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STATE OF MINNESOTA



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Pages 1771-1802



Printing Schedule for Agencies

Issue Number	*Submission deadline for Executive Orders, Adopted Rules and **Proposed Rules	*Submission deadline for State Contract Notices and other **Official Notices	Issue Date
SCHEDULE FOR VOLUME 8			
32	Monday Jan 23	Monday Jan 30	Monday Feb 6
33	Monday Jan 30	Monday Feb 6	Monday Feb 13
34	Monday Feb 6	Monday Feb 13	Monday Feb 20
35	Monday Feb 13	Monday Feb 20	Monday Feb 27

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

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

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

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

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

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

The PROPOSED RULES section contains:

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

The ADOPTED RULES section contains:

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

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

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

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EXECUTIVE ORDERS**Executive Order No. 84-1****Creating the Upper Mississippi River Basin Association, Successor of the Upper Mississippi River Basin Commission**

I, RUDY PERPICH, GOVERNOR OF THE STATE OF MINNESOTA, by virtue of the authority vested in me by the Constitution and the applicable statutes, do hereby issue this Executive Order:

WHEREAS, the Mississippi River is a critical natural resource of this state, vital to its commerce and important to the recreational and aesthetic needs of the people of this state;

WHEREAS, careful, coordinated planning and interstate communication and cooperation are essential to the ability of the Upper Mississippi River System to fulfill its historic functions;

WHEREAS, prior to the termination of the Upper Mississippi River Basin Commission, the Governors of the states of Iowa, Illinois, Minnesota, Missouri, and Wisconsin by joint resolution of August, 1981, endorsed the creation of a successor agency to the Commission to maintain communication and cooperation among the states on matters related to water resources planning and management;

WHEREAS, in December, 1981, representatives of the states of Iowa, Illinois, Minnesota, Missouri, and Wisconsin ("member states") met and adopted on behalf of these states, Articles of Association creating the Upper Mississippi River Basin Association (UMRBA);

WHEREAS, pursuant to Presidential Executive Order No. 12319, the member states accepted the transfer of the assets of the Commission to the Association for its stated purposes;

WHEREAS, the Association fulfills the functions and activities recommended in the joint Governors' resolution; and

WHEREAS, the State of Minnesota wishes to continue and reaffirm its membership and participation in the Association;

NOW, THEREFORE, I, RUDY PERPICH, by the authority vested in me as Governor of the State of Minnesota, do order:

1. Recognizing that the UMRBA has been and continues to be an instrumentality of the member states for water resources planning, communication, and coordination in the Upper Mississippi River System, this State's membership in the Upper Mississippi River Basin Association is reaffirmed and continued.

2. That all agencies, boards, and commissions of this State and their employees cooperate with and assist the Association in its activities.

3. That the Association is authorized to undertake such activities and programs in regard to the Upper Mississippi River System as the state representatives to the Association may

EXECUTIVE ORDERS

decide among themselves or as the states may be authorized by Congress, provided those activities are consistent with its purposes as stated in its Articles of Association and provided they do not violate the Compact Clause of the United States Constitution.

4. That the Association shall continue to operate according to its Articles of Association and By-laws.

5. That if the Association is terminated, its assets shall be distributed to the member states as provided in its Articles and by-laws.

Pursuant to Minnesota Statutes 1982, Section 4.035, this Order shall be effective 15 days after publication in the *State Register* and filing with the Secretary of State and shall remain in effect until rescinded by proper authority or it expires in accordance with Section 4.035, Subdivision 3.

IN TESTIMONY WHEREOF I have set my hand and cause the Great Seal of the State of Minnesota to be affixed at the Capitol in St. Paul this day, January 13, 1984.



ADOPTED RULES

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

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

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

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

Department of Agriculture Dairy Industries Division

Adopted Temporary Rules Governing Administration of the Manufacturing Grade Milk Investment Reimbursement Program

The temporary rules proposed and published at *State Register*, Volume 8, Number 22, pages 1250-1256, November 28, 1983 (8 S.R. 1250) are adopted as proposed.

Department of Commerce

Board of Architecture, Engineering, Land Surveying and Landscape Architecture

Adopted Rules Amending Fees

The rule proposed and published at *State Register*, Volume 8, Number 10, pages 355-358, September 5, 1983 (8 S.R. 355) is adopted as proposed.

Department of Labor and Industry Workers' Compensation Rehabilitation Services

Adopted Rules Governing Qualified Rehabilitation Consultants and Rehabilitation Vendors

The rules proposed and published at *State Register*, Volume 8, Number 8, pages 264-273, August 22, 1983 (8 S.R. 264) are adopted with the following modifications:

Rules as Adopted

RS 14. Qualifying eligibility criteria for rehabilitation consultant.

B. Rehabilitation consultant intern. An individual who meets the minimum educational requirements but does not meet the minimum experience requirements may be registered as a consultant intern. When the intern is registered, the intern's employer shall provide the commissioner with the name of the qualified rehabilitation consultant under whose direct supervision the intern will work. The supervisor shall be considered to be directly responsible for the rehabilitation work on any case. The supervisor shall co-sign all work being done by the intern. So that all parties are aware of the intern's status, he shall be designated as an "intern." The intern may make application for "qualified" status when the minimum requirements in RS 14 A.1. or 2. have been met.

Substantiated complaints about professional behavior or services, or failure to comply with laws, rules, ~~policies and procedures~~, or decisions and orders are grounds for denial of registration as a qualified rehabilitation consultant. The intern may appeal the denial as provided in rule RS 15 B.

In cases where an intern has been supervised by a qualified rehabilitation consultant/affiliated who leaves the organization with which he has been affiliated and no other qualified rehabilitation consultant is available to supervise the intern, the intern may, with the approval of the commissioner, temporarily sign all required documents in the capacity of a qualified rehabilitation consultant. Past performance and overall experience will be taken into consideration for this approval.

D. General criteria. All persons who are qualified rehabilitation consultants shall be exclusively self-employed or exclusively employed by a single organization that is approved for the employment of qualified rehabilitation consultants or an employer/insurer.

All persons who are qualified rehabilitation consultants shall be residents of Minnesota. An organization authorized for the employment of qualified rehabilitation consultants may request an exception for a consultant who lives contiguous to a Minnesota catchment area if the organization and any such consultant agrees, as a condition to approval, to appear at any hearing when requested, in the same manner as if they had been subpoenaed. Failure to do so shall result in automatic revocation of the individual consultant's approval.

A qualified rehabilitation consultant operating on the effective date of this amendment with approval and registration who is registered is deemed to meet the standards of this rule. Qualified rehabilitation consultant interns operating on the effective date of this amendment with approval and registration who are registered must meet the minimum requirements of this rule in order to make application for qualified rehabilitation consultant registration.

RS 15. Procedure for qualifying as rehabilitation consultant.

A. Application. An individual desiring to receive approval and registration as a qualified rehabilitation consultant shall submit to the commissioner, a complete application consisting of the following:

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

ADOPTED RULES

1. completed and signed application form ~~(which is notarized)~~;

The commissioner shall issue a notice of acceptance or rejection to the applicant within 60 days of receipt of the completed application ~~and~~. Acceptance will be provisional until the completion of an introductory training session.

D. Renewal. Registration shall be renewed annually. If an interval of one year occurs without providing direct case service or without providing supervision to qualified rehabilitation consultants or qualified rehabilitation consultant interns who provide direct case service to workers' compensation recipients, the registration and approval is automatically ~~revoked and reinstatement will be required in accordance with the minimum requirements in effect on the date of application for reinstatement~~ suspended. A qualified rehabilitation consultant or intern may apply for reinstatement by providing verification to rehabilitation services of his attendance at the annual update sessions and fulfillment of continuing education requirements as provided by RS 1.-19. The applicant must complete an introductory training session before approval is final. The suspension may be appealed to the rehabilitation review panel in accordance with RS 15. E.2.

Services and fee schedules shall be submitted to the commissioner whenever there is a change or no less than once each calendar year. This filing shall not constitute an approval or disapproval of the services or fees.

No later than 60 days prior to expiration of registration, the consultant shall request registration renewal on a form prescribed by the commissioner.

E. Revocation. The commissioner may review the activities of registered qualified rehabilitation consultants and vendors to determine if they are in compliance with all rehabilitation services' rules.

1. When the commissioner becomes aware of an ~~apparent~~ alleged violation concerning a qualified rehabilitation consultant or vendor he shall ~~write~~ notify in writing the qualified rehabilitation consultant or vendor. The qualified rehabilitation consultant or vendor may then respond by letter or by requesting an administrative conference. If the qualified rehabilitation consultant or vendor does not request an administrative conference, the commissioner ~~may~~ shall order that a conference occur unless the complaint is found to be frivolous or without merit. After the administrative conference, the commissioner shall determine if he should discipline the individual or firm based upon applicable rules and statutes and all evidence gathered by the conference. Regardless of the commissioner's decision, he shall issue an order setting forth the reasons for his actions. If discipline is decided on by the commissioner, it ~~may~~ shall consist of one or more of the following:

d. a restriction or prohibition on accepting new cases for up to six months.

If the commissioner imposes discipline twice in five years upon an individual or firm, the next ~~apparent~~ alleged violation shall be referred to the rehabilitation review panel for review and any appropriate further. An individual's discipline shall not be attributed to his employing firm unless the violation for which discipline is imposed also constitutes a violation by the firm and results in discipline to the firm.

3. Upon the commissioner's referral of a third ~~apparent~~ alleged violation, the firm or individual shall be given written notice of the referral and grounds for the review.

4. The rehabilitation review panel shall follow the hearing procedures set forth in Minnesota Statutes, section 176.102, subdivision 3a. The panel ~~may~~ shall take one or more of the following actions in reviewing rehabilitation providers alleged violations such as:

a. Absolving the individual or firm of any ~~alleged~~ rehabilitation rule ~~apparent~~ violation and dismissal of the complaint;

d. Probation of a qualified rehabilitation consultant, qualified rehabilitation consultant intern, or vendor during which time another disciplinary action review by the panel would result in revocation;

RS 18. Standards of performance.

A. Goals. A qualified rehabilitation consultant, qualified rehabilitation consultant intern, and vendor should strive to meet certain policies recognized by rehabilitation services as fundamental to the rehabilitation profession. The statements in 1., 8., are objectives that rehabilitation services promotes to constantly upgrade the quality of professional rehabilitation care.

1. The welfare of the injured employee should be the primary focus of concern, communications, and activity by the qualified rehabilitation consultant or vendor.

2. The qualified rehabilitation consultant or vendor should maintain a fair and objective position in dealing with the employee, employer, and insurer.

3. The qualified rehabilitation consultant or vendor should maintain objective and effective lines of communication with all members of the rehabilitation team: the employee, employer, insurer, attorney, physician, qualified rehabilitation consultant, and vendor.

4. A qualified rehabilitation consultant or vendor should withdraw from any case in which achieving rehabilitation goals is being interfered with by the lack of rapport between the qualified rehabilitation consultant or vendor and the employee or in which there are personality conflicts between the employee and the qualified rehabilitation consultant or vendor.

5. A qualified rehabilitation consultant or vendor should keep abreast of professional advances and topics by participation in continuing education programs.

6. Rehabilitation providers should carry professional liability insurance for the protection of themselves and affected third parties.

7. A qualified rehabilitation consultant or vendor should not engage in any form of discrimination.

8. Any discussion, comments, or criticisms directed toward or about a fellow professional rehabilitation provider or organization should be positive or constructive.

~~B.~~ B. Minimal standards. The standards of conduct described in ~~C.~~ B.-F. establish minimum standards concerning the professional activities of qualified rehabilitation consultants and rehabilitation vendors in Minnesota. The performance evaluations by rehabilitation services of qualified rehabilitation consultants and vendors will be based upon these standards, as well as on the adherence to Minnesota Statutes, section 176.102 and rules adopted to administer it.

~~C.~~ B. Professional conduct.

2. Only the assigned qualified rehabilitation consultant, or a qualified rehabilitation consultant designated by the assigned qualified rehabilitation consultant, shall be involved at any given time in the employee's rehabilitation effort, except as stated in 4. and 5. The assigned qualified rehabilitation consultant must submit the ~~R-2~~ rehabilitation plan within 30 days of referral and must submit subsequent ~~R-3~~ rehabilitation progress reports every 30 days to the office of rehabilitation services and the other parties. This rule shall not apply to a qualified rehabilitation consultant acting on behalf of the reinsurance association in a monitoring or advisory capacity on a reinsurance claim file.

4. A qualified rehabilitation consultant shall cooperate in transferring to a newly approved qualified rehabilitation consultant all data, reports, and relevant information within 15 days from the ~~date of letter~~ receipt of rehabilitation services letter approving the new qualified rehabilitation consultant.

6. A qualified rehabilitation consultant who has testified as an expert witness for any party in a judicial hearing may not function as the ongoing qualified rehabilitation consultant on the case unless agreed to by the ~~parties~~ employee.

8. The roles and functions of a claims agent and a qualified rehabilitation consultant or vendor are separate. A qualified rehabilitation consultant or vendor, or an agent of a rehabilitation provider, shall engage only in those activities designated in Minnesota Statutes, section 176.102, its rules ~~and policies and procedures~~. Claims adjustment and claims investigation ~~are prohibited~~ activities such as unilaterally providing for an adverse medical, vocational, or rehabilitation examination except as provided for in RS 18. B.5., aiding insurers in determining monetary workers' compensation benefits, or determining the reasonableness of medical or rehabilitation service are prohibited for a rehabilitation provider. This rule shall not prohibit a qualified rehabilitation consultant acting on behalf of the reinsurance association from consulting with the primary qualified rehabilitation consultant regarding the rehabilitation plan.

~~D.~~ C. Communications.

2. All reports shall be submitted in accordance with rehabilitation services' ~~policy, procedure, and~~ forms as prescribed by the commissioner under Minnesota Statutes, section 176.165.

9. A qualified rehabilitation consultant or vendor shall request only that information and data which will assist the parties in developing and carrying out the rehabilitation plan. ~~They are prohibited from making investigations for claims processing purposes.~~

10. ~~A.~~ A. The qualified rehabilitation consultant or vendor assigned to a case shall provide all reports written by all parties regarding a case to rehabilitation services. This rule shall not apply to the reinsurance association, unless the reinsurance association has assumed primary responsibility for the claim pursuant to Minnesota Statutes, section 79.35, clause (g).

~~E.~~ D. Responsibilities.

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

ADOPTED RULES

1. A qualified rehabilitation consultant is to instruct the employee ~~in~~ of his rights and responsibilities by ~~providing and reviewing with him the R-12~~ the purpose of rehabilitation services and the rights and responsibilities of the injured ~~Worker form together with The Rehabilitation Feedback form during the initial interview~~ workers.

2. A qualified rehabilitation consultant or vendor shall be knowledgeable and informed regarding portions of the workers' compensation law, rules, ~~policies, and procedures~~ that directly relate to the provision of rehabilitation services. If a qualified rehabilitation consultant or vendor communicates inaccurate information regarding workers' compensation not directly related to rehabilitation services, the rehabilitation provider is subject to discipline.

3. A qualified rehabilitation consultant or vendor shall may contact rehabilitation services to clarify any rehabilitation issues or problems.

4. A qualified rehabilitation consultant or vendor's registration is subject to disciplinary action up to and including revocation based on substantiated complaints about professional behavior, or services, or for failure to comply which show noncompliance with established laws, rules, ~~policies and procedures~~, decisions, or orders.

~~F.~~ E. Continuing education and competencies.

1. A qualified rehabilitation consultant or vendor shall attend at least one introductory training session provided by rehabilitation services within six months of being registered ~~provided by rehabilitation services~~.

~~G.~~ F. Business practices. All registered qualified rehabilitation consultants, qualified rehabilitation consultant interns, and vendors shall abide by the following rules concerning a provider's business practices.

2. Rehabilitation providers shall not misrepresent themselves, their duties, or credentials. A rehabilitation provider must not promise or offer services or results he cannot deliver or has reason to believe he cannot provide. Competitive advertising must be factually accurate and must avoid exaggerating claims as to costs, results, and endorsements by other parties. ~~When recruiting employees, rehabilitation providers must not falsely promise benefits, employment advancement, or salaries which they know or have reason to know they cannot provide.~~

3. If a fellow rehabilitation provider violates RS 1.-19., a qualified rehabilitation consultant or vendor ~~provider~~ having information actual personal knowledge about the violation must direct the information to rehabilitation services.

6. Any fee arrangement which prevents individual assessment and services for each employee shall subject the providers to discipline. Any fee arrangement which provides employees with standardized services whether or not the services are necessary shall also subject the ~~parties~~ rehabilitation providers to discipline.

8. Qualified rehabilitation consultants shall not incur profit ~~through, split fees, or have an ownership interest with health care providers or split fees through referrals with health care providers~~. "Health care providers" means those defined in Minnesota Statutes, section 176.011, subdivision 24.

RS 19. Rehabilitation services and fees.

B. Reasonable and necessary services. A qualified rehabilitation consultant or vendor shall bill for only those necessary and reasonable services which are rendered in accordance with rehabilitation services rules ~~and policies and procedures~~ during completion of a plan. Reasonable and necessary services and fees shall be determined by the commissioner. The commissioner's review must include all the following factors, ~~but may include other factors if enumerated in his eventual determination. These factors are:~~

C. Reporting requirements. ~~All~~ The qualified rehabilitation consultants ~~consultant~~ assigned to an employee must provide rehabilitation services with ~~certain~~ the following information regarding an employee's case for purposes of rehabilitation services' monitoring of services and overall record keeping requirements. This rule shall not apply to the reinsurance association, unless the reinsurance association has assumed primary responsibility for the claim pursuant to Minnesota Statutes, section 79.35, clause (g).

1. The qualified rehabilitation consultant shall provide rehabilitation services with an initial evaluation narrative report concerning the employee which will include the following information in summary fashion:

d. ~~social~~ and economic status;

D. Estimated goal dates and costs. When developing the rehabilitation plan and progress reports, the qualified rehabilitation consultant must make a professional judgment regarding any projected goal date and estimated costs. This shall include projected goal date and estimated costs submitted by any vendor. When the date or cost has been exceeded, the qualified rehabilitation consultant and any rehabilitation vendor must submit to rehabilitation services an itemized billing and no more than a one page rationale regarding continued provision of rehabilitation services. The rehabilitation provider is to submit the

rationale to the employer/insurer. If the parties are unable to agree about continued rehabilitation services, any party may request a review by rehabilitation services.

F. Consent of employer/insurer; exceptions. A qualified rehabilitation consultant or vendor shall obtain the express consent of the employer/insurer before providing the following services, however, the presence or the absence of express consent shall not preclude rehabilitation services from determining the reasonable value or necessity of these services:

1. when not directed to plan objectives, costs for physician visits, phone calls to physicians, accompanying employee to appointments or examinations ~~not directed to plan objectives~~;
3. phone calls to rehabilitation services regarding general procedures on questions or rehabilitation direction, not related to a specific rehabilitation plan;
5. time spent for report writing not requested by a party beyond items indicated in the reporting guidelines of C.;
7. time for attendance ~~of a~~ at an administrative conference by the supervisor or observer at administrative conferences when of the qualified rehabilitation consultant who is providing services to the employee;
10. time spent by a supervisor, another qualified rehabilitation consultant, or support staff in addition to the qualified rehabilitation consultant of record except as provided for in RS 18. B.2.;
12. wait time for ~~each~~ a visit without a prearranged meeting or early arrival for a prearranged appointment;

Pollution Control Agency

Adopted Rules 6 MCAR §§ 4.9701-4.9706, Hazardous Waste Facility and Generator Fee Rules

The rules proposed and published at *State Register*, Volume 8, Number 19, pages 1071-1077, November 7, 1983 (8 S.R. 1071) are adopted with the following modifications:

Rules as Adopted

6 MCAR § 4.9701 Definitions.

S. Storage. "Storage" means the holding or accumulation of hazardous waste for a temporary period at the end of which the hazardous waste is treated, disposed of, or stored elsewhere.

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 Agriculture Dairy Industries Division

Notice of Availability of Investment Reimbursements Under the Manufacturing Grade Milk Program

The Minnesota Department of Agriculture announces the availability of investment reimbursement funds under the Manufacturing Grade Milk Program. The program is designed to financially aid can producers with limited resources in the modification of their facilities to meet the federal standards, as adopted by Minnesota, in order that they may continue in the production of manufacturing grade milk in cans. Any individual, partnership, family farm, family farm corporation, or

OFFICIAL NOTICES

authorized farm corporation currently engaged in the production of manufacturing grade milk in cans whose facilities do not meet the adopted federal standards, and whose yearly net income is less than \$6,000, and whose net worth is not in excess of \$75,000, may apply under this program. Application forms may be obtained by written request addressed to:

Daryl Piltz
Minnesota Department of Agriculture
Dairy Industries Division
90 West Plato Boulevard
St. Paul, MN 55107
(612) 297-2131

The maximum investment reimbursement is \$100 for the first \$500, or fraction thereof, and 10% of the next \$2,000 of net investment expenditures.

All reasonable expenditures incurred by a qualifying can producer as a result of facility modifications will be eligible for reimbursement with the exception of the following items:

Bulk tank units, hose port concrete pad, milk lines, milk pumps, pressurized hot water systems, waste disposal system (more elaborate than one necessary to handle waste associated with the cleaning of milk handling equipment), and labor cost in excess of 10% of the total investment reimbursement approved by the Commissioner.

All information survey applications for the Manufacturing Grade Milk Investment Reimbursement Program must be received by May 1, 1984. Completion of this application procedure requires that a plant representative inspect the applicants facility; therefore, it is advised that the applicant not wait to the last possible moment to request the application.

Investment reimbursement funds for can producers who qualify will be distributed no later than June 30, 1985.

Department of Commerce

Notice of Hearing in the Matter of the Proposed Adoption of Rules Relating to Insurance Claims Settlement

Notice is given that a public hearing will be held pursuant to Minn. Stat. § 14.14, subd. 1, in the above-entitled matter in the Large Hearing Room, 500 Metro Square Bldg., St. Paul, MN. 55101, on March 12, 1984, at 9:00 A.M. and continuing until all interested persons and groups have had an opportunity to be heard concerning adoption of these proposed rules by submitting either oral or written data, statements, or arguments. Statements or briefs may be submitted without appearing at the hearing by sending them to Hearing Examiner Jon L. Lunde, Office of Administrative Hearings, 4th Floor, Summit Bank Building, 310 4th Ave. S., Minneapolis, MN, 55415, telephone (612) 341-7645. The rule hearing procedure is governed by Minn. Stat. §§ 14.02-14.45 and by 9 MCAR §§ 2.101-2.113 (Minnesota Code of Agency Rules). Questions regarding procedure may be directed to the Hearing Examiner at the above listed address.

The Commissioner proposes to adopt rules relating to insurance claims settlement. Authority for adoption of these rules is contained in Minnesota Statutes, sections 72A.19, subd. 2; 72A.20, subd. 12; 60A.17, subd. 15; and 72B.12. The proposed rules were published in the *State Register* on January 2, 1984 at 8 S.R. 1562, pages 1562 through 1567.

The proposed rules, if adopted, will govern claim settlement procedures between claimants, insureds and all adjusters, agents, insurers and self-insureds under the jurisdiction of the Department of Commerce. The rules provide standards for claim filing and handling, standards for fair settlement offers and agreements, standards for automobile insurance claims handling, settlement offers and agreements, standards for release, standards for claim denial, and standards for communications with the Department of Commerce.

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 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, MN 55155, telephone (612) 296-5148.

As a result of the hearing process, the proposed rule may be modified. Written material may be submitted and recorded in the hearing record for five working days after the public hearing ends. The comment period may be extended for a longer period not to exceed 20 calendar days if ordered by the Hearing Examiner at the hearing.

Notice is hereby given that 25 days prior to the hearing, a Statement of Need and Reasonableness will be available for review at the Department of Commerce and at the Office of Administrative Hearings. This Statement of Need and Reasonableness will include a summary of all the evidence and argument which the Department of Commerce anticipates presenting at the hearing justifying both the need for and the reasonableness of the proposed rule or rules. Copies of the Statement of Need and Reasonableness may be obtained from the Office of Administrative Hearings at a minimal charge.

Pursuant to Minnesota Laws 1983, ch. 188, codified as Minnesota Statutes § 14.115, subd. 1, the impact on small business has been considered in the promulgation of the rules. Anyone wishing to present evidence or argument as to the rules effect on small business may do so. The Department's position regarding the impact of the rules on small business is set forth in the Statement of Need and Reasonableness.

Notice: Any person may request notification of the date on which the Hearing Examiner's Report will be available, after which date the Department of Commerce 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 records have been submitted (or resubmitted) to the Attorney General by the Department of Commerce. 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 Department of Commerce (in the case of the agency's submission or resubmission to the Attorney General).

One free copy of this Notice and the proposed rules may be obtained by contacting Debbi J. Lindlief, Department of Commerce, 500 Metro Square Bldg., St. Paul, MN 55101. Additional copies will be available at the door on the date of the hearing.

Michael A. Hatch
Commissioner of Commerce

Department of Commerce

Outside Opinion Sought Regarding Proposed Rules Relating to Self-Insurance by Groups of Political Subdivisions, Including the Impact of the Rules on Small Businesses

Notice is hereby given that the Department of Commerce is seeking information or opinions from persons outside the agency in preparing to promulgate new rules governing self-insurance by groups of political subdivisions. Promulgation of these rules is authorized by Minnesota Statutes, sections 471.617, subd. 2 and 471.982, subd. 2.

Outside opinion is also being solicited as to how these rules will affect small businesses as defined by Minnesota Laws 1983, ch. 188, codified as Minnesota Statutes § 14.115, subd. 1.

The Department of Commerce requests information and comments concerning the subject matter of these rules. Interested or affected persons or groups may submit statements of information or comment orally or in writing to: John Klein, Department of Commerce, 500 Metro Square Building, St. Paul, MN 55101, (612) 297-3238.

All statements of information and comment shall be accepted until February 29, 1984. Any written material received by the Department of Commerce shall become part of the record in the event that the rules are promulgated.

Michael A. Hatch
Commissioner of Commerce

Department of Commerce

Outside Opinion Sought Regarding Proposed Rules Relating to Self-Insurance Under the No-Fault Act, Including the Impact of the Rules on Small Businesses

Notice is hereby given that the Department of Commerce is seeking information or opinions from persons outside the agency in preparing to promulgate new rules governing self-insurance under the no-fault act. Promulgation of these rules is authorized by Minnesota Statutes, section 65B.48.

Opinion is also being solicited as to how these rules will affect small businesses as defined by Minnesota Laws 1983, ch. 188, codified as Minnesota Statutes § 14.115, subd. 1.

OFFICIAL NOTICES

The Department of Commerce requests information and comments concerning the subject matter of these rules. Interested or affected persons or groups may submit statements of information or comment orally or in writing to: David Corum, Department of Commerce, 500 Metro Square Building, St. Paul, MN 55101, (612) 297-3301.

All statements of information and comment shall be accepted until February 29, 1984. Any written material received by the Department of Commerce shall become part of the record in the event that the rules are promulgated.

Michael A. Hatch
Commissioner of Commerce

Department of Energy and Economic Development Energy Finance Division

Procedures for Distribution of State Cost-Share Maxi-Audit and Cost-Share Maxi-Audit Revision Grant Funds

Purpose:

These procedures establish the method by which Minnesota public school districts may obtain financial assistance for conducting new maxi-audits on unaudited buildings and for revising existing maxi-audits. This program is funded by a \$500,000 appropriation pursuant to Laws of Minnesota, 1983, Chapter 323, Section 5, Subdivision 4.

I. Definitions:

- A. **Scope:** For the purposes of this program the following terms have the meaning given them.
- B. **Authorized Cost-Share Maxi-Auditor:** "Authorized Cost-Share Maxi-Auditor" means a person who:
1. Is a professional electrical or mechanical engineer or architect registered in the State of Minnesota.
 2. Has attended an information/training session conducted by the Department.
 3. Has agreed to abide by all requirements and procedures of the cost-share maxi-audit program when conducting cost-share maxi-audits or cost-share maxi-audit revisions which will be paid by funds from the cost-share maxi-audit program.
 4. Has agreed to correct all deficiencies in a cost-share maxi-audit report as requested by the Department in writing after its review. These changes must be made within 30 days, or the Department may remove the maxi-auditor from the authorized list.
 5. Has signed and submitted to the Department the "Cost-Share Maxi-Auditor Authorization Agreement."
- C. **Building:** "Building" means any separate, enclosed, heated structure owned and operated by the district.
- D. **Cost-Share:** "Cost-share" means a partial payment by the State of Minnesota for the costs incurred in conducting a cost-share maxi-audit or cost-share maxi-audit revision.
- E. **Cost-Share Maxi-Audit:** "Cost-Share Maxi-Audit" means a detailed engineering analysis of a building structure (envelope) and its energy using systems, including the plumbing, lighting, heating, ventilating, and air conditioning systems to identify and quantify the economic and engineering feasibility of energy conservation measures. It is performed in accordance with the Cost-Share Maxi-Audit Requirements and Procedures, January 1984.
- F. **Cost-Share Maxi-Audit Report:** "Cost-Share Maxi-Audit Report" means the written document prepared as the result of an authorized cost-share maxi-auditor's analysis of the building. The cost-share maxi-audit or cost-share maxi-audit revision report will be prepared according to Cost-Share Requirements and Procedures, January 1984.
- G. **Cost-Share Maxi-Audit Revision:** "Cost-Share Maxi-Audit Revision" means a cost-share maxi-audit on a building that has an existing maxi-audit. The requirements and procedures that apply to a cost-share maxi-audit will apply to a cost-share maxi-audit revision.
- H. **Department:** "Department" means the Minnesota Department of Energy and Economic Development. The Department is responsible for administering the cost-share maxi-audit program.
- I. **District:** "District" means a Minnesota public school district.

II. Eligibility:

- A. **General:** All districts are eligible for a state grant for a cost-share maxi-audit/cost-share maxi-audit revision on existing district owned buildings.

B. Reimbursement: To be reimbursed for the authorized cost-share limit or 50% of the maxi-audit invoices, whichever is less, following conditions must be met:

1. Cost-share maxi-audit work must not be contracted for or begun prior to complete execution of the grant agreement.
2. The cost-share maxi-audit must be done by a state authorized cost-share maxi-auditor.
3. The cost-share maxi-audit report must be reviewed and approved by the Department.
4. Invoices for the cost-share maxi-audit work must be itemized by building and submitted with the cost-share maxi-audit report.
5. A loan application authorized by the Laws of Minnesota, 1983, Chapter 323, Section 1, including energy conservation measures identified in the approved cost-share maxi-audit report for the specific building must be received by the Department.

III. Cost-Share Maxi-Audit Requirements:

A. Minimum Requirements: Specifics of what must be included in a cost-share maxi-audit are given in the manual *Cost-Share Maxi-Audit Requirements and Procedures, January 1984*, which is available upon request from the Department. Cost-share maxi-audits and cost-share maxi-audit revisions must be performed by an authorized cost-share maxi-auditor. The minimum requirements are not intended to limit the scope of the cost-share maxi-audit/cost-share maxi-audit revision in any way.

B. Applicability of these Requirements: All cost-share maxi-audits and cost-share maxi-audit revisions must meet these requirements in order to receive reimbursement through the State cost-share maxi-audit grant program. In addition, these requirements will apply to all maxi-audits conducted with federal Institutional Conservation Programs Technical Assistance grants awarded in Cycle 6 (September 1984) and all subsequent cycles.

IV. Application:

A. Process: The district must submit to the Department an application for cost-share maxi-audit funds on the form prescribed by the Department. This application will include:

1. School district number and address,
2. Building Name(s),
3. Building Area(s) in square feet,
4. Audit status (existing maxi-audit, requires new cost-share maxi-audit), and
5. Signature and date of authorized official of the district. The Department will mail this application form and directions for its completion to all districts.

B. Application Period: The Department will process applications beginning February 1, 1984, until all funds have been encumbered, or June 30, 1985, whichever occurs first.

V. Contract Process:

A. Cost-Share Maxi-Audit: Upon receipt of the application from a district, the Department will determine the funding limits for each building and will prepare the grant contract for the cost-share maxi-audit.

B. Cost-Share Maxi-Audit Revision: Upon receipt of the application from a district, the Department will review the existing maxi-audit. After review and analysis, the Department will present several options to the district, one of which will be the cost-share maxi-audit revision. The Department will determine funding limits and prepare a cost-share maxi-audit revision contract.

C. General: The Department will send the prepared contract to the district for two authorized signatures. If the district decides to accept the grant and conduct the cost-share maxi-audit/cost-share maxi-audit revision, the district must return the signed contract(s) to the Department for processing. Grant contracts must be signed and returned to the Department within 45 days of the Department's mailing date. If the grant contract has not been returned within 45 days the funds will be redistributed to other districts. After complete execution of the contract by the State of Minnesota, the district will be sent a copy of the fully executed contract, required scope of work and a list of authorized cost-share maxi-auditors. The district will then negotiate its own contract with a cost-share maxi-auditor.

D. Contract Period: The district has one year to fulfill all contract conditions in order to be reimbursed.

VI. Audit Review:

A. Information Submitted by District: For both the cost-share maxi-audit and cost-share maxi-audit revision, the district shall submit one copy of the complete cost-share maxi-audit report to the Department. The district shall also submit to the Department one copy of all invoices associated with the cost-share maxi-auditor or cost-share maxi-audit revision, itemized by building.

OFFICIAL NOTICES

B. Department Review: The Department will review the cost-share maxi-audit report to verify that all requirements have been fulfilled. If the requirements have not been fulfilled, the Department will notify both the district and the authorized cost-share maxi-auditor. When the cost-share maxi-audit report has fulfilled all requirements, notice of acceptance will be sent to the district.

VII. Funding:

A. Priorities: Beginning February 1, 1984, applications will be processed on a first-come first-served basis according to the day they arrive at the Department. Applications received before that date will be treated as if they were received on February 1, 1984. In the case that more funds are requested than are available, the following system will be used:

1. New Audits: Applications for new cost-share maxi-audits will be processed and funded before applications for cost-share maxi-audit revisions received on the same day. If funds are not available for all new cost-share maxi-audit applications which arrive at the Department on the same day, the funds will be prorated equally.

2. Revisions: Application for cost-share maxi-audit revisions will be processed and funded after applications for new cost-share maxi-audits which are received on the same day. If the Department cannot fund all of the cost-share maxi-audit revision applications which arrive on the same day, they will be reviewed and prioritized according to their ability to support a loan application, pursuant to Laws of Minnesota, 1983, Chapter 323, Section 1.

B. Limits: The maximum state share of a new cost-share maxi-audit is \$5,000 or 50% of the invoices associated with the cost-share maxi-audit, whichever is less. The maximum state share of a cost-share maxi-audit revision is \$2,000 or 50% of the invoices associated with the revision, whichever is less. Grant limits are based on building square footage up to the maximum state share based on the following table. When all available funds have been encumbered, the Department will not process any further applications and affected applicants will be notified.

Funding Limits for Cost-Share Maxi-Audits and Cost-Share Maxi-Audit Revisions

Cost-Share Maxi-Audit (NEW)

<u>Building Size in Square Feet</u>	<u>Funding Limits</u>
0- 25,000	\$1,000
25,001- 50,000	(Area) (4¢/ft ²)
50,001-100,000	((Area) (2.4¢/ft ²)) + \$ 800
100,001-150,000	((Area) (1.6¢/ft ²)) + \$1600
150,001-200,000	((Area) (1.2¢/ft ²)) + \$2200
200,001-250,000	((Area) (0.8¢/ft ²)) + \$3000
250,001 and up	\$5,000

Cost-Share Maxi-Audit Revisions

0- 25,000	\$1000
25,001- 50,000	(Area) (4¢/ft ²)
50,001 and up	\$2000

For further information and materials contact:

Department of Energy and Economic Development
Energy Finance Division
980 American Center Building
150 East Kellogg Boulevard
St. Paul, Minnesota 55101
(612) 297-2103

Department of Health

Emergency Medical Services Licensure Application, Nashwauk MN

As of January 30, 1984, a complete application for a basic life support transportation service was submitted by Bruce E. Christensen, Life Star Ambulance Systems, to operate a base of operation in Nashwauk, Minnesota.

This notice is given pursuant to Minnesota Statutes 1979, Section 144.802, which requires in part that the Commissioner of Health shall publish the notice in the *State Register* at the applicant's expense; and in a newspaper in the municipality in which the service will be provided.

Each municipality, county, community health services agency, and any other interested person wishing to comment on this application may submit comments to the Health Systems Agency of Western Lake Superior, 202 Ordean Building, 424 West Superior St., Duluth, MN. 55802, Attention: JoAnn Axtell, Executive Director (218) 726-4762. The comments must reach the Health Systems Agency before February 29, 1984, or be submitted at the public hearing which will be held in Nashwauk.

After a public hearing has been held, the Health Systems Agency shall recommend that the Commissioner of Health grant or deny a license or recommend that a modified license be granted. The Health Systems Agency shall make the recommendations and reasons available to any individual requesting them.

Within 30 days of receipt of the recommendation to the Commissioner of Health, the Commissioner shall grant or deny the license to this applicant.

Department of Health Health Systems Division

Outside Opinions Sought Concerning a Request for a Waiver of HMO Statutes and Rules by Group Health Plan, Inc.

Notice is hereby given that the Department of Health is seeking opinions and comments pertaining to a request by Group Health Plan, Inc. for a waiver of HMO statutes and rules regarding the assumption of full financial risk by the organization. Such waivers are authorized for demonstrative projects by Minn. Stat. § 62D.30.

The request submitted by Group Health Plan, Inc. is available for inspection during normal business hours at the following location:

HMO Unit
Room 216
Minnesota Department of Health
717 Delaware Street S.E.
Minneapolis, Minnesota 55440

Comments on the application must be received at the HMO Unit by February 10, 1984.

Department of Public Welfare Health Care Programs Division

Medicaid Demonstration Project: Notice of Provider Education Seminar

The Department of Public Welfare intends to contract with health care providers to provide health care services for Medical Assistance (MA) recipients on a prepaid basis. A Demonstration Project will be conducted in three counties to test the feasibility of MA prepayment. The Department is offering a provider education seminar for providers interested in participating in the project or in learning more about their possible role in the project. The metropolitan area counties which have tentatively been selected as demonstration sites are Hennepin and Anoka. Health care providers in these counties might find the seminar of particular interest.

Provider Education Seminar
February 7, 1984
8:30 a.m. to 12:00 p.m.
State Office Building
435 Park Avenue (just West of Capitol)
St. Paul, Minnesota
Room 81 (Auditorium, Ground Floor)

Providers attending the seminar will receive a packet of information describing the project, the capitation rates and the criteria for participation.

Providers who cannot attend, but would like to receive information on the project may contact:

Ms. Kathy Heuer
Health Care Programs Division
Space Center, 444 Lafayette Road
St. Paul, Minnesota 55101
Phone: (612) 297-4668

OFFICIAL NOTICES

Department of Public Welfare Licensing Division

Outside Opinion Sought Concerning the Licensing of Family Day Care Homes and Group Family Day Care Homes

Notice is hereby given that the Minnesota Department of Public Welfare is considering amendments to 12 MCAR § 2.002, Standards for Family Day Care Homes and Group Family Day Care Homes.

The Commissioner is authorized to promulgate rules for the licensing of day care facilities, specifically family day care and group family day care homes, under Minnesota Statutes, sections 245.781-245.812. Among the proposed amendments being considered are changes to the staff/child ratios, licensed capacity with respect to infants, usable space requirements, health and safety standards, training, and the child development program.

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

Jane Nelson
Department of Public Welfare
Rulemaking Section, 4th Floor, Centennial Building
St. Paul, MN 55155

Oral statements of information and comment will be received over the telephone at (612) 297-1217 between 9:00 am and 4:00 pm Mondays through Fridays.

Statements of information and comment will be accepted until further notice. Any written material received by the Department shall become part of the hearing record. Oral statements will be considered but will not become part of the hearing record.

Department of Public Welfare Mental Health Bureau

Outside Opinion Sought Concerning Proposed Temporary Rules on Funding Services to Mentally Retarded Persons Under the Home and Community-Based Waiver

Notice is hereby given that the Minnesota Department of Public Welfare is considering a temporary rule 12 MCAR § 2.04100 [Temporary], the administration and funding of services to mentally retarded persons under the Home and Community-Based Waiver for mentally retarded persons as approved under United States Code, Title 42, Sections 1396 to 1396p. These services will include case management, in-home family support, supportive living arrangements for children and adults, semi-independent living, day habilitation, respite, homemaker and minor physical adaptations.

Authority for this rule is contained in Laws of Minnesota 1983, Chapter 312, article 9.

All interested or affected persons or groups are requested to participate.

Statements of information and comment may be made orally or in writing. Written statements of information and comment may be addressed to:

Mental Retardation Program Division
Department of Public Welfare
4th Floor, Centennial Building
St. Paul MN 55155

Oral statements of information and comment will be received during regular business hours over the telephone at 612/296-2682.

Any written material received by the Department shall become part of the rule record submitted to the Attorney General for review.

Comments will be accepted until further notice.

Department of Transportation**Amended Order and Notice of Street and Highway Routes Designated and Permitted to Carry the Gross Weights Allowed Under Minnesota Statute § 169.825****Order No. 68621**

Whereas, the Commissioner of Transportation has made his Order No. 67790 which order has been amended by Orders Nos. 68172, 68273, 68362, 68509 designating and permitting certain street and highway routes, or segments of those routes, to carry the gross weights allowed under Minnesota Statutes § 169.825, and

Whereas, the Commissioner has determined that the additional following routes, or segment of routes, should be designated to carry the gross weights allowed under Minnesota § 169.825.

IT IS HEREBY ORDERED that Commissioner of Transportation Order No. 67790 is amended this date by adding the following designated streets and highway routes, or segment of routes, as follows:

TRUNK HIGHWAYS

- T.H. 10 — From Jct. T.H. 87 (Frazee) to Jct. T.H. 78 (Perham).
(12 month. This is a change from 5/15 effective date).
- T.H. 13 — From Waterville to Montgomery
(effective 5/15).
- T.H. 13 — From I-35E to entrance to J. L. Shiely Yard
(12 month).
- T.H. 23 — From Jct. T.H. 39 to Jct. T.H. 35 (Duluth)
(12 month).
- T.H. 55 — From West Douglas County Line to Jct. T.H. 55 and 29 (Glenwood)
(effective 5/15).
- T.H. 63 — From Jct. T.H. 14 (Rochester) to Jct. Olmstead C.S.A.H. 14
(12 month).
- T.H. 75 — From Jct. T.H. 10 (Moorhead) to Jct. Clay C.S.A.H. 18
(12 month).
- T.H. 75 — From Polk County Road #9 to Jct. T.H. 2 (Crookston)
(12 month).

COUNTY ROADS

- | | |
|------------|---|
| BLUE EARTH | C.S.A.H. 5 (Third Avenue) from Brooks Street (Mankato) to North LeSueur County Line (effective 5/15). |
| CARLTON | C.S.A.H. 1 from Jct. T.H. 210 to Wrenshall Refinery (effective 5/15). |
| CLAY | C.S.A.H. 18 from Jct. C.S.A.H. 3 to Jct. T.H. 75
(12 month). |

January 23, 1984

Richard P. Braun
Commissioner

SUPREME COURT**Decisions Filed Wednesday, January 18, 1984****Compiled by Wayne O. Tschimperle, Clerk**

C1-83-1513 State of Minnesota, Respondent, v. Wesley Paul Olson, Appellant. District Court, Freeborn County.

Defendant's physical manifestations of intoxication including his inability to recite the alphabet or recite 20 numbers backward

SUPREME COURT

without error, coupled with an accident apparently caused by defendant driver's carelessness clearly constituted probable cause to require chemical testing pursuant to Minn. Stat. 169.121 Subd. 3(a).

We reverse and remand. Sedgwick, J.

C6-83-1135 Malcolm Edwards, Relator, v. Yellow Freight Systems, Respondent, and Commissioner of Economic Security, Respondent. Department of Economic Security.

Repeated failure to comply with an employer's regulation to provide two hours advance notice when unable to report to work and persistent absenteeism constitute misconduct under Minn. Stat. § 268.09, subd. 1(6).

Affirmed. Lansing, J.

C5-83-1580 Hibbing Educational Association, Relator, v. Public Employment Relations Board, Respondent. Public Employment Relations Board.

The motion for an extension of time to serve Independent School District No. 701 is denied. Foley, J.

Decisions Filed Friday, January 20, 1984

Compiled by Wayne O. Tschimperle, Clerk

C2-83-824 Lawrence Anthony Wooldridge, petitioner, Appellant, v. State of Minnesota, Respondent. District Court, Hennepin County.

Postconviction court properly denied petition seeking resentencing according to the Minnesota Sentencing Guidelines.

Affirmed. Amdahl, C.J.

CX-83-490, C8-83-1430 State of Minnesota, Respondent, v. Van Douglas Johnson, Appellant. District Court, Otter Tail County.

Trial court did not err in refusing to dispositionally depart from the presumptive sentence by sentencing defendant to a probationary term.

Affirmed. Amdahl, C.J.

C0-83-367 State of Minnesota, Respondent, v. Billy W. Kennedy, Appellant. District Court, Ramsey County.

Use of consecutive sentencing did not violate the Sentencing Guidelines or unfairly exaggerate the criminality of defendant's conduct.

Affirmed. Amdahl, C.J.

C6-83-941 State of Minnesota, Respondent, v. Marvin William Wall, Appellant. District Court, Douglas County.

Record fails to support upward durational departure in sentencing of defendant who lacked substantial capacity for judgment at the time he committed the offense.

Affirmed as modified. Amdahl, C.J.

C8-82-1370 Wise Furniture, Appellant, v. Marjorie Dehning, Respondent. District Court, LeSueur County.

1. Failure to adequately disclose finance charge and to clearly and unequivocally describe retained security interests constitutes violation of the Truth in Lending Act, 15, U.S.C. § 1601 *et seq.* (1982) (TILA).

2. Each financing contract violating TILA gives rise to statutory damages of twice the financing charge calculated at the inception of the contract.

3. A TILA claim is properly referred to as recoupment.

Affirmed in part with modification and reversed in part and remanded for entry of judgment in accord with this opinion. Amdahl, C.J.

C7-82-1652 Northern States Power Company, Respondent, v. Leslie G. Williams, et al., Respondents-Below, Go-Pher Evergreen, a partnership, Appellant. District Court, Sherburne County.

1. Christmas tree growers are not eligible to elect a fee-taking when a power company condemns an easement across their lands in order to construct a high-voltage transmission line.

2. Where the legislature has not defined "timber" for the purpose of Minn. Stat. § 273.13, subd. 8a, but where "timber" universally includes Christmas tree growing and generally includes nursery stock within all statutes applicable to "timber"

production, this court will not presume the legislature intended any other definition for purposes of Minn. Stat. § 116C.63, subd. 4.

3. Classification of property by a county assessor for the purpose of assessment of property subject to taxation is not binding upon the court in its application of the fee-election statute. Minn. Stat. § 116C.63, subd. 4.

Affirmed and remanded for determination of damages. Amdahl, C.J. Took no part. Peterson, J.

C9-82-1328 Dale Everson, individually and d.b.a. Everson Electric, Respondent, v. Jerome Kapperman, individually and d.b.a. Kapperman Construction, Respondent, Transamerica Bond Company, Defendant, City of Pipestone, Appellant. District Court, Pipestone County.

Whether an offer of judgment made under Rule 68.01 of the Minnesota Rules of Civil Procedure that is not expressly rejected or withdrawn remains valid and acceptable is determined by a standard of reasonableness.

Reversed and remanded. Amdahl, C.J.

C9-82-387 State of Minnesota, Respondent, v. Charles LaTourelle, Appellant. District Court, Stearns County.

1. Unrebutted evidence that defendant's volition and capacity to control his behavior were impaired is not sufficient to excuse defendant from criminal responsibility when other evidence shows that he knew the nature and wrongfulness of his acts.

2. *State v. Rawland*, 294 Minn. 17, 199 N.W.2d 774 (1982), does not require jury instruction mentioning a defendant's volition and capacity to control his behavior.

3. Instruction on excuse from criminal responsibility by reason of mental illness was adequate when court instructed jury to consider whether defendant was competent to choose to do a criminal act and whether defendant knew the nature of his act and that it was wrong.

4. A defendant may not be convicted of two counts of criminal sexual conduct on the basis of a single act.

Affirmed; Counts I and II vacated; remanded for action consistent with this opinion. Yetka, J.

C5-83-39 Celeste Naylor, Appellant, v. The Minnesota Daily, et al., Respondents, State of Minnesota, intervenor, Respondent. District Court, Hennepin County.

The notice of claim requirement of the Minnesota Tort Claims Act, Minn. Stat. § 3.736, subd. 5, is a non-jurisdictional requirement. Failure to give notice is not grounds for dismissal of an action against the state. The state may assert the failure to receive notice as a defense if it can establish prejudice.

Reversed and remanded for trial. Todd, J.

Concurring Specially, Scott, J. and Yetka, J.

C3-83-55, C5-82-1651 Melanie Olson and Dennis J. Olson, Appellants (C3-83-55) v. Ivan Marvin Ische, Defendant, Randy Lee Fritz, Respondent, Darrell St. John, Respondent, Knight Klub, Inc., and Dana J. Nelson, Respondents, United Fire and Casualty Company, Respondent, and All Nation Insurance Company, Respondent (C5-82-1651) v. Home Mutual Insurance Company, plaintiff in intervention, Respondent, Melanie Olson and Dennis J. Olson, Appellants, v. Randy Lee Fritz, Respondent. District Court, Carver County.

1. Absent a special relationship between a driver-owner and his passenger, the passenger has no duty to members of the public to control the operation of the motor vehicle by the intoxicated driver-owner. Nor is the passenger liable to members of the public under theories of joint enterprise, joint tort liability, or "open bottle" violation.

2. Having ruled plaintiffs have no cause of action against the passenger in the other car, the question as to whether the passenger has insurance coverage for the plaintiffs' claims is moot.

Judgment for defendant Fritz in the Olson personal injury suit (No. C3-83-55) is affirmed; the Olsons' appeal in the All Nation declaratory judgment action (No. C5-82-1651) is dismissed as moot. Simonett, J. Dissenting. Yetka, J.

C0-82-1170 Francis Mahowald and Mary Ann Mahowald, Appellants, Stephen Bock, Appellant, Michael L. Kannegieter and Alice B. Kannegieter, individually and as husband and wife and natural guardians of Todd Kannegieter and Pamela Kannegieter, Appellants, v. Minnesota Gas Company, a.k.a. Minnegasco, Respondent, Century 21 Town and County Real Estate, Inc., et al., Defendants, Barbarossa and Sons, Respondent. District Court, Scott County.

1. A gas distributor is not an insurer of damages to person and property of others from an explosion resulting from leaks in gas mains located in public streets.

2. When natural gas escapes from lines and mains of a gas company located in the public streets, the gas company is liable only if negligent. In this case the plaintiffs were entitled to an instruction based upon the doctrine of *res ipsa loquitur*.

Reversed and remanded for new trial. Kelley, J. Dissenting. Todd, J., Scott, J., and Wahl, J. Took no part. Coyne, J.

SUPREME COURT

C1-82-870, CX-82-1600 Paul J. Viereck and Donna M. Viereck, (C1-82-870), Respondents, v. Peoples Savings and Loan Association, Appellant, and David W. Huey and Marcia K. Huey, (CX-82-1600), Respondents, v. First State Federal Savings and Loan Association, Appellant. District Courts, Scott County and Hennepin County.

1. Federal law does not preempt Minnesota law governing exercise of conventional real estate mortgage due-on-sale clauses contained in property security instruments on borrower-occupied residences executed prior to June 1, 1979, even though the original state-chartered mortgagee, subsequent to execution, acquired a federal charter or assigned the security agreement to a federally-chartered savings and loan institution.
2. State law concerning enforceability of due-on-sale clauses in conventional real estate mortgages is not preempted by the Garn-St. Germain Depository Institutions Act of 1982, Pub. L. No. 97-320, 96 Stat. 1469 (1982), in construing due-on-sale clauses in mortgages executed or transferred prior to June 1, 1979.
3. Absent credit or security risks, a mortgagee holding a conventional mortgage on borrower-occupied real estate executed prior to June 1, 1979, may not accelerate the payment of the balance due on the mortgage or charge a greater interest rate when the borrower-occupier transfers the mortgaged property.

Affirmed. Kelley, J.

TAX COURT

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

State of Minnesota
County of Chisago

William C. Forcey,
Petitioner,

v.

County of Chisago,
Respondent.

District Court
Tenth Judicial District

FINDINGS OF FACT, CONCLUSIONS OF LAW
AND ORDER FOR JUDGMENT

Court File Nos. 1409 &
2707

The above entitled matter, having been regularly upon the calendar of the Court, came on for trial before the undersigned, The Honorable John Knapp, Chief Judge of the Tax Court, at the Chisago County Courthouse, in Center City, County of Chisago, State of Minnesota, on June 3, 1983. Briefs were subsequently submitted by both parties.

William Forcey, appeared Pro Se for the Petitioner.

Clair Cole, Assistant County Attorney, appeared as attorney for the Respondent.

After hearing all the evidence adduced at said hearing, and being fully advised in the premises and upon the files and records herein, the Court now makes the following:

FINDINGS OF FACT

1. This appeal involves the estimated market value for the improvements on the property which comprises tax parcel number 07-00001-10, located at Rt. 2, Rush City, Minnesota for January 2, 1981 and January 2, 1982, for taxes payable in the years 1982 and 1983.
2. The assessor's EMV of the subject property as of January 2, 1981, was \$70,208.00, and as of January 2, 1982, \$70,016.00.
3. The subject property consists of a life estate owned by the Petitioner on improvements on approximately 1 acre of land. The improvements consist of a house of wood construction covering 4,074 square feet, a garage of wood construction with a concrete floor, a pole shed, 24 ft. x 40 ft. of minimal metal construction and a "guest house" structure, 12 ft. x 12 ft.

4. The major improvement, the house, is of log cabin type construction, one level, with no basement. There are several additions to the original section that was built in approximately 1930. There is an indoor heated swimming pool. The house is poorly insulated and is in fair to poor condition.

5. The land surrounding and underneath the improvements was originally owned by Northern States Power Company and leased to the Petitioner, who owned the improvements, in 1951.

6. In July, 1980, the United States purchased the land from Northern States Power Company and improvements from the Petitioner under threat of condemnation as part of the St. Croix scenic riverway system. The United States paid the Petitioner \$116,000.00 for the improvements.

7. Petitioner, in turn, bought back from the United States the life estate in the improvements and underlying land for \$16,400.00. The purchase price was determined by use of an actuarial table which figured the Petitioner's life expectancy to be 13.9 years at the time of purchase. Using a 13.9 year base, the United States sold Petitioner the use of the improvements for 1 percent of the purchase price for each year Petitioner was expected to live, 13.9 percent of \$116,000.00, plus an additional \$230.00 for the land use.

8. The Petitioner was given homestead credit on the subject property for the years 1981 and 1982.

CONCLUSIONS OF LAW

1. Petitioner's long term reservation of use of the subject property is taxable as a non-exempt interest in real property.
2. Petitioner has failed to sustain his burden showing that subject property was over-valued.
3. IT IS HEREBY ORDERED that the Chisago County Assessor's estimated market value for the subject property as of January 2, 1981 and January 2, 1982, are hereby affirmed.

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

January 16, 1984.

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

MEMORANDUM

The Petitioner contends that his property is exempt from taxation under the provisions of Minn. Stat. § 273.19, subd. 4, which reads as follows:

"Subd. 4. Property held under a lease for a term of three or more years which is owned by the United States and located within a national park shall be exempt, provided the property was acquired by the United States by condemnation or purchased by the United States under threat of condemnation, and within a reasonable time leased back for noncommercial residential purposes to the person owning the property at the time of acquisition by the United States. If property exempt under this subdivision is subsequently leased or subleased for a term of three or more years to another person, it shall no longer qualify for the exemption provided in this subdivision and shall be placed on the assessment rolls as provided in section 272.02, subdivision 4, and taxed pursuant to subdivision 1 of this section."

The value of improvements made to property otherwise exempt pursuant to this subdivision which are owned by the lessee or to which the lessee has salvage rights shall be taxable to the lessee pursuant to subdivision 1.

This section, however, is not applicable in the present case because the subject property is not located within a national park.

Minn. Stat. § 273.19, subd. 1, imposes a tax on private, recreational use of federally-owned property. It provides in relevant part as follows:

" . . . property held under a lease for a term of three or more years, and not taxable under Section 272.01, subd. 2 . . . when the property belongs to the United States . . . shall be considered, for all purposes of taxation, as the property of the persons so holding the same." (Emphasis Added).

As to the specific measure of value upon which the tax is assessed, Minn. Stat. § 273.11, subd. 1 provides in relevant part:

"All property, or the use thereof, which is taxable under Sections 272.01, subd. 2, or 273.10, shall be valued at the market value of such property and not at the value of a leasehold estate in such property, or at some lessor value than its market value." (Emphasis added).

Thus the Petitioner as lessee and user of federal government property is expressly liable for ad valorem taxes based on the market value of the property used, as though he, not the federal government, were fee owners of the property.

TAX COURT

In *Baumann, et al v. County of Cook*, this Court held that the private use of real property, leased from the federal government, is subject to an ad valorem tax based on the property's market value, notwithstanding that, pursuant to 16 USC § 500, a portion of the annual lease fee charged by the federal government ultimately is paid to the county wherein the property is located.

In *Grava vs. County of Pine*, 268 N.W. 2d 723, the Minnesota Supreme Court held that a private, long-term reservation of use of non-business property, the underlying fee of which is conveyed to the federal government, is taxable pursuant to the general authority of Minn. Stat. 272.01, subd. 1.

The property is now classified as a homestead and the Petitioner is entitled to that classification even though he doesn't have title to the fee.

State of Minnesota County of Dakota

Tax Court Regular Division

David Nichols,
Appellant,

v.

Commissioner of Revenue,
Appellee.

In the Matter of an Appeal from the Commissioner's
Billing dated 9/27/82 Relating to the Income Tax
Liability of Appellant for the Year 1981.

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

Docket No. 3711

The above matter came on for trial on September 19, 1983, before the Minnesota Tax Court, Judge Carl A. Jensen presiding, at the Dakota County Courthouse in Hastings, Minnesota.

David Nichols, Appellant, appeared on his own behalf.

Thomas K. Overton, Special Assistant Attorney General, appeared on behalf of Appellee.

Briefs were subsequently filed by the parties.

SYLLABUS

An Order of the Commissioner of Revenue is presumed to be correct and the Appellant has the burden of proving otherwise.

FINDINGS OF FACT

1. By letter dated September 27, 1982, Appellant was notified that \$1,104.33 was due for payment of his 1981 income tax. Said amount included 10% penalty plus interest to that date.
2. Appellant filed an appeal in the Minnesota Tax Court on November 18, 1982, stating that an amended return for 1981 was in order, that Appellant tendered payment of \$920.00 with his tax return filed on April 15, 1982, and that Appellant has no obligation to pay Minnesota income tax for 1981.
3. There are no legal grounds to sustain the claim of Appellant.
4. The Commissioner's assessment of \$920.00 income tax due for the year 1981, together with a 10% penalty plus interest to date of payment, is affirmed.
5. The Affidavit of the attorney for Appellee verifies expenses of the Commissioner of Revenue relative to this appeal in the amount of \$823.84.
6. The Court finds that it was obvious that the tax was due and that the appeal was entered merely for the purpose of delay, and Appellee should be allowed \$500.00 in addition for expenses in accordance with Minn. Stat. § 271.19.
7. Appellant's 1981 tax return should remain subject to audit by the Commissioner.

CONCLUSIONS OF LAW AND ORDER FOR JUDGMENT

1. Judgment is to be entered for the Commissioner of Revenue, Appellee, in the amount of \$920 tax plus 10% penalty plus interest from the due date of April 15, 1982, plus an award of expenses in the amount of \$500.00.

IT IS SO ORDERED.

January 16, 1984

By the Court,
Carl A. Jensen, Judge
Minnesota Tax Court

MEMORANDUM

We find that there is absolutely no basis for this appeal and consequently have ordered the penalties and expenses to be assessed against Appellant.

Appellant originally filed an income tax return for the year 1981 on April 15, 1982, indicating a tax due in the amount of \$920. Appellant submitted with the return something labeled "Public Office Money Certificate", a copy of which is as follows:

PUBLIC OFFICE MONEY CERTIFICATE

DATE 4/15 1982

LEAVE *ATE*

THE UNDERSIGNED
WILL PAY TO COMMISSIONER OF REVENUE \$ 920.00

NINE HUNDRED TWENTY & NO/100 DOLLARS OF THE
MONEY OF ACCOUNT OF THE UNITED STATES, AS REQUIRED BY LAW AT 31 U.S.C. §371.
PENDING OFFICIAL DETERMINATION OF THE SUBSTANCE OF SAID MONEY.

VOID IF NOT
PRESENTED TO PAYOR
FOR REDEMPTION
IN 120 DAYS

D. H. Nichols
Signature
P. H. NICHOLS
Name
24438 CHIPPENDALE
Address
FARMINGTON, MN 55024

Such certificate is no more than a promise to pay and does not meet the requirement that actual payment must be made by the due date.

Appellant's own Minnesota tax return for 1981 originally indicated that the \$920 was due. He subsequently filed an amended return indicating that no tax was due although he admitted the receipt of the amount indicated in the original return. We find there was no proof or indication as to why the tax was not due.

Appellant made some claims that have been fully considered and disposed of in many other cases, and it was apparent from several of his exhibits that he was or should have been fully aware that there were no grounds for his claims.

For example, Appellant cites United States Constitution, Article I, Section 10, which reads in part as follows:

"No state shall enter into any treaty, alliance or confederation; grant letters of marque and reprisal; coin money; emit bills of credit; make anything but gold and silver coin a tender in payment of debts; . . ."

This section limits the power of the states and appears to prohibit the states from issuing paper money that would have to be accepted as legal tender. The State of Minnesota has not attempted to do anything contrary to those provisions.

The United States Constitution provides that the Congress shall have the power to coin money and regulate the value thereof. Congress has declared that United States currency and federal reserve notes shall be legal tender for all debts, and the State of Minnesota is obligated to accept such a tender in payment of any obligations to the State of Minnesota. The Appellant has failed to make such a tender. In his brief Appellant refers to Article IX, Section 13, of the Minnesota Constitution. We find no such section.

Although we were not provided with a copy of the federal income tax return, it appears that the federal adjusted gross income shown on the Minnesota income tax return of Appellant in the amount of \$19,471 was for his labor or services. Appellant appears to contend that the exchange of his labor for money is a tax-free exchange. It is obvious that the receipt of money in exchange for labor or services constitutes exactly the kind of income that is subject to income tax.

It is true that there are certain tax-free exchanges, generally exchanges of the same kinds of property, but the exchange of labor for money clearly is not a tax-free exchange. Appellant's Exhibit 8 clearly shows that Appellant knew that taxable income

TAX COURT

included salaries, wages, or any other kind of remuneration received. Item 9 of the Memorandum attached to Appellant's Exhibit 8 reads as follows:

"9. Section 22 (a) of the Revenue Act defines "gross income" subject to the Act as including "gains, profits, and income derived from salaries, wages, or compensation for personal service***, of whatever kind and in whatever form paid***," Treasury Regulations 101. Art. 22 (a)-1 provides: If property is transferred** by an employer to an employee, for an amount substantially less than its fair market value, regardless of whether the transfer is in the guise of a sale or exchange, such*** employee shall include in gross income the difference between the amount paid for the property and the amount of its fair market value to the extent that such difference is in the nature of (1) compensation for services rendered.****"

Internal Revenue v. Smith 324 U.S. 177 (1945)

It is on the basis of Appellant's knowledge of these provisions that we have assessed the penalties and expenses.

C.A.J.

State of Minnesota County of Hennepin

Tax Court Regular Division

State Mutual Life Assurance Company,

Petitioner,

v.

County of Hennepin,

Respondent.

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER FOR JUDGMENT

Court File Nos. TC-1254
TC-1696
TC-2399

The above tax petitions came on for trial on October 5, 1983, before the Minnesota Tax Court at Hennepin County Government Center, Judge Earl B. Gustafson presiding. Testimony was concluded October 6 and the case was submitted on post-trial memoranda on November 1, 1983.

Benjamin J. Smith of Lapp, Lazar, Laurie & Smith, appeared on behalf of Petitioner.

Richard T. Todd, Assistant Hennepin County Attorney, appeared for Respondent.

The Court, having heard and considered the evidence adduced and being fully advised, now makes the following:

FINDINGS OF FACT

1. Petitioner is the owner of real property located in the City of Minneapolis, County of Hennepin, described as follows:
Lots 1 to 5 inclusive;
The East 110 feet of Lot 6;
That part of Lots 6 and 7 lying West of the East 110 feet of Lots 6 and 7;
Lots 8 to 14 inclusive:
all in Block 34, Murphy's Addition to the Town of Minneapolis, according to the recorded plat thereof.
Together with part of vacated 23rd Avenue, Property I.D. No. 25 029 24 340053
2. The property is a full city block in the Seward neighborhood of Minneapolis between 23rd Avenue and 24th Avenue South on the north side of East Franklin Avenue next to I-94.
3. The land is improved with two identical 91-unit 4-story apartment buildings constructed in 1970.
4. The subject property sold on December 28, 1982 for a purchase price of \$4,300,000.
5. Petitioner claims the assessor's estimated values for January 2, 1980, 1981 and 1982 exceed the property's actual market value on those dates and that it is unequally assessed when compared with other property in the taxing district.
6. The assessor's estimated values for the assessment years in question are as follows:
1980 — \$4,816,500
1981 — \$5,100,000
1982 — \$5,280,000
7. The Court finds the market value, prior to any equalization with other property, to be as follows:
1980 — \$4,000,000
1981 — \$4,400,000
1982 — \$4,700,000

8. Property in the same class in the City of Minneapolis and County of Hennepin for the assessment year 1980 was valued for taxes at approximately 86% of full market value. For assessment years 1981 and 1982, similar property was valued at approximately 88% of full market value.

9. After applying a ratio of 86% for 1980 and 88% for 1981 and 1982, we find the final estimated market values for the subject property to be as follows:

1980 — \$3,444,000
1981 — \$3,872,000
1982 — \$4,136,000

10. The attached Memorandum is made a part of these Findings of Fact and Conclusions of Law.

CONCLUSIONS OF LAW

1. The estimated market values (EMV's) for real estate taxes should be reduced as follows:

Assessment Year	
1980	from \$4,816,500 to \$3,444,000
1981	from \$5,100,000 to \$3,872,000
1982	from \$5,280,000 to \$4,136,000

2. Real estate taxes are due and payable in 1981, 1982 and 1983 should be recomputed accordingly and refunds, if any, paid to Petitioner as required by such computations, together with interest from the date of original payment.

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

January 16, 1984

By the Court,
Earl B. Gustafson, Judge
Minnesota Tax Court

MEMORANDUM

The Petitioner claims its property has been overvalued by the City of Minneapolis Assessor and that it has been treated unfairly and unequally in relation to other property in the taxing district.

The subject property is located at 2300 East Franklin Avenue. It is a relatively new two-building 182-unit apartment complex valued by the assessor at \$4,816,500 for 1980, \$5,100,000 for 1981 and \$5,280,000 for 1982. It sold in December, 1982 for \$4,300,000 on contract for deed. The buyer had the option of accepting terms or paying \$4,100,000 cash. He elected to accept the contract terms.

A recent arms-length sale of any property being appraised is the best evidence of its market value. Respondent suggests that the recent sale in this case is suspect and should virtually be ignored because the seller is an insurance company that acquired the property through foreclosure and was under some type of statutory or regulatory pressure to dispose of the property quickly. Respondent further claims that the buyer was "selected" by the broker and that price was not the prime consideration but rather that this was "a special sale designed to assure placement with no default." There is no hard evidence in the record supporting either of these contentions.

It certainly is true that there are fewer buyers available for properties in this price range than there are for smaller apartments and that per square foot prices and gross rent multipliers decrease as the total size increases.

This does not mean that when a large property is sold we should automatically discount it as not being a legitimate "market sale."

In this case a number of offers and counter-offers were made before the sale was finalized in December 1982. This tends to confirm our opinion that an arms-length sale was consummated.

One sale does not make a market, however, and in this case, there is further evidence that the buyer probably made a purchase somewhat below the true market value of this property.

In appraising income-generating property, another indication of value can be obtained through the so-called "net income capitalization approach." This requires a projection of net operating income and a capitalization of that income at an appropriate rate.

This income approach tells us that the 4.3 million dollar sale in 1982 was a price lower than would be expected.

If we use "actual" income and expenses for the three years in question and capitalize the net operating income at 8%, the following values are obtained:

TAX COURT

	<u>1980</u>	<u>1981</u>	<u>1982</u>
Effective Gross Income	\$ 689,359	\$ 767,005	\$ 814,513
Operating Expense Without Taxes	<u>182,609</u>	<u>226,095</u>	<u>226,727</u>
Net Operating Income	506,749	540,910	587,786
Indicated Value When Capitalized at 8% plus tax rate	\$4,063,744	\$4,537,835	\$4,981,237

In the above calculations, we used the "actual" figures reported by Petitioner. Mr. Lunieski, the Petitioner's appraisal witness, used actual income figures but estimated higher expense figures and a cap rate of 8.3% rather than 8%. This resulted in lower valuation figures, namely, \$3,734,191 for 1980, \$4,091,905 for 1981 and \$4,374,920 for 1982.

Mr. Westerberg, the appraiser for Respondent, projected lower expenses and used a 7% cap rate. That resulted in higher indications of value, namely, \$4,500,000 for 1980, \$5,105,504 for 1981 and \$5,606,481 for 1982.

Both appraisers gave substantial weight to the direct sales comparison approach and selected a number of "comparable sales." This approach resulted in the following opinions of value:

	<u>1980</u>	<u>1981</u>	<u>1982</u>
Petitioner's Appraiser Lunieski	3,700,000	4,000,000	4,250,000
Respondent's Appraiser Westerberg	4,500,000	5,100,000	5,600,000

Based upon all the evidence adduced and not relying on one approach or formula, we conclude that the actual market value of the subject property, before being equalized with other property in the taxing district, is: \$4,000,000 for 1980, \$4,400,000 for 1981 and \$4,700,000 for 1982.

To prevail in a claim of "discrimination" or unequal treatment in violation of the United States and Minnesota Constitutions, the Petitioner must show that other property of the same class in the taxing district was systematically and arbitrarily undervalued when compared with the subject property. *In Re Petition of Hamm vs. State*, 255 Minn. 64, 95 N.W. 2d 649 (1959). Where property is valued at approximately the same level as most other properties, intervention by the courts is not required or appropriate. *Federal Reserve Bank vs. State*, 316 N.W. 2d 619 (Minn. 1981).

The leading Minnesota case on this subject is *In Re Petition of Hamm v. State, Supra*, which states these principals in the following language:

"The right to uniformity and equality is the right to equal treatment in the apportionment of the tax burden. Uniformity of taxation does not permit the systematic, arbitrary, or intentional valuation of the property of one or a few taxpayers at a substantially higher valuation than that placed on other property of the same class. . . .

". . . Absolute equality is impracticable of attainment and the taxpayer may not complain unless the inequality is substantial. Mere errors of judgment in estimating market value of property usually will not support a claim of discrimination. 255 Minn. 64, 95 N.W. 2d 649, 654."

The best tool the Court has to determine the level of assessment within a taxing jurisdiction is sales ratio studies prepared specially for the Tax Court by the Minnesota Department of Revenue. These studies indicate that apartment properties in Minneapolis and Hennepin County were assessed on an average of 80% to 82% when sales prices are matched with the assessor's estimated market values.

Although Minn. Stat. § 278.05, Subd. 4 permits the admission of these studies into evidence without laying a foundation, we do not, however, consider these studies conclusive or binding on the Court. The major weakness of these studies is their failure to adjust sale prices for terms or "cash equivalency."

In recent years many income producing properties have often sold with below market financing terms where the purchase price is higher than the actual cash value.

Recognizing this, we feel the ratios to apply in equalizing the values in this case should be raised to 86% for 1980 to 88% for 1981 and 1982. For this reason we find the final values for tax purposes to be \$3,444,000 for 1980, \$3,872,000 for 1981 and \$4,136,000 for 1982.

E.B.G.

STATE OF MINNESOTA

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