

MINNESOTA Department of Revenue

April 18, 1996

Maryanne V. Hruby, Director
Legislative Commission to Review Administrative Rules
55 State Office Building
St. Paul, Minnesota 55155-1201

Re: Minnesota Department of Revenue, Proposed Repeal of Rule Governing
Constitutional Exemptions; *Minnesota Rules*, part 8130.4900

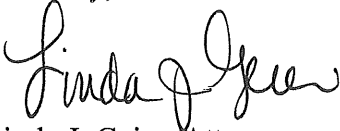
Dear Ms. Hruby:

The Minnesota Department of Revenue plans to publish a Notice of Hearing with regard to the above-referenced proposed repealer in the April 22, 1996 edition of the *State Register*.

As required by Minn. Stat. §14.131, the department has prepared a Statement of Need and Reasonableness (SONAR). A copy of this SONAR is enclosed with this letter. For your information, we are also enclosing a copy of the Notice of Hearing in this matter.

Please contact me if you have any questions.

Sincerely,



Linda J. Geier, Attorney
Appeals & Legal Services Division
296-1902, ext. 116

Enclosures

**STATE OF MINNESOTA
DEPARTMENT OF REVENUE
APPEALS AND LEGAL SERVICES DIVISION**

**In The Matter Of The Proposed Repeal
of Minnesota Rules, Part 8130.4900
Relating to Constitutional Exemptions**

**STATEMENT OF NEED
AND REASONABLENESS**

I. Statutory Authority

The commissioner of revenue has general rulemaking authority under Minnesota Statutes, section 270.06(14) to “make, publish, and distribute rules for the administration and enforcement of assessments and fees administered by the commissioner and state tax laws.” In addition, Minnesota Statutes, section 14.05, subd. 1, grants the Department of Revenue the authority to “adopt, suspend, *or repeal* its rules in accordance with the procedures specified in sections 14.001 to 14.69. . .” [Italics added].

II. Introduction and Background

Minnesota Rules, part 8130.4900 is an explanation of the types of transactions that are exempt from Minnesota taxation due to mandates of the United States Constitution. Due to the reasons set forth, this rule should be repealed in its entirety.

Minnesota Rules, part 8130.4900, subp. 2 was created to explain that the federal government, and certain units thereof, are exempt from state taxation under the doctrine of intergovernmental immunity. Since this is a federal doctrine, developed by federal law, and because the explanation currently in Subpart 2 of this rule creates more confusion than it alleviates, the Department has concluded that Minnesota Rules, part 8130.4900, subp. 2 should be repealed.

In 1993, subpart 3 of this rule was revised in order to exercise the widest scope of taxing authority consistent with the United States Supreme Court decision in Complete Auto Transit, Inc. v. Brady, 430 U.S. 274 (1977). However, some confusion has arisen over the current rule language, which prompted the Department to reexamine the need for the rule. The Department has concluded that the constitutional exemption provision in Minn. Stat. § 297A.25, subd. 4 is adequate, by itself, to encompass ongoing developments in the Supreme Court’s interpretation of the commerce clause. Minnesota Rules, part 8130.4900, subp. 3 creates unnecessary confusion and should, therefore, be repealed.

Subpart 4 of this rule explains exemptions from Minnesota taxation as prohibited under the due process clause of the 14th amendment to the federal constitution. Since the prohibition comes from federal law, and the federal government is the authority regarding this prohibition, the Department has concluded that Minnesota Rules, part 8130.4900, subp. 4 should be repealed.

Subpart 5 of this rule explains that sales to foreign consular officers, their employees or family members are exempt from state taxation. Because this exemption is granted by federal law and not by state law, the Department has concluded that an

administrative rule addressing this exemption creates more confusion than it alleviates, and therefore, Minnesota Rules, part 8130.4900, subp. 5 should be repealed.

Subpart 6 of this rule explains that sales made to federal credit unions, banks, and savings and loans are exempt by virtue of federal law. Because this exemption is granted by federal law and not by state law, the Department has concluded that an administrative rule addressing this exemption creates more confusion than it alleviates, and therefore, Minnesota Rules, part 8130.4900, subp. 6 should be repealed.

Subpart 7 of this rule explains that sales of tangible personal property or services to the federal government that can be taxed, will be taxed, in Minnesota. Because the effectiveness of this provision is entirely dependent on federal law and not state law, the Department has concluded that an administrative rule addressing this concept creates more confusion than it alleviates, and therefore, Minnesota Rules, part 8130.4900, subp. 7 should be repealed.

III. Minnesota Statutes, Section 14.131 Requirements

(1) Minnesota Rules, part 8130.4900 defines the six general instances where the State will not impose sales or use tax on a transaction, as such taxation is prohibited by the United States Constitution. Since this rule is based on Federal Law, and because the Federal Law is still in effect, the repeal of Minnesota Rules, part 8130.4900 will not affect any persons or groups in Minnesota. Because this repeal will not change the existing law in any way, there will be no costs to bear and no benefits to gain.

(2) Because this is a repeal, and not a rule enactment, there will be no costs to the Department of Revenue or any other agency in the implementation or enforcement of the rule.

(3) & (4) Because of the confusion that has resulted from the Department of Revenue's attempts to define Constitutional law through this rule, the Department has determined that the only logical solution is to repeal the rule in its entirety and let the Constitution speak for itself. The Department considered the idea of further amendments to the existing rule as a way to address the confusion created by the rule. This idea was dismissed, however, because of past failures in attempts to clarify the rule. The Department has determined that there are no less intrusive or less costly methods for achieving the purpose of the proposed repealer.

(5) Because the law is not changing there will be no additional costs of compliance with the rule.

(6) There are no differences between the proposed rule and Federal Law. This repealer is actually designed to give ultimate deference to Federal Doctrine.

IV. Additional Notice

The Department of Revenue maintains a list of persons who have registered for purposes of receiving notice of rule proceedings. Pursuant to Minnesota Statutes, section 14.14, subdivision 1a, the Department intends to provide public notice of the hearing on the proposed repealer by mailing notices of the hearing to those persons on its list. The Department intends to provide discretionary additional notice of the proposed repealer by also mailing notices of the hearing to members of the Natural Gas Pipeline industry who have expressed an interest in this issue.

V. Witnesses

If this proposed repealer goes to a public hearing, the witnesses listed below may testify on behalf of the Department of Revenue in support of the need for and reasonableness of the repealer. The witnesses will be available to answer questions about the development and content of the original rule.

Thomas J. Seidl, Supervising Attorney
Minnesota Department of Revenue
Appeals and Legal Services Division
10 River Park Plaza, Eighth Floor
Mail Station 2220
St. Paul, MN 55146-2220
(612) 296-1022

Michael P. Haag, Student Worker
Minnesota Department of Revenue
Appeals and Legal Services Division
10 River Park Plaza, Eighth Floor
Mail Station 2220
St. Paul, MN 55146-2220
(612) 282-5581

VI. Conclusion

Based on the foregoing, the Department of Revenue's proposed repealer is both necessary and reasonable.

4/8/96

Date

Matthew G. Smith

Matthew G. Smith, Commissioner
Minnesota Department of Revenue

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III. Small Business Considerations

Minnesota Statutes, section 14.115 requires an agency, when proposing a new rule or amending an existing rule that may affect small businesses, to consider certain methods of reducing the impact of the rule on small businesses. The impact of the repeal of this rule on small businesses has been considered. The repeal of Minnesota Rules, part 8130.4900 will not impose new filing or payment requirements on small businesses and, therefore, is not expected to place any additional financial or administrative burdens on small businesses.

IV. Fiscal Impact

Minnesota Statutes, section 14.11, subd. 1, requires that the Notice of Intent to Adopt Rules contain an estimate of the cost of implementing rules to local public bodies if

the cost exceeds \$100,000 in either of the two years following adoption. That provision does not apply because the repeal of this rule will not result in additional spending by local public bodies.

V. Agricultural Land Impact

Minnesota Statutes, section 14.11, subd. 2, does not apply because the repeal of this rule will not have an impact on agricultural land.

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If this proposed repealer goes to a public hearing, the witnesses listed below may testify on behalf of the Department of Revenue in support of the need for and reasonableness of the repealer. The witnesses will be available to answer questions about the development and content of the original rule.

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