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P182

STATE REGISTER

STATE OF MINNESOTA

VOLUME 5, NUMBER 8

August 25, 1980

Pages 263-302

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		
9	Monday Aug 18	Monday Aug 25	Monday Sept 1
10	Monday Aug 25	Friday Aug 29	Monday Sept 8
11	Friday Aug 29	Monday Sept 8	Monday Sept 15
12	Monday Sept 8	Monday Sept 15	Monday Sept 22

*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 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, Suite 415, Hamm Building, 408 St. Peter Street, St. Paul, Minnesota 55102.

The *State Register* is published by the State of Minnesota, Office of the State Register, Suite 415, Hamm Building, 408 St. Peter Street, St. Paul, Minnesota 55102, pursuant to Minn. Stat. § 15.0411. Publication is weekly, on Mondays, with an index issue in August. In accordance with expressed legislative intent that the *State Register* be self-supporting, the subscription rate has been established at $120.00 per year, postpaid to points in the United States. Second class postage paid at St. Paul, Minnesota, Publication Number 326630. (ISSN 0146-7751) No refunds will be made in the event of subscription cancellation. Single issues may be obtained at $2.25 per copy.

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:

- Proposed new rules (including Notice of 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 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
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.

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PROPOSED RULES

Pursuant to Minn. Stat. § 15.0412, subd. 4, agencies must hold public hearings on proposed new rules and/or proposed amendment of existing rules. Notice of intent to hold a hearing must be published in the *State Register* at least 30 days prior to the date set for the hearing, along with the full text of the proposed new rule or amendment. The agency shall make at least one free copy of a proposed rule available to any person requesting it.

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 20 days thereafter, interested persons may submit data and views in writing to the proposing agency.

Public Hearings on Agency Rules
September 1-6, 1980

Date	Agency and Rule Matter	Time & Place
Sept. 4	Housing Finance Agency Income Limits for the Home Improvement Program Hearing Examiner: Richard Luis	9:00 a.m., Conference Rm., Capitol Square Bldg., 550 Cedar St., St. Paul, MN 55101

Department of Health
Environmental Health Division

Proposed New Rules Relating to Mineral Explorers and Exploratory Borings, and Proposed Amendments to Rules Relating to Water Well Construction and the Use of Plastic Casing

Notice of Hearing

Notice is hereby given that a public hearing concerning the proposed rules captioned above will be held pursuant to Minn. Stat. § 15.0412, subd. 4 (Supp. 1978) in Room 105, Minnesota Department of Health Building, 717 Delaware Street Southeast, Minneapolis, Minnesota 55440, on Tuesday, September 30, 1980, commencing at 9:30 a.m. The proposed rules may be modified as a result of the hearing process. Therefore, if you are affected in any manner by the proposed rules you are urged to participate in the rule hearing process.

Following the agency's presentation at the hearing, all interested or affected persons will have an opportunity to ask questions and make comments. Statements may be made orally and written material may be submitted. In addition, whether or not an appearance is made at the hearing, written statements or material may be submitted to Richard Luis, Hearing Examiner, Office of Administrative Hearings, Room 300, 1745 University Avenue, St. Paul, Minnesota 55104, telephone: (612) 296-8114, either before the hearing or within five (5) working days after the close of the hearing. The hearing examiner may, at the hearing, order that the record be kept open for a longer period not to exceed 20 calendar days. All such statements will be entered into and become part of the record. For those wishing to submit written statements or exhibits, it is requested that at least three (3) copies be furnished. In addition, it is suggested, to save time and avoid duplication, that those persons, organizations, or associations having a common viewpoint or interest in these proceedings join together where possible and present a single statement in behalf of such interests. The rule hearing procedure is governed by Minn. Stat. §§ 15.0411-15.052, and by 9 MCAR §§ 2.101-2.112 (Minnesota Code of Agency Rules). If you have any questions about the procedure, call or write to the hearing examiner.

Notice is hereby given that twenty-five (25) days prior to the hearing, a Statement of Need and Reasonableness will be available for review at the agency and at the Office of Administrative Hearings. This Statement of Need and Reasonableness will include all of the evidence which the agency intends to present at the hearing to justify both the need for and the reasonableness of the proposed rules. However, additional evidence may be submitted in response to questions raised by interested persons. You are therefore urged to both review the Statement of Need and Reasonableness before the hearing and to attend the hearing. Copies of the Statement of Need and Reasonableness may be obtained from the Office of Administrative Hearings at a minimal charge.

If adopted, the proposals would have the following effects:

1. The proposed new rules would effectuate the statutory requirement that mineral explorers be licensed according to the procedures prescribed in 7 MCAR § 1.211 for water well contractors and to follow certain procedures for the construction and abandonment of exploratory borings; and

KEY: RULES SECTION — Underlining indicates additions to proposed rule language. ~~Strike-outs~~ indicate deletions from proposed rule language. **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."

2. The proposed revision to existing rules governing the use of plastic well casing would prescribe procedures for its use where certain geological conditions are encountered and would allow for the use of plastic casing under conditions which permit its safe use throughout the state.

Statutory authority of the Commissioner of Health to promulgate the new rules on mineral exploration is contained in Minn. Laws of 1980, ch. 535, §§ 5 and 8. Statutory authority of the Commissioner of Health to promulgate revisions to rules regarding plastic well casing is contained in Minn. Stat. § 156A.031 (Supp. 1979).

Copies of the proposed amendments are now available and at least one free copy may be obtained by writing to the Minnesota Department of Health, Division of Environmental Health, 717 Delaware Street Southeast, Minneapolis, Minnesota 55440. Additional copies will be available at the door on the date of the hearing.

Notice: Any person may request notification of the date on which the Hearing Examiner's Report will be available, after which date the agency may not take any final action on the rules for a period of five (5) working days. Any person may request notification of the date on which the hearing record has been submitted or resubmitted to the Attorney General by the agency. If you desire to be so notified, you may so indicate at the hearing. After the hearing, you may request notification by sending a written request to the hearing examiner, in the case of the Hearing Examiner's Report, or to the agency, in the case of the agency's submission or resubmission to the Attorney General.

In addition, please be advised that Minn. Stat. ch. 10A requires each lobbyist to register with the State Ethical Practices Board within five days after he commences lobbying. A lobbyist is defined in Minn. Stat. § 10A.01, subd. 11 (Supp. 1979) as any individual:

(a) Engaged for pay or other consideration, or authorized by another individual or association to spend money, who spends more than five hours in any month or more than $250, not including *his own* travel expenses and membership dues, in any year, for the purpose of attempting to influence legislative or administrative action by communicating or urging others to communicate with public officials; or

(b) Who spends more than $250, not including *his own* traveling expenses and membership dues, in any year for the purpose of attempting to influence legislative or administrative action by communicating or urging others to communicate with public officials.

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.

Promulgation of these proposed new rules and amendments will not result in the expenditure of public monies by local government units.

August 8, 1980

George R. Pettersen, MD
Commissioner of Health

Amendments as Proposed

7 MCAR § 1.210 Definitions and policies.

B.2. "Council" means the Water Well Contractors' and Exploratory Borers' Advisory Council created pursuant to the provisions of Minn. Stat. § 156A.06.

B.6. "Applicant" means any person who applies for a water well contractor's or explorer's license pursuant to the Act.

B.9. "Year of experience" for a water well contractor means a year during which the applicant personally drilled five (5) water wells and was actively working in the trade for a period of 1,000 hours under the supervision of a licensed water well contractor. An applicant drilling 1,000 hours per year and completing fewer than five wells per year may qualify, if the experience is gained in constructing one or more large diameter wells (casing outer diameter is ten inches or more) which are more than 500 feet deep. An applicant who seeks to qualify under this provision shall have his license limited to construction of such deep and large diameter wells. A year of experience for an explorer means a year during which the applicant supervised or personally drilled five exploration borings.

B.10. "Licensee" means a person who is licensed as a water well contractor or explorer pursuant to the provisions of the Act and these rules.

Rule as Proposed

7 MCAR § 1.225 Rule relating to mineral exploration. This rule applies to all explorers who engage in exploratory boring in accordance with the provisions of Minn. Stat. § ch. 156A (as amended by Laws of 1980, ch. 535).

A. Unless otherwise specified in this rule, the definitions given in 7 MCAR § 1.210 B. and C. shall apply to the terms used in this rule, as appropriate.

B. Licensing. The procedures and conditions for licensing of water well contractors which are contained in 7 MCAR § 1.211 A. through G. shall apply to the licensing of explorers, except that experience in supervising the construction of borings need not have been gained in Minnesota.

C. Explorer responsibilities.

1. No person shall construct or cause to be constructed any exploratory boring within this state unless he possesses a valid explorer's license issued by the commissioner.

2. The explorer shall be responsible for the construction and abandonment of all exploratory borings completed under his license.

D. Procedures for location, construction and abandonment of exploratory borings.

1. Location and construction.

a. An exploratory boring shall be located in accordance with the isolation distances from sources of contamination which are specified in 7 MCAR § 1.217 C.1.a. through e.

b. An exploratory boring shall be constructed in a location and maintained in such a manner as to prevent all known sources of contamination from entering the boring at any time.

c. Any boring which encounters a cavernous limestone formation shall be cased and grouted to prevent the introduction of surface water into the groundwater and to prevent the passage of water from one aquifer to another. The casing and grouting procedures are prescribed in 7 MCAR § 1.220 A., C. and H.

d. No boring shall be open except during the time when it is actually being drilled or logged.

2. Abandonment.

a. Abandonment of all exploratory borings shall be carried out in accordance with the provisions of ch. 156 A and these rules (7 MCAR §§ 1.210-1.225) as appropriate.

b. Abandonment, whether temporary or permanent, shall be undertaken immediately upon completion of drilling activities.

c. Temporary abandonment.

(1) A boring which is temporarily abandoned shall be cased from bedrock or the bottom of the boring, to one foot above the ground surface, or if in a flood plain, at least two feet above the level of the highest flood of record, and protected with a water-tight cap which will prevent any surface contamination from entering the boring.

(2) Any boring which is temporarily abandoned shall be marked and protected with four steel posts as prescribed in 7 MCAR § 1.217 C.4.b.

(3) A boring shall not be temporarily abandoned for more than five years.

d. Permanent abandonment.

(1) Whenever the explorer determines that a boring need not remain open any longer, or whenever he is about to lose the right to explore, the explorer shall permanently abandon the boring in the manner prescribed in these rules.

(2) A boring which is permanently abandoned shall be completely filled in the manner and with the materials prescribed in 7 MCAR § 1.218 C.2.a. through e.

e. Abandonment report. The abandonment report required by Minn. Stat. § 156A.017, subd. 8 shall specify whether the boring is being temporarily or permanently abandoned. A separate abandonment report shall be filed when a temporarily abandoned boring is permanently abandoned.

E. Any request for modification of the provisions of rules applicable to exploratory borings shall be submitted according to the procedure prescribed in 7 MCAR § 1.210 D.3.a. and b.

Amendments as Proposed

7 MCAR § 1.224 Plastic well casing. In addition to complying with 7 MCAR §§ 1.210-1.223, an installer who uses plastic well casing* must comply with the provisions of this rule with regard to construction and installation.

~~*Laws of 1977, ch. 398, and Laws of 1979, ch. 312 permit the use of plastic well casing in certain Minnesota counties. A list of these counties is appended at the end of this rule.~~

KEY: RULES SECTION — Underlining indicates additions to proposed rule language. ~~Strike-outs~~ indicate deletions from proposed rule language. **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."

B.2. Any plastic pipe, couplings, components, solvents, cements, or primers used in water well casing construction shall have the approval of a testing laboratory which has demonstrated the use of unbiased, reliable and appropriate testing methods, as determined by the Commissioner of Health. Such laboratory must approve the material as being intended for use in the transport of potable water. This approval shall be stamped on the pipe as prescribed below.

~~C. Plastic well casing pipe size: Where a submersible pump is to be installed inside a plastic casing, the casing diameter shall be no less than five inch nominal pipe size, as specified in ASTM F 480.~~

Reletter D. as C.

D. ~~E.~~ Technique for joining plastic well casing.

1. Cutting. The installer shall use fine tooth blades with little or no set for cutting the pipe. Pipe ends shall be cut square ~~using a miter box~~. A plastic pipe cutter equipped with extra wide rollers and thin cutting wheels may be used. Standard steel pipe or tubing cutters shall not be used for cutting plastic pipe.

5. ~~(1). allow sufficient time for the joint to cure before the joined pipe can be dropped into the drilled hole. This additional cure time is specified in Table 3.~~

~~Table 3~~
~~Joint Cure Schedule~~

~~Ambient Temperature, °C~~	~~2 to 3 in. SDR 26 and above~~	~~SDR 21 17, 13.5~~	~~3½ to 12 in. SDR 26 and above~~	~~SDR 21 17, 13.5~~
~~15 to 40~~	~~2 h*~~	~~12 h~~	~~6 h~~	~~24 h~~
~~5 to 15~~	~~4 h~~	~~24 h~~	~~12 h~~	~~48 h~~
~~20 to +5~~	~~16 h~~	~~96 h~~	~~48 h~~	~~8 days~~

~~*When the relative humidity is above 60%, increase all of the above times by 50%.~~

E. ~~F.~~ Installation of plastic well casing.

1. The installer shall drill an open hole which is 4 inches larger than nominal casing size where:

a. rock (consolidated as opposed to unconsolidated geological material) is encountered within 25 feet of the surface. The annular space shall be grouted with neat cement or concrete grout as prescribed in 7 MCAR § 1.220 C.

b. rock is encountered at a depth greater than 25 feet from the surface. The casing shall extend at least 5 feet into the stable rock formation. The casing shall be sealed into the rock using neat cement grout. The remaining annular space shall be grouted as prescribed in 7 MCAR § 1.220 C. or F.

c. boulders or unstable geologic conditions require that an oversized hole be drilled in order to install and protect the well casing. The annular space shall be grouted as prescribed in 7 MCAR § 1.220 C. or F.

d. the well screen is to be gravel packed. The gravel pack shall not extend more than 10 feet above the static water level nor within 50 feet of the land surface. The remaining annular space shall be grouted as prescribed in 7 MCAR § 1.220 C. or F.

3. Grouting.

a. The installer shall fill the annular space between the drill hole wall and the casing pipe with grout ~~(defined in 7 MCAR § 1.210)~~ as prescribed in 7 MCAR § 1.220 C. or F. to assure equal loading around the casing in order to prevent collapse or deformation of the casing and to prevent any contamination from entering the well. ~~Native sand may be used in non-artesian wells drilled in outwash material having no clay lense or lenses (a geological stratum composed of clay). The upper 30 feet in any type of well shall be grouted with neat cement grout (defined in 7 MCAR § 1.220 C.3.) using a tremie pipe. A tremie pipe is one which is small enough to fit in the annular space and which carries the grout to the bottom of a hole. The grout shall be fed under pressure from the bottom to the top in one continuous operation.~~

~~b. When drilling a rock well, the installer shall seal the casing pipe into the bedrock using neat cement grout (defined in 7 MCAR § 1.220 C.3.).~~

b. ~~c.~~ Because of its high heat of hydration, grout made of rapid-setting cement is not permitted for use in wells which are cased with PVC pipe.[3]

6. Plastic water well casing shall not be used in wells cased and cement grouted through cavernous rock formations. However, in such formations, plastic casing may be used as an inner casing if surrounded by an outer casing which meets the requirements of 7 MCAR § 1.220A.7.

7. Screws shall not be used to join solvent weld joints.

Department of Natural Resources

Proposed Amendments to Boat and Water Safety Rules

Notice of Hearing

A public hearing concerning the proposed rule amendments will be held in St. Paul on September 25, 1980 at the Minnesota Historical Society Building, 640 Cedar Street, in the Weyerhaeuser Room. The hearing will begin at 7:00 p.m.

The proposed rules may be modified as a result of the hearing process. Therefore, if you are concerned about the content of the rules, you are urged to participate.

Following the agency's presentation at the hearing, all interested or affected persons will have an opportunity to ask questions and make comments. Statements may be made orally and written material may be submitted. In addition, whether or not an appearance is made at the hearing, written statements or material may be submitted to Phyllis Reha, Hearing Examiner, room 300, 1745 University Avenue, St. Paul, MN 55104, telephone (612) 296-6910 either before the hearing or within five working days after the close of the hearing. The hearing examiner may, at the hearing, order that the record be kept open for a longer period not to exceed 20 calendar days. The rule hearing procedure is governed by Minn. Stat. §§ 15.0411-15.1417 and 15.052, and by 9 MCAR §§ 2.101-2.112 (Minnesota Code of Agency Rules). If you have any questions about the procedure, call or write the hearing examiner.

Twenty-five days prior to the hearing, a Statement of Need and Reasonableness will be available for review at the Office of Hearing Examiners. This Statement of Need and Reasonableness will include a summary of all of the evidence which will be presented by the agency at the hearing justifying both the need for and the reasonableness of the proposed rule amendments. Copies of the Statement of Need and Reasonableness may be obtained from the Office of Hearing Examiners at a minimal charge.

Because of legislative changes during the 1975 and 80 sessions, as well as changes in federal regulations and those additions or deletions necessitated by experience, amendments to the current boat and water safety rules have been found to be necessary. Current rules were promulgated in 1972.

The following amendments are proposed:

—the addition of the term "sailboard" as well as several technical corrections in the rules on licensing and marking of watercraft.

—providing that all required safety equipment be provided by the owner of rental watercraft.

—changing technical terms regarding alcohol and controlled substances to conform to statute changes.

—shortening and clarifying the rules of the road for non-motorized watercraft and the use of emergency lights on patrol craft.

—rewriting the required safety equipment rules to conform to new statutes. This includes requirements for lifesaving devices, sound producing devices, fire extinguishers and navigation lights. No substantial change is proposed from existing rules, however.

—changing the technical requirements for certain waterway markers to more closely conform to what is practical and available commercially.

—removing language on skin and SCUBA diving which was preempted by a 1975 statute.

—clarifying permit requirements for temporary structures, buoys and signs.

—deleting reference to an obsolete address in the Department of Natural Resources.

The authority for and subject-matter of the rules are found in Minn. Stat. ch. 361.

The agency estimates that there will be no cost to local public bodies in the state to implement the amendments for the two years immediately following its adoption, within the meaning of Minn. Stat. § 15.0412, subd. 7 (1978).

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Copies of the proposed rule amendments are now available and at least one free copy may be obtained by writing to Boat and Water Safety Section, Minnesota Department of Natural Resources, Box 46 Centennial Bldg., Saint Paul, Minnesota 55155, telephone (612) 296-3336. Additional copies will be available at the hearing. If you have any questions on the content of the proposed rule amendments, contact the boat and water safety section at the address or phone listed above.

Any person may request notification of the date on which the hearing examiner's report will be available, after which date the agency may not take any final action on the rules for a period of five working days. Any person may request notification of the date on which the hearing record has been submitted or resubmitted to the Attorney General by the agency. If you desire to be so notified, you may so indicate at the hearing. After the hearing, you may request notification by sending a written request to the hearing examiner, in the case of the hearing examiner's report, or to the agency, in the case of the agency's submission or resubmission to the Attorney General.

Minn. Stat. ch. 10A requires each lobbyist to register with the State Ethical Practices Board within five days after he or she commences lobbying. A lobbyist is defined in Minn. Stat. § 10A.01, subd. 11 (1979 Supp.) as any individual:

(a) Engaged for pay or other consideration, or authorized by another individual or association to spend money, who spends more than five hours in any month or more than $250, not including *his own* travel expenses and membership dues, in any year, for the purpose of attempting to influence legislative or administrative action by communicating or urging others to communicate with public officials; or

(b) Who spends more than $250, not including *his own* traveling expenses and membership dues, in any year for the purpose of attempting to influence legislative or administrative action by communicating or urging others to communicate with public officials. The statute provides certain exceptions. Questions should be directed to the Ethical Practices Board, 41 State Office Building, Saint Paul, Minnesota 55155, telephone (612) 296-5615.

August 8, 1980.

Joseph N. Alexander, Commissioner
Department of Natural Resources

Rules as Proposed

NR 200 Licensing of watercraft.

(b) Display of license certificate. No person shall operate or use a watercraft, except a non-motorized canoe, kayak, ~~or~~ sailboat, sailboard or rowing shell required to be licensed unless the license certificate for such watercraft is on board and available for inspection by authorized enforcement officers. Owners of non-motorized canoes, kayaks, sailboats, sailboards, or rowing shells shall produce the license certificate for such watercraft within a reasonable time upon request of authorized enforcement officers. The owner of rental watercraft may keep the license certificate available for inspection on the premises from which the watercraft is rented, provided that the owner's business is legibly printed on the rear half and on both sides of the watercraft in the same size and manner as required for the license number in NR 200, Section (c).

(c) Display of license number & validation decal on motorized watercraft. The license number, on all watercraft, except non-motorized canoes, kayaks, sailboats, sailboards and rowing shells shall be securely affixed on each side of the forward half of the watercraft for which it was issued in such a position as to provide clear and legible identification. The letters and numerals must be of a color that contrasts with the background and may be reflectorized decals or metal or may be painted. The letters and numerals shall read from left to right and shall not be less than 3 inches in height, of block type, of a stroke not less than ½ inch or more than ¾ inch in width, not including a border. The license number shall be maintained so that it is clearly visible and legible, and the letter groups must be separated from the numeral groups by a space of not less than 3 inches nor more than 4 inches. Adjacent letters and numerals within each group must be spaced not less than ½ inch nor more than ¾ inch apart. A state validation decal for the current license period must be affixed toward the stern of the boat and not more than 4 inches from the first or last letter of the license number on each side of the boat.

(e) Marking of non-motorized sailboats and sailboards. All non-motorized sailboats and sailboards shall display the decals furnished by the Department of Natural Resources for such watercraft. These decals shall be securely affixed on each side of the forward half of the watercraft for which it was issued, in such a position as to provide clear and legible identification. If it is impossible to display such decals on the forward half of such watercraft so as to provide clear and legible identification both decals must then be affixed to the stern of such watercraft.

(g) Other insignia. No person shall operate any watercraft, except a non-motorized canoe, kayak, rowing shell, sailboard or sailboat, which has any number, letter, design or insignia displayed on either side thereof which is closer than 24 inches to any part of the watercraft license number of validation decal.

(j) Enforcement pennant. ~~All watercraft used in the enforcement of these rules and regulations and the laws under which they are promulgated shall be marked by the flying of a pennant.~~ The pennant required under Minn. Stat. § 361.215 shall be triangular in shape

and of the following dimensions: Four (4) inches in depth at the staff and one foot in length. The pennant shall be of a blue background and bear a three (3) inch replica of the Minnesota State Seal.

~~(k) Determining length of watercraft. For the purpose of determining the license fee, the overall length of the watercraft shall be measured from transom top to point of the bow.~~

NR 201 Rental of watercraft.

(a) Condition and equipment of rented watercraft.

(8) The owner of a business which rents, leases, or hires out watercraft shall provide for each person on board the watercraft a lifesaving device required by law or these rules, as well as all other required safety equipment for each watercraft.

(b) Persons to whom watercraft may be rented. No watercraft shall be knowingly rented or offered for rent to any person who is under the influence of ~~an alcoholic beverage, narcotic or habit forming drug~~ alcohol or a controlled substance.

NR 202 Navigation of watercraft on the waters of the state; safety equipment.

(a) General rules of the road.

(4) A ~~sailboat~~ non-motorized watercraft has right-of-way over a motor-powered watercraft except when it is the overtaking watercraft. ~~Small sailboats~~ Non-motorized watercraft should not insist on this right-of-way when approaching large commercial vessels.

~~Watercraft propelled by oars or paddles shall also be given right-of-way by motor-powered watercraft.~~ Motor-powered watercraft should always keep clear and pass astern of such watercraft.

(5) All watercraft shall yield the right-of-way to enforcement or other authorized emergency watercraft displaying a red or blue flashing light.

(b) General mode of operation of watercraft.

(3) No person shall operate a watercraft within 150 feet of a diver's warning flag (described in ~~NR 206 (a)(6).~~ Minn. Stat. § 361.085).

(4) The operator of any watercraft, when signaled to do so by a conservation officer, sheriff or sheriff's deputy shall bring the watercraft to a stop or maneuver it in a manner which will allow the officer to come alongside.

~~(c) Safety Equipment.~~

~~(1) Every person on board a non-motorized canoe or kayak shall wear or have readily accessible to him on board the non-motorized canoe or kayak for his personal use a U.S. Coast Guard approved lifesaving device. A lifesaving device of the vest type with no less than 150 permanently inflated air sacs of 12 mil vinyl construction and capable of supporting a minimum weight of 13 pounds may be substituted for a U.S. Coast Guard approved lifesaving device.~~

~~(2) All motor-powered watercraft 26 feet or more in overall length shall be equipped with one hand- or power-operated horn or whistle audible at least one mile.~~

~~(3) All motor-powered watercraft less than 26 feet in length with construction permitting the entrapment of explosive or flammable gases or vapors must have at least one B-I type hand portable U.S. Coast Guard approved fire extinguisher fully charged and in good operating condition on board and readily accessible.~~

~~(4) All motor-powered watercraft 26 feet or less than 40 feet in length must have at least two B-I U.S. Coast Guard approved hand portable fire extinguishers, or at least one B-II type U.S. Coast Guard approved hand portable fire extinguisher on board in good condition, fully charged and readily accessible.~~

~~(5) All motor-powered watercraft 40 feet to not more than 65 feet in length must have at least three B91 type U.S. Coast Guard approved fire extinguishers; or at least one B-I type plus one B-II type approved hand portable fire extinguisher on board. These fire extinguishers must be fully charged, in good working condition and readily accessible.~~

~~(6) All motor-powered watercraft over 65 feet in length must have at least three B-II type U.S. Coast Guard approved fire extinguishers on board. These fire extinguishers must be fully charged, in good working condition and readily accessible.~~

(c) Personal flotation (lifesaving) devices

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(1) Every person on board a watercraft shall wear or have readily accessible a U.S. Coast Guard approved Type I, II, III or IV personal flotation device.

(2) A Coast Guard approved Type V personal flotation device may be carried in lieu of the Type I, II, III or IV personal flotation device required in this regulation, if the Type V personal flotation device is approved for the activity in which the watercraft is being used.

(3) Persons being towed by a watercraft on water skis, or other devices shall be considered to be on board the towing watercraft, for the purpose of personal flotation device requirements. A U.S. Coast Guard approved personal flotation device must be either carried in the towing watercraft or worn by the person being towed.

(4) All personal flotation devices required by these rules shall be:

(aa) Approved by the United States Coast Guard.

(bb) Legibly marked with the approval number issued by the United States Coast Guard.

(cc) In serviceable condition.

(dd) Either readily accessible or worn.

(ee) Of the appropriate size for the intended wearer, if the device is designed to be worn.

(d) Sound producing devices

(1) All motorboats 16 feet or more in overall length shall carry a power, hand or mouth-operated horn or whistle capable of producing a sound for at least two seconds which is audible for at least one-half mile.

(2) All motorboats 26 feet but less than 40 feet in overall length shall be equipped with a hand or power-operated horn or whistle capable of producing a sound for at least two seconds which is audible for at least one mile.

(3) All motorboats 40 feet or more in length shall be equipped with a power-operated horn or whistle capable of producing a sound for at least two seconds which is audible for at least one mile.

(e) Fire extinguishers

(1) All motorboats less than 26 feet in length with construction permitting the entrapment of explosive or flammable gases or vapors must have at least one B-I type hand portable U.S. Coast Guard approved fire extinguisher fully-charged and in serviceable condition on board and readily accessible.

(2) All motorboats 26 feet to less than 40 feet in length must have at least two B-I U.S. Coast Guard approved hand portable fire extinguishers, or at least one B-II type U.S. Coast Guard approved hand portable fire extinguisher on board in serviceable condition, fully-charged and readily accessible.

(3) All motorboats 40 feet to not more than 65 feet in length must have at least three B-I type U.S. Coast Guard approved fire extinguishers; or at least one B-I type plus one B-II type approved hand portable fire extinguisher on board. These fire extinguishers must be fully-charged, in serviceable condition and readily accessible.

(4) All motorboats over 65 feet in length must have at least three B-II type U.S. Coast Guard approved fire extinguishers on board. These fire extinguishers must be fully-charged, in serviceable condition and readily accessible.

(5) When a motorboat is equipped with a U.S. Coast Guard approved fixed fire extinguishing system installed in the engine compartment, one less B-I extinguisher is required. The fixed system must be in serviceable condition and fully-charged.

(f) ~~(d)~~ Ventilation equipment

(g) ~~(e)~~ Lighting equipment

(7) All watercraft over 65 feet in length must display the lights required by ~~the Inland Rules Light Requirements found in~~ NR 202 ~~(e)~~(g)~~(5)~~(4).

(8) All non-motorized ~~canoes, kayaks, sailboats and rowboats~~ watercraft when under way or anchored, between sunset and sunrise, shall carry aboard but not necessarily fixed to any part of the watercraft a minimum of one ~~a~~ lantern or flashlight capable of showing a white light visible all around the horizon at a distance of two miles or more. ~~in sufficient time to avoid collision with another watercraft.~~ Such light or lantern shall be displayed~~.~~ in sufficient time to avoid collision with another watercraft.

(9) When a watercraft is moored to a buoy authorized by a permit issued under NR 207 it shall not be required to display the 32-point anchor light required in NR 202 (g)(4) through (8).

NR 203 Capacity plate information requirements.

(a) For watercraft constructed from January 1, 1972 through July 31, 1980:

(1)~~(a)~~ Information required. The manufacturer's capacity plate required by law shall contain the following information:

(aa)~~(1)~~ Safe maximum horsepower;

(bb)~~(2)~~ Maximum number of persons at 150 pounds per person;

(cc)~~(3)~~ Properly located maximum weight in pounds of persons, motor and gear.

(2)~~(b)~~ Formula for determining maximum weight. The formula for determining the maximum weight for watercraft manufac-tured for sale in Minnesota, 19 feet and under, except canoes, kayaks, and sailboats, shall be the recommended practices for watercraft load capacity Project H-5 (adopted) or Project H-5a (proposed) contained in the American Boat and Yacht Council Incorporated publication "Safety Standards for Small Craft 1971-72."

(3)~~(c)~~ Formula for determining maximum horsepower. The formula for determining the maximum horsepower for watercraft manufactured for sale in Minnesota, 19 feet and under, shall be the "recommended Practices and Standards Covering Safe Powering of Small Craft" Project P-11 (proposed) contained in the American Boat and Yacht Council, Incorporated publication "Safety Standards for Small Craft 1971-72."

(b) For watercraft constructed on or after August 1, 1980:

(1) Information required. The manufacturer's capacity plate required by law shall contain the following information:

(aa) For outboard boats

Maximum persons capacity in pounds or persons

Maximum weight capacity (persons, motor and gear) in pounds

Maximum motor horsepower or maximum horsepower with and without remote steering

(bb) For inboard, inboard/outdrive and boats without mechanical propulsion

Maximum persons capacity in pounds or persons

Maximum weight capacity (persons and gear) in pounds

(2) The method used for determining capacity information shall comply with the U.S. Coast Guard Safe Loading and Powering Standards as set forth in 33 CFR Part 183.

(c) The terms "safe power capacity" and "safe carrying capacity" used in Minn. Stat. § 361.05 (4) shall be that capacity displayed on the manufacturer's capacity plate. If no such plate exists, the method referred to in either NR 203 (a)(2) & (3) or NR 203 (b)(2) shall be used to determine the capacity.

NR 204 Waterway markers.

(b) Channel marker buoys

(1) Every channel marker buoy shall have the external form of a ~~flat topped~~ cylinder having a circular transverse cross-section not less than 9 inches ~~and not more than 15 inches~~ in diameter. All such markers must extend at least 36 inches above the water.

(3) To indicate a watercraft should pass to south or west, where there is no well-defined channel, a buoy shall have the top surface and upper 5 inches colored red and the remainder colored white. If the buoy is reflectorized, it shall be done with a white strip, no less than 4 inches in width, that completely encircles the buoy and it shall be placed directly under the ~~black~~ red top. A white quick-flashing light shall be used if the buoy is lighted.

(c) Other navigational buoys. A buoy indicating that a watercraft should not pass between it and the nearest shore shall have ~~a flat top and shall have a square~~ a circular transverse cross-section measuring not less than 9 inches in diameter ~~nor more than 15 inches across on a side~~ and shall extend at least 36 inches above the surface of the water. ~~Each such buoy shall have a white top surface and a white vertical stripe on each side extending medially from top to bottom of a width equal to one-half the width of each side. The remainder shall be colored red.~~ Each such buoy shall be marked with alternating vertical red and white stripes. White reflectorization may be used on a minimum of the upper four inches of the white vertical stripe. Red reflectorization may be used on a minimum of the upper four inches of the red vertical stripes. A white quick-flashing light shall be used if the buoy is lighted.

(d) Mooring buoys. Every buoy placed in the waters of the state for use in anchoring or mooring watercraft may be of any practicable size or shape, but must have at least 8 inches extending above the waterline. No anchoring buoy may have a diameter of over ~~20~~ 24 inches if circular or a width of more than ~~20~~ 24 inches if some other shape. No mooring or anchor buoy may be placed in any public water if it obstructs access to any public or private property or creates a navigational hazard. No mooring or anchor buoy may be placed

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in or upon the water of the State except by public authority or under a permit issued by the sheriff of the county. Every such buoy shall be colored white and shall be encircled by a visible blue band at least ~~three~~ one inches wide. Mooring buoys must have a minimum total of 16 square inches of white reflectorization, part of which must be visible from any direction. Mooring buoys, if lighted, shall show a flashing white light.

(e) Regulatory and information signs and buoys

(1) No regulatory or informational signs or buoys may be placed in or upon the waters of this state, except by public authority or under a permit issued by the sheriff of the county. All such signs and buoys shall be colored white except as hereinafter provided.

When a buoy is used as a regulatory or informational marker (except in private swimming areas), it shall have two orange-colored horizontal bands completely around the buoy's circumference, one such band at the top, and the other just above the waterline. The appropriate geometric shape(s) indicating the buoy's purpose and any lettering or numerals shall be placed between these horizontal bands. The buoy itself shall have a circular transverse cross-section of at least 9 inches and shall extend at least 36 inches above the surface of the water.

(2) Every sign or buoy giving information for the convenience of watercraft operators shall bear a two-inch wide orange-colored band forming an upright rectangle measuring at least 14 inches in height ~~and width,~~ outside dimensions.

(3) Signs or buoys indicating danger to watercraft shall bear an orange-colored band of two-inch width forming an upright diamond at least 14 inches in outside ~~width~~ height, and such signs shall bear a printed statement of the source of danger.

(4) Signs or buoys indicating controlled water areas in which boating, fishing, waterskiing, skin diving, or other water activities are restricted, limited or otherwise subjected to special rules or regulations shall bear a two-inch wide band forming a circle at least ~~24~~ 12 inches in outside diameter. The limitation, restriction, prohibition or regulation effective within a controlled area shall be printed inside of the orange-colored circle when possible.

Signs or buoys designating State Game Refuges, Wildlife Management Areas or spawning areas shall not be subject to the provisions of this order.

(5) Signs or buoys directing all watercraft to keep out of a specific water area shall bear a two-inch orange-colored band forming an upright diamond at least 14 inches in outside ~~width~~ height, dissected vertically and horizontally by an orange-colored strip two inches wide.

Signs or buoys designating State Game Refuges, Wildlife Management Areas or spawning areas shall not be subject to the provisions of this order.

(6) Signs indicating winter ice dangers to persons, motor vehicles, snowmobiles, all-terrain vehicles, ice boats, or any other conveyance used to transport persons over the ice on public waters of the state shall bear a two-inch wide orange-colored band forming an upright diamond at least 14 inches in outside width and such signs shall bear a printed statement of the source of danger.

Where used, except for the marking of aeration systems operating under a permit from the Commissioner of Natural Resources, these signs shall completely line the perimeter of the ice hazard at intervals not exceeding 75 feet and shall be at least 48 inches above the ice. When a permit is issued for an aeration system, the commissioner shall specify the marking requirements for each system as a part of the permit.

~~Such signs must be removed from the ice, by whomever placed, not later than April 1.~~

(7) No person shall operate any motor vehicle, snowmobile, all-terrain vehicle, ice boat, or any other conveyance used to transport persons over the ice on public waters of the state within 150 feet of a diver's warning flag described in ~~NR 206 (a)(6)~~ Minn. Stat. § 361.085.

(8) Written material on any waterway marker sign or buoy shall be printed with black letters at least 2 inches in height, on a white background. ~~All lettering shall be placed inside the area enclosed by the orange band, except that explanatory material appearing on signs indicating an area prohibited to watercraft shall be placed outside of the orange band.~~

NR 205 Marking of legally designated swimming areas.

(b) Other areas

(1) The entire perimeter of the water area shall be marked with white marking buoys no less than 9 inches in diameter and extending no less than 36 inches above the surface of the water. Each marking buoy must contain two horizontal bands of ~~reflectorized international~~ orange, one such band at the top, and the other just above the waterline. Each marking buoy must also contain two diamond shapes with crosses which means "boats keep out." These diamond shapes must have a vertical diagonal of not less than 14 inches. ~~and a horizontal diagonal of not less than 14 inches.~~ The borders of the diamond and cross outline shall not be less than ~~1~~ 2 inches in width. The color of these borders shall be ~~reflectorized international~~ orange. The diamonds shall be placed midway between the horizontal bands. The words "swim area" should also appear on each marker in no less than two-inch letters.

NR 206 Scuba Divers and Water skiers.

~~(a) Diver's Flags~~

~~(1) Every person who shall swim in any waters of the state, except in legally designated swimming areas, while wearing or carrying any apparatus including a snorkel permitting him to breathe while under water, shall tow a diver's flag, displayed above the surface of the water, which shall be attached to a device capable of supporting such swimmer and his equipment upon the surface of the water.~~

~~(2) Every person who causes a diver's flag to be displayed shall remain within 50 feet thereof, measured on the surface of the water.~~

~~(3) A diver's flag shall not be towed by more than one person, except as provided in (5) below.~~

~~(4) No person shall display a diver's flag so as to cause unlawful obstruction to navigation.~~

~~(5) If a group of divers is operating in an area, the outside of the perimeter shall be marked and shall be outside of the normal area of navigation. These markings shall consist of the official diver's flag and shall be placed around the perimeter of the diving area at intervals not exceeding 150 feet.~~

~~(6) A diver's flag displayed to indicate the presence of persons engaged in underwater activities shall measure at least 15 inches horizontally and 12 inches vertically, and both sides thereof shall have a red-colored background bisected diagonally by a three-inch wide white stripe having its upper end adjacent to the flagstaff.~~

~~(7) A diver's flag shall be displayed in a vertical plane extended from a rigid flagstaff equipped to maintain the upper edge of the flag at least three feet above the water surface.~~

~~(8) Any diver's flag may be reflectorized or fluorescent provided that the entire displayed surface thereof is uniformly reflectorized or fluorescent.~~

~~(b)~~ Length of ski tow ropes. No person being towed on water skis, aquaplane, saucer or other device shall be towed with a rope, wire, cable or other towing device extending more than 150 feet from the towing watercraft without obtaining a permit from the local sheriff.

NR 207 Placement of temporary structures and buoys in the waters of the state.

(a) Generally. No person shall leave any temporary structure not extending from shore, or any ~~navigational~~ buoy or ~~regulatory or information~~ sign in the waters of this state between the hours of sunset and sunrise without first obtaining a permit in writing therefor from the sheriff of the county. Mooring buoys must be placed as provided in NR 204(d). Swimming area markers must be placed as provided in NR 205.

NR 210 Reimbursement of county sheriffs for search and rescue operations.

(b) Reimbursement by state. A sheriff claiming reimbursement shall submit in duplicate an itemized invoice, verified by the county auditor, together with a statement showing that the operation qualified for reimbursement to the ~~administrator of the Bureau of Business Management, the~~ Department of Natural Resources~~, Centennial Building, Saint Paul, Minnesota 55155~~. All claims will be subject to audit by the state.

Department of Revenue

Proposed Amendments and New Rules Relating to Individual Income Tax and Property Tax Refund (13 MCAR §§ 1.6001-1.6004, 1.6020, 1.6030 and 1.6225)

Notice of Hearing

A public hearing concerning the proposed rule amendments and adoption of new rules will be held in Room 83, State Office Building, 435 Park Street, St. Paul, Minnesota 55155, on Thursday, October 2, 1980, commencing at 9:00 a.m. The proposed rule amendments and new rules may be modified as a result of the hearing process. Therefore, if you are affected in any manner by the proposed amendments and new rules, you are urged to participate in the rule hearing process.

Following the agency's presentation at the hearing, all interested (or affected) persons will have an opportunity to ask questions and make comments. Statements may be made orally and written material may be submitted. In addition, whether or not an appearance is made at the hearing, written statements or materials may be submitted to Jon L. Lunde, Office of Administrative Hearings, Room 300,

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1745 University Avenue, St. Paul, Minnesota 55104, 612-296-5938, either before the hearing or within five working days after the close of the hearing. The hearing examiner may, at the hearing, order that the record be kept open for a longer period not to exceed 20 calendar days. The rule hearing procedure is covered by Minn. Stat. §§ 15.0411-15.0417 and 15.052 and by 9 MCAR §§ 2.101-2.112 (Minnesota Code of Agency Rules). If you have any questions about the procedure, call or write the hearing examiner.

Twenty-five days prior to the hearing a statement of need and reasonableness will be available for review at the agency and at the Office of Administrative Hearings. This statement of need and reasonableness will include a summary of all the evidence which will be presented by the agency at the hearing justifying both the need for and the reasonableness of the proposed rule amendments. Copies of this statement of need and reasonableness may be obtained from the Office of Administrative Hearings at a minimal charge.

The proposed rule amendment to the definition of "resident" (Income Tax Rule 2001(7)) lists several items which will be considered in determining whether or not a person is domiciled in this state. The amendments also clarify the application of other provisions of the existing rule.

The proposed rule amendments to the existing rule governing joint returns (Income Tax Rule 2038(1)) is amended to provide several guidelines in the area of income tax returns for husband and wife. A definition is provided to define the term "married." The proposed rule specifies some restrictions on the splitting of income and losses between a husband and wife. The proposed rule amendments also provide how a husband and wife who are no longer married can file an amended return for a year in which they had filed a joint or combined return. The proposed rule also specifies how a husband and wife are to determine their federal adjusted gross income when they file a joint federal return and a separate or combined Minnesota income tax return.

A new proposed rule deals with the topic of Minnesota gross income for individuals who are full year Minnesota residents. The new proposed rule specifies the restrictions on the deduction of out of state losses and gives guidelines on the deduction of a net operating loss. The proposed rule also defines income and losses that are assignable to Minnesota.

Another new proposed rule deals with the topic of Minnesota gross income for individuals who are part year residents or nonresidents of Minnesota. This proposed rule defines what income is assignable to Minnesota and gives guidelines on the application of the reciprocity exclusion agreements with Wisconsin and North Dakota. Guidelines are provided in this rule for the allowance of a net operating loss. The proposed rule specifies that nonresident athletes are to assign their income to Minnesota based on a "games played" formula. Nonresident athletes whose income is a product of other substantial services in addition to performing as an athlete in an athletic contest are to use the "duty days" formula.

Amendments are proposed to the existing income tax energy credit rule (13 MCAR § 1.6020). These amendments incorporate some qualification changes that result from 1980 legislation passed by the Minnesota legislature and some changes passed by the U.S. Congress in the Windfall Profits Tax Act. Unnecessary provisions in this rule are now deleted and the proposed amendments clarify that if a person provides services in connection with the purchase of renewable energy source equipment, the payments for that person's services are income.

A new rule is proposed concerning the Nongame Wildlife Checkoff. This proposed rule provides for the administration of this designation when changes are made in the amount of the overpayment as reflected on the individual's return.

A new rule is proposed in the property tax refund area concerning the adoption by the 1980 legislature of an additional refund called targeting. This proposed rule specifies homestead qualifications, how a new construction is to be treated, and the calculation of net property taxes payable.

The agency's authority to adopt the proposed rule amendments is contained in Minn. Stat. §§ 290.06, subd. 14; 290.52; and 290A.20.

The agency estimates that there will be no cost to local public bodies in the state to implement the amendments for the next two years immediately following its adoption within the meaning of Minn. Stat. § 15.0412, subd. 7.

Copies of the proposed rules are now available and one free copy may be obtained by writing to Gerome Caulfield, Director, Income Tax Division, Second Floor Centennial Office Building, 658 Cedar Street, St. Paul, Minnesota 55145, 612-296-3436. Additional copies will be available at the door on the date of the hearing.

Any person may request notification of the date on which the Hearing Examiner's Report will be available, after which date the agency may not take any final action on the rules for a period of five working days. Any person may request notification of the date on which the hearing record has been submitted or resubmitted to the Attorney General by the agency. If you desire to be so notified, you may so indicate at the hearing. After the hearing you may request notification by sending a written request to the Hearing Examiner in the case of the Hearing Examiner's report or to the agency in the case of the agency's submission or resubmission to the Attorney General.

Minn. Stat. ch. 10A requires each lobbyist to register with the State Ethical Practices Board within five days after he or she commences lobbying. A lobbyist is defined in Minn. Stat. § 10A.01, subd. 11 (1979 Supp.) as any individual:

(a) Engaged for pay or other consideration, or authorized by another individual or association to spend money, who spends more than five hours in any month or more than $250, not including *his own* travel expenses and membership dues, in any year, for the purpose of attempting to influence legislative or administrative action by communicating or urging others to communicate with public officials; or

(b) Who spends more than $250, not including *his own* traveling expenses and membership dues, in any year for the purpose of attempting to influence legislative or administrative action by communicating or urging others to communicate with public officials.

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.

August 8, 1980

Clyde E. Allen, Jr.
Commissioner of Revenue

Amendments as Proposed

13 MCAR § 1.6001 2001 (7) Resident defined.

A. General statements.

1. The term "resident" means ~~any individual domiciled in Minnesota, and~~ any ~~other~~ individual person maintaining ~~an abode therein~~ a home in Minnesota during any ~~portion~~ part of a tax year who ~~shall~~ is, during ~~any portion~~ that part of such year, ~~have been~~ domiciled in Minnesota ~~within the state~~. The term "domicile" means the bodily presence of an individual person in a place coupled with an intent to make such a place one's home.

2. ~~Residence, as defined in the Act, is practically synonymous with domicile.~~ The ~~residence~~ domicile of any person shall ~~is held to~~ be ~~in~~ that place in which ~~his~~ that person's habitation is fixed, without any present intentions of ~~removing~~ removal therefrom, and to which, whenever ~~he is~~ absent, ~~he~~ that person intends to return.

A person who leaves ~~his~~ home to go into another ~~state~~ jurisdiction for temporary purposes only is not considered to have lost ~~his~~ that person's ~~residence~~ domicile. But if a person ~~removes~~ moves to another ~~state~~ jurisdiction with the intention of remaining there permanently or for an indefinite time as a ~~place of permanent residence~~ home, ~~he~~ that person shall ~~be considered to~~ have lost ~~his~~ that person's ~~residence~~ domicile in this state. The presumption is that a person who leaves this state to accept a job assignment in a foreign nation has not lost that person's domicile in this state.

The presumption is that the place where a ~~man's~~ person's family ~~resides~~ is domiciled ~~shall be considered his residence~~ is that person's domicile.~~, and~~ The ~~residence~~ domicile of a ~~wife~~ spouse ~~is usually that of her husband~~ shall be the same as the other spouse, unless there is affirmative evidence to the contrary or unless the husband and wife are ~~permanently~~ legally separated or the marriage has been dissolved. When a ~~man~~ person has ~~taken up his~~ made a ~~abode~~ home at any place with the intention of remaining there and ~~his~~ the person's family neither ~~resides~~ lives there ~~with him~~ nor intends to do so, then ~~he~~ that person shall ~~be considered to~~ have established a ~~residence~~ domicile separate from that person's ~~of his~~ family.

The ~~residence~~ domicile of a single ~~man~~ person is ~~his~~ that person's usual ~~place of abode~~ home. In case of a minor child who is not emancipated, the ~~residence~~ domicile of the child's ~~father, or of the mother if the father is deceased~~ parents is the domicile of the child. The domicile of the parent who has legal custody of the child is the domicile of the child. A person who is a permanent resident alien in the United States may have a domicile in this state. The domicile of a member of the armed forces will be governed by the facts just prior to becoming a member of the armed forces unless the person takes the necessary steps to establish a new domicile.

3. The mere intention to acquire a new ~~residence~~ domicile, without the fact of physical removal, does not change the status of the taxpayer, nor does the fact of physical removal, without the intention to remain, change ~~his~~ the person's status. The presumption is that one's domicile is the place where ~~he~~ one lives. An individual can have only one domicile at any particular time. A domicile once shown to exist is presumed to continue until the contrary is shown. An absence of intention to abandon a ~~residence~~ domicile is equivalent to an intention to retain the existing one. No positive rule can be adopted with respect to the evidence necessary to prove an intention to change a domicile but such intention may be proved by acts and declarations, and of the two forms of evidence, acts ~~are generally conceded~~ shall be given more weight than declarations. A person who is temporarily employed within ~~the~~ this state does not acquire a ~~residence~~ domicile in ~~the~~ this state, if during such period ~~he~~ the person is domiciled without ~~the~~ this state.

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B. The following items listed will be considered in determining whether or not a person is domiciled in this state:

1. Location of domicile for prior years.

2. Where the person votes or is registered to vote. ~~While the exercise of one's voting franchise is presumptive evidence of residence, such evidence may be overcome by a showing of the facts involved in the determination of residence.~~ Casting an illegal vote does not ~~of itself~~ establish ~~residence~~ domicile for income tax purposes.

3. Status as a student.

4. Classification of employment as temporary or permanent.

5. Location of employment.

6. Location of newly acquired living quarters whether owned or rented.

7. The present status of the former living quarters, i.e., was it sold, offered for sale, rented or available for rent to another.

8. Homestead status has been requested and/or obtained for property tax purposes on newly purchased living quarters and the homestead status of the former living quarters has not been renewed.

9. Ownership of other real property.

10. Jurisdiction in which a valid driver's license was issued.

11. Jurisdiction from which any professional licenses were issued.

12. Location of the person's union membership.

13. Jurisdiction from which any motor vehicle license was issued and the actual physical location of the vehicles.

14. Purchased resident or nonresident fishing or hunting licenses.

15. Whether an income tax return has been filed as a resident or nonresident.

16. Whether the person has fulfilled the tax obligations required of a resident.

17. Location of any bank accounts, especially the location of the most active checking account.

18. Location of other transactions with financial institutions.

19. Location of the place of worship at which the person is a member.

20. Location of business relationships and the place where business is transacted.

21. Location of social, fraternal, or athletic organizations or clubs or in a lodge or country club, in which the person is a member.

22. Address where mail is received.

23. Percentage of time (not counting hours of employment) that the person is physically present in Minnesota and the percentage of time (not counting hours of employment) that the person is physically present in each jurisdiction other than Minnesota.

24. Location of jurisdiction from which unemployment compensation benefits are received.

25. Location of schools at which the person, the person's spouse or children attend, and whether resident or nonresident tuition was charged.

26. Statements made to an insurance company, concerning the person's residence, and on which the insurance is based.

Any one of the items listed above will not, by itself, determine domicile.

13 MCAR § 1.6002 ~~2038 (1) JOINT RETURNS.~~ Income tax returns for husband and wife.

A. The determination of whether an individual is married shall be made as of the close of the taxable year; except that if a surviving spouse does not remarry during the taxable year such determination shall be made as of the date of death. An individual shall not be considered to be married if the marriage has been dissolved or if they are legally separated or if they do not live together, unless the spouse is only temporarily away from home. No joint or combined return can be made if the husband and wife have different taxable years. In the case where one spouse dies, a joint or combined return may be filed if the surviving spouse has not remarried before the close of their taxable year.

~~Every person married and living with his spouse at the close of the taxable year must file a return if either of the following conditions exist.~~

~~(1) The tax on his own taxable net income or the tax on the combined taxable net income of himself and his spouse exceeds the allowable specific credits as provided in M.S.A. 290.06; or~~

~~(2) His gross income or the combined gross income of himself and his spouse exceeds $2,000.~~

~~See Reg. 2037(1).~~

~~If a husband and wife living together at the close of the taxable year each had separate income during the taxable year, they may either file a joint return or separate returns. Regardless of whether a joint return or separate returns are filed, the total income of both spouses must be reported. Example: Gross income of the husband $5000, gross income of the wife $125. The income of both the husband and wife must be reported either in a joint return or in separate returns.~~

B. A husband and wife may elect to file (1) a single return jointly (joint return), (2) separate returns, or (3) separately on one return ("combined" return).

C. If a husband and wife elect to each file a separate income tax return, or if they elect to file a combined return, each spouse must report that spouse's own federal adjusted gross income. On separate returns, each spouse may claim only those deductions and credits that spouse is separately entitled to claim except that the married credit may be claimed in full by one spouse or may be divided between them in any manner. Deductions for which each spouse is equally liable and which are paid from a joint account may be considered as being paid by either spouse.

Income and losses from jointly held property must be divided based on percentage of ownership in the property. Income and losses from a partnership which operates a business must be reported on the basis of the partnership agreement. Income and losses from a business that is not governed by a partnership agreement must be reported on the basis of participation in and contribution to the partnership or joint business venture and this is determined according to the (1) percentage of contribution to the capital assets, (2) percentage of labor performed, and (3) percentage of participation in management decisions. Interest income from a joint bank account or jointly held bonds and dividends on jointly held stocks shall be divided equally. A gain or a loss from the sale or exchange of a capital asset shall be reported by the spouse owning the capital asset. A gain or a loss from the sale or exchange of a capital asset owned jointly by the spouses must be reported by each spouse based on the percentage of ownership of the capital asset.

D. If both husband and wife are residents of a community property state or nation, it is permissible for them to split their income and losses based on the law of their residence. Otherwise, it is not permissible for a husband and wife to split their income and losses or to assign it to the other spouse unless there is a business relationship or unless it is required under the provisions of the Internal Revenue Code.

E. The liability of each spouse on a separate return is limited to the tax liability on that return. If a combined return is filed and if later an adjustment is made to an item of income, or modification to income, which is attributable solely to one spouse, only that spouse is liable for any additional tax.

F. Where a husband and wife filed joint or combined returns and subsequently are no longer married within the definition of Part A., an amended return, claim for refund, or net operating loss or farm loss carryback claim filed by one of the former spouses shall be allowed if the item is attributable to that spouse to the extent of that spouse's tax liability. Where a joint return was filed, the spouse's tax liability shall be determined according to the following formula:

$$\frac{\text{Spouse's recomputed separate tax liability}}{\text{Both spouse's recomputed separate tax liability.}} \times \text{Recomputed joint tax liability} = \text{Spouse's share of joint tax liability}$$

The spouse's share of the joint liability is then subtracted from the spouse's contributions through withholding or estimated tax or other payments which were made to pay that joint liability. The amount of the refund to be made to the spouse cannot exceed the amount of the joint overpayment shown on the amended return or claim for refund. Where a combined return was filed, the spouse's tax liability shall be determined as if an amended combined return was filed.

When an amended joint or combined return is filed, items paid out of joint funds of the husband and wife shall be divided between the spouses to provide the greatest tax benefit to both spouses unless both spouses had previously elected another method. Joint estimated tax declarations shall be divided according to the provisions of Income Tax Rule 2093(2). Where credits are not paid out of joint funds, the credit shall belong to the spouse who made the payment on which the credit is based. The homemaker credit and the married credit

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may be divided equally between the spouses. The homemaker credit and the dependent care credit are not allowed to be claimed on separate returns filed by a married couple.

When an amended joint or combined return or a claim for refund is filed under this part, no refund will be given to a spouse unless an amended return or claim for refund is filed by that spouse. No additional tax liability may be created and assessed against a spouse unless an amended return is filed by that spouse or there is an audit done by the department.

~~If one spouse did not have separate income of his own, the spouse who did not have separate income cannot file a separate return. However, a husband and wife living together at the close of the taxable year may make a joint return even though one of the spouses had neither gross income nor deductions.~~

~~If the income of a husband and wife is included in a joint return, the tax is computed on the aggregate income and all deductions and credits shall be taken from such aggregate income. However, if separate returns are filed, each spouse must include only his separate income in his return.~~

~~In determining whether persons are married or single, the determination is made as of the last day of the taxable year.~~

~~No joint return can be made if the husband and wife have different taxable years. However, an exception to this rule is made in the case where one spouse died during the taxable year (see Reg. 2038(2).~~

~~In the case of a joint return, the liability with respect to the tax is both joint and several.~~

G. Persons who become married during the taxable year may file a joint, combined, or a separate return if they are married and living together at the close of the taxable year. Married persons who were legally separated or living apart during any part of the taxable year may file a joint, combined, or a separate return if they were ~~married and~~ living together at the close of the taxable year. ~~In either case, a joint return must include all of the income each spouse received during the taxable year, and the credit allowed for married persons must be prorated so that such credit is claimed only for the part of the taxable year the persons were married and living together. For proration of credits, see Reg. 2006(3)(d).~~

H. Except as provided by law in the case of a death of a spouse, a joint or a combined return must be signed by both husband and wife unless (a) the return is made by an agent of both the husband and wife, or (b) one spouse signs as the agent of the other. Any spouse who makes a joint or a combined return through an agent ~~assume~~ assumes the responsibility for making the return and ~~incur~~ incurs liability for the penalty provided for erroneous, false, or fraudulent returns. One spouse cannot sign as the agent of the other unless the return is accompanied by a power of attorney authorizing such action by the spouse not signing the return. Other agents must also submit their power of attorney with the return.

I. The election of a husband and wife to file ~~a~~ joint ~~return~~, combined, or separate returns may be changed by ~~said~~ the husband and wife if (1) they both sign and file an amended return reflecting the change of election to file a joint or combined return or (2) each spouse signs and files an amended return reflecting the change of election to file a separate return. The change in the election may be made at any time within the period provided ~~by the statute~~ for the assessment of additional taxes~~, that is, three and one-half years from the time of the filing of the return in question.~~

J. When a husband and wife file a joint federal income tax return and file a separate or combined Minnesota income tax return, they shall determine their Minnesota gross income separately as if their federal adjusted gross income had been determined separately. Any income exclusion or adjustment to income (such as the disability income exclusion), allowed in arriving at federal adjusted gross income which requires them to file a joint federal return will be allowed in determining Minnesota gross income even though they elect to file separate or combined returns for Minnesota. However, if a deduction allowed or a loss limitation provided in computing federal adjusted gross income (such as the capital loss limitation) is reduced by one half if separate federal returns had been filed, the Minnesota gross income of each spouse reflected on a separate or combined Minnesota return will be computed as though separate federal returns had been filed including the reduced deduction or loss limitation.

Rules as Proposed (all new material)

13 MCAR § 1.6003 Minnesota gross income for individuals who are full-year Minnesota residents (Federal Adjusted Gross Income)

A. The beginning point in the determination of Minnesota gross income is federal adjusted gross income. Federal adjusted gross income for Minnesota residents should be the same as the federal adjusted gross income that is used for federal purposes. If no federal tax return was filed for that year, federal adjusted gross income for Minnesota must be calculated using the appropriate Internal Revenue Code as if a federal tax return had been filed. Federal adjusted gross income for Minnesota is defined in Minn. Stat. § 290.01, subd. 20 as being the federal adjusted gross income as defined in the Internal Revenue Code on a certain date. Unless the legislature specifies otherwise, provisions that affect federal adjusted gross income for future years and which have been enacted by Congress as of December 31 of the year set by the legislature, become effective for Minnesota income tax purposes at the same time they become effective for federal income tax purposes. Provisions that affect federal adjusted gross income and which have been enacted by

Congress after December 31 of the year set by the legislature do not become effective until the legislature passes a law to adopt the provisions or to update the reference to December 31, of a certain year.

B. All income and losses, regardless of the source, are assignable to Minnesota. Pay received by a member of the military who is a Minnesota resident and who is outside of the state of Minnesota while receiving the pay is includible for Minnesota purposes, as is income received by any other resident.

C. Losses.

1. Losses included in federal adjusted gross income which were incurred in connection with out of state income are allowable in full with the following exception. Out of state losses are reduced by the taxpayer's tax preference items which are attributable to those losses but only to the extent of those losses. The preference items of depletion and capital gains deduction shall not be used to reduce a taxpayer's out of state loss.

The preference item, intangible drilling costs, is defined as being the amount of the excess intangible drilling costs arising in the taxable year which exceed the amount of the net income from productive wells of the taxpayer from oil, gas, and geothermal properties for the taxable year.

2. Each loss will be considered separately for the purpose of making this computation. A separate loss would consist of:

a. Each separate operation within an individual proprietorship.

b. Each separate operation within a partnership, limited partnership, joint venture, or small business corporation.

c. Each transaction regarding the sale of a capital asset or an asset utilized in a trade or business provided that the sale of such asset is not part of an ongoing operation.

3. When an out of state loss is reduced by a tax preference item which is reflected in the computation of the adjusted basis of property, the reduction in basis which was made for federal purposes would not be made for Minnesota purposes to the extent of the amount of the loss which was reduced by that specific preference item. The taxpayer may elect to not reduce the basis of a depletable asset or the taxpayer may reduce the amount of otherwise taxable income subsequently produced by that asset in subsequent taxable years by the amount of the reduction that was required to be made to the out of state loss because of these tax preference items.

4. A net operating loss carryback or carryforward which has been used in the calculation of federal adjusted gross income must be reduced by the amount of tax preference items attributable to the out of state loss.

5. A modification increasing federal adjusted gross income in the amount of the losses that are disallowed must be made.

D. As provided in B., all income and losses are assignable to Minnesota. The following are types of income or losses from sources outside of Minnesota:

1. Farm income or loss from a farm located outside of Minnesota.

2. Income, gains, or losses from tangible property, such as real estate, which is located outside of Minnesota. Oil, gas, coal and mineral leases are interests in real property. The following would also be out of state income or losses if incurred in connection with real estate located outside of Minnesota: option income or expenses, exploring, securing, and developing the real estate, and equipment used on the real estate.

The basis of tangible property utilized in a trade or business outside of Minnesota by a Minnesota resident shall be cost less depreciation allowable for Minnesota income tax purposes. However, prior to 1978, a Minnesota resident need not reduce the basis of out of state property which was held while a Minnesota resident. The amount of depreciation allowable in any year is the amount claimed in arriving at federal adjusted gross income and would not be modified because of a higher Minnesota basis. When property is utilized in a trade or business outside of Minnesota and is held by a Minnesota resident who acquired the property prior to the date of becoming a Minnesota resident, the federal adjusted basis of that property shall be the Minnesota basis.

3. The income or losses from a business located outside of Minnesota.

4. Income or losses from trusts, estates, partnerships, joint ventures, or Minnesota electing small business corporations to the extent that the income results from business conducted or tangible property located outside of Minnesota.

5. Income or losses from intangible assets owned by a Minnesota resident is not out of state income. Generally an intangible asset is a legal relationship between persons (which in fact has no geographic location) and is so associated with the owner that it is

taxable at the place of the owner's domicile. The following is a listing of some intangible assets and includes the income from these assets:

a. Stocks, notes and bonds even if secured by liens on property.

b. The right to receive payments under a contract for deed or mortgage.

c. The right to withdraw contributions to a retirement fund.

d. Dividends received.

e. Gains or losses from the sale or exchange of stocks, bonds or notes.

f. Interest received on a savings account.

g. Distributions received from a corporation which has made a federal election to be treated as a small business corporation but which has not made a similar election for Minnesota.

E. The amount of a net operating loss carryforward or carryback shall be the same dollar amount allowed in the determination of federal adjusted gross income. However, as provided in Part C., no deduction is allowed for or with respect to that portion of losses which constitute tax preference items. An adjustment must also be made for any changes in the computation of federal adjusted gross income which have not been adopted by the Minnesota legislature in a law updating the reference to the Internal Revenue Code.

The taxpayer may also make an adjustment for gains or losses which result from the sale or other disposition of property having a higher adjusted basis for Minnesota income tax purposes than for federal income tax purposes subject to the limitations contained in § 290.01, subd. 20(b)(2) and (4).

13 MCAR § 1.6004 Minnesota gross income for individuals who are part year residents or nonresidents of Minnesota (Federal Adjusted Gross Income)

A. Gross income.

1. An individual who was a part year resident or a nonresident of Minnesota should use the appropriate federal adjusted gross income that was computed for federal income tax purposes as the beginning point in the determination of Minnesota gross income.

2. Modifications should be made to remove:

a. Income from personal and professional services performed outside of Minnesota,

b. other income from intangible assets, and

c. income and losses from tangible property located outside of Minnesota, which income or loss was received or earned while that person was a nonresident of Minnesota.

A modification should also be made to remove the amount of certain qualified pension payments which are received while a nonresident of Minnesota.

3. The following types of income received by a nonresident in Minnesota are to be included in that individual's Minnesota gross income and are assignable to Minnesota:

a. Wages, salaries, tips, fees, commissions, bonuses, or similar earnings for personal or professional service performed within Minnesota. Two conditions must be met before a taxpayer's income can be deemed personal or professional service income. First, the income producing activity itself must be the rendition of personal or professional services; and, second, the taxpayer must personally render such services; it is not enough to employ others to render them. The following are some examples of taxpayers who may be deriving income or earnings from the performance of personal or professional services: carpenter, plumber, bricklayer, repairman, barber, beautician, accountant, attorney, doctor, dentist, architect, engineer, or an insurance agent. While the ownership and management of a shopping center or hotel which furnishes business space is business income, it is not a personal service business.

b. Rents, royalties and any other income received from land, buildings, machinery, or other tangible property located in Minnesota.

c. Gains or losses from the sale or other disposition of land, buildings, machinery, or other tangible property located in Minnesota.

d. Business losses.

(1) Income or losses from

(a) a business,

(b) a farm,

(c) that portion of the distributive share of income or losses of a partnership which are attributed to Minnesota, and

(d) that portion of the distributed and undistributed net income or loss, which is attributed to Minnesota, of a small business corporation which has elected to be taxed as a partnership for Minnesota purposes, which income or loss is derived from the operation of a business in Minnesota or which is income or loss from tangible property located within Minnesota is assignable to Minnesota.

(2) Business conducted within Minnesota would include income or losses from sales within Minnesota and a business dealing in personal and professional services where such services were performed in this state. Trade or business income or loss assignable to Minnesota and earned by a nonresident individual as a proprietorship or partnership which was carried on partly within and partly without Minnesota is subject to the three factor apportionment formula contained in section 290.19 except for construction business on which the three factor formula is not permitted. A nonresident individual who has farm income from within Minnesota and from outside of Minnesota may also use the three factor apportionment formula.

B. The definition of federal adjusted gross income is the same definition as is used for Minnesota residents and which is determined by the legislature by adopting the reference to the Internal Revenue Code for use in or application to that particular taxable year.

C. Income received by a nonresident, which is the distributive share of partnership income from personal or professional services which are performed in Minnesota, is assignable to Minnesota in the same proportion as the partnership income is assignable to Minnesota even though the nonresident partner performed no personal or professional services in Minnesota during that year.

D. Minnesota gross income for a nonresident of Minnesota does not include income that is received as compensation for military or naval services performed within Minnesota.

E. The United States Government has entered into numerous tax treaties with different nations which provide that when a nonresident alien is employed in the United States the gross income which they earn is not subject to taxation in the United States as long as that nonresident alien is employed only temporarily in the United States. Since that income is not taxable for federal purposes, it would not be taxable for Minnesota purposes. Each tax treaty has somewhat different terms and each case must be examined on its own.

F. Minnesota gross income does not include personal or professional service income earned in Minnesota by a resident of Wisconsin or North Dakota who customarily returns at least once a month to their residence in that state. Wisconsin and North Dakota are the only two states that have reciprocity exclusion agreements with the state of Minnesota. The income subject to reciprocity exclusion is compensation for the performance of personal or professional services which the taxpayer personally renders. It is not enough to employ others to render these services.

1. The reciprocity exclusion does not apply where the personal or professional income is earned as part of a business which has employees that do more than incidental duties for the business or where there is the sale or delivery of goods which are more than an incidental part of the business. The reciprocity exclusion does apply to all the personal or professional income earned in the business where the sale of goods and the services of the employees are incidental. Where a partner is a member of a partnership where the selling of goods or the services of employees is more than incidental to the partnership business, reciprocity exclusion would apply only to the partner's salary (personal or professional service income) but not to the distributive shares of the partnership business. Salaries would be subject to a reasonableness test and a provision for salaries must be part of the partnership agreement. If there is no written partnership agreement, or if in the written agreement no salary or salary formula is specifically provided, the payment to the partners is a partnership distribution and is not subject to reciprocity exclusion. Partnership draw does not constitute a salary; it is a convenience to the partners in withdrawing a share of their business equity. If all partners are performing personal services and the sale of goods and the services of the employees are incidental, the reciprocity exclusion applies to the partner's salary and to the partner's distributive share. The imputed income of a shareholder of an electing small business corporation (Subchapter S) is not subject to reciprocity exclusion as this income is in the form of a partnership distribution.

2. The word "incidental" means the sale of goods or the services of employees which are only a minor or secondary contribution to the personal service income of the individual or partnership for whom performed. The sale of goods or the services of employees is incidental if:

a. for the sale of goods the gross profit (gross receipts less cost of goods sold) or

b. for the services of employees the total compensation paid the employees is less than $20,000 or 10% of the gross profit of the business, whichever is greater. The total compensation paid the employees and the gross profit from the sale of goods must be totaled when determining if the goods and employees are incidental.

3. If an individual's total income assignable to Minnesota is subject to reciprocity exclusion, that individual need not file a Minnesota income tax return. However, if that individual has Minnesota income, some of which is subject to reciprocity exclusion and

some of which is not subject to reciprocity exclusion and if the income which is not subject to reciprocity exclusion exceeds the filing requirements for filing a Minnesota income tax return, that individual must file a Minnesota income tax return. That individual should use the appropriate federal adjusted gross income for the taxable year. A subtraction would be allowed at a subsequent point on the return to remove income which is subject to reciprocity exclusion.

In order to claim the reciprocity exclusion, individuals should file Form M-115, which is an affidavit claim for exemption of compensation received for services performed under the reciprocity exclusion. Although the exact form may change, the following information will be required:

a. Name, address, and social security number of the individual,

b. year for which the affidavit is being submitted,

c. amount of income received for services performed in Minnesota subject to reciprocity exclusion,

d. a statement whether or not Minnesota income tax was withheld on that income,

e. the name and address of the employer,

f. type of services performed in Minnesota,

g. state in which the individual maintains residence,

h. the year in which the individual became a resident of the state,

i. a statement disclosing whether or not the individual customarily returns to his residence in the other state at least once a month,

j. a statement whether or not the individual filed an income tax return with that state and whether the income subject to reciprocity exclusion was declared on that return and

k. a statement declaring if the individual ever was a resident of Minnesota and, if so, when was the date of last residence.

An individual whose income is subject to reciprocity exclusion may also want to complete a withholding exemption certificate, Form MW-6.

G. The amount of federal adjusted gross income to be assigned to Minnesota for nonresident athletes for that person's athletic performance in Minnesota shall be determined by using the "games played" formula. The fraction used to determine the amount of income assignable to Minnesota under the "games played" formula shall use the total number of games in the season as the denominator and the total number of games played in Minnesota as the numerator. In using the "games played" formula, pre-season games do not constitute games played during a season. Each level of post-season "playoff" games constitutes a season. The use of any method other than "games played" to determine assignability of income to Minnesota will place the burden on the nonresident athlete to demonstrate that his or her income is actually the product of other substantial services in addition to performing as an athlete in an athletic contest. An athlete who meets this requirement would be allowed to use the "duty days" formula. The fraction used to apportion income by using the "duty days" formula is where the denominator contains the total number of days which the individual is under a duty to perform for the employer, and the numerator is the total number of those days spent in Minnesota. An example of these types of athletes would be those that are hired for specific duties after the end of a normal season, or other athletes such as managers, coaches or trainers who are hired for duty on an annual basis.

H. The following items of income received by a nonresident are assignable to Minnesota regardless of the time or place received by the taxpayer if the underlying services giving rise to the distribution were performed in Minnesota.

1. A bonus.
2. Commissions.
3. Vacation pay.

However, certain qualified pension payments are not assignable to Minnesota if they are received by a nonresident, even though the payments are attributable to services previously performed in Minnesota.

I. The amount of a net operating loss carryforward or carryback shall be the same dollar amount allowed in the determination of federal adjusted gross income. Adjustments must be made in the net operating loss for income and losses which are not assignable to Minnesota and for any changes in the computation of federal adjusted gross income which have not been adopted by the Minnesota legislature in a law updating the reference to the Internal Revenue Code.

Amendments as Proposed

13 MCAR § 1.6020 Energy credit.

A.2. A taxpayer must actually purchase the equipment or earth sheltered dwelling to qualify for this credit. The expenses connected with the leasing of equipment or the leasing of an earth sheltered dwelling do not qualify for this credit. If the taxpayer received a refund from the seller or the manufacturer of equipment on which the taxpayer claimed this credit, the amount of expenditures that were

allowable for this credit must be reduced by the amount of the refund that was received. The taxpayer will need to file an amended income tax return if the refund that was received would require a reduction in the energy credit which had already been claimed. A payment received by the taxpayer from the seller or the manufacturer of equipment is considered as a payment for services rendered when the payment was for field testing of the system by the taxpayer or for reports on the system that the taxpayer completed. A payment for services rendered must be included in the gross income of the taxpayer and does not reduce the amount of expenditures allowable for this credit. Expenditures will qualify even though they are paid for as the result of a federal ~~or~~, state, or local government grant, but only to the extent that the grant was included in federal adjusted gross income. Each dollar of expenditure which qualifies for this credit may be used only one time for purposes of computing this credit.

A.7. A shareholder of a family farm corporation is allowed to claim this credit in the same manner as a joint owner of property that otherwise qualified for the credit. All joint owners will be treated as one taxpayer (and so qualify for only one $2,000 energy credit) with the same taxable year. Each joint owner will be allowed, with respect to the expenditures, a credit for that taxable year in an amount, which bears the same ratio to the total amount allowable, as the amount of the expenditures made by the joint owner during the taxable year bears to the aggregate of the expenditures made by all joint owners during the taxable year. However, joint owners who make expenditures with respect to two or more principal residences shall compute the amount of their energy credit separately based on the amount of the expenditure made by each joint owner. If a Subchapter S or a family farm corporation makes the expenditure, the expenditure may be divided among the shareholders based on the percentage of their stock ownership in the corporation.

A.9. The energy credit, pollution control credit and feedlot pollution control credit shall be applied after all other nonrefundable credits. If the expenditures otherwise qualify, the taxpayer may elect which credit (including the carryforward) will be used. This election may be amended at any time before the expiration of the statute of limitations. If an expenditure otherwise qualifies the taxpayer may claim both the energy credit and the feedlot pollution control credit or pollution control credit on that property but the energy credit must be used first and the expenditures allowable for the feedlot pollution control credit or pollution control credit must be reduced by the expenditures that have been used for the energy credit. The taxpayer may elect to carryforward the amount of the energy credit, pollution control credit and feedlot pollution credit when the taxpayer's tax liability is computed by using the low income alternative tax.

B. Piggybacked federal renewable energy source credit. Any expenditure that qualifies for the federal renewable energy source credit, including expenditure for labor costs, geothermal energy, wind energy for electricity, renewable energy used to heat water, and any other expenditures which are allowable for the federal credit, would also be allowable for purposes of the state piggy-backed credit provided that the building is located in Minnesota and does not contain more than six dwelling units. After December 31, 1980, any active solar collector which qualifies for the federal renewable energy source credit must also be certified by the Minnesota Energy Agency before it will qualify for the state piggybacked federal renewable energy source credit. Expenditures that are allowable are only those that were allowable on the date that the legislature has specified in Minn. Stat. section 290.06, subd. 14 for purposes of adopting the federal credit provisions. No solar panel installed as a roof (or portion thereof) shall fail to qualify for the piggybacked federal renewable energy source credit solely because it constitutes a structural component of the dwelling on which it is installed. If an expenditure qualifies for both the federal energy conservation credit and for the federal renewable energy source credit and the taxpayer used the expenditure for the federal conservation credit, the taxpayer can use that expenditure for the state piggybacked federal renewable energy source credit provided that the expenditure otherwise qualifies.

C. Earth sheltered dwelling units. Expenditures that qualify for the credit for earth sheltered dwellings include material, labor and other construction costs (except interest) incurred to construct the dwelling. The structure of the earth sheltered dwelling unit must meet the standards of the Minnesota building code even though the code may not be in effect in that area. The earth sheltered dwelling unit's structure must also comply with all three tests which are contained in Minn. Stat. § 290.06, subd. 14(b)(1)-(3) and which are as follows:

"(1) 80 percent or more of the roof* area is covered with a minimum depth of 12 inches of earth; and

(2) 50 percent or more of the wall area is covered with a minimum depth of 12 inches of earth; and

(3) Those portions of the structure not insulated with a minimum of seven feet of earth shall have additional insulation;"

~~*A computer typing error was made here in the final copy of the conference committee report on H.F. 1495 (Laws of 1979, ch. 303). The law contains the word "wall" and not the word "roof." However, it is clear that this was a technical mistake and the Department is proposing a law change to the 1980 legislature.~~ The roof area contained in Minn. Stat. § 290.06, subd. 14(b)(1) that must be covered with earth means that area of the roof that is above the area used for residential living which is heated. The roof area that must be covered with earth does not include the roof area for a garage, unless the garage is heated. For § 290.06, subd. 14(b)(2) the term "wall" means the exterior walls of the residential living area. The walls of a garage are not included in this definition. If a garage is attached to the

KEY: RULES SECTION — Underlining indicates additions to proposed rule language. ~~Strike-outs~~ indicate deletions from proposed rule language. **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."

exterior walls at the residential living area, that area of the exterior wall of the residential living area that is part of the attached garage is not counted in the area of the wall that must be covered with earth. The wall must be covered with a minimum horizontal depth of 12 inches (30 cm) of earth. The term "structure" contained in § 290.06, subd. 14(b)(3) means the exterior walls and roof as defined for § 290.06, subd. 14(b)(1) and (2). In section 290.06, subd. 14(b)(3) the additional insulation that will be required is the amount of insulation that is needed to equal the following requirements:

E.6. Miscellaneous. The Commissioner of Revenue will require drawings, photographs, or other descriptions of a passive solar energy system from any taxpayer claiming the credit for a passive solar energy system. ~~If the taxpayer consents,~~ The commissioner may consult with the Director of the Minnesota Energy Agency to secure an evaluation of the drawings, photographs, or other descriptions to determine if the system qualifies for the energy credit.

A taxpayer who has installed or is planning to install a passive solar energy system which he or she feels may achieve passive solar energy performance better than a system designed according to the criteria contained in this rule may request an advisory opinion by submitting an architectural drawing, a detailed operational description of the system and performance calculation to the Director of the Energy Agency. On the basis of this information, the director may decide that the entire system and its integral components or some part thereof qualifies for the credit. The taxpayer shall furnish the Department of Revenue with a copy of the Director's Opinion when claiming this credit.

The original use of the passive solar energy system must begin with the taxpayer who claims the credit. Expenses for normal maintenance on the passive solar energy system do not qualify for the credit. Replacement expenditures of a capital nature to replace all or part of the passive solar energy system do qualify for the energy credit provided that the taxpayer must add these expenditures to the other expenditures that he had already claimed for the energy credit. Those passive solar energy system expenditures which exceed a reasonable cost amount, which serve no additional passive solar function, or which serve a purely aesthetic function, shall not be allowed.

Rules as Proposed (all new material)

13 MCAR § 1.6030 Nongame wildlife checkoff.

A. Charitable contribution. A designation by a taxpayer to the Nongame Wildlife Management Fund qualifies as a charitable contribution under the provisions of Minn. Stat. section 290.21, subd. 3 in the year in which the designation was made.

B. Administration.

1. A taxpayer may reverse all or part of the designation that was made to the Nongame Wildlife Management Fund from the taxpayer's refund. A taxpayer may reverse the designation to the Nongame Wildlife Management Fund at any time during which the taxpayer may file an amended return. A taxpayer may designate that all or part of his refund on an amended return go to the Nongame Wildlife Management Fund.

2. An individual, fiduciary, trust or estate may designate all or part of their refund to the Nongame Wildlife Management Fund. A corporation or a partnership may not make this designation.

3. Taxpayers who are allowed to claim the property tax refund as a credit on their income tax return may make a designation to the Nongame Wildlife Management Fund only on their income tax return.

4. The amount of the refund from which a taxpayer may make a designation to the Nongame Wildlife Management Fund is determined after the following deductions have been made:

a. Unpaid Minnesota tax liabilities owed to the Commissioner of Revenue.

b. A debt which qualifies for the provisions of the Revenue Recapture Act contained in Laws of 1980, Chapter 607, Article XII.

c. Amounts credited to the estimated income tax liability for taxable year.

5. Machine audit.

a. The term "machine audit" means the adjustments made to a taxpayer's return in the original processing of the return from the date the return is filed until the date the refund is granted or the order assessing additional tax is issued.

b. If, upon machine audit, a taxpayer's overpayment is reduced, the reduction shall be made in the following order:

(1) The amount of the overpayment that the taxpayer had requested as a refund is reduced.

(2) The amount of the overpayment that the taxpayer had designated to the Nongame Wildlife Management Fund is reduced.

c. If, upon machine audit, the taxpayer no longer has an overpayment but is assessed a tax balance due, the designation to the Nongame Wildlife Management Fund is cancelled.

6. A taxpayer, who owes a tax balance due (including penalty and interest) on his income tax return, may designate that an amount be paid to the Nongame Wildlife Management Fund by paying the entire balance that is due for both the tax liability and the designation to Nongame Wildlife at the same time that the return is filed. If the amount that is paid with the return does not equal the tax balance due and the amount designated to Nongame Wildlife, the amount of the tax balance due shall be paid first. If the amount that is paid with the return does not fully pay the tax balance due, the designation to the Nongame Wildlife Management Fund shall be cancelled.

13 MCAR § 1.6225 Targeting.

A. Homestead qualifications. The refund contained in Minn. Stat. § 290A.04, subd. 2c (targeting) provides up to $300 of property tax relief in 1981 to homeowners whose property taxes have increased by more than 10% from 1980 after reduction is made for improvements and other state paid credits. To qualify for targeting the property must qualify as the claimant's homestead for purposes of claiming the property tax refund for property taxes payable in 1980 and 1981. The claimant, therefore, must have owned and occupied the property as the claimant's homestead on January 2, 1980 and on January 2, 1981. When a homestead is owned by two or more persons as joint tenants or tenants in common, the tenants shall determine between them which tenant shall be the claimant for purposes of claiming the property tax refund and targeting. The joint tenant or tenant in common who claimed the property tax refund in 1981 is the only joint owner who qualifies to claim targeting in 1981. The joint owner who claims the property tax refund and targeting in 1981 need not be the same joint owner who claimed the property tax refund in 1980. In order for a joint owner to claim the property tax refund and targeting in 1981, the property must also have been the joint owner's homestead on January 2, 1980.

B. New construction. The claimant shall reduce the amount of the net property taxes payable in 1981 by the amount which is attributable to improvements. The amount attributable to improvements shall be determined by applying a ratio to the property taxes payable after reduction for the state-paid homestead credit and all other state-paid credits but before the reduction for the property tax refund. The ratio that shall be used is:

$$\frac{\text{Assessor's estimated market value of improvements}}{\text{Assessor's estimated market value of the entire homestead (including land)}}$$

This ratio shall apply to the estimated market value of all improvements which are included in the estimated market value for the first time for property taxes payable in 1981 regardless of the year the improvement was actually made.

C. Net property taxes payable.

1. A claimant who was required to reduce the property taxes payable for purposes of the property tax refund because

a. the homestead was used for business purposes and depreciation expenses were claimed or,

b. part of the homestead was rented to another, must make the similar reduction in the net property taxes payable which qualify for targeting. The same percentage reduction must be applied to net property taxes payable in 1980 and 1981. The largest percentage reduction must be used whether it be the 1980 percentage reduction or the 1981 percentage reduction.

2. The net property tax payable is only for that part of the property that qualifies as the claimant's homestead. On a duplex, only the property taxes attributable to the homestead portion qualify for targeting.

3. For purposes of computing the net property taxes payable that qualify for targeting, the property taxes payable must be reduced by the amount of the Class 3CC credit which was received under the provisions of Laws of 1980, ch. 607, Article IV, sections 3, 6, and 7.

4. The net property taxes payable in 1980 shall be reduced only by the amount of the property tax refund attributable to property taxes payable. No reduction shall be allowed for that part of a property tax refund attributable to rent constituting property taxes. If a taxpayer's property tax refund includes property taxes payable and rent constituting property taxes, the property tax refund shall be recomputed using only property taxes payable.

Department of Transportation

Notice of Withdrawal of Proposed Rules Establishing A Program of State Grants for the Development of Local Bicycle Trails

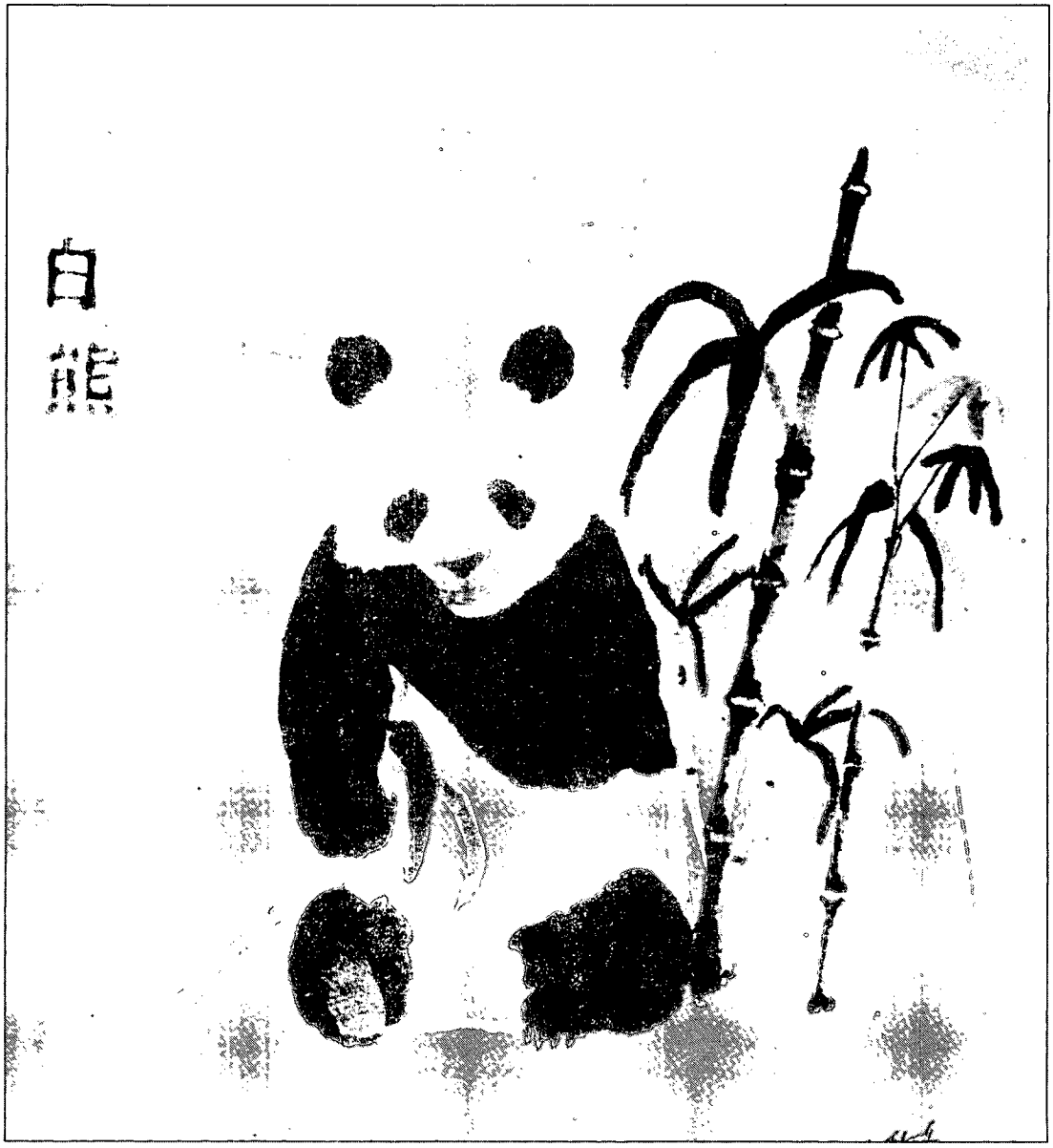
The above proposed rules came on for hearing on April 22, 1980, in a proceeding captioned *In the Matter of the Proposed Adoption*

of Rules Establishing a Program of State Grants for the Development of Local Bicycle Trails (Bikeways). The Hearing Examiner, Harry Seymour Crump, in that proceeding, issued his report on June 18, 1980.

After review of the record herein, the commissioner hereby orders that the proposed rules establishing a program of state grants for the development of local bicycle trails (bikeways), as published at 4 S.R. 1493, March 17, 1980, and reviewed in the hearing of April 22, 1980, are withdrawn.

August 8, 1980

Richard P. Braun
Commissioner of Transportation



PANDA, ink drawing by Michael Floyd, Mayo High School, Rochester, MN.

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

James R. Ree and Lynn D. Ree, Appellants,
Docket No. 2785

and

Glen C. Merfeld and Kathleen Merfeld, Appellants,
Docket No. 2786

v.

The Commissioner of Revenue, Appellee.

Order dated August 6, 1980.

The above-entitled matters were consolidated for trial. Both are appeals from two separate orders of the Commissioner of Revenue dated October 13, 1978. Said orders disallowed appellants' claims for property tax refund which were pursuant to Chapter 290A of Minnesota Statutes. Appellants, James R. Ree and Lynn D. Ree, are husband and wife and reside in the same residence with Glen C. Merfeld and Kathleen Merfeld, the other appellants. The Rees, as joint tenants, own a one-half interest in the property and the Merfelds, as joint tenants, own the other one-half interest in the property. It is contended by the appellants that the Merfelds and the Rees each own and occupy separate homesteads within the meaning of Chapter 290A. It is also contended that the Rees and the Merfelds are separate households within the meaning of that chapter, which, it is contended, explicitly recognizes that the homestead may be part of a multi-dwelling building.

Ronald B. Sieloff, appeared on behalf of appellants, Thomas K. Overton, Special Assistant Attorney General, appeared on behalf of appellee.

Decision

The Orders of the Commissioner of Revenue dated October 13, 1978 are hereby affirmed.

Findings of Fact

John Knapp

These two cases, involving the same facts and issues have been consolidated for purposes of this decision.

1. Appellants James R. Ree and Lynn D. Ree (referred to as "the Rees") are husband and wife residing in a house at 833 Goodrich Avenue, St. Paul, Minnesota 55105 (the property).

2. Appellants Glen C. Merfeld and Kathleen Merfeld (referred to as "the Merfelds") are husband and wife and reside in the same house with the Rees.

3. Mr. and Mrs. Ree own as joint tenants a one-half interest in the property. Mr. and Mrs. Merfeld own as joint tenants a one-half interest in the property. The Rees' interests in the property are that of tenants-in-common with respect to the Merfelds' interests.

4. There were property taxes payable with respect to the property at 833 Goodrich Avenue payable in 1976 and 1977.

5. The property at 833 Goodrich Avenue is a house which is a single dwelling unit which constitutes a single family residence and not a duplex.

6. The relationship of the Rees to the Merfelds (and vice versa) is not that of "husband and wife, dependents, roomers or boarders."

7. For the 1976 property tax refund, the Rees and Merfelds each claimed a property tax credit with respect to the property. Refunds were paid as claimed without audits. Audit of these claims is being held pending the outcome of this appeal at the request of taxpayers' counsel per telephone conversation on December 18, 1978.

8. For the 1977 property tax refund (for property taxes payable in 1977) the Rees and Merfelds each claimed a property tax credit. The Rees computed their credit using one-half the qualifying tax amount, one-half the state paid homestead credit, and only their own income. The Merfelds made a similar computation in computing their property tax.

9. The Department of Revenue disallowed the two credits claimed and recomputed a single credit using the total qualifying tax amount, the total state paid homestead credit, and the total income of all the residents.

Conclusions of Law

1. A single dwelling unit shared by claimants is a single homestead within the meaning of Chapter 290A of Minnesota Statutes.

2. Minn. Stat. § 290A.05, (1977) provides that property tax credit must be computed using the total income of all owner occupants of the homestead.

Memorandum

Appellants make three assertions in support of their claim. The first of these is that the Merfelds and the Rees each own and occupy separate homesteads within the meaning of Chapter 290A. The second, is that the Merfelds and Rees are separate households within the meaning of that chapter. The third is that Chapter 290A explicitly recognizes that a homestead may be part of a multi-dwelling building. As part of those assertions, appellants make further contentions. They contend that there is no statutory authority within Minn. Stat. § 290A.05 to require members of different households owning the same homestead or owning different homesteads to aggregate their income for purposes of claiming a refund under Chapter 290A. Furthermore, Appellants contend that Minn. Stat. § 290A.05 which deals with combined household income does not apply to multiple owners of the same property but only to an owner of property who had others merely occupying the property with him.

In order to properly answer the questions before this court, it is necessary to first address the question of what is a homestead. Minn. Stat. § 290A.03, subd. 6, defines a homestead as a dwelling occupied as a place of residence:

> "Homestead" means the dwelling occupied by a claimant as a place of residence and so much of the land surrounding it, not exceeding one acre, as is reasonably necessary for use of the dwelling as a home, except that this restriction shall not be applicable to agricultural land assessed as part of a homestead pursuant to § 273.13, subdivision 6. The homestead may be owned or rented and may be a part of a multi-dwelling or multi-purpose building and the land on which it is built. A mobile home, as defined in § 168.011, subd. 8, assessed as personal property may be a dwelling for purposes of this subdivision.

Initially upon reading the first sentence of the above quoted subsection, one could infer that as many people as there are who are living in your typical single family structure could claim a homestead. But such a reading would be to neglect the rest of the subsection which clarifies the first sentence. Further along in that subsection the legislature saw fit to provide that a homestead may be part of a multi-dwelling building. Therefore, the legislature included within this section a phrase which deals with a single family dwelling which can be considered a homestead and a phrase which deals with multiple family dwellings, e.g. an apartment complex, and provided that in such a complex there would be multiple homesteads.

There is no explicit indication of intent by the legislature to allow a single family dwelling to qualify for numerous exemptions. The fact that the legislature saw fit to allow a multi-dwelling building numerous exemptions does not validate the appellants' argument. Taxation is the rule. Exemption is the exception and must be explicitly stated. At best, it can be stated that here we are dealing with some doubtful language, but an exemption from taxes cannot be presumed from doubtful language. It must be expressed in words so clear and explicit as to leave no reasonable doubt that the exemption was intended to be given. *Great Northern Railway Company v. State of Minnesota*, 216 U.S. 206, 30 S. Ct. 344, in re *Junior Achievement*, 271 Minn. 385, 135 N.W. 2d 881.

This result is consistent with the case of *Schumann v. Commissioner*, 253 N.W. 2d 130 Minn. (1977) where the court interpreted the status of the old rent credit provisions as provided in Minn. Stat. §§ 290.981-290.992 (1974) and interpreted the rules as saying that occupants of a single dwelling unit were considered occupants of a single rental unit. Therefore it is consistent when interpreting the property tax refund statutes to determine that occupants of a single dwelling unit are occupants of a single property tax unit.

In assertion of their claim of two homestead exemptions for this one particular dwelling unit, appellants appear to be relying upon the facts that they are all co-owners of this single dwelling unit and that they are not all related to one another. Upon examining the statute however, it does not appear that either of these factors is relevant whatsoever. Minn. Stat. § 290A.03, subd. 13 provides for a method of determining which of the co-owners of a single dwelling unit will claim the homestead credit exemption. It does not say that if there are numerous co-owners that they all can claim the exemption. It clearly says that the parties will determine between them which of them is to claim the exemption.

Appellants have further contended that it is improper for the commissioner to aggregate the incomes of the Rees and the Marfelds in determining the property tax credit. Minn. Stat. § 290A.05 (1977 Supp.) provides an answer to this issue.

> If a person occupies a homestead with another person or persons not related to the person as husband and wife, excluding dependents, roomers or boarders on contract, and has property tax payable with respect to the homestead, the household income of the claimant or claimants for the purpose of computing the refund allowed by section 290A.04 shall include the total income received by the other persons residing in the homestead. If a person occupies a homestead with another person or persons not related as husband and wife or as dependents, the property tax payable or rent constituting property tax shall be reduced as follows:
>
> If the other person or persons are residing at the homestead under rental or lease agreement, the amount of property tax payable or rent constituting property tax shall be that portion not covered by the rental agreement.

It has been stipulated that the Rees are husband and wife. It has also been stipulated that the Merfelds are husband and wife. There is no indication that the four of them are related in any way. The four of them are co-owners of the property, none of them are dependents of the others, roomers or boarders of the others. Therefore they do not come within the listed exceptions within the above quoted section. Since it is clear that the Merfelds and Rees are co-owner occupants of this dwelling and it is clear from reading the subsection quoted above that a claim of co-owner occupants of a homestead must be computed using the total income of the co-owner occupants, it was proper for the commissioner to aggregate the incomes of the Merfelds and the Rees in determining the property tax credit in this case.

This Court having considered all the facts and evidence before it finds according to the above analysis that the Orders of the Commissioner are hereby affirmed in full.

John Knapp

SUPREME COURT

Decisions Filed Friday, August 15, 1980

50282/Sp. State of Minnesota vs. Henry Walter Butler, Appellant. Hennepin County.

Evidence of defendant's guilt was sufficient, trial court did not commit prejudicial error in any of its evidentiary rulings, and trial court's instructions were adequate.

Affirmed. Rogosheske, J.

48671, 48672, 49180/157 Roy Vieths, Plaintiff, vs. Wayne Ripley and Harry Munson, d.b.a. Munson Crane Rental Service, defendants and third party plaintiffs, vs. Archer-Midland-Midland Company, third party defendant, Appellant (48672), ADM Milling Company, third party defendant, Appellant (48671 and 49180). Goodhue County.

Where a workman is injured by an electrical current that traveled from an uninsulated, unmarked, high voltage powerline through a crane the workman was touching, evidence of negligence of appellant owner of the powerline was sufficient where the jury could have found appellant knew or should have known the crane would be operating near the powerline.

Similarly, evidence of negligence of appellant employer was sufficient.

There was insufficient evidence for a jury to find that the workman's employer was acting as an agent for the powerline owner and it was therefore error for the trial court to impute the negligence of the workman and his employer to the owner.

The crane operator was not negligent as a matter of law where evidence sustains a jury finding that he reasonably depended upon the injured workman not to direct the crane into a dangerous position.

Instructions to the jury on Article 4 of the National Electrical Safety Code were not prejudicial.

Reversed and remanded. Rogosheske, J. Took no part, Peterson, J., Todd, J. and Amdahl, J.

50375/200 The Brothers Jurewicz, Inc. vs. Atari, Inc., Appellant. Hennepin County.

In an action on a contract containing an arbitration clause, the general rule is that the issue of whether the right to request arbitration has been lost due to laches and waiver should be decided by an arbitrator rather than a trial court.

When an arbitration request is made after litigation has been instituted on a dispute and the party opposed to arbitration claims laches or waiver predicated solely upon participation in the lawsuit by the party seeking arbitration, a limited exception to the general rule exists giving the trial court jurisdiction to decide the issue.

Because the trial court's finding that Atari was guilty of laches was based solely on Atari's failure to request arbitration until after the litigation had proceeded for nearly 1 year, rather than on the underlying contract dispute between the parties, it was proper for the trial court to assume jurisdiction of the Brothers Jurewicz' laches defense to Atari's motion to compel arbitration.

Atari's participation in litigation for nearly 1 year with constructive knowledge of its right to demand arbitration, and without moving the court to compel arbitration, constituted laches.

Affirmed. Rogosheske, J.

50549/218 In the Matter of the Alteration of the Outlet Elevation of Plum Grove Lake (Lake 3-564), Becker County, Minnesota. Becker County.

Minn. Stat. § 105.38 (1) (1973) is the law of the case, because all parties to this dispute applied it as the controlling statute in addressing the question of whether Plum Grove Lake was public waters.

Because the record is replete with evidence concerning the beneficial public purposes served by Plum Grove Lake, the commissioner's conclusion that the lake is public waters is amply supported by substantial evidence.

Reversed and remanded with instructions that the commissioner's order be reinstated. Rogosheske, J. Took no part, Amdahl, J.

50264/Sp. State of Minnesota vs. David Harold Affeldt, Appellant. Martin County.

Evidence of defendant's guilt held sufficient.

Statute making it a crime to publish false statement relating to value of corporate property with intent to defraud is not void for vagueness.

Trial court's instructions, which were not objected to, were not so inadequate as to require a new trial.

Affirmed. Peterson, J.

49060/Sp. State of Minnesota vs. Jerome Peter Sufka, Appellant. Benton County.

Deputy sheriff deliberately elicited statements from petitioner in the absence of petitioner's attorney and state failed to meet its burden of proving that petitioner waived his right to counsel; however, admission of statements, even if obtained in violation of petitioner's right to counsel, was harmless error beyond a reasonable doubt.

Petitioner, by failing to object to admission of extrajudicial statements as being violative of R. 410, R. Evid., is deemed to have forfeited his right to have this issue considered on this appeal.

Trial court did not clearly abuse its discretion in denying a midtrial request for a continuance to locate a potential rebuttal witness.

Affirmed. Todd, J.

Decisions Filed Tuesday, August 12, 1980

51372/Sp. State of Minnesota, Appellant, vs. Mark Edward Dineen. Swift County.

Abandonment, if any, of motor vehicle was prompted by threat of search of vehicle by officer who did not have probable cause to search.

Affirmed. Sheran, C. J.

51407/Sp. State of Minnesota, Plaintiff, vs. Yves Montand Guy, Michael Lee Kidd, Michael Douglas Harvey, Daniel Maurice Winston. Hennepin County.

Certified question, based on doubt as to whether defendants charged with possessory offenses had automatic standing under federal constitution, was resolved by decision of United States Supreme Court while this appeal was pending; accordingly, issue is no longer doubtful, but case is remanded so that defendants may have opportunity to demonstrate, if they can, that their own Fourth Amendment rights were violated.

Remanded. Sheran, C. 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 Health
Emergency Medical Services Section

Eligibility List for EMT and Paramedic Examiners

The Minnesota Department of Health, Emergency Medical Services Section, is in the process of formulating a list of eligible individuals interested in working part time conducting EMT and Paramedic written and practical examinations. Physicians, Registered Nurses, Paramedics and EMTs interested in being placed on the department's list of eligibles should send a resume and cover letter to:

Ernest W. Kramer
Training Coordinator
Minnesota Department of Health
EMS Section
717 Delaware Street S.E.
Minneapolis, Minnesota 55440

Applicants should have considerable experience in emergency care including teaching as well as the provision of emergency care. If anyone has questions call Mr. Kramer at (612) 296-5281.

State Arts Board

Notice of Request for Proposals for Regional Arts Program Evaluation

The Minnesota State Arts Board is requesting a proposal from an individual with arts planning expertise to examine the relationship between the Minnesota State Arts Board and regional arts councils regarding grants and service delivery, to determine how this relationship might be improved and to suggest how such improvements might be made.

The total amount of the contract will not exceed $5,000.00.

Inquiries and formal expressions of interest should be directed to:

Jim Olsen
Minnesota State Arts Board
2500 Park Avenue
Minneapolis, Minnesota 55404
Telephone: (612) 341-7177

A formal expression of interest must be submitted to the Minnesota State Arts Board no later than 12:00 p.m. (noon), September 4, 1980.

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 Human Rights

Notice of Intent to Prepare Department of Human Rights List for Future Rulemaking Hearings

In accordance with Minnesota Law, 1980, Chapter 615, the Minnesota Department of Human Rights is establishing a list of persons to receive official notice of its rulemaking proceedings. The law requires each agency or department to establish and maintain such a list to replace the list currently maintained by the Secretary of State.

If you wish to receive notice of rulemaking proceedings of the department, please notify the department in writing. You will then receive notice of any rulemaking proceedings initiated after the date on which your request is received. Please note that this procedure will put you only on the list of the Department of Human Rights. Other agencies and departments will be establishing their own lists.

Please send your written request to:

Mary A. Hartle
Minnesota Department of Human Rights
4th Floor Bremer Towers
7th Place and Minnesota Street
St. Paul, Minnesota 55101
(612) 296-9048

Department of Transportation

Notice of Intent to Solicit Opinion Concerning Proposed Rules Establishing A System of State Grants for the Development of Local Bicycle Trails

Notice is hereby given that the Commissioner of Transportation is considering the adoption of rules which would establish a system of state grants for the development of local bicycle trails.

Minn. Stat. § 160.265 (1978) authorizes the Commissioner of Transportation to establish, by rule, procedures for the administration of grants for local bicycle trails to units of government as defined in Minn. Stat. § 4.36, subd. 1. Such units of government include counties, cities, and home rule charter cities, towns, school districts, public post-secondary educational institutions, special park districts, or any elected park and recreation boards.

Please be advised that the commissioner has withdrawn the earlier proposed rules which were published in the *State Register* at 4 S.R. 1494 and which were reviewed at a hearing held April 22, 1980.

All persons interested in this subject matter of rules for state grants on local bicycle trails should consider this notice to be separate and distinct from the earlier rule proceeding.

The commissioner may not necessarily entertain or use proposed regulatory statements developed in the earlier rule proceeding. Those affected and those who participated in the earlier hearing are earnestly solicited to make their views known and to provide whatever information that may be relevant to this matter.

The purpose of these rules for state grants for the development of local bicycle trails would be to adopt procedures to establish: grant project eligibility; project priority; requirements for matching funds; grant conditions; distribution and depletion of project monies; project accounting; retention and use of project facilities; and contract expiration.

All interested or affected persons or groups may submit information on this subject of rules for state grants for the development of local bicycle trails. Written or oral information and comment should be addressed to:

Minnesota Department of Transportation
Office of Environmental Services
Attention: Leonard G. Eilts, Acting Director
612 Transportation Building
St. Paul, Minnesota 55155
Telephone: (612) 296-7528

Any written material received will become a part of the record of any rules hearing held.

August 8, 1980

Richard P. Braun
Commissioner of Transportation

Department of Labor and Industry Rehabilitation Services Division

Announcement of Open Meeting

Notice is hereby given that the Rehabilitation Review Panel for Workers' Compensation will conduct an open meeting on Thursday, September 18, 1980 from 9:00 a.m. to noon and 1:00 to 3:00 p.m. The meeting will be held at the auditorium of the State Office Building, Wabasha Street and Park Avenue, St. Paul, Minnesota.

The purpose of the open meeting is to receive views and comments from any interested parties on rehabilitation issues as they relate to M.S. 176.102. Registration of those parties wishing to present verbal comments will be held between 8:30 and 10:00 a.m. that day at the auditorium.

Errata

1. At 5 S.R. 113, July 28, 1980, a proposed rule of the Livestock Sanitary Board (Board of Animal Health, effective August 1, 1980), 3 MCAR § 2.001 (LSB 1) Importation of cattle and bison., contains an error. Paragraph A. should read as follows:

"A. (a) Where used in ~~these~~ this rules ~~and regulations~~ the following words and terms ~~shall be~~ are defined as follows:"

2. At 5 S.R. 114, July 28, 1980, an adopted rule of the Office of the Secretary of State, Election and Legislative Manual Division, contains an error. Rule 1 MCAR § 2.4103 Instructions to absent voter., paragraph (12) of the form should read:

"(12) ~~(13)~~ You may mark and mail or deliver your ballots at any time after you receive them. However, if mailing your ballots, allow sufficient time so that they can be delivered by the U.S. Postal Service on election day. If you or your agent deliver in person your Absentee Ballot Return Envelope, the auditor or clerk must receive it before ~~5~~ 4:30 p.m. on the day before an election day."

3. At 5 S.R. 121, July 28, 1980, an adopted rule of the Department of Transportation contains an error. Rule 14 MCAR § 1.4000 D.2. should read:

"2. If a rehabilitation project is on a rail line owned by a bankrupt railroad, previously owned by a bankrupt railroad, or a rail line has been abandoned under Interstate Commerce Commission regulations, 49 CFR 1121, the division of costs shall be by the following formula:"

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