

ORDER ADOPTING AMENDMENT OF RULES

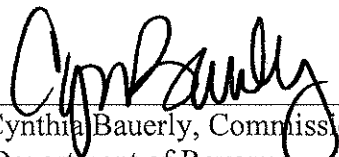
**Adoption of Permanent Exempt Rule Governing Combined Group Franchise Returns:
Amending Minnesota Rules, Part 8019.0405, subpart 2, and repealing subpart 9**

WHEREAS:

1. The rulemaking provision of Minnesota Statutes, chapter 14, are unnecessary and impracticable when amending or repealing a rule to incorporate specific changes set forth in applicable statutes when no interpretation of law is required.
2. The attached Findings and Statement of Supporting Reasons justify a good cause exemption from rulemaking, and are hereby incorporated by reference.
3. All procedural requirements in Minnesota Statutes, section 14.388, and Minnesota Rules, part 1400.2400, and other applicable law have been complied with.
4. The Office of Administrative Hearings received no written comments on the rules.
5. A certified copy of the rule is attached, as required by Minnesota Statutes, section 14.386, paragraph (a), clause (1), and Minnesota Rules, part 1400.2400.

IT IS ORDERED that the above-captioned rule, in the form certified as approved by the Office of the Revisor, is adopted pursuant to authority vested in me by 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 tax laws." Under this statute, the commissioner of Revenue has the necessary statutory authority to amend this rule.

12/21/18
Date


Cynthia Bauerly, Commissioner
Department of Revenue

FINDINGS

In 2009 and 2013, the Minnesota Legislature enacted significant changes to the state's corporate franchise tax. The statutory changes in Minnesota Statutes, section 290.17, affect how unitary businesses subject to tax in Minnesota calculate their apportionment factor of Minnesota's corporate franchise tax. Minnesota Rules, 8019.0405, governs how unitary business groups file their Minnesota corporate franchise tax return. Two amendments and one repeal are required to bring Minnesota Rules, 8019.0405, up to date with the 2009 changes to Minnesota Statutes, section 289A.08, and the 2013 changes to Minnesota Statutes, section 290.17. The amendments and repeal will not affect how Minnesota taxpayers file their taxes. Rather, the amendments and repeal will bring the rule into conformity with the statutory changes. As explained in the findings below, the amended or repealed rules from Minnesota Rules, 8019.0405, are inconsistent with state statutes.

1. **Minnesota Rules, 8019.0405, subpart 2(B), is currently inconsistent with Minnesota Statutes, section 289A.08.** Under the current version of Minnesota Statutes, section 289A.08, a corporation that is part of a unitary business group is not required to be subject to tax in Minnesota in order to be the designated member on the corporate franchise tax return of a unitary business group. However, the definition of designated filer under Minnesota Rules, 8019.0405, subpart 2(B), requires that the designated filer be subject to tax in Minnesota. Therefore, the definition of designated filer is obsolete and should be amended to reflect current law.
2. **Minnesota Rules, 8019.0405, subpart 2(C), is currently inconsistent with Minnesota Statutes, section 289A.08.** Under the current version of Minnesota Statutes, section 289A.08, a member of a unitary business group is not required to be subject to tax in Minnesota in order to be a member on a unitary business group's corporate franchise tax return. The definition of member is obsolete and should be amended to reflect current law.
3. **Minnesota Rules, 8019.0405, subpart 9, is obsolete because in 2013 the Minnesota Legislature amended Minnesota Statutes, 290.17.** The current version of Minnesota Rules, 8019.0405, subpart 9, directs the designated member of a unitary business group to apportion each member's Minnesota corporate franchise tax liability separately and then combine each member's liability on the group's Minnesota corporate franchise tax return. This is inconsistent with the version of Minnesota Statutes, section 290.17, passed in 2013, which holds that a unitary business group must combine all of the sales to Minnesota into the sales apportionment factor for the unitary business group, including the sales of unitary subsidiaries that do not file in Minnesota. Therefore, subpart 9 is obsolete and should be repealed to reflect current law.

STATEMENT OF SUPPORTING REASONS

An agency has to meet one of the criteria of Minnesota Statutes, section 14.388, to have a rule adopted under the good cause exemption procedures. The third clause, "to incorporate specific changes set forth in applicable statutes when no interpretation of law is required," applies in this instance.

Minnesota Rules, 8019.0405, is no longer consistent with Minnesota Statutes, sections 289A.08 and 290.17, because of statutory amendments (see Findings). Since the statutory authorities for the rules have been amended, no interpretation of the law is required in amending or repealing these portions of the rule.

Furthermore, the amendments do not involve substantive policy issues. The amendments reflect the statutory changes to Minnesota Statutes, sections 289A.08 and 290.17. Because the public had the opportunity to comment on the statutory changes, amending Minnesota Rules, 8019.0405, through the full rulemaking process would be repetitive and unnecessary.