

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

In the Matter of Amendments to Rules
Governing Combined Group Corporate
Franchise Returns, Minnesota Rules
8019.0405

**ORDER ON REVIEW OF
RULES UNDER
MINN. STAT. § 14.388 AND
MINN. R. 1400.2400**

This matter came before Administrative Law Judge Jessica A. Palmer-Denig upon a request by the Minnesota Department of Revenue (Department) for a legal review pursuant to Minn. Stat. § 14.388 (2018).

On December 10, 2018, the Department filed its request for approval of proposed revisions of Minn. R. 8019.0405 (2017), to amend two rule subparts and repeal one rule subpart. On December 12, 2018, the Department supplemented its filing with additional information regarding its public notice of the rulemaking. The Department seeks approval of its rule revisions pursuant to Minn. Stat. § 14.388, subd. 1(3), Minn. R. 1400.2400 (2017).

Based upon a review of the written submissions and filings, Minnesota Statutes, Minnesota Rules, and for the reasons explained in the Memorandum that follows,


IT IS HEREBY DETERMINED:

1. The Department has the statutory authority to adopt the rules.
2. The Department has complied with the procedural requirements of Minn. Stat. ch. 14 (2018) and Minn. R. ch. 1400 (2017).
3. The Department has established that it may utilize the good cause exemption in connection with this rulemaking, pursuant to Minn. Stat. § 14.388, subd. 1(3).

IT IS HEREBY ORDERED THAT:

The amendments and repeal of rule subparts in Minn. R. 8019.0405 are **APPROVED**.

Dated: December 20, 2018


JESSICA A. PALMER-DENIG
Administrative Law Judge

MEMORANDUM

I. Introduction

The Department seeks to revise Minn. R. 8019.0405 by amending subparts 2(B) and 2(C) and repealing subpart 9. The Department requests approval of these revisions pursuant to Minn. Stat. § 14.388, subd. 1(3), which provides that:

If an agency for good cause finds that the rulemaking provisions of this chapter are unnecessary, impracticable, or contrary to the public interest when adopting, amending, or repealing a rule to . . . incorporate specific changes set forth in applicable statutes when no interpretation of law is required . . . the agency may adopt, amend, or repeal the rule after satisfying the requirements of subdivision 2 and section 14.386, paragraph (a), clauses (1) to (4).

The Office of Administrative Hearings must review the Department's filing and must approve or disapprove the rule within 14 days after submission of the rule by the agency.¹ As part of that review, the Office of Administrative Hearings must determine whether the agency has provided adequate justification for its use of the good cause exemption,² as well as determining whether the rule meets the requirements of Minn. R. 1400.2100, items A and D to G (2017).³

II. Notice and Comment

An agency proposing to adopt, amend, or repeal a rule under Minn. Stat. § 14.388 must give electronic notice of its intent in accordance with Minn. Stat. § 16E.07, subd. 3 (2018), and notice by United States mail or electronic mail to persons who have registered their names with the agency under Minn. Stat. § 14.14, subd. 1a.⁴ The agency must give such notice no later than the date the agency submits the proposed rule for review to the Office of Administrative Hearings and must include:

- (1) the proposed rule, amendment, or repeal;
- (2) an explanation of why the rule meets the requirements of the good cause exemption . . . ; and
- (3) a statement that interested parties have five business days after the date of the notice to submit comments to the Office of Administrative Hearings.

Compliance with public notice requirements regarding rules to be adopted under the good cause exemption is particularly important. "Exempt rulemaking is an

¹ Minn. Stat. § 14.386(a)(3); Minn. R. 1400.2400, subp. 3.

² Minn. Stat. § 14.388, subd. 1.

³ Minn. R. 1400.2400, subp. 3.

⁴ Minn. Stat. § 14.388, subd. 2.

exceptional procedure,”⁵ that bypasses full notice and hearing procedures designed to comply with one of the stated purposes of the Administrative Procedure Act, to “increase public participation on the formulation of administrative rules.”⁶

In this proceeding, the Department provided notice as required by statute. The Department provided electronic notice to the public of this rulemaking under Minn. Stat. § 16E.07, subd. 3(2), by publishing notice of its intent to adopt the proposed rule revisions on its website.⁷ The Department also sent notice by U.S. Mail or by email to all persons and associations on the rulemaking mailing list who provided the Department with their mailing or email address, as well as by email to all persons subscribed to the Department’s Rules and Individual Income Tax Updates email list.⁸ The Department also certified the accuracy of its mailing list as of December 4, 2018.⁹

The Department’s notice was accompanied by a copy of the proposed rules, along with the Findings and Statement of Supporting Reasons regarding the rulemaking, which are to be incorporated by reference into the Commissioner’s Order Adopting Rules. The notice and accompanying documents specifically explain the Department’s use of the good cause exemption. Finally, the notice advised that interested parties had five business days after the date of the notice to submit comments to the Office of Administrative Hearings.

The period for any public comments regarding the proposed revisions to Minn. R. 8019.0405 closed at 4:30 p.m., on December 17, 2018. The Office of Administrative Hearings received no comments regarding the proposed rule changes.

III. The Rules are Approved

Under Minn. Stat. § 270C.06 (2018), “[t]he commissioner shall, from time to time, make, publish, and distribute rules for the administration and enforcement of state revenue laws.” Minn. R. 8019.0405 governs the requirements for combined group franchise tax returns. The Department contends that the rule revisions it proposes are required to conform the rule to statutory changes enacted in 2009 and 2013.

The Department proposes to amend rule parts 2(B) and 2(C) of Minn. R. 8019.4045 as follows:

B. “Designated Member” means the member of a combined group designated by the combined group. ~~The designated member must be subject to tax in Minnesota under Minnesota Statutes, section 290.015.~~

⁵ *Jewish Cmty. Action v. Comm’r of Public Safety*, 657 N.W.2d 604, 610 (Minn. Ct. App. 2003) (citing *Buschmann v. Schweiker*, 676 F.2d 352, 357 (9th Cir. 1982)).

⁶ Minn. Stat. § 14.001(5).

⁷ See Certificate of Mailing the Notice of Intent to Adopt Rules Without a Public Hearing to the Rulemaking Mailing List.

⁸ *Id.*; see also Minn. Stat. § 14.14, subd. 1a.

⁹ See Certificate of Accuracy of the Mailing List.

C. “Member” means a corporation that is part of a combined group ~~that is subject to tax in Minnesota under Minnesota Statutes, section 290.015.~~

In 2009, the legislature amended Minn. Stat. § 289A.08 to provide that a corporation that is part of a unitary business group need not be subject to tax in Minnesota in order to be the designated member on the corporate franchise tax return of the unitary business group.¹⁰ Additionally, a member of a unitary business group is not required to be subject to tax in Minnesota in order to be a member on the group’s corporate franchise tax return.¹¹ The Department proposes to amend rule parts 2(B) and 2(C) to delete obsolete language contrary to current statute, as these rules presently require a member or designated member to be subject to taxation in Minnesota.

The Department also proposes to repeal subpart 9 of Minn. R. 8019.0405. This rule subpart currently states:

Subp. 9. **Computation of tax.** The designated member shall combine the separate franchise tax of each member to determine the combined group’s franchise tax liability for the taxable year in which a single return is filed.

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. In 2013, the legislature amended Minn. Stat. § 290.17 to provide that a unitary business group must combine all sales of the unitary business in Minnesota into the sales apportionment factor, including the sales of unitary subsidiaries that do not file in Minnesota.¹² This statutory amendment rendered the process described in subpart 9 obsolete and the rule is contrary to current law.

The Administrative Law Judge determines that the Department has statutory authority to adopt the proposed rules. The Administrative Law Judge further determines that the Department has established it may use the good cause exemption permitted under Minn. Stat. § 14.388, subd. 1(3) in order to “incorporate specific changes set forth in applicable statutes when no interpretation of law is required.” The changes proposed by the Department are necessitated by statutory revisions and no interpretation of law is required. Finally, the Administrative Law Judge concludes that as the proposed rule amendments and repeal are necessary to conform to statutory language already in effect, the rules may be approved under the standards articulated in Minn. R. 1400.2100(A), (D)-(G).

J. P. D.

¹⁰ See 2009 Minn. Laws ch. 88, art. 7, § 1; *see also* Minn. Stat. § 289A.08 (2018).

¹¹ See 2009 Minn. Laws ch. 88, art. 7, § 1; *see also* Minn. Stat. § 289A.08.

¹² See 2013 Minn. Laws ch. 143, art. 6, § 28; *see also* Minn. Stat. § 290.17 (2018).