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 Then, in 1984 combined returns were repealed.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

2

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.