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STATE REGISTER

STATE OF MINNESOTA

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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 5		
29	Monday Jan 5	Monday Jan 12	Monday Jan 19
30	Monday Jan 12	Monday Jan 19	Monday Jan 26
31	Monday Jan 19	Monday Jan 26	Monday Feb 2
32	Monday Jan 26	Monday Feb 2	Monday Feb 9

*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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Subscribers who do not receive a copy of an issue should notify the *State Register* Circulation Manager immediately at (612) 296-0931. Copies of back issues may not be available more than two weeks after publication.

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*.

Cover graphic: *Minnesota State Capitol*, ink drawing by Ric James.

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NOTICE

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* will be published in the Minnesota Code of Agency Rules (MCAR). Proposed and adopted TEMPORARY RULES appear in the *State Register* but are not published in the MCAR due to the short-term nature of their legal effectiveness.

The *State Register* publishes partial and cumulative lisitngs 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
Issues 40-51, inclusive
Issue 52, cumulative for 1-52

The listings are arranged in the same order as the table of contents of the MCAR.

MCAR AMENDMENTS AND ADDITIONS

PROPOSED RULES

Pursuant to Minn. Laws of 1980, § 15.0412, subd. 4h, 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 § 15.0412, subds. 4 through 4g, 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. § 15.0412, subd. 5, 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 30 days thereafter, interested persons may submit data and views in writing to the proposing agency.

Energy Agency

Proposed Amendment of Rule Governing Permissible Quantity of Outdoor Display Lighting

Notice of Intent to Amend Rule without a Public Hearing

Notice is hereby given that the Minnesota Energy Agency ("agency") intends to adopt an amendment to the above-referenced agency rule without public hearing because of the noncontroversial nature of the amendment.

The proposed amendment raises the maximum permissible quantity of security lighting from .05 to .10 watts per square foot. This amendment is intended to be effective as soon as the law allows.

Please be advised that you have an opportunity for the 30-day period following publication of this notice and the proposed amendment to submit comments in writing on the proposed amendment and to object to the lack of public hearing on the proposed amendment. Your written comments or request for hearings should be submitted to:

Minnesota Energy Agency
c/o Richard A. Wallen
980 American Center Building
160 East Kellogg Boulevard
Saint Paul, Minnesota 55101.

If seven or more persons request hearings on the rule amendment, the agency will order public hearings in accordance with Minn. Stat. § 15.0412, subds. 4-4f. The agency may modify the proposed amendment if modification is supported by data and views submitted in written comments and if no substantial change results from the modification.

If no hearing is required, and the agency decides to adopt the amendment as proposed, or as modified if written comments justify modification, the Agency will submit to the Attorney General for review of form, legality and substantial change the following documents: this notice with the amendment as proposed, the amended rule as adopted, the order adopting the amendment, any written comments received by the agency, and the agency's Statement of Need and Reasonableness supporting adoption of the amendment. Any person may request notification of the date the Agency makes the submission to the Attorney General. If you desire to be so notified, you must inform the agency in writing during the 30-day comment period.

The proposed rule amendment follows:

6 MCAR § 2.2120 Permissible quantity.

A. Beginning July 1, 1980, the provisions of 6 MCAR § 2.2102 B. and C. notwithstanding, no person shall operate security

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.

lighting that exceeds .05 watts per square foot for the area lighted for security purposes, except that security lighting installed and placed in operation prior to July 1, 1981, may continue to operate at levels not exceeding .10 watts per square foot.

B. [Not changed.]

C. [Not changed.]

The agency has prepared a Statement of Need and Reasonableness in support of the proposed amendment which is also available from the agency by writing to the address indicated above or calling (612) 296-7457.

The agency's authority to promulgate the proposed amended rule can be found in Minn. Stat. §§ 116H.08(a), 116H.12, Subd. 1b (1978).

Please be advised that Minnesota Statutes Chapter 10A requires each lobbyist to register with the Ethical Practices Board within five days after he/she becomes a lobbyist. Lobbying includes attempting to influence rulemaking by communicating or using others to communicate with public officials. A lobbyist is generally any individual who spends more than $250 per year for lobbying or any individual who is engaged for pay or authorized to spend money by another individual or association and who spends more than $250 per year or five hours per month at lobbying. The statute provides certain exceptions. Questions should be directed to the Ethical Practices Board, 41 State Office Building, St. Paul, Minnesota 55155, telephone (612) 296-5615.

December 29, 1980.

Mark Mason
Director

Amendment as Proposed

6 MCAR § 2.2120 Permissible quantity.

A. Beginning July 1, 1980, the provisions of 6 MCAR § 2.2102 B. and C. notwithstanding, no person shall operate security lighting that exceeds .05 watts per square foot for the area lighted for security purposes, except that security lighting installed and placed in operation prior to July 1, 1981, may continue to operate at levels not exceeding .10 watts per square foot.

B. No person shall operate any other outdoor display lighting that exceeds the recommended minimum standards set forth in the "IES Lighting Handbook" (5th edition), published by the Illuminating Engineering Society, by more than 20 percent.

C. Rule 6 MCAR § 2.2120 A. shall not apply to an establishment whose total security lighting system has a demand of 1500 watts or less.

ADOPTED RULES

The adoption of a rule becomes effective after the requirements of Minn. Stat. § 15.0412, subd. 4, 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. § 15.0412, subd. 5. Notice of his decision will be published as soon as practicable, and the adopted temporary rule will be published in the manner provided for adopted rules under subd. 4.

Department of Agriculture
Board of Animal Health

Adopted Rules 3 MCAR § 2.001 Importation of Cattle and Bison, 3 MCAR § 2.011 Eradication of Bovine and Bison Brucellosis, 3 MCAR § 2.012 Control of Anaplasmosis

The rules proposed and published at *State Register*, Volume 5 pages 70 through 87 are adopted with the following amendments:

Amendments as Adopted

3 MCAR § 2.001 Importation of cattle and bison.

A.14. "Brucellosis exposed cattle" means cattle that are part of a known infected herd or that have been in contact with brucellosis reactors in marketing channels for periods of 24 hours or of less than 24 hours if the reactor has recently aborted, calved, or has a vaginal or uterine discharge regardless of the blood test results. After January 1, 1982, any period of contact in marketing channels shall be considered exposed.

A.17. "B-branded cattle" means cattle that have been identified by branding with a hot iron with the letter "B" at least 2 × 2 inches on the left jaw because they were classified as brucellosis reactors or are brucellosis exposed cattle from a herd depopulation.

B. Cattle consigned to public stockyards, markets approved under ~~Part 78 Code of Federal Regulations~~ LSB 43 The Establishment of State-Federal Approved Markets for Cattle and Sale of Cattle at Such Markets, or slaughtering establishments.

B.1. Cattle of any class may be consigned without a health certificate or tests to a public stockyard or market approved under ~~Part 78 Code of Federal Regulations.~~ LSB 43 The Establishment of State-Federal Approved Markets for Cattle and Sale of Cattle at Such Markets.

E.1.a. Cattle of any class consigned to the public stockyards or markets approved under ~~Part 78 Code of Federal Regulations.~~ LSB 43 The Establishment of State-Federal Approved Markets for Cattle and Sale of Cattle at Such Markets.

F.1.c.(3) Cattle shipped directly to the public stockyards or markets approved under ~~Part 78 Code of Federal Regulations~~ LSB 43 The Establishment of State-Federal Approved Markets for Cattle and Sale of Cattle at Such Markets.

F.2.b. Cattle shipped directly to a public stockyard or markets approved under ~~Part 78 Code of Federal Regulations~~ LSB 43 The Establishment of State-Federal Approved Markets for Cattle and Sale of Cattle at Such Markets.

F.3.c. Cattle shipped directly to a public stockyards or markets approved under ~~Part 78 Code of Federal Regulations.~~ LSB 43 The Establishment of State-Federal Approved Markets for Cattle and Sale of Cattle at Such Markets.

G. Negative cattle tested for anaplasmosis as required in F.2. are not eligible for entry if one or more cattle in the herd of origin react greater than 3+ in the 1:5 dilution on the complement fixation test.

H. Imported cattle leaving a market approved under ~~Part 78 Code of Federal Regulations~~ LSB 43 The Establishment of State-Federal Approved Markets for Cattle and Sale of Cattle at Such Markets, or imported on permit pending the laboratory results of the anaplasmosis blood test drawn at the market or in the state of origin are under quarantine until the test results are determined.

3 MCAR § 2.011 Eradication of bovine and bison brucellosis.

A.4. "Veterinarian" means a veterinarian licensed and accredited in Minnesota or a veterinarian of the United States Department of Agriculture (USDA).

A.9.b. Cattle more than six months of age when the standard plate test or standard tube test disclose reactions of not more than complete agglutination in the 1:25 dilution, if performed; are negative to the brucellosis card test, if performed; disclose 25 percent fixation or less (1 plus) at the 1:10 dilution on the complement fixation test, if performed; or disclose less than complete agglutination at the 1:25 dilution on the rivanol plate agglutination test, if performed. The board may accept variations~~.~~ when an epidemiological investigation indicates Brucella abortus infection is present. A diagnosis of suspect or reactor will then be accepted.

A.10.c. The board may accept variations~~.~~ when an epidemiological investigation indicates Brucella abortus is not present. A diagnosis of negative will then be accepted. When an epidemiological investigation indicates Brucella abortus infection is present, a diagnosis of reactor will be accepted.

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A.11.e. The board may accept variations~~.~~ when an epidemiological investigation indicates Brucella abortus is not present. A diagnosis of suspect will then be accepted.

B.10.a.(2) Vaccine shall be administered by the method and dosage described by the manufacturer or the Board.

C.3.a. The board ~~may~~ shall notify other owners and caretakers of the cattle herds of an affected herd by means of an educational letter delivered through personal contact or by mail within 30 days of the issuance of the quarantine.

C.3.a.(1) The board ~~may~~ shall determine the size of the notification area.

E.3.c. ~~The board may notify the vendor and the person receiving the cattle of the provisions of this section in person or by letter.~~

SKATING IN ST. PAUL.

Part of the Minnesota Historical Society's collection, this sketch depicts the grace and elegance of Minnesota's recreational winters. This sketch, drawn in 1886, captured the stylish event in a St. Paul setting. Wherever there is a frozen lake or pond in Minnesota, this scene could be duplicated today, perhaps with minor fashion alterations. (Courtesy of the Minnesota Historical Society).

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 Economic Security Division of Vocational Rehabilitation

Notice of Request for Proposals for Evaluation of the Vocational Rehabilitation Client Assistance Project

The Minnesota Department of Economic Security, Division of Vocational Rehabilitation is seeking proposals which will design and implement a comprehensive evaluation of the Vocational Client Assistance Project: The Vocational Rehabilitation Ombudsman Project (VROP). The VROP provides ombudsman services to past, present, and potential clients of the Division who have problems or questions about services provided by the Division. In addition, VROP provides ombudsman services to sheltered employees who are experiencing problems with their sheltered work environment.

A comprehensive final report of findings and recommendations along with interim progress reports will be required. Additional specific information is available in the request for proposal. The Division has estimated the cost of this evaluation at $30,000 for a nine month study. Response must be submitted before February 27, 1981, to be considered.

Request for proposal may be obtained by contacting:

Thomas L. Macy, Rehabilitation Specialist
Division of Vocational Rehabilitation
Third Floor, Space Center Building
444 Lafayette Road
St. Paul, Minnesota 55101
Telephone 612/296-7869.

Energy Agency

Notice of Request for Proposals for Advertising Agency Services to Develop Materials and Campaign Plans for Residential Conservation Service (RCS) Program

The Energy Agency hereby requests proposals for advertising agency contract services for the purpose of developing materials and campaign plans for the Residential Conservation Service (RCS) program in Minnesota.

RCS is a program that will be conducted by major utilities in the state in cooperation with the Minnesota Energy Agency (MEA). Elements include home energy audits, a list of state-approved businesses who provide energy conservation services or supplies, and information on financial assistance for improvements. The program begins April, 1981.

Phase I of the advertising campaign for RCS should include development of MEA radio, television and newspaper ads, recommendations on placements plus development of support materials for participating businesses. Phase I begins January 30 and ends June 30, 1981. Deadline for submission of proposals is January 30.

For detailed information contact:

Beth Allen
Minnesota Energy Agency
980 American Center Building
150 East Kellogg Boulevard
St. Paul, Minnesota 55101
(612) 297-3602

Estimated cost: Not to exceed $13,000 (Phase I only).

Proposals should include an outline of promotional ideas, timetable for development and implementation, schedule of placements, breakdown of costs and profiles of agency people who would be assigned to the account.

STATE CONTRACTS

Contractors with the Minnesota Energy Agency must apply for a Certificate of Compliance from the Minnesota Department of Human Rights. All bidders must submit, along with their proposal to the Minnesota Energy Agency, a statement indicating that they have applied. Applications can be obtained by written request from the Minnesota Department of Human Rights, 240 Bremer Building, St. Paul, Minnesota 55101.

SUPREME COURT

Decisions Filed Friday, December 26, 1980

Compiled by John McCarthy, Clerk

50872/Sp. State of Minnesota vs. Alphonso White, Appellant. Hennepin County.

Evidence of defendant's guilt of burglary and aggravated robbery was sufficient.

Prosecutor's failure to inform defense counsel of information which defense counsel could have used in trying to impeach the key prosecution witness does not require new trial under circumstances of this case.

Trial court's refusal to permit defense counsel to cross-examine accomplice to the crime, testifying for the state, about maximum prison sentence he could have received if he had not negotiated a favorable plea bargain, did not result in denial of defendant's right of confrontation where defense counsel was able to effectively cross-examine witness about motivation to lie.

Trial court did not commit prejudicial error in instructions.

Affirmed. Sheran, C. J.

51132/Sp. In re the Marriage of: Georgianna R. Stevens, petitioner, Appellant, vs. Danny H. Stevens. Hennepin County.

The award of a house jointly held by the parties to the respondent was not an abuse of the trial court's discretion.

It is not just and equitable to hold the petitioner jointly liable for the loan which was used, at least in part, to purchase the house awarded to respondent.

Affirmed in part; remanded in part. Sheran, C. J.

50568/350 Wallace E. Lunning, individually, and W.T.S., Inc., Appellants, vs. Land O'Lakes. Freeborn County.

The doctrine of equitable estoppel can not be invoked to make a contract enforceable in the absence of a representation or concealment of material fact.

Affirmed. Amdahl, J.

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 Commerce
Banking Division

Bulletin No. 2315
Maximum Lawful Rate of Interest for Mortgages and Contracts for Deed for the Month of January, 1981

Notice is hereby given that pursuant to Section 47.20, Subd. 4a, Minnesota Statutes, the maximum lawful rate of interest for conventional home mortgages for the month of January, 1981, is fifteen and one-half (15.50) percentage points.

Further, pursuant to Senate File No. 273, Chapter 373, 1980 Session Laws, as it amended Section 47.20, Minnesota Statutes, the maximum lawful rate of interest for contracts for deed for the month of January, 1981, is fifteen and one-half (15.50) percentage points.

December 24, 1980

Michael J. Pint
Commissioner of Banks

Minnesota State Retirement System

Special Meeting, Board of Directors

Notice is hereby given that a special meeting of the board of directors of the Minnesota State Retirement System will be held on Friday, January 16, 1981 at 9:00 a.m. at the office of the System, 529 Jackson Street, St. Paul, Minnesota 55101.

Department of Education
Vocational-Technical Education Division

Notice of Intent to Solicit Outside Opinion Regarding Rules for Post-Secondary Vocational-Technical Education

The Department of Education, Division of Vocational-Technical Education is drafting rules in the Post-Secondary Vocational-Technical Education Rules (Chapter Six, 5 MCAR § 1.0102 M.).

The Department invites interested persons or groups to provide information, comment and advice to these subjects in writing or orally to:

Dr. Mary Thornton Phillips
Assistant Commissioner
Division of Vocational-Technical Education
564 Capitol Square Building
550 Cedar Street
St. Paul, Minnesota 55101

Written statements will be made part of the public hearing record.

All materials to be considered in the original draft should be submitted by February 16, 1981.

Ethical Practices Board

Request for Advisory Opinion Regarding Campaign Financial Disclosure

The Minnesota State Ethical Practices Board solicits opinions and comments to the following request for an advisory opinion which will be discussed at its January 30, 1981 Board meeting. Written comments concerning the opinion request should be forwarded to arrive at the Board's office prior to January 23, 1981.

December 30, 1980

Ethical Practices Board
State of Minnesota
41 State Office Building
St. Paul, MN 55155

Dear Sirs:

Under Chapter 362 (Laws 1980) Hennepin County Commissioners are subject to provisions of state law regarding financial and campaign disclosure similar to those applying to state officials. I request an Advisory Opinion on the following questions:

1. As an elected official I distribute a periodic newsletter to interested constituents. The newsletter is not partisan, although it expresses my personal opinions on Hennepin County issues. Costs of past newsletters have been paid by me personally or from excess funds contributed to my 1978 County Commissioner campaign. If in the future any such remaining excess funds are used to print and distribute similar newsletters, what are my reporting obligations?

2. A number of persons have suggested to me that I establish a Newsletter Fund to pay for similar newsletters in the future. They are willing to donate money to such a Newsletter Fund because they strongly believe it is important for me to continue to inform constituents of Hennepin County issues that are overlooked by the news media, yet many of those same persons may not be willing to contribute to my regular campaign committee because they have a different party affiliation.

a. Can such a Newsletter Fund be established separate from my campaign committee?

b. If so, what are the reporting obligations of such a Newsletter Fund?

3. Under Hennepin County budgeting procedures, the cost of such newsletters could also be paid for out of public funds budgeted for the office of Second District Hennepin County Commissioner. If such public funds are used to print and distribute a newsletter, what are the reporting obligations?

4. I do not intend to make a decision about whether to run for another term as Hennepin County Commissioner until late 1981 or early 1982. In any event I am not sure that it is appropriate to authorize a re-election campaign committee prior to deciding whether to run again. Under such circumstances, when must I register a re-election committee?

Very truly yours,
Randy Johnson

Department of Administration
Building Code Division
Residential Energy Disclosure Program

Notice of Scheduled Examinations for Certification of Evaluators for the Energy Disclosure Program

Test and Orientation—Orientation Sessions precede test.

February 10, 1981—Lakewood Community College
City of White Bear Lake

1:30 p.m. to 3:30 p.m.

April 7, 1981 —Hennepin Vo-Tech School—South Campus
9200 Flying Cloud Drive
Eden Prairie—Room J-115

9:30 a.m. to 11:30 a.m.

Applications may be obtained from: Division of Building Codes and Standards, 408 Metro Square Building, 7th and Robert Sts., St. Paul, MN 55101, Phone 612/296-4639.

All applications must be returned to the division at least TWO WEEKS PRIOR to the test.

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 **Tax Court**

County of Hennepin **Regular Division**

Lloyd B. Miller, **Appellant,**
Docket No. 2918

v.

The Commissioner of Revenue, **Appellee.**

Order dated December 23, 1980.

In the matter of the Appeal from the Commissioner's Order dated May 8, 1979 relating to income tax of Lloyd B. Miller for the taxable year 1977.

This is an appeal from an order of the Commissioner of Revenue assessing additional income taxes, interest and penalty under Minnesota Statute section 290.47 after the appellant refused to file an income tax return, claiming that he was exempt from income tax as a member of a religious order and having taken a vow of poverty.

Decision

The Order of the Commissioner of Revenue is hereby affirmed.

Findings of Fact

John Knapp

1. The Appellant, Lloyd B. Miller, is a cash basis taxpayer who in 1977 resided at 9600 37th Place North, Apt. #304, Plymouth, Minnesota.

2. During the taxable year 1977, Appellant was employed in engineering work as a group leader of documentation control by the Control Data Corporation of Minneapolis, Minnesota. Appellant had worked for Control Data for a total of about 17 years prior to 1977. By reason of his employment, Appellant was paid by Control Data a total of $23,152.69 in compensation for the taxable year 1977.

3. During the year 1977, Appellant was clearly an employee of Control Data, as indicated by his own testimony, the compensation paid to him and the fact that Control Data covered Appellant with its qualified employee pension plan.

4. Sometime in the latter part of 1977 Appellant attended several meetings in Bloomington, Minnesota where he learned about a national organization known as the Life Science Church headed by one William Drexler, and he also learned how to establish his own local Church Chapter. At these meetings the subject of tax exemptions was discussed.

5. At either the last or the second to last of these meetings the Appellant paid over a sum of $1,000 to two representatives of the Life Science Church who were holding the meetings. In return for this $1,000 "donation" Appellant received on December 15, 1977, a certificate of ordination purporting to ordain him as a minister, and a certificate of doctorate of divinity, together with other documents to be described below. Appellant admits that he has never formally attended any seminary.

6. Also on December 15, 1977, the Appellant received from the aforementioned two representatives a church charter and a constitution and by-laws purportedly establishing Appellant's own local chapter of the Life Science Church known as Chapter No. 10,173 (also known as "Life Science Church of Ecology").

7. Under the church charter, Appellant's Chapter No. 10,173 was supposedly governed by three trustees who were named in the charter as Lloyd B. Miller (the Appellant herein), Eileen M. Hansen (who at the time was also a member of another Life Science Church Chapter,) and Ann Miller (the Appellant's daughter who in fact lived in Florida and took no part in the business of the chapter).

However, under the chapter by-laws the sole authority to govern Chapter No. 10,173 was vested in a life-time office called the "Head of the Chapter", who was named in the by-laws to be the Appellant herein. Neither the other trustees nor any other members had the right to vote, the right to control the chapter, or the right to do anything other than act in an advisory capacity only.

The Head of the Chapter, Appellant, also had sole authority to control and dispense the funds and property of Chapter No. 10,173 for his own support.

8. Under both the church charter and the by-laws, there was complete separation and independence between the national organization known as the Life Science Church and the local Chapter No. 10,173, which was controlled solely by the Appellant in all relevant matters concerning finances, property and the spending of funds. Under the by-laws, total discretion was vested in the Appellant to spend the funds of his local Chapter No. 10,173 without any interference from other trustees, members or the national organization known as the Life Science Church.

9. On December 15, 1977, the same day he received his ordination certificate, doctorate of divinity, church charter and by-laws, Appellant also received a vow of poverty form which purportedly transfered all his income to his local Chapter No. 10,173. Thereafter, Appellant endorsed and deposited his paychecks earned as an employee of Control Data into a bank checking account held in the name of his local Chapter No. 10,173. The only person authorized to draw checks on this account was Appellant. The money in this account was then used by the Appellant to pay his personal debts and living expenses in the same manner as they had been previously paid out of Appellant's personal checking account.

10. After receiving his ordination certificate and church charter, and signing the vow of poverty form, Appellant continued in his same employment at Control Data. For the taxable year 1977, Appellant received a W-2 wage and tax statement from Control Data showing that a total of $23,152.69 in wages, tips and other compensation had been paid to him. However, Appellant filed no Minnesota income tax return for the year 1977.

11. On October 27, 1978, the Commissioner sent a demand letter to Appellant pursuant to Minn. Stat. § 290.47, requesting that a 1977 return be filed. Appellant responded to this letter by stating that he was no longer required to file because, "as of 1977 I have been a member of a religious order and having taken a vow of poverty and given my assets to the Order, I am not required to file tax returns.".

12. Upon receiving this answer the Commissioner, pursuant to his authority under Minn. Stat. § 290.47, proceeded to prepare a 1977 return for the Appellant based upon the information contained in Appellant's W-2 form and from such other information concerning credits and deductions as was available. Appellant's exemption claim under his vow of poverty was not allowed. On the basis of said return the Commissioner assessed a tax of $2,263.83, penalty of $565.95, and interest of $151.33, for a total amount due of $2,981.11. Notice of this assessment and demand for payment was duly made upon Appellant by letter dated December 14, 1978.

13. The Appellant administratively protested this assessment and an administrative hearing was held on May 7, 1979. No change was made in the assessment as a result of this hearing. On May 8, 1979, the Commissioner of Revenue issued his final Order assessing additional income tax, penalty and interest against Appellant in the amount of $2,981.11. The Appellant has filed a timely appeal with the Tax Court from this Order.

Conclusions of Law

1. The compensation earned by Appellant as an employee of Control Data is taxable as "gross income" for Minnesota income tax purposes.

2. Neither the Appellant nor his income are exempt from the Minnesota state income tax by reason of any vow of poverty.

3. The return and assessment against Appellant made by the Commissioner herein pursuant to Minn. Stat. § 290.47, is correct and proper and should be affirmed in all respects.

Memorandum

The legal issues are as follows:

1. Whether the compensation earned by Appellant as an employee of Control Data is gross income subject to taxation under Minnesota's income tax law.

2. Whether the income earned by Appellant as an employee of Control Data is subject to Minnesota state income tax, notwithstanding that he claims to have taken a vow of poverty in his own personal "church", over which he retains total financial control.

It is undisputed that the taxpayer herein, Lloyd B. Miller, earned a total of $23,152.69, in the year 1977 as an employee of Control Data Corporation. It is also undisputed that the taxpayer received a 1977 W-2 wage and tax statement from his employer clearly setting forth this amount of compensation. Despite these facts the taxpayer failed to file any 1977 Minnesota income tax return, claiming instead that he was exempt from doing so by reason of his alleged vow of poverty. Additionally, at the trial and in his post-trial brief the taxpayer also claims that the compensation paid to him in 1977 was not taxable because it did "not constitute gain" and therefore was not gross income.

As will be shown herein, both of these claims are patently erroneous. The Commissioner therefore properly disallowed them in auditing the taxpayer's 1977 tax year.

The Commissioner began his audit by sending a written demand to the taxpayer to file his 1977 return. When the taxpayer refused to do so, the Commissioner proceeded to make a return for him from such information as was available pursuant to the authority granted by Minn. Stat. § 290.47. As a result, additional 1977 income tax in the amount of $2,263.83, plus penalty and interest, was assessed against the taxpayer.

By statute, the Commissioner-filed return is prima facie valid, and the burden of proving it wrong is entirely upon the taxpayer. Minn. Stat. § 290.47, reads in relevant part as follows:

Any such return or assessment made by the commissioner on account of the failure of the taxpayer to make a return, or a corrected return, shall be prima facie correct and valid, and the taxpayer shall have the burden of establishing its incorrectness or invalidity in any action or proceeding in respect thereto.

See also, Minn. Stat. § 271.06, subd. 6.

The taxpayer has failed to meet his burden of establishing the incorrectness or invalidity of the assessment herein.

It is axiomatic that compensation earned by an employee for services rendered to his employer is includable within the broad definition of "gross income" subject to taxation by the State of Minnesota. The statutory language itself makes this point clear. For the year in question, Minn. Stat. (1977 Supp.) § 290.01, subd. 20, defined the term "gross income" in relevant part as follows:

For each of the taxable years beginning after December 31, 1970, the term "gross income" in its application to individuals, estates, and trusts shall mean the adjusted gross income as computed for federal income tax purposes as defined in the Internal Revenue Code of 1954, as amended through the date specified herein for the applicable taxable year, with the modifications specified in this section.

(v) The Internal Revenue Code of 1954, as amended through December 31, 1976, including the amendments made to section 280A (relating to licensed day care centers) in H.R. 3477 as it passed the Congress on May 16, 1977, shall be in effect for the taxable years beginning after December 31, 1976. The provisions of the Tax Reform Act of 1976, P.L. 94-455, which affect adjusted gross income shall become effective for purposes of chapter 290 at the same time they become effective for federal income tax purposes. Section 207 (relating to extension of period for nonrecognition of gain on sale or exchange of residence) and section 402 (relating to time for making contributions to pension plans of self employed people) of P.L. 94-12 shall be effective for taxable years beginning after December 31, 1974.

In effect, this law adopts federal adjusted gross income as the starting point for calculating Minnesota individual income taxes. Under Internal Revenue Code (I.R.C.) § 62, 26 U.S.C. § 62, federal adjusted gross income is arrived at by taking a taxpayer's gross income minus certain specified deductions not at issue herein.

The term "gross income" for federal income tax purposes is defined in I.R.C. § 61, 26 U.S.C. § 61, in relevant part as follows:

(a) General Definition. Except as otherwise provided in this subtitle, *gross income means all income from whatever source derived*, including (but not limited to) the following items:

(1) *Compensation for services*, including fees, commissions, and similar items; (Emphasis added.)

The statutory scheme therefore expressly includes "compensation for services: within the measure of the income taxed by the State of Minnesota. Inasmuch as the taxpayer herein admits that the $23,152.69 earned by him from Control Data was compensation for services, it therefore follows that those earnings were taxable as "gross income" for Minnesota income tax purposes.

While the statutory language itself leaves no room for doubt on this question, it can also be mentioned that the applicable regulations and case law readily support the above conclusion.

Internal Revenue Reg. § 1.61-2, reads in relevant part as follows:

(a) In general. (1) Wages, salaries, commissions paid salesmen, compensation for services on the basis of a percentage of profits, commissions on insurance premiums, tips, bonuses (including Christmas bonuses), termination or severance pay, rewards, jury fees, marriage fees and other contributions received by a clergyman for services, pay of persons in the military or naval forces of the United States, retired pay of employees, pensions, and retirement allowances *are income to the recipients unless excluded by law.*

As the United States Supreme Court has stated on a number of occasions, the language used in I.R.C. § 61 and its predecessor statutes was intended by Congress to exert "the full measure of its taxing power" over all incomes from whatever

source derived. See, e.g., *Comm. of Internal Revenue v. Glenshaw Glass Co.*, 348 U.S. 426, 429, 75 S. Ct. 473, 476, 99 L. Ed. 483 (1955). As recently as 1977, the Court stated in *Comm. of Internal Revenue v. Kowalski*, 434 U.S. 77, 82, 98 S. Ct. 315, 319, 54 L. Ed. 2d 252 (1977), that:

The starting point in the determination of the scope of "gross income" is the cardinal principle that Congress is creating the income tax intended "to use the full measure of its taxing power." (citations omitted.) In applying this principle to the construction of § 22(a) of the Internal Revenue Code of 1939 this Court stated that "Congress applied no limitations as to the source of taxable receipts, nor restrictive labels as to their nature [, but intended] to tax all gains except those specifically exempted." (Citations omitted.) Although Congress simplified the definition of gross income in § 61 of the 1954 Code, it did not intend thereby to narrow the scope of that concept.

These federal authorities parallel the holding of the Minnesota Supreme Court in *Drew v. Commissioner of Taxation*, 222 Minn. 186, 193, 23 N.W. 2d 565, 568 (1946), where it was said that: "There was an obvious purpose in our state [Income Tax] Act to exert the full measure of the taxing power upon all income.".

It is clear that "the full measure" of the income taxing power would include the taxation of compensation for services rendered.

In *Adams v. United States*, 585 F. 2d 1060, 1063 (Ct. Cl., 1978) the U.S. Court of Claims said that:

Gross income means all income from whatever source derived, including compensation for services.

In *Wilson v. United States*, 412 F. 2d 694, 695 (1st Cir., 1969), the First Circuit Court of appeals said:

We start with the proposition that *all remuneration received for services is gross income* unless it falls within a specific exclusion. (Emphasis added.)

And in the recent case of *United States v. Francisco*, 614 F. 2d 617, (8th Cir., 1980), the Court rejected a taxpayer's argument similar to that made by the Appellant herein to the effect that income received in exchange for labor or services is not income within the meaning of the Sixteenth Amendment. In 614 F. 2d at 619, the Eighth Circuit said:

Francisco's conviction was based upon receipt of stipulated amounts representing compensation from the sale of goods. His challenge based upon income received from labor or services is therefore inapposite. *In any event, it is clear Congress intended to tax income from whatever source derived.* See Brushaber v. Union Pacific Railroad Co., 240 U.S. at 18, 36 S. Ct. at 241.

Francisco stipulated to receiving amounts representing gross proceeds less costs, which constitute gains. See United States v. Ballard, 535 F. 2d at 404. Thus, by his own admission Francisco received taxable income.

We find this appeal frivolous. (Emphasis added.)

Like the Court in *Francisco, supra*, we also find Appellant's argument that his compensation from Control Data is not "gross income", to be frivolous. It should be rejected as such.

Appellant's novel contention that "Money received by an employee is not taxable since such receipts do not constitute gain" is obviously based upon a wishful misreading and mis-citation of both statutes and case law.

The taxpayer states that he can find no definition of "gross income" in the Internal Revenue Code. Apparently, the taxpayer either missed or ignored I.R.C. § 61, which is expressly labeled "Gross Income Defined", and which expressly includes in that definition compensation for services rendered.

Appellant's citation of *Doyle v. Mitchell Brothers Co.*, 247 U.S. 179, 38 S. Ct. 467, 62 L. Ed. 1054 (1918), is completely inapposite because that case dealt only with the Federal corporation excise tax act of 1909, rather than the individual income tax. Moreover, the *Doyle* Court in its opinion was talking only about the meaning of income in connection with the conversion (in the form of cutting and selling timber) by a business corporation of previously acquired assets (i.e., the uncut timber). Nothing in that case dealt with compensation for services earned by individual employees.

Another case cited by Appellant, *Edwards v. Keith*, 231 F. 110 (2d Cir., 1916), is not only inapposite, but also wrongly cited by the Appellant. That case involved an insurance agent who had sold certain policies for which he was entitled to a commission not only in the year of sale, but also additional commissions in each subsequent year that renewal premiums were paid on those policies. There was no question in that case that all of the commissions, both the first year's and subsequent years', constituted taxable income to the salesman. The only issue before the Court was the exact year in which the items of income were to be reported (i.e., in the year the policies were sold, or in the years in which the commissions were actually paid to the salesman).

In 231 F. at 112, the *Edwards* Court stated both the issue and the outcome when it said:

If an agent for a life insurance company does a particular job, e.g., persuades John Doe to insure in the company on July 1, 1915, and received as part compensation for that work a certain sum when Doe pays his first premium in July, 1915, *surely he includes that in his income return for 1915. That certainly is income.* If under this arrangement with the company he receives a

further sum of money as compensation for the same job in July, 1916, when John Doe pays his second premium, *we cannot see why that is not income for 1916—in the ordinary sense* of the act "income arising or accruing in the calendar year 1916" and "derived from personal services" we are entirely at a loss to understand. The statute does not provide that the "personal services," *compensation for which is to be considered income*, must be rendered in the same year in which the compensation is received. (Emphasis added.)

Thus, Appellant is wrong when he says on p. 6 of his brief that the *Edwards* Court: ". . . held that the first commission was not taxable because it was mere compensation for services . . .". In fact, the *Edwards* Court reaffirmed that all compensation is income subject to taxation.

Likewise, the interpretation placed by Appellant on the Court's phrase ". . . one does not derive income by rendering services and charging for them," 231 F. at 113, is also wrong. Taken in context with the rest of its opinion it is clear that the *Edwards* Court was merely saying that income includes only that which is actually received by a taxpayer in a particular year; and that the mere performance of a service and the billing therefore does not result in the realization of income for tax purposes.

Appellant has cited, or rather mis-cited, several other cases in connection with his theory, but it would serve no useful purpose to comment upon them in detail. Suffice it to say that a true reading of those cases lends no support whatsoever to Appellant's erroneous claim that his compensation from Control Data is somehow not "gross income" within the meaning of our tax laws.

Appellant's second claim for tax exemption is based upon an alleged vow of poverty in his own personal church. This argument, however, is no different in substance than similar claims already rejected by this Court in previous cases.

It is by now well settled that a taxpayer cannot exempt himself from the Minnesota income tax act simply by paying for a minister's certificate and a charter for his own church, and then signing a voew of poverty in that church, all while continuing in the same employment and lifestyle as before and in effect controlling the "church's" funds for his own personal use. *Fury v. Commissioner of Revenue*, Tax Ct. Dkt. #2626 (Aug. 24, 1978), affirmed summarily by the Minnesota Supreme Court on June 11, 1979; and *Baldwin v. Commissioner of Revenue*, Tax Ct. Dkt. #2752 (July 17, 1980).

The basic principle upon which both *Fury* and *Baldwin, supra*, were decided is that all income is taxed personally to the one who earns it, and that this tax liability cannot be avoided by any form of anticipatory assignment of one's income to another where he still retains total financial control.

There can be no doubt herein that it was Appellant who personally earned the income in question. He was the person who was employed by Control Data, both before and after he received his church charter and other documents. It was solely for his services as an engineer that Control Data hired him and paid him compensation. The relationship between the taxpayer and Control Data can only be described as that of employer-employee under the evidence herein, and the Appellant admits as much in his own arguments.

There is no contention that Appellant was acting in the capacity of an agent while working at Control Data. Nor is there any evidence to support such a contention if it were made.

Inasmuch as the income in question was earned by the Appellant as an employee, and is includable, as we have seen, within the definition of "gross income", it follows that such income is taxable personally to him. The fact that it may have been assigned or given over to Appellant's local Chapter No. 10,173 under an alleged vow of poverty is of no consequence. Under the controlling principles of *Lucas v. Earl, supra; Fury v. Commissioner, supra*, and *Baldwin v. Commissioner, supra*, the Appellant's income tax liability herein cannot be avoided. Accordingly, the Commissioner's assessment of tax should be affirmed.

In his brief herein the Appellant cites a federal withholding tax statute (26 U.S.C. 3401), and a federal self-employment contributions regulation (26 C.F.R. 1.1402) which deal only with requirements placed upon employers (in the case of withholding) and self-employed persons (in order to finance the extension of social security benefits to them).

Neither of these authorities even remotely apply to an individual's state income tax liability.

They are therefore unnecessary and irrelevant to the present case, because the issue herein concerns solely the personal income tax liability of the taxpayer, Lloyd B. Miller. The only relevant statutes are those dealing with personal income taxation and the authorities cited by Appellant are totally irrelevant to the question of whether he is personally exempt from income taxation.

Minnesota Tax Court
John Knapp, Chief Judge

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