

February 12, 2024

VIA EFILING ONLY

James G. Jordan
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Minnesota Department of Revenue
600 N Robert St
Saint Paul, MN 55146
jim.jordan@state.mn.us

Re: *In the Matter of Good-Cause-Exempt Amendments to Department of Revenue Rule Governing Sales Tax on Property Brought into Minnesota, Part 8130.4300*
OAH 24-9032-39776; Revisor R-4831

Dear James Jordan:

Enclosed herewith and served upon you by mail is the **ORDER ON REVIEW OF RULES UNDER MINN. STAT. § 14.386 AND MINN. R. 1400.2400** in the above-entitled matter. The amendments to the rule parts are exempt from the rulemaking requirements of Minn. R. ch. 1400 pursuant to the good cause exemption in Minn. Stat. § 14.388, subd. 3.

With the approval of the adopted rules, the Office of Administrative Hearings has closed this file and is returning the rule record to the Department so that it can maintain the official rulemaking record in this matter as required by Minn. Stat. § 14.365. Upon submission to the Office of Administrative Hearings of the Department's signed order approving the rules, the Office of Administrative Hearings will file the rules with the Secretary of State. The Department's next step is to arrange for publication of the proposed amendments in the State Register as required by Minn. Stat. § 14.388, subd. 1.

If you have any questions regarding this matter, please contact William Moore at (651) 361-7893, william.t.moore@state.mn.us or via facsimile at (651) 539-0310.

Sincerely,


MICHELLE SEVERSON
Legal Assistant

Enclosure

cc: Legislative Coordinating Commission
Ryan Inman

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

In the Matter of Good-Cause-Exempt
Amendments to Department of Revenue
Rule Governing Sales Tax on Property
Brought into Minnesota, Part 8130.4300

**ORDER ON REVIEW
OF RULES UNDER
MINN. STAT. § 14.386
AND MINN. R. 1400.2400**

This matter came before Assistant Chief Administrative Law Judge Kristien R. E. Butler upon the application of the Minnesota Department of Revenue (the Department) for a legal review under Minn. Stat. § 14.386 (2022).

On January 29, 2024, the Department filed documents with the Office of Administrative Hearings seeking review and approval of the above-entitled rules under Minn. Stat. § 14.386 and Minn. R. 1400.2400 (2023).

Based upon a review of the written submissions by the Department, and for the reasons set out in the accompanying Memorandum below,

IT IS HEREBY DETERMINED THAT:

1. The rules were adopted in compliance with the procedural requirements of Minnesota Statutes, Chapter 14, and Minnesota Rules, Chapter 1400.
2. According to Minn. Stat. § 270C.06 (2022), the Department has the statutory authority to adopt these proposed rules.
3. The proposed changes to Minn. R. 8130.4300, subp. 1, incorporate specific changes set forth in applicable statutes when no interpretation of law is required and do not alter the sense, meaning, or effect of the rule. These changes are consistent with Minn. Stat. § 14.388, subd. 1(3) and (4). The Department has established that it may utilize the good cause exemption in connection with this rulemaking.

Based on this determination, the Judge hereby issues the following:

ORDER

The adopted rules are **APPROVED**.

Dated: February 12, 2024



KRISTIEN R. E. BUTLER
Assistant Chief Administrative Law Judge

MEMORANDUM

I. Introduction

The Department seeks to revise Minn. R. 8130.4300 by amending subpart 1. The Department requests approval of these revisions pursuant to Minn. Stat. § 14.388, subd. 1(3) and (4), which provide that:

If an agency for good cause finds that the rulemaking provisions of this chapter are unnecessary, impracticable, or contrary to the public interest when adopting, amending, or repealing a rule to . . . incorporate specific changes set forth in applicable statutes when no interpretation of law is required or make changes that do not alter the sense, meaning, or effect of a rule . . . the agency may adopt, amend, or repeal the rule after satisfying the requirements of subdivision 2 and section 14.386, paragraph (a), clauses (1) to (4).

The Office of Administrative Hearings must review the Department's filing and approve or disapprove the rule within 14 days after submission of the rule by the agency.¹ As part of that review, the Office of Administrative Hearings must determine whether the agency has provided adequate justification for its use of the good cause exemption,² as well as determining whether the rule meets the requirements of Minn. R. 1400.2100, (A), (D)-(G) (2023).³

II. Adequate Justification for Use of the Good Cause Exemption

Minn. Stat. § 14.388, subd. 1, provides an abbreviated set of procedures for promulgating new rules that may be used when "good cause" is present. As such, an agency must provide an adequate justification that the rulemaking provisions of chapter 14 are unnecessary, impracticable, or contrary to the public interest when adopting, amending, or repealing its proposed rule.

The Department submits its proposal to adopt revisions to Minn. R. 8130.4300 subp. 1, pursuant to this expedited process. The Department explained that its revisions are necessary to bring the substance of the statute and the rule into alignment due to statutory changes implemented in 2008 and 2013.⁴ Yet, the Department does not directly address how chapter 14's rulemaking provisions are "unnecessary, impracticable, or contrary to the public interest."

¹ Minn. Stat. § 14.386(a)(3); Minn. R. 1400.2400, subp. 3.

² Minn. Stat. § 14.388, subd. 1.

³ Minn. R. 1400.2400, subp. 3.

⁴ Proposed Order and Required Explanation at 2 (Jan. 29, 2024).

The best practice for an agency's rulemaking proposal is to specifically articulate the agency's justification for how its rule falls under a good cause exemption.⁵ Here, the reason for the rule language changes by the Department relate to past statutory updates. As a result, based on a review of the entirety of the record submitted by the Department and its proposed changes, the Judge finds the Department has shown an adequate justification for the use of the good cause exemption.

III. Notice and Comment

An agency proposing to adopt, amend, or repeal a rule under Minn. Stat. § 14.388 must give electronic notice of its intent in accordance with Minn. Stat. § 16E.07, subd. 3 (2022), and notice by United States mail or electronic mail to persons who have registered their names with the agency under Minn. Stat. § 14.14, subd. 1a (2022).⁶

The Department provided notice as required by statute through electronic notice to the public of this rulemaking under Minn. Stat. § 16E.07, subd. 3(2), by publishing notice of its intent to adopt the proposed rule revisions on its website.⁷ The Department sent notice by U.S. Mail or by email to all persons and associations on the rulemaking mailing list who provided the Department with their mailing or email address.⁸ The Department also certified the accuracy of its mailing list as of January 29, 2024.⁹

The period for any public comments regarding the proposed revisions to Minn. R. 8130.4300 closed at 4:30 p.m., on February 5, 2024. The Office of Administrative Hearings received no comments by that deadline.

IV. The Rules are Approved

Pursuant to Minn. Stat. § 270C.06 (2022), “[t]he commissioner shall, from time to time, make, publish, and distribute rules for the administration and enforcement of state revenue laws.” Minn. R. 8130.4300 governs sales or use tax on property brought into Minnesota from purchase in another state. The Department contends its rule revisions remove a statutory exemption repealed by the legislature in 2008 and update statutory citations in the rule because the statute was re-lettered in 2013.¹⁰ In addition, the Department's revision adding the language: “or any items listed in Minnesota Statutes, section 297A.63,” brings the rule's language into alignment with the same phrase in Minn. Stat. § 297A.665(f) (2022). Because these revisions incorporate specific changes in statutes when no interpretation of law is required, and do not alter the substance of

⁵ In some instances, the failure to address why the “rulemaking provisions of this chapter are unnecessary, impracticable, or contrary to the public interest” may require the denial of the agency's request under Minn. Stat. § 14.386, subd. 1.

⁶ Minn. Stat. § 14.388, subd. 2.

⁷ Certificate of Mailing the Notice of Submission to the Rulemaking Mailing List and Certificate of Additional Notice (Jan. 30, 2024).

⁸ *Id.*; see also Minn. Stat. § 14.14, subd. 1a.

⁹ Certificate of Accuracy of the Mailing List (Jan. 30, 2024).

¹⁰ Proposed Order and Required Explanation at 2.

the rule, use of the good cause exemption is permissible under Minn. Stat. § 14.388, subd. 1(3)-(4).

The Judge determines that the Department has statutory authority to adopt the proposed rules. The Department has also established that it complied with all procedural requirements and that the rules meet the standards articulated in Minn. R. 1400.2100(A), (D)-(G). Therefore, the rules are **APPROVED**.

K. R. E. B.