

MN MAAO: TAX COURT 101 - BASICS AND LITIGATION

This document was initially drafted for a 2007 presentation to MN County Attorney's. I have attempted to update the original document with the most current statutory requirements and information with Tax Court employees. Again, I am not an attorney. I am not providing legal advice. This information does contain some very useful information and an overview of the tax court process.

Basics and Litigation

The purpose of this material is to provide a general overview of the various stages of the tax petition process and general description of the tax court litigation process. Hopefully this mix of discussion of statute, limited case law and practical realities of litigation in the tax court will be of use to your office.

- I. The Court and its Judges
 - a. The tax court as we currently think of it was created by Chapter 307 of the 1997 session laws. Under M.S. 271.01, subd. 1, Membership, **appointment, qualifications.**

There is hereby created a Tax Court as an *independent agency of the executive branch of the government*. The Tax Court is a *court of record*. The Tax Court shall consist of *three judges*, each of whom shall be *a citizen of the state, appointed by the governor, by and with the advice and consent of the senate, for a term of six years commencing at the expiration of the preceding term*. Any vacancy shall be filled by the governor for the unexpired term, subject to confirmation by the senate. The terms of the judges shall end on the first Monday in January. The terms of the judges shall be staggered, the term of one judge expiring on the first Monday of each odd-numbered year. Judges may serve until their successors are appointed and qualify. They shall be selected on the basis of their experience with and knowledge of taxation and tax laws. The judges of the Tax Court shall be subject to the provisions of the Minnesota Constitution, article VI, section 6, the jurisdiction of the commission on judicial standards, as provided in sections [490A.01](#) and [490A.02](#), and the provisions of the Code of Judicial Conduct.

- b. Subd. 5. **Jurisdiction.**

The Tax Court shall have statewide jurisdiction. Except for an appeal to the supreme court or any other appeal allowed under this subdivision, the Tax Court shall be the sole, exclusive, and final authority for the hearing and determination of all questions of law and fact arising under the tax laws of the state, as defined in this subdivision, in those cases that have been appealed to the Tax Court and in any case that has been transferred by the district court to the Tax Court. The Tax Court shall have *no jurisdiction in any case that does not arise under the tax laws of the state or in any criminal case or in any case determining or granting title to real property or in any case that is under the probate jurisdiction of the district court*. The Small Claims Division of the Tax Court shall have jurisdiction only as provided in section [271.21, subdivision 2](#). The Tax Court shall have no jurisdiction in any case involving an order of the state board of equalization unless a taxpayer contests the valuation of property. Laws governing taxes, aids, and related matters administered by the commissioner of revenue, laws dealing with property valuation, assessment or taxation of property for property tax purposes, and any other laws that contain provisions authorizing review of taxes, aids, and related matters by the Tax Court shall be considered tax laws of this state subject to the jurisdiction of the Tax Court. This subdivision shall not be construed to prevent an appeal, as provided by law, to an administrative agency, board of

equalization, review under section [274.13, subdivision 1c](#), or to the commissioner of revenue. Wherever used in this chapter, the term commissioner shall mean the commissioner of revenue, unless otherwise specified.

II. The Judges

271.02 OFFICERS.

- a. The judges of the Tax Court shall *choose a chief judge*. The chief judge shall coordinate and make hearing assignments, and appoint employees who shall be in the unclassified service. The chief judge may delegate administrative duties to the employees appointed. *The court administrator of district court in each county shall be the court administrator of the Tax Court in that county.* Filing fees and library fees deposited with the court administrator of district court in the capacity of court administrator of the Tax Court and in cases originally commenced in district court and transferred to the Tax Court shall be retained by the court administrator of district court. The court administrator of the Tax Court in each county shall be subject to the supervision of the administrator in Tax Court matters.
- b. The current Chief Judge of the tax court is the Honorable Bradford Delapena. Governor Mark Dayton appointed Judge Delapena to the Minnesota Tax Court on November 30, 2012. Delapena served as Chief Judge from December 2012 to January 2015, and from June 2017 to the present. Judge Delapena earned a B.A. from University of Pittsburgh in 1986 (Philosophy & Economics), and a J.D. from the University of Wisconsin Law School in 1991 (cum laude). His official biography states that he has twenty years of legal practice, specializing in appellate law, both criminal and civil, and state tax controversies.
- c. The second most senior judge is the Honorable Joanne Turner. Joanne Turner has a bachelor's degree in accounting with honors from The Ohio State University and a Ph.D. in accounting from the University of Minnesota. She taught accounting and taxation at the University of Minnesota, at Ohio State, and at the Rochester Institute of Technology in Rochester, New York, for more than a dozen years before earning her J.D. with honors from the University of Michigan in 1992. From 1993 to 2005, she was a commercial litigator and appellate attorney at Mackall, Crouse & Moore in Minneapolis, where she was a partner and served on the firm's Board of Governors. *In 2005, Judge Turner became counsel to the Minnesota Supreme Court, specializing in review of tax court appeals among other things, and where she served until her appointment to the Tax Court in December 2012.*
- d. The most recent addition to the tax court is Judge Tamar Gronvall. Judge Gronvall joined the tax court in January, 2017. Judge Gronvall earned her B.A. from the University of Minnesota in 1996, cum laude with a double major in Political Science and Philosophy and a J.D. from the University of Minnesota Law School in 2000. From 2001 to 2004 Judge Gronvall worked in private practice at the law firms of Terhaar, Archibald, Pfefferle & Griebel, LLP and Leonard Street and Deinard (n/k/a) Stinson Leonard Street handling a variety of civil litigation matters including medical malpractice, construction litigation and insurance coverage disputes. In August 2004 she was appointed as an Assistant Attorney General in the Health Licensing Division of the Office of the Minnesota Attorney General. In 2007 she was promoted to Manager of the Tax Litigation, Education, Bankruptcy and State Pension Divisions managing over a dozen attorneys and support staff providing legal representation to numerous state agencies. As Manager, she handled a wide variety of

state tax controversies including cases involving corporate franchise tax, individual income tax, sales and use tax, withholding tax, collection and other related state tax matters. From 2016 to 2017 Judge Gronvall served as the General Counsel in the Office of Legal Services at the Minnesota Department of Commerce, where she managed and lead a team of attorneys advising the agency in the areas of consumer protection, banking, insurance, energy, insurance fraud, contracts, and employment law.

- The legislature has not appropriated a great deal of money to the tax court for support staff. While the court has a Court Administrator - Lisa Pister, a Paralegal – Joanne Prillaman and an Administrative Assistant – Mary LaBore. The judges now have two law clerks to assist in the preparation of decisions and orders. They are Melissa Houghtaling and Katherine Swanson.
- In the past, many assessing offices have had major concerns with the lack of communication between their County Attorney’s Office and Assessors. Many times, Assessors are not receiving scheduling orders, and other court documents. These court documents are time sensitive and when they are not relayed onto the Assessor, important deadlines for response are missed. In a continuous effort to enhance the current Tax Court process and procedures, MN Tax Court has developed a new software program that will allow public access of many of these documents. Assessing offices will soon be able to have direct access to the active cases within their county.

III. Heading Off the Tax Appeal

- a. While we Assessors have very little control on who files, it’s important to try to make the connection with the property owner when you have that opportunity. By taking the time in the very beginning to explain your position by explaining the steps taken to derive at either their valuation or classification concern, many times they will reluctantly accept the information.
- b. An Assessor’s Office that has continuity and experience can sometimes prevent a tax appeal from even being filed by being open and receptive to communication with those taxpayers on an ongoing basis. For most of those taxpayers the major methodology for determination of value will probably be through an income approach when events happen that cause a significant downturn in income for the property. If that information can or is shared with the Assessor’s Office significantly in advance of evaluation dates, or at the Local Appeal level, an adjustment can be made. This is the most cost effective approach to heading off a formal tax petition.
 - Some offices make attempts at contacting their commercial property owners directly prior to setting their assessment. This may occur during the quintile review process with a letter being mailed to your commercial, industrial or apartment property owners letting them know that their property is up for reassessment.
 - Include the basic rationale for collecting the data, a list of beneficial documentation, explain that their pertinent data is kept confidential, include your contact information and on the reverse side of the letter include the County Assessor’s Office Data Practices Rights Advisory.

- A similar letter can be submitted to Commercial/Industrial owners during their appeal at the local level. Our office has a separate form for Apartment Property Owners that also includes a Rental Market Study form.
 - Your office should adhere to the record retention schedule.
 - This letter may be of use in the future to demonstrate to the court that attempts were made to either gain access to their property in the event that the petitioner fails to grant entrance.
- c. The owners that ultimately file have either been approached by an attorney or tax representative, seek legal counsel to fight for them after their attempts have failed or file Pro se (Latin meaning “on behalf of themselves”).

Classification

Disputes stemming from classification issues present a separate set of dialog, communication and statutes. The petition may be the result of a denied Exempt Application or you may have been served by a law firm with a Mistakenly Billed Taxes claim.

272.02 EXEMPT PROPERTY.

If your dispute is the result of the denial of an Exempt Application, it is helpful for the applicant to clearly understand why they were denied. If after you have communicated the statutory requirements followed along with decisions made by the Tax Court that may have aided you in your denial and no additional information pertinent information was left out, you may have unfortunately reached an impasse.

278.14 REFUNDS OF MISTAKENLY BILLED TAXES.

Subdivision 1.Applicability. A county must pay a refund of a mistakenly billed tax as provided in this section. As used in this section, "mistakenly billed tax" means an amount of property tax that was billed, to the extent the amount billed exceeds the accurate tax amount due to a misclassification of the owner's property under section [273.13](#) or a mathematical error in the calculation of the tax on the owner's property, together with any penalty or interest paid on that amount. This section applies only to taxes payable in the current year and the two prior years. As used in this section, "mathematical error" is limited to an error in:

- (1) converting the market value of a property to tax capacity or to a referendum market value;
- (2) application of the tax rate as computed by the auditor under sections [275.08, subdivisions 1b, 1c, and 1d](#); [276A.06](#), subdivisions 4 and 5; and [473F.07](#), subdivisions 4 and 5, to the property's tax capacity or referendum market value; or
- (3) calculation of or eligibility for a credit.

The remedy provided under this section does not apply to a misclassification under section [273.13](#) that is due to the failure of the property owner to apply for the correct classification as required by law.

Subd. 2.Procedure. A refund of mistakenly billed tax must be paid upon verification of a claim made in a written application by the owner of the property or upon discovery of the mistakenly billed tax by the county. Refunds of overpayments will be made as provided in section [278.12](#).

Subd. 3.Appeals. If the county rejects a claim by a property owner under subdivision 2, it must notify the property owner of that decision within 90 days of receipt of the claim. The property owner may appeal that decision to the Tax Court within 60 days after receipt of a notice from the county of the decision. Relief granted by the Tax Court is limited to current year taxes, and taxes in the two prior years.

- In my personal experience, I work directly with our County Attorney’s Office prior to responding to this type of claim. If your County Attorney lacks the experience in dealing with this type of claim, I encourage them to reach out to the County Attorney Association for guidance. An additional resource is by reviewing decisions made by MN Tax Court. You can type in 278.14 in the search bar to read the various decisions.

IV. The Tax Petition

- a. Assuming the proactive efforts of the Assessor’s Office are not successful, a tax court appeal begins with filing and serving of a petition by the taxpayer or the taxpayer’s representative. The entity filing the petition is not necessarily or does not necessarily have to be the owner of the property. For example, a shopping mall that is owned by one entity but is under a long term lease by another is a situation in which both entities, depending on the relationship between the two, could file tax appeals. It is not particularly unusual to have duplicate petitions for the same property being filed in a given year. Assessors and county attorney’s should have a system in place to ensure that if such duplication of petitions does exist, that early contact is made with counsel for the respective parties in an effort to determine whether the matters will be consolidated or one petition will be dismissed and the other allowed to proceed.
- b. At least three essential aspects should be looked at when a petition is filed since each of those may, at the appropriate time, provide a basis for dismissal of the petition.
 - i. The first area that needs to be examined is in the nature of a statute of limitations. Except for a few unusual situations in which property might be reclassified or adjustments made during the course of the year, statutes generally require that a property tax petition must be filed and served by April 30 of the year in which the taxes are due. For example, if a petition is filed for payable year 2017 to challenge the classification or valuation of the property as of January 2, 2016, the petition must be filed and served on or before April 30, 2017. Minn. Stat. 278.01, subd. 1(c). The failure to file and serve the petition within that time period is jurisdictional.
 - ii. In addition to timing, a second important issue to examine as an immediate defense to a tax petition is whether or not all appropriate service has been done. The failure to make such service is also jurisdictional and will result in dismissal of the petition with prejudice. The petitioner must serve a copy of the petition upon the County Auditor, the County Attorney, the County Treasurer and three copies on the County Assessor. Minn. Stat. 278.01 subd. 1 (b). In counties where the Office of the County Treasurer has been combined with the Office of County Auditor, the County may elect to require the petitioner to serve the number of copies as determined by the county. However, if the county has taken no action in that regard, the statute requires that the combined office be served with two petitions. Once again, the failure to serve all copies by April 30 of the appropriate year is jurisdictionally defective even if some of the parties have been served. Counties should make sure they have in place a system by

which, upon receipt of a petition by one of the parties, it is confirmed that all other relevant parties have been served. If such service has not been made, the prudent County Attorney's Office will wait until April 30 before filing a dismissal motion so as to preclude the petitioner from correcting its mistake within the statutory period.

- iii. A third potential defense that exists for dismissal of tax petitions early in the proceeding are found in requirements of Minn. Stat. 278.03. Under subdivision 1 of that statute if the proceedings instituted by the filing of a tax petition have not been completed before May 16th next following the filing of the petition, the petitioner must pay to the County Treasurer 50% of the tax levied for the year against the property involved unless permission to continue the prosecution of the petition without such payment is obtained. Additional requirements exist under the statute if the file has not been completed by the following October 16 or November 16, depending on the classification of the property.
- iv. As a practical matter contested property tax petitions, given the workload of the court and the parties, rarely are completed with such speed. Therefore, the prudent practitioner will have in place a system by which the County Auditor or Treasurer's Office, as the case may be in your county, will cross reference all petitions to determine if taxes have or have not been paid the taxpayer may apply to the tax court for permission to continue to prosecution of the petition without payment. If it appears that the appeal is taken in good faith, or if there is a probable cause to believe the property may be held exempt from taxes or that the tax may be determined to be less than 50% of the amount levied and that it would work a hardship upon the petitioner to pay the taxes, after hearing or with the stipulation and consent of the county, the case can continue without payment of the taxes.
 - 1. This provision is significant because upon proof that taxes were not paid as required by Minn. Stat. 278.03, the statute provides for automatic dismissal of the petition. While the statute provides for "automatic dismissal" the reality is that the County Attorney's Office will need to prepare a Notice of Dismissal for Non-Compliance with payment of the statute. A sample of such a notice and proposed order may be obtained by contacting any of our Metro-County Attorney's Offices.
 - 2. Dismissal under this provision can be only a temporary victory. The petition will be "automatically reinstated" upon payment of the entire tax plus interest and penalties if the payment is made within one year of the dismissal. While reinstatement is guaranteed upon these circumstances, it is this writer's experience that many petitions dismissed for non-payment of taxes are not re-filed within that one year period.

V. **The Sixty Day Rule – Now the *Ninety* Day Rule**

- a. Tax petitioners for income producing property have turned litigation concerning the so called 60 day rule into a minor industry in itself. The **90** day rule for income producing property stems from Minn. Stat. 278.05, subd. 6. Under that statute information, including income and expense figures, verified net rentable areas and anticipated income and expenses for income producing property must be provided to the County Assessor no later than **90** days after the applicable filing deadline. (previously 60 days) Failure to provide the information required in this paragraph shall result in dismissal of the petition unless the failure to provide the information

was due to the unavailability of evidence at the time the information was due or the petitioner was not aware or informed of the requirement to provide this information. In the latter case, if the petitioner provides the required information within 30 days they become aware of this obligation the petition will not be dismissed.

- b. While courts and commentators have argued this provision is “draconian” in that it is effectively the death penalty for a case simply because of what practitioners argue to be a discovery violation, both the Supreme Court and the Minnesota Tax Court have strictly enforced these provisions. So long as the property is classified as income producing, the 90 day provisions will be applied. A 2007 decision of the tax court held that these provisions apply not only for cases in which the value of the subject property is under appeal, but also in a case which is purely in the nature of an exemption claim from property taxes. *Croixdale v. County of Washington (Tax Court 2007)*. In that case the taxpayer argued before Judge Ramstad that not all counties interpreted the statute to apply to exemption cases and therefore they should not be subject to dismissal. In light of Judge Ramstad’s rejection of this provision, counties that have historically made a distinction between exemption and valuation cases for 90 day rule purposes may wish to rethink their positions.
- c. The 90 day rule also has a 30 day “safe harbor” provision for those circumstances in which the taxpayer might claim that they were not aware of this requirement. In order to defeat this safe harbor some counties have prepared literature or some form of documentation to the taxpayer advising them of this requirement. The document, an example of which is included with these materials, was initially prepared to deal with potential ethical issues concerning contact with represented parties. Because of the abilities and sophistication of the staff of our office, it is often a very effective use of time and resources to allow counsel for the taxpayer to deal directly with the Assessor’s Office in informal discovery and even negotiation and resolution of the tax appeal. In order to protect the attorney so involved and get the County Attorney’s Office out from acting in the middle of these discussions a letter was prepared to authorize such contacts. The implementation of this “opening letter” also serves as “starting the clock” running on any defense of ignorance as to the 90 day rule. A sample is included in your materials.

VI. Discovery issues

- a. While the 90 day rule is often thought of in terms of some basic discovery for the Assessor’s Office, the statutes and rules under which the tax court operates, unless specifically stated to the contrary, are the same rules as exist under the Rules of Civil Procedure and those include discovery rules. The discovery tools available to a litigant in the district court, such as interrogatories, request for production of documents, requests for admissions and depositions, and are available to the tax court petitioner.
- b. In counties that have a higher volume of tax court petitions, it appears to be a fairly common practice for the Assessor’s Office to attempt to engage in informal discovery with representatives of the taxpayer to collect at least preliminary information and data that can be utilized in an effort to settle the tax appeal. Such data is addressed and classified under the Minnesota Government Data Practices Act as Assessor’s Data under Minn. Stat. 13.51. Under subdivision 2 of the statute, income property assessment data is generally classified as private data on individuals or non-public data if the data collected is not on individuals. To the extent such data is classified as private data on an individual, one area that some Assessor’s Offices may forget is the requirements that

they give the individual taxpayer a Data Practices Rights Advisory. The Data Practices Rights Advisory applies only to collection of private data and would not be necessary when collecting such information from someone not classified as an individual, such as a corporate business entity. However, as a matter of administrative convenience it may be easier for the Assessor's Office with the assistance of the County Attorney's Office to prepare a Data Practices Rights Advisory that could be utilized in all cases. A sample is included in the materials.

- c. In many higher volume jurisdictions, efforts by the Assessor's Office to obtain the necessary data to arrive at a value of the property may result in a request to initiate formal discovery. Typically such formal discovery will at least start with interrogatories and request for production of documents. A sample may be obtained by contacting your County Attorney's Office. Each case may need to be modified depending on the unique information that is sought to be collected from the taxpayer.
- d. In the metropolitan area there are of a couple dozen lawyers and/or law firms who specialize in tax court practice and who routinely file most of the cases. Request for production of documents can produce some documents that would not otherwise be provided with the 90 day submission.
- e. Some tax petitions appear to be filed without a thoughtful analysis as to whether or not there is in fact a valid basis for the petition. Therefore, depending on budget and resources, you may wish to consider a proactive approach in the form of taking depositions. In such a circumstance it is recommended that rather than attempt to depose any expert appraiser on behalf of the taxpayer, consider deposing the taxpayer or owner of the property. Any such deposition should be accompanied by a Subpoena Duces Tecum.
- f. **Long before the exchange of appraisals** – make sure you have as much information about the case as possible by reviewing other MN Supreme Court decisions, MN Tax Court decisions and obtain copies of court transcripts from the most relevant recent case(s). The information within these documents will help not only the County Attorney during trial, but most importantly the Assessor. These documents provide a roadmap to the detailed information that is needed within their appraisal report and the types of questions they will be asked while on the stand.

VII. The trial itself

- a. Minnesota Statute 278.07 subd. 6(b) provides that there would be an exchange of appraisals at least five days before trial. The failure of the petitioner to provide the county with its appraisal can result in disallowed appraisal testimony. The courts have enforced this provision, but even in cases in which an appraisal is not provided, ~~to~~ the taxpayer always has the ability to testify as to the opinion of value.
- b. Offer of Judgement or Settlement – A sealed offer filed with the court 10 or more days prior to trial. This protects the County from court costs.
- c. The two types of cases most frequently tried are classification cases and valuation cases. Within the area of classification the issues are primarily one of exemption, although sometimes other classifications such as agriculture or homestead may be tried.
- d. In the cases of Exemption – Institution of Purely Public Charity, the Minnesota Supreme Court has established the Northstar Test which establishes six factors for the Court to consider as to whether or not to grant an exemption. The Assessor's Offices use the same criteria at the administrative level upon the receipt of an application for exemption from property taxes. In several counties the administration decision to

grant or deny the status of property as exempt is made jointly with Assessor's Office and the County Attorney's Office that will have to defend the decision. Such a process is very helpful in that it allows the assessor the opportunity to know the strengths and weaknesses of any decision to grant or deny exemption and can prevent needless litigation. On the other hand it also helps the County Attorney's Office to prepare and begin to think of trial defenses long before the case is ultimately to be litigated before the tax court.

- e. Exemption cases typically are fact based. Under the law all properties are presumptively subject to taxation. It is the burden upon the taxpayer to prove it is entitled to an exemption. Valuation evidence and methodologies for valuation may still be relevant in exemption cases although those cases tend to focus more on the nature of the facility, what it is used for, its sources of revenue and what it spends its money on.
- f. The other primary class of cases that are litigated are valuation cases in which the taxpayer claims the property is valued in excess of market value or on occasion that it is improperly valued under a sales ratio analysis. If you are making an offer to settle a case where you have a sales ratio issue or discrimination issues. Never just agree to the posted Assessed Estimated Market Value, because it is statistically low, that is why you have a ratio issue. Always appraise the property to come up with the Estimated Market Value or Appraised Value, then apply the ratio. Ratio relief is the difference between 95.0% and the published 9 month Tax Court Ratio, *if it is less than 90.0%*. There is no ratio relief if the ratio is above 90.0%.
- g. The law does not require a party to proceed with an appraisal in order to try a valuation case. Under the statute the value established by the assessor is presumptively correct, but a decision of the Supreme Court has established that this is a presumption that apparently can be overcome relatively easily and therefore put the matter in issue once some evidence is presented in that regard. Therefore, valuation cases at least for larger property and income producing property tend to often boil down to a battle of appraisal experts.
- h. There is no time limit on the number of days in trial or over how long a period a trial can last.
- i. **Your appraisal is your appraiser's direct testimony.**
- j. All experts must be identified per the Scheduling Order.
- k. Taxpayers and landowners typically hire appraisers who will prepare an appraisal report. Upon receipt of that report it should be promptly and thoroughly reviewed with your assessor or other expert that you will utilize. Upon receipt of the identity of the opposing appraiser, it should be useful to contact the Department of Commerce to inquire as to the status of that individual's license and whether or not they have been subject to any disciplinary action.
- l. Appraisers licensed by the Department of Revenue can author appraisals and serve as an expert witness for tax court. Additionally, appraisers licensed through the Department of Commerce can also author an appraisal and serve as an expert witness as long as the appraisal is for a property type that is allowed by their licensure level.
- m. It is suggested that upon notification of the identity of the particular appraiser and receipt of his or her appraisal document to conduct basic internet and Westlaw searches of those individuals. Between marketing of themselves on the internet, reference in Westlaw as well as the Tax Court, many of these individuals have put themselves in the public domain or testified many times. It is not unusual for an

opinion or position taken in the case for which you are currently in litigation to be contrary to a position taken in another matter. Additionally, many of these appraisers will testify not only in tax court matters but in eminent domain matters. To that end a group of County Attorneys who practice in those areas have recently generated a serve list by which data and information about trends and practices in tax court, condemnation and appraisers involved in this area can be exchanged. Anyone interested in participating in that information in your capacity as a representative of the County Attorney's Office should contact your County Attorney's office.

- n. The trial itself is conducted before a tax court judge sitting without a jury. Trials are typically held in the county in which the real estate is located but on occasion the trial may be held at the tax court courtroom in Ramsey County. The trials will be held in that location only with the consent of the County involved and unless your jurisdiction is relatively close to the tax court offices in St. Paul, which are at the State Capital Judicial Center.
- o. Because the burden of proof is on the taxpayer, the taxpayer will go forward with presentation of evidence. The Rules of Evidence are not strictly binding on the Tax Court and depending on the individual Tax Court Judge, objections based on traditional rules of evidence will meet with mixed success. However, while such traditional evidentiary objections such as hearsay and best evidence are not likely to be sustained, a practitioner is encouraged to consider foundation objections to testimony. Experts may make assumptions not supported by fact or vague generalizations. Objections based on lack of foundation can reveal the assumptions used or reveal that the appraiser has failed to adequately gather the information upon which the assumptions set forth in their appraisal are made.
- p. Most tax court trial practitioners base the presentation of their evidence upon the appraisal document. Appraisal documents consist of a recognized format as approved by USPAP the Uniform Standards of Professional Appraisal Practices. USPAP standards generally indicate the appraisal methodology should consider three approaches, the sales comparison approach, the cost approach and the income approach to value. All three approaches do not need to be used, it is the appraiser's job to decide which approaches to value should be utilized in the analysis.
- q. Because the matter is tried in the tax court which consists of an experienced Judge, many foundation and preliminary matters may be dispensed with, and focus may be made on the substantive issues in dispute before the Court. Witnesses are all subject to direct, cross examination, redirect, and re-cross, and so on.
- r. After the taxpayer has rested its case, the County proceeds with its case. This will typically involve testimony by the County's appraiser from the Assessor's Office or retained outside appraiser. The County also has the option of retaining, if time permits, an individual to conduct what is known in the profession as a review appraisal. Review appraisals in the tax court arena are relatively uncommon, although they are allowed and have been considered by the court of litigation.
- s. All of the current tax court judges prefer written final argument as opposed to oral argument. Both parties typically order a transcript of the proceeding which can be helpful to reference for statements of fact and factual assertions. The final argument should be written in the similar nature and format to that of an appellate brief. In doing so there is the additional advantage of having your appellate brief significantly written in the event one party or the other is not happy with the decision of the tax court and seeks further review.

- t. Under the statutes the tax court is generally required to issue a decision within 90 days of when the case is submitted. On occasion the Court may need more time and will advise the parties of that fact. As a practical matter the tax court seems to almost always get its decision out within that 90 day period.

VIII. Decision and Post Decision

- a. The Court has the option of either affirming the assessor's market value, lowering it or raising it. The Court has raised a valuation when the facts warrant it.
- b. A party that prevails in the tax court may bring a Motion for Costs and Disbursements. Under the statute the prevailing party is entitled to \$200, statutory costs and such other reasonable costs and disbursements as determined by the Court, such as transcript and witness fees. The awarding of such costs and disbursements is a matter of discretion with the Court.
- c. A party who is unhappy with the decision of the Tax Court may make an appeal. An appeal of Tax Court decisions is made directly to the Minnesota Supreme Court and is covered by the Rules of Civil Appellate Procedure. The appeal is made on the record and is governed by the normal appellate process.

IX. Conclusion

- a. Win, lose or draw, one thing to be aware of is the decision in any given year in the tax court for a property is neither necessarily Res judicata or binding for the subsequent year. Each tax year stands or falls on its own in terms. Therefore, the fact that one year a property may or may not have won an exemption from taxation does not mean in the following year that property will remain in that classification. The fact that the case goes to trial and is even appealed to the Minnesota Supreme Court in which an exemption is denied, does not preclude the taxpayer from seeking an exemption for the very same property in the following year. See, Croixdale v. Washington County. Therefore, what we do know about the Tax Court is that as long as taxes are being paid and people don't want to pay them, you will have an ongoing source of business.

Sample Opening Letter

COUNTY ATTORNEY'S OFFICE DEPARTMENT LETTERHEAD

DATE

FILING ATTORNEY

ADDRESS

ADDRESS

VIA EMAIL ONLY: IF YOU HAVE THE LAW FIRM OR PRO SE FILING OFFICE'S E-MAIL ADDRESS

RE: PETITION NAME, COUNTY ATTORNEY FILE NO., COURT FILE NO.

Dear Mr. XYZ:

In response to the property tax petition recently served on XYZ County this letter sets forth the County's general approach in tax cases and the role of our Office and the Assessor's Office in a manner that is consistent with the Lawyers Rules of Professional Responsibility.

The Attorney's Office represents XYZ County in all Tax Court litigation. XYZ County desires an efficient and amicable resolution to your claim. To facilitate such resolution our Office consents to you, your office or a representative for which you assume responsibility under the Rules of Professional Conduct to contact the Assessor's Office directly to exchange information and negotiate a resolution. This consent does not include third parties such as third-party tax representatives. However, all correspondence with the Court or correspondence required by court order, such as a written position statement or a joint statement of the case, must be made directly to the Attorney's Office. The undersigned attorney is the assistant county attorney assigned to this matter.

Our Office will initially forego formal discovery to gather this data, assuming you share our goal to efficiently settle this case without going to trial and you will cooperate with the assessor's requests. Additionally, you may be required to timely provide to the assessor certain specific data on income producing property pursuant to Minn. Stat. § 278.05, subd. 6. When considering whether you will cooperate with the assessor's request, please keep in mind the assessment you are challenging is legally presumed correct. The County will not make an offer to settle a claim simply because a petition was filed. You are expected to provide credible evidence showing there is merit to the relief you request. The assessor will in good faith analyze your data and will provide an offer of adjustment if (s)he believes it is supported by the data. Additionally, due to the voluminous nature of petitions before the Tax Court, you can expect it will be a considerable period of time before the Court schedules this case for trial. Therefore, whether this case is resolved in satisfactory and

expedient fashion may largely be dependent on you and whether you are willing to cooperate with the Assessor's Office by disclosing all of the information that supports your claim. If you fail to cooperate with the assessor's requests for information, you can expect to be served with formal discovery requests pursuant to the rules of Civil Procedure. From that point on our Office's consent permitting you to directly contact the Assessor's Office is withdrawn and you must deal directly with the undersigned attorney unless expressly noticed otherwise.

It is the hope of this Office and the Assessor's Office that by establishing the above-parameters we can continue our effort to fairly and efficiently resolve these cases. As always, if you have any questions, please do not hesitate to contact me.

Very truly yours,
Your County Attorney Name, County Attorney
XYZ County, Minnesota

Name and contact information of Assistant County Attorney

Sample Informal Discovery sent by the Assessor's Office

March 21, 2019

Petitioners Attorney Name, Address

RE: Petitioner Name v. County of ABC *County 2 digit #-CV-17-xxxx*

Parcel ID(s):

Property Address:

Dear Mr. XYZ,

This letter is in response to your 90-Day Production of Documents regarding the above referenced petition. Thank you for the information that you have provided, however in order to determine a market value that is accurate, it is necessary for our office to also obtain the following:

- Copy of any and all appraisals, analysis, certificates of value or any other documents which lead to, or indicate a value of the subject property. More specifically, the appraisal report and any related documents used in conjunction with the mortgage document #1234537 dated November 1, 2016 in the amount of \$mortgage amount.
- A complete copy of the active listing advertised by Commercial or Residential brokerage firm name, agent(s) names and phone numbers listing the property. This active listing advertises an asking price of \$(asking price here).
- Copy of any and all leases that were in place specific to the assessment year(s) under appeal. The lease information should include copies of the lease(s) as well as, the lease rate by unit, the lease terms, the leased premise(s), and any supporting information.
- Detailed income and expenses, including a breakdown of the repairs & maintenance identified within the income and expense statement (12-month) ending December 31, 2016 and December 31, 2017.
- Copy of the commercial building drawing and or building layout which includes both exterior and interior dimensions and a complete copy of the building plans.

I will calendar this matter for four weeks from the date of this letter to determine if formal discovery is deemed necessary. Please feel free to contact me direct at your telephone # or via e-mail: your e-mail address

Thank you,

Assessor's Name Address & Contact

Always include the Assessor's Office Data Practices Rights Advisory on the back of this request

Sample Assessor's Office Data Practices Rights Advisory

RE: **ABC** County Assessor's Office Data Practices Rights Advisory

This advisory is being provide to you in compliance with Minnesota Statute § 13.04, subd. 2. In order to accomplish its statutory and legal duties in as fair and effective manner as possible for the taxpayer and the citizens of Minnesota, the **ABC** County Assessor's Office collects from individuals and business entities certain data. Minnesota Statute § 13.51, subd. 2 classifies some data collected from individuals or business entities concerning income producing property as private or non-public data. The data that is classified as private or non-public includes detailed income and expense figures, average vacancy factors, verified net rentable areas or net usable areas, as appropriate, anticipated income and expenses, projected vacancy factors and lease information. Because the statutes classify this data as private or non-public data its accessibility to members of the public is limited and the ABC County Assessor's Office is providing you this written notice in compliance with the Minnesota Government Data Practices Act.

The purpose and intended use of this data by the **ABC** County Assessor's Office is to use this data in the assessment process to determine the market value of real estate. This information may be used for a variety of purposes by **ABC** County and the State of Minnesota, including but not limited to, determination of value for property tax purposes.

You are not required to provide or supply the requested data. However, if you do not provide this information, depending on the circumstances, it could have an impact on your particular assessment and therefore your property taxes. If you filed a petition for review of assessment before the Minnesota Tax Court, failure to provide this information consistent with the requirements of Minnesota Statute § 278.05, subd. 6 could result in dismissal of your property tax petition. If you did not file a petition for review of your assessment as it relates to your property taxes, not providing this information will not be used against you in the determination of the value of the property, but it could impact the ability of the Assessor's Office to accurately determine the assessed market value of your property. That fact in turn might cause the affected property to be valued at a higher amount than you believe is appropriate.

The information that is provided is used by the **ABC** County Assessor's Office for the purposes described in this Notice. In order to administer the property tax system this information may be shared in whole or in part, or on occasion in the form of summary data in which identifying information concerning your property is removed, with other government officials such as the Minnesota Department of Revenue, the **ABC** County Attorney's Office and other tax and real property sections within **ABC** County and the State of Minnesota. As private or non-public data, the data you provide is also available to you, those individuals to which you have signed a written informed consent, as ordered by a court, or as otherwise authorized or required by state or federal statutes.

The **ABC** County Assessor's Office wishes to thank you in advance for your anticipated cooperation in the providing of this data.