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STATE REGISTER

Printing Schedule for Agencies

Issue Number	*Submission deadline for Executive Orders, Adopted Rules and **Proposed Rules	*Submission deadline for State Contract Notices and other **Official Notices	Issue Date
	SCHEDULE FOR VOLUME 8		
14	Monday Sept 19	Monday Sept 26	Monday Oct 3
15	Monday Sept 26	Monday Oct 3	Monday Oct 10
16	Monday Oct 3	Monday Oct 10	Monday Oct 17
17	Monday Oct 10	Monday Oct 17	Monday Oct 24

*Deadline extensions may be possible at the editor's discretion; however, none will be made beyond the second Wednesday (12 calendar days) preceding the issue date for rules, proposed rules and executive orders, or beyond the Wednesday (5 calendar days) preceding the issue date for official notices. Requests for deadline extensions should be made only in valid emergency situations.

**Notices of public hearings on proposed rules and notices of intent to adopt rules without a public hearing are published in the Proposed Rules section and must be submitted two weeks prior to the issue date.

Instructions for submission of documents may be obtained from the Office of the State Register, 506 Rice Street, St. Paul, Minnesota 55103, (612) 296-0930.

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The *State Register* is the official publication of the State of Minnesota, containing executive orders of the governor, proposed and adopted rules of state agencies, and official notices to the public. Judicial notice shall be taken of material published in the *State Register*.

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How to Follow State Agency Rulemaking Action in the *State Register*

State agencies must publish notice of their rulemaking action in the *State Register*. If an agency seeks outside opinion before promulgating new rules or rule amendments, it must publish a NOTICE OF INTENT TO SOLICIT OUTSIDE OPINION. Such notices are published in the OFFICIAL NOTICES section. Proposed rules and adopted rules are published in separate sections of the magazine.

The PROPOSED RULES section contains:

- Calendar of Public Hearings on Proposed Rules.
- Proposed new rules (including Notice of Hearing and/or Notice of Intent to Adopt Rules without A Hearing).
- Proposed amendments to rules already in existence in the Minnesota Code of Agency Rules (MCAR).
- Proposed temporary rules.

The ADOPTED RULES section contains:

- Notice of adoption of new rules and rule amendments (those which were adopted without change from the proposed version previously published).
- Adopted amendments to new rules or rule amendments (changes made since the proposed version was published).
- Notice of adoption of temporary rules.
- Adopted amendments to temporary rules (changes made since the proposed version was published).

ALL ADOPTED RULES and ADOPTED AMENDMENTS TO EXISTING RULES published in the *State Register* and filed with the Secretary of State before September 15, 1982, are published in the *Minnesota Code of Agency Rules 1982 Reprint*. ADOPTED RULES and ADOPTED AMENDMENTS TO EXISTING RULES filed after September 15, 1982, will be included in a new publication, *Minnesota Rules*, scheduled for publication in spring of 1984. In the MCAR AMENDMENT AND ADDITIONS listing below, the rules published in the *MCAR 1982 Reprint* are identified with an asterisk. Proposed and adopted TEMPORARY RULES appear in the *State Register* but are not published in the *1982 Reprint* due to the short-term nature of their legal effectiveness.

The *State Register* publishes partial and cumulative listings of rule action in the MCAR AMENDMENTS AND ADDITIONS list on the following schedule:

Issues 1-13, inclusive
Issues 14-25, inclusive
Issue 26, cumulative for 1-26
Issue 27-38, inclusive
Issue 39, cumulative for 1-39
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PROPOSED RULES

Pursuant to Minn. Stat. of 1980, §§ 14.21, an agency may propose to adopt, amend, suspend or repeal rules without first holding a public hearing, as long as the agency determines that the rules will be noncontroversial in nature. The agency must first publish a notice of intent to adopt rules without a public hearing, together with the proposed rules, in the *State Register*. The notice must advise the public:

1. that they have 30 days in which to submit comment on the proposed rules;
2. that no public hearing will be held unless seven or more persons make a written request for a hearing within the 30-day comment period;
3. of the manner in which persons shall request a hearing on the proposed rules;

and

4. that the rule may be modified if modifications are supported by the data and views submitted.

If, during the 30-day comment period, seven or more persons submit to the agency a written request for a hearing of the proposed rules, the agency must proceed under the provisions of §§ 14.13-14.20 which state that if an agency decides to hold a public hearing, it must publish in the *State Register* a notice of its intent to do so. This notice must appear at least 30 days prior to the date set for the hearing, along with the full text of the proposed rules. (If the agency has followed the provisions of subd. 4h and has already published the proposed rules, a citation to the prior publication may be substituted for republication.)

Pursuant to Minn. Stat. § 14.29, when a statute, federal law or court order to adopt, suspend or repeal a rule does not allow time for the usual rulemaking process, temporary rules may be proposed. Proposed temporary rules are published in the *State Register*, and for at least 20 days thereafter, interested persons may submit data and views in writing to the proposing agency.

Department of Energy and Economic Development Community Development Division

Proposed Adoption and Amendment of Rules Governing the Community Development Block Grant Program

Notice of Intent to Adopt and Amend Rules without a Public Hearing

Notice is hereby given that the State Department of Energy and Economic Development proposes to adopt and amend the above-entitled rules without a public hearing. The commissioner has determined that the proposed adoption and amendment of these rules will be noncontroversial in nature and has elected to follow the procedures set forth in Minnesota Statutes sections 14.21 to 14.28 (1982), as amended.

Persons interested in these rules and amendments shall have 30 days to submit comments on the proposed rules and amendments. The proposed rules and amendments may be modified if the modifications are supported by the date and views submitted to the agency and do not result in a substantial change in the proposed language.

Unless seven or more persons submit written requests for a public hearing on the proposed rules and amendments within the 30-day comment period, a public hearing will not be held. In the event a public hearing is required, the agency will proceed according to the provisions of Minnesota Statutes sections 14.21 to 14.28 (1982), as amended.

Persons who wish to submit comments or a written request for a public hearing should submit such comments or request to:

D. Beigbeder, Department of Energy and Economic Development
100 Hanover Building, 480 Cedar Street, St. Paul, Minnesota 55101
(612) 296-2262

Authority for the adoption of these rules is contained in Minnesota Statutes sections 116J42 and 116J45 (1982) as amended by Minnesota Laws 1983, chapter 289, section 50, subdivision 115. This authority has been transferred from the State Planning Agency to the Department of Energy and Economic Development pursuant to Reorganization Order No. 129 issued pursuant to Minnesota Statutes, 1982, section 16.125. Additionally, a statement of need and reasonableness that describes the need for and reasonableness of each provision of the proposed rules and amendments and identifies the data and information relied upon to support the proposed rules and amendments has been prepared and is available from D. Beigbeder upon request.

Upon adoption of the final rules and amendments without a public hearing, the proposed rules and amendments, this notice, the statement of need and reasonableness, all written comments received, and the final rules and amendments as adopted will be delivered to the Attorney General for review as to form and legality, including the issue of substantial change. Persons who wish to be advised of the submission of this material to the Attorney General, or who wish to receive a copy of the final rules and amendments as proposed for adoption, should submit a written statement of such request to D. Beigbeder at the address listed above.

(A copy of the proposed rules and amendments is attached to this notice.)

Copies of this notice and the proposed rules and amendments are available and may be obtained by contacting D. Beigbeder either in writing or by telephone.

Mark B. Dayton, Commissioner
Department of Energy and Economic Development

Rules as Proposed

10 MCAR § 1.500 Small cities community block grant program; general provisions.

A. Purpose of these rules. Rules 10 MCAR §§ 1.500-1.565 give procedures for evaluating applications for grants and awarding them to eligible applicants by the Department of Energy~~,~~ ~~Planning~~ and Economic Development under United States Code, title 42, sections 5301-5136 (1981), and regulations adopted in Code of Federal Regulations, title 24, part 570.

B. Objective of the program. The primary objective of this program is to develop viable urban communities by providing decent housing and a suitable living environment and by expanding economic opportunities, principally for persons of low and moderate income. Activities funded under this program shall not benefit moderate-income persons to the exclusion of low-income persons. All funded activities must be designed to:

1. benefit low- and moderate-income persons;

2. prevent or eliminate slums and blight; or

3. alleviate urgent community development needs caused by existing conditions which pose a serious and immediate threat to the health or welfare of the community where other financial resources are not available to meet those needs.

C. Definitions. As used in 10 MCAR §§ 1.500-1.565, the following terms have the meanings given them.

1. "Application year" means the federal fiscal year beginning October 1 and ending September 31.

2. "Community development need" means a demonstrated deficiency in housing stock, public facilities, economic opportunities, or other services which are necessary for developing or maintaining viable communities.

3. "Competitive grant" means a grant application that is evaluated and ranked in comparison to other applications in the same grant category and includes housing, public facilities, and comprehensive applications.

~~2.~~ 4. "Comprehensive program" means a combination of at least two interrelated projects which are designed to address community development needs which by their nature require a coordination of housing, public facilities, or economic development activities. A comprehensive program must be designed to benefit a defined geographic area, otherwise known as a program area.

5. "Economic development project" means one or more activities designed to create new employment, maintain existing employment, increase the local tax base, or otherwise increase economic activity in a community.

~~3.~~ 6. "Eligible activities" means those activities so designated in United States Code, title 42, section 5305 (1981) and as described in Code of Federal Regulations, title 24, sections 570.200-570.207 (1981).

~~4.~~ 7. "General purpose local government" means townships as described in Minnesota Statutes, chapter 365; cities as described in Minnesota Statutes, chapters 410 and 412; and counties.

~~5.~~ 8. "Grant" means an agreement between the state and an eligible recipient through which the state provides funds to carry out specified programs, services, or activities.

~~6.~~ 9. "Grant close-out" means the process by which the office determines that all applicable administrative actions and all required work have been completed by the grant recipient and the department.

~~7.~~ 10. "Grant year" means any period of time during which the United States Department of Housing and Urban Development makes funds from any federal fiscal year available to the state for distribution to local governments under United State Code, title 42, sections 5301-5316 (1981), and includes the period of time during which the office solicits applications and makes grant awards.

KEY: PROPOSED RULES SECTION — Underlining indicates additions to existing rule language. ~~Strike outs~~ indicate deletions from existing rule language. If a proposed rule is totally new, it is designated "all new material." ADOPTED RULES SECTION — Underlining indicates additions to proposed rule language. ~~Strike outs~~ indicate deletions from proposed rule language.

~~8.~~ 11. "Infrastructure" means the basic physical systems, structures, and facilities, such as roads, bridges, water, and sewer, which are necessary to support a community.

~~9.~~ 12. "Low and moderate income" means income which does not exceed 80 percent of the median income for the area with adjustments for smaller and larger families.

~~10.~~ 13. "Metropolitan city" means a city over 50,000 population or a central city of a standard metropolitan statistical area that receives entitlement grants under United States Code, title 42, section 5306 (1981) directly from the United States Department of Housing and Urban Development.

~~11.~~ 14. "Nonentitlement area" means an area that is not a metropolitan city or part of an urban county.

~~12.~~ 15. "Office" means the office ~~of Local Government~~ or division in the Department of Energy~~, Planning~~ and Economic Development to which the program is assigned.

~~13.~~ 16. "Per capita assessed valuation" means the adjusted assessed valuation divided by population.

~~14.~~ 17. "Population" means the number of persons who are residents in a county, city, or township as established by the last federal census, by a census taken pursuant to Minnesota Statutes, section 275.53, subdivision 2, by a population estimate made by the Metropolitan Council, or by the population estimate of the state demographer made under Minnesota Statutes, section ~~4.12~~ 116J.42, subdivision 7, clause (10), whichever is most recent as to the stated date of count or estimate, up to and including the most recent July 1.

~~15.~~ 18. "Poverty persons" means individuals or families whose incomes are below the poverty level as determined by the most current data available from the United States Department of Commerce, taking into account variations in cost of living for the area affected.

~~16.~~ 19. "Program" means the community development block grant program for nonentitlement areas.

~~17.~~ 20. "Program area" means a defined geographic area within which an applicant has determined that, based on community plans or other studies, there exists a need for community development activities. A program area may be a neighborhood in a community or an entire community.

~~18.~~ 21. "Program income" means gross income earned by the grant recipient from grant-supported activities, excluding interest earned on advances.

~~19.~~ 22. "Project" means one or more activities designed to meet a specific community development need.

~~20.~~ 23. "Regional or community development plans" means written documents, resolutions, or statements which describe goals, policies, or strategies for the physical, social, or economic development of a neighborhood, community, or substate area. Regional or community development plans include comprehensive plans and elements of comprehensive plans, including land use plans, which have been approved by the governing boards of townships, counties, or cities, and also include regional development plans adopted under Minnesota Statutes, section 462.381, where applicable.

~~21.~~ 24. "Slums and blight" means areas or neighborhoods which are characterized by conditions used to describe deteriorated areas in Minnesota Statutes, section 462.421 or which are characterized by the conditions used to describe redevelopment districts in Minnesota Statutes, section 273.73, subdivision 10.

~~22.~~ 25. "Single purpose project" means one or more activities designed to meet a specific housing or public facilities community development need.

~~23.~~ 26. "Urban county" means a county which is located in a metropolitan area and is entitled to receive grants under United States Code, title 42, section 5306 (1981), directly from the United States Department of Housing and Urban Development.

10 MCAR § 1.505 Types of competitive grants available.

A. Single purpose grants. The office shall approve grants for single purpose projects for funding from a single grant year. The office shall place single purpose grant applications in one of the following categories for purposes of evaluation:

1. housing projects which include one or more activities designed to increase the supply or quality of dwellings suited to the occupancy of individuals and families; or

2. public facilities projects which include one or more activities designed to acquire, construct, reconstruct, or install buildings or infrastructure which serve a neighborhood area or community~~; or~~

~~3. economic development projects which include one or more activities designed to create new employment, maintain existing employment, or otherwise increase economic activity in a community~~.

B. Comprehensive grants. The office shall approve comprehensive grants for two or more projects which constitute a

comprehensive program. Comprehensive grants shall be approved for funding from one, two, or three grant years. In the case of grants approved for funding from more than one grant year, the office shall make funds available to the grant recipient in the second or third year only after the recipient submits an approved application. Approval shall be subject to a finding by the office that the grant recipient has made normal progress and is in compliance with 10 MCAR §§ 1.500-1.565.

C. Previous grant commitment. The provisions of B. apply to three-year comprehensive grant commitments made by the United States Department of Housing and Urban Development in 1981 under United States Code, title 42, section 5306 (1980).

10 MCAR § 1.506 Economic development grants; noncompetitive.

The office shall approve grants for economic development projects for funding throughout a single application year, or until the funds reserved have been exhausted.

10 MCAR § 1.510 Application process and requirements.

A. Grant application manual. The office shall prepare a manual for distribution to eligible applicants no later than 120 days before the application closing date for competitive applications. The manual must instruct applicants in the preparation of applications and describe the method by which the office will evaluate and rank applications. If 10 MCAR §§ 1.500-1.565 are not adopted before September 15, 1982, the 120-day period is waived for the 1983 grant year but the office shall make the manual available no later than 60 days before the application closing date.

B. Eligibility requirements. Any unit of general purpose local government, including cities, counties, and townships located in a nonentitlement area or electing exclusion from an urban county under United States Code, title 42, section 5302 (1981), may apply for a grant. An eligible applicant may apply on behalf of other eligible applicants. Applications submitted on behalf of other applicants must be approved by the governing body of all local governments party to the application. An eligible applicant may apply for only one competitive grant per grant year and no eligible applicant shall be included in more than one competitive application. An eligible applicant may apply for one economic development grant in addition to a competitive grant each application year.

C. Disqualification of applicants. Applications from otherwise eligible applicants shall be disqualified where for previously awarded grants under these rules or awarded by the Department of Housing and Urban Development under United States Code, title 42, section 5306 (1981), it is determined by the office that any of the following conditions exist:

1. there are outstanding audit findings on previous community development grants and the grantee has not objected on a reasonable basis to the findings or demonstrated a willingness to resolve the findings;

2. previously approved projects have passed scheduled dates for grant close-out and the grantee's ability to complete the project in an expeditious manner is in question; or

3. the applicant has not made scheduled progress on previously approved projects and the grantee's ability to complete the project in an expeditious manner is in question.

D. Contents of application. The contents of the application must be consistent with the informational requirements of 10 MCAR §§ 1.500-1.565 and must be on a form prescribed by the office. The application must be accompanied by:

1. an assurance, signed by the chief elected official, that the applicant will comply with all applicable state and federal requirements;

2. an assurance signed by the chief elected official certifying that at least one public hearing was held at least ten days but not more than ~~30~~ 60 days before submitting the application; and

3. a copy of a resolution passed by the governing body approving the application and authorizing execution of the grant agreement if funds are made available.

The office may request additional information from the applicant if it is necessary to clarify and evaluate the application.

E. Time limit for submitting applications. Competitive applications must be received in the office or postmarked by the closing date. The office shall give notice of the period during which applications will be accepted. The notice must be published

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in the *State Register* at least 120 days before the closing date. Economic development project applications may be submitted at any time during the application year.

F. Regional review. The applicant must submit a complete copy of the application to the Regional Development Commission, where such a commission exists, or the Metropolitan Council, where it has jurisdiction, for review and comment in accordance with Minnesota Statutes, section 462.391, subdivision 3, or Minnesota Statutes, section 473.171, respectively.

10 MCAR § 1.515 Evaluation of applications; in general.

All applications shall be evaluated by the office. A fixed amount of points shall be established as the maximum score attainable by any application. Points shall be made available within each class of rating criteria in accordance with the percentages and fractions indicated in 10 MCAR §§ 1.520-1.545. Economic development project applications must meet threshold criteria in order to be evaluated.

10 MCAR § 1.520 Comparison of all competitive applications; general competition.

A. Points available. Thirty percent of the total available points shall be awarded by the office based on a general competition involving a comparison of all applications.

B. Evaluation of community need. Two-thirds of the points in the general competition shall be awarded based on evaluation of community need, which shall include:

1. the number of poverty persons in the area under the applicant's jurisdiction;

2. the percentage of persons resident in the area under the applicant's jurisdiction who are poverty persons; and

3. the per capita assessed valuation of the area under the jurisdiction of the applicant, such that points are awarded in inverse relationship to applicants' per capita assessed valuation.

C. Evaluation of other factors. One-third of the points in the general competition shall be awarded based on evaluation of:

1. the extent to which the proposed activities are compatible with regional or community development plans; and

2. adequacy of the applicant's management and financial plan.

10 MCAR § 1.525 Comparison of competitive applications within categories.

After completing the general competition described in 10 MCAR § 1.520, the office shall place each application in the appropriate grant category in accordance with 10 MCAR § 1.505. The categories are housing projects, public facilities projects, ~~economic development projects,~~ and comprehensive programs. Seventy percent of the total points available for each application shall be awarded based on a comparison of the applications within each of the categories as further described in 10 MCAR §§ 1.530-1.545.

10 MCAR § 1.546 Evaluation of economic development projects.

A. In general. Evaluation of economic development applications consists of eligibility threshold screening and project review. Applications must meet the eligibility thresholds in order to be referred for project review. Applications that fail to meet eligibility thresholds may be revised and resubmitted.

B. Federal and state eligibility thresholds. Applicants shall provide a description of the ways that activities address one of the federal objectives described in 10 MCAR § 1.500 B. Each activity proposed for funding must be eligible under current federal regulations.

Applicants shall describe how they will meet two of the three following thresholds based on state economic development objectives:

1. creation or retention of permanent private sector jobs;

2. stimulation or leverage of private investment; or

3. increase in local tax base.

C. Project review. Applications that meet eligibility thresholds will be awarded points by the office based on evaluation of the two rating categories: project design and financial feasibility. Applications must attain at least two-thirds of the total available points for economic development to be recommended for funding. Applications must score at least half of the points available in each of the two rating categories.

Two-thirds of the available points will be awarded based on an evaluation of project quality including an assessment of need, impact, and the capacity of the applicant to complete the project in a timely manner.

One-third of the available points will be awarded based on an evaluation of the effective use of program funds to induce economic development. Consideration of financial feasibility must include investment analysis, commitment of other funds, and other factors relating to the type of program assistance requested. Consideration of need for an economic development project must be based on deficiencies in employment opportunities and circumstances contributing to economic vulnerability and distress. Consideration of impact must be based on the extent to which the project reduces or eliminates the need. Consideration of capacity must be based on demonstration of administrative capability, realistic implementation schedules, and the ability to conform to state and federal requirements.

D. Funding recommendations. Applications that attain at least two-thirds of the available points will be recommended to the commissioner for funding. Applications not recommended for funding may be revised and resubmitted.

10 MCAR § 1.550 Determination of grant awards.

A. Funds available for grants. The amount of funds available for grants shall be equal to the total allocation of federal funds made available to the State under United States Code, title 42, section 5306 (1981), after subtracting an amount for costs incurred by the office for administration of the program, as allowed by that law. The office is not liable for any grants under 10 MCAR §§ 1.500-1.565 until funds are received from the United States Department of Housing and Urban Development.

B. Division of funds.

1. Of the funds available for grants in each grant year, ~~45~~ 30 percent shall be reserved by the office to fund single purpose grants, 15 percent shall be reserved for economic development grants, and 55 percent shall be reserved by the office to fund comprehensive grants, including the second and third years of comprehensive grants approved for funding under 10 MCAR § 1.505 ~~B. and C.,~~ and 10 MCAR § 1.545. However, the office may modify the proportions of funds available for single purpose and comprehensive grants if, after review of all applications, it determines that there is a shortage of fundable applications in either category.

2. At least ~~20~~ 30 percent of the funds made available for single purpose grants shall be awarded for applications in each of the ~~three~~ two categories: housing~~,~~ and public facilities~~, and economic development~~. However, no application with a rating below the median score for its category shall be funded by the office solely for the purpose of meeting this requirement.

3. If there are unawarded economic development funds available at the end of the application year, two-thirds of the remaining funds will be available for competitive single purpose projects and one-third will be available for economic development projects during the next application year.

C. Funding list. Within each grant category, a list of applications shall be prepared in rank order of the scores received after evaluation pursuant to 10 MCAR §§ 1.515-1.545. Based on these lists, and subject to the availability of funds within each category, applications with the highest rank shall be recommended to the commissioner for funding. In the case of a tie between any two applications within any category, the application with the highest score in the general competition shall receive the higher ranking on the list.

D. Approval by commissioner. The list of applications recommended for funding, including recommended grant awards, shall be submitted by the office to the commissioner for approval. A decision by the commissioner not to approve any application recommended for funding must be made in writing to the applicant, giving reasons for disapproval.

E. Reduction in amount requested. The office may recommend an application for funding in an amount less than requested if, in the opinion of the office, the amount requested is more than is necessary to meet the applicant's need. If the amount of the grant is reduced, the reasons for the reduction shall be given to the applicant.

F. Grant ceilings. No competitive single purpose grant may be approved for an amount over $600,000. No comprehensive grant may be approved for an amount over $700,000 from any single grant year or for more than a total of $1,400,000 over three grant years. No economic development grant may be approved for an amount over $500,000.

Repealer. 10 MCAR § 1.540 is repealed.

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Minnesota State Retirement System

Proposed Amendments to the Rules Relating to the Minnesota Public Employees Deferred Compensation Plan

Notice of Intent to Adopt Rules without a Public Hearing

Notice is hereby given that the Executive Director proposes to adopt amendments to the above-entitled rules without a public hearing. The Executive Director has determined that the proposed adoption of these amendments will be noncontroversial in nature and has elected to follow the procedures set forth in Minn. Stat. §§ 14.21 to 14.28. The amendments to the rules are needed to implement the provisions of the U.S. Revenue Act of 1978 as amended through December 31, 1982 and Internal Revenue Code 457.

Persons interested in these rules shall have until 30 days after publication in the *State Register* to submit comments on the proposed amendments. The proposed amendments may be modified if the modifications are supported by the data and views submitted to the Executive Director and do not result in a substantial change to the proposed language.

Unless seven or more persons submit written requests for a public hearing on the proposed rules within the comment period, a public hearing will not be held. In the event a public hearing is required, the office will proceed according to the provisions of Minn. Stat. § 14.13 to 14.20.

Persons who wish to submit comments or a written request for a public hearing should submit such comments or requests to:

Paul L. Groschen, Executive Director
Minnesota State Retirement System
529 Jackson Street at Tenth
St. Paul, Minnesota 55101
Telephone Number 612-296-2761

Authority for the adoption of these rules is contained in Minn. Stat. § 352.96, subdivision 4. A statement of need and reasonableness that describes the need for and reasonableness of each provision of the proposed amendments and which identifies the data and information relied upon to support the proposed amendments has been prepared and is available from the Executive Director upon request.

Upon adoption of the final rules without a public hearing, the proposed amendments, this notice, the statement of need and reasonableness, all written comments received, and the final rules as adopted will be delivered to the Attorney General for review as to form and legality, including the issue of substantial change. Persons who wish to be advised of the submission of this material to the Attorney General or who wish to receive a copy of the final rules as proposed for adoption should submit a written statement of such request to the Executive Director.

A copy of the proposed rules is attached to this notice.

Paul L. Groschen
Executive Director

Rules as Proposed

2 MCAR § 3.5001 Establishment and purpose of plan.

A. [Unchanged.]

B. Purpose of plan. The purpose of this plan is to allow employees to designate a portion of their compensation to be withheld each pay period by the employer and invested at the discretion of and in a manner approved by the director for the employer until ~~termination of employment~~ separation from service, financial hardship, or death of the employee. Any compensation deferred by employees may be invested by the director, for the employer, but there is no requirement for the director or employer to do so. Participation in this plan shall not be construed to establish or create an employment contract between the employee and the employer.

2 MCAR § 3.5002 Definitions.

A. Definitions. Whenever used in the plan, the following terms shall have the meanings as set forth below unless otherwise expressly provided:

1.-3. [Unchanged.]

4. "Compensation" means any remuneration payable to an individual who performs service for the employer which is reportable as ~~taxable~~ federal gross income.

5. [Unchanged.]

6. "Deferred compensation account" means the account established for the investment of deferred compensation. It shall include the supplemental investment account and the fixed and variable annuity account.

a. "Supplemental investment account" means the Minnesota Supplemental ~~Retirement~~ Investment Fund as established by Minnesota Statutes, section 11A.17 and managed by the board.

b. "Fixed ~~and~~ or variable annuity account" means the investment accounts of the companies approved by the board pursuant to Minnesota Statutes, section 352.96, ~~subd.~~ subdivision 2.

7.-9. [Unchanged.]

10. "Includable compensation" means the compensation remaining after any deferrals through this plan ~~and/or~~ and any amount of compensation excluded from ~~taxable~~ federal gross income as a result of contributions made for the benefit of an employee under a tax sheltered annuity ~~or~~ pursuant to section 403(b), mutual fund shares held in a custodial account pursuant to section 403(b)(7), or employee contributions to a retirement plan excluded under section 414(h)(2) of the Internal Revenue Code of 1954, as amended through December 31, 1982.

11. "Normal retirement age" means ~~the earliest of the following~~:

a. An age not earlier than that for attainment of eligibility by the participant to commence receiving normal, i.e. unreduced, retirement benefits from one of the retirement systems enumerated in Minnesota Statutes, section 356.20, ~~subd.~~ subdivision 2, or other Minnesota public employee pension plan of which participant is a member~~.~~ nor later than age 70½; or

b. ~~Age 65~~ If the participant is not a member of one of the retirement systems, not later than age 70½.

12.-13. [Unchanged.]

14. "Pay date" means the date the participant receives payment of compensation.

14.-15. [Renumber as 15.-16.]

~~16. "Projected Retirement date" means a date established to allow deferral of underutilized amounts according to the provisions of 2 MCAR § 3.5004 D.2. Only one projected retirement date may be designated and is to be designated on a form approved by the director.~~

17. "~~Termination of~~ Separation from service" means the permanent severance of the participant's employment relationship with the employer by means of: retirement; discharge (provided all appellate processes have been exhausted or tolled); resignation (provided seniority or continuous service is interrupted); permanent layoff; expiration or nonrenewal of appointment or term of office; nonreelection; death; or such other form of permanent severance as may be provided by appropriate law, contract, or rules and regulations. For purposes of this definition, a break in employment for a period of less than 30 days shall not be considered a ~~termination of~~ separation from service.

18. [Unchanged.]

19. "Unforeseeable emergency" means a severe financial hardship to the participant resulting from a sudden and unexpected illness or accident of the participant or of a dependent of the participant, loss of the participant's property due to casualty, or other similar extraordinary and unforeseeable circumstances arising as a result of events beyond the control of the participant. The circumstances that will constitute an unforeseeable emergency will depend upon the facts of each case, but in any case payment will not be made to the extent that such hardship is, or may be relieved, through reimbursement or compensation by insurance or otherwise by liquidation of the participant's assets to the extent the liquidation of such assets would not itself cause severe financial hardship or by cessation of deferrals under the plan.

B. [Unchanged.]

2 MCAR § 3.5004 Participation in the plan.

A. [Unchanged.]

B. Enrollment. Any employee eligible to participate in accordance with ~~2 MCAR § 3.5004~~ A. may become a participant by

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agreeing with the employer in writing, on a form approved by the director, to a deferment of his or her compensation in accordance with ~~2 MCAR § 3.5004~~ C. and D. The deferment will commence with the first ~~full~~ pay ~~period~~ date following 30 days from the date the application is properly completed by the employee and accepted by the employer or director acting for the employer. The application shall also specify an investment preference for the deferred compensation.

C. [Unchanged.]

D. Maximum deferment. The total amount of deferred compensation during any taxable year shall not exceed the limits provided in ~~D.~~1. and ~~D.~~2. ~~of this rule.~~

1. 33⅓% percent of includable compensation or $7,500 whichever is less; or

2. ~~Each participant may designate a projected retirement date to be on or after normal retirement age which then shall be participant's normal retirement age under the plan.~~ For each of three taxable years preceding ~~his or her projected retirement date~~ the year in which he or she will attain normal retirement age, a participant may defer an amount equal to the limits set forth in ~~2 MCAR § 3.5004 D.~~1. plus an additional amount equal to the difference between the amount of compensation which could have been deferred under this plan, and the amount which was deferred for years after December 31, 1978. In no event, however, can the deferral exceed $15,000 for any taxable year.

The participant may designate and utilize this "catch-up" provision only once whether or not it is utilized in less than all of the three taxable years ending before attaining normal retirement age and whether or not the participant or former participant rejoins the plan. The participant may not utilize this "catch-up" provision if participant joins this plan after retirement from and utilization of the "catch-up" provision in another eligible plan.

If a participant also participates in or has amounts contributed by the employer for the purchase of a tax-sheltered annuity or mutual fund shares held in a custodial account, and part or all of such contributions are excludable from taxable income, the contributions reduce the maximums established in paragraphs ~~D.~~1. and ~~D.~~2. ~~of this rule.~~

In no event can deferrals exceed an employee's compensation less deductions for FICA, any other taxes, pension contributions, and other mandatory deductions.

E. Modifications to amount deferred. The employer shall adjust the participant's total annual compensation, on a pay period basis, by the deferred compensation amount indicated on the participant's application. That amount, subject to the limits of ~~2 MCAR § 3.5004~~ D. may be increased or decreased only by proper application to the employer or to the director acting for employer. The change shall take effect the first ~~full~~ pay ~~period~~ date following 30 days from receipt and approval of the application. Only two modifications (other than a revocation of participation as provided in ~~2 MCAR § 3.5004~~ F.) may be made each taxable year.

F. Revocation of deferral. Any participant may revoke his or her election to have compensation deferred by so notifying the employer or the director acting for the employer in writing. The participant's full compensation on a nondeferred basis will then be restored beginning with the first ~~full~~ pay ~~period~~ date following 30 days from the date notification was received; however, the participant's deferred compensation account shall be paid only as provided in 2 MCAR § 3.5005. The participant ~~may~~ will not again be eligible to defer compensation until the next taxable year.

G. Duration of election to defer compensation. Once an election to have compensation deferred has been made by the participant, the election shall continue in effect until the participant's ~~termination of~~ separation from service, unless the participant modifies the amount in accordance with ~~2 MCAR § 3.5004~~ E., or revokes the deferred compensation in accordance with ~~2 MCAR § 3.5004~~ F.

H. Deferral adjustments.

1.-3. [Unchanged.]

4. Maximum deduction. The employer shall attempt to ensure compliance with the maximum deferment set forth in ~~2 MCAR § 3.5004~~ D. If the amount deducted exceeds the maximum deferment set forth in ~~2 MCAR § 3.5004~~ D., the amount of subsequent deductions for the remainder of the taxable year shall be adjusted to conform to the maximum deferment allowed for the year. If it is not possible to correct the total deduction by year end, the overage shall be refunded. A participant is responsible for any tax consequences to the participant which may arise as a result of his or her deferrals under this plan which exceed the maximum amounts allowable.

2 MCAR § 3.5005 Participants' accounts, investments, and distributions.

A. Deferred compensation accounts and valuation.

1. Participants' accounts. An investment account shall be established for each participant which shall be the basis for any distributions payable to the participants under ~~2 MCAR § 3.5005~~ D., E., F., and G. Each participant's account shall be

credited with the amount of any compensation deferred and received less the administrative charge set forth in ~~2 MCAR § 3.5005 A.~~4. and shall be further credited or debited, as applicable, with any increase or decrease resulting from investments pursuant to ~~2 MCAR § 3.5005~~ C., credited or debited with any investment expenses, if applicable, debited for the amount of any distribution, and credited initially with the value on the effective date of this plan of any bookkeeping account maintained under the prior plan.

2. Financial responsibility of ~~the~~ employer. The funds and assets paid into the deferred compensation account may be invested in approved investments as provided by Minnesota Statutes, section 352.96, ~~subd.~~ subdivision 2, until distributed in accordance with ~~2 MCAR § 3.5005~~ D., E. ~~and~~, F., and G.

The employer shall not be responsible for any loss due to the investment or failure of investment of funds and assets in said deferred compensation account, nor shall the employer be required to replace any loss whatsoever which may result from said investments.

3. [Unchanged.]

4. Administrative expense. ~~Two~~ One and one-half percent ~~(2%)~~ shall be deducted each pay period from the deferred compensation invested in the supplemental investment account to pay administrative costs. The director shall review the charge levied annually and if such levy proves to be excessive or insufficient to pay all necessary costs of administration, the director shall adjust the charges accordingly after review of the necessity for the charge by the legislative auditor.

Administrative costs for the fixed and variable annuity account shall be established by the contract as approved by the board pursuant to Minnesota Statutes, section 352.96.

B. [Unchanged.]

C. Investment of funds.

1. Any compensation deferred by employees may be invested by the ~~employer or by the~~ director for the employer but there is no requirement to do so.

2. Investment options. The participant may select an investment preference from among the options provided in the deferred compensation account.

a. The supplemental investment account shall provide the ~~following~~ option: of the income share account, the growth share account ~~and~~, or the fixed return account.

b. The fixed ~~and~~ or variable annuity account shall provide the ~~following~~ options: of a fixed annuity ~~and~~ or a variable annuity.

A participant may select ~~any~~ a combination of these five ~~(5)~~ investment account preferences by specifying on the application the amount to be deferred under each investment preference. A participant may select the account options of only one of the companies approved by the board at any one time. The amount to be deferred cannot be less than ~~ten dollars ($10.00)~~ per pay period per account selected.

3. Investment preference requests for future compensation. A participant shall, at the time of enrollment, make an investment preference request on an application provided for that purpose. Once made, an investment request shall continue for any deferments unless later changed by the participant.

A participant may, ~~once~~ twice in any taxable year, change his or her investment preference request for future amounts of deferred compensation. A change in investment request shall be effective with respect to compensation to be deferred for the first ~~full~~ pay ~~period~~ date following 30 days from receipt of the request.

4. Investment preference requests for past deferred compensation. A participant may also, ~~once~~ twice in any taxable year, at the same time as a change is requested under ~~2 MCAR § 3.5005 C.~~3., or in lieu of a change thereunder, change his or her investment preference request with respect to all or part of previously deferred compensation. If a partial transfer is made, a minimum of $1,000 must be transferred and a minimum balance of $1,000 must remain in the prior investment preference option. ~~Such~~ Changes are limited to a change within the fixed ~~and~~ or variable annuity account according to the terms of the annuity contracts or within the supplemental investment account but not between the ~~accounts and are also limited to transfers to fixed accounts only~~ annuity accounts and the supplemental investment account, nor between companies approved by the board.

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These changes in investment preference shall be effected as soon as practical as cash flow to an account permits, but not later than six months after the requested change.

D. Distribution events. A participant's deferred compensation account may begin to be distributed in accordance with 2 MCAR § 3.5004 E. ~~and~~, F., and G. ~~the month~~ following the ~~day on which~~ occurrence of one of the following events ~~occurs~~:

1. ~~Termination of~~ separation from service~~,~~;

2. death~~,~~;

3. unforeseeable emergency~~,~~;

4. ~~Delayed~~ distribution date as provided in ~~2 MCAR § 3.5005~~ F.; or

5. attainment of age 70½.

E. Methods of distribution. Distribution of a participant's deferred compensation account shall be made in one of the following ways, with the ~~method~~ date of distribution determined in accordance with ~~2 MCAR § 3.5005~~ F. Elections by a participant as authorized herein shall be made on forms approved by the director.

1. A participant in the supplemental investment account ~~may~~ will have deferred compensation distributed over a period of 60 months, unless at least 30 days prior to the commencement of distribution the participant elects to have distribution made in one of the following methods:

a. In a lump sum.

b. In a lump sum purchase by the director of a fixed or variable annuity contract with one of the companies approved by the board pursuant to Minnesota Statutes, section 352.96, ~~subd.~~ subdivision 2 which contract shall include the availability of the options set forth in ~~2 MCAR § 3.5005 E.~~2.

c. In monthly installments distributed over a period of months specified by the participant not to exceed 240 months, but in no event exceeding the life expectancy of the participant or beneficiary if the beneficiary is the spouse. If the beneficiary is other than the spouse, distribution shall be made over a period not exceeding 180 months from the date of death of the participant.

The monthly installment payment from the supplemental investment account shall be determined by dividing the number of shares held by the months to be paid in accordance with the withdrawal period selected. Should such computation result in a quotient of less than ten ~~(10)~~, then ten ~~(10)~~ shares shall be redeemed and distributed to ~~such~~ the employee or beneficiary each month until the deferred compensation is depleted in its entirety. If the deferred compensation has been invested in shares of more than one investment account, shares will be redeemed in whole units proportionately to the extent possible. Fixed return investment payments shall also include payment of annual interest on the invested balance. If the value of the participant's account is $1,000 or less, distribution shall be made in a lump sum.

2. A participant in the fixed ~~and~~ or variable annuity account ~~may~~ will have deferred compensation distributed in the form of monthly annuity payments unless, prior to commencement of distribution, the participant elects a lump sum distribution. The annuity payments shall be based on one of the following methods, as selected by the participant at least 30 days before distribution commences:

a. The life of the participant.

b. ~~The life of the participant or a period certain, whichever is greater~~ A period certain not to exceed the life expectancy of the participant or the life expectancy of the beneficiary if the beneficiary is the participant's surviving spouse. If the beneficiary is other than the spouse, distribution shall be made over a period not exceeding 180 months from the date of death of the participant.

c. The joint lifetime of the participant and ~~a named beneficiary~~ spouse.

If no election is made, the participant's deferred compensation will be paid on the basis of a five-year period certain annuity.

Notwithstanding any other rule to the contrary, if a fixed ~~and~~ or variable annuity account is equal to or less than $1,000, the account shall be distributed in a lump sum ~~the month~~ within 60 days following ~~a delayed distribution date not exceeding one year from the date the participant was first entitled to begin distributions~~ the close of the taxable year during which the distribution event occurs.

Once payments have commenced on an annuity basis, any future payments to a beneficiary will depend on the terms of

the annuity payments agreed to by the participant and the employer. If a participant dies prior to the end of a period certain, any remaining distributions will be paid to the beneficiary determined under ~~2 MCAR § 3.5005~~ H. If annuity payments have commenced on a joint and last survivor basis, any payments due after the death of the participant will be due only to the other person on which the annuity payments have been based and not any other beneficiary.

If, in fact, an annuity contract is purchased, the owner and named beneficiary shall be the employer. Any rights of participants or beneficiaries are derived solely from this plan.

F. ~~Election of method and time~~ Date of distribution. ~~At any time prior to the date distributions are to commence (except for unforeseeable emergency distributions as provided in 2 MCAR § 3.5005 G.) a participant may elect a delayed distribution date or elect the method by which the deferred compensation account shall be distributed~~ A participant or beneficiary may irrevocably elect, on a form approved by the director at least 30 days prior to the time any amounts become payable, to defer payment of some or all of the amounts to a fixed or determinable future time, subject to the following rules:

1. ~~A participant or beneficiary may elect, by filing a form provided for that purpose, to delay the commencement of distributions until after a specific future date. Such future date shall be referred to as the "delayed distribution date" for purposes of this plan.~~ At any time prior to 30 days following the close of the taxable year in which separation from service occurs, a participant may designate a distribution date which cannot be later than the latest of:

a. sixty days after the close of the taxable year in which the participant attains or would have attained normal retirement age under the plan, or if the participant does not designate a normal retirement age, not later than 60 days after the close of the taxable year in which the participant attains age 70½; or

b. sixty days after the close of the taxable year in which the participant separates from service.

Election of a date of distribution may be made only once and, once made, is irrevocable.

2. If a participant should die prior to the ~~delayed~~ distribution date or date of separation from service, the death will be treated as an event of distribution, and the beneficiary shall have the right to elect the method and time of distribution as if the beneficiary was the participant. If a participant should die after distribution has commenced, distribution will continue under the method selected by the participant under E.

~~2.~~ 3. ~~The distribution date or method of distribution may be changed at any time prior to distribution.~~ Once payment has commenced, the ~~distribution date or~~ method of distribution may not be changed, except ~~to allow a lump sum payment of the remaining balance the month following receipt of such request from the participant~~ in the event of an unforeseeable emergency, subject to the restrictions of the payment option the participant or beneficiary has selected.

~~3.~~ 4. Distribution may not begin prior to ~~termination of~~ separation from service or death except for unforeseeable emergency distributions as provided in ~~2 MCAR § 3.5005~~ G.

~~4.~~ 5. If no distribution date ~~or method of distribution~~ is elected, then ~~a lump sum~~ payment shall ~~be made to the participant the month following his or her 70th birthday or termination of employment, whichever is later. The participant shall be given 30 days notice of the intent to make such lump sum payment~~ commence 60 days after the close of the taxable year in which separation from service occurs.

G. Unforeseeable emergency. A distribution of all or a portion of a participant's deferred compensation account or a change in method of distribution to a participant notwithstanding the fact that distribution has commenced, unless the distribution is in the form of an annuity, shall be permitted in the event the participant is faced with an unforeseeable emergency. Deferrals under the plan shall cease as soon as possible for any participant seeking a distribution because of an unforeseeable emergency.

~~Examples of an unforeseeable emergency may include the following: impending personal bankruptcy; unexpected and unreimbursed major expenses resulting from illness, accident, or disability of the participant or any dependent thereof; major property loss or any other type of unexpected unreimbursed personal expense of a major nature that would not normally be budgetable; and the disability of the participant. Foreseeable personal expenditures normally budgetable, such as a down payment for a home, the purchase of an automobile, college, or other educational expenses, etc., will not constitute an "unforeseeable emergency."~~

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Any participant desiring a distribution by reason of an unforeseeable emergency must demonstrate that the circumstances being experienced were not under the participant's control and constitute a real emergency which is likely to cause the participant great financial hardship. The employer or director acting for the employer, shall have the authority to require such medical or other evidence as he may need to determine the necessity for participant's withdrawal request.

The distribution shall be limited to an amount sufficient only to meet the emergency and shall in no event exceed the amount of his or her deferred compensation account. Any remaining benefits shall be distributed in accordance with ~~2 MCAR § 3.5005~~ D., E., and F.

The allowed distribution shall be payable by a method determined by the employer or the director acing for the employer and commence as soon as possible after notice to the participant of approval.

H. Designation of beneficiary. A participant may designate a beneficiary or beneficiaries to receive payment of the participant's deferred compensation in the event of his or her death. With respect to deferred compensation in the supplemental investment account, only a singular beneficiary may be designated. If the designated beneficiary predeceases the employee ~~or~~ and a new beneficiary has not been named or the designated beneficiary dies before receiving payment, a lump sum payment shall be made to the participant's estate. Such beneficiary designation shall be in writing and must be filed with the director or company approved by the board pursuant to Minnesota Statutes, section 352.96, ~~subd.~~ subdivision 2, as the case may be, prior to the death of the participant. If no designation of beneficiary is filed with the director, the beneficiary shall be the surviving spouse, or if none, a lump sum payment shall be made to the participant's estate.

I. Leave of absence. Any participant who is granted a leave of absence by the employer may continue to be a participant in this plan as long as the leave of absence is approved by the employer. If an approved leave of absence is terminated by the employer or employee without the resumption of the employment relationship, the participant shall be treated as having a ~~termination of~~ separation from service under this plan.

J. Separation from service by independent contractors. An independent contractor is considered separated from service with the employer upon the expiration of the contract (or in the case of more than one contract, all contracts) under which services are performed for the employer, if the expiration constitutes a good faith and complete termination of the contractual relationship. An expiration will not constitute a good faith and complete termination of the contractual relationship if the employer anticipates a renewal of a contractual relationship or the independent contractor becoming an employee. For this purpose, an employer is considered to anticipate the renewal of the contractual relationship with an independent contractor if it intends to again contract for the services provided under the expired contract, and neither the employer nor the independent contractor has eliminated the independent contractor as a possible provider of services under any such new contract. Further, an employer is considered to intend to again contract for the services provided under an expired contract, if the employer's doing so is conditioned only upon the employer incurring a need for the services, or the availability of funds, or both.

No amount shall be paid to the participant before a date at least 12 months after the day on which the contract expires under which services are performed for the employer (or, in the case of more than one contract, all such contracts expire), and no amount payable to the participant on that date shall be paid to the participant if, after the expiration of the contract (or contracts) and before that date, the participant performs services for the employer as an independent contractor or an employee.

ADOPTED RULES

The adoption of a rule becomes effective after the requirements of Minn. Stat. § 14.13-14.28 have been met and five working days after the rule is published in the *State Register*, unless a later date is required by statutes or specified in the rule.

If an adopted rule is identical to its proposed form as previously published, a notice of adoption and a citation to its previous *State Register* publication will be printed.

If an adopted rule differs from its proposed form, language which has been deleted will be printed with strike outs and new language will be underlined, and the rule's previous *State Register* publication will be cited.

A temporary rule becomes effective upon the approval of the Attorney General as specified in Minn. Stat. § 14.33 and upon the approval of the Revisor of Statutes as specified in § 14.36. Notice of approval by the Attorney General will be published as soon as practicable, and the adopted temporary rule will be published in the manner provided for adopted rules under § 14.18.

Board of Assessors

Adopted Amendment of the Rule Regarding License Fees (4 MCAR § 15.001)

The rule proposed and published at *State Register*, Volume 7, Number 43, pages 1545-1546, April 25, 1983 (7 S.R. 1545) is adopted as proposed.

Board of Assessors

Adopted Amendment to Rule Regarding License Period (4 MCAR § 15.005)

The rule proposed and published at *State Register*, Volume 7, Number 43, pages 1546-1547, April 25, 1983 (7 S.R. 1546) is adopted as proposed.

Department of Energy, Planning and Development Energy Division

Adopted Rules Governing Certification and Registration of Solar Collectors to Qualify Renewable Energy Source Expenditures for the Minnesota Individual Income Tax Residential Energy Credit (6 MCAR §§ 2.1501-2.1512)

The rules proposed and published at *State Register*, Volume 6, Number 40, pages 1669-1685, April 5, 1983 (6 S.R. 1669) are adopted with the following modifications:

Rules as Adopted

6 MCAR § 2.1502 Definitions. For purposes of 6 MCAR §§ 2.1501-2.1512, the following definitions apply.

EE. Nonpublic data. "Nonpublic data" means "trade secret information" as that term is defined in Minn. Stat. § ~~15.1673~~ 13.37, subd. 1, clause (b), that is, government data, including a formula, pattern, compilation, program, device, method, technique, or process:

QQ. Solar collector. "Solar collector" means a device designed to absorb incident solar radiation, to convert it to thermal energy, and to transfer the thermal energy to a fluid in contact with it through either forced or natural convection. For purposes of 6 MCAR §§ 2.1501-2.1512, solar collector refers to one specific model of solar collector.

6 MCAR § 2.1503 Applicability of rules.

A. Generally. All solar collectors must be certified or registered according to 6 MCAR §§ 2.1501-2.1512 at the time of sale to be eligible for the credit. If certification is required for a collector but the collector has not been certified, neither

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the collector nor other solar system components are eligible for the credit. The collector certification requirements apply no matter who installs the system, whether homeowner, contractor, solar installer, or dealer. All solar collectors which are exempted, registered, or certified by the Minnesota Department of Energy, Planning and Development are deemed certified for the purposes of the Individual Income Tax Residential Energy Credit Solar Collector Certification, pursuant to Minnesota Statutes, section 290.06, subdivision 14.

B. Exceptions.

4. A manufacturer of a solar collector required to be certified which has had the collector tested or contracted to be tested before the effective date of 6 MCAR §§ 2.1501-2.1512 may use the results of that test in its application for certification instead of the test procedures outlined in 6 MCAR § 2.1507. The tests must have been performed at a department-approved laboratory in accordance with ASHRAE Standard 93-77, 'Methods of Testing to Determine the Thermal Performance of Solar Collectors,' issued by the Standards Committee of the American Society of Heating, Refrigerating, and Air Conditioning Engineers (New York, 1978); ASHRAE Standard ~~95-82~~ 95-1981, 'Method of Testing to Determine Thermal Performance of Solar Domestic Water Heating Systems,' issued by the Standards Committee of the American Society of Heating, Refrigerating, and Air Conditioning Engineers (New York, 1982); or ASHRAE Standard ~~96-80~~ 96-1980, 'Method of Testing the Thermal Performance of Unglazed Flat Plate Liquid Type Solar Collectors,' issued by the Standards Committee of the American Society of Heating, Refrigerating, and Air Conditioning Engineers (New York, 1980).

5. Solar collectors that have been certified by the California Energy Commission, the State of Florida, the Solar Rating and Certification Corporation, the Solar Energy Industry Association, or the ~~American~~ Air-Conditioning and Refrigeration Institute before the expiration of the grace period specified in 6., or by a national organization that meets the criteria in 6 MCAR §§ 2.1501-2.1512, are eligible for automatic certification by the department. However, the manufacturer must file an application with the department in order to receive Minnesota solar collector certification.

6. A blanket exception is granted for a period of ~~six~~ nine months following the effective date of 6 MCAR §§ 2.1501-2.1512 to provide for timely and orderly testing, rating, and certification of solar collectors. All expenditures for solar collectors after the expiration of the grace period must be in accordance with 6 MCAR §§ 2.1501-2.1512 to be eligible for the credit.

7. Any solar collector included in a renewable energy source expenditure after February 3, 1982, and before the effective date of 6 MCAR §§ 2.1501-2.1512 shall be deemed certified by the Department of Energy, Planning and Development for the purposes of Minnesota Statutes 1980, section 290.06, subdivision 14, so long as the expenditure qualifies for the federal renewable energy source residential credit of Section 44C of the Internal Revenue Code of 1954 (26 U.S.C. §§ 44C), as amended through December 31, 1978, and any regulation promulgated pursuant thereto.

6 MCAR § 2.1504 Application fees. Fees for processing an application are:

C. $50 for an application based on previous certification by the Solar Rating and Certification Corporation, Solar Energy Industry Association, ~~American~~ Air-Conditioning and Refrigeration Institute, California Energy Commission, or the State of Florida as authorized by 6 MCAR § 2.1503 B.5.;

6 MCAR § 2.1506 Certification procedure.

E. Custom-built solar collectors.

n. Product warranty, if any;

6 MCAR § 2.1507 Test methods and minimum standards for certifying solar collectors.

B. Scope.

2. The procedures in C.8.-C.10. cannot be followed for devices meeting the following description:

c. Its collection function cannot be separated from the system function, commonly referred to as an integral collector storage (ICS) device.

For these devices, the procedures in C.8.-C.10. must be replaced by the procedures contained in ASHRAE Standard ~~95-82~~ 95-1981, 'Method of Testing to Determine Thermal Performance of Solar Domestic Water Heating Systems,' issued by the Standards Committee of the American Society of Heating, Refrigerating, and Air Conditioning Engineers (New York, 1982), and SRCC Standard 200-82, 'Test Methods and Minimum Standards for Certifying Solar Water Heating Systems,' issued by the Solar Rating and Certification Corporation (Washington D.C., March 1982).

6 MCAR § 2.1508 Evaluation criteria, ratings, and warranties.

F. Warranty. The intent of the warranty is to encourage the use of solar energy and promote the development of a viable solar industry by providing purchasers with effective, well-designed, carefully manufactured solar collectors and by providing

warranty protection for certified solar collectors in accordance with the standards, terms, and conditions specified in the Magnuson-Moss Warranty—Federal Trade Commission Improvement Act, 15 United States Code, Sections 2301-2312 (1976), and the regulations promulgated thereunder as found in 16 Code of Federal Regulations, Subchapter G (1981).

1. The manufacturer of a certified solar collector shall give a full warranty against defects in materials, manufacture, or design of ~~a~~ the solar collector for a period equal to at least one year, which begins on the date of sale. In addition, the manufacturer shall provide a limited warranty on the collector for at least 20 percent of the claimed collector design life, beginning one year after the date of sale.

G. Laboratory approval. The department shall approve all laboratories accredited by the Solar Rating and Certification Corporation for solar collector certification testing. The department shall maintain a list of approved laboratories.

6 MCAR § 2.1512 Solar Collector Certificate. The solar collector certificate issued under 6 MCAR §§ 2.1501-2.1511 must be in the form in Exhibit 6 MCAR § 2.1512-1.

Exhibit 6 MCAR § 2.1512-1
Solar Collector Certificate

The solar collector identified and described in the Solar Collector Label Information below is certified by the Minnesota Department of Energy, Planning and Development as having met the testing, disclosure, and warranty requirements of the State of Minnesota for solar collector certification.

This certificate entitles the manufacturer or its agent to:

1. Publicize this collector as certified by the State of Minnesota and eligible for the Minnesota residential energy tax credit; and

2. ~~Affix the certification label to each production unit of this collector; and~~

~~3.~~ Use the certification symbol and label information in advertising, catalogs, or sales promotion material, provided the symbol clearly refers only to certified collectors.

Minnesota Housing Finance Agency

Adopted Temporary Rules Governing Accessory Apartment Loans

The temporary rules proposed and published at *State Register*, Volume 8, Number 4, pages 109-111, July 25, 1983 (8 S.R. 109) are adopted as proposed.

Minnesota Housing Finance Agency

Adopted Temporary Rules Governing Solar Energy and Energy Conservation Bank Programs

The temporary rules proposed and published at *State Register*, Volume 8, Number 4, pages 111-114, July 25, 1983 (8 S.R. 111) are adopted as proposed.

Department of Natural Resources Waters Division

Adopted Amendments to Rules Governing Permits for Making Changes in the Course, Current, or Cross-Section of Public Waters

The rules proposed and published at *State Register*, Volume 7, Number 40, pages 1393-1429, April 4, 1983 (7 S.R. 1393) are adopted with the following modifications:

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Rules as Adopted

STANDARDS AND CRITERIA FOR GRANTING
PERMITS TO CHANGE THE COURSE, CURRENT,
OR CROSS-SECTION OF PROTECTED WATERS

6 MCAR § 1.5022 Excavation of protected waters.

B. General standards.

1. Scope. Excavation as used in this rule includes any activity which results in the displacement or removal of bottom materials or the widening, deepening, straightening, realigning, or extending of protected waters. It may involve proposals for excavations landward or waterward from the ordinary high water mark.

C. Specific standards. In addition to compliance with the general standards in B. specific requirements shall be met for the following activities:

4. Harbors and boat slips.

e. Excavations for development of inland harbors shall be limited to those waters described in C.4.c. and shall meet the following additional requirements:

(2) An application for a permit shall contain plans, maps, and supporting data ~~including but not limited to~~ regarding proposed excavation site soil borings, ground water levels and characteristics, water quality, topography, drainage, and vegetation which shall substantiate that the proposed project must be reasonable and practical based upon geologic and hydrologic conditions including:

6. Excavations in protected watercourses. Except as noted in B.3., a permit shall be required for any excavation in a protected watercourse and shall be subject to the following specific requirements in addition to the general requirements of B.:

k. Excavations for construction of sediment traps or settling basins to control sedimentation and water quality shall be based on plans approved by the Pollution Control Agency or the local soil and water conservation ~~districts~~ district and shall be consistent with any state and local standards, regulations, and requirements.

n. The straightening or realignment of a watercourse with a total drainage area, at its mouth, greater than five square miles shall only be permitted where the project will not result in increased downstream flooding, erosion, or sedimentation. Where it is proposed to straighten or realign a watercourse with a total drainage area, at its mouth, greater than five square miles, the applicant may be required to submit appropriate hydraulic data. Such data may include~~, but are not limited to~~:

6 MCAR § 1.5023 Structures in protected waters.

B. General standards.

1. Scope. This rule applies to the placement, construction, reconstruction, repair, relocation, abandonment, or removal of any structure placed on or in protected waters.

3. No permit shall be required for the following activities, unless prohibited under 2.:

b. To construct or reconstruct a permanent dock on wood pilings or rock filled cribs on lakes provided:

(6) for a permanent dock on rock filled cribs, the surface area of the lake is equal to or greater than 2,500 acres; and

C. Specific standards. In addition to compliance with the general standards in B., specific requirements shall apply to the following activities:

3. A permit shall be required for the construction or reconstruction of all offshore breakwaters and marinas. These structures shall be permitted provided the following general conditions and the additional listed specific conditions are met:

b. The facility shall be adequate in relation to appropriate engineering factors including but not limited to those listed in 6 MCAR § 1.5022 C.4.e. (2) (f) ~~(m)~~ (n).

c. The plan shall be adequate in relation to ~~appropriate~~ the geologic and hydrologic factors ~~including but not limited to those~~ listed in 6 MCAR § 1.5022 C.4.e.(2)(a)-(e).

6 MCAR § 1.5024 Water level controls.

B. General standards.

4. Permits shall be required for the construction, repair, reconstruction, or abandonment of any water level control structure except as provided in 2. and 3., and shall meet the following general criteria:

f. The construction or reconstruction of water level control structures or changing the level of an existing structure may be permitted to:

(3) manage water quality, including the prevention ~~and/or~~ or control of erosion and sedimentation;

~~5. The commissioner shall require the owner or operator of any water level control structure, reservoir, or waterway obstruction within protected waters, constructed before a permit was required by law, to secure approval from the commissioner of the manner by which the structure is to be operated and maintained whenever the commissioner finds that such operation and maintenance approval is necessary in the public interest after there is either:~~

~~a. verified and supported complaints by the public or governmental agencies that the existing or proposed operation and maintenance is or would be detrimental to public health, safety, and welfare or environmental protection with respect to problems of flooding, instream flows, water quality, fish and wildlife, or violations of land use regulations, requirements, and standards for lands abutting the protected waters involved; or~~

~~b. notification to the commissioner by the owner or operator of the intent to make any of the following changes in the operation or maintenance of the structure:~~

~~(1) proposed new uses or reuse of the structure for any purpose after the use of the structure has been discontinued for at least one year; or~~

~~(2) proposed changes or alterations in the operation of the structure which would affect water levels, flows, or water quality in protected waters.~~

~~6. The owner or operator of any water level control structure, reservoir, or waterway obstruction within protected waters, constructed before a permit was required by law, shall comply with the following provisions when notified by the commissioner that approval is required for operation and maintenance of the structure:~~

~~a. The owner or operator shall submit plans, specifications, and information on the structure including:~~

~~(1) An explanation of the purposes for which the structure is operated or intended to be operated.~~

~~(2) Available data on the past history of use and operation of the structure and any evidence of easements or other rights which exist or would be obtained.~~

~~(3) Engineering details on the structural features and characteristics of the structure which involve the existing or proposed operation of the structure including but not limited to any gates, sluiceways, penstocks, turbines, waterwheels, or other mechanical devices employed or to be employed in the operation of the structure.~~

~~(4) Available information on the hydraulic and hydrologic characteristics of the structure and the area upstream and downstream of the structure which is affected by the structure including any available information on flows, water levels, and water quality.~~

~~(5) Available information on the physical condition of the structure including engineering data on original construction, any reconstruction or repairs and the dates of original construction and subsequent reconstruction or repairs.~~

~~(6) If the structure contains features or is intended to contain features which allow or would allow manipulations of water levels, details shall be provided on the methods, frequency, time, duration of operation, and any existing or proposed operating plans.~~

~~(7) Such other available or attainable information on hydraulic, hydrologic, or geologic characteristics as the commissioner may deem necessary in order to assess the impacts or effects of the structure and its operation.~~

~~b. After receipt of all supporting facts and available information required by 5. and 6.a., the commissioner shall review the existing or proposed operational and maintenance aspects of the structure and shall grant approval of the operation and maintenance provided that:~~

~~(1) The operation and maintenance does not or will not result in destruction or significant impairment of the protected waters with respect to:~~

~~(a) the ecosystem of the protected waters including quantity and quality effects;~~

~~(b) potential threats to life or property due to flooding and overflow of upstream and downstream lands unless allowed by easement or other legal means including acquisition of flooded property;~~

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~~(c) maintenance of adequate water flows and levels for upstream and downstream higher priority users particularly for public domestic water supplies.~~

~~(2) The existing or proposed operation and maintenance is or will be consistent with applicable state and local land use standards, regulations, and requirements including floodplain, shoreland, and wild and scenic rivers management standards and ordinances.~~

~~(3) The existing or proposed operation and maintenance does not or will not result in significant decreased public use of the surface of the protected waters affected by the structure including existing uses for fishing, hunting, or navigation.~~

~~(4) The existing or proposed operation and maintenance will comply, when applicable, with the requirements of 6 MCAR §§ 1.5030-1.5034 relating to dam safety.~~

~~c. If the commissioner determines that the existing or proposed operation and maintenance will be detrimental to public health, safety, and welfare or the ecosystem of the protected waters based on provisions of 6.b., the commissioner shall not approve the manner of operation and maintenance of the structure until the operation and maintenance is modified to meet the provisions.~~

C. Specific standards. In addition to the general standards in B., specific requirements for water level control structures shall be met as follows:

4. Permits for the construction, reconstruction, and abandonment of all other water level control structures shall be issued provided:

c. Adequate assurances shall be made for future maintenance of new water level control structures:

(2) For other water level control structures, title-registration type permits may be issued to the owner or owners of the private property upon which the water level control structure will be located which shall run with the land and require breaching or removal if it ever falls into a state of disrepair or becomes unsafe.

6 MCAR § 1.5025 Bridges and culverts, intakes and outfalls.

B. General standards.

3. No permit shall be required to construct the following types of crossings on protected waters, unless prohibited in 2.:

e. To install an agricultural drain tile outletting into protected waters provided:

(1) the bank is restored to the original cross-section or contour; and

C. Specific standards. In addition to the general standards in B., specific requirements for bridges, culverts, intakes, outfalls, and other crossings of protected waters shall be met as follows:

2. The construction, reconstruction, or relocation of all water intake and sewer outfall structures placed in protected waters shall be permitted provided all of the following criteria are met:

a. Adequate attention is given to methods of screening the structure from view as much as possible from the surface of the protected water through the use of existing vegetation ~~and/or~~ or new plantings.

6 MCAR § 1.5028 General administration.

B. Permit review.

3. Procedure upon decision: The commissioner may grant permits, with or without conditions, or deny them. In all cases, the applicant, the managers of the watershed district, the board of supervisors of the soil and water conservation district, or the mayor of the city may demand a hearing in the manner specified in Minnesota Statutes, section 105.44, subdivision 3, within 30 days after receiving mailed notice outlining the reasons for denying or modifying an application. Any hearing shall be conducted as a contested case hearing before a hearing examiner from the independent Office of Administrative Hearings in accordance with Minnesota Statutes, chapter ~~15~~ 14 and sections 105.44 and 105.45.

SUPREME COURT

Decisions Filed Friday, September 16, 1983

Compiled by Wayne O. Tschimperle, Clerk

C1-83-152, C8-82-164, C1-83-166, C3-83-167, C5-83-168 AFSCME Councils 6, 14, 65 and 96, AFL-CIO, Appellants (C1-83-152) v. Barbara L. Sundquist, Commissioner of Employees Relations, *et al.*, and Minneapolis Police Relief Association, *et al.*, Appellants (C5-83-168); Minnesota Education Association, intervenor, Appellant (C3-83-167); Minnesota Teamsters Public and Law Enforcement Employees Union, Local No. 320, intervenor, Appellant (C1-83-166), St. Paul Police Relief Association, *et al.*, Appellants (C8-83-164); Minnesota Association of Professional Employees, intervenor, Appellant (C1-83-152) and International Union of Operating Engineers, Local 49 and LELS, Inc., Amicus Curiae. Ramsey County.

No contract or contract term, express or implied, existed between public employers and employees that guaranteed fixed levels of employee retirement contributions to the pension funds, nor does the record support appellants' claim to a fixed level of contributions based on a theory of promissory estoppel.

The legislative classification at issue is rationally related to the achievement of a legitimate governmental purpose, and we therefore deny appellants' equal protection challenge. We also deny appellant's uniformity clause challenge on the ground that public employee pension contributions are not a tax within the meaning of the uniformity clause.

Even assuming a property interest has been interfered with, that interference satisfies the demands of due process. The increase in employee contributions is rationally related to a legitimate governmental purpose, and the increase is not a "taking" because it is not a public use of private funds.

Insofar as appellants' unfair labor practice claims concern pension contribution levels, they are without merit because such matters are not permissible subjects of bargaining. To the extent that the act does change terms of employment which are proper subjects of bargaining, the act does not constitute an unfair labor practice because, within the meaning of PELRA, the Legislature is incapable of committing an unfair labor practice.

Affirmed. Amdahl, C.J. Dissenting, Yetka, Scott, Wahl and Kelley, JJ.

C7-83-530 State of Minnesota v. Claude David Feinstein, Appellant. Hennepin County.

Minn. Stat. § 609.346, subd. 1 (1982) mandates the imposition but not the execution of a 3-year minimum term in the case of a second or subsequent sex offender under section 609.342 to 609.345.

Remanded for resentencing. Amdahl, C.J.

C2-83-211, C4-83-212 State of Minnesota, Appellant (C2-83-211) v. Peter Lee Heywood and State of Minnesota, Appellant (C4-83-212) v. Ralph Todd Hubbard. Ramsey County.

Trial court was justified in departing dispositionally, by staying presumptively executed minimum prison term, where the court concluded that defendants were particularly amendable to probation.

Affirmed. Amdahl, C.J.

C0-83-529 State of Minnesota v. Carl R. McGee, Appellant. Hennepin County.

Trial court properly computed defendant's criminal history score and properly departed from presumptive sentence duration.

Affirmed. Amdahl, C.J.

C9-82-406 State of Minnesota v. Lucious F. Simmons, Appellant. Hennepin County.

Evidence identifying defendant as participant in aggravated robbery was sufficient. Affirmed. Peterson, J.

C7-82-940 State of Minnesota v. Michael S. Koziol, Appellant. Hennepin County.

Police in true hot pursuit of fleeing suspect do not need warrant before entering dwelling which fleeing suspect has entered.

Affirmed. Peterson, J.

CX-82-852, C5-82-922 State of Minnesota v. Larry Trott, Appellant. Kandiyohi County.

The record establishes an adequate factual basis to sustain a plea of guilty to assault in the second degree. Minn. Stat. § 609.222 (1982).

When defendant was given no promise of probation by his attorney, he is not entitled to withdraw his plea.

Where defendant is advised of the maximum statutory term of imprisonment, and when the sentence imposed is less than the maximum term, under the circumstances of this case, a defendant is not entitled to withdraw his plea of guilty.

Affirmed. Kelley, J. Dissenting, Amdahl, C.J. and Scott, J.

TAX COURT

Pursuant to Minn. Stat. § 271.06, subd. 1, an appeal to the tax court may be taken from any official order of the Commissioner of Revenue regarding any tax, fee or assessment, or any matter concerning the tax laws listed in § 271.01, subd. 5, by an interested or affected person, by any political subdivision of the state, by the Attorney General in behalf of the state, or by any resident taxpayer of the state in behalf of the state in case the Attorney General, upon request, shall refuse to appeal. Decisions of the tax court are printed in the *State Register*, except in the case of appeals dealing with property valuation, assessment, or taxation for property tax purposes.

State of Minnesota
County of Lyon

Tax Court
Regular Division

Vernon and Dora Prairie,

Appellants,

v.

The Commissioner of Revenue,

Appellee.

FINDINGS OF FACT, CONCLUSIONS OF LAW, ORDER FOR JUDGMENT, AND MEMORANDUM

Docket No. 3830
Order dated September 16, 1983

This is an appeal from an Order of the Commissioner of Revenue dated April 15, 1983, assessing income taxes to Appellants for calendar year 1977.

The matter came on for trial at the Lyon County Courthouse in Marshall, Minnesota, on August 15, 1983, at 2:00 p.m. before the Honorable John Knapp, Chief Judge of the Minnesota Tax Court.

Vernon Prairie, one of the Appellants, appeared pro se, and Amy Eisenstadt, Special Assistant Attorney General, appeared as counsel for the Respondent.

At issue herein is the statute of limitations where the taxpayer fails to report a change or correction or renegotiation made by the Commissioner of Internal Revenue as required by Minnesota Statutes.

Syllabus

The Minnesota income tax assessment for 1977 is based upon the Appellants' federal adjusted gross income as determined by the IRS and not contested by Appellants. The adjusted gross income as so determined is conclusive for Minnesota income tax purposes.

The assessments were timely made within the six-year period.

From the evidence adduced at the trial and from the files and records herein and being fully advised in the premises, the Court now makes the following:

Findings of Fact

1. Appellants timely filed a Minnesota Individual Income Tax Return for the tax year 1977.

2. Appellants filed a Federal Income Tax Return for the tax year 1977.

3. In filing their 1977 returns, Appellants sent blank returns that they had signed and a list of their income and expenses for that year. They then expected the Internal Revenue Service (IRS) and the Minnesota Department of Revenue to determine the amount of taxes owed.

4. Appellants' 1977 Federal Income Tax Return was audited by the IRS and adjustments made to the return which resulted in an increase in their federal adjusted gross income. A report of Income Tax Examination Changes was prepared May 29, 1979.

5. Appellants did not appeal the assessment made by the IRS and have paid the 1977 federal assessment in full.

6. Appellants did not report the changes made by the IRS to the Minnesota Department of Revenue or file an amended 1977 Minnesota Income Tax Return.

7. Based on the information obtained from the IRS, the Minnesota Department of Revenue performed a similar audit of Appellants' 1977 Minnesota Individual Income Tax Return and made adjustments to their Minnesota taxable income which reflected the increase in Appellants' federal adjusted gross income as determined by the IRS. A deduction was allowed for income allocable to Appellants' farm located in Illinois. An Order assessing Minnesota income taxes in the amount of $5,270.00 tax and $2,777.65 interest was sent to Appellants April 15, 1983.

8. Appellants presented no evidence to indicate that either the federal or state assessments were invalid or incorrect for the tax year 1977.

Conclusions of Law

1. The federal adjusted gross income as determined by the IRS and consented to by the Appellants is conclusive for Minnesota income tax purposes.

2. The assessment of Minnesota income tax was timely.

LET JUDGMENT BE ENTERED ACCORDINGLY. A STAY OF 15 DAYS IS HEREBY ORDERED.

Dated: September 16, 1983

By the Court,
John Knapp, Chief Judge
Minnesota Tax Court

Memorandum

The facts in this case are governed by Minn. Stat. § 290.01, subd. 20 (1982), which provides in pertinent part:

The term "gross income" in its application to individuals, estates and trusts shall mean the adjusted gross income as defined in the Internal Revenue Code of 1954 . . .

In *Wahlberg v. Commissioner of Taxation*, Dkt. No. 1503 (May 13, 1970), this Court considered the effect of a federal adjustment upon Minnesota income stating:

. . . our legislature has clearly defined that Federal adjusted gross income is Minnesota gross income. The fact that Appellant may have disagreed with the Federal authorities at some stage, but consequently for reasons of his own consented to the adjustment to Federal income, is conclusive as to Minnesota income. There is no provision under our statutes which would allow this Court to review on a de novo proceedings the basis for objections the Taxpayer may have had at one time to the Federal adjustment to his income. Having consented to the increase of his Federal adjusted gross income, he is bound by the language of the statute in this case and this Court has no authority to go beyond the legislative definition of Minnesota gross income. Any change would have to be made by the legislature and not by this Court.

Appellants did not appeal the IRS determination of their federal adjusted gross income. At the hearing, they did not argue that this amount was incorrect. Therefore, the decision in *Wahlberg* is controlling in this case.

Minn. Stat. § 290.56, subd. 3 (1982) states that:

If a taxpayer shall fail to report a change or correction or renegotiation by the Commissioner of Internal Revenue or other officer of the United States, or other competent authority or shall fail to file a copy of an amended return within 90 days as required by subdivision 2, the commissioner may, within six years thereafter, recompute the tax including a refundment thereof, based upon such information as may be available to him, notwithstanding any period of limitations to the contrary.

The changes were made to Appellants' 1977 Federal Income Tax Return in May, 1979. Appellants should have reported those changes to the Minnesota Department of Revenue by August 29, 1979, but did not do so. Appellee recomputed Appellants' return and issued his Order assessing tax due on April 15, 1983. This is well within the six-year time limit proscribed by statute.

J.K.

State of Minnesota
County of Wilkin

Tax Court
Regular Division

David E. Miller,

Appellant,

vs.

The Commissioner of Revenue,

Appellee.

Docket No. 3665

FINDINGS OF FACT, CONCLUSIONS OF LAW, ORDER FOR JUDGMENT AND MEMORANDUM

Order dated: Sept. 13, 1983

This is an appeal from an Order of the Commissioner of Revenue dated August 6, 1982, assessing a use tax against the Appellant, who is a resident of North Dakota, for the use of farm machinery on lands owned or rented by the Appellant in Minnesota.

The matter came on for trial at the Wilkin County Courthouse at Breckenridge, Minnesota, on December 14, 1982, before the Honorable John Knapp, Chief Judge of the Minnesota Tax Court.

R. E. T. Smith, Esquire, of the firm of Smith and Strege of Wahpeton, North Dakota, appeared as counsel for the Appellant; and C. H. Luther, Deputy Attorney General, appeared as counsel for Appellee.

At issue is the amount of use tax due on items of tangible personal property purchased by the Appellant in North Dakota for use in Minnesota on which a sales tax was paid in North Dakota at a lower rate than that payable in Minnesota.

From the evidence adduced at trial and from the files and records herein the Court makes the following:

Findings of Fact

1. Appellant is a resident of the State of North Dakota and maintains a farm together with a grain elevator in Richland County, North Dakota. He owns 3,628 acres in North Dakota and in 1977 owned 7,656.5 acres in Minnesota and during each of calendar years 1978, 1979 and 1980, he owned 7,736.5 acres in Minnesota. It is conceded by the Appellee that this amounts to approximately 68% during the years here in issue.

2. During calendar years 1977, 1978, 1979 and 1980, the Appellant purchased farm machinery totaling $765,891.58 in the State of North Dakota on which he paid a 2% sales tax as required by North Dakota law. Appellant purchased the machinery for use on both his Minnesota and North Dakota farm land. Appellant's use of farm machinery in Minnesota was in direct proportion to the lands farmed in Minnesota, which is conceded to be 68%.

3. Appellant is not engaged in Interstate Commerce as contended by him.

4. By his Order dated August 6, 1982, the Commissioner of Revenue assessed a use tax on the retail purchase price of all of said farm machinery. Credit was given pursuant to Minn. Stat. § 297A.24 for the 2% sales tax paid to North Dakota.

5. Seven of the items of farm machinery purchased by the Appellant during the years in issue were never brought to the State of Minnesota and never used in Minnesota. The total cost of those items was $64,913.50 on which a use tax in the amount of $1,416.27 was assessed.

Conclusions of Law

1. No use tax can be assessed on items of personal property purchased by the Appellant in North Dakota which were never physically brought to the State of Minnesota so the Appellant is entitled to a deduction of $1,416.27 for those items.

2. The amount of use tax shall be recomputed as follows:

a. Assessing a use tax of 68% of 4% of the purchase price of all items of farm machinery which were used within the State of Minnesota (no use tax shall be assessed on those items which were never physically present in the State of Minnesota).

b. A credit of 68% of the tax paid to the State of North Dakota on those items which were used within the State of Minnesota shall be subtracted.

c. Interest at the statutory rate shall be added to the date of payment.

d. No penalty shall be assessed.

LET JUDGMENT BE ENTERED ACCORDINGLY. A STAY OF 15 DAYS IS HEREBY ORDERED.

Dated: September 13, 1983

BY THE COURT
John Knapp, Chief Judge
Minnesota Tax Court

Memorandum

The Appellant claims that he is engaged in Interstate Commerce because he is shipping wheat to Minneapolis, corn to Canada, and sunflowers to other jurisdictions through Cargill, Inc. as intermediary. All of the goods shipped in Interstate Commerce are farm produce. Appellant claims that a tax on the machinery used to prepare the goods for Interstate Commerce is an unconstitutional burden on the flow of commerce and is thus prohibited. We cannot agree with the contention. The imposition of a use tax on the Appellant is no greater an impediment to Interstate Commerce than is the imposition of a sales tax on machinery purchased by a farmer who resides in the State of Minnesota and also produces grain which is ultimately shipped in Interstate Commerce.

The fact that the tax is a tax imposed by the State of Minnesota and is called a "use tax" implies that it is to be imposed upon a use in Minnesota of personal property purchased elsewhere. It is not a tax on the use in North Dakota so no use tax can be imposed on those items of machinery that were never used in Minnesota.

Because the farm machinery was used both in Minnesota and North Dakota, it seems consistent with the basic principles of our sales and use tax laws and the economic realties of the transactions in this case to make a pro rata assessment of the use tax as was done by the Minnesota Supreme Court in *Commissioner of Revenue v. Safeco Products Co.*, 266 N.W. 2d 875. In that case the Court held that the sales and use tax exemption for purchases of property ultimately destined for out-of-state use was

available for the same proportion of component costs not otherwise included in the finished-product charge, as the finished product itself. Consistent with that decision, it seems appropriate that the Appellant should pay 68% of the use tax for those items that ultimately reached Minnesota and were used in Minnesota and should be given credit for 68% of the tax paid to the State of North Dakota on those items.

J.K.

State of Minnesota

Tax Court

AVM, Incorporated,

Appellant,

v.

The Commissioner of Revenue.

Appellee.

FINDINGS OF FACT, CONCLUSIONS OF LAW, ORDER FOR JUDGMENT AND MEMORANDUM

Order Dated: Sept. 13, 1983.

Docket No. 3189

This is an appeal from an Order of the Commissioner of Revenue dated May 23, 1980 assessing additional sales and use taxes against the Appellant for the taxable period from April 1, 1973 through December 31, 1978.

The matter came on for trial before the Honorable John Knapp, Chief Judge of the Minnesota Tax Court, in the courtroom on the fifth floor of the Space Center Building at 444 Lafayette Road, St. Paul, Minnesota, on May 5, 1982, at 10 A.M.

James P. Larkin of the firm of Larkin, Hoffman, Daly and Lindgren, appeared for the Appellant.

Thomas K. Overton, Special Assistant Attorney General, appeared for Appellee.

Syllabus

Payment for the processing of raw materials into bituminous mix constitutes a sale within the meaning of the sales tax statute in spite of the fact that the corporation which did the processing never had title to the raw material before, during or after the processing.

A separate corporate existence cannot be disregarded to permit the corporation to avoid the tax consequences of operating a business in that form.

From the files and records herein and from the evidence adduced at the trial, the Court now makes the following:

Findings of Fact

1. This is an appeal from an Order of the Commissioner of Revenue dated May 23, 1980, assessing additional sales and use tax against Appellant for the period of April 1, 1973 through December 31, 1978, in the amount of $58,586.96 plus a penalty of $5,858.78 and interest in the amount of $21,559.05 for a total of $86,004.72.

2. Aggreco Gravel is a partnership between Michael McNamara and Edward Vivant. It owns the tract of land from which the virgin gravel is extracted and on which the plant owned by AVM was located.

3. McNamara-Vivant Contracting Company, hereinafter referred to as McNamara-Vivant, is a Minnesota corporation also owned by Michael McNamara and Edward Vivant in equal shares. It is engaged in the business of bituminous surfacing of roads, driveways, parking lots, etc. As a part of its operation, it excavates gravel in its virgin state, then crushes, screens and sizes it for its own use in construction, and for sale to contractors after it has been processed into bituminous hot mix for bituminous cement roads, driveways, parking lots, etc.

4. Alexander Construction Company, Inc., hereinafter referred to as Alexander, is also a Minnesota corporation 100% owned by Craig Alexander. It is also engaged in the business of bituminous surfacing in competition with McNamara-Vivant, doing the same type of construction as McNamara-Vivant.

5. Prior to 1973, each corporation operated a separate hot mix plant in the same gravel pit, side by side. Aggreco Gravel sold virgin gravel to McNamara-Vivant and Alexander. Because the plants were small, the operations were uneconomical. Prior to 1973, Craig Alexander and Michael McNamara had some discussions about reducing costs, and in 1973 the two corporations decided to buy a larger plant jointly to reduce costs. The accountant suggested that for the purpose of allocating costs between the corporations, a new corporation be formed which would own the hot mix plant, pay the costs of operating the same, and then invoice each of the corporations on an established cost per ton. In order to allocate costs equally between the two corporations, it was decided that Craig Alexander would furnish half of the capital and Michael McNamara and Edward Vivant

would each furnish 25% of the capital and each of them would then receive a corresponding amount of shares in the new corporation. As a result of those discussions, AVM was incorporated for the sole purpose of operating the hot mix plant and allocating costs in connection with the operation of the hot mix plant.

6. In the plant virgin gravel is crushed in order to attain a uniform size, heated to extract the moisture and mixed with asphalt cement, while it is still hot to produce a bituminous mix. While the mix is still hot, it is laid in place, and after it cools, it forms a blacktop surface for roads, driveways, parking lots, sidewalks, etc.

7. Whenever Alexander or McNamara-Vivant needed hot mix material, that company would purchase gravel from Aggreco Gravel on which a sales tax was paid and also purchase asphalt cement from an outside source on which a sales tax was paid, then deliver both ingredients to AVM for processing. After the material was mixed and heated that company would take the processed material from the plant and use it in its roadbuilding business or sell it to its customers.

8. During all of the years here in issue, AVM sold no bituminous mix to anyone. Most of the mix was consumed by Alexander and McNamara-Vivant on their own construction jobs, however, each of said corporations sold some mix to other people on which a sales tax was paid.

9. After deducting the number of tons of bituminous mix which were subsequently sold at retail by McNamara-Vivant and Alexander and on which a tax was paid, the Commissioner assessed a 4% sales tax on the remaining tons of bituminous mix which were processed in the hot mix plant by AVM for McNamara-Vivant and Alexander during the period here in question based on the rates per ton paid by the two corporations to AVM for the processing.

10. Subsequent to the issuance of the Order dated May 23, 1980, the Commissioner determined that the diesel fuel used by AVM to wet the truck beds was used and consumed in industrial production and consequently entered an Order reducing the sales tax assessment by $443.08 and reducing the penalty by $44.28 and reducing the interest by $167.98 for a total reduction of $655.34.

11. AVM never purchased any materials for use in producing bituminous mix. It never purchased any of the gravel or aggregate or asphalt cement, but it did pay the electric bill and the gas bill for heating the products, and it paid a sales tax on those purchases.

12. On some occasions Alexander would purchase gravel or aggregate from Aggreco Gravel and sell it directly to customers without being processed into hot mix in the plant, however, the material was still weighed at the plant on a scale owned by McNamara-Vivant Contracting and the charges for weighing the material were billed to AVM and later credited by AVM to McNamara-Vivant Contracting.

13. AVM had only one employee who operated the plant and occasionally would operate the scale. The other labor was furnished by the respective corporations, namely Alexander and McNamara-Vivant.

14. The gravel was brought to the plant by means of a 966 caterpillar loader owned by McNamara-Vivant and operated by an employee of McNamara-Vivant. He loaded the gravel owned either by McNamara-Vivant or Alexander into a hopper at the end of a conveyor leading to the processing facility owned by AVM. The same person also loaded unprocessed aggregate into McNamara-Vivant and Alexander trucks for use in building roadbeds. His wages, all employment taxes and all employee benefits were paid by McNamara-Vivant but were later billed to AVM along with an hourly charge for the use of the loader and charges for bookkeeping and overhead. McNamara-Vivant was given credit for those charges at the end of the year. Part of the charges that were allocated through AVM were charges for functions with respect to gravel or aggregate that was not compounded into bituminous mix but was simply used by McNamara-Vivant or Alexander to lay a base for the blacktop surface.

15. The operator had enough time to feed the plant when he was not engaged in loading trucks for the two corporations. This procedure proved to be advantageous to all parties because the operator was kept busy at all times.

16. During the years here in issue, employees of Alexander did perform some services for AVM and Alexander was paid for those services by AVM on an annual basis.

17. During the years in issue, AVM would bill Alexander and McNamara-Vivant an amount per ton determined by a schedule adopted at a meeting of stockholders of AVM on June 28, 1971 and Alexander and McNamara-Vivant would bill AVM for those items which either of them had provided to AVM. They were then given credit for those items on their respective accounts, and a cash settlement was made at the end of the year. During the year cash advances were made to AVM by both McNamara-Vivant and Alexander in order to meet current bills.

Most of the charges between McNamara-Vivant and AVM were merely bookkeeping entries.

18. The charge for the use of the 966 Cat and operator varied drastically from year to year depending upon the number of tons extracted during the year. The variance in costs was the result of allocating the costs between the two corporations. When the number of tons extracted was low, the overhead increased the hourly charge. Mr. Sands, the accountant, testified as follows:

"If you have a high production year, you could produce many more tons in the same number of hours."

19. During all of the years here in issue AVM paid no dividends, paid no salaries other than that of the plant operator, paid no directors fees, and was not operated for a profit.

20. During the first two years of operation AVM showed a minimal profit and retained earnings but Alexander's demand for bituminous mix dropped significantly over the period of years and it became apparent that the only equitable way to allocate the fixed costs of the plant was to have each of the corporations share equally in the fixed costs, so at the end of calendar year 1977 and also at the end of calendar year 1978 each company was assessed $60,000 for the fixed costs of operation of the plant. By the end of 1978 it became very expensive for Alexander to continue to operate on that basis so Mr. Alexander sold his shares in AVM to AVM and those shares were retired. AVM and Mr. Norman Vivant were then immediately merged, and AVM went out of existence.

21. AVM did not pay a sales tax on the natural gas used for the purpose of heating at the hot mix plant. This was an honest error resulting from the fact that prior to 1973 the gas was exempt.

Conclusions of Law

1. AVM received possession of the raw materials from the owners, processed it, and returned it to the owners. In view of the plain statutory language, that constitutes a "sale" taxable under the statute.

2. The Order of the Commissioner of Revenue assessing additional sales tax and interest as amended should be affirmed but the penalty shall be abated.

LET JUDGMENT BE ENTERED ACCORDINGLY. A STAY OF 15 DAYS IS HEREBY ORDERED.

Dated: Sept. 13, 1983.

BY THE COURT
John Knapp, Chief Judge

Memorandum

In the instant case, AVM processed aggregate and oil into asphalt paving material for only McNamara-Vivant and Alexander. The Appellant contends that AVM provided only services to Alexander and McNamara-Vivant.

The Appellant contends that we should disregard the corporate existence of AVM and view it as a vertical integration with Alexander and McNamara-Vivant. We cannot agree with that contention. Courts are reluctant to disregard the separate legal entities of the parent corporation and the subsidiary merely to grant tax relief at the expense of the state. In *Milwaukee Motor Transportation Company v. Commissioner of Taxation*, 292 Minn. 66, 193 N.W. 2d 605, the Minnesota Supreme Court said:

"The general rule is that courts are reluctant to disregard the separate legal entities of the parent corporation and the subsidiary corporation merely to grant tax relief at the expense of the state where the subsidiary is incorporated or acquired for the purpose of advantageously carrying on some phase of the parent corporation's activities and business. If a corporation elects to treat itself as an independent business for some purpose, it should not be permitted to disavow that identity merely to avoid the resultant tax consequences."

In this case, it is indisputable that AVM was operated and recognized as a separate corporate entity for its entire seven year existence. AVM owned its asphalt plant, kept separate books, had separate bank accounts, obtained its own loans, obtained its own insurance, and McNamara-Vivant and Alexander provided services to AVM and also purchased mixing services from AVM. All the bills between the companies were paid or credited by accounting entries and the income and expenses were reported on separate income tax returns for each company.

The decision of the Minnesota Supreme Court in *Pickands Mather and Co. v. Commissioner of Revenue*, 334 N.W. 2nd 155, has cast some doubt in this Court's mind as to whether or not the so-called sales on which the tax was imposed by the Commissioner should really be classified as sales, because AVM could be looked upon as a conduit by which the parties to a joint venture did produce a bituminous mix at cost. In *Pickands Mather* the Minnesota Supreme Court disregarded the separate corporate entity of Erie Mining Company in determining that there was no sale. The Court said:

". . . Here, Erie has not sold its taconite pellets; it only transfers the pellets to its out-of-state shareholders in exchange for payment to Erie of its costs of producing the pellets. To characterize this transaction as a sale elevates form over substance. . . ."

The facts in *Pickands Mather*, however, must be distinguished because in that case we had no specific statute defining a "sale" for tax purposes as we have in the instant case. Here the statute clearly says that the processing of tangible personal property for a consideration for consumers who furnish the materials is to be defined as a "sale" for tax purposes.

In order to determine that a sales tax is due, it is necessary to find that there was a sale. In common parlance a "sale" would

necessarily indicate a transfer of title from one person to another, but in view of the language of the statute and the interpretation thereof in the *Emil Olson, Inc. v. Commissioner of Revenue*, 293 N.W. 2d 831, it is not necessary that there be a transfer of title in order to have a taxable sale. Minn. Statutes § 297A.01, subd. 3, provides as follows:

Subd. 3 A "sale" and a "purchase" includes, but is not limited to, each of the following transactions:

(b) The production, fabrication, printing or processing of tangible personal property for a consideration for consumers who furnish either directly or indirectly the materials used in the production, fabrication, printing or processing;

Like in the instant case, Olson argued that it rendered a service to contractors which did not qualify as a sale within the scope of the statute. The Court did not agree. It held that even though Olson never had title to the gravel before, during or after the processing, the transformation of the virgin material into a commercially usable state amounted to an alteration as contemplated by the statute and was, therefore, a sale within the definition of the statute.

In the Olson case the Minnesota Supreme Court held that the modification of sand and gravel from virgin rock into bituminous material constituted processing of tangible personal property within the meaning of the sales tax statute and held that such processing was a "sale" within the meaning of the statute imposing a sales tax. We find it impossible to make a distinction between the facts in the instant case and those in *Emil Olson*.

In view of the fact that the Appellant honestly misinterpreted the statute, we have waived the penalty.

C.A.J.

STATE CONTRACTS

Pursuant to the provisions of Minn. Stat. § 16.098, subd. 3, an agency must make reasonable effort to publicize the availability of any consultant services contract or professional and technical services contract which has an estimated cost of over $2,000.

Department of Administration procedures require that notice of any consultant services contract or professional and technical services contract which has an estimated cost of over $10,000 be printed in the *State Register*. These procedures also require that the following information be included in the notice: name of contact person, agency name and address, description of project and tasks, cost estimate, and final submission date of completed contract proposal.

Department of Public Welfare
Health Care Programs Division

Notice of Request for Proposals to Develop Federal Waiver Submittal to Effect "Swing Bed" Availability on Statewide Basis

The Minnesota Department of Public Welfare is seeking proposals for the development of a request for a waiver of Federal Regulations to enable the Department to implement the "swing bed" long term care concept statewide. The waiver proposal must be submitted to the Federal agency by 11-30-83.

Estimated cost: $5,000

Submission deadline: October 10, 1983

To obtain a copy of the formal Request for Proposal document, contact:

Bob Meyer, Manager
New Initiatives Program
Health Care Programs Division
Minnesota Department of Public Welfare
444 Lafayette Road
St. Paul MN 55101

Phone: (612) 297-2670

Department of Public Welfare
Support Services Bureau

Request for Proposal for Services as Part of a Rulemaking Project

Notice is hereby given that the Support Services Bureau, Department of Public Welfare, is requesting proposals for services using research, writing and group process skills as part of a rulemaking demonstration project. This project is designed to gain approval of amendments to selected Support Service Bureau rules and to test the effectiveness of utilizing specialized skills on a centralized basis in the development and approval of rules.

The estimated amount of the contract is not to exceed $22,000.

The guidelines to be used in the preparation of a proposal and a detailed description of the project are available from the Manuals Section, Support Services Bureau, Department of Public Welfare. Deadline for receipt of proposals is 4:30 p.m., Monday, October 17, 1983. To obtain a copy of the detailed proposal, write or call:

Robert Hamper
Department of Public Welfare
Manuals Section
4th Floor, Centennial Bldg.
St. Paul, Minnesota 55155
(612) 296-2794

Department of Public Welfare
Health Care Programs Division

Notice of Availability of Health Care Consultation Contract

The Department of Public Welfare intends to issue a consultant contract for the purpose of providing professional advice and recommendations in the administration of the Medical Assistance and General Assistance Medical Care programs. The contract for professional advice and recommendations in the administration of the Health Care programs will be issued to a Licensed Consulting Psychologist. The contract will be awarded to the candidate based on his/her experience, education, achievements, professional standing.

The Department of Public Welfare shall make the final selection and issue a contract of varying amount of time and money for the period of November 1, 1983 through June 30, 1984 with an option for a one year renewal to June 30, 1985.

Proposals and inquiries should be directed to:

Thomas L. JoliCoeur, Supervisor
Health Care Programs Division
Professional Services Section
Space Center
444 Lafayette Road
St. Paul, MN 55101
(612) 296-8822

Department of Public Welfare
Income Maintenance Bureau

Notice of Request for Proposals to Develop a Case-Mix Reimbursement Formula

The Department of Public Welfare is seeking proposals for researching and developing a nursing home reimbursement formula based on the case-mix of residents receiving care in the facility. Chapter 199 of the Minnesota Session Laws of 1983 directs the Minnesota Department of Public Welfare and the Interagency Board on Quality Assurance to develop and implement a new reimbursement system by July 1, 1985.

The purpose of the project is to develop a nursing home reimbursement formula based on a case-mix concept which addresses at a minimum the following factors:

1. The ease with which the system can be administered and monitored and the level of resources needed to reliably develop and update the groupings.

2. The incentives the system creates for the delivery of an appropriate array of resident services.

3. The availability of existing nursing home data sets and the practicality of collecting additional information.

4. The availability of different options and instruments with attention to rules valid for assessing client characteristics, service need and their compatibility with other assessment projects in the state.

5. The appropriateness of introducing facility characteristics such as geographic location and size into the formula.

6. The clarity of the groupings and the ease with which the long term care industry can recognize them.

7. The probable legal issues and possible responses that will arise in developing a new reimbursement system.

8. The incentive for rehabilitation of residents and sustained high quality resident care.

The anticipated results are analyses of alternative and comparison of different reimbursement methods using a case mix formula, recommendation of a particular approach and development of an implementation strategy.

The board has estimated that the cost of this project should not exceed $250,000 for proposed services and expenses.

Interested parties may obtain the Interagency Board's Request for Proposal document by calling or writing:

Pamela Parker
Interagency Board on Quality Assurance
Minnesota Department of Public Welfare
Space Center Building
444 Lafayette Road
St. Paul, Minnesota 55101
(612) 297-3209
(612) 296-2722

The deadline for submitting formal proposals to the Interagency Board is October 31, 1983 at 4:30 p.m. Formal proposals must be submitted to Pamela Parker at the above address.

OFFICIAL NOTICES

Pursuant to the provisions of Minn. Stat. § 15.0412, subd. 6, an agency, in preparing proposed rules, may seek information or opinion from sources outside the agency. Notices of intent to solicit outside opinion must be published in the *State Register* and all interested persons afforded the opportunity to submit data or views on the subject, either orally or in writing.

The *State Register* also publishes other official notices of state agencies, notices of meetings, and matters of public interest.

Department of Corrections

Notice of Intent to Solicit Outside Opinion Regarding Proposed Rules Governing the Operation of the Office of Adult Release

Notice is hereby given that the Department of Corrections is seeking information or opinions from sources outside the agency in preparing to promulgate rules governing the Operation of the Office of Adult Release. The promulgation of these rules is authorized by Minnesota Statutes, 1983, chapter 274.

The Minnesota Department of Corrections requests information and comments concerning the subject matter of these rules. Interested or affected persons or groups may submit statements of information or comments orally or in writing. Written statements should be addressed to:

John McLagan
430 Metro Square Building
7th & Robert Streets
St. Paul, Minnesota 55101

Oral statements will be received during regular business hours over the telephone at (612) 296-1312 and in person at the above address.

All statements of information and comment shall be accepted until October 14, 1983. Any written material received by the Department of Corrections shall become part of the record in the event that the rules are promulgated.

District Memorial Hospital

Public Hearing

The Metropolitan Health Board will hold a Certificate of Need/1122 Public Hearing on October 5, 1983 at 7 p.m. in the main conference room at District Memorial Hospital, 246-11th Av. SE., Forest Lake, Mn. for the purpose of receiving written and oral comments on a proposal from District Memorial Hospital to change its ambulance license from Basic Life Support to Advanced Life Support, as required by the Minnesota Life Support Transportation Licensing Law of 1979. No capital expenditure is involved. This ambulance service serves primary Linwood and Columbus Townships and Lino Lakes in Anoka County, Forest Lake, Hugo and Scandia-Marine in Washington County and a portion of Chisago County. For further information, contact the Metropolitan Health Board at the above address or telephone 291-6352.

LaVonne E. Barac, Chairperson
Metropolitan Health Planning Board

Department of Finance

Notice of Maximum Interest Rate for Municipal Obligations

Pursuant to Laws of Minnesota 1982, Chapter 523, Commissioner of Finance, Gordon M. Donhowe, announced today that the maximum interest rate for municipal obligations in the month of October will be eleven (11) percent per annum. Obligations which are payable wholly or in part from the proceeds of special assessments or which are not secured by general obligations of the municipality may bear an interest rate of up to twelve (12) percent per annum.

Metropolitan Council

Revised Review Schedule

Metropolitan Development Framework: Interim Economic Policies

Four years ago, the Metropolitan Council began a process to build a better understanding of the regional economy and to examine how the council's decisions impact the business community. An economic Technical Advisory Committee (ETAC) made up of business, labor and government representatives assisted in the process and suggested further research. The council has followed up on that research, and the goals and policies recommended in the Interim Economic Policies discussion paper are based on the concerns raised by ETAC and the staff research.

The goals and policies discussed in the paper will be adopted on an interim basis in early 1984 and will be incorporated into a revised Metropolitan Development Framework Guide chapter in late 1984.

The basic premise behind the recommended goals and policies is that economic development and business concerns need to be more specifically considered in the council's decisions. The paper contains policies related to investments in the regional systems, regional coordination of economic development, financing of economic development and increasing access to employment opportunities.

The following is a schedule for reviewing and adopting the interim economic policies. The schedule has been revised from one that was published in July, 1983.

Sept. 19 (Mon.)	Special Committee on Economic Development reviews public meeting comments and discusses policy revisions.

Sept. 26 (Mon.)	Special Committee on Economic Development reviews public meeting comments and discusses policy revisions.
Oct. 3 (Mon.)	Special Committee on Economic Development reviews public meeting comments and discusses policy revisions.
Oct. 10 (Mon.)	Committee approves public hearing draft.
Oct. 13 (Thurs.)	Council sets public hearing date.
Nov. 16 (Wed.)	Public hearing held.
Dec. 1 (Fri.)	Public hearing record closed.
Dec. 19 (Mon.)	Hearing record and final document available.
Jan. 16 (Mon.)	Committee reviews and makes recommendation.
Jan. 19 (Thurs.)	Council action.

Minnesota Housing Finance Agency
Home Improvement Division

Notice of Fund Availability for Single-Family Passive Solar Homes

The Minnesota Housing Finance Agency hereby announces that it is accepting applications from individuals for subsidies to be used to reduce the cost of newly constructed single-family homes that include passive solar space heating systems. Assistance will be in the form of a principal reduction of the permanent financing, in amounts up to a maximum of $5,000.

To be eligible, the applicant must intend to own and occupy the home which is subsidized.

Applications will be accepted until November 15, 1983.

A non-refundable review fee of $50 must be submitted with the application.

Selection of applications. Applications that are received prior to the deadline announced by the agency, that fulfill the basic standards in the notice of fund availability, and that meet the other eligibility requirements are eligible applications.

If the agency receives more eligible applications than can be financed with the available funds, the agency will use the following method to select those applicants who will receive a passive solar subsidy:

1. The agency will first award funds to all eligible applicants with certified annual adjusted incomes of $38,000 or less.

2. If there are more applications from eligible applicants with annual adjusted incomes of $38,000 or less than can be financed with the funds available, the applications to be funded will be selected by lot.

3. After funds are awarded to all eligible applicants with adjusted incomes of $38,000 or less, if funds remain available, the agency may publish a second notice of funds availability and accept applications from applicants with adjusted incomes of greater than $38,000. The applications to be funded will be selected by lot, if necessary, from among the eligible applications received in response to the second notice of funds availability.

To receive an application and the design specifications upon which the application will be evaluated contact:

Wendell Hill
Minnesota Housing Finance Agency
333 Sibley Street, Suite 200
St. Paul, Minnesota 55101
(612) 297-3136

Minnesota Housing Finance Agency
Home Improvement Division

Notice of Fund Availability for Residential Rental Energy Conservation

The Minnesota Housing Finance Agency announces that funds have been received from the Solar Energy and Energy Conservation Bank of the U.S. Dept. of Housing and Urban Development for the purpose of upgrading the energy efficiency of

rental residential properties. These funds are available in communities in the state implementing the "Rental Subsidy Program" for eligible owners who obtain a loan from a participating lender for installing qualified energy conservation measures in qualified property. Funds are available as a subsidy to reduce the cost of these improvements in amounts ranging from 20% to 50%, subject to certain dollar limits and extent of improvement work. Subsidy funds do not have to be repaid. Applications for subsidy funds are submitted to MHFA by participating lenders on behalf of eligible owners, and must contain the following information, in the form and manner prescribed by MHFA:

—owner income certification (in certain circumstances)

—an energy audit of the property meeting standards of the Minnesota Dept. of Energy and Economic Development.

—identification of eligible improvement work to be financed, and the qualifying subsidy amount

—supplier(s)/contractor(s) warranty form(s)

—owner certification to meet required terms of participation

—evidence of the loan's origination

—owner certification of completion, once work is finished.

The Rental Subsidy Program is being implemented in the city of Minneapolis, and the following lenders will be participating in the program:

Norwest Bank Minneapolis NA
3030 Nicollet Avenue
Minneapolis, MN 55408
(612) 372-7711

First Bank Minneapolis
First Bank Place
Minneapolis, MN 55402
(612) 370-4141

Norwest Bank Central
2329 Central Avenue N.E.
Minneapolis, MN 55418
(612) 372-7444

Future Notices of Fund Availability will identify additional communities in which the Rental Subsidy Program will be implemented, and the lenders participating.

For more information on the Program contact:

Diane Sprague
Minnesota Housing Finance Agency
333 Sibley Street, Suite 200
St. Paul, MN 55101
(612) 296-9811

Pollution Control Agency

Information Regarding Polychlorinated Biphenyl (PCB) Cleanup Levels

The Minnesota Pollution Control Agency (MPCA) staff has prepared a document entitled the *Cleanup of PCB Spills* which contains information regarding the method of approach recommended by the MPCA for the cleanup of PCB. Because each spill or release of PCB is unique, specific levels of cleanup for each incident cannot be established, but rather the method of approach that has been developed is recommended. The document is available at the MPCA offices for review.

The MPCA has received input regarding this matter from interested or affected persons or groups. A notice requesting such input was published on July 25, 1983. A committee representing various interests and viewpoints concerning PCB cleanup has been formed to provide additional input. The MPCA staff intends to present the recommended approach to PCB cleanup to the MPCA Board for their consideration at the regularly scheduled November, 1983 Board Meeting.

Interested or affected persons or groups may submit statements of information or comment to the following:

Lovell E. Richie
Minnesota Pollution Control Agency
1935 West County Road B-2
Roseville, Minnesota 55113

September 9, 1983

Sandra S. Gardebring
Executive Director

Department of Public Welfare
Health Care Programs Division

Public Notice Regarding Changes in Minnesota's Medical Assistance and General Assistance Medical Care Programs

Notice is hereby given to all providers and recipients of Minnesota Medical Assistance and General Assistance Medical Care, and to the public, of changes to be made in the covered services and statewide methods and level of reimbursement for inpatient hospital services under the Medical Assistance and General Assistance Medicare Care programs. These changes are the result of legislation passed by the Minnesota State Legislature during the 1983 session. These legislative changes are found in Laws of Minnesota 1983, chapter 312, article 5, section 9.

Information on implementation of these provisions will be sent as needed as local welfare agencies via Instructional and Information Bulletins, to health care providers enrolled in the Medical Assistance Program via Provider Bulletins. Copies of these materials may be reviewed at the county welfare or social services department. Written comments and questions on hospital rate setting may be addressed to:

Richard Tester
Health Care Programs Division
Income Maintenance Bureau
Department of Public Welfare
2nd Floor Space Center
444 Lafayette Road
St. Paul, Minnesota 55101

612/296-9939

Comments and suggestions received from the public may be viewed at the same address during normal working hours.

This notice is being published pursuant to federal regulations which govern administration of the Medical Assistance Program, 42 C.F.R. § 447.205 (1982). Estimated program expenditures are total state, federal and county dollars for the period July 1, 1981 through June 30, 1985.

I. RATE SETTING FOR HOSPITALS

POLICY CHANGE

Laws of Minnesota, Chapter 312, 12 MCAR §§ 2.05401-2.05403 [Temporary] which is expected to become effective October 1, 1983, introduces a number of changes in the rate setting method for hospital services under the MA and GAMC programs.

A. A prospective inpatient hospital reimbursement system will be used and made on the basis of a rate per admission or rate per day, or some combination thereof for MA and GAMC programs. The rate will be determined in advance of the delivery of care and not on the basis of customary charges or audited prorated costs.

B. The hospital's 1981 medicaid/medicare cost report will be used as the base year in establishing the rates.

ALLOWABLE BASE YEAR COSTS

The allowable base year costs means a hospital's total MA and GAMC program costs according to the 1981 medicaid-medicare costs report with the following changes:

A. Malpractice insurance costs apportioned to the program are deducted.

B. Pass-through capital costs (pass-through costs other than malpractice insurance) are deducted based on program costs less malpractice insurance to total hospital costs.

C. Costs disallowed due to Public Law Number 92-602, Section 223, inpatient routine service cost limitations, and Public Law Number 92-603, lower of cost or charges are added.

HOSPITAL COSTS INDEX (HCI)

The hospital cost index is a single percentage factor applied annually to allowable base year costs, or subsequent to the initial year, to the adjusted base year costs, to adjust cost for inflation and technology.

A. The HCI will be obtained from an independent source.

B. For the biennium ending June 30, 1985, the HCI is limited to 5 percent.

PASS-THROUGH COSTS

A. Pass-through costs means those costs categories which are not subject to the HCI and are limited to the following categories:

1. depreciation;
2. rents and leases;
3. property taxes and license fees;
4. interests; and
5. malpractice insurance.

B. No pass-through costs will be allowable if they are derived from capital projects requiring a certificate of need for which any applicable certificate of need was not granted.

C. Each hospital must submit a report to the department containing its pass-through costs for the hospital's budget or immediate upcoming fiscal year.

DETERMINATION OF RATE

The rate per admission for each hospital's budget year is calculated as follows:

Rate = [(adjusted base year costs per program admission) multiplied by (budget year hospital costs index), plus (budget year pass-through costs per program admission.)]

A rate per day payment will be calculated upon request of the hospital if it qualifies for minimal participation (fewer than 100 program admissions in any given rate year).

SPECIAL CONSIDERATION

A. The prospective inpatient hospital reimbursement system will take into account the situation whereby a hospital serves a disproportionate number of MA/or GAMC clients. If the percentage exceeds 15 percent, an increase will be made to the rate per admission.

B. The hospital shall be entitled to a per diem payment in addition to the rate per admission for an unusually long length of stay. An unusually long length of stay will be defined by the appeals board in each case, as will the per diem adjustment, if any.

II. APPEALS

An appeals board will be appointed by the Commissioner of Public Welfare. The appeals board will consist of two representatives of the State of Minnesota, two representatives of the hospital industry, and one representative of the business or consumer community.

A. Authority of appeals board. The appeals board shall have recommendation authority to the Commissioner of Public Welfare.

B. Initiation of appeal. The appeal must be filed within 30 days of the effective date of the contested rate or within 30 days of the change in circumstances which occasioned the appeal.

C. Scope of the Appeals. The following issues can be heard:

a. mix changes;
b. addition of approved new services;
c. deletion of services;
d. denied applications for exceptions;
e. modifications of pass-through costs;
f. catastrophic events;

g. catastrophic patient cases; and

h. rate reduction resulting from inappropriate levels of utilization.

D. Resolution of appeal. The appeal shall be heard according to the procedure of the Office of Administrative Hearings for hearings based on the Revenue Recapture Act 9 MCAR §§ 2.501-2.519, as modified by 12 MCAR § 2.05401 [Temporary] H.

E. The hospital may appeal the decision of the commissioner and have such appeal conducted under the contested case procedures of Minnesota Statutes, chapter 14.

III. PAYMENT PROCEDURES

A. Standard billing data required. Hospitals shall submit complete medicaid billing forms on paper or by approved computer—tape data exchange following existing procedures.

B. When billing forms may be submitted. Billing forms shall not be submitted until the patient dies, is discharged, or has been a patient for at least 30 days, whichever comes first.

C. Payments in response to billings. If a patient is still hospitalized when the first bill is submitted, a final bill must be sent containing the type-of-bill code indicating that the bill is for information only or for documentation of the eligibility of the case for additional payment for an unusual length of stay. When a final bill or information only continuation bill is not received within six months of the date of admission, the billing shall be deemed to be in non compliance with the rule and any payment originally made shall be repaid to the department.

D. Medicare crossover claims shall be paid as follows:

Payment Amount = (medicare deductible), plus (medicare coinsurance), plus [(Amounts covered by medicaid but not by medicare) times (raw allowable base year costs divided by total base year charges for persons not eligible for medicare (Part A)]

IV. ESTIMATED DECREASE IN EXPENDITURES

M.A. — 10.1 Million
G.A.M.C. — 3.5 Million

Department of Public Welfare
Mental Health Bureau

Notice of Intent to Solicit Outside Opinion Concerning Community Mental Health Services (12 MCAR § 2.028)

Notice is hereby given that the Minnesota Department of Public Welfare is considering draft amendments to DPW Rule 28, Community Mental Health Services.

This rule authorized by Minn. Stat. § 245.62 governs the establishment of a community mental health center, definition of a community mental health center, director of a community mental health center, services provided by a community mental health center, and the governing board of a community mental health center.

The proposed changes to the rule include deletion of references to grant-in-aid, annual plan and required reports; addition of sections on center governing board, clinical or medical director, and approval under 12 MCAR §§ 2.029-2.0298; and the general updating of rule format.

All interested or affected persons or groups are requested to participate. Statements of information and comment may be made orally or in writing. Written statements of information and comment may be addressed to:

Trudy Dunham, Mental Health Program Advisor
Mental Health Bureau
4th flr. Centennial Office Building
St. Paul, MN 55155

Oral statements of information and comment will be received during regular business hours over the telephone at (612) 296-4503.

All statements of information and comment must be received by November 18, 1983. Any written material received by the department shall become part of the hearing record.

Department of Transportation

Petition of the City of Burnsville for a Variance from State Aid Standards for Street Width

Notice is hereby given that the City Council of the City of Burnsville made a written request to the Commissioner of Transportation for a variance from minimum design street width for the reconstruction of portions of Portland Avenue from CSAH 42 to Stevens Avenue and Crystal Lake Road from Stevens Avenue to Grand Avenue.

The request is for a variance from 14 MCAR § 1.5032 H.1.c. Rules for State Aid Operations under Minnesota Statute, Chapters 161 and 162 (1978) as amended, so as to permit a street width of 44 feet instead of the required street width of 46 feet.

Any person may file a written objection to the variance request with the Commissioner of Transportation, Transportation Building, St. Paul, Minnesota 55155.

If a written objection is received within 20 days from the date of this notice in the *State Register*, the variance can be granted only after a contested case hearing has been held on the request.

Dated this 14th day of September, 1983

Richard P. Braun
Commissioner of Transportation

STATE OF MINNESOTA

State Register and Public Documents Division
117 University Avenue
St. Paul, Minnesota 55155

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FOR LEGISLATIVE NEWS

Publications containing news and information from the Minnesota Senate and House of Representatives are available free to concerned citizens and the news media. To be placed on the mailing list, write or call the offices listed below:

Briefly/Preview—Senate news and committee calendar; published weekly during legislative sessions. Contact Senate Public Information Office, Room B29 State Capitol, St. Paul MN 55155, (612) 296-0504.

Perspectives—Publication about the Senate. Contact Senate Information Office.

Weekly Wrap-Up—House committees, committee assignments of individual representatives, news on committee meetings and action, House action and bill introductions. Contact House Information Office, Room 8 State Capitol, St. Paul, MN, (612) 296-2146.

This Week—weekly interim bulletin of the House. Contact House Information Office.