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Apportionment/Jurisdiction

R.J.R. (f/k/a Jane Doe) v. Department of Revenue. TC-MD 210061R. Order on Plaintiff's motion to segregate Plaintiff's current and former names (unpublished). May 27, 2021.

Taxpayer filed a complaint using the pseudonym "Jane Doe" along with a complaint filed under seal using Taxpayer's real name and concurrently filed a motion to segregate Taxpayer's personal information. At the time, there were no Tax Court rules for *ex-parte* motions or the use of pseudonyms, although the Circuit Courts have rules on both topics. Taxpayer asserted that her name and sex were changed by a Circuit Court order which was sealed. Taxpayer asserted that "public disclosure of the unredacted documents would cause irreparable harm."

The court entered a temporary order protecting Plaintiff's name and personally identifiable information and gave the department time to respond. The department responded with concerns over collectability of any debt and the court's authority to grant the request. Taxpayer provided information to the department to assist in collection and provided the court with background information on the nature of her security concerns. Specially, Taxpayer presented credible proof that a stalker was using extraordinary means to locate her and had threatened harm.

The court was persuaded of the equities in the situation but was concerned with the use of pseudonyms because of the limitations contained in the Open Courts Doctrine, which is applicable in many states. Article 1, section 10 of the Oregon Constitution provides that "No court shall be secret, but justice shall be administered, openly and without purchase, completely and without delay, and every man shall have remedy by due course of law for injury done him in his person, property, or reputation." A literal reading of that constitutional provision might preclude the use of pseudonyms in all Oregon courts. However, in *Jack Doe 1 v. Corp. of Presiding Bishop of Church of Jesus Christ of Latter-Day Saints*, 352 Or 77, 280 P3d 377 (2012), the Supreme Court observed: "our cases have recognized that the command for openness in Article I, section 10, is subject to qualification for some aspects of court proceedings that, by well-established tradition, were and are conducted out of public view, as long as the framers intended the tradition of secrecy as to those proceedings to persist despite adoption of Article I, section 10." Thus, there is some justification for limiting access to sensitive records such as adoption, divorce, paternity, restraining orders, DHS and juvenile cases. However, there is statutory authority for the aforementioned cases but not for tax cases.

In granting Plaintiff's motion, the court relied in part of the analysis of the Ninth Circuit decision in *Does 1 through XXIII v. Advanced Textile Corp*., which stated: "a party may preserve his or her anonymity in judicial proceedings in special circumstances when the party's need for anonymity outweighs prejudice to the opposing party and the public's interest in knowing the party's identity. In cases where, as here, pseudonyms are used to shield the anonymous party from retaliation, the district court should determine the need for anonymity by evaluating the following factors: (1) the severity of the threatened harm; (2) the reasonableness of the anonymous party's fears; and (3) the anonymous party's vulnerability to such retaliation. The court must also determine the precise prejudice at each stage of the proceedings to the opposing party, and whether proceedings may be structured so as to mitigate the prejudice. Finally, the court must decide whether the public's interest in the case would be best served by requiring that the litigants reveal their identities."

The court also noted legislative mandate to the Magistrate Division that gives broad latitude in resolving cases using procedures to "achieve substantial justice." The court found all the factors in the Ninth Circuit *Does 1 through XXIII* were in favor of the taxpayer. Further, the court found the inherent authority to allow a party to use a pseudonym in extraordinary situations. The court changed the caption from Jane Doe to R.J.R. to conform with traditions used in the Circuit Court.

Submitted by: Richard Davis, Oregon Tax Court

23-TAC-03206. July 10, 2024.

This case concerned the proper method of apportioning income of a construction contractor in Arkansas. As background, Arkansas has a systemic issue where its principal, substantive tax administrative rules for income tax and sales/use tax have not been updated in decades. This leads to challenging questions about determining whether rules apply or have been superseded by statute.
Arkansas went to single sales factor apportionment for 2021, and later years based on tax reform legislation adopted in 2019. The relevant corporate income tax apportionment rules have not been updated since 1998. The Arkansas Department of Finance and Administration (ADFA) took the position that industry-specific rules were not superseded by the 2019 legislation and effectively now required three-factor apportionment. The corporate income tax return instructions provided accordingly.

Taxpayer is an Arkansas-based construction contractor doing a lot of business outside of the state, so single sales factor apportionment would be beneficial. Taxpayer originally based their argument on a misreading of the relevant ADFA industry-specific rule. The Tax Appeals Commission ordered additional briefing concerning the impact of the 2019 single sales factor apportionment legislation.

After considering the relevant statutes and reading the rules in their totality, the Commission determined that the 2019 single sales factor legislation required single sales factor apportionment in this case. The construction contractor apportionment rule, when adopted, had provided specifics for calculating each of the three factors but had not required addition of or exclusion of factors. The harmonious reading of the statute and rule was to apply single sales factor while still applying the rule's special provisions for calculation of the sales factor by construction contractors.

Submitted by: Matt Boch, Arkansas Tax Appeals Commission

Cities Management, Inc. v. Commissioner of Revenue. 997 N.W.2d 348. November 22, 2023.

Kim Carlson (a nonresident of Minnesota) sold her stock ownership in Cities Management, Inc. (CMI). Minnesota Statutes section 290.17 (2022) governs the allocation and apportionment of different types of income for tax purposes. Carlson and CMI structured the sale (and 2015 tax filings) around the tax court's interpretation of Minn. Stat. § 290.17, subd. 2, in *Nadler v. Commissioner of Revenue*, No. 7736 R, 2006 WL 1084260 (Minn. T.C. Apr. 21, 2006). The commissioner of revenue never appealed *Nadler* to the supreme court, but since its issuance, the commissioner internally took the position that the Department of Revenue "does not acquiesce" to the decision—a position eventually made public in a July 2017 Revenue Notice. The commissioner audited CMI's 2015 tax return and found that gain from the sale was "business income" subject to apportionment under section 290.17, subdivision 3, and assessed $433,017 in nonresident withholding tax and a penalty for substantial underpayment. In the administrative appeal to the commissioner, the commissioner affirmed the tax assessment but removed the penalty for underpayment based on the taxpayer's reasonable reliance on *Nadler*.

The tax court affirmed the commissioner's administrative appeal determination. The tax court acknowledged the procedural history involving *Nadler*, but focused upon the decision in *YAM Special Holdings, Inc. v. Commissioner of Revenue*, 947 N.W.2d 438 (Minn. 2020), as instead being controlling and dictating that the CMI transaction was subject to section 290.17, subdivision 3.

On appeal to the supreme court, the issues presented are: (1) whether the tax court erred by failing to recognize that the commissioner is bound by an unappealed tax court decision that interprets Minnesota tax law; (2) whether the tax court erred by failing to apply collateral estoppel against the commissioner; and (3) whether the tax court erred by failing to apply the plain language of Minn. Stat. § 290.17, subd. 2.

The Minnesota Supreme Court, affirming the tax court, held that the gain on the sale of goodwill constituted business income of a unitary business subject to apportionment rules rather than allocation, but expressed displeasure with the commissioner's conduct.

We are troubled by the commissioner's conduct that this case has brought to light. Rather than appealing the tax court's interpretation of tax law with which the department disagreed, the commissioner decided internally—apparently without notice to the public—that the department would "not acquiesce" to the tax court's interpretation of the law. We fear that such actions do little to inspire the trust and confidence of taxpayers in Minnesota's tax system. *Cities Mgmt., Inc. v. Comm'r of Revenue*, 997 N.W.2d 348, 353 (Minn. 2023)

The dissent goes even further, questioning the fundamental fairness of the underlying audit that led to this matter coming before the court, but what is perhaps most troubling about this conduct is the commissioner's lack of transparency. For more than 10 years after the *Nadler* opinion was issued, the commissioner did not make public the Department of Revenue's position on the interpretation of section 290.17. Public notice of the commissioner's disagreement was not provided until July 2017 when the department issued Revenue Notice 17-02. In this revenue notice, the commissioner publicly advised taxpayers for the first time that "the department does not administer the income allocation provisions in [section 290.17] using the Minnesota Tax Court's reasoning in *Nadler v. Commissioner*." (emphasis added) CMI, 997 N.W.2d at 361 (J. Anderson dissenting).

Concluding his dissent, Justice Anderson writes, "Given the outrageous conduct of the Commissioner, I would instead announce an equitable rule that the Commissioner is bound by tax court decisions that are not appealed unless the Department of Revenue provides public notice of its disagreement with the tax court opinion. It is vital that taxpayers 'have trust and confidence that Minnesota's tax system is fairly and equitably applied to all.' [citations omitted] ('Essential to the guarantee of due process is fundamental fairness.'). But how are we to expect taxpayers to have confidence in a system in which the Commissioner ignores the tax court's interpretation of tax statutes and unilaterally adopts the Commissioner's preferred interpretation of the law—all without notice to the public? Simply put, taxpayers deserve some assurance that if they prepare their tax returns in reliance on the tax court's interpretation of the law, the Commissioner cannot subsequently change the rules, or at least not without notice to the public… Accordingly, I would reverse the decision of the tax court and remand for the tax court to vacate the Commissioner's assessment. Id. at 361-62.

Note: This prompted legislative action during the 2024 legislative session. Although Justice Anderson's proposed framework, that all un-appealed tax court decisions are legally binding on the commissioner in the absence of public notice to the contrary, was contemplated, it was not signed into law.

Submitted by: Kendric Olson, Minnesota Tax Court

Ratan AC LLC v. City of Absecon. 000923-2023. September 18, 2024.

This case addresses a recurring problem that has persisted post-Covid. In New Jersey, an assessor can request by certified mail property income information. Failure to respond within 45 days bars a future tax appeal. The assessor sent the notice by certified mail. The postal service computer record indicates delivery to an individual and someone wrote part of the property address on the signature line. The court first reviewed the history and mechanics of certified mail. A letter sent by certified mail serves two purposes. First, it provides proof of delivery by obtaining the signature of the recipient. Second, requesting a signature puts the recipient on notice of something important requiring immediate attention. Delivery without a signature is not certified mail. The complaint can go forward.

Submitted by: Mark Cimino, Tax Court of New Jersey

Wendell v. Commissioner of Revenue. 7 N.W.3d 405 (Minn. 2024). June 5, 2024.

Christopher and Nancy Wendell, residents of Wisconsin, in 2019 and 2020 had some of their wages withheld for Minnesota taxes. For both years, the Wendells filed joint Minnesota individual income tax returns declaring that they had no Minnesota individual income tax liability and requested refunds of all state tax withheld. The commissioner of revenue instead issued orders assessing tax and interest for both years. Moreover, after warning the Wendells in 2019, the 2020 order also assessed a 25 percent frivolous return penalty, as permitted by Minn. Stat. § 289A.60, subd. 7 (2022). The Wendells sought administrative review, and the commissioner affirmed.

On appeal, the tax court granted two motions for summary judgment to the commissioner. The first summary judgment order granted the commissioner's motion for the 2019 tax year and the 2020 tax year in most respects other than the brokerage and interest income for 2020. The frivolous claim penalty was also affirmed.

The tax court later granted the second summary judgment motion, which affirmed the commissioner's corrected notice of determination for the 2020 tax year, and also affirmed the constitutionality of the frivolous return penalty.

The Wendells appealed the tax court's ruling to the Minnesota Supreme Court. Affirming the tax court, the Minnesota Supreme Court held:

1. The commissioner had the authority to adjust or correct the amount of federal adjusted gross income reported on the Wendells' Minnesota tax return to determine the amount of state tax owed;
2. the tax statute imposing a penalty for filing a frivolous tax return was not unconstitutionally vague in violation of due process;
3. the tax statute imposing a penalty for filing a frivolous tax return was not unconstitutional under the excessive fines clause; and
4. the Wendells failed to overcome the presumption of constitutionality with respect to their claim that the tax statute imposing a penalty for filing a frivolous tax return violated the equal protection clause.

Submitted by: Kendric Olson, Minnesota Tax Court

Statutory Construction Interpretation

Inland Insurance Company v. Lancaster County Board of Equalization. S-23-289. March 8, 2024.

A commercial building owned by Inland Insurance Co. (Inland) was assessed for tax year 2020 as of the statutory effective date of January 1, 2020. On May 30, 2020, the building was destroyed by a fire set by an arsonist involved in rioting in a business district of Lincoln, Nebraska. Inland subsequently filed a Report of Destroyed Real Property, which, under Nebraska law, allows for a review of the assessment after January 1 and before July 15 if the property meets the statutory definition of "destroyed real property." The County Board denied Inland's protest, and Inland appealed to the Nebraska Tax Equalization & Review Commission (TERC). TERC affirmed the decision of the County Board based upon the express language of the statute (Act), which reads, in pertinent part:

1. The Legislature finds and declares that fires, earthquakes, floods, and tornadoes occur with enough frequency in this state that provision should be made to grant property tax relief to owners of real property adversely affected by such events.
2. For purposes of [this Act]:
    a. Calamity means a disastrous event, including, but not limited to, a fire, an earthquake, a flood, a tornado, or other natural event which significantly affects the assessed value of real property;
    b. destroyed real property means real property that suffers significant property damage as a result of a calamity occurring on or after January 1, and before July 1 of the current assessment year. Destroyed real property does not include property suffering significant property damage that is caused by the owner of the property; and
    c. significant property damage means:
        i. damage to an improvement exceeding 20 percent of the improvement's assessed value in the current tax year as determined by the county assessor…

Inland argued the fire was a “calamity” and both parties stipulated the property suffered “significant property damage.” Consequently, TERC needed to determine whether the destruction was the result of a “calamity” as defined by the Act.

The County Board argued the plain meaning of the statutory language did not allow an interpretation that a man-made fire (one, as in this case, that was directly caused by an arsonist) falls under the statutory definition of calamity because it was not a natural event. Inland argued the statutory definition of “calamity” includes some man-made disastrous events, like man-made fires (arson).

TERC relied upon rules of statutory construction as laid out by the Nebraska Supreme Court in prior decisions. TERC also relied upon the express definitions within the [Act], and also noted the [Act’s] specific findings regarding the statutory scheme, concluding that the express purpose of the statutory scheme is “to provide property tax relief to owners of real property adversely affected by such events” as “fires, earthquakes, floods, and tornadoes” that “occur with [certain] frequency in this state.” TERC reasoned, “[i]n order to conclude that man-made fires should be included within the meaning of “calamity” in the [Act], as [Inland] asserts, we must conclude that the text of the statute contemplates man-made fires in the same context as all “disastrous events” that are “natural events.”

TERC found “Inland’s construction [of the Act] would require [TERC] to read into the statute words that are not present in the text of the statute. It is clear natural events are included. It is not at all clear that man-made events should be included within the meaning of the statutory definition of calamity.”

TERC also found the interpretation of the statute also requires us to determine what effect the limiting language “but not limited to” has on the meaning of calamity. If we read this phrase as placing no limit at all to whether the event was natural or man-made, then the definition of calamity is reduced to “calamity means any disastrous event which significantly affects the assessed value of real property.” Such a construction would treat many specific words within the definition of calamity as being superfluous. “When interpreting a statute, effect must be given, if possible, to all the several parts of a statute; no sentence, clause, or word should be rejected as meaningless or superfluous if it can be avoided.” Such a construction would also read meaning that is direct and plain out of the statute. A sensible reading of this limiting language is that it makes room for natural disasters not expressly named in the statute that occur with frequency in [the] state other than fire, earthquake, flood, and tornado. As mentioned above, this might reasonably include wind, hail, rain, lightning, or snow.

TERC found the text of the statutory definition of calamity was plain, direct, and unambiguous, and concluded it did not include within its scope disastrous events caused by a fire started by an arsonist. In sum, TERC concluded the definition of "destroyed real property" requires the property be destroyed or diminished in value due to a “calamity.” And a "calamity" includes a fire, earthquake, flood, tornado, or other natural event. Therefore, TERC denied Inland’s appeal.

The Nebraska Supreme Court reversed the decision of the TERC. The Court also emphasized certain rules of statutory construction. In relation to the construction of the statute, the Court reasoned:

> In defining ‘calamity,’ § 77-1307(2)(a) explains by its plain terms that a ‘calamity’ is, first and foremost, a ‘disastrous event.’ The definition of ‘disastrous event’ includes some natural events, but by the plain language of § 77-1307(2)(a), it is ‘not limited’ to natural events. Although § 77-1307(1)

> notes that the Legislature ‘finds and declares’ that fires, earthquakes, floods, and tornadoes occur with frequency in Nebraska, this recognition does not limit disastrous events to only these ‘events.’
>
> TERC interpreted the listed events provided in § 77-1307(2)(a) and concluded that the phrase ‘other natural event[s]’ must mean that all listed preceding events were also natural. But in doing so, TERC reads out the language ‘including, but not limited to’ and ignores the text that provides a calamity is simply a ‘disastrous event.’ In so doing, TERC effectively redefined a ‘calamity’ as ‘a fire, an earthquake, a flood, a tornado, or other natural event.’ But this definition does not conform to the law.

Submitted by: Rob Hotz, Nebraska Tax Equalization & Review Commission

Statutory Actions and Initiatives

Workgroup on Taxpayer Representation. September 30, 2024.

The Magistrate Division of the Oregon Tax Court has a statute, ORS 305.239, that allows for various non-attorney representatives to appear on behalf of taxpayers. The statute includes a list of specific categories of representatives, but also a provision that allows the court to recognize additional representatives by rule. The court's rule on representation is Tax Court Rule-Magistrate Division 1 E. Over the years, stakeholders have raised a range of issues and questions regarding the authority of persons other than Oregon-licensed attorneys to represent taxpayers in the Magistrate Division. Questions have been raised at our annual stakeholder meetings where we discuss rule revisions, as well as in at least one case. Some of the questions raised include: (1) What limit, if any, is on the court’s authority to use its rules to allow representatives not in the licensed categories at the beginning of the list? (2) Can a person who is licensed for one type of tax represent a taxpayer for a different type of tax? (3) Do out-of-state JDs have to associate with an in-state lawyer?

In order to hear stakeholder concerns and generate potential solutions, our court has recently convened a workgroup with stakeholders to discuss taxpayer representation in the Magistrate Division. The workgroup will commence discussion
ns in October 2024 with a goal to conclude in January 2025. Potential solutions could eventually lead to changes to court forms and instructions, rules, or statutes.

Submitted by: Allison Boomer, Oregon Tax Court

Valuation

Vasko v. County of McLeod. A23-0061, 2024 WL 3882574. August 21, 2024.

Renee Vasko, the sole owner of a residence in Lester Prairie, Minnesota, contested (1) the county assessor’s classification of the property as a residential non-homestead as of the date of value; (2) the estimated market value of the property; and (3) a special assessment placed on the tax bill. Following a trial, the tax court issued an order concluding that Vasko presented sufficient evidence to rebut the prima facie validity of the county’s classification for 2019, but ultimately concluded that the county assessor’s classification of the property for that year was correct as Vasko had not occupied and used the property for the purposes of a homestead as required by statute during 2019. The tax court also affirmed the county's estimated market value assessment and concluded it lacked subject matter jurisdiction over the challenge to the special assessment. On appeal to the Minnesota Supreme Court, Vasko challenges her property tax assessment on two grounds: (1) the homestead classification should not have been revoked; and (2) the property valuation was too high. Deferring to the tax court's assessment on the credibility of evidence, the supreme court ruled:

1. The tax court properly placed on the taxpayer the ultimate burden of proving that revocation of a homestead classification was unlawful and that the assessed value of the property was incorrect;
2. the tax court did not clearly err in finding that the county had properly revoked the property's homestead classification; and
3. the tax court did not clearly err in upholding the county's assessment of the taxpayer's property.

Submitted by: Kendric Olson, Minnesota Tax Court

Tamarack Village Shopping Center, LP v. County of Washington. 9 N.W.3d 820. July 31, 2024.
Consolidated cases came before the tax court concerning the market value as of January 2, 2019, of two parcels of property that are part of the Tamarack Village Shopping Center in Woodbury, Minnesota. After a trial, the tax court concluded that the assessor's estimated market value for the properties understated their market value as of the assessment date. The tax court denied Tamarack's post-trial motions raising issues pertaining to the tax court's income capitalization approach.

On appeal to the supreme court, Tamarack presents the following issues relating to the tax court's valuation determination: (1) whether the tax court may include the value of nonexistent tenant improvements in its value conclusion and whether the tax court's interpretation of the terms "excessive" and "atypical" is overly narrow as those terms relate to an effective market rent calculation; and (2) whether the tax court may value property as though stabilized on the assessment date when it is agreed the property is destabilized and lease-up costs are required to stabilize the property on the assessment date.

The Minnesota Supreme Court, affirming the tax court, found:

1. When calculating potential gross income under the income capitalization approach to valuation, the tax court did not err by declining to use an effective rent calculation to account for tenant improvement allowances because the taxpayer's tenant improvement allowances were typical of the market.
    a. "The tax court reasonably relied on the testimony of all three witnesses, including the taxpayer's own witnesses, in concluding that free rent was not present in the market and not offered by Tamarack Village."
    b. "[t]he tax court reasonably distinguished between free rent and no-rent periods for build-out and fixturing time, and we see no reason to conclude that the tax court clearly erred in finding that 'free rent' was neither standard in the market nor offered by the taxpayer. Accordingly, because the no-rent periods for build-out and fixturing were not 'free rent,' they provided no basis for an effective rent, rather than market rent, calculation in determining potential gross income."
2. The tax court did not clearly err by declining to deduct lease-up costs from a property's indicated value to account for its above-market vacancy rate on the assessment date because the taxpayer failed to show that such a deduction was required.
    a. "In sum, [the taxpayer's appraiser's] written report did not explain the nature of the deductions, her testimony was inconsistent with her written report and failed to justify the properties' similar treatment despite their different circumstances, and [the county's

appraiser] credibly testified that no stabilization adjustment was warranted because Center's above-market vacancy rate was a temporary market fluctuation. Given this factual record, and regardless of the legal standard, the taxpayer did not present the tax court with evidence that lease-up costs should have been deducted."

Submitted by: Kendric Olson, Minnesota Tax Court

In re Appeal of Albany County Assessor. Doc. No. 2019-35 August 20, 2020.

By tax deed, Taxpayer purchased a motel property in 2017 that had fallen into disrepair. Assessor learned from Taxpayer that he would operate as a "long term occupancy hotel," similar to an apartment business.

Assessor, based on discussions with owner, discounted the property's total value to $265,000 in 2018, anticipating costs owner would incur to correct property defects. Assessor used a "cost to cure" analysis. The renovation work would involve structural corrections, including plumbing and electrical systems. Assessor, in 2019, removed the "cost-to-cure" adjustment, more than doubling the property's value to $571,000. Owner had only spent approximately $25,000 to paint, "cover," and to perform light repairs. Owner complained that his value should not have increased by more than 125 percent. The Albany County Board of Equalization reversed, finding that Assessor failed to answer Owner's assertion of an overvalued property based on the previous year's assessment and the costs Owner actually incurred to repair. The County Board ordered that Assessor determine the remaining cost to cure and adjust for any appreciation resulting from the light repairs performed. Assessor appealed.

Issues:

1. Whether the County Board's decision was supported by substantial evidence; and
2. whether Taxpayer carried his initial burden of production to shift burden of proof to Assessor, and his ultimate burden of proving that the assessed value violated Wyoming law.

Assessor did not testify in his case in chief, relying exclusively on the appraisal documentation. He did, however, testify in Taxpayer's rebuttal case, explaining how he significantly discounted the hotel's value in 2018. He testified that his 2018 adjustment was excessive. The County Board focused heavily upon the difference in assessed values between 2018 and 2019, concluding that the difference shifted the burden to Assessor to justify his 2019 valuation.

Unfortunately, Taxpayer focused entirely upon the previous 2018 assessment, arguing that the increased 2019 assessment was incorrect given that the property's condition had changed little. Taxpayer failed to address the 2019 valuation on its own terms. The State Board held that without evidence of the 2018 assessment's preparation, which was not in evidence, the County Board received insufficient evidence that the 2019 assessment was incorrect. Each assessed valuation stands on its own, so Taxpayer's failure to address the 2019 appraisal on its own terms was an error. Also, the record did not include Assessor's specific cost-to-cure analysis from 2018, which possibly explained why Assessor opted not to testify in his case in chief. The record included only the witnesses' general recall of the 2018 assessment numbers. The County Board, without substantial evidence, concluded that the 2018 assessment established an accurate baseline valuation for adjudging the next year's assessed value.

Submitted by: Marty Hardsocg, Wyoming State Board of Equalization

In re Appeal of Shannon & Traer Caywood. Doc. No. 2023-30. February 16, 2024.

Couple challenged 2023 assessed value of a recently constructed home on recently purchased land in Alpine, Wyoming. The Caywoods completed construction of their home in November of 2022 through a builder they interviewed and selected. The Caywoods claimed that Assessor's 2023 valuation of their new home and land, performed only two months after the home's completion, should not significantly exceed the cost to acquire the land and construct the home ($934,651) by almost half of a million dollars. They asserted that Assessor's application of Wyoming's Computer Assisted Mass Appraisal (CAMA) system overvalued their property. They offered calculations of square footage value extrapolations for various surrounding properties, but they primarily asserted that the combined price paid to construct their new home and acquire the land was the "gold standard" of valuation.
Assessor offered various forms of evidence of the up-trending values in the Alpine area which had spiked due to the Covid-19 pandemic's influence. She explained how Wyoming's CAMA system had calculated a market adjustment of 2.14 for the homes in the area through a ratio study. She testified that the adjustment ensured that the Caywood's home fell within the prescribed appraisal level range of between .90 and 1.10. The Lincoln County Board of Equalization affirmed.

Issues:

1. Whether the recent acquisition of land and price paid to construct residential property was compelling or conclusive evidence of the property's taxable value established two months after completion of the home.

The State Board affirmed the County Board of Equalization's decision affirming the assessed value. The Caywoods incorrectly assumed that the cost to construct, even if arm's length and completed almost contemporaneous with the appraisal date, was conclusive evidence of value. The Caywoods' preferred valuation approach ignored the role of market adjustments in the mass-appraisal process. The board held that while the construction cost might be evidence of the cost to construct or replace, the Lincoln County assessor correctly performed a ratio study to determine whether market values were outpacing the costs to construct or replace alone. The Caywoods did not carry their initial or ultimate burdens of proof before the County Board of Equalization.

Submitted by: Marty Hardsocg, Wyoming State Board of Equalization

DRSN v. Grosse Pointe Woods. MTT 18-000573. July 9, 2024.

This tax appeal involved the valuation of a continuing care retirement center (CCRC) with multiple levels of senior care (independent living, assisted living, and skilled nursing). The parties took divergent paths in the valuation of the property. Petitioner developed an overall going concern value to then discount business intangibles to derive a real property value. On the other hand, Respondent focused primarily on the real property value with the development of the cost approach.

The complexity of the case included alleged erratum, a land use restriction agreement (LURA), original construction costs, and functional/external obsolescence.

The Michigan Tax Tribunal Final Opinion and Judgment concluded that the cost approach was the most reliable and credible valuation methodology. Cost elements were taken from each party's analysis to render the Tribunal's independent determination of market value for the subject property.

Submitted by: Marcus Abood, Michigan Tax Tribunal

Elkhart County Assessor v. Lexington Square, LLC. 219 N.E.3d 236 2023 WL 5660790. September 01, 2023.

Lexington Square appealed the property tax assessments of an apartment complex alleging that the 2016–2018 assessments were not only incorrect, but also were unfair when compared to the assessments of other apartment complexes in Elkhart County.

Lexington County appealed the assessment of its property for four tax years. The Indiana Board of Tax Review determined that because neither the taxpayer nor the assessor demonstrated the correct assessment of property for years in question, the assessments reverted to property's assessed value for the last unchallenged tax year. The assessor appealed.

Judge Wentworth held that:

1. The legislature did not intend to rescind a challenger’s rights of actions filed and still pending under the repealed statutory exception to the general rule that the challenger bore the burden to prove the tax assessment of the property was incorrect. Therefore, the assessor—the challenger in this case—was not relieved from the burden to prove the correctness of assessments;
2. the repeal of the statutory exception was not remedial, as it could have supported retroactive application of the repeal; and
3. there were not strong and compelling reasons supporting retroactive application of repeal of the statutory exception, even if such a repeal were remedial.

Affirmed.

Submitted by: Martha Blood Wentworth, Indiana Tax Court

Square 74 Associates, LLC v. Marion County Assessor. Pet. No. 49-101-10-1-4-82869-15, et. seq. May 20, 2022.

The taxpayer held a master lease for five retail spaces within a municipally owned parking garage. All five subtenants were ground-floor restaurants, and the total square footage of the five spaces was approximately 30,000 s/f with a footprint of .72 acres. The eight-story parking garage areas were not part of the lease. The land beneath the garage was subject to a ground lease. Each retail space was assigned a tax parcel, and the taxpayer challenged the assessments.

The taxpayer relied on the testimony of an appraiser and his USPAP compliant appraisal report. The appraiser did not offer a sales comparison approach. The cost approach did not include values for the land or inputs for the structural components of the parking garage. The income approach included a land valuation performed solely for the purpose of calculating an expense for the ground lease. The assessor did not offer a competing appraisal.

Indiana law requires otherwise exempt property (like a municipally owned building) to be taxed as "real property" when leased to a non-exempt entity. The primary legal dispute was whether the taxpayer's appraiser erred in valuing a leasehold interest rather than a fee simple interest, including land. The assessor also challenged the reliability of the appraisal.

The Indiana Board of Tax Review agreed with the assessor, based on a prior appeal to the Indiana Tax Court, that the taxpayer's appraiser erred in omitting the value of the land from the appraisal. However, the Board issued a decision adopting the appraiser's cost approach after adding in the appraiser land valuation from the income approach.

The Board's determination was upheld by the Indiana Tax Court in *Marion County Assessor v. Square 74 Associates*. (Square 74 II), 228 N.E.3d 542 (Ind. Tax Ct. 2024).

Submitted by: Jonathan Elrod, Indiana Board of Tax Review

Agua Caliente Solar, LLC v. Arizona Department of Revenue. No. 1 CA-TX 22-0007 , 550 P.3d 185. May 14, 2024.

Taxpayer Agua Caliente Solar, LLC ("Agua Caliente") operates a solar-electricity power-generation facility using renewable energy equipment as defined by A.R.S. § 42-14155(D)(5). The facility was placed into service in 2012.

"The full cash value of renewable energy and storage equipment is twenty percent of the depreciated cost of the equipment. Depreciated cost shall be determined by deducting depreciation from taxable original cost. Depreciation shall not exceed ninety percent of the adjusted original cost." A.R.S. § 42-1455(B). "Taxable original cost" is defined as "the original cost reduced by the value of any investment tax credits . . . applicable to the taxable renewable energy and storage equipment" A.R.S. § 42-14155(D)(6).

From 2012 to 2015, AC Solar Holdings, LLC ("AC Solar") owned Agua Caliente. AC Solar was a partnership between Berkshire Hathaway, Inc. (Berkshire Hathaway) and NRG Energy, Inc. (NRG Energy). From 2012 and 2015, Agua Caliente received $465,454,649 in investment tax credits from the federal government for building the facility. The credits were passed through to Berkshire Hathaway and NRG Energy. During that time, Berkshire Hathaway used its share of tax credits to reduce its corporate tax liability. NRG did not have any taxable income to use the credit against, so it carried forward its share of the tax credit as a deferred corporate tax asset.

Agua Caliente first reported the tax credits to ADOR in its 2020 valuation report. ADOR's initial valuation did not include any of the tax credits. After a challenge by Agua Caliente, ADOR revised its valuation to include Berkshire Hathaway's share of the tax credits but not NRG Energy's share. Agua Caliente appealed ADOR's valuations for tax years 2016 through 2019 based on ADOR's refusal to include NRG Energy's share of the tax credits.

Agua Caliente argued that the tax credit should be subtracted from the original cost for purposes of valuation once the owner places the equipment in service and claims the credit. ADOR contended that a claimed tax credit should not be included in the valuation until it is used to offset a federal tax liability.

The Arizona Court of Appeals agreed with Agua Caliente and held that the “value” of an investment tax credit under A.R.S. § 42-14155 is the full amount of the credit when the equipment is placed in service and the credit is claimed—regardless of whether the credit has been used to offset a tax liability. The Court reasoned that Agua Caliente’s interpretation of the statute was the only reasonable interpretation and that the statutory valuation of the equipment should not be dependent on the income level of the equipment’s owner.

Submitted by: Sara Agne, Maricopa County Superior Court

Mesquite Power, LLC v. Arizona Department of Revenue. 552 P.3d 502. July 22, 2024.

The Arizona Court of Appeals had previously held that a competent appraisal must consider the effect intangible assets have on the taxable property's value when intangible assets enhance the real and tangible property's value. That appellate court found that a power purchase agreement would contribute to the plant's cash flows and current usage and therefore would enhance the value of the taxable property. The Arizona Supreme Court vacated that opinion, however, and reversed and remanded the Arizona Tax Court's opinion for further proceedings. The Arizona Supreme Court found that the power purchase agreement did not implicate current usage of the plant, and therefore the state statute requiring the inclusion of current usage for valuation purposes did not require consideration of the power purchase agreement. The agreement was not entirely irrelevant, as it may be considered under the income approach to value if "relevant to the calculation of income derivable from the property itself by continued use as a power plant." The case was remanded to allow the taxpayer's expert to consider income from the power purchase agreement under the income approach to valuation.

Submitted by: Sara Agne, Maricopa County Superior Court

Mughal v. Oregon Department of Revenue. 5458. September 27, 2024.

Although Oregon’s Magistrate Division operates informally and is not bound by the rules of evidence or by “technical or formal rules of procedure,” a litigant still must take the process seriously. A litigant who does not take the Magistrate Division process seriously risks dismissal by the magistrate and also risks forgoing the chance for a *de novo* trial on the merits if the litigant appeals the dismissal to the Regular Division.

Submitted by: Robert Manicke, Oregon Tax Court

Discovery

New Covert Generating Company v. Covert Township. Docket No. 364076. Unpublished per curiam opinion of the Court of Appeals. June 27, 2024.

The Michigan Tax Tribunal is part of the executive branch. Tribunal members are appointed by the Governor. By statute, the Tribunal is a "quasi-judicial" agency. Given this, the Tribunal is subject to the Freedom of Information Act (FOIA) and the Open Meetings Act (OMA). The Tribunal has rules promulgated by the legislature (TTR), but is also subject to the Michigan Court Rules (MCR) to the extent that there is not an applicable TTR. There is no TTR governing protective orders.

The impetus for this case began with the Court's decision in Herald Co, Inc v Tax Tribunal, 258 Mich App 78; 669 NW2d 862 (2003). In that case, the Court held that the Tribunal did not follow the MCR when issuing a protective order and that there was a violation of the OMA. After that, the Tribunal followed the MCRs when issuing these orders. In 2021, a question arose as to what happens when a FOIA request is made for information subject to a protective order. It was ultimately determined that the information would have to be released unless there was a specific FOIA exemption.

The petitioner in this case disagreed with the Tribunal's determination and filed an interlocutory appeal with the Michigan Court of Appeals. The petitioner argued that the Herald decision provided two "paths" by which information could be protected: the MCRs and a FOIA exemption. The Court agreed, stating that "the MTT's authority to issue protective orders under [the MCRs] should not be limited by whether an applicable FOIA exemption applies."

The Court further held that the Tribunal's "unique position as a quasi-judicial agency with exclusive jurisdiction over tax appeal proceedings implies that information in the possession of the MTT that is protected under MCR 2.302(C)(8) should be protected from public disclosure regardless of whether an applicable FOIA exemption exists."

Submitted by: Patricia Halm, Michigan Tax Tribunal

Exemptions and Abatements

Sports Medicine Research and Testing Laboratory v. Board of Equalization of Salt Lake County, State of Utah, And Utah State Tax Commission. No. 20220786. August 8, 2024.

Denial of exclusive use exemption for real property in Salt Lake County. Noncharitable use was more than de minimis.

Submitted by: Jennifer Fresques, Utah State Tax Commission

Uline, Inc. v. Commissioner of Revenue. 10 N.W.3d 170. August 7, 2024.

Congress passed a federal law which provides that if a company's only activity in a state is the "solicitation of orders," that state cannot impose income taxes. See 15 U.S.C. § 381. The U.S. Supreme Court in *Wisconsin Dep't of Revenue v. William Wrigley, Jr., Co.* interpreted the scope of the term "solicitation of orders" and also concluded that there is a de minimis exception to otherwise unprotected activity. 505 U.S. 214 (1992). The State of Minnesota incorporated this federal law into its tax statutes, providing that if taxation is precluded by that federal law, that person is likewise not subject to Minnesota's income or franchise tax. Here, the Commissioner of Revenue determined that Uline Inc., an S Corporation with its headquarters and principal place of business in Wisconsin, maintained sufficient minimum contacts in Minnesota to be subject to the state's taxation. Uline challenged this, and the tax court held, applying *Wrigley*, that Uline's regular and systematic preparation of Market News Notes generated from information learned in sales calls and accessible to non-sales personnel went beyond mere solicitation of orders for purposes of immunity from taxation.

Affirming the tax court, the supreme court held:

1. the market research the company assigned to its Minnesota sales representatives went beyond mere “solicitation of orders” and, thus, the company was not entitled to statutory immunity from imposition of tax; and
2. the market research was regular and systematic, rather than de minimis and, thus, the company was liable for tax.

Submitted by: Kendric Olson, Minnesota Tax Court

Alliance Housing Incorporated et al. v. County of Hennepin. 4 N.W.3d 355. March 27, 2024.

Alliance Housing Incorporated and North Penn Supportive Housing LLC are nonprofits created to provide affordable housing for individuals with low and very low income. At issue in the tax court was the exempt status of parcels of real property owned by Alliance and North Penn: twelve parcels in south Minneapolis and nine parcels in north Minneapolis. The tax court ruled that the properties are exempt from tax under Minn. Stat. § 272.02, subd. 7(a) (2022).

The county appealed the tax court’s ruling. On appeal to the Minnesota Supreme Court, the issue was, does an institution of purely public charity “use” the property in furtherance of its charitable purpose when it leases the property to an unrelated third party for use as a personal residence?

The Minnesota Supreme Court, affirming the tax court, held that the evidence reasonably supported the finding of the tax court that the organizations used the properties in furtherance of their charitable purpose to create, own, and operate affordable housing for low and very low-income people.

Submitted by: Kendric Olson, Minnesota Tax Court

City of Jersey City v. Hudson Street Investment, LLC. 008833-2023. May 1, 2024.

At issue was the requisite procedure to obtain a five-year property tax exemption for a five story, nine (9) unit new construction condominium project. Jersey City's position is that a tax agreement must have been applied for and approved by the Jersey City Municipal Council prior to construction. Taxpayer's position is that Jersey City's controlling ordinance allows condominium owners the right to apply to the tax assessor for a five-year exemption under its definition of "dwelling" within 30 days after construction is completed without the need for a preapproved tax agreement.

Submitted by: Mary Brennan, Tax Court of New Jersey

Heard Farm Inc. v. Douglas County Assessor. TC-MD 220403R, 2024 WL 3042379. June 17, 2024.

In Oregon, farmland property tax exemptions are intended to preserve farms from development. Disqualification from farmland special assessment can result in lookback penalties of up to 10 years of taxes.

Mr. Heard represents a new breed of farmer; he holds a master’s degree in biology and is well versed in chemistry. Citing a 2001 legislative change which allows “the land application of reclaimed water, agricultural or industrial process water of biosolids, or the onsite treatment of septage prior to the land application of biosolids” on farmland, Heard began a collection of waste from municipalities, businesses, and individuals in southern Oregon. Heard separated out the organic material and discarded the rest into landfill. He separated out the organic material into liquid and solids, putting the liquid into a “pond” and put the solids into a shed before using some and giving the rest to neighboring farms. Due to the extensive use of chemicals, the farm was heavily regulated by the Department of Environmental Quality. After many chemical processes, Heard used the water from the pond to irrigate his crops. The solution resulted in a 50 percent increase in productivity per crop and allowed him to add an additional crop per season.

The County Assessor disqualified portions of the farm from special assessment because in their view, the process was a singular industrial use and not a traditional farm use. Heard argued that the legislature specifically allowed this type of use on farmland. Heard submitted a letter from the chairman of the legislative committee, who stated that the law was changed with the intent to allow exactly what Heard was doing on his farm.

The court looked at the legislative changes and found they were made to zoning statutes and did not alter the definitions of “farm use” as that term is defined in the tax laws. From there, the court divided the processes into subparts, taking guidance from an old Judge Breithaupt exemption decision. First, the court looked at the main treatment plant which took in and sorted the wastes. The court found that was not an exempt farm use. The court next turned to the “dewatering facility” and again found that was an industrial and not a farm use. The court found the ponds and the storage facility containing the solid organic fertilizer were exempt uses.

Other key elements of the decision were: (1) evidence from members of the legislature as to the intent of a past law are not relevant as to the meaning of the law; (2) consideration of processes/conduct on potentially exempt property can be divided into subparts.

Submitted by: Richard Davis, Oregon Tax Court

State Tax Issues

Appeal of Mather. 18093787. February 16, 2024.

The issue was whether the New York City (NYC) unincorporated business tax (UBT) and the metropolitan commuter transportation mobility tax (MCTMT) are eligible for the other state tax credit (OSTC), and if so, the amount, if any, appellants are entitled to claim as an OSTC for the 2012, 2013, and 2014 tax years. During the appeal years, appellants were California residents, and appellant-husband was a member of two California-headquartered LLCs classified as partnerships for income tax purposes. The LLCs conducted multistate business operations, including in New York State (NYS), such as in New York City (NYC) and the metropolitan commuter transportation district (MCTD), which embraces NYC and certain nearby NYS counties. The LLCs were subject to the NYC UBT, and appellant-husband was individually subject to the MCTMT. The Office of Tax Appeals (OTA) held the NYC UBT is a local levy that is not eligible for the OSTC, and although the MCTMT’s self-employment tax is eligible for the OSTC, appellants have not shown the amount, if any, they can claim against their California net taxes.

OTA first noted at least five conditions must be satisfied before California residents can claim an OSTC under R&TC section 18001. The first three involve whether the other state’s levy is eligible for the OSTC: (1) the other state’s levy must be “imposed by and paid to another state”; (2) the levy must be a “tax”; and (3) the other state’s tax must imposed on “net income.” The next two conditions involve the amount of the OSTC that California residents can claim: (1) the double-taxed income must be derived from sources within that state, determined by applying California's nonresident sourcing rules; and (2) the OSTC cannot exceed a proportion limitation involving the double-taxed income and the net tax payable to California.

OTA first concluded that California law controls the conditions for claiming the OSTC, and that for a net income tax to be "imposed by and paid to another state," two conditions must be met: (1) the state (rather than a local political subdivision, such as a city, county, municipality, etc.) must mandate or require the tax's imposition; and (2) taxpayers must pay that tax to the state. OTA distilled a non-exhaustive list of objective factors to aid in the analysis, including whether: the tax is imposed by a state statute; the state requires the imposition of a certain tax rate; the state administers and enforces the tax; and the tax is imposed statewide on all affected taxpayers.

Applying these principles to the NYC UBT, an entity-level levy, OTA concluded it is imposed by and paid to NYC, not NYS. The NYC UBT is imposed by a NYC tax code rather in a state-level tax statute, and this fact alone was enough to disqualify the levy from being eligible for the OSTC. OTA also found the NYC UBT was not paid to NYS but rather was paid to the NYC Department of Finance, which administers and enforces the UBT. OTA disagreed with appellants that NYS required or mandated NYC to impose the UBT because there was no evidence to support that contention; rather, the evidence supported NYC merely had the option or discretion to impose the UBT.

With respect to the MCTMT, which appellant-husband was individually subject to based on his net earnings from self-employment allocated to the MCTD from both LLCs, OTA concluded, unlike the NYC UBT, that the MCTMT is imposed by a NYS tax law statute and the NYS Department of Taxation and Finance administers, enforces, and collects the MCTMT. FTB argued the MCTMT is in substance paid to the Metropolitan Transportation Authority (MTA) because although NYS collects the levy, NYS only holds the funds in trust for the MTA. OTA disagreed, noting that it was unaware of any authority supporting FTB's argument and that what matters under R&TC section 18001(a) is whether the state mandates or requires the tax's imposition and whether taxpayers must then pay that tax to the state, regardless of whether the state then distributes the funds to its localities. OTA next concluded the MCTMT is a tax and not a fee under both Proposition 26 of the California Constitution (Cal. Const., art. XIII A, § 3(b)) and California constitutional case law, and the MCTMT's self-employment tax is a net income tax. Therefore, OTA found the MCTMT is eligible for the OSTC. However, OTA found appellants were not entitled to claim an OSTC for the MCTMT because they failed to show the amount, if any, they could claim. Specifically, appellants did not provide any documentation or computations showing how their self-employment income would have been sourced to the MCTD under California's nonresident sourcing rules (see R&TC, § 18001(a)(1), (c)), and they improperly computed the proportion limitation under R&TC section 18001(a)(3). OTA thus sustained FTB's deemed denials of appellants' refund claims in full.

Submitted by: Kristen Kane, California Office of Tax Appeals

City of Tucson v. Orbitz Worldwide, Inc.. No. 1 CA-TX 23-0001, 2024 WL 123640. January 11, 2024.

This case involved a dispute between Expedia, Inc.; Hotels.com L.P.; Hotwire, Inc.; Orbitz, LLC; Trip Network, Inc.; and Internetwork Publishing Corp. (collectively, "Expedia") and the city of Tucson. The Parties had been involved in litigation since 2015 involving several online travel companies (OTCs), including Expedia, and several Arizona cities (Cities), including Tucson.

Previously, the Arizona Supreme Court held that OTCs are brokers but not hotel operators or hotels and, as a result, are liable to the Cities under MCTC § 444 but not § 447. The Supreme Court remanded the case to the superior court to determine if MCTC § 444 could be applied retroactively. Both Expedia and Tucson appealed aspects of the Superior Court's subsequent ruling.

At issue here was Tucson City Code (TCC) § 19-66 which imposes a tax on "[e]very person who operates or causes to be operated a hotel." The Court of Appeals found that TCC § 19-66 differed from MCTC § 444 and § 447. As a result, the Court of Appeals found that the Supreme Court's previous construction of MCTC § 444 and § 447 did not address TCC § 19-66.

The Court of Appeals found that TCC § 19-66 would only apply to OTCs if they are hotel operators or cause hotels to be operated. TCC § 19-1 defines "hotel operator" as a proprietor or a non-employee managing agent who performs the operator's functions. The Court of Appeals reasoned that OTCs are brokers, and brokers are not proprietors because they do not own, control, or have present use of the hotels.

As to whether the OTCs are a managing agent, the Court of Appeals found that although OTCs perform some of the functions of proprietors, they do not perform all of the functions. As a result, OTCs are not hotel operators under TCC § 19-1.

The Court of Appeals also found that TCC § 19-66 is directed at hotel operations and not adjacent business activities. In addition, TCC § 19-66 is a real property licensing tax and the OTCs do not issue licenses to transients but broker deals between operators and transients. The tax is also a "debt owed by the operator to" Tucson. TCC § 19-66. The Court reasoned that if it applied TCC § 19-66 against Expedia, it would create tax liability against an entity that does not owe the debt.
The Court of Appeals held that Expedia was not liable to Tucson for taxes under TCC § 19-66.

Submitted by: Sara Agne, Maricopa County Superior Court

Dove Mountain Hotelco, LLC, et al. v. Arizona Department of Revenue. 549 P.3d 192. June 7, 2024.

Monies paid to reimburse a hotel for the cost of a third-party loyalty program (Marriott Rewards) member's complimentary stay were gross income for purposes of Arizona's transaction privilege tax, the Arizona Supreme Court held. The Court distinguished a 1960 Arizona Supreme Court case, in which consumers' "advanced spending and deferred enjoyment" using trading stamps issued by the owner of several supermarkets that could later be exchanged for merchandise was not subject to TPT—as the value of merchandise traded for the stamps was included in the taxpayer's gross sales such that all TPT had already been fully paid. Dove Mountain as taxpayer could not show the same regarding the third-party loyalty program redemptions and reimbursements.

Submitted by: Sara Agne, Maricopa County Superior Court

Microsoft Corporation v. Department of Revenue. 5413. August 29, 2024.

This is a corporate income tax appeal involving apportionment of the taxpayer's additional subpart F income arising from the one-time inclusion of long-deferred foreign subsidiary income—the same kind of income that was at issue in the 2024 *Moore* decision of the US Supreme Court.

Submitted by: Robert Manicke, Oregon Tax Court

Stallings v. Director, Division of Taxation. 009002-2023. February 2, 2024.

Plaintiff is a New Jersey resident employed in New York. In April 2018, Plaintiff filed her 2017 gross income tax return. Inadvertently, she forgot to claim a credit for the taxes she paid to New York. This error resulted in an overpayment of $13,779. On September 30, 2021, Plaintiff filed an amended return and a request for a refund. On August 29, 2022, the Division of Taxation denied the refund request as untimely. Over the next two years, it was determined that the division's claim of untimeliness was incorrect. Nonetheless, the division continued to deny the refund on the basis that the plaintiff used the wrong form. On August 23, 2023, Plaintiff filed a complaint with the Tax Court, requesting the refund plus interest, as well as $15,000 to cover legal fees, a $1,200 accountant fee, and $50,000 in punitive damages. On September 4, 2023, the division issued Plaintiff a refund comprised of $14,250 in New Jersey gross income tax overpayment for 2017 and $1,444.01 accrued statutory interest. Thereafter, the division filed a motion to dismiss Plaintiff's complaint. Plaintiff opposed the motion. The court found that Plaintiff was not entitled to the additional relief requested beyond the refund and statutory interest with the exception of the court filing fee, and dismissed the complaint.

Submitted by: Mary Brennan, Tax Court of New Jersey

Shapiro v. Hamilton County Assessor. 231 N.E.3d 291 2024 WL 1298479. March 27, 2024.

Married taxpayers with separate principal residences could not claim both Indiana's homestead deduction and Michigan's principal residence exemption.

Married taxpayers appealed the Board of Tax Review's final determination finding that their Indiana property, which was the husband's principal residence, was ineligible for Indiana's homestead property tax deduction during the four tax years at issue, based on the wife's receipt of Michigan's principal residence exemption (PRE) for her residence in Michigan.

Senior Judge Wentworth held that:

1. Under the prior version of the homestead deduction statute, the taxpayers were ineligible for the homestead deduction for the first tax year due to the wife's ownership interest in both properties; and
2. the homestead deduction and Michigan PRE were *equivalent* within meaning of the version of the homestead deduction statute in effect for the other three tax years at issue, and thus the taxpayers were ineligible for the homestead deduction for those tax years.

Reversed in part and affirmed in part.

Submitted by: Martha Blood Wentworth, Indiana Tax Court

[*Verizon New Jersey Inc. v. Borough of Hopewell (088421)*](). A-22-23. July 2, 2024.

This is a follow-up to the case presented last year. The New Jersey Supreme Court affirmed the Appellate Division's affirmance of the Tax Court decision determining "that 'local telephone exchange' as used in N.J.S.A. 54:4-1 means a local telephone network within a defined geographical area as depicted on Verizon's tariff exchange maps."

Submitted by: Mary Brennan, Tax Court of New Jersey

CASES AND PRESENTERS FOR 2024 NATIONAL CONFERENCE OF STATE TAX JUDGES

State	Presenter	Case Title
Oregon	Richard Davis	*R.J.R. v. Department of Revenue, State of Oregon*
Arkansas	Matt Boch	*23-TAC-03206*
Minnesota	Kendric Olson	*Cities Management, Inc. v. Commissioner of Revenue*
New	Mark Cimino	*Ratan AC LLC v. City of Absecon*
Minnesota	Kendric Olson	*Wendell v. Commissioner of Revenue*
Nebraska	Rob Hotz	*Inland Insurance Company v. Lancaster County Board of Equalization*
Oregon	Allison Boomer	*Workgroup on Taxpayer Representation*
Minnesota	Kendric Olson	*Vasko v. County of McLeod*
Minnesota	Kendric Olson	*Tamarack Village Shopping Center, LP v. County of Washington*
Wyoming	Marty Hardsocg	*In re Appeal of Albany County Assessor*
Wyoming	Marty Hardsocg	*In re Appeal of Shannon & Traer Caywood*
Michigan	Marcus Abood	*DRSN v. Grosse Pointe Woods*
Indiana	Martha Wentworth	*Elkhart County Assessor v. Lexington Square, LLC*
Indiana	Jonathan Elrod	*Square 74 Associates, LLC v. Marion County Assessor*
Arizona	Sara Agne	*Agua Caliente Solar, LLC v. Arizona Department of Revenue*
Arizona	Sara Agne	*Mesquite Power, LLC v. Arizona Department of Revenue*
Oregon	Robert Manicke	*Mughal v. Oregon Department of Revenue*
Michigan	Patricia Halm	*New Covert Generating Company v. Covert Township*
Utah	Jennifer Fresques	*Sports Medicine Research and Testing Laboratory v. Board of Equalization of Salt Lake County, State of Utah, and Utah State Tax Commission*
Minnesota	Kendric Olson	*Uline, Inc. v. Commissioner of Revenue*
Minnesota	Kendric Olson	*Alliance Housing Inc. et al. v. County of Hennepin*
New	Mary Brennan	*City of Jersey City v. Hudson Street Investment, LLC*
Oregon	Richard Davis	*Heard Farm Inc. v. Douglas County Assessor*
California	Kristen Kane	*Appeal of Mather*
Arizona	Sara Agne	*City of Tucson v. Orbitz Worldwide, Inc.*
Arizona	Sara Agne	*Dove Mountain Hotelco, LLC, et al. v. Arizona Department of Revenue*
Oregon	Robert Manicke	*Microsoft Corporation v. Department of Revenue*
New	Mary Brennan	*Stallings v. Director, Division of Taxation*
Indiana	Martha Wentworth	*Shapiro v. Hamilton County Assessor*
New	Mary Brennan	*Verizon New Jersey Inc. v. Borough of Hopewell (088421*