Department Policy Bill

	Yes	No
Separate Official Fiscal Note Requested		
Fiscal Impact		
DOR Administrative Costs/Savings		

March 28, 2003

Department of Revenue
Analysis of H.F. 760 (Abrams)/ S.F. 1008 (Moua)

	Revenue Gain or (Loss)			
	F.Y. 2004	**F.Y. 2005**	**F.Y. 2006**	**F.Y.2007**
	(000's)			
Federal Update				
Clergy Housing Allowance	Negligible	Negligible	Negligible	Negligible
Permanent Exclusion of Holocaust Restitution Payments	$0	$0	$0	$0
General Fund Total	Negligible	Negligible	Negligible	Negligible

The change to the clergy housing allowance would be effective retroactive to tax year 2002. The permanent exclusion of Holocaust restitution payments would begin in tax year 2011. Various effective dates apply to other provisions in the bill.

EXPLANATION OF THE BILL

A section-by-section summary of the bill is attached.

REVENUE ANALYSIS DETAIL

Clergy Housing Allowance

- The restriction to the housing allowance exclusion for members of the clergy would have an impact only in cases in which the allowance exceeds the fair rental value of the home. As defined in federal law, the fair rental value of the home also includes furnishings, appurtenances, such as a garage, and the cost of utilities. Only the excess over the fair rental value would be affected by the restriction.
- It is expected that there are few cases in Minnesota in which the housing allowance paid to a member of the clergy exceeds the defined "fair rental value of the home" and that any excess amounts are not significant.
- Based on the estimates of the federal law change by the Joint Committee on Taxation, the estimated state revenue gain would be less than $5,000 annually.

REVENUE ANALYSIS DETAIL (CONT.)

Holocaust Restitution Payments

- Because the change would not take effect until tax year 2011, there is no impact in fiscal years 2004 through 2007. Under previous federal law and current Minnesota law, the exclusion expires in tax year 2011, along with other changes made by the federal Economic Growth and Tax Relief Reconciliation Act of 2001.
- The annual cost of the exclusion is estimated to be less than $25,000.

Other Provisions of the Bill

- It is expected that other provisions in the bill would have no impact on state revenues.

Source: Minnesota Department of Revenue
Tax Research Division
http://www.taxes.state.mn.us/polic.html#analyses

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Article 1 Income and Estate Taxes

Section 1. Estate Tax Filing Requirement. Amends Minn. Stat. § 289A.10, subd. 1 to clarify that if a federal estate tax return is required to be filed under the current federal estate tax laws, a Minnesota estate tax return is also required to be filed. This would cover the situation where the decedent made federally taxable gifts during their life to the point where their gross estate is less than the federal filing requirement but the gross estate plus adjusted taxable gifts exceeds the federal filing requirements. Effective for estates of decedents dying after December 31, 2002.

Section 2. Extension for Filing Estate Tax. Amends Minn. Stat. § 289A.19, subd. 4 to allow the commissioner to grant extensions for the filing of estate tax returns for up to six months. The current law only allows the commissioner to extend the filing date if the federal filing date has been extended, which is not helpful in cases where a Minnesota estate tax return is required but a federal return is not. Effective for estates of decedents dying after December 31, 2001.

Section 3. Liability of Third-Party Vendor for Repayment of Refund. Adds a new subdivision 8 to Minn. Stat. § 289A.31. Authorizes the Department of Revenue to recover an income tax refund of a taxpayer paid directly to a third-party provider of an educational service or product upon which the education credit giving rise to the refund is based, if the Department subsequently disallows the credit. Effective for refunds paid to third-party vendors on or after the day following final enactment.

Section 4. Interest on Estate Tax Refunds. Amends Minn. Stat. § 289A.56, subd. 3 to change the date from which the state pays interest on the overpayment of estate tax to the later of the date of over-payment, the due date of the return (9 months from date of death), or the date the estate tax return is actually filed. Current law is the later of the date of over-payment, or the due date for filing. Effective for estates of decedents dying after December 31, 2003.

Section 5. Penalty for Frivilous Returns. Amends Minn. Stat. § 289A.60, subd. 7 to increase the penalty for filing a frivolous return from the current flat $500 penalty to a penalty of the greater of $1,000 or 25% of the tax which should have been shown on the return. Effective for returns filed after December 31, 2003.

Section 6. Conditions for Assignment of Refund. Amends Minn. Stat. § 290.0679, subd. 2. The Department of Children, Families, and Learning must certify that the educational service or product being purchased by a taxpayer qualifies for the education credit, in order to have a valid assignment of the taxpayer's future income tax refund based upon the credit to the lender financing the purchase. A denial to certify can be appealed by the provider of the service or product using the administrative contested case procedure. Effective for assignments made on or after the day following final enactment.

Sections 7, 9, 10, 11, 12 and 13. Certain Public Employee Pensions Exempt from Estate Tax. Amends Minn. Stat. §§ 291.005, subd. 1, 352.15, subd. 1, 353.15, subd. 1, 354.10, subd. 1, 354B.30 and 354C.165 to remove the exemption from the Minnesota estate tax for the following public employee pensions:

1. Minnesota State Retirement System (MSRS),
2. Public Employee Retirement Association (PERA),
3. Teachers Retirement Act (TRA),
4. Teachers Retirement Fund Association (TRFA), and
5. Higher Education Supplemental Retirement Plans (HESRA).

Even without the exemption the pension would only be taxable to the extent the pension is payable after the deaths of the decedent and his or her surviving spouse. The first section also picks up the federal legislative changes to federal taxable estate made in 2001 or 2002 which expanded the exclusion of 40% of value of land subject to qualified conservation easement to include land further than 25 miles from a national park or wilderness area or metropolitan area. The limited family-owned business deduction was repealed effective in 2004. Effective for estates of decedents dying after December 31, 2002.

Section 8. Estate Tax Computation. Amends Minn. Stat. § 291.03, subd. 1 to provide that the Minnesota estate tax is the maximum state death tax credit allowable under the 2000 federal estate tax law multiplied by a ratio for the Minnesota sitused gross estate over the total federal gross estate. Current law provides that for residents the tax is the greater of the above amount or the state death tax credit allowable minus estate taxes paid to other states. This section also provides that if an estate elects to claim certain administrative expenses for federal and Minnesota fiduciary income taxes, those expenses cannot be claimed as a deduction in computing the Minnesota estate tax. Effective for estates of decedents dying after December 31, 2002.

Section 14. Repeal of Sunset Provision. Amends Minn. Laws 2001, 1st Spec. Sess., ch. 5, art. 9, sec. 12, to repeal the provision that sunsets the assignment of refunds for the education credit after December 31, 2003.

Article 2 Federal Update

Overview. This article updates the references to Internal Revenue Code Minnesota uses in its income and franchise taxes (Minn. Stat. ch. 290), property tax refund (Minn. Stat. ch. 290A) and general tax administration (Minn. Stat. ch. 289A) to adopt federal changes made since the last update of March 15, 2002. Effective at the same time as the corresponding federal changes were effective.

The only changes to the Internal Revenue Code from March 15, 2002 through December 31, 2002 were:

1. To clarify that the current exclusion for parsonage allowances paid to members of the clergy is limited to the fair rental value of residences occupied by the clergy member (Public Law No. 107-181);

2. To provide that Johnny Michael Spann Trusts (trusts set-up to provide for survivors of members of the military or other federal agencies dying in terrorist attacks or combating terrorism) are charitable entities if the trust meets certain conditions (Public Law No. 107-296);

3. To remove duplicative information reporting for state and local political campaign organizations and parties (Public Law No. 107-276); and

4. To permanently extend the exclusion from taxable income the amount received from Holocaust damages and restitution (Public Law No. 107-358).

Article 3 Property Tax

Section 1. Commissioner's Rulemaking Authority. Amends Minn. Stat. § 270.06 to clarify that the commissioner of revenue may promulgate rules on laws administered by the commissioner of revenue, as well as rules dealing with state tax laws. This will clarify that the commissioner has rulemaking authority for purposes of administering the Sustainable Forest Incentives Act. Effective the day following final enactment.

Section 2. Local Assessor Residency Requirement. Amends Minn. Stat. § 273.05, subd. 1 to strike the requirement that local assessors be residents of the state. "Local" assessors are those working for a city, other than a city of the first class, or a town. Effective the day following final enactment with added language to preserve the validity of any existing employment contract between a Minnesota city or town and a non-resident.

Section 3. Assessors; Incompatible Offices. Amends Minn. Stat. § 273.061, subd. 1 to make it clear that the person appointed as county assessor may not also be the county auditor, county attorney, or a county board member in that same county; and that city assessors may not also be a city council member for the same city. Effective January 2, 2004 and thereafter.

Sections 4 and 5. County and Local Boards of Equalization and Review. Amends Minn. Stat. §§ 274.01, subd. 1 and 274.13, subd. 1 to clarify that county and local boards of equalization and review do not have the authority to remove property from the property tax rolls. Effective the day following final enactment.

Sections 6, 7, 8, 9, and 12. State General Property Tax Levy. Amends Minn. Stat. § 275.025, subd. 4 to allow the commissioner of revenue to certify a preliminary rate for the state general property tax levy on or before November 1 for use in the "Truth in Taxation" process, and until

January 1 to certify a final rate. The current November 1 deadline for the final rate is too early because some of the necessary data is typically not available at that time. Corrects the wording of a reference to "seasonal residential recreational property" (*i.e.*, cabins). Effective for taxes payable in 2004 and thereafter, except that the change in wording for the reference to seasonal residential recreational property in section 8 is effective the day following final enactment.

Amends Minn. Stat. §§ 276.10 and 276.11, subd. 1 to eliminate the state from the list of taxing authorities for which the county treasurer issues a warrant for property tax collections, and to eliminate the apportionment of funds to the state on the various settlement days that are provided for in general law. Effective for taxes payable in 2004 and thereafter.

Amends Minn. Stat. ch. 276 by adding the new section 276.112 requiring county treasurers and county auditors who collect the state levy amounts to transmit those collections to the commissioner of revenue (rather than the commissioner of finance) on or before June 29 and January 25 each year, and requires the transmissions to be by electronic means. Effective the day following final enactment which will affect the June, 2003 settlements and thereafter.

Amends Minn. Stat. § 282.08 to require county auditors to pay over the unpaid state general property tax levy amounts for each parcel of tax-forfeited land from the net proceeds of the sale or lease of that parcel. Effective for taxes payable in 2004 and thereafter.

Section 10. Tax Deeds for Redevelopment Property in Targeted Neighborhoods. Amends Minn. Stat. § 282.01, subd. 1b. This statute allows tax-forfeited properties in "targeted neighborhoods" (as defined in Minn. Stat. § 469.201, subd. 10 for outstate counties and Minn. Stat. § 473.121, subd. 2 for metro counties) to be conveyed to a political subdivision for redevelopment purposes upon written application and without the payment of money. In 2001, this law was changed to make the procedures for issuing these deeds the same for metro and outstate counties. As a result, approval of the county board is now required in the case of properties located in metro counties. Previous to 2001, county board approval was only required in the case of property located in an outstate county. This amendment eliminates county board approval as a requirement for properties located in metro counties, so that this specific provision would be as it was prior to the 2001 changes. Effective for deeds issued on or after July 1, 2003.

Section 11. Alternate Sale Procedures for Tax-Forfeited Property. Amends Minn. Stat. § 282.01, subd. 7a to allow tax-forfeited property that consists of an undivided interest in land to be offered to the other owners for its appraised value without first having to be offered to the public at an open sale. Effective for sales on or after the day following final enactment.

Section 13. Sustainable Forest Incentives Act, Death of Claimant. Amends Minn. Stat. ch. 290C to add a new section 290C.12. If the original claimant dies, the claimant's heir, devisee or estate would have one year to notify the commissioner of its choice to either terminate the program without penalty or continue without a break. If the commissioner is not notified within one year the land will be terminated from the program without penalty. Effective the day following final enactment, except that if a claimant has already died the election may be made within six months of the effective date or within one year of the claimant's death, whichever is later.

Section 14. Tax Increment Financing. Amends Minn. Stat. § 469.1792, subd. 3 to require development authorities that wish to exercise the "original tax rate" option under this statute to annually certify their election to do so by July 1 in order for the election to be effective for taxes payable the following year. The election allows increments to be computed based on captured net tax capacity and the tax rate in effect when the district was created. Effective for taxes payable in 2004 and thereafter.

Section 15. Local Government Aid. Amends Minn. Stat. § 477A.011, subd. 30 to change the "pre-1940 housing" factor in the municipal aid formula. Currently the factor is determined from the most recent available census data (*i.e.*, the 2000 census data). The change will require use of data from the 1990 census to determine this factor. Effective for aids payable in 2003 and thereafter.

Sections 16 and 17. "Use-Deeds" for Tax Forfeited Property. Amends the effective dates for Minn. Laws 2001, 1st Spec. Sess., ch. 5, art. 3, sections 61 and 63, to eliminate changes of use for so-called "use deeds" issued before the effective date of the 2001 laws. "Use deeds" convey tax-forfeited property to a political subdivision of the state, upon approval of the county board, for a specified public use without requiring a payment of money. Property not used for the stated purpose within three years reverts to the state. However, for property held under a "use deed" issued before August 1, 2001, the recipient local unit of government that does not achieve the originally-proposed public use within five years can continue to hold the property for successive five year periods simply by proposing a different public use at the end of each five year period (subject to county board approvals). Under the proposal, property could not be put to a different use unless it was conveyed back to the state and reacquired specifically for the new use. Effective August 1, 2003 and thereafter for deeds issued before August 1, 2001.

Article 4 Sales and Use Taxes

Section 1. Penalty for Incorrectly Completing Return. Amends Minn. Stat. § 289A.60 by adding subdivision 25 that provides a 5 percent penalty for failing to report local sales tax on a return or for failing to report local sales tax on a separate line on the return. A new $500 penalty is imposed for failing to report location information when filing a consolidated tax return. In addition to the penalty, the commissioner may revoke the taxpayer's privilege to file a consolidated tax return. Effective for returns filed after June 30, 2003.

Section 2. Sales and Purchases. Amends Minn. Stat. § 297A.61, subd. 3 as follows:

The subdivision is amended to clarify that only non-residential parking services are subject to the sales tax.

The subdivision is amended to clarify that when providing the services added to the sales tax base in 1987, the following conditions apply: (1) all references to tangible personal property shall also include the 1987 taxable services unless otherwise provided, (2) services performed by a partnership which is owned or controlled by another partnership are not taxable, and (3) services performed by members for other members of an affiliated group of corporations are not taxable.

The subdivision is amended to make a technical change to reflect that the sales taxation of telecommunications is broader than telephone service.

The provisions in this section are effective the day following final enactment.

Section 3. Farm Machinery. Amends Minn. Stat. § 297A.61, subd. 12 to clarify that machinery and equipment used directly and principally in agricultural production would qualify as farm machinery. Other items exempted under the current definition of farm machinery are moved to other exemptions. Effective for sales and purchases made after June 30, 2003.

Section 4. Agricultural Production. Amends Minn. Stat. § 297A.61 by adding subdivision 35 to define the term "agricultural production". The definition is currently found in Minn. Stat. § 297A.69, subd. 2. Effective for sales and purchases made after June 30, 2003.

Section 5. Capital Equipment. Minn. Stat. § 297A.68, subd. 5 is amended to clarify that it is the concrete ready-mix equipment, regardless of whether mounted on the vehicle, that qualifies as capital equipment and not the vehicle itself, and that the leases of ready-mix trucks would remain exempt.

This section is amended to provide a definition of the integrated production process and an explanation of when the process begins and ends for manufacturing, mining, fabricating, and refining.

Effective for sales and purchases made after December 31, 2003.

Section 6. Transition Provisions For Pre-Existing Contracts. Amends Minn. Stat. § 297A.68 by adding subdivision 39 to provide that when the sales tax law is amended to impose the tax upon goods or services and the bill imposing the tax does not provide a transitional period for pre-existing construction contracts or bids, the goods or services will be exempt for a six month transition period from the date of the law change. The subdivision sets forth the conditions that must exist before the six-month transition period applies. Effective the day following final enactment.

Section 7. Agricultural Production. Repeals the definition of agricultural production, in Minn. Stat. § 297A.69, subd. 2 which has been moved to Minn. Stat § 297A.61. Effective for sales and purchases made after December 31, 2003.

Sections 8 and 9 contain changes relating to items that are currently exempt as farm machinery.

Section 8. Repair and Replacement Parts. Amends Minn. Stat. § 297A.69, subd. 3 to provide that exemption for farm machinery parts also applies to repair and replacement parts for logging equipment and aquaculture product equipment. Effective for sales and purchases made after June 30, 2003.

Section 9. Machinery, Equipment and Fencing. Amends Minn. Stat. § 297A.69, subd. 4 to provide that in addition to farm machinery being exempt, the exemption applies to purchases of logging equipment, fencing for cervidae, primary and backup generators, aquaculture production equipment, and maple syrup harvesting equipment. Effective for sales and purchases made after June 30, 2003.

Section 10. Noncollector Vehicles. Amends Minn. Stat. § 297B.025, subd. 1 to provide that the department of public safety is no longer required to prepare and distribute an above market list of automobiles. The requirements to qualify as a noncollector vehicle remain the same and transfers of vehicles that are ten years or older and that are not above market vehicles will continue to be taxed at $10. Effective for vehicles purchased after June 30, 2003.

Section 11. Collector Vehicles. Amends Minn. Stat. § 297B.025, subd. 2 to make a technical change reflecting that the department of public safety would no longer be designating above market automobiles. Effective for vehicles purchased after December 31, 2003.

Section 12. Ordinary Course of Business. Amends Minn. Stat. § 297B.035, subd. 1 to provide that only vehicles purchased by motor vehicles for resale in the ordinary course of business can be purchased exempt. Vehicles used by the dealer for other than resale or demonstration cannot be purchased exempt. Effective the day following final enactment.

Article 5 Cigarette &Tobacco Products Taxes

Section 1. Unlicensed Seller. Amends Minn. Stat. § 297F.01, subd. 21a which contains the definition of unlicensed seller to delete the statutory reference to local licensing authorities. Effective July 1, 2003.

Section 2. Tobacco Products Use Tax. Amends Minn. Stat. § 297F.06, subd. 4 which contains the consumer use tax exemptions to clarify that the exemption includes the "possession" of tobacco products and changes the exemption from quantities of tobacco products to an exemption based upon a dollar value for tobacco products. Effective July 1, 2003.

Section 3. Penalties for Failure to File or Pay. Amends Minn. Stat. § 297F.20, subd. 1 to clarify that consumers are subject to the misdemeanor penalties for failing to file or pay the tax. Effective for acts committed on or after July 1, 2003.

Section 4. Penalties for Knowing Failure to File or Pay. Amends Minn. Stat. § 297F.20, subd. 2 to clarify that consumers are subject to the gross misdemeanor penalties for knowingly failing to file or pay the tax. Effective for acts committed on or after July 1, 2003.

Section 5. Penalties for False or Fraudulent Returns. Amends Minn. Stat. § 297F.20, subd. 3 to clarify that consumers are subject to the felony penalties for filing or aiding and abetting in the preparation of reports or returns that are known to be fraudulent or false concerning a material matter. Effective for acts committed on or after July 1, 2003.

Section 6. Unstamped Cigarettes; Unstamped Tobacco Products. Amends Minn. Stat. § 297F.20, subd. 6 to delete consumers and licensed distributors from the criminal provisions for possession of unstamped cigarette and untaxed tobacco products; raises the tobacco products tax thresholds to make them roughly equivalent to the cigarette tax thresholds; and adds a presumption that an individual is not a consumer if in possession of certain amounts of unstamped cigarettes or untaxed tobacco products. Effective for acts committed on or after July 1, 2003.

Section 7. Purchases from Unlicensed Sellers. Amends Minn. Stat. § 297F.20, subd. 9 to delete the references to consumers; clarify that retailers and subjobbers can purchase cigarettes and tobacco products only from licensed distributors or subjobbers; and raises the penalty threshholds for purchases from unlicensed sellers. Effective for acts committed on or after July 1, 2003.

Article 6 Collections and Compliance

Section 1. Penalty for Filing Documents Against Department Personnel. Amends Minnesota Statutes by adding section 270.278, providing that documents purporting to create claims against the commissioner or employees based on the performance or non-performance of duties are invalid. Also provides for civil penalties to be paid by taxpayers filing such documents. Effective for documents filed on or after July 1, 2003.

Section 2. Provide for Public Notice of Sale via the Internet. Amends Minn. Stat. § 270.701, subd. 2 to provide that posting on the Internet qualifies as posting in a public place for purposes of notice of sale of seized property. Effective for notices of sales posted on or after the day following final enactment.

Section 3. Sale of Seized Stock and Securities. Amends Minn. Stat. § 270.701 by adding subdivision 7 to provide the manner of sale for seized negotiable securities. Effective for sales of securities seized on or after the day following final enactment.

Section 4. License Definition for Tax Clearance and Tax Clearance for Carnivals. Amends Minn. Stat. § 270.72, subd. 2 to provide that the definition of license includes more than just licenses to conduct a trade, business or profession and specifically includes authorization to operate concessions or rides at county and local fairs, festivals or events. The subdivision is also amended to include county and local boards or governing bodies in the definition of licensing authority. Effective day following final enactment.

Section 5. Revenue Recapture; Adding MCE as Claimant Agency. Amends Minn. Stat. § 270A.03, subd. 2. Clarifies that the Minnesota Collection Enterprise is a claimant agency under the Revenue Recapture Act for purposes of recovering its collection costs under Minn. Stat. § 16D.11. Effective the day following final enactment.

Section 6. Enforcement of Subpoenas. Amends Minn. Stat. § 289A.36, subd. 7 to allow the Ramsey County district court to punish as contempt disobedience of administrative subpoenas issued by the commissioner of revenue to determine whether certain out of state businesses are required to file Minnesota tax returns. Allows the district court to issue appropriate orders necessary to enforce compliance with those subpoenas. Effective the day following final enactment.

Section 7. Subpoenas to Determine if an Out of State Business is Required to File a Minnesota Tax Returns. Amends Minn. Stat. § 289A.36 by enacting new subdivision 9 that allows the commissioner of revenue to serve administrative subpoenas on out of state businesses to produce information necessary to determine if a taxpayer is required to file a Minnesota tax return by using the same procedures that are authorized for service of process to commence a tort action or contract action against an out of state business. Requires the commissioner to pay the reasonable costs of producing the records if production of those records imposes an unreasonable burden on the subpoenaed party and the investigation does not lead to a determination that the subpoenaed party is required to file a Minnesota tax return. Effective the day following final enactment.

Section 8. Penalty for Failure to Comply with Court Order to Comply with a Subpoena. Amends Minn. Stat. § 289A.36, by enacting new subdivision 10 that imposes a $250 per day/$25,000 maximum penalty payable to the commissioner of revenue for any business that violates a court order to comply with a subpoena seeking information necessary to determine if the business is required to file a Minnesota tax return. The penalty is determined, and entered as a judgment in favor of the commissioner, by the district court, upon request of the commissioner. It is not payable until the judgment is entered. Applies to enforcement of court orders to enforce subpoenas issued on or after the day following final enactment.

Section 9. Repealer. Repeals Minn. Stat. § 270.691, subd. 8 to remove the sunset from the delinqnet statute. Effective day following final enactment.

Dated: February 19, 2003