposed rule is not mandatory and therefore is not expected to place any financial or administrative burden on small

business. Small businesses which do not elect to file a tax return under this rule will not be subject to this rule.

AUTHORITY TO ADOPT RULES.

Minnesota Statutes section 290.52 grants the commissioner of revenue statutory authority to promulgate rules concerning the income tax laws. Additionally, Minnesota Statutes section 290.37, subd. 1(a) requires that "The commissioner shall adopt rules for the filing of one return on behalf of the members of a unitary group of corporations that are required to file a combined report."

RULE 8019.0405, SUBPART 1.

This subpart is necessary because it refers to the general statutory requirements for filing a combined income report. The statute only permits the filing of a single return if a combined report is required. This section is reasonable because its language regarding a unitary group reflects both the statute, M.S. sec. 290.17; and rule, Rule 8019, which require combined income reports of a unitary group. This subpart sets forth the basic required relationship between corporate members which must be understood to accurately apply the rest of the rule. It sets forth the general requirements for the election to file a single combined return.

SUBPART 2 DEFINITIONS.

This subpart sets out definitions of terms used in the rule.

Definitions are necessary to adequately inform taxpayers of whether they are eligible to make the election to file one return, and to indicate what is meant by the words and phrases used in the rule, which are particular to this rule.

SUBPART 2, ITEM A.

This item is necessary because it defines the unitary group required to file a single combined income report as the statute defines corporations affiliated by stock ownership required to file a combined income report. It is reasonable because it follows the statutory definition and refers the user of this rule to the statute and rule where the requirements for a combined income report are set forth.

SUBPART 2, ITEM B.

This subpart is necessary because the Department of Revenue must know who is responsible for filing the return on behalf of the unitary group. Each taxpayer is required generally by statute to file a return signed by a person designated by it. Although a single filing will be accepted by the Department of Revenue on behalf of the corporations in the unitary group, it is still necessary that the return be signed by a designee of the filing corporation. This designee, the designated member must be responsible for the filing when it signs the return to be filed, so a power of attorney must be filed. The second sentence of Item B is necessary^a because the commissioner must have jurisdiction to enforce the provisions of this rule

specifically, and Minnesota tax laws generally.

SUBPART 2, ITEM C.

This item is reasonable because it defines a member of a unitary group of corporations in a manner consistent with the definition of a unitary business in Minnesota Statutes section 290.17, subd. 4. A unitary business is a prerequisite for filing a combined income report, and the ability to file a combined income report is a ^{pre}requisite for filing a single return.

SUBPART 2, ITEM D.

This item is reasonable, because it defines the term single return as it is used in this rule.

SUBPART 2, ITEM E.

This item is necessary because the designated member of a unitary group of corporations are required to file a return for the entire group. It is reasonable to define single return year as the rule does to distinguish between a single return year and a tax year for a corporation filing a combined report on a separate basis for a tax year.

SUBPART 3.

The first paragraph is necessary because it sets forth the basic requirements for filing a single return, that each member's tax year must be the same as the designated member's. The single return is filed one time to cover every member, so it is

reasonable for the filing date to be the same date for each member. Because filing a single return for each member of a unitary group requires a single tax year shared by each member, the same fiscal year or accounting year is also required in order to have a common measure for income for the year.

The second paragraph is necessary because it sets forth the rules for the tax year of a member added to a unitary group or a member removed from a unitary group. It is reasonable because it relates the filing requirements of a combined income report with the particular requirements of filing one return on behalf of the members of a unitary group.

SUBPART 4.

This item is necessary because it sets forth the mechanical requirements for a single return filing. The listed requirements are reasonable because the first and second requirements, the names of the members whose tax is filed by the single return and the Minnesota and federal identification numbers of each member, allow the Department of Revenue to identify each member of the unitary group covered by the filing and properly credit their accounts for taxes paid. The third requirement, that each member execute a power of attorney to the designated member is reasonable because Minnesota Statutes section 290.37 requires that each taxpayer corporation file a return, and that the return be signed by a person designated by the corporation. The power of attorney authorizes the designated corporation to sign the return of and for the

member. These requirements parallel the requirements that would be imposed on a corporation when it filed a separate return and are necessary for identification and to meet statutory execution requirements.

This subpart also notifies the electing unitary group members of the requirements of Minnesota Statutes section 290.37, that modification of a unitary group filing a single return may be accomplished only on a form prescribed by the commissioner. The power of attorney executed to effect a single return must be rescinded, and notification is necessary to insure that payments are properly credited to the responsible persons.

SUBPART 5.

This subpart clarifies that the designated member is responsible for filing the tax return on behalf of each member of the unitary group. Coupled with the responsibility for filing, it is reasonable that the authorized signatory have knowledge of the contents of the return.

The second paragraph is reasonable inasmuch as the single return must be filed for the unitary group. It is necessary to report to the commissioner any corporation leaving an electing unitary group because the returns and payments must be matched by the Department to individual corporations which are ultimately responsible for returns and payments. The explanation of changes, both newly included corporations and excluded corporations, limits the possibility that the Department may improperly credit payments to corporations.

SUBPART 6.

Subpart 6 is reasonable and necessary, because it clearly sets forth the responsibility of the designated member. A single return is predicated on the designated member having responsibility for filing a return and paying taxes, penalty, and interest. This subpart establishes that the designated member is the primary source for payment.

SUBPART 7.

This section is a provision for collection of delinquent taxes penalties, interest, and additions to tax. It is reasonable because it is based on the unitary theory of taxation, that income of interrelated corporations defined as a unitary group derive their income as a part of the affiliated group, and are controlled as a unitary group. The common control of the various corporations is the underlying reason for allowing the filing of a single return and payment of tax liability of multiple corporations with a single payment. The single payment which is made with a single return is not divisible to the members so that some members have no remaining liability and some do have remaining liability. The single payment is several amongst the corporations, so the additional tax penalties, interest, and additions to tax are several.

The second sentence of this item provides relief from several liability for a deficiency assessment against a former member of

the affiliated group. The commissioner may reduce the assessment and collection amount from several liability for the entire amount to the portion which is properly allocable to the former member based upon the ratio of former member's taxable net income to the group's taxable net income. It is reasonable for the rule to include this provision because it both allows members to leave the affiliated group with some tax finality and protects the interests of the state in the continued assessment and collection of taxes.

The qualifications for this relief are designed to require that a former member has truly left the affiliated group of corporations in a bona fide transaction with a third party or parties and that there is no intent to avoid tax. Thus the requirements that a former member has ceased to be member in a bona fide sale or exchange of stock for fair value and that the transaction occur prior to the assessment are necessary. The last requirement for application of the relief provision is that the commissioner believes that the relief will not jeopardize the assessment or collection of the balance of the tax deficiency. This requirement is reasonable because the state should not forego taxes which would otherwise be due but for this relief.

The last sentence states the rule that a taxpayer cannot contract with a third party to relieve itself of tax liability to the state. Because subpart 7 generally addresses corporate acquisitions and dispositions, it is reasonable to restate this black letter principle as a reminder of limitations that exist

in any purchase or sale of a business.

SUBPART 8.

This subpart is reasonable because it parallels subparts 5 and 6 which require the designated member to file and pay the tax for all of the electing members. Also, the distribution of refunds by the Department of Revenue to the members at the time of refund would require additional processing and analysis by the Department of Revenue which would unnecessarily delay the issuance of refunds.

SUBPART 9.

This subpart is reasonable and necessary because it alerts the electing unitary group of corporations that although a single return is allowed upon election, the computation methods are not changed. A consolidated return is not permitted as part of the election to file a single return. Other governmental units allow consolidation when a single return is filed, but this subpart should dispel any confusion on this point. A combined income report as required by Minnesota Statutes section 290.17 is required regardless of whether the returns are filed separately or as a single return.

SUBPART 10.

This subpart is reasonable because the estimated tax return is included in the scope Minnesota Statutes section 290.37. It is

necessary because the estimated tax payments made throughout the tax year for each member must be matched up with the single tax return filed by the designated member.

This subdivision follows subdivisions 5, 6, 8, and 13 in treating the single payments made by the designated member as made by a single corporation. Sentence three establishes the procedure for payment of estimated tax in the first year of election. The netting of tax liability of members in the year prior to election is necessary to establish the basis for the payment of estimated taxes in the first year.

The last paragraph is reasonable because if the group makes separate payments, the Department of Revenue will calculate penalties and interest on the same basis as the payment. This provision puts taxpayers on notice that the estimated tax payments will be processed by the Department as filed by the taxpayer.

SUBPART 11, FORMS AND SCHEDULES.

This subpart is reasonable and necessary, as this rule will require forms and schedules for the calculation of the net tax liability of the affiliated group and a schedule of members of the affiliated group which are not necessary for the filing of a separate combined income report. The commissioner has the statutory authority to promulgate forms as set forth in Minnesota Statutes section 290.39.

SUBPART 12, EXTENSIONS.

This subpart is reasonable because it follows the structure which is required by the statute, that members are identified with their affiliated group, and that filings, payments, and refunds are made by the designated member for the members. It is necessary to file an extension in this manner, because members are identified with the affiliated group, and a filing by the designated member will allow the Department to correctly identify those corporations included in the extension.

SUBPART 13, INTEREST.

This subpart is necessary because it explicitly states how interest calculated under Minnesota Statutes section 290.53 will be calculated for a unitary group filing a single return. This provision may lower the interest payments because interest is calculated on net tax due for the affiliated group, rather than the tax due from each member without regard to refunds due because of overpayments of tax. The subpart is reasonable because it treats tax due and interest calculations consistently with the filing and other provisions of this rule and the statute.

SUBPART 14.

This subpart establishes the effective date for tax years beginning after December 31, 1989.

Repealer. The repealer repeals Minnesota Rule 8019.0400, which applied to the filing of one tax return for members of a unitary group which included a bank, and will be subject to the proposed, more general rule.