

CHAPTER 8020
DEPARTMENT OF REVENUE
INCOME AND FRANCHISE TAXES
INCOME APPORTIONMENT

8020.0100 PETITION FOR APPLICATION OF OTHER THAN PRESCRIBED APPORTIONMENT FORMULA. 8020.0150 APPORTIONMENT FORMULAS REQUIRED BY COMMISSIONER.

8020.0100 PETITION FOR APPLICATION OF OTHER THAN PRESCRIBED APPORTIONMENT FORMULA.

Subpart 1. **In general.** Minnesota Statutes, section 290.20, subdivision 1, permits a departure from the apportionment provisions of Minnesota Statutes, section 290.191. If the methods of apportionment required by that section do not fairly reflect all or any part of the taxable net income allocable to this state, the taxpayer may petition for the determination of net income by use of another method. The taxpayer must petition for use of another method of determining taxable net income allocable to this state. The petition must be filed at the time of or at a time prior to the time the return or amended return is filed. Acceptance of a return using a method of apportionment other than the method prescribed by Minnesota Statutes, section 290.191, is not approval of the petition and other method by the commissioner.

Subp. 2. **Time of petition.** Minnesota Statutes, section 290.20, requires that any taxpayer applying for a deviation from the apportionment methods prescribed by Minnesota Statutes, section 290.191, must file a petition in the form required by the commissioner. The petition must be filed before or at the same time as the return or amended return is filed using a method other than the methods prescribed by Minnesota Statutes, section 290.191.

Subp. 3. **Form of petition.** The petition filed under this part shall be in the form required by the commissioner and shall include:

- A. the name, address, and tax identification number of the taxpayer;
- B. in the case of a corporation, the state of incorporation and the location of the principal office or place of business;
- C. the tax year of the petition. If more than one year is covered by the petition, the summary statement required by item E must demonstrate the ongoing necessity of departure from the apportionment provisions prescribed by Minnesota Statutes, section 290.191;
- D. a statement of the kind or kinds of business activity in which the taxpayer is engaged and from which the income was derived for the taxable year stated in the petition;
- E. a summary statement of the facts upon which the taxpayer relies to demonstrate that the application of the methods prescribed by Minnesota Statutes, sections 290.17 and 290.191, will be unfair as applied to the taxpayer, and that the method proposed will fairly reflect the taxable net income properly allocable to this state; and
- F. a hypothetical computation of Minnesota taxable net income in accordance with the proposed method of apportioning income.

Subp. 4. **Additional information.** The commissioner may, after receipt and review of the petition, require additional information from the taxpayer which is necessary to determine whether the apportionment provisions prescribed by Minnesota Statutes, section 290.191, will be unfair when applied to the taxpayer. The 45-day period for approval or rejection of the petition, contained in subpart 5, is suspended from the date of the letter requiring additional information to the date of receipt by the commissioner of the required information.

Subp. 5. **Approval or rejection of petition.** The commissioner shall approve or reject a petition filed under this part within 45 days after the date of receipt of the petition.

However, failure of the commissioner to act within 45 days does not constitute approval of a petition. If the petition is approved more than 15 days prior to the due date of the first estimated tax return, the taxpayer must file that return and each return thereafter in the year or years covered by the petition using the approved method and attaching thereto a copy of the approved petition with its first payment. If the petition is rejected or if the taxpayer has not received an order approving or rejecting the petition prior to the due date of the first estimated tax payment, the taxpayer must file estimated tax payments using the apportionment methods prescribed by Minnesota Statutes, section 290.191. If the taxpayer's petition is approved after an estimated tax payment is made or a return is filed, the taxpayer may amend its return, estimated tax filings, and payments using the approved method and attaching thereto a copy of the approved petition.

Subp. 6. **Appeals.** An order by the commissioner rejecting any petition filed under this part constitutes an order from which an appeal may be made to the tax court pursuant to Minnesota Statutes, section 271.06.

Statutory Authority: *MS s 270.06; 270C.06*

History: *18 SR 1890; L 2005 c 151 art 1 s 114*

8020.0150 APPORTIONMENT FORMULAS REQUIRED BY COMMISSIONER.

Minnesota Statutes, section 290.20, subdivision 1, grants the commissioner the authority to require a taxpayer to use a method of apportionment other than that prescribed in Minnesota Statutes, section 290.191, if:

A. the statutory method does not fairly reflect all or any part of the taxable net income apportionable to Minnesota; and

B. the commissioner's method fairly reflects net income. For purposes of this part, the statutory method shall be presumed to not fairly reflect a taxpayer's taxable net income if the statutory method does not fairly represent the extent of the taxpayer's net income in this state.

When the commissioner has determined that the statutory apportionment formulas do not fairly reflect net income as applied to a specific industry, the commissioner may adopt apportionment rules for uniform application to that industry. If rules have been adopted with respect to a specific industry, a taxpayer's petition under part 8020.0100 must demonstrate the unfairness of the application of the industry-specific rule as applied to it.

Statutory Authority: *MS s 270.06; 270C.06*

History: *18 SR 1890; L 2005 c 151 art 1 s 114*