

MINNESOTA • REVENUE

9-4-2007

August 23, 2007

Legislative Reference Library
645 State Office Building
100 Reverend Dr. Martin Luther King Jr. Blvd.
St. Paul, Minnesota 55155

Re: In The Matter Of The Proposed Amendment to Rules of the Minnesota Department of Revenue
Governing Sales and Use Tax Permits; Reinstatement of Revoked Permits; Amending *Minnesota Rules*, part
8130.2700.

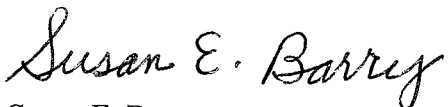
Dear Librarian:

The Minnesota Department of Revenue intends to adopt an amendment to a rule governing the reinstatement of revoked sales and use tax permits, to allow the Department to repay the security deposit required for reinstating a revoked permit prior to the mandatory 2-year holding period. We plan to publish a Dual Notice of Intent to Adopt Rules in the September 4, 2007, State Register.

The Department has prepared a Statement of Need and Reasonableness. As required by Minnesota Statutes, sections 14.131 and 14.23, the Department is sending the Library a copy of the Statement of Need and Reasonableness at the time it is available to the public.

If you have any questions, please contact me at (651) 556-4062.

Yours very truly,



Susan E. Barry
Attorney/ Rules Coordinator
Appeals & Legal Services Division
Minnesota Department of Revenue

Enclosure: Statement of Need and Reasonableness

Department of Revenue

STATEMENT OF NEED AND REASONABLENESS

Proposed Amendment to Rules Relating to Sales and Use Tax Permits; Reinstatement of Revoked Permits; *Minnesota Rules*, part 8130.2700

INTRODUCTION

The proposed amendment to rules relates to the requirement that must be satisfied by taxpayers who have had two sales tax permits revoked within 24 months, in order for them to obtain a new permit, or to obtain a reinstatement of the second revoked permit. In the proposed amendment, the requirement for the Commissioner of Revenue to hold the taxpayer's security deposit that must be furnished in such situations is modified.

The process that was used to draft the amendment to the rules was internal consultation within the Department of Revenue. Advisory committees were not used, and there were no public hearings. The Request for Comments was published in the *State Register* on Monday, March 19, 2007 (21 S.R. 1292). No comments were received.

ALTERNATIVE FORMAT

Upon request, this Statement of Need and Reasonableness can be made available in an alternative format, such as large print, Braille, or cassette tape. To make a request, contact, Richard Walzer, Attorney, at Minnesota Department of Revenue, Appeals and Legal Services Division, 600 North Robert Street, St. Paul, Minnesota 55146-2220; by phone at (651) 556-4093; by fax at (651) 296-8229; or by e-mail at rick.walzer@state.mn.us. TDD users may call the Department of Revenue at (651) 297-2196.

STATUTORY AUTHORITY

The Department's statutory authority to adopt rules is set forth in *Minnesota Statutes*, section 270C.06, which provides that the Commissioner of Revenue shall make, publish, and distribute rules for the administration and enforcement of state revenue laws.

Under this statute, the Department has the necessary statutory authority to adopt the proposed amendment to rules.

REGULATORY ANALYSIS

As required by *Minnesota Statutes*, section 14.127, the Department looked at the cost of compliance within the first year after the rule changes take effect and determined that the cost will not exceed \$25,000 for any business that has less than 50 full time employees or for any one statutory or home rule charter city that has less than 10 full time employees.

Minnesota Statutes, section 14.131, sets out the following seven factors for a regulatory analysis that must be included in the SONAR:

“(1) a description of the classes of persons who probably will be affected by the proposed rules, including classes that will bear the costs of the proposed rule and classes that will benefit from the proposed rule”

The classes of affected persons are those taxpayers who have had their sales and use tax permits revoked for nonpayment of sales taxes or failure to file sales tax returns, and have applied

for and been granted reinstatement of the revoked permit or a new permit after revocation. The proposed rule does not impose costs, and therefore there are no classes of person who will bear any costs. Those who will benefit from the proposed rule are the classes of affected persons who go out of business within two years after reinstatement or issuance of a new permit, and therefore may be entitled to an early refund of their security deposit

“(2) the probable costs to the agency and to any other agency of the implementation and enforcement of the proposed rule and any anticipated effect on state revenues”

There are no anticipated costs to the Department of Revenue or to any other agency of the implementation and enforcement of the proposed rule, and there is no effect on state revenues

“(3) a determination of whether there are less costly methods of less intrusive methods for achieving the purpose of the proposed rule”

There are no less costly methods or less intrusive methods for achieving the purpose of the proposed rule

“(4) a description of any alternative methods for achieving the purpose of the proposed rule that were seriously considered by the agency and the reasons why they were rejected in favor of the proposed rule”

The Department of Revenue considered interpreting the existing language of the rule as applying only to situations where the taxpayer is still required to file sales tax returns and pay sales taxes, and therefore refund the security deposit if the taxpayer goes out of business before the end of the two-year holding period. This approach, however, requires the Department to add an unwritten assumption to the rule that is not supported by its plain language, which is not an appropriate way of interpreting rules.

“(5) the probable costs of complying with the proposed rule, including the portion of the total costs that will be borne by identifiable categories of affected parties, such as separate classes of governmental units, businesses, or individuals”

There are no probable costs to parties affected by this rule, because the only parties who are affected are those taxpayers who are benefited by the rule.

“(6) the probable costs or consequences of not adopting the proposed rule, including those costs or consequences borne by identifiable categories of affected parties, such as separate classes of governmental units, businesses, or individuals”

The probable costs or consequences of not adopting the rule are costs to taxpayers affected by the rule due to not having use of the funds during the time they would otherwise receive a refund until the end of the two-year holding period.

“(7) an assessment of any differences between the proposed rule and existing federal regulations and a specific analysis of the need for and reasonableness of each difference”

There are no federal regulations dealing with this subject matter.

CONSULT WITH FINANCE ON LOCAL GOVERNMENT IMPACT

As required by *Minnesota Statutes*, section 14.131, the Department has consulted with the Commissioner of Finance “to help evaluate the fiscal impact and fiscal benefits of the proposed rule changes on units of local government.”

PERFORMANCE-BASED RULES

The proposed rule is designed to amend a technical problem that exists under the language of the existing rule, so that the rule has greater flexibility in needed situations. To that extent, the Department's goal of adopting rules that both enhance tax compliance and are practical in the private business sector is achieved.

ADDITIONAL NOTICE

To provide notice to all persons who may be affected by the proposed rule, the Additional Notice Plan consists of:

- (1) posting the Request for Comments, Notice of Intent to Adopt Rules, and SONAR to the Department website at <http://www.taxes.state.mn.us>;
- (2) mailing a copy of the Request for Comments to the regular rulemaking list, and to chairs and minority leads of the House and Senate tax committees; and
- (3) mailing a copy of the Notice of Intent to Adopt Rules, and a copy of the proposed rules and SONAR to the following:
 - Minnesota Retailers Association.
 - AccountAbility Minnesota
 - Legal Aid Society of Minneapolis
 - Southern Minnesota Regional Legal Services
 - Minnesota State Bar Association, Tax Section
 - Minnesota Society of Certified Public Accountants
 - Minnesota Chamber of Commerce
 - as well as any individual requesting notice who is not already on the agency's regular rulemaking mailing list.

Our Notice Plan also includes giving notice required by statute. We will mail the rules and Notice of Intent to Adopt to everyone who has registered to be on the Department's rulemaking mailing list under *Minnesota Statutes*, section 14.14, subdivision 1a. We will give notice to the Legislature per *Minnesota Statutes*, section 14.116.

RULE ANALYSIS

Minnesota Statutes, chapter 14, requires the Department to explain the facts establishing the need for and reasonableness of the rules as proposed. "Need" means that a problem exists which requires administrative attention. "Reasonableness" means that there is a rational basis for the Department's proposed action. The need for and reasonableness of the proposed rules, amending *Minnesota Rules, Part 8130.2700*, is here explained.

The need for the proposed rule change is that the rule as currently written creates a problem for the Department whenever taxpayers who furnish a security deposit, as required by the rule, go out of business before the end of the two-year holding period for the security deposit, also required by the rule.

As to the reasonableness of the proposed rule change, the current language in the paragraph following item E in subpart 5, requiring the security deposit to be held by the Commissioner of Revenue for two years, was included as part a rulemaking project relating to the administrative provisions of the sales tax. (See 15 S.R. 693.) The Statement of Need and Reasonableness at that time justified the various requirements for reinstating a revoked permit or obtaining a new permit after revocation as follows:

“These requirements are necessary for the commissioner to ensure compliance with Minnesota law in revocation circumstances where the taxpayer has a history of noncompliance. The requirements are reasonable because they allow a mechanism for a person to resume making taxable sales after a revocation has occurred while assuring compliance with chapter 297A.” (Emphasis added.)

Thus, in light of the original intent of these requirements to allow a mechanism for the taxpayer to resume making taxable sales, it is reasonable to conclude that if the taxpayer is no longer making taxable sales, the justification to continue holding on to the taxpayer’s security deposit is eliminated.

There are additional factors supporting both the need and reasonableness for the rule change that should be considered. First, holding on to the funds when there is no need to do so is an injustice to the taxpayer, because it is money the taxpayer would otherwise have for their own use. Second, there is an administrative accounting and recordkeeping burden for the Department of Revenue to keep track of the funds during the holding period. Third, because of the passage of time, it may be difficult to locate or determine the person or person entitled to the funds when the holding period ends. This especially can be a problem when the business is no longer operating. Finally, the funds accrue additional interest that must be paid by the Department under the last paragraph in subpart 5, and thus prompt return of the funds as provided in this rule change is a cost savings for the Department.

LIST OF WITNESSES

If these rules go to a public hearing, the Department does not anticipate calling any witnesses, although Department employees may be called to testify in support of the rules.

CONCLUSION

Based upon the foregoing, the proposed rules are both needed and reasonable.

8-21-07
Date

Ward Einess
Ward Einess
Commissioner of Revenue