

1 Department of Revenue

2

3 Adopted Permanent Rules Relating to Income and Franchise Tax;

4 Income Apportionment

5

6 Rules as Adopted

7 8020.0100 PETITION FOR APPLICATION OF OTHER THAN PRESCRIBED

8 APPORTIONMENT FORMULA.

9 Subpart 1. In general. Minnesota Statutes, section
10 290.20, subdivision 1, permits a departure from the
11 apportionment provisions of Minnesota Statutes, section
12 290.191. If the methods of apportionment required by that
13 section do not fairly reflect all or any part of the taxable net
14 income allocable to this state, the taxpayer may petition for
15 the determination of net income by use of another method. The
16 taxpayer must petition for use of another method of determining
17 taxable net income allocable to this state ~~and receive approval~~
18 ~~of the method, in accordance with this part, before using any~~
19 ~~method that is not prescribed by Minnesota Statutes, section~~
20 ~~290.191.~~ The petition must be filed at the time of or at a time
21 prior to the time the return or amended return is filed.

22 Acceptance of a return using a method of apportionment other
23 than the method prescribed by Minnesota Statutes, section
24 290.191, is not approval of the petition and other method by the
25 commissioner.

26 Subp. 2. Time of petition. Minnesota Statutes, section
27 290.20, requires that any taxpayer applying for a deviation from
28 the apportionment methods prescribed by Minnesota Statutes,
29 section 290.191, must file a petition in the form required by
30 the commissioner. The petition must be filed before or at the
31 same time as the return or amended return is filed using a
32 method other than the methods prescribed by Minnesota Statutes,
33 section 290.191.

34 Subp. 3. Form of petition. The petition filed under this
35 part shall be in the form required by the commissioner and shall

1 include:

2 A. the name, address, and tax identification number
3 of the taxpayer;

4 B. in the case of a corporation, the state of
5 incorporation and the location of the principal office or place
6 of business;

7 C. the tax year of the petition. If more than one
8 year is covered by the petition, the summary statement required
9 by item E must demonstrate the ongoing necessity of departure
10 from the apportionment provisions prescribed by Minnesota
11 Statutes, section 290.191;

12 D. a statement of the kind or kinds of business
13 activity in which the taxpayer is engaged and from which the
14 income was derived for the taxable year stated in the petition;

15 E. a summary statement of the facts upon which the
16 taxpayer relies to demonstrate that the application of the
17 methods prescribed by Minnesota Statutes, sections 290.17 and
18 290.191, will be unfair as applied to the taxpayer, and that the
19 method proposed will fairly reflect the taxable net income
20 properly allocable to this state; and

21 F. a hypothetical computation of Minnesota taxable
22 net income in accordance with the proposed method of
23 apportioning income.

24 **Subp. 4. Additional information.** The commissioner may,
25 after receipt and review of the petition, require additional
26 information from the taxpayer which is necessary to determine
27 whether the apportionment provisions prescribed by Minnesota
28 Statutes, section 290.191, will be unfair when applied to the
29 taxpayer. The 45-day period for approval or rejection of the
30 petition, contained in subpart 5, is suspended from the date of
31 the letter requiring additional information to the date of
32 receipt by the commissioner of the required information.

33 **Subp. 5. Approval or rejection of petition.** The
34 commissioner shall approve or reject a petition filed under this
35 part within 45 days after the date of receipt of the petition.
36 However, failure of the commissioner to act within 45 days does

1 not constitute approval of a petition. If the petition is
2 approved more than 15 days prior to the due date of the first
3 estimated tax return, the taxpayer must file that return and
4 each return thereafter in the year or years covered by the
5 petition using the approved method and attaching thereto a copy
6 of the approved petition with its first payment. If the
7 petition is rejected or if the taxpayer has not received an
8 order approving or rejecting the petition prior to the due date
9 of the first estimated tax payment, the taxpayer must file
10 estimated tax payments using the apportionment methods
11 prescribed by Minnesota Statutes, section 290.191. If the
12 taxpayer's petition is approved after an estimated tax payment
13 is made or a return is filed, the taxpayer may amend its return,
14 estimated tax filings, and payments using the approved method
15 and attaching thereto a copy of the approved petition.

16 Subp. 6. **Appeals.** An order by the commissioner rejecting
17 any petition filed under this part constitutes an order from
18 which an appeal may be made to the tax court pursuant to
19 Minnesota Statutes, section 271.06.

20 8020.0150 APPORTIONMENT FORMULAS REQUIRED BY COMMISSIONER.

21 Minnesota Statutes, section 290.20, subdivision 1, grants
22 the commissioner the authority to require a taxpayer to use a
23 method of apportionment other than that prescribed in Minnesota
24 Statutes, section 290.191, if:

25 A. the statutory method does not fairly reflect all
26 or any part of the taxable net income apportionable to
27 Minnesota; and

28 B. the commissioner's method fairly reflects net
29 income. For purposes of this part, the statutory method shall
30 be presumed to not fairly reflect a taxpayer's taxable net
31 income if the statutory method does not fairly represent the
32 extent of the taxpayer's net income in this state.

33 When the commissioner has determined that the statutory
34 apportionment formulas do not fairly reflect net income as
35 applied to a specific industry, the commissioner may adopt

1 apportionment rules for uniform application to that industry.
2 If rules have been adopted with respect to a specific industry,
3 a taxpayer's petition under part 8020.0100 must demonstrate the
4 unfairness of the application of the industry-specific rule as
5 applied to it.

6 REPEALER. Minnesota Rules, part 8017.4000, is repealed.