

January 29, 2007

Legislative Reference Library
645 State Office Building
100 Reverend Dr. Martin Luther King Jr. Blvd.
St. Paul, Minnesota 55155

Re: In The Matter Of The Proposed Amendment of Rules of the Minnesota Department of Revenue Governing the Application of Sales and Use Tax on Soft Water Equipment and Service Dealers, *Minnesota Rules*, Part 8130.9000

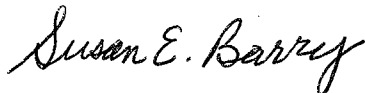
Dear Librarian:

The Minnesota Department of Revenue intends to adopt rules governing the application of Minnesota sales and use tax on soft water equipment and service dealers. We plan to publish a Dual Notice of Intent to Adopt Rules in the February 5, 2007, State Register.

The Department has prepared a Statement of Need and Reasonableness. As required by Minnesota Statutes, sections 14.131 and 14.23, the Department is sending the Library a copy of the Statement of Need and Reasonableness at the time it is available to the public.

If you have any questions, please contact me at (651) 556-4062.

Yours very truly,



Susan E. Barry
Attorney/ Rules Coordinator
Appeals & Legal Services Division
Minnesota Department of Revenue

Enclosures: Statement of Need and Reasonableness

Minnesota Department of Revenue

STATEMENT OF NEED AND REASONABLENESS

Proposed Amendment to Minnesota Rules, part 8130.9000, governing soft water equipment and service dealers.

INTRODUCTION

The Minnesota Department of Revenue proposes to amend Minnesota Rules, part 8130.9000. The Department is considering these amendments to make the rule conform to statutory changes made during the 2001 and 2002 legislative sessions that rendered a portion of the current rule obsolete.

Because of its subject matter, the proposed amendments are of interest to businesses that lease water softening equipment and persons who install such equipment, as well as to the customers of those two groups. However, since the amendments merely conform the rule to the statute as amended, they should have no separate substantive effect.

This document, the Statement of Need and Reasonableness (SONAR), has been prepared to establish the statutory authority of, need for, and reasonableness of the proposed rules. It is submitted pursuant to *Minnesota Statutes*, section 14.23, and *Minnesota Rules*, part 1400.2070, requiring a Statement of Need and Reasonableness.

A Request for Comments was published in the *State Register* on Monday, March 29, 2004 (28 S.R. 1180). A few comments were received from affected businesses and the trade association, the Minnesota Water Quality Association.

ALTERNATIVE FORMAT

Upon request, this Statement of Need and Reasonableness can be made available in an alternative format, such as large print, Braille, or cassette tape. To make a request, contact Mark Pederson, Attorney; Minnesota Department of Revenue; Appeals and Legal Services Division, 600 North Robert Street, Mail Station 2220, St. Paul, Minnesota 55146-2220; phone (651) 556-4078; FAX (651) 296-8229. TTY users contact the Department by calling the Minnesota Relay at 711.

STATUTORY AUTHORITY

The Department's general statutory authority to adopt rules is set forth in Minnesota Statutes, section 270C.06. The section provides that the Commissioner of Revenue has the authority to "from time to time, make, publish, and distribute rules for the administration and enforcement of state revenue laws." Under this statute, the Department has the necessary authority to adopt the proposed rule.

REGULATORY ANALYSIS

As required by Minnesota Statutes section 14.131, the Department consulted with the Commissioner of Finance “to help evaluate the fiscal impact and fiscal benefits of the proposed rule on units of local government.”

As required by Minnesota Statutes section 14.127, the Department looked at the cost of compliance within the first year after the rule takes effect and determined that the cost will not exceed \$25,000 for any business that has less than 50 full time employees or for any one statutory or home rule charter city that has less than ten full time employees.

Minnesota Statutes section 14.131, sets out seven factors for a regulatory analysis that must be included in the SONAR. The Department’s response to these seven factors follows:

“(1) a description of the classes of persons who probably will be affected by the proposed rule, including classes that will bear the costs of the proposed rule and classes that will benefit from the proposed rule”

The proposed amendments to the rule will be of interest to businesses that lease or rent water softening equipment and persons who install such equipment, as well as the customers of those two groups. However, since the amendments conform the rule to the statutory law, the amendments will have no substantive affect. These interested groups should benefit from the amendments since they will have a rule upon which they can rely.

“(2) the probable costs to the agency and to any other agency of the implementation and enforcement of the proposed rule and any anticipated effect on state revenues.”

Since the proposed amendments conform the rule to the statutory law, the proposed rules will not result in any costs to the Department, in any way jeopardize the collection of any state taxes, nor impair the ability of the Department to administer the tax laws of the state. No state agency should be impacted by the proposed rules.

“(3) a determination of whether there are less costly methods or less intrusive methods for achieving the purpose of the proposed rule”

Since the purpose of the amendment is to conform the rule to statute, amending it will neither be costly nor intrusive.

“(4) a description of any alternative methods for achieving the purpose of the proposed rule that were seriously considered by the agency and the reasons why they were rejected in favor of the proposed rule”

The Department explored the possibility of using a good cause exemption to rule making proceeding, pursuant to Minnesota Statutes, section 14.388, to make these amendments. The Department recognized that the amendments to the underlying statutes were, to some extent, controversial, and did not want to use an expedited proceeding and then have it get bogged down in controversy even though the purpose of the rule is simply to conform it to statute.

“(5) the probable costs of complying with the proposed rule, including the portion of the total costs that will be borne by identifiable categories of affected parties, such as separate classes of governmental units, businesses, or individuals”

Since the amendments simply conform the rule to the statute, there are no costs associated with compliance with the proposed amendments to the rule.

“(6) the probable cost or consequence of not adopting the proposed rule, including those costs or consequences borne by identifiable categories of affected parties, such as separate classes of governmental units, businesses, or individuals”

If this proposed rule is not adopted, the current rules dealing with leased water softeners will reflect obsolete law because of the law changes that have taken place since the rules were originally promulgated. If the rule is not updated, people in the industry, as well as their customers, may mistakenly believe that they are not required to comply with the statutory law.

“(7) an assessment of any differences between the proposed rule and existing federal regulations and a specific analysis of the need for and reasonableness of each difference”

There are no directly applicable federal laws or regulations in the sales tax area.

PERFORMANCE-BASED RULES

Minnesota Statutes, sections 14.002 and 14.131, require that the SONAR describe how the agency, in developing the rules, considered and implemented performance-based standards that emphasize superior achievement in meeting the agency’s regulatory objectives and maximum flexibility for the regulated party and the agency in meeting those goals.

This proposed rule supports the Department’s strategic plan. The Department’s main objective in this rule is to repeal outdated information. By providing clarity and certainty in this area of the law, the proposed rule will promote the principle that everyone is paying the right amount of tax, no more and no less. The additional clarity and certainty provided by the proposed rule will also help improve the degree to which these particular tax laws are easy to understand and easy to administer.

ADDITIONAL NOTICE

In order to provide notice to all persons who may be affected by the proposed rules, the Additional Notice Plan consists of:

(1) posting the Request for Comments, Notice of Intent to Adopt Rules, the rule and SONAR to the Department website at <http://www.taxes.state.mn.us>.

(2) mailing a copy of the Request for Comments, Notice of Intent to Adopt Rules and a copy of the proposed rules to the Minnesota Water Quality Association, to each member of the Association, and to anyone who requests copy. In our mailing, we also requested that the

Request for Comments be displayed in a prominent location so that customers of the businesses might be able to see the request, and will do the same for the Notice of Intent to Adopt Rules.

Our Notice Plan also includes giving notice required by statute. We will mail the rules and Notice of Intent to Adopt to everyone who has registered to be on the Department's rulemaking mailing list under Minnesota Statutes, section 14.14, subdivision 1a. We will give notice to the Legislature as required by Minnesota Statutes, section 14.116.

LIST OF WITNESSES

If these rules go to a public hearing, the Department does not anticipate calling any witnesses. Department of Revenue employees may be called to testify in support of the rules.

RULE ANALYSIS

Minnesota Statutes, chapter 14 requires the Department to explain the facts establishing the need for and reasonableness of the rules as proposed. "Need" means that a problem exists, which requires administrative attention. "Reasonableness" means that there is a rational basis for the Department's proposed action. The need for and reasonableness of the proposed amendment to the rule is explained in this section. It is necessary and reasonable to amend the rule to make it easier and more efficient for the Department to administer the laws related to the sales tax on water softener installation and to make sure that taxpayers are informed of their rights and obligations.

The proposed amendments are to all three subparts of Minnesota Rule 8130.9000.

Subpart 1.

The amendment to subpart 1 that replaces the phrase "permanently affixed" with "attached" is reasonable as it makes the language consistent with the language used in subpart 2. The other amendments make the rule more readable.

Subpart 2.

The proposed amendments to subpart 2 are mainly made to accurately reflect current law. Two of the modifications are necessitated by statutory changes enacted since the rule was originally promulgated. The remainder are reasonable as they make the subpart consistent with subpart 1, reflect current law, and otherwise improve readability.

Separately stated installation charges

The current rule inaccurately states that charges for the installation of rented equipment and tanks are not subject to sales and use tax if those charges are separately stated on the initial invoice or billing. The proposed amendment clarifies that those charges are taxable, even if they are separately stated. This is necessary to conform the rule to a 2001 statutory change.

Prior to 2001, Minnesota sales tax laws did not tax the sale of installation services of leased property, unless the installation charges and the sales price of the taxable good that was installed were stated as a lump sum on the billing statement or invoice. The current rule reflects this tax treatment by providing an exemption from tax when the installation charges are "separately stated on the initial invoice or billing."

2001 Minn. Laws, 1st Spec. Sess., ch. 5, art 12, § 11, amended Minn. Stat. § 297A.61, subdivision 7, to specifically make installation charges of taxable goods and services subject to tax. Following that amendment, that statute reads, in relevant part:

(a) "Sales price" means the measure subject to sales tax, and means the total amount of consideration, including cash, credit, personal property, and services, for which personal property or services are sold, leased, or rented, valued in money, whether received in money or otherwise, without any deduction for the following . . .

(5) installation charges. . . .

After this statutory change, charges for the installation of leased property became taxable regardless of whether the installation charges were separately stated. Therefore, charges for the installation of water softening equipment became taxable as part of the sales price, and it is reasonable to state in the rule that tax applies regardless of whether the installation charge is separately stated or not.

The statute does not provide a distinction between charges for the installation of the original leased equipment and any subsequent installation charges inquired to replace or exchange the original leased equipment. It is therefore reasonable to clarify that the sales tax applies to all installation charges, regardless of whether those charges are for the installation of the original leased equipment or are instead for any subsequent installation charges to replace or exchange that leased equipment.

Installation by lessor or third party.

The amendment provides that installation charges are subject to tax, even if those services are not provided by the lessor of the equipment or tanks. This amendment is necessary to conform the rule to a statutory change, made after the rule was promulgated, 2002 Minn. Laws, ch. 377, art. 3, § 3, which amended Minn. Stat. § 297A.61, subdivision 3, to read:

(j) A sale and a purchase includes the furnishing for a consideration of installation if the installation charges would be subject to the sales tax if the installation were provided by the seller of the item being installed.

This statutory provision was adopted to assure equal treatment of installation services of leased equipment whether the installation was done by the lessor or by an independent third party installer. It is reasonable to state in the rule that for tax purposes it does not matter whether the installation is done by the lessor or not.

Other amendments to subpart 2.

The proposed amendment strikes "automatic and semiautomatic" as an unnecessary description of the equipment subject to the subpart. This is reasonable since for purposes of this rule there is no need to distinguish between automatic equipment or semi-automatic equipment or any other type of equipment.

It is reasonable to replace the word "softener" with "softening" to make the subpart consistent with the language used in subpart 1. It also is reasonable to strike the phrase "and all persons regularly engaged in such business" as it serves to define "retailer," a word that is not otherwise used in the rule.

Receipts from the delivery of otherwise taxable items of tangible personal property are considered part of the purchase price of the property pursuant to Minnesota Statutes section 297A.61, subdivision 7, paragraph (a), clause (4). It is reasonable to add the word "deliver" to the list of taxable charges to avoid possible confusion about whether those receipts are subject to sales tax.


Subpart 3.

Subpart 3 is repealed in its entirety as redundant to provisions in subparts 1 and 2. The taxability of installation charges for all rental water softening equipment is covered in the amendment to subpart 2. The taxability of installation charges for such equipment that is sold to the purchaser is included within the receipts from the sale of equipment described in subpart 1.

CONCLUSION

Based on the foregoing, the proposed rules are both needed and reasonable.

1-23-07
[Date]


Ward Einess
Commissioner of Revenue