

5/28/91



STATE OF MINNESOTA

DEPARTMENT OF REVENUE

Appeals and Legal Services Division  
Mail Station 2220  
St. Paul, Minnesota 55146-2220  
(612) 296-1022

May 22, 1991

Maryanne Hruby, Director  
Legislative Commission to Review  
Administrative Rules  
55 State Office Building  
St. Paul, Minnesota 55155

**Re: Proposed Rule on Annual Withholding Tax Return**

Dear Maryanne:

Enclosed please find a copy of the Statement of Needs and Reasonableness for the proposed rule on annual withholding tax returns for your file. The Notice of Intent to Adopt will be published on Monday, May 27.

If you have any questions or comments, please don't hesitate to call.

Sincerely,

A handwritten signature in cursive script that reads "Fran".

Fran Gerten, Attorney  
Appeals and Legal Services Division

FG/lao

Enclosure

**The Legislative Commission to  
Review Administrative Rules**

MAY 23 1991



STATE OF MINNESOTA  
DEPARTMENT OF REVENUE

In the Matter of the Proposed  
Adoption of a New Rule Relating  
to the Annual Filing of Withholding  
Tax Returns and Payment of  
Withheld Tax By Employers Who  
Withhold \$500 or Less in One Year  
(Minnesota Rules Part 8092.1400)

**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 income tax rules including withholding tax was published in the State Register on May 6, 1991. The notice specifically mentioned this rule and invited interested persons to submit comments or suggestions in writing to the Department by May 21, 1991.

**IMPACT ON SMALL BUSINESS**

The impact of this rule on small business has been considered. The proposed rule does not impose a new filing or payment requirement on small businesses and therefore is not expected to place any additional financial or administrative burden on small businesses. Reporting and deposit requirements for eligible small businesses have been simplified and

consolidated. Small businesses which do not elect to file an annual return under this rule will not be subject to this rule.

### **AUTHORITY TO ADOPT RULES**

Minnesota Statutes section 270.06(13) requires that the Commissioner of Revenue promulgate rules concerning the administration of state tax laws. Additionally, Minnesota Statutes section 289A.09, subd. 1(a) provides that "(a)n employer who is required to deduct and withhold tax under section 290.92, subdivision 2a or 3 . . . must file a return with the commissioner for each quarterly period unless otherwise prescribed by the commissioner." [Emphasis added.] Additionally, Minnesota Statutes Section 289A.20, subd. 2(a) and (b) prescribes the due dates for making payment of withholding tax, and provides in subd. 2(c) that "(t)he commissioner may prescribe by rule other return periods or deposit requirements. In prescribing the reporting period, the commissioner may classify payors according to the amount of their tax liability and may adopt an appropriate reporting period for the class that the commissioner judges to be consistent with efficient tax collection. In no event will the duration of the reporting period be more than one year."

### **SUBPART 1. GENERAL RULE.**

This subpart introduces the rule and sets forth the general terms of the election to file an annual withholding tax return. The purpose of the rule is to simplify the filing and payment requirements for employers with a small payroll while, at the same time, reducing the state's administrative costs.

The maximum withholding amount for qualification under the rule, \$500 annually, is intended to limit the application of the rule to employers with a small payroll.

Employers who qualify under the rule are not required to file returns and pay tax quarterly, as required by current law. Rather they are eligible to file one return and make one payment annually on February 28th in the year following the calendar year in which the tax was withheld. Qualifying employers are also relieved from filing the annual reconciliation of the quarterly returns because the annual return will contain substantially the same information. The employers will simply submit their W-2 forms with their annual return. This will significantly lessen the administrative burden on the employers since they will be required to file just one return annually instead of five. It will also lessen the administrative costs of the Department of Revenue. There will be fewer forms to produce, mail, and process, and fewer demands to produce and mail quarterly to nonfilers. In addition, this will enable Department personnel to process other returns in a more timely manner, and reduces the number of physical and electronic records the Department must store.

The Department of Revenue will determine which employers qualify to file an annual return and notify them of their eligibility. This is necessary to enable the Department to maintain a record of which employers are in the group filing annual returns. In order to make the determination, the Department will need to examine all four quarterly returns or the annual return for those employers already on the annual filing system. This is the only practical way to verify that the employer is withholding \$500 or less.

This is one reason that the rule provides that employers who have not filed all required returns are not eligible to elect to file an annual return. Another reason is that the Department is less likely to secure payment of tax and compliance with filing requirements if due dates are extended for an employer currently delinquent in filing a return.

The rule is not mandatory. Employers may elect to file quarterly returns. Those who so elect are subject to all applicable payment and filing requirements. This is necessary to ensure that all employers in the quarterly system are similarly treated.

#### **SUBPART 2. BASE YEAR.**

This subpart defines "base year" to be the most recent four consecutive quarters for which the Department has compiled data on all employers and provides that the first base year is calendar year 1990. This definition is necessary to inform employers of the time period the Department will look at to determine the employers' eligibility.

#### **SUBPART 3. QUALIFYING YEAR.**

This subpart defines "qualifying year" to be the year for which the Department notifies the employer that it is eligible to file an annual return and provides that the first qualifying year is the 1992 calendar year. This definition is necessary to inform employers of the year in which they will be eligible to file an annual return. Although the first year for which the employer may file an annual return begins one year subsequent to the end of

the first base year, over time the Department foresees being able to compile the relevant data more quickly.

#### **SUBPART 4. ACCELERATED DEPOSITS.**

The first two paragraphs of subpart 4 provide for the deposit of taxes by annual filers whose withholding tax amount exceeds \$500 in a calendar year. This requirement is reasonable because the rule is designed to apply only to those employers who withhold \$500 or less.

The third paragraph of subpart 4 provides that if an employer permanently ceases to pay wages subject to withholding, the employer must file a final return and deposit any undeposited tax by the last day of the month following the cessation. It is reasonable and necessary to require a prompt final accounting of tax withheld while persons with knowledge of the payroll are still connected with the business and while funds are still available.

#### **SUBPART 5. MAXIMUM WITHHOLDING AMOUNT.**

This subpart provides for a recalculation of the maximum amount an employer can withhold and still be eligible to file an annual return under this rule. A formula is provided to automatically increase the maximum amount without going through a rule change. The formula is based on Minnesota Statutes section 290.06, subd. 2d which is used by the Commissioner to adjust income tax rate brackets for inflation. The formula is also used to adjust maximum liability amounts for quarterly and annual filing of sales tax returns. Minn. R. 8130.7300, subpart 2B (1990). This

formula is necessary because it allows a mechanism for the withholding amount to increase with inflation without going through the rulemaking process. This positively impacts small businesses by increasing the amount of withholding tax they can collect and still be eligible to file on an annual basis, instead of having to file each quarter, thus reducing their administrative paperwork. The Department has estimated that, based on historical inflation factor data, the \$100 trigger amount is expected to be reached every 4 - 5 years.