

Department of Revenue

DUAL NOTICE: Notice of Intent to Adopt Rules Without a Public Hearing Unless 25 or More Persons Request a Hearing, and Notice of Hearing if 25 or More Requests for Hearing Are Received; OAH 23-9032-39775; Revisor's ID: R-04840.

Proposed Amendment to Rule Governing Petroleum Tax Refunds for Power Take-Off Units or Auxiliary Engines, *Minnesota Rules*, Part 8125.1301.

Introduction. The Minnesota Department of Revenue ("Department") intends to adopt rules without a public hearing following the procedures in the rules of the Office of Administrative Hearings ("OAH"), *Minnesota Rules*, parts 1400.2300 to 1400.2310, and the Administrative Procedure Act, *Minnesota Statutes*, sections 14.22 to 14.28. However, if 25 or more persons submit a written request for a hearing by 4:30 p.m. on **Friday, August 30, 2024**, the Department will hold a virtual public hearing on **Tuesday, November 19, 2024 at 9:30 am**. You can participate in the virtual hearing, which will be conducted by an administrative law judge from the Office of Administrative Hearings, via WebEx by using this link along with the associated access code and password:

<https://minnesota.webex.com/minnesota/j.php?MTID=m95dbc6be1f4889c5d0ecd26fc7cd846c>

Meeting Number (access code): 2489 990 0846

Password: X7jMxdAGP89

For audio connection only, join the virtual hearing by phone:

Call: 1-415-655-0003 (US Toll)

Access code: 2489 990 0846

To find out whether the Department will adopt the rules with or without a hearing, contact the agency contact person (see immediately below) after **Friday, August 30, 2024** and before **Tuesday, November 19, 2024**.

Agency Contact Person. Submit any comments or questions on the rules or written requests for a public hearing to the agency contact person:

Jim Jordan, Attorney
Appeals, Legal Services, and Disclosure Division
Minnesota Department of Revenue
600 North Robert Street
Mail Station 2220
St. Paul, MN 55146
jim.jordan@state.mn.us

You may also submit written comments or hearing requests via the OAH Rulemaking eComments website (<https://minnesotaoah.granicusideas.com/discussions>).

Subject of Rules. Because the Rule has not been updated since 1998, the Department is proposing changes to align the rule with current terminology and current industry and Department practices (“Rule Amendment”). Below is a summary of the proposed changes:

Subpart 2. Claim for refund

The current rule allows for refund claims to be made monthly or annually. The Department proposes changing the rule so it allows only monthly returns. While this is a significant textual change, it will have no practical effect. The reason – for more than a decade, only monthly returns have been possible due to limitations in the petroleum tax refund processing system. Specifically, the relevant software is not able to process a refund claim with more than one tax rate. Therefore, taxpayers are already submitting only monthly returns. This subpart is also amended to make a number of minor clarifications regarding monthly claim filings, including: 1) when measuring whether a claim is filed within one year from the fuel purchase date, the postmark date is the filing date; 2) eliminating the requirement that the sales ticket be an “original” or be accompanied by a “signed dealer affidavit” given technology now provides other verification tools; 3) clarifying that an amended refund claim must be filed for claim corrections; and 4) clarifying that only one refund claim per each month period is allowed.

Subpart 3. Records to be maintained

In this subpart, the Rule Amendment makes minor clarifications and minor terminology updates regarding what information must be on each sales ticket or invoice, and how some of that information must be printed or numbered. The Rule Amendment also proposes presenting the required information in a list to improve readability.

Subpart 5. Optional means of calculating refund; information needed for refund claim

The Department proposes updating this subpart’s terminology in three ways. First, we propose replacing the outdated term “onboard computer” with the more general term “technology” so that taxpayers with the ability to accurately record the amount of fuel used to propel the PTO, regardless of the specific technology, meet the requirement. Second, we propose replacing “printouts” with “statements” so that digital and hard-copy printouts clearly meet the requirement. Third, we propose replacing “computer information” with “technology-generated information” so that taxpayers qualify based on the quality of the information, and not the specific technology that produced it.

A copy of the proposed rules is published in the *State Register* and attached to this notice.

Statutory Authority. The Department has specific authority to promulgate rules related to Chapter 296A petroleum tax. *Minnesota Statutes*, section 296A.02, subdivision 3 reads: “The commissioner [of revenue] may adopt rules relating to administration and enforcement of laws regulating the sale, distribution, and use of petroleum products and special fuel.”

Comments. You have until 4:30 p.m. on **Friday, August 30, 2024** to submit written comment in support of or in opposition to any provision in the proposed rules. Your comment must be in

writing and submitted to the agency contact person or OAH eComments website (<https://minnesotaoah.granicusideas.com/discussions>). Comment is encouraged. Your comment should identify the portion of the proposed rules addressed, the reason for the comment, and any suggested change to the rule language. Any comment regarding the legality of the proposed rules must also be made during this comment period.

Request for a Hearing. In addition to submitting comment, you may also request that the Department hold a hearing on the rules. You must make your request for a public hearing in writing, and the agency contact person (see above) must receive the request by 4:30 p.m. on **Friday, August 30, 2024**. You must include your name and address in your written request. In addition, you must identify the portion of the proposed rules that you object to or state that you oppose the entire rule proposal. You are also encouraged to state the reason for the hearing request, including any requested changes to the rule proposal. Any request that does not comply with these requirements is not valid and the Department cannot count it when determining whether it must hold a public hearing.

Withdrawal of Requests. If 25 or more persons submit a valid written request for a hearing, the Department will hold a public hearing unless enough persons withdraw their requests in writing. If enough requests for hearing are withdrawn to reduce the number below 25, the Department must give written notice of this to all persons who requested a hearing, explain the actions the Department took to effect the withdrawal, and ask for written comments on the Department actions to effect the withdrawal. If a public hearing is required, the Department will follow the procedures in *Minnesota Statutes*, sections 14.131 to 14.20.

Alternative Format/Accommodation. Upon request, this information can be made available in an alternative format, such as large print, braille, or audio. To make such a request or if you need an accommodation to make the hearing accessible, please contact the agency contact person (see above).

Modifications. The Department might modify the proposed rules, either because of public comment or because of the rule hearing process. It must support modifications using data or comments submitted to the Department or presented at the hearing. Before the Department can adopt substantially different rules, it must follow the procedures under *Minnesota Rules*, part 1400.2110. If the proposed rules affect you in any way, the Department encourages you to participate in the process applicable to substantive changes to the proposed rules.

Cancellation of Hearing. The Department will cancel the hearing scheduled for Tuesday, **November 19, 2024** if the Department does not receive requests for a hearing from 25 or more persons. If you requested a public hearing, the Department will notify you before the scheduled hearing to let you know whether the hearing will be held. You may also contact the agency contact person (see above) after **Friday, August 30, 2024** to find out whether the hearing will be held.

Notice of Hearing. If 25 or more persons submit valid written requests for a public hearing, the Department will hold a hearing using the procedures in *Minnesota Statutes*, sections 14.131 to 14.20. The hearing will be held on the date and at the time and place listed in the “Introduction” section of this notice. The hearing will continue until all interested persons attending the hearing

have been heard or until the end time of 4:30 p.m., whichever occurs first. As noted above, Administrative Law Judge Suzanne Todnem is assigned to conduct the hearing. Judge Todnem's Legal Assistant, William Moore, can be reached at the Office of Administrative Hearings, 600 North Robert Street, P.O. Box 64620, Saint Paul, Minnesota 55164-0620, telephone (651) 361-7900, fax (651) 539-0310, and william.t.moore@state.mn.us.

Hearing Procedure. If the Department holds a hearing, you and all interested or affected persons, including representatives of associations or other interested groups, will have an opportunity to participate. Hearing exhibits, if any, will be posted on the Department website in advance of the hearing. You may present your views orally at the hearing or in writing at any time before the hearing record closes. All evidence presented should relate to the proposed rules. You may also submit written material to the Administrative Law Judge to be recorded in the hearing record for five working days after the public hearing ends. At the hearing, the Administrative Law Judge may order an extension of the five-day comment period to no more than 20 calendar days. Following the comment period, there is a five-working-day rebuttal period when the Department and any interested person may respond in writing to any new information. New evidence may not be submitted during the five-day rebuttal period.

All post-hearing comments must be submitted to Administrative Law Judge Todnem no later than 4:30 p.m. on the due date. The OAH encourages persons submitting comments or responses to use OAH's Rulemaking eComments website (<https://minnesotaoah.granicusideas.com/discussions>). If using the eComments website is not possible, you may submit post-hearing comments in person, via United States mail, or by fax addressed to Administrative Law Judge Todnem using the contact information listed in the "Notice of Hearing" section (see above).

All comments or responses will be available for review at the offices of the Department or on the Department website (<https://www.revenue.state.mn.us/minnesota-administrative-rules>). The hearing procedure is governed by *Minnesota Rules*, parts 1400.2000 to 1400.2240, and *Minnesota Statutes*, sections 14.131 to 14.20. You may direct questions about the procedures to Administrative Law Judge Todnem using the contact information listed in the "Notice of Hearing" section (see above).

Statement of Need and Reasonableness. The statement of need and reasonableness summarizes the justification for the proposed rules, including a description of who will be affected by the proposed rules and estimate of the probable cost of the proposed rules. You may access the statement on the Department's website (<https://www.revenue.state.mn.us/minnesota-administrative-rules>). You may also obtain a copy for the cost of reproduction by contacting the agency contact person (see above).

Lobbyist Registration. *Minnesota Statutes*, chapter 10A, requires each lobbyist to register with the State Campaign Finance and Public Disclosure Board. Please direct questions about this requirement to the Campaign Finance and Public Disclosure Board at: Suite #190, Centennial Building, 658 Cedar Street, St. Paul, Minnesota 55155, telephone (651) 539-1180 or 1-800-657-3889.

Adoption Procedure if No Hearing. If no hearing is required, the Department may adopt rules after the comment period and after the Department submits the rules and supporting documents to the OAH for legal review. To receive notice of when the rules are submitted to the OAH for review, to receive a copy of the adopted rules, or to register with the Department to receive notice of future rule proceedings, submit your request to the agency contact person (see above).

Adoption Procedure after a Hearing. If a hearing is held, after the close of the hearing record, the Administrative Law Judge will issue a report on the proposed rules. You may ask to be notified of the date that the Administrative Law Judge's report becomes available, and you can make this request at the hearing or in writing to the Administrative Law Judge. You may also ask to be notified of the date the Department adopts the rules and the date the rules are filed with the Secretary of State. Please make these requests at the hearing or by writing to the agency contact person (see above).

Order. I order the rulemaking hearing be held at the date, time, and location listed above.

Date: July 22, 2024

Paul Marquart, Commissioner
Minnesota Department of Revenue