

5/26/92



STATE OF MINNESOTA

DEPARTMENT OF REVENUE
Appeals and Legal Services Division
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St. Paul, Minnesota 55146-2220
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May 26, 1992

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

RE: Proposed Rules on Motors Fuels Taxation

Dear Ms. Hruby:

Enclosed please find a copy of the Statement of Need and Reasonableness for the proposed rules concerning motor fuels taxation. The Notice of Intent to Adopt is being published on Tuesday, May 26, 1992.

If you have any questions or comments, please feel free to call.

Sincerely:

A handwritten signature in cursive script that reads "Mark D. Pederson".

Mark D. Pederson, Attorney
Legal Services

The Legislative Commission to
Review Administrative Rules

MAY 28 1992



STATE OF MINNESOTA
DEPARTMENT OF REVENUE

In the Matter of the Proposed
Adoption of New and Amended
Rules Relating to Motor Fuels
Taxation (Minnesota Rules Parts
8125.0200 to 8125.0800, and
parts 8125.1300 to 8125.1400).

**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 amendments to the existing rules and the proposed new rules. 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 Motor Fuels Taxation was published in the State Register on July 15, 1991. The notice specifically mentioned these rules and invited interested persons to submit comments or suggestions in writing to the Department by July 30, 1991. No written comments were submitted.

This rulemaking proceeding proposes to amend the motor fuel tax rules substantially, as well as to add new rules. These rules were last amended in the early 1980's. Since that time, the Minnesota Legislature has annually amended portions of Minnesota Statutes Chapter 296. It is necessary to amend the rules so that they comply with the changes made in the law and in Department administration of the law. Most of the changes involve the repeal of outdated information and duplicative statutory language.

IMPACT ON SMALL BUSINESS

The impact of these rules on small businesses has been considered. The proposed rules do not impose new filing or payment requirements on small businesses and therefore are not expected to place any additional financial or administrative burden on small businesses. Where possible, reporting and compliance requirements have been simplified, consolidated, made less stringent or eliminated.

AUTHORITY TO ADOPT RULES

Minnesota Statutes section 270.06(13) provides that the Commissioner of Revenue shall promulgate rules concerning the administration of state tax laws. More specifically, Minnesota Statutes section 296.27 enables the Commissioner of Revenue to make rules relating to the administration and enforcement of laws regulating the sale, distribution and use of petroleum products and special fuel, so long as the rules are reasonable and not inconsistent with the law. Minnesota Statutes section 296.17, subdivision 11, provides that the Commissioner of Revenue may by rule exempt from quarterly filing of road tax returns and payment of road tax and authorize an annual filing of road tax returns and payment of road tax for motor carriers "whose mileage is all or substantially all and those motor carriers whose mileage is minimal within this state." Minnesota Statutes 41A, subdivision 4 authorizes the Commissioner of Revenue to promulgate rules for the administration of the Ethanol Development Fund.

RULE-BY-RULE ANALYSIS

The following is an analysis of the amendments to, and repeal of, existing rules as well as an analysis of the proposed new rules

RULE 8125.0200 TERMINAL RECORDS AND REPORTS

This rule sets out the reports to be maintained by terminal operators. The amendments to subpart 3 eliminate the requirement to report two items. The requirement to report the transport permit number was deleted because Minnesota Statutes, section 296.10, which required transport operators to secure such permits, was repealed. See 1985 Minn. Laws,

First Special Session, chapter 13, section 376, subdivision 1. The requirement to report the name of the distributor who will pay the inspection fee was deleted because Minnesota Statutes, section 239.78 now requires the supplier to pay the inspection fee rather than the distributor. 1991 Minn. Laws, chapter 235, Article 1, Section 5. A provision was added to broaden the manner in which information may be submitted to the commissioner. This will lessen the administrative burden on the taxpayer by allowing for consolidated reports (e.g. computer printouts).

RULE 8125.0300 TRANSPORT REQUIREMENTS

Subparts 2, 3 and 4. These three subparts regarding transport permits were deleted as obsolete. See explanation in part 8125.0200, supra.

Subpart 5. Form and grammatical changes were made to clarify and simplify existing language. The 48 hour period for reporting diversions was made less stringent. While these reports are necessary so that the commissioner may determine the correct tax, the 48 hour limit imposed an unreasonable burden on affected taxpayers, particularly since the short reporting period time was not essential to the determination of the correct tax liability.

Subpart 6. This subpart was deleted because it is covered by Minnesota Statutes, section 115.061 which refers to matters under the control of the Minnesota Pollution Control Agency, rather than the Department of Revenue. Under that statute, any person who spills a substance which may cause pollution of the "waters of the state" must notify the MPCA. "Waters of the state" includes drainage systems and underground bodies of water. Minn. Stat. § 115.01, subdivision 9. Thus, a transporter who spills a petroleum product must notify the MPCA because the petroleum will inevitably run off and contaminate the groundwater. There is no need for additional notice to be given to the Commissioner of Revenue.

Subpart 7. The reference to the inspection fee was deleted as obsolete. See explanation in part 8125.0200, supra. Following the amendment of

Minnesota Statutes 239.78, the operator can no longer be made to assume the inspection fee.

RULE 8125.0400 DISTRIBUTOR RECORDS

Subpart 2. Language that limited what a petroleum product could be dispensed from to be considered a "bulk sale" was deleted. The type of vehicle from which a product is dispensed is an irrelevant factor in determining whether a transaction is a "bulk sale". Language was added to clarify that the product referred to is that which is dispensed into a storage "tank" rather than the more ambiguous term "facility", whether that tank is fixed or portable. Two provisions regarding the use of an original invoice were stricken as unnecessary and outdated. The requirement that the original invoice be given to the purchaser is no longer necessary since the department will now allow refund claims based on copies of invoices. Two items were added to the list of information which must be reported on invoices. The name of the purchaser must be listed so that the Department can verify the transaction. The type of equipment in which the product is to be consumed must be reported because refunds are only allowed for petroleum products used in certain types of equipment. See Minn. Stat. § 296.18, subdivision 1. The last three provisions of the subpart were deleted because they refer to a requirement under the control of the Department of Public Service, which no longer requires the inclusion of that information on the invoice.

Subpart 4. This subpart was amended to make it consistent with Minnesota Statutes, section 296.21, subdivision 1, which requires certain parties to maintain records regarding all motor fuels transactions "in a manner approved by the commissioner". The existing language narrowed the scope of the rule by requiring taxpayers to retain only some records regarding petroleum products. The requirement to retain petroleum tax returns was added as a means to speed up the audit process. It will allow field auditors the opportunity to obtain returns that may become relevant during an audit without having to stop the audit process for a trip to St. Paul so that the auditor can obtain the Department's copies.

RULE 8125.0410 DISTRIBUTOR'S LICENSES

Subpart 1. Minnesota Statutes, section 296.06, subdivision 2(4), provides that the commissioner must determine that an applicant for a distributor license is "financially responsible" before granting an exemption from depositing securities or filing a bond to secure payment of motor fuels taxes. The purpose of this subpart is to set forth the type of information the commissioner will consider in making that determination.

Item A. The Statute requires that an applicant submit and the commissioner review and take into consideration the applicant's financial statements. This item describes how the commissioner will analyze the data on the financial statement. The first factor is whether, at a minimum, the applicant is solvent based on a comparison of current assets and liabilities. The second factor is whether the applicant's net worth is at least three times its average quarterly motor fuels tax liability. These factors directly relate to the applicant's ability to pay the tax. If an applicant is insolvent or owes more than one third of their net worth in motor fuels taxes, an exemption from the security requirement, which is meant to insure the payment of the tax, is unwarranted.

Item B. In determining whether to require a bond, or the amount of the bond required, the commissioner must be able to ascertain the amount of tax owed. This determination cannot be made if the applicant does not file returns in a timely manner. Whether the applicant has failed to file or has been delinquent in filing motor fuels tax returns is a relevant indication of whether they will file the required returns and pay the tax in the future.

Item C. This factor is reasonable because it would not be rational for the commissioner to allow an applicant an exemption from providing security for payment of the tax if the applicant has failed to meet motor fuels tax obligations in a timely manner in the past.

Item D. This provision is necessary so that the commissioner may consider any other evidence of the applicant's financial responsibility. It is reasonable because the statute provides that the commissioner can make the determination by reviewing the applicant's financial statement "or otherwise". Minn. Stat. §296.06, subdivision 2(4).

Subpart 2. The legislature recently enacted a law which allows the commissioner to seize gasoline or special fuel and the vehicle transporting that product if it is being transported in violation of the law that requires a licensed distributor to receive petroleum products in this state before any of several business actions may be made regarding those products. (Minn. Stat. §296.06, subdivision 1) 1991 Minn. Laws Chapter 291, Article 9, Section 14. This subpart sets forth standards by which seizure will be warranted under the new statute. The seizure will occur when there appears to be an intent to evade the motor fuels tax by delivering gasoline or special fuels to any party other than a licensed distributor (as defined in Chapter 296.). Since intent is subjective, the commissioner must look at objective evidence of that intent. The commissioner will presume an intent to evade the tax when the trip manifest in the transporter's possession lists neither a shipper nor a consignee who is a licensed distributor or lists no shipper and no consignee.

RULE 8125.0500 DISTRIBUTOR AND DEALER CREDITS AND REFUNDS

Subpart 1 of this rule clarifies how the distributor and dealer credits and refunds are computed. Item D was amended and Item E was added to make the rule consistent with Minnesota Statutes, section 296.14, subdivision 2.

RULE 8125.0600 DEALER RECORDS

Subpart 2. Unnecessary language was stricken and language was added to clarify the requirements under this rule. See explanation for Rule 8125.0400, supra.

Subpart 3. This subpart was deleted because it improperly narrows the requirement covered by Minnesota Statutes, section 296.21.

RULE 8125.0700 SPECIAL FUEL REQUIREMENTS

Subpart 1. This subpart was deleted because the information is covered by Rule 8125.1200 and Minnesota Statutes, Section 296.21, and because it did not provide the reader with information which assisted in understanding the requirement to retain records and make them accessible.

Subpart 2. Outdated and unnecessary language was stricken regarding the sales invoice and two items were added to the information required to be listed on the invoice. The type of product and type of equipment in which the product is to be consumed are necessary to determine special fuels taxation and the availability of refunds. See Minn. Stat. §§ 296.025 and 296.18.

Subpart 3. Item A was amended to clarify that a mechanical accumulating meter must be on each pump rather than an electronic meter accumulating data on all of the pumps as a whole. This is necessary because a mechanical accumulating meter provides more accurate data than an electronic one. If the electricity that serves an electronic meter is cut off, the meter zeroes out and the owner must estimate the amount of special fuel dispensed.

Subpart 4. Provisions requiring the filing of an annual information return by users of special fuel were repealed. The purpose for requiring the filing of an annual reconciliation of special fuel taxes paid is to help determine that the correct tax has been paid. However, the commissioner has discovered that other investigatory tools are far superior in making that determination. As such the commissioner seldom used information from the annual returns. The requirement to file annual reconciliation returns for special fuel taxes paid therefore merely imposes an unnecessary and burdensome duty on the users of special fuels who must

file such returns and on the commissioner who must receive and maintain such returns.

Subpart 5. This subpart was repealed. Mileage reports were required only upon demand, and the commissioner rarely if ever made such demand. The information that could be gained from these reports is more readily accessible through other means.

Subpart 6. This subpart was repealed. The purpose for requiring the filing of monthly bulk sale reports is to help determine that the correct tax has been paid. However, the commissioner has discovered that other investigatory tools are far superior in making that determination. As such the commissioner seldom uses information from the monthly bulk sale reports. The requirement to file monthly bulk sale reports therefore merely imposes an unnecessary and burdensome duty on bulk sellers who must file such returns and on the commissioner who must receive and maintain such returns.

Subpart 7. This subpart was amended to add petroleum tax returns to the list of documents to be retained by the taxpayer. See explanation to Rule 8125.0400, subdivision 4.

Subpart 9. This subpart was deleted because it refers to matters under the control of the Department of Public Service, rather than the Department of Revenue, and duplicates language found in Minnesota Statutes, section 239.79.

RULE 8125.0800 OTHER TAXABLE PRODUCTS

This rule was repealed because it contains information comprehensively covered by Minnesota Statutes, section 296.01, subdivision 3. The products listed in this rule are all included in the definition of "gasoline" in the statute.

RULE 8125.1300 REFUNDS AND CREDITS

The heading was amended to broaden the scope of the rule. The first paragraph was deleted because it duplicates language found in Minnesota Statutes, section 296.18. The second paragraph was deleted as outdated and unnecessary. The statute provides that an original invoice must accompany the refund claim. The Department no longer requires the other items described in that paragraph.

Subpart 1. Minnesota Statutes, section 41A.09, subdivision 3 limits the total amount of money that may be paid from the Ethanol Development Fund each fiscal year/biennium. Since no funds can be paid in excess of that limit, this subpart was added to provide a formula for proration when the allowable claims made in a quarter exceed the remaining available funds. Under this subpart, each claimant will be paid the same percentage of available funds as the percentage that the claimant's allowable claim bears to the total allowable claims made by all claimants in that quarter. This is a fair and equitable formula which will allow each claimant to share in any available funds. The formula is also one that can be easily administered by the commissioner. The statutorily fixed quarterly due dates and quarterly pay out dates allow the commissioner the opportunity to calculate all claims in a quarter and prorate all claims in a quarter before any claims have been paid for that quarter.

Minnesota Statutes 41A.09 subd. 3(c) limits the amount that may be paid to one producer to three million dollars in a fiscal year. Before determining the portion of available funds to be paid to each claimant, the claim of any claimant who is claiming an amount that, if paid would allow the claimant to receive more than three million dollars in a fiscal year, will be reduced to the maximum claim that could be paid in the quarter without going over the three million dollar limit. This will ensure that all claimants will share in reductions caused by any proration. Furthermore, if the allowable claim was based on the total claim before this adjustment, additional prorations would have to be made if the allowable claim would result in a payment that would exceed the maximum allowable payment.

All claims must be filed by the due date. The statute is clear that each producer "shall file" by the due date and there are no statutory provisions that would allow the commissioner to extend those deadlines.

Furthermore, late filed returns would make it difficult if not impossible for the commissioner to process all claims in a quarter and make any necessary prorations before the date the claims must be paid.

The statute provides that claims must be based on production of ethanol in the preceding three calendar months. The last two sentences of the subpart merely clarify that amounts that were not paid for any reason, including amounts not paid because of the proration announced in this subpart or because the claimant reached the maximum that can be paid to a claimant in a fiscal year, cannot be carried over into future years.

Subpart 2. Minnesota Statutes, section 296.02, subdivision 1a exempts from taxation gasoline purchased by a transit system receiving financial assistance from the Department of Transportation for providing public transportation as defined by Minn. Stat. §174.24 and §473.384.

Under this subpart, gasoline that qualifies for the exemption includes fuel necessary to operate vehicles while they are used for public transportation as well as other gasoline that is necessary to operate such a transit system. It does not include gasoline purchased by a transit system but used in a business that is not part of a transit system. Nor does it include fuel used for personal use or any other use not necessary for the operation of the transit system.

These are reasonable limitations necessary to carry out legislative intent which was to provide an exemption for fuel purchased with state subsidized funds. Taxing subsidized purchases would mean that the state was receiving, through taxation, money which it had granted as a subsidy. Taxing fuel which is not used for purposes necessary to carry out the obligation to provide public transportation will not result in the return of money granted as a subsidy because the cost of fuel used for such non-transit purposes is not included in the definition of "total operating cost"

of the transit system and therefore not eligible for subsidy. See Minnesota Statutes section 174.24 subdivision 3 and Minnesota Rules, part 8835.0110 subdivision 19 and part 8835.0220.

Subpart 3. The Federal Aviation Act provides that use of gasoline, other than aviation gasoline, in aircraft is subject to approval by the Federal Aviation Administration. See, 49 U.S.C. §1421(e). Such approval is given in the form of a supplemental type certificate. 14 C.F.R. 21.111-21.119. This subpart provides that refunds for gasoline used in aircraft, other than aviation gasoline, will be issued only to claimants who have received that approval. Under no circumstances will the Department encourage aircraft users to violate U.S.C. 1421(e), by paying refund claims paid based on taxes paid for fuel used in violation of that federal law.

RULE 8125.1400 ROAD TAX

Subpart 1. This subpart was deleted because it is inconsistent with current law. See Minn. Stat. §296.17, subdivision 7(b).

Subpart 2. This subpart was amended to eliminate unnecessary provisions and to conform it to current law.

Item A. This item was amended to bring it into conformity with current law. See Minn. Stat. §296.17. The road tax is to be paid by "motor carriers", which are defined as "a person who operates or causes to be operated a commercial motor vehicle on a highway in this state". Id., §296.17, subdivision 8. The definition of "commercial motor vehicle" includes only those vehicles weighing in excess of 26,000 pounds. Minn. Stat. §296.17, subdivision 7. This item merely confirms that those vehicles weighing 26,000 pounds or less are exempted from the road tax.

Item C. This item was deleted because it duplicates language found in Minnesota Statutes, section 296.17, subdivision 9.

Item D. This item was deleted in part because it duplicates language found in Minnesota Statutes 296.17, subdivision 9. The remainder of the

item is outdated because it applies to "reciprocal agreements". Those agreements were in regard to licensing of motor vehicles whereby a allowed motor vehicles licensed in one state to be operated in another without obtaining a license from the other state. Minnesota is no longer a party to any reciprocal agreements, but rather is a member of one interstate fuel tax compact. See Minn. Stat. § 296.17, subdivision 9a.

Subpart 3. The first provision was deleted because it duplicates language found in Minnesota Statutes, section 296.17, subdivision 17(b).

Items A & B. These items were deleted as outdated and unnecessary. The fee has statutorily increased since these items were promulgated. The procedures outlined are not exclusive and are unnecessarily specific.

The last sentence was deleted because it duplicates language found in Minnesota Statutes, section 296.17, subdivision 17(a).

Subpart 4. The first two sentences were deleted because they duplicate language found in Minnesota Statutes, section 296.17, subdivision 11. One nonsubstantive gender change was made.

Subpart 5. The existing language was replaced by more procedurally specific language. The underlying authority is found in Minnesota Statutes, section 296.17, subdivision 11 which allows the commissioner to promulgate rules proscribing annual returns for motor carriers whose mileage is minimal within Minnesota and for motor carriers, whose mileage is all or substantially all within Minnesota. The maximum road tax liability amount for qualification under the rule, \$1,000 annually, is intended to limit the application of the rule to motor carriers whose mileage is minimal within Minnesota. The second category of motor carriers, those whose mileage is all or substantially all within Minnesota, do not normally file road tax returns. Those carriers are most likely licensed in one of the states surrounding Minnesota, all of which belong to the interstate fuel tax compact of which Minnesota is a member. Minnesota Statutes, section 296.17, subdivision 9a governs those carriers.

The purpose of the subpart is to simplify the filing and payment requirements for those motor carriers who file quarterly road tax returns while, at the same time, reducing the state's administrative costs.

Motor carriers 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 January 31st in the year following the calendar year in which the liability accrued. This will significantly lessen the administrative burden on the motor carriers since they will be required to file just one return annually instead of four. 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 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 motor carriers 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 motor carriers are in the group filing annual returns. To make the determination, the Department will need to examine all four quarterly returns, or the annual return of those motor carriers already on the annual filing system. This is the only practical way to verify that the motor carrier is liable for less than \$1,000 of road tax. This is one reason that the subpart provides that motor carriers who have not filed all required returns or have not paid all road tax due 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 liberalized for a motor carrier currently delinquent in filing a return or in payment of tax.

The rule is not mandatory. Motor carriers may elect to file quarterly returns. Those who elect to do so are subject to all applicable payment and filing requirements. This is necessary to ensure that all motor carriers in the quarterly system are similarly treated. In addition, annual

filers may only make refund claims annually rather than quarterly. This is necessary because the allowance of quarterly refund claims by annual filers would undermine the purpose of the rule. The motor carrier would have to file an information return to substantiate the claim for refund. The motor carriers' administrative burden and the Department's administrative costs would increase because there would be five returns annually (four quarterly refund claims and the annual return) rather than four returns annually under the current system.

"Base year" is defined as the most recent four consecutive quarters for which the Department has compiled data on all motor carriers and provides that the first base year is the four-consecutive quarter period beginning October 1990 and ending September 1991. This definition is necessary to inform motor carriers of the time period the Department will use to determine the motor carriers' eligibility.

"Qualifying year" is defined as the year for which the Department notifies the motor carrier 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 motor carriers of the year in which they will be eligible to file an annual return.

Subpart 6. Item D was amended to clarify that the report must list the number of gallons of retail fuel and the number of gallons of bulk fuel purchased in Minnesota. The reporting of both is necessary because the tax is paid at the time of purchasing retail fuel but not at the time of purchasing bulk fuel.

Subpart 8. This subpart was deleted because it duplicates language found in Minnesota Statutes 296.17, subdivision 14.