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STATE REGISTER

Printing Schedule for Agencies

Issue Number	*Submission deadline for Executive Orders, Adopted Rules and **Proposed Rules	*Submission deadline for State Contract Notices and other **Official Notices	Issue Date
	SCHEDULE FOR VOLUME 8		
30	Monday Jan 2	Monday Jan 16	Monday Jan 23
31	Monday Jan 16	Monday Jan 23	Monday Jan 30
32	Monday Jan 23	Monday Jan 30	Monday Feb 6
33	Monday Jan 30	Monday Feb 6	Monday Feb 13

*Deadline extensions may be possible at the editor's discretion; however, none will be made beyond the second Wednesday (12 calendar days) preceding the issue date for rules, proposed rules and executive orders, or beyond the Wednesday (5 calendar days) preceding the issue date for official notices. Requests for deadline extensions should be made only in valid emergency situations.

**Notices of public hearings on proposed rules and notices of intent to adopt rules without a public hearing are published in the Proposed Rules section and must be submitted two weeks prior to the issue date.

Instructions for submission of documents may be obtained from the Office of the State Register, 506 Rice Street, St. Paul, Minnesota 55103, (612) 296-0930.

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The *State Register* is the official publication of the State of Minnesota, containing executive orders of the governor, proposed and adopted rules of state agencies, and official notices to the public. Judicial notice shall be taken of material published in the *State Register*.

Cover graphic: *Minnesota State Capitol*, ink drawing by Ric James.

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NOTICE

How to Follow State Agency Rulemaking Action in the *State Register*

State agencies must publish notice of their rulemaking action in the *State Register*. If an agency seeks outside opinion before promulgating new rules or rule amendments, it must publish a NOTICE OF INTENT TO SOLICIT OUTSIDE OPINION. Such notices are published in the OFFICIAL NOTICES section. Proposed rules and adopted rules are published in separate sections of the magazine.

The PROPOSED RULES section contains:

- Calendar of Public Hearings on Proposed Rules.
- Proposed new rules (including Notice of Hearing and/or Notice of Intent to Adopt Rules without A Hearing).
- Proposed amendments to rules already in existence in the Minnesota Code of Agency Rules (MCAR).
- Proposed temporary rules.

The ADOPTED RULES section contains:

- Notice of adoption of new rules and rule amendments (those which were adopted without change from the proposed version previously published).
- Adopted amendments to new rules or rule amendments (changes made since the proposed version was published).
- Notice of adoption of temporary rules.
- Adopted amendments to temporary rules (changes made since the proposed version was published).

ALL ADOPTED RULES and ADOPTED AMENDMENTS TO EXISTING RULES published in the *State Register* and filed with the Secretary of State before September 15, 1982, are published in the *Minnesota Code of Agency Rules 1982 Reprint*. ADOPTED RULES and ADOPTED AMENDMENTS TO EXISTING RULES filed after September 15, 1982, will be included in a new publication, *Minnesota Rules*, scheduled for publication in spring of 1984. In the MCAR AMENDMENT AND ADDITIONS listing below, the rules published in the *MCAR 1982 Reprint* are identified with an asterisk. Proposed and adopted TEMPORARY RULES appear in the *State Register* but are not published in the *1982 Reprint* due to the short-term nature of their legal effectiveness.

The *State Register* publishes partial and cumulative listings of rule action in the MCAR AMENDMENTS AND ADDITIONS list on the following schedule:

Issues 1-13, inclusive
Issues 14-25, inclusive
Issue 26, cumulative for 1-26
Issue 27-38, inclusive
Issue 39, cumulative for 1-39
Issues 40-51, inclusive
Issue 52, cumulative for 1-52

The listings are arranged in the same order as the table of contents of the *MCAR 1982 Reprint*.

MCAR AMENDMENTS AND ADDITIONS

EXECUTIVE ORDERS

Executive Order No. 83-44

Providing for the Continuation of the Governor's Minnesota Judicial Merit Advisory Commission

I, RUDY PERPICH, GOVERNOR OF THE STATE OF MINNESOTA, by virtue of the authority vested in me by the Constitution and the applicable statutes, do hereby issue this Executive Order:

Executive Order Number 83-2, signed by me on January 10, 1983, and providing for the establishment of the Governor's Minnesota Judicial Merit Advisory Commission shall continue in effect pursuant to the provisions below.

Pursuant to Minnesota Statutes 1982, Section 4.035, this Order shall be effective 15 days after publication in the *State Register* and filing with the Secretary of State and shall remain in effect until January 3, 1985, or it is rescinded by proper authority or it expires in accordance with Section 4.035, Subdivision 3.

IN TESTIMONY WHEREOF, I hereunto set my hand this 30th day of December, 1983.

PROPOSED RULES

Pursuant to Minn. Stat. of 1980, §§ 14.21, an agency may propose to adopt, amend, suspend or repeal rules without first holding a public hearing, as long as the agency determines that the rules will be noncontroversial in nature. The agency must first publish a notice of intent to adopt rules without a public hearing, together with the proposed rules, in the *State Register*. The notice must advise the public:

1. that they have 30 days in which to submit comment on the proposed rules;
2. that no public hearing will be held unless seven or more persons make a written request for a hearing within the 30-day comment period;
3. of the manner in which persons shall request a hearing on the proposed rules;

and

4. that the rule may be modified if modifications are supported by the data and views submitted.

If, during the 30-day comment period, seven or more persons submit to the agency a written request for a hearing of the proposed rules, the agency must proceed under the provisions of §§ 14.13-14.20 which state that if an agency decides to hold a public hearing, it must publish in the *State Register* a notice of its intent to do so. This notice must appear at least 30 days prior to the date set for the hearing, along with the full text of the proposed rules. (If the agency has followed the provisions of subd. 4h and has already published the proposed rules, a citation to the prior publication may be substituted for republication.)

Pursuant to Minn. Stat. § 14.29, when a statute, federal law or court order to adopt, suspend or repeal a rule does not allow time for the usual rulemaking process, temporary rules may be proposed. Proposed temporary rules are published in the *State Register*, and for at least 20 days thereafter, interested persons may submit data and views in writing to the proposing agency.

Department of Natural Resources

Proposed Amendment of Rule Governing Lower St. Croix Water Surface Use

Notice of Intent to Amend a Rule without a Public Hearing

Notice is hereby given that the Minnesota Department of Natural Resources ("department") intends to adopt an amendment to the above-referenced department rule without public hearing because of the noncontroversial nature of the amendment.

Persons interested in these rules and amendments shall have 30 days to submit comments on the proposed rules and amendments. The proposed rules and amendments may be modified if the modifications are supported by the data and views submitted to the agency and do not result in a substantial change in the proposed language. Persons who wish to submit comments should submit such comments to Kim Elverum, Minnesota Department of Natural Resources, Box 46—Centennial Bldg., St. Paul, MN 55155.

No public hearing will be held unless seven or more persons make a written request for a hearing within the 30-day comment period. In the event a public hearing is required, the agency will proceed according to the provisions of Minnesota Statutes, section 14.14, subd. 1.

Authority for the adoption of these rules is contained in Minnesota Statutes, § 361.26, subd. 2. A Statement of Need and Reasonableness describing the need for and reasonableness of the amendment has been prepared and is available upon request at the above address.

Upon adoption of the final rules without a public hearing, the proposed rules, this Notice, the Statement of Need and Reasonableness, all written comments received, and the final Rules as Adopted will be delivered to the Attorney General for review as to form and legality, including the issue of substantial change. Persons who wish to be advised of the submission of this material to the Attorney General, or who wish to receive a copy of the final rules as proposed for adoption, should submit a written statement of such request to the address listed above.

A copy of the proposed amendment is attached.

December 23, 1983

Joseph N. Alexander, Commissioner
Department of Natural Resources

Rule as Proposed

6 MCAR § 1.2200 Lower St. Croix water surface use.

A.-D. [Unchanged.]

E. Water skiing.

1.-2. [Unchanged.]

3. From ~~Memorial Day~~ May 15 through ~~Labor Day~~ September 15, inclusive, no watercraft towing a person on water skis, aquaplane, or similar device shall operate after 12:00 noon on Saturdays, Sundays, and legal holidays, from the sandbars located approximately at mile 31.0 to the upper end of the federal nine-foot navigation channel approximately at mile 24.5.

F. [Unchanged.]

ADOPTED RULES

The adoption of a rule becomes effective after the requirements of Minn. Stat. § 14.13-14.28 have been met and five working days after the rule is published in the *State Register*, unless a later date is required by statutes or specified in the rule.

If an adopted rule is identical to its proposed form as previously published, a notice of adoption and a citation to its previous *State Register* publication will be printed.

If an adopted rule differs from its proposed form, language which has been deleted will be printed with strike outs and new language will be underlined, and the rule's previous *State Register* publication will be cited.

A temporary rule becomes effective upon the approval of the Attorney General as specified in Minn. Stat. § 14.33 and upon the approval of the Revisor of Statutes as specified in § 14.36. Notice of approval by the Attorney General will be published as soon as practicable, and the adopted temporary rule will be published in the manner provided for adopted rules under § 14.18.

Pollution Control Agency

Adopted Amendment of APC 29, Standards of Performance for Grain Handling Facilities, to be Recodified and Retitled 6 MCAR Section 4.00291, Standards of Performance for Dry Bulk Agricultural Commodity Facilities

The rule proposed and published at *State Register*, Volume 8, Number 12, pages 499-502, September 19, 1983 (8 S.R. 499) is adopted with the following modifications:

Rule as Adopted

6 MCAR § 4.00291 Standards of performance for dry bulk agricultural commodity facilities.

A. Definitions. For the purposes of this rule the following terms have the meanings given them:

4. "Dry bulk agricultural commodity facility" means a facility where bulk commodities are unloaded, handled, cleaned, dried, stored, ground, or loaded. "Dry bulk agricultural commodity facility" does not include a facility located on a family farm or family farm corporation, as defined in Minnesota Statutes, section 116B.02, which handles commodities from the farm or used on the farm.

10. "Normal loading procedure" means that part of a barge or ship loading operation where the spout and associated dust suppression systems are capable of distributing the commodity in the hold as needed without making modifications to the loading procedure, such as removing the dust suppressor, raising the spout, slowing the loading rate below the design capability of the spout, or attaching equipment at the end of the spout.

11. "Rack dryer" means equipment used to reduce the moisture content of grain in which the grain flows from the top to the bottom in a cascading flow around rows of baffles (racks).

~~11.~~ 12. "Reasonably available control technology (RACT)" means the lowest emission limit that a particular source is capable of meeting by the application of control technology that is reasonably available considering technological and economic feasibility.

~~12.~~ 13. "Throughput" means the number of tons of commodities received, plus the number of tons of commodities shipped, divided by two, determined on the basis of an average year. An average year is determined by averaging the actual receipts and shipments for the last three consecutive fiscal years. For facilities less than three years old, actual and anticipated receipts and shipments must be used.

~~13.~~ 14. "Topping-off" means the placing of grain in the final three feet of void in a barge, nine feet in a ship, between the fore and aft center line of the hatch and the outboard side of the vessel. The depth is determined by vertical measurement along the outboard side of the vessel from the top of the hatch opening.

~~14.~~ 15. "Trimming" means the part of the ship loading that requires the use of spoons, slingers, and other equipment attached to the loading spout to ensure that a ship is loaded to capacity.

~~15.~~ 16. "Unloading station" means the part of a commodity facility where the commodities are transferred from a truck, railcar, barge, or ship to a receiving hopper.

KEY: PROPOSED RULES SECTION — Underlining indicates additions to existing rule language. ~~Strike outs~~ indicate deletions from existing rule language. If a proposed rule is totally new, it is designated "all new material." ADOPTED RULES SECTION — Underlining indicates additions to proposed rule language. ~~Strike outs~~ indicate deletions from proposed rule language.

B. Standards of performance for dry bulk agricultural commodity facilities.

3. A commodity facility that is not required to be controlled under B.2. must be controlled if the facility meets one of the descriptions listed in Exhibit 6 MCAR § 4.00291-1 where the table indicates "control required." For a facility where control is required under this section, no owner, operator, or other person who conducts activities at the facility may allow:

d. a discharge of particulate matter from control equipment that exceeds the limits set forth in table 2 of rule APC 5 or that exhibits greater than ~~five~~ ten percent opacity, except that facilities constructed prior to January 1, 1984, with an annual commodity throughput of more than 180,000 tons and located in an unincorporated area or in a city with a population of less than 7,500, outside the Minneapolis-St. Paul Air Quality Control Region, is in compliance if the control equipment has a collection efficiency of not less than 85 percent by weight.

TAX COURT

Pursuant to Minn. Stat. § 271.06, subd. 1, an appeal to the tax court may be taken from any official order of the Commissioner of Revenue regarding any tax, fee or assessment, or any matter concerning the tax laws listed in § 271.01, subd. 5, by an interested or affected person, by any political subdivision of the state, by the Attorney General in behalf of the state, or by any resident taxpayer of the state in behalf of the state in case the Attorney General, upon request, shall refuse to appeal. Decisions of the tax court are printed in the *State Register*, except in the case of appeals dealing with property valuation, assessment, or taxation for property tax purposes.

State of Minnesota
County of Hennepin

Tax Court
Regular Division

Federal Reserve Bank of Minneapolis,

Petitioner,

v.

County of Hennepin,

Respondent.

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER FOR JUDGMENT

File Nos. TC-1623, TC-2221

The above tax petitions came on for hearing on the 21st day of June, 1983, at the Hennepin County Government Center before Judge Earl B. Gustafson. Testimony was closed on the 8th day of July, 1983, and the case was submitted to the Court on written briefs on the 14th day of October, 1983.

Ralph W. Peterson of Eastlund, Peterson & Solstad, Ltd., appeared for the petitioner. Charles F. Sweetland, Assistant County Attorney, appeared for the respondent.

The Court, having heard and considered the evidence adduced and being fully advised, now makes the following:

Findings of Fact

1. The petitions involve real property and improvements located in the City of Minneapolis, County of Hennepin, State of Minnesota, described as follows:

Lots 128 to 155, inclusive, Auditors Subdivision No. 137, identified for tax purposes as District 4, Plat 8690, Parcel 2150, School District 1.

2. Federal reserve banks are not exempt from state and local real estate taxes.

3. Petitioner has sufficient interest in the property to maintain its petitions; all statutory and jurisdictional requirements have been complied with, and the Court has jurisdiction over the subject matter of the actions and the parties hereto.

4. The taxes at issue are the real estate taxes on the subject property payable in the years 1982 and 1983 which petitioner claims were unequally assessed and assessed at a value greater than their actual or market value.

5. The assessment dates in question are January 2, 1981 and 1982.

6. The subject property was valued by the City of Minneapolis Assessor for tax purposes at $36,000,000 for the 1981 assessment date and $39,000,000 for the 1982 assessment date.

7. The Court finds the actual market values of the subject property to be $43,000,000 on January 2, 1981 and $45,000,000 on January 2, 1982.

8. The Court also finds that other commercial property in the City of Minneapolis during this period was systematically valued at 85% of market value and that this ratio should be applied to the above market values.

9. The final equalized values for tax purposes therefore are $36,550,000 for 1981 and $38,250,000 for 1982.

10. The attached Memorandum is made a part of these Findings of Fact and Conclusions of Law.

Conclusions of Law

1. The assessor's estimated market value (EMV) of $36,000,000 as of January 2, 1981 is affirmed.

2. The assessor's estimated market value (EMV) as of January 2, 1982, for taxes payable in 1983, is reduced from $39,000,000 to $38,250,000.

3. Real estate taxes due and payable in 1983 should be recomputed accordingly and refunds, if any, paid to petitioner as required by such computations, together with interest from the date of original payment.

LET JUDGMENT BE ENTERED ACCORDINGLY. A STAY OF 15 DAYS IS HEREBY ORDERED.

December 30, 1983.

By the Court,
Earl B. Gustafson, Judge
Minnesota Tax Court

Memorandum

The petitioner, Federal Reserve Bank of Minneapolis, is contesting its real estate taxes payable in the years 1982 and 1983. Under the original Federal Reserve Act, 12 U.S.C., Section 531, federal reserve banks are not immune from state and local real estate taxes.

Based upon the evidence adduced at trial and the controlling law, we find the actual market values to be $43,000,000 for 1981 and $45,000,000 for 1982. We also find that other commercial property in the City of Minneapolis and County of Hennepin was systematically valued at approximately 85% of market value during this period, and therefore, find the correct equalized values for tax purposes to be $36,550,000 for 1981 and $38,250,000 for 1982. This requires a reduction only in the assessor's estimated market value for 1982, from $39,000,000 to $38,250,000. No reduction for 1981 is ordered because the assessor's estimated market value of $36,000,000 does not exceed our finding of $36,550,000.

The subject property consists of land and a building occupying one complete block of property in downtown Minneapolis. The building was specifically designed to house all of the operations of the Federal Reserve Bank of Minneapolis serving banks in the Ninth Reserve District. Approximately 60 percent of the total building is underground and the balance is an office tower above ground suspended by a catenary cable between two supporting towers at either end of the structure. The ground level area is a plaza of granite dedicated to public use rising gradually from Nicollet Avenue to Marquette Avenue and serves as the roof for the underground portion of the building. There is open space between the plaza and most of the office tower. The supporting towers contain elevators connecting the above ground and below ground portions of the building. The three underground levels contain the vault and secure areas where currency, coin and securities are kept. The vault cuts through all underground levels and constitutes a "building within a building". The entire structure was designed as an integrated whole following guidelines issued in 1967 by the Board of Governors of the Federal Reserve System.

The building was completed and ready for occupancy in 1973 for a total cost, including land, of approximately $34,000,000.

The Bank makes two principal claims. First, it maintains that the Minneapolis Assessor's estimated market value of $36,000,000 and $39,000,000, for 1981 and 1982 respectively, exceed the subject property's actual market values for those years. Secondly, the Bank alleges there has been an unconstitutional inequality and lack of uniformity in the valuation of the subject property as compared with other property of the same class within the City of Minneapolis.

Claim of Excessive Valuation

In valuing property for real estate taxation, the assessor is required to use the criterion of "market value," Minn. Stat. 273.11(1), and in doing so must "consider and give due weight to every element and factor affecting the market value." Minn. Stat. 273.12. Market value is defined as the usual selling price which could be obtained at private sale and not at a forced sale. Minn. Stat. 272.03(8).

In prior litigation, petitioner contested the assessor's values for 1974-1978 which were set at $27,600,000 for each year, something less than the actual original cost. This Court affirmed those values and our decision, in turn, was affirmed by the Minnesota Supreme Court. *Federal Reserve Bank of Minneapolis v. State, et al,* 313 N.W. 2d 619 (Minn. 1981).

Both parties agree that in light of *Federal Reserve Bank of Minneapolis v. State*, Id., the Federal Reserve Bank should be considered a "special purpose building" specifically designed to meet the needs of a Federal Reserve Bank. If sold it would be put to an identical use, not some alternative use.

The Supreme Court's opinion reads in pertinent part as follows:

"The first issue, then, is whether the Tax Court's finding that the Federal Reserve Bank was a "special purpose building" was clearly erroneous. We hold it was not.

"Special purpose property is property that is treated in the market as adapted to or designed and built for a special purpose. This definition combines both functional and structural aspects: a special purpose property becomes such either by its use for unique functions or by its distinctive, specially-designed structural details. The tax treatment of special purpose property is atypical and follows directly from this definition. Because the building is specially adapted to a unique use and will not readily be sold to another user, "(t)he very nature of special purpose property is such that market value cannot readily be determined by the existence of an actual market, and therefore other methods of valuation, such as reproduction cost, must be resorted to." McCannel v. County of Hennepin, 301 N.W. 2d 910, 924 (Minn. 1980). McCannel, our leading case on this question, states that an airport facility should be valued according to its reproduction cost, rather than by its value to a hypothetical buyer who could use the facility only as a warehouse.

"The city's assessors considered it significant that the property in this case was built to fulfill certain needs of the owner and that the building was not the type of property bought or sold frequently on the market. Thus they assumed that the only hypothetical buyer would be essentially the same as the current user, the Federal Reserve Bank. The Tax Court accepted this analysis . . . .

"It seems to us that the property in this case is a special purpose building, specifically designed to meet the needs of the bank." 313 N.W. 2d 619, 621

This assumption, that any hypothetical buyer would continue to use the building as a Federal Reserve Bank District Headquarters, effectively precludes use of both the income approach and the market data approach to market value.

The only remaining traditional approach to market value is the cost approach.

The cost approach is founded on the principle of substitution. Namely, that a buyer will not pay more for what can be acquired by paying for the construction of an identical or similar facility. The cost of this new facility, of course, would have to be discounted or depreciated to make it an equivalent substitute for the subject property, an older building.

The cost approach is particularly applicable when the property being appraised involves relatively new improvements, when the improvements are unique or specialized, or when there exist no market sales of comparable properties. These conditions all obtain in this case.

In the cost approach an indication of value is found by adding the estimated land value to the estimated reproduction or replacement cost of new improvements less any accrued depreciation. This analysis assumes that any new improvements would have advantages over the older existing improvements. The measure of this difference between new and old improvements is called accrued depreciation. Depreciation may be composed of one, any, or all of three basic types, namely, physical, functional (internal obsolescence) and economic (external obsolescence).

In this case the appraisers for each party agree there is no economic obsolescence based on external factors such as neighborhood deterioration or competition. Both agree that physical depreciation and functional obsolescence should be recognized. Their biggest divergence of opinion is over the appropriate amount of functional obsolescence.

This disagreement over the extent of functional obsolescence stems from different projections regarding design. The question is would a new building be an exact replica of the present building or would it only be similar in size and utility?

Estimating the cost of exactly duplicating the structure is called the reproduction cost approach. Replacement cost, on the other hand, means estimating the cost of constructing a new building having equivalent utility. When properly followed, both approaches should arrive at approximately the same estimate of value. The reproduction cost approach envisions constructing an exact duplicate and therefore requires applying a deduction for functional obsolescence. The replacement cost approach, because it is only attempting to replace a building have equivalent utility, eliminates most or all functional obsolescence. In both approaches there is an additional deduction for physical depreciation.

The City's appraiser, Herbert Nyberg, took a reproduction cost approach. He started with historical costs and estimated what it would cost to build on the assessment dates in question. He further allowed some deductions for unessentials or "super-adequacies."

The Respondent's appraiser, Alan Leirness, emphasized a replacement cost approach in which he estimated the cost of constructing a building of similar size and utility.

Both appraisers applied depreciation to their estimates of new construction.

Although Mr. Leirness emphasized a replacement cost approach, he also considered the reproduction cost approach upon which the assessor put his principal reliance. Their respective estimates of constructing a new building, prior to any

depreciation, were very close. Mr. Leirness estimated that a new building would cost $57,800,000 to build in 1981 and $61,650,000 in 1982. Mr. Nyberg estimated these reproduction costs at $60,269,300 for 1981 and $63,299,000 for 1982.

If we use a reproduction cost figure of $60,000,000 for the new building and deduct $11,000,000 for functional obsolescence and $5,500,000 for physical depreciation, the depreciated value of the building would be $43,500,000. If this is added to the uncontested value of the land of $2,722,000, the indicated value of the entire property in 1981 would be $46,222,000. In 1982 it would be higher.

We disagree with respondent's contention that the Supreme Court's decision affecting earlier years compels us to only consider the reproduction cost approach. In estimating market value we, as well as the assessor, are obliged to "consider and give due weight to every element and factor affecting market value. . . ." Minn. Stat. § 273.12. Making one formula synonymous with market value violates Minn. Stat. § 273.12 even in special purpose property cases. *Independent School District No. 99 v. Commissioner*, 297 Minn. 378, 211 N.W. 2d 886 (1973). It is true that in *Federal Reserve Bank of Mpls. v. State*, supra, our Supreme Court held that the assessor's almost exclusive reliance on reproduction cost method was not error. We do not take this to mean, however, that no other approach such as a replacement cost approach can be considered. In *Independent School District No. 99 v. Commissioner*, supra, the Supreme Court held it was error for the Tax Court to rely exclusively on the Commissioner's reproduction cost formula in valuing a hydroelectric power plant. The Court said, "The difficulty we have with the formula approved by the Tax Court is that it makes market value synonymous with original cost, taking into account limited appreciation, and gives no weight to other factors affecting market value," Id., 297 Minn. at 384. The Court went on to say, however, that if all factors are considered one approach may be relied upon as the best indication of value.

"In rejecting the formula as applied to this case, we do not mean to suggest that in any individual case the one making the determination of market value might not, after considering all factors, conclude that original cost less depreciation most closely approximates market value." Id., 297 Minn. at 384.

In this case we feel the better approach and the one entitled to the greater weight is the reproduction cost approach.

Petitioner maintains the reproduction cost approach is unreliable because any hypothetical new Federal Reserve Bank Headquarters in Minneapolis would be built differently and much cheaper. This is an assumption only partially supported by the evidence. Improvements in design can always be made but we find no significant or dramatic difference in the building guidelines promulgated by the Federal Reserve Board of Governors in 1980 from the earlier 1967 guidelines. The 1980 Planning Guidelines state that new facilities should continue to reflect "stability, dignity and security" and should be "aesthetically pleasing within realistic and justifiable limits of cost."

Mr. Leirness deducted over $20,000,000 for functional obsolescence claiming that the subject property was overbuilt by 30% to 40% when compared to four new Federal Reserve Banks in other parts of the country. We think this amount of depreciation, in addition to physical depreciation, is excessive.

Mr. Nyberg, the appraisal witness for Respondent, did make a $11,000,000 allowance for so-called "super-adequacies" and inefficiencies labeled as "functional obsolescence" in appraisal parlance. This figure we accept as a more appropriate item of depreciation.

As we discussed earlier, we have considered all of the factors and approaches to value presented at trial but in the instant case are giving substantial weight to the reproduction cost approach.

Based upon all of the evidence adduced we conclude that the market value of the subject property as of January 2, 1981 was $43,000,000 and as of January 2, 1982 was $45,000,000.

Claim of Unequal Treatment

To prevail in a claim of "discrimination" or unequal treatment in violation of the United States and Minnesota Constitutions the petitioner must show that other property of the same class in the taxing district was systematically and arbitrarily undervalued when compared with the subject property. *In Re Petition of Hamm vs. State*, 255 Minn. 64, 95 N.W. 2d 649 (1959). Where property is valued at approximately the same level as most other properties intervention by the courts is not required or appropriate. *Federal Reserve Bank v. State*, 316 N.W. 2d 619 (Minn. 1981).

The leading Minnesota case on this subject is *In re Petition of Hamm v. State, Supra*, which states these principals in the following language:

"The right to uniformity and equality is the right to equal treatment in the apportionment of the tax burden. Uniformity of taxation does not permit the systematic, arbitrary, or intentional valuation of the property of one or a few taxpayers at a substantially higher valuation than that placed on other property of the same class . . . .

"Absolute equality is impracticable of attainment and the taxpayer may not complain unless the inequality is substantial.

Mere errors of judgment in estimating market value of property usually will not support a claim of discrimination." 255 Minn. 64, 95 N.W. 2d 649, 654.

The level of assessment in a taxing district can be shown through sales/ratio studies which compare the sale prices of properties recently sold to the assessor's estimated market values for these same properties. Sales/ratio studies that may be used for this purpose have been specially constructed by the Department of Revenue for the Minnesota Tax Court. There are three relevant studies which indicate the following ratios:

City of Minneapolis Commercial	1981 Sales Only	1981 and 1982 Sales	1982 Sales Only
Mean	77.1	81.6	85.1
Median	75.7	79.4	83.4
County of Hennepin Commercial			
Mean	76.3	78.0	80.5
Median	76.5	76.1	79.1

Although Minn. Stat. § 278.05, Subd. 4 permits the admission of these studies into evidence without laying a foundation, we do not, however, consider these studies conclusive or binding on the Court. Nevertheless, they provide valuable assistance in determining whether other property in the taxing jurisdiction is being systematically and arbitrarily valued under market value. The major weakness of these studies is their failure to adjust sale prices for terms or "cash equivalency."

In recent years many commercial properties have sold with favorable below market financing terms (known in the vernacular as "creative financing") where the purchase price is higher than the actual cash value.

Recognizing this, we have adjusted these ratios upward. In a number of other cases involving commercial property in Hennepin County and the City of Minneapolis, we have applied an 85% factor to the Court determined market value. *United National Corporation v. County of Hennepin*, TC-1482 and 1866, dated April 21, 1983; *Kraus-Anderson, Inc. v. County of Hennepin*, TC-2007, dated September 9, 1983; *Minneapolis Grain Exchange v. County of Hennepin*, TC-1349 and 1635, July 21, 1983 (Amended August 25, 1983); *Sheldon C. Brooks v. County of Hennepin*, TC-2133, September 16, 1983; *Host International v. County of Hennepin*, TC-1352, 1820, 1821 and 1822, dated November 16, 1983; *Sharpe & Kline v. County of Hennepin*, TC-1940 and 2978, dated December 20, 1983.

Here again, we feel a ratio of 85% should be applied to the Court determined market values of $43,000,000 for 1981 and $45,000,000 for 1982. This results in equalized values of $36,550,000 for 1981 and of $38,250,000 for 1982. Because the 1981 value of $36,550,000 exceeds the assessor's estimated market value of $36,000,000, no reduction is ordered and the assessor's value is affirmed. The assessor's 1982 estimated market value of $39,000,000 is reduced to this new equalized value of $38,250,000.

E.B.G.

State of Minnesota

Thomas M. Willmus, as Trustee,

Appellant,

Rose M. Willmus,

Appellant,

Mark T. Willmus,

Appellant,

v.

The Commissioner of Revenue,

Appellee.

Tax Court

FINDINGS OF FACT, CONCLUSIONS OF LAW, ORDER FOR JUDGMENT, AND MEMORANDUM

Docket No. 3632

Docket No. 3640

Docket No. 3641

The above entitled matters having been consolidated came on for trial before the undersigned, the Honorable John Knapp, Chief Judge of the Tax Court, in the courtroom of the Tax Court on Fifth Floor of the Space Center Building, 444 Lafayette Road, St. Paul, Minnesota, on June 7, 1983. Briefs were subsequently filed by both parties.

At issue herein is the proper interpretation of the Minnesota Minimum Tax For 1979.

The Commissioner contends that the Appellants' Minnesota Minimum Tax on preference items for calendar year 1979 must be computed by using the provisions of the Internal Revenue Code as amended through December 31, 1976. The Appellants contend that because they had no federal minimum tax under Section 56 of the Internal Revenue Code in 1979, they are not required to pay any minimum tax to the State of Minnesota.

William R. Busch, Esq., appeared as attorney for the Appellants.

James W. Neher, Special Assistant Attorney General, appeared as attorney for Appellee.

Syllabus

Minnesota Minimum Tax under Minnesota Statutes Section 290.019 for calendar year 1979 shall be 40% of the Federal Minimum Tax constructively imputed under Section 56 of the Internal Revenue Code of 1976.

After hearing all of the evidence adduced at said trial and being fully advised in the premises and upon the files and records herein, the Court makes the following:

Findings of Fact

1. Appellants Thomas M. Willmus, as Trustee, Rose M. Willmus, and Mark T. Willmus are individual taxpayers who resided in the State of Minnesota during 1979 and who timely filed separate state and federal income tax returns for the 1979 tax year.

2. On their 1979 federal returns, Appellants each showed a tax preference item of capital gains income in the amount of $147,222. None of the Appellants were obligated to pay a federal minimum tax for the tax preference items pursuant to Sections 56 through 58 of the Internal Revenue Code of 1954 as amended through December 31, 1979, electing instead to pay the alternative minimum tax pursuant to the provisions of Section 55 of the Internal Revenue Code, in the following respective amounts:

Appellant	Amount of Federal Alternative Minimum Tax Liability
Thomas M. Willmus, Trustee	$ 192.00
Rose M. Willmus	$2,720,00
Mark T. Willmus	$ 293.00

3. Appellants' Minnesota Individual Income Tax Returns indicated no Minnesota minimum tax liability for the 1979 tax preference items and Appellants paid no Minnesota minimum tax.

4. The Commissioner determined the Appellants' 1979 Minnesota minimum tax liability by imputing to them a federal minimum tax liability pursuant to the provisions of Section 56 of the Internal Revenue Code of 1976 and then assessed a Minnesota minimum tax equal to 40% of the imputed federal liabilities. The Orders assessed the tax in the following amounts:

Taxpayer	Date of Order	Tax	Interest	Total
Rose M. Willmus	7/28/82	$6,531.00	$1,577.46	$8,108.46
Mark T. Willmus	7/21/82	6,019.00	1,430.70	7,449.70
Thomas M. Willmus as Trustee	6/14/82	6,361.00	1,381.63	7,742.63

5. Appellants appealed from the Commissioner's assessments, and the cases were consolidated for trial by an Order of the Court dated October 6, 1982.

6. The Memorandum attached hereto is hereby made a part of these Findings.

Conclusions of Law

1. Minn. Stat. § 290.091 (1979) requires the Minnesota minimum tax on tax preference items for 1979 to be computed pursuant to Sections 56-58 of the Internal Revenue Code of 1954 as amended through December 31, 1976.

2. The Commissioner's assessment of Minnesota minimum tax on Appellants' tax preference items for 1979 was proper under the provisions of Minn. Stat. § 290.091 (1979).

3. Computation of the Minnesota minimum tax at 6 percent of the taxable amount of Appellants' tax preference items serves merely to simplify the tax computation and does not constitute impermissible administrative legislation by the Commissioner.

4. The Commissioner's Orders should be affirmed.

LET JUDGMENT BE ENTERED ACCORDINGLY. A STAY OF 15 DAYS IS HEREBY ORDERED.

December 29, 1983

By the Court,
John Knapp, Chief Judge
Minnesota Tax Court

Memorandum

The issue herein is whether the Commissioner's assessment of a Minnesota minimum tax on Appellants' tax preference items for 1979 was proper under the provisions of Minn. Stat. § 290.091 (1979).

On their 1979 federal return, Appellants did not assess a federal minimum tax, electing instead to pay the alternative minimum tax pursuant to the provisions of Section 55 of the Internal Revenue Code. The Commissioner of Revenue determined Appellants' imputed 1979 Federal minimum tax liabilities pursuant to Section 56 of the Internal Revenue Code of 1976 and then assessed Minnesota minimum taxes equal to 40% of the imputed federal liabilities.

Appellants contend that the Commissioner was in error in computing the Minnesota minimum tax at 40% of the imputed federal liability under Section 56 of the Internal Revenue Code of 1976. They contend that no Minnesota minimum taxes are due because the Appellants were not liable for any federal minimum tax under the provisions of Section 56 of the Internal Revenue Code as amended for calendar year 1979.

The Appellants contend that under the provisions of Minn. Stat. § 290.091, a Minnesota minimum tax is assessable against a taxpayer for 1979 only if the taxpayer actually had a federal minimum tax liability for that year. They contend that because each of them have the right to compute their federal minimum tax liability under a new provision of the Internal Revenue Code effective for 1979 entitled "Sec. 55 Alternative Minimum Tax for Taxpayers Other Than Corporations," they should not be obligated to pay any Minnesota minimum tax computed pursuant to the provisions of Section 56 of the Internal Revenue Code as amended through December 31, 1976.

Minn. Stat. § 290.091 (1979) provides in relevant part:

"In addition to all other taxes imposed by this chapter there is hereby imposed, a tax which, in the case of a resident individual, estate or trust, shall be equal to 40 percent of the amount of the taxpayer's minimum tax liability for tax preference items *pursuant to the provisions of sections 56 to 58 and 443(d) of the Internal Revenue Code of 1954 as amended through December 31, 1976.* . . ." [Emphasis added]

Section 56 of the Internal Revenue Code of 1976 states in pertinent part:

"In addition to other taxes imposed by this chapter, there is hereby imposed for each taxable year, with respect to the income of every person, a tax equal to 15% of the amount by which the sum of the items of tax preference exceeds the greater of—

(1) $10,000 or
(2) The regular tax deduction for the taxable year (as determined under subsection (c))."

Minn. Stat. § 290.091 was first adopted by the legislature in 1977 (Chapter 423, Article I, Section 14, Laws of Minnesota 1977) and was operative only as to the years beginning after December 31, 1976. After its adoption, the Commissioner prescribed Schedule M-1MT for reporting Minnesota minimum tax liability for 1977. It specified that the starting point is:

"1. Federal Minimum Tax (from Line 19 of Federal Form 4625 or Form 4626, Schedule A, Line 12 [Schedule B, Line 11 for Financial Institutions])"

On the reverse side of said Schedule M-1MT, the following instructions appear:

"The Minnesota minimum tax is equal to 40% of the federal minimum tax liability for resident individuals, estates and trusts except that Minnesota income tax paid cannot be included in federal tax preference items.

* * *

"WHO MUST FILE—You must file Schedule M-1MT if you are liable for a federal minimum tax on preference items computed on Federal Form 4625 or Form 4626."

* * *

The Appellants contend that these instructions make it crystal clear that if a taxpayer has no federal minimum tax liability for the given taxable year, he has no reportable or assessable Minnesota minimum tax liability for that year. However, the instructions were revised in 1978 and again revised in 1979 to reflect changes in Federal and State law, so the Appellants' reliance on the instructions is misplaced.

After Section 290.091 was enacted in 1977 and after the Commissioner issued the above-quoted Minnesota minimum tax computation instructions for 1977, Congress enacted the Revenue Act of 1978 in which, effective for 1979, the federal minimum tax no longer applied to a taxpayer's capital gains deduction. Instead, under Sections 421-423 of the 1978 Act, the taxpayer's capital gains deductions were subject to a new federal alternative minimum tax under the newly enacted Internal Revenue Code, Section 55. As a result of that change in federal tax law, the Appellants, who had substantial 1979 capital gains deductions, had no federal minimum tax liability whatsoever under Section 56 of the Internal Revenue Code. Instead, those capital gains deductions were subject only to a federal alternative minimum tax liability under Internal Revenue Code, Section 55.

Because the Appellants' federal minimum tax liability for calendar year 1979 was computed pursuant to Section 55 of the Internal Revenue Code and not Section 56 of the Internal Revenue Code, the Appellants are contending that they owe no Minnesota minimum tax under the above statute. We do not agree with the Appellants. Changes made in federal income tax law are not automatically incorporated into Minnesota tax law. *Bunge Corp. v. Commissioner of Revenue*, 305 N.W. 2d 779; *Wallace v. Commissioner*, 289 Minn. 220, 184 N.W. 2d 558.

The 1978 change in the Internal Revenue Code imposed a federal alternative minimum tax liability rather than a federal minimum tax liability on the taxpayers who had only capital gain deduction tax preferences for 1979.

The Appellants contend that the Court should disregard the last clause of the statute [as amended through December 31, 1976] as though it did not exist. In ascertaining legislative intent, the Courts have consistently held that the statute is to be construed as a whole so as to harmonize and give effect to all of its parts, and where permissible, no word, phrase, or sentence will be held superfluous, void or insignificant. *Anderson v. Commissioner*, 253 Minn. 528, 93 N.W. 2d 523, and also *Van Asperen v. Darling Olds, Inc.*, 2545 Minn. 62, 93 N.W. 2d 690.

In 1980 the legislature amended Minn. Stat. § 290.091, effective for years after 1979, by revising the opening clause of said section to read as follows (Laws 1980, Chapter 607, Article I, Section 15):

"(a) In addition to all other taxes imposed by this chapter there is hereby imposed, a tax which, in the case of a resident individual, estate or trust, shall be equal to 40% of the amount of the taxpayer's minimum tax liability or tax preference items pursuant to the provisions of sections 55 to 58 and 443(d) of the Internal Ravenue Code of 1954 as amended through December 31, 1979, except [the then designated exceptions are not here applicable]. . . ."

It is apparent that after the 1980 amendments the amount of taxes would have been substantially less than they were in 1979, but we cannot impute a legislative intent to follow the federal law until the legislature acts. The fact that changes in Minnesota Income Tax Law are always a year or two behind the federal changes is of no significance in this case. If the legislature had intended the 1980 changes to be effective for calendar year 1979, it would have so specified, but since it did not so, we must conclude that the legislature did not intend to change it for 1979.

A literal reading of the statutes specifically requires a minimum tax to be imposed on a taxpayer's tax preference items, which tax is to be equal to 40% of the taxpayer's imputed federal minimum tax liability under Sections 56-58 of the Internal Revenue Code of 1954 as amended through December 31, 1976. Thus, in calendar year 1979, a taxpayer's Minnesota minimum tax on preference item is computed by using the provision of the Internal Revenue Code as amended through December 31, 1976, not as amended through December 31, 1978.

J.K.

State of Minnesota
County of Polk

Tax Court
Regular Division

Lyle and Wilma Larson,

Appellants,

v.

The Commissioner of Revenue,

Appellee.

FINDINGS OF FACT, CONCLUSIONS OF LAW, ORDER AND MEMORANDUM

Docket No. 3710

This is an appeal from an Order of the Commissioner dated August 27, 1982, assessing additional income tax for 1978. The hearing was held October 4, 1983, in the Polk County Courthouse in Crookston, Minnesota, before the Honorable John Knapp, Chief Judge of the Minnesota Tax Court. The issue in the case is whether or not Appellants are residents of Minnesota.

Mikal Simonson of Simonson and Nelson, 223 North Central Avenue, Valley City, North Dakota, appeared for appellants.

Amy Eisenstadt, Special Assistant Attorney General, appeared for Appellee.

Syllabus

Appellee failed to show that Appellants had made a change of domicile from North Dakota to Minnesota. Appellants, as residents of North Dakota, are not liable for Minnesota income tax. The Commissioner's Order is, therefore, reversed.

From the evidence adduced at trial and from the files and records herein, the Court now makes the following:

Findings of Fact

1. Appellants, Lyle and Wilma Larson, are cash basis, calendar year taxpayers who filed a joint Minnesota Individual Income Tax Return in 1978, the year in question herein.

2. Lyle Larson was born in Barnes County, North Dakota. Wilma was born in Iowa. After their marriage, Lyle and Wilma were domiciled in Valley City, North Dakota.

3. Lyle Larson has been a grain farmer in North Dakota for most of his life.

4. In 1978 Lyle Larson owned over 3,200 acres of farmland in Barnes County, North Dakota. He was joint owner, with his brother, of an additional 1,100 acres in North Dakota. Of this land, 3,760 acres was cultivated in 1978.

5. Included in the land owned by Lyle Larson was a parcel which was given homestead treatment in North Dakota.

6. Appellants paid only $10,000 for labor on their farm in 1978, indicating that Appellants were active in the operation of the farm that year.

7. Appellants also own a home in Fargo, North Dakota.

8. Appellants pay real estate taxes on all of their property in North Dakota.

9. Appellants own no real property in Minnesota.

10. In 1971, Lyle Larson became involved with the Assembly of God Church in Alexandria, Minnesota, at the request of that church's superintendent. That involvement was continuous through 1978. In 1976, he received $14,896.33 in compensation for his services at the Alexandria church. In 1977 and 1978, he earned $17,000 and $18,391, respectively.

11. When in Alexandria, Appellants lived in a home owned by the Assembly of God Church. The church paid for all utilities. Appellants have not requested homestead status on this property.

12. Appellants divided the year into two parts, the farming season and winter. During the farming season (approximately March to November), Appellants spent their work week on their North Dakota farm and commuted to Alexandria for weekends. During the winter (approximately November to March), Appellants spent their time almost exclusively in Minnesota.

13. Appellants spent slightly less than fifty percent of 1978 in North Dakota and slightly more than fifty percent of 1978 in Minnesota.

14. In 1976 and 1977 Appellants filed Minnesota, North Dakota and federal income tax returns using the Alexandria residence as their address. In those years they filed Minnesota tax returns as Minnesota residents and filed North Dakota tax returns as non-residents. This was done inadvertently and was an error on the part of Appellants' Valley City tax preparer.

15. In 1978 Appellants filed Minnesota, North Dakota and federal tax returns using the Alexandria address. In that year they filed their North Dakota returns as residents and their Minnesota returns as non-residents.

16. In 1978 Appellants were registered to vote in North Dakota. They have always voted in North Dakota and have never registered to vote in Minnesota.

17. Appellants have always maintained their house in Barnes County, North Dakota. It has never been rented nor has it ever been put up for sale.

18. In 1978, both Lyle and Wilma Larson had Minnesota drivers licenses.

19. In 1978, Appellants owned ten motor vehicles. Seven of these (three farm trucks and four pick-up trucks) were used exclusively in North Dakota and were registered and licensed in North Dakota. The other three (all cars) were used in Minnesota and for travel between Alexandria and Barnes County. These vehicles were registered and licensed in Minnesota.

20. Appellants maintained bank accounts in Valley City and in Alexandria. The majority of Appellants' money was kept in a checking account at the Northwestern Bank of Valley City. Appellants also had personal and business loans from that bank. They also maintained a checking account at the Alexandria State Bank in Alexandria.

21. Appellants received treatment from several physicians in 1978. All of these physicians were located in Minnesota.

22. Most of Appellants' mail was received at their Alexandria address.

23. Appellants made charitable contributions in both North Dakota and Minnesota.

24. Appellants purchased all farm equipment and supplies in North Dakota. Personal items were purchased in both North Dakota and Minnesota.

25. Appellants had three children in 1978. Two attended college in North Dakota and lived in Appellants' house in Fargo. One attended school in Alexandria and lived at the Alexandria residence.

Conclusions of Law

1. Appellee has the burden of proving by a preponderance of the evidence that Appellants have changed their domicile from their farm in North Dakota to Alexandria, Minnesota.

2. Appellee has failed to carry the burden of proof.

IT IS SO ORDERED. A STAY OF 15 DAYS IS HEREBY ORDERED.

December 29, 1983

By the Court,
John Knapp, Chief Judge
Minnesota Tax Court

Memorandum

The issue in this case is whether Appellants, Lyle and Wilma Larson, changed their domicile from North Dakota to Minnesota during or prior to 1978, thereby becoming liable for Minnesota income taxes for all income earned in that year. We hold that the Commissioner failed to prove that Appellants changed their domicile. Accordingly, we reverse the Commissioner's Order assessing additional income tax.

In Minnesota, a resident's entire income is taxable by the state, including income earned outside of Minnesota. Minn. Stat. § 290.17, subd. 1. The term "resident" is defined as "any individual domiciled in Minnesota and any other individual maintaining an abode therein during any portion of the tax year who shall not, during the whole of such tax year, have been domiciled outside the state." Minn. Stat. § 290.01, subd. 7.

The word "domicile" is not statutarily defined. In *Miller v. Commissioner of Taxation*, 240 Minn. 18, 19, 59 N.W. 2d 925 (1953), the Minnesota Supreme Court held that "'[d]omicile' means bodily presence in a place coupled with an intent to make such place one's home." The test is a two-pronged one requiring both a person's presence in a place and an intent that the place become that person's domicile.

In *Commissioner of Revenue v. Stump*, 296 N.W. 2d 867, 870 (Minn. 1980), in an opinion affirming a decision by this Court, the Supreme Court stated that "an existing domicile is presumed to continue until a new one is established. . . . " That presumption must be overcome by a preponderance of the evidence showing that Appellants met the two-pronged test. Neither proof of physical presence without intent nor proof of intent without physical presence will establish a change in domicile. *Sawicke v. Commissioner of Revenue*, Minn. Tax. Court #3646 (August 1, 1983).

The Department of Revenue has promulgated 13 Minn. Code Agency Rule Sec. 1.6001 which further defines domicile. In Subsection A, its general statements, the regulation provides in part:

"The domicile of any person shall be that place in which that person's habitation is fixed, without any present intentions of removal therefrom, and to which, whenever absent, that person intends to return.

"A person who leaves home to go into another jurisdiction for temporary purposes only is not considered to have lost that person's domicile.

* * *

"The mere intention to acquire a new domicile, without the fact of physical removal, does not change the status of the taxpayer, nor does the fact of physical removal, without the intention to remain, change the person's status. The presumption is that one's domicile is the place where one lives. An individual can have only one domicile at any particular time. A domicile once shown to exist is presumed to continue until the contrary is shown. An absence of intention to abandon a domicile is equivalent to an intention to retain the existing one. No positive rule can be adopted with respect to the evidence necessary to prove an intention to change a domicile but such intention may be proved by acts and declarations, and of the two forms of evidence, acts shall be given more weight than declarations. A person who is temporarily employed within this state does not acquire a domicile in this state, if during such period the person is domiciled without this state."

13 Minn. Code Agency Rule 1.6001, subd. A.

In addition, Subsection B of the regulation lists a number of items that should be considered in determining whether or not a person is domiciled in Minnesota. The factors that are applicable to the case in point are:

1. Location of domicile for prior years.

2. Where the person votes or is registered to vote. Casting an illegal vote does not establish domicile for income tax purposes.

* * *

4. Classification of employment as temporary or permanent.

5. Location of employment.

6. Location of newly acquired living quarters whether owned or rented.

7. The present status of the former living quarters, i.e., was it sold, offered for sale, rented or available for rent to another.

8. Homestead status has been requested and/or obtained for property tax purposes on newly purchased living quarters and the homestead status of the former living quarters has not been renewed.

9. Ownership of other real property.

10. Jurisdiction in which a valid driver's license was issued.

* * *

13. Jurisdiction from which any motor vehicle license was issued and the actual physical location of the vehicles.

* * *

15. Whether an income tax return has been filed as a resident or nonresident.

16. Whether the person has fulfilled the tax obligations required of a resident.

17. Location of any bank accounts, especially the location of the most active checking account.

18. Location of other transactions with financial institutions.

19. Location of the place of worship at which the person is a member.

20. Location of business relationships and the place where business is transacted.

* * *

22. Address where mail is received.

23. Percentage of time (not counting hours of employment) that the person is physically present in Minnesota and the percentage of time (not counting hours of employment) that the person is physically present in each jurisdiction other than Minnesota.

* * *

25. Location of schools at which the person, the person's spouse or children attend, and whether resident or nonresident tuition was charged.

13 Minn. Code Agency Rule 1.6001, subd. B.

These factors are helpful in trying to determine the intent of the Appellants regarding domicile. None of the factors are, however, decisive. "Each case turns on its own peculiar facts and circumstances." *Commissioner of Revenue v. Stump*, supra, at 870.

In applying the factors listed above to the peculiar facts and circumstances of this case, it is apparent that the Commissioner has failed to demonstrate that Appellants intended to make Minnesota their home. The facts indicate that Appellants intended to spend considerable time in both North Dakota and Minnesota. It is well-established law that the existing domicile continues until a new domicile is established. *Sarek v. Commissioner of Revenue*, Minn. Tax Court #2524 (April 19, 1979).

The establishment of a new domicile requires a clear showing of acts and intent. *Sawicke v. Commissioner or Revenue*, supra. Generally, intent may be shown by acts and statements of the party with acts receiving greater weight. *Texas v. Florida*, 306 U.S. 398, 425 (1939). In this case the acts are inconclusive as to Appellants' intent. Since the Commissioner is alleging that Appellants have changed their domicile from North Dakota to Minnesota, he has the burden of proof. No evidence has been presented which conclusively establishes Appellants' domicile in Minnesota.

The uncontradicted testimony of Lyle Larson was that he never intended to change his domicile from North Dakota to Minnesota. He testified that he had always commuted back and forth between North Dakota and Minnesota and that his pastorship was temporary.

Appellee alleges that the fact that Appellants submitted their 1976 and 1977 income tax returns as Minnesota residents establishes that prior to 1978 Appellants were residents of Minnesota, not North Dakota. Lyle Larson, however, testified that Appellants had not intended to file as residents of Minnesota. He stated that this was an inadvertent mistake by Appellants' tax preparer that went unnoticed when the forms were signed and sent out. In any event, the filing of previous tax returns as a resident is only one factor in determining Appellants' intent and is not by itself determinative of residency.

It is uncontested that prior to 1976 Appellants were residents of North Dakota. The State has the burden of showing that Appellants intended to change their domicile to Minnesota at some point. This the State failed to do. The Commissioner's Order is, therefore, reversed.

J.K.

State of Minnesota
County of Hennepin

Tax Court
Regular Division

Anthony A. Gasser,
Petitioner,

v.

County of Hennepin,
Respondent.

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER FOR JUDGMENT.

File No. TC-2244

The above entitled matter came on for trial at the Hennepin County Government Center in Minneapolis on December 19, 1983, before the Honorable Earl B. Gustafson, Judge of the Minnesota Tax Court.

The issues are the classification of the petitioner's property and the real estate taxes due in 1981 and 1982.

The petitioner appeared pro se.

Richard T. Todd, Assistant Hennepin County Attorney, appeared for respondent.

From the evidence adduced at the trial and from the files and records herein, the Court now makes the following:

Findings of Fact

1. Petitioner has sufficient interest in the property to maintain his petition; all statutory and jurisdictional requirements have been complied with, and the Court has jurisdiction over the subject matter of the action and the parties hereto.

2. The subject property is the homestead of petitioner in the City of Minneonka described as follows:

Lots 4, 7, 8 and 9, Hazelwood West, according to the recorded plat thereof.

1980 Property I.D. No. 15-117-22-23-0031
1981 Property I.D. No. 15-117-22-23-0032

3. The taxes at issue are the real estate taxes on the subject property payable in the years 1981 and 1982, which petitioner claims were assessed unequally when compared with other property in the City of Minnetonka.

4. The correct classification of the property for taxes is "agricultural homestead."

5. There is no significant evidence of a pattern of systematic and substantial undervaluation of other property within the same taxing district when compared to the subject property.

6. The attached Memorandum is made a part of these Findings of Fact.

Conclusions of Law

1. The classification of the property should be changed from "residential" to "agricultural" for the years 1980 and 1981, taxes payable 1981 and 1982.

2. The petitioner's request for a reduction in valuation based upon a claim of unequal taxation is denied and the assessor's estimated market values are affirmed.

3. Real estate taxes due and payable in 1981 and 1982 should be recomputed using an "agricultural" classification and refunds, if any, should be paid to petitioner as required by such computations, together with interest from the dates of original payment.

LET JUDGMENT BE ENTERED ACCORDINGLY. A STAY OF 15 DAYS IS HEREBY ORDERED.

December 30, 1983.

By the court,
Earl B. Gustafson, Judge
Minnesota Tax Court

Memorandum

The taxes being contested are real estate taxes on the petitioner's homestead (which includes several platted lots) for the years 1980 and 1981, taxes payable in 1981 and 1982.

Questions of classification have been resolved in other litigation or by agreement with the assessor. The proper classification for the property for taxes payable in 1981 and 1982 is "agricultural homestead."

Petitioner does not actually contest the assessor's estimated market values (EMV's) but, rather, claims that his property has been overvalued when compared to other similar property in the immediate neighborhood.

To prevail in presenting a claim of unequal taxation in violation of the United States and Minnesota Constitutions the

petitioner must show that other property in the same taxing district was systematically and arbitrarily undervalued when compared with the subject property. We find no such pattern of undervaluation in this case. As near-by property was being platted there may have been a lag in bringing some lots up to full market value. There is, however, no indication that the assessor failed to exercise reasonable diligence in raising values as lots were sold and new homes built.

The Minnesota Supreme Court has held that a taxpayer's claim of unequal taxation cannot be sustained by comparing the subject property with two or three other properties that are allegedly undervalued. *Ploetz v. County of Hennepin*, 301 Minn. 401, 223 N.W. 2d 761 (1974).

The level of assessment in a taxing district can best be proven through sales/ratio studies which compare the sale prices of properties recently sold to the assessor's estimated market values (EMV's) for these same properties. There are studies that have been specially constructed by the Department of Revenue for the Minnesota Tax Court that may be admitted into evidence without laying a foundation. Minn. Stat. 278.05, Subd. 4. These studies show that residential property in the City of Minnetonka was being valued at approximately 85% of the sale prices.

It is very difficult to make any meaningful comparisons with the taxpayer's property and other property in Minnetonka because no evidence was offered as to the actual market value of the subject property or any other comparable property. It appears that most of the lots the petitioner sold in the subdivision he platted were valued by the assessor at about 85% of market value. They all sold for more than the assessor's E.M.V. This is consistent with the sales ratio studies.

Although the evidence is sketchy, there appears to be no pattern of systematic arbitrary valuation of the taxpayer's property at a substantially higher valuation than that placed on other property of the same class in the same taxing district.

The assessor's estimated market values are affirmed.

E.B.G.

OFFICIAL NOTICES

Pursuant to the provisions of Minn. Stat. § 15.0412, subd. 6, an agency, in preparing proposed rules, may seek information or opinion from sources outside the agency. Notices of intent to solicit outside opinion must be published in the *State Register* and all interested persons afforded the opportunity to submit data or views on the subject, either orally or in writing.

The *State Register* also publishes other official notices of state agencies, notices of meetings, and matters of public interest.

Department of Agriculture
Agronomy Services Division

Notice of Special Local Need (SLN) Registration for Furadan 4 Flowable

Pursuant to Minnesota Statutes, Section 18A.23, and 3 MCAR, Section 1.0338 B, the Minnesota Department of Agriculture (MDA), on December 29, 1983, issued a Special Local Need (SLN) Registration for Furadan 4 Flowable, manufactured by FMC Corporation.

The Commissioner of Agriculture, based upon information in the application, has deemed it in the public interest to issue such a registration, and has deemed that the information in the application indicates that the pesticide does not have the potential for unreasonable adverse environmental effects.

In addition to the uses prescribed on the product label, this Special Local Need (SLN) Registration permits the use of this product for control of root weevils infesting strawberries.

The application and other data required under Minnesota Statutes, Sections 18A.22, Subdivision 2(a-d), 18A.23, and 40 CFR 162.150-162.158, Subpart B, relative to this registration (identified as SLN No. MN83-0013; is on file for inspection at:

Minnesota Department of Agriculture
Agronomy Services Division
Pesticide Control Section
90 West Plato Boulevard
St. Paul, Minnesota 55107
Telephone: (612) 296-8547

A federal or state agency, a local unit of government, or any person or group of persons filing with the Commissioner a petition that contains the signatures and addresses of 500 or more individuals of legal voting age, have thirty (30) days to file written objections with the Commissioner of Agriculture regarding the issuance of this Special Local Need Registration. Upon receipt of such objections and when it is deemed in the best interest of the environment or the health, welfare, and safety of the public, the Commissioner of Agriculture shall order a hearing pursuant to Minnesota Statutes, Chapter 14, for the purpose of revoking, amending, or upholding this registration.

December 12, 1983

Jim Nichols, Commissioner

Housing Finance Agency
Home Improvement Division

Notice of Funding Availability for Residential Rental Energy Conservation

As announced by the Minnesota Housing Finance Agency in the *State Register* dated September 26, 1983, funds have been received from the Solar Energy and Energy Conservation Bank of the U.S. Dept. of Housing and Urban Development for the purpose of upgrading the energy efficiency of rental residential property, and are available in those communities participating in implementing the Rental Subsidy Program. In addition to those previously announced, the following communities and lenders are participating in implementing this program:

Community: City of Brainerd
Participating Lender:
First American Bank of Brainerd
321 S. Seventh Street
Brainerd, MN 56401
(218) 829-8781

Community: City of Duluth
Participating Lenders:
Norwest Bank Duluth, N.A.
230 W. Superior Street
Duluth, MN 55802
(218) 723-2600

Western National Bank
5629 Grand Avenue
Duluth, MN 55807
(218) 727-3533

Additional communities participating in implementing the program will be identified in future Notices. For more information on the Program, contact:

Diane Sprague
Minnesota Housing Finance Agency
333 Sibley Street, Suite 200
St. Paul, MN 55101
(612) 296-7615

Bureau of Mediation Services

Outside Opinion Sought Regarding Proposed Rules Governing the Procedure for Determining Appropriate Units, Representation, Fair Share Fees, Mediation and Impasse Procedures in the Public Sector

Notice is hereby given that the Minnesota Bureau of Mediation Services is seeking information or opinions from sources outside the agency in preparing to promulgate rules governing the procedure for determining appropriate units, representation, fair share fees, mediation and impasse procedures. Rules covering the subjects are currently codified at 8 MCAR § 2 (BMS 100-154). The promulgation of these new rules is authorized by Minn. Stat. § 179.71, subd. 5 (1980) which requires the Director

of the Bureau of Mediation Services to adopt reasonable and proper rules relative to and regulating the forms of petitions, notices, orders and the conduct of hearings and elections.

The Minnesota Bureau of Mediation Services requests information and comments concerning the subject matter of these rules. Interested or affected persons or groups may submit statements of information or comment orally or in writing. Written statements should be addressed to:

Jean L. King
Bureau of Mediation Services
205 Aurora Avenue
St. Paul, Minnesota 55103

Oral statements will be received during regular business hours over the telephone at 296-2525 and in person at the above address.

All statements of information and comments shall be accepted until February 24, 1984. Any written material received by the Minnesota Bureau of Mediation Services shall become part of the record in the event that these rules are promulgated.

Paul W. Goldberg, Director
Bureau of Mediation Services

Department of Public Welfare Mental Health Bureau

Outside Opinion Sought Concerning a Rule Governing Chemical Dependency Referral Criteria for Public Assistance Recipients

Notice is hereby given that the Minnesota Department of Public Welfare is drafting a rule 12 MCAR 2.025, establishing criteria for referral of public assistance recipients to needed chemical dependency treatment programs. This rule will govern criteria to be used in determining the appropriate level of chemical dependency care, whether outpatient, inpatient or short-term treatment programs, for each recipient of public assistance seeking treatment for alcohol or other drug dependency and abuse problems.

Authority for this rule is contained in Minnesota Statutes Chapter 254A.03, Subdivision 3. This is a new subdivision established by the 1981 Legislature.

All interested or affected persons are requested to participate in the formulation of this rule. Statements of information and comment may be made orally or in writing. Written statements of information and comment may be addressed to:

Lee Gartner
Chemical Dependency Program Division
Centennial Office Building
658 Cedar
St. Paul, Minnesota 55155

Oral statements of information and comment will be received during regular business hours over the telephone at 612/296-3991.

All statements of information and comment will be accepted until further notice. Any written material received by the Department shall become part of the hearing record.

Department of Transportation

Request by City of Minnetonka for Variance from State Aid Operations Standards for Deposit of Local Funds

Notice is hereby given that the City Council of the City of Minnetonka has made a written request to the Commissioner of Transportation for a variance from the requirement that local funds be on deposit with the Department of Transportation before an award of contract can be made as pertains to the TH 12-FAI-394-Carlson Parkway Interchange construction project.

The request is for a variance from 14 MCAR § 1.5032, G.,2.,b., Rules for State Aid Operations under Minnesota Statute, Chapters 161 and 162 (1978) as amended, so as to permit the city to deposit required moneys in an interest earning account and allow the Department of Transportation to withdraw funds from said account as needed, instead of making the full required deposit.

Any person may file a written objection to the variance request with the Commissioner of Transportation, Transportation Building, St. Paul, Minnesota 55155.

If a written objection is received within 20 days from the date of this notice in the *State Register*, the variance can be granted only after a contested case hearing has been held on the request.

January 6, 1984

Richard P. Braun
Commissioner of Transportation

STATE CONTRACTS

Pursuant to the provisions of Minn. Stat. § 16.098, subd. 3, an agency must make reasonable effort to publicize the availability of any consultant services contract or professional and technical services contract which has an estimated cost of over $2,000.

Department of Administration procedures require that notice of any consultant services contract or professional and technical services contract which has an estimated cost of over $10,000 be printed in the *State Register*. These procedures also require that the following information be included in the notice: name of contact person, agency name and address, description of project and tasks, cost estimate, and final submission date of completed contract proposal.

Department of Agriculture
Office of the Commissioner

Notice for Submission of Applications for Agricultural Market Development Projects Under the Agricultural Development Grant Program

Notice is hereby given that the Minnesota Department of Agriculture is accepting applications for agricultural development grants as provided for in Laws of Minnesota 1983, Chapter 293, Sections 5 and 29; and in 3 MCAR §§ 1.4060-1.4070. Applications are being received and will continue to be received until February 15, 1984.

Organizations or individuals wishing to apply for a grant should request a copy of the rules governing the program. The rules describe eligibility criteria, application content and application procedures. Separate proposals must be submitted for each grant being sought. Other information may be obtained by contacting:

Rollin Dennistoun, Ph.D.
Deputy Commissioner
Minnesota Department of Agriculture
90 West Plato Boulevard
St. Paul, Minnesota 55107
(612) 296-9310

Applicants are to submit their proposal(s) to Dr. Dennistoun at the above address on or before 4:30 P.M., February 15, 1984.

City of Hermantown

Contract for Professional Legal Services for Minnesota Small Cities Development Program

NOTICE IS HEREBY GIVEN that the City of Hermantown requires the services of a qualified legal consultant for a Minnesota Small Cities Development Program project. The City of Hermantown has secured federal funds for the project, and must follow all regulations imposed by the Federal Government for the expenditure of the funds.

The legal services required by the City of Hermantown include the following:

1. Assist and advise the City with respect to special assessment procedures.
2. Assist and advise the City with respect to land and easement acquisition.

3. Assist and advise the City in connection with the acceptability contracts with contractors and subcontractors.

Firms or individuals desiring consideration should express their interest by 4:00 P.M. January 27, 1984. A detailed Request for Proposal will be provided to all firms or individuals that respond.

Please indicate your interest in being considered for this contract by contacting:

Nancy A. Sirois
City Clerk
3161 Maple Grove Road
Hermantown, Minnesota 55811
(218) 729-6331

Department of Natural Resources

Request for Proposals to Operate Summer Work/Learn Camp

The Department of Natural Resources requests proposals to staff, manage and provide food for two residential and several non-residential Minnesota Conservation Corps (MCC) camps throughout the state. MCC is a work/learn program for high school aged youth.

A copy of the RFP may be obtained between January 16 and February 6 from John F. Grix, Office of Youth Programs, Centennial Office Building, Box 4, St. Paul, MN 55155. (612) 296-2144.

Proposals must be received by 4:00 p.m. on February 7, 1984. The approximate amount of funds available for this contract is $90,000.

Pollution Control Agency
Water Quality Division

Request for Qualifications to Evaluate Fiber Removal Technologies for a Reserve Mining Company Discharge from the Mile Post 7 Tailings Disposal Basin, Silver Bay, Lake County, Minnesota

The Minnesota Pollution Control Agency (MPCA) is issuing a Request for Qualifications (RFQ) for consulting firms qualified to conduct an evaluation of fiber removal technologies for a proposed discharge of surface water runoff and tailings transportation supernatant form Reserve Mining Company's Mile Post 7 taconite tailings disposal basin. The evaluation will be divided into two major parts. The first part will be the development of a best available technology to maintain water quality for the purpose of removing and treating fibers from the discharge. It will be necessary that the developed and recommended technology be compatible with Reserve operations. A report will be prepared comparing expected removal efficiencies and corresponding expected costs of the technologies considered and the rational for the selection of the recommended technology. The second part will require the consultant to review any Reserve Mining Company proposal for the disposal and treatment of the discharge and make recommendations concerning the proposal. There may also be a need for assistance from the consultant to aid the MPCA in the permitting process. Further information concerning the project can be obtained in the RFQ.

The estimated cost for this project is $25,000 and the estimated duration is one year.

The complete text of the RFQ and the project description will be made available to all interested parties until 4:30, January 25, 1984 by calling or writing:

Robert Criswell
Minnesota Pollution Control Agency
Water Quality Division
1935 West County Road B-2
Roseville, Minnesota 55113

Submittals of statement of qualifications are to be sealed in mailing envelopes or packages with the firm's name and address clearly written on the outside and received at the above address before 4:30, January 27, 1983. Late submittals will not be accepted.

All submittals received by the deadline will be evaluated by staff of the MPCA. The MPCA plans to make a selection of finalists by February 13, 1984. The selected group of most qualified firms may be requested to further interview with MPCA staff in order to arrive at a final decision. All submittals become property of the state of Minnesota and will not be returned.

State Designer Selection Board

Request for Proposal for Design of Microbiology/Public Health Remodeling Project

To architects and engineers registered in Minnesota:

The State Designer Selection Board has been requested to select designer for the Microbiology/Public Health Remodeling Project at the University of Minnesota—Minneapolis, Minnesota. Design firms who wish to be considered for this project should submit proposals on or before 4:00 P.M., February 8, 1984, to George Iwan, Executive Secretary, State Designer Selection Board, Room G-10, Administration Building, St. Paul, Minnesota 55155-1495.

The proposal must conform to the following:

1. Six copies of the proposal will be required.

2. All data must be on 8½" × 11" sheets, soft bound.

3. The cover sheet of the proposal must be clearly labeled with the project number, as listed in number 7 below, together with the designer's firm name, address, telephone number and the name of the contact person.

4. The proposal should consist of the following information in the order indicated below:

a) Number and name of project.

b) Identity of firm and an indication of its legal status, i.e. corporation, partnership, etc.

c) Names of the persons who would be directly responsible for the major elements of the work, including consultants, together with brief descriptions of their qualifications. If the applicant chooses to list projects which are relevant in type, scale, or character to the project at hand, the person's role in the project must be identified.

d) A commitment to enter the work promptly and to assign the people listed in "C" above and to supply other necessary staff.

e) A list of design projects in process or completed in the three (3) years prior to the date of this request for agencies or institutions of the State of Minnesota, including the University of Minnesota, by the firm(s) listed in "b" together with the approximate fees associated with each project.

f) A section of not more than fourteen (14) faces containing graphic material (photos, plans, drawings, etc.) as evidence of the firm's qualification for the work. The graphic material must be identified. It must be work in which the personnel listed in "c" have had significant participation and their roles must be clearly described.

The proposal shall consist of no more than twenty (20) faces. Proposals not conforming to the parameters set forth in this request will be disqualified and discarded without further examination.

5. In accordance with the provisions of Minnesota Statutes, 1981 Supplement, Section 363.073; for all contracts estimated to be in excess of $50,000, all responders having more than 20 full-time employees at any time during the previous 12 months must have an affirmative action plan approved by the Commissioner of Human Rights before a proposal may be accepted. Your proposal will not be accepted unless it includes one of the following:

a) A copy of your firm's current certificate of compliance issued by the Commissioner of Human Rights; or

b) A statement certifying that your firm has a current certificate of compliance issued by the Commissioner of Human Rights; or

c) A statement certifying that your firm has not had more than 20 full-time employees in Minnesota at any time during the previous 12 months.

6. Design firms wishing to have their proposals returned after the Board's review must follow one of the following procedures:

a) Enclose a self-address stamped postal card with the proposals. Design firms will be notified when material is ready to be picked up. Design firms will have two (2) weeks to pick up their proposals, after which time the proposals will be discarded.

b) Enclose a self-addressed stamped mailing envelope with the proposals. When the Board has completed its review, proposals will be returned using this envelope.

In accordance with existing statute, the Board will retain one copy of each proposal submitted.

Any questions concerning the Board's procedures or their schedule for the project herein described may be referred to George Iwan at (612) 296-4656.

7) PROJECT—I-84
Microbiology/Public Health Remodeling
University of Minnesota
Minneapolis Campus
Department of Education

PROJECT DESCRIPTION:

The project will involve remodeling approximately 85,000 assignable square feet of existing teaching and research space on the upper floors of the Mayo Building (located on the Twin Cities Campus) and vacated clinic areas in the northwest quadrant of the lower portion of the building. Approximately half the area to be remodeled will be laboratories; the other half will be devoted to offices, conference rooms, and various teaching spaces. The remodeling scope will range from simple upgrading of existing areas to major work in some areas necessitating extensive changes to room configurations, equipment, and building services. Construction will have to be sequenced to permit user relocation and will have to allow for continued occupancy of unaffected areas of the building. Construction budget is approximately $9.5 Million.

Project Objectives:

This project, within the University of Minnesota Health Science Complex, will accomplish the following:

—Provide needed expansion space for the Department of Microbiology

—Provide remodeled facilities for the School of Public Health

—Update all laboratories to current technology and current code requirements

—Consolidate both programs into logical configurations for program functioning.

Consultant Services:

The consultant will be required to prepare, in cooperation with the University's planning staff and Building Advisory Committee, necessary drawings, specifications, and estimates for Schematic Design, Design Development, and Construction Document Phases. Construction Phase Services will include shop drawings review, construction observation, and the preparation of as-built drawings. The fees for the project will be negotiated on the basis of general guidelines for similar type and complexities of projects.

Questions concerning the project may be referred to Clint Hewitt at 373-2250.

Roger D. Clemence, Chairman
State Designer Selection Board

SUPREME COURT

Decisions Filed Wednesday, January 4, 1984

Compiled by Wayne O. Tschimperle, Clerk

C2-83-1536 Aaron C. King, Relator, v. Little Italy, Respondent, Commissioner of Economic Security, Respondent.

Where an employee has been warned several times not to come to work intoxicated, his conduct in reporting to work on his day off in an intoxicated condition and allowing his dog to roam unleashed through employer's restaurant constitutes misconduct, a disqualifying condition for unemployment compensation benefits under Minn. Stat. § 268.09, Subd. 1(2), even though a fellow employee had requested claimant's help in repairing a malfunctioning piece of equipment.

Affirmed. Popovich, C.J.

C5-83-1398 State of Minnesota, Appellant, v. Laura Caroline Medenwaldt, Respondent.

1. A prior misdemeanor DWI conviction based on an uncounseled plea of guilty cannot be used to convert a subsequent DWI offense into a gross misdemeanor when defendant is neither informed of her right to counsel nor waives the right to counsel on the record.

2. Defendant properly challenged the constitutional validity of using a prior uncounseled misdemeanor conviction as the basis

for enhancement to a gross misdemeanor by bringing a motion under Minn. R. Crim P. 10.04. The burden was then on the State to show that the prior conviction was obtained consistent with constitutional requirements.

Affirmed. Lansing, J.

C4-83-1473 & C8-83-1475 State of Minnesota, Appellant, v. Sandy Lynn Menard, Respondent, Russell Wayne Rushfeldt, Respondent.

1. An investigatory *Terry* stop requires that a police officer be able to articulate particularized facts, in light of the total circumstances, giving rise to a reasonable suspicion that the individual stopped may be engaged in wrongdoing; probable cause is not required.

2. An investigatory stop under *Terry v. Ohio* is justified when a police officer in a small town is able to articulate that the following facts aroused his suspiction: he recognized a pickup truck entering town after midnight but did not recognize the three occupants, a short time later he saw the truck proceed through an alley on its way toward the state highway with no tailgate and with a motorcycle now laying in the back of the truck.

Reversed. Foley, J.

C6-83-1328 Greg McDonald, Relator, v. PDQ, Respondent, and Commissioner of Economic Security, Respondent.

Affirmed. Wozniak, J.

CX-83-1493 Gary Armstrong, Appellant, v. Robert L. Carr, Respondent.

1. Under a lease making the landlord responsible for maintenance, and tenants responsible for repairs necessitated by their acts or omissions, the landlord is not required to make cosmetic repairs necessitated by a tenant's omissions.

2. Under lease making tenants responsible for repairs necessitated by their acts or omissions, a tenant/assignee is not required to make repairs necessitated by the omissions of a prior tenant. An assignee is liable only for obligations maturing or breaches occurring while he holds the estate as assignee, and not for those which occurred before he became assignee or after he ceased to be such.

3. Under a lease permitting tenants to make business improvements at their own expense, a tenant who makes improvements to expedite the sale of his business assumes responsibility for the cost of the improvements.

Affirmed. Sedgwick, J.

C3-83-1268 State of Minnesota, Appellant, v. Linda Marie Von Bank, Respondent.

1. Where an officer advised defendant of her right to counsel by reading her a standard implied consent advisory form and then asked her if she wished to consult with an attorney, he had no further obligation to pursue the question of counsel after defendant answered "Don't know."

2. The results of a chemical test taken with defendant's consent after she answered that she didn't know if she wished to consult with an attorney, are admissible in evidence.

3. The limited right to counsel as outlined in *Prideaux* was adequately communicated to defendant when the implied consent advisory was read to her and she indicated she understood.

Reversed. Sedgwick, J.

C7-83-1449 Karen Kalanges, a.k.a. Karen Brinigton, Appellant, v. Leroy Brinigton, Respondent.

Dismissed. Popovich, C.J.

Decisions Filed Friday, January 6, 1984

Compiled by Wayne O. Tschimperle, Clerk

C1-82-1629 State of Minnesota, Respondent, v. Elvan Haase, Appellant.

Defendant received a fair trial and was properly convicted of criminal sexual conduct in the second degree and intrafamilial sexual abuse in the second degree.

Affirmed. Amdahl, C.J.

C4-83-792 State of Minnesota, Respondent, v. Monte Carl Ott, Appellant.

Record fails to support sentencing departure with respect to consecutive service.

Remanded for sentencing. Amdahl, C.J.

C6-83-79 Kenneth F. Bickel and Lorraine A. Bickel, Respondents, v. Larry D. Ostenson and Nancy Ostenson, Respondents, Donald O. Ostenson, et al., Defendants, Vern Carlson, Appellant.

Under the unique circumstances presented, the trial court abused its discretion in failing to vacate a default judgment against the individual when it granted the corporate defendant's motion.

Reversed and remanded. Peterson, J.

C4-83-193 & CX-83-196 Erie Mining Company, Respondent-Petitioner, v. Commissioner of Revenue, Petitioner-Respondent.

1. Subsequent to our decision in *Guilliams v. Commissioner of Revenue*, 299 N.W.2d 138 (Minn. 1980) the tax court has no jurisdiction over constitutional issues unless a district court refers the constitutional issues to the tax court.

2. The taconite tax provision of Minn. Stat. § 298.24, subd. 1(c), which taxes the higher of current year production or the average of the last three years of production, does not violate the uniformity clause of the Minnesota Constitution since it is a computational method which taxes production in lieu of a property tax.

3. Although Minn. Stat. § 298.24, subd. 1(c) creates two classifications of taconite property taxpayers, it does not violate the equal protection clause because the distinction is rationally related to a legitimate governmental purpose.

4. Even though Minn. Stat. § 298.24, subd. 1(c) utilizes previous tax years to compute present tax liability, it does not violate the due process clause as retroactively applied, since it is a valid property tax.

5. If the averaging method is used under subdivision 1(c) of Minn. Stat. § 298.24 then it must also be used for subdivision 1(a), the price index adjustment, and subdivision 1(b), the iron content adjustment of the taconite tax.

Affirmed in part, reversed in part. Todd, J.

Concurring Specially, Yetka, J.

C5-82-1598 James P. Hearne, d/b/a J. P. Hearne & Associates, Respondent, v. Kirk F. Waddell, d/b/a Integrated Business Computers, Defendant, Integrated Business Computers, Inc., Appellant.

Under the unique circumstances presented, the trial court abused its discretion in failing to vacate the default judgment entered against a corporate defendant when the default judgment entered against the individual defendant was vacated.

Reversed and remanded. Scott, J.

C7-83-1080 In Re Petition for Disciplinary Action against Dixon E. Jones, an Attorney at Law in the State of Minnesota.

Attorney publicly reprimanded and placed on probation, with conditions.

Per Curiam.

Errata

The following changes are to be made in the Pollution Control Agency's proposed rules relating to permits published at Volume 8, Number 25, pages 1422-1479, December 19, 1983:

At 8 S.R. 1422, 6 MCAR § 4.4005 A., change the colon at the end of the phrase to a semicolon.

At 8 S.R. 1422, 6 MCAR § 4.4005 B., change the colon at the end of the phrase to a semicolon.

At 8 S.R. 1435, 6 MCAR § 4.4106 B.14.d., the second sentence should be changed to read:

The applicant's right to make this request expires ~~250~~ 270 days after the promulgation by the Environmental Protection Agency of an effluent limitation guideline that pertains to the pollutant discharged by the applicant that is subject to the best available technology requirement, or at the close of the public comment period established under 6 MCAR § 4.4010 D., whichever is earlier.

At 8 S.R. 1438, 6 MCAR § 4.4107 F.41., change "N-nitrosodimenthylamine" to "N-nitrosodimethylamine."

At 8 S.R. 1438, 6 MCAR § 4.4107 F.44., change "phenathrene" to "phenanthrene."

At 8 S.R. 1440, 6 MCAR § 4.4107 J.15., change "chlopyrifos" to "chlorpyrifos."

At 8 S.R. 1441, 6 MCAR § 4.4107 J.21., change "diaxinon" to "diazinon."

At 8 S.R. 1445, 6 MCAR § 4.4109 C., the second sentence should be changed to read:

The director may also require implementation of best management practices if the director finds that this requirement is necessary to achieve compliance with an effluent limitation, standard, or prohibition or to comply with Minnesota or federal statutes or rules, including requirements for the control of toxic pollutants and hazardous substances from ancillary activities.

At 8 S.R. 1448, 6 MCAR § 4.4203 B.4., change "6 MCAR § 4.9414" to "6 MCAR § 4.9214."

At 8 S.R. 1453, 6 MCAR § 4.4208, change "except as provided" to "except as otherwise provided."

At 8 S.R. 1453, 6 MCAR § 4.4208 D.2., change "or how to contact" to "or how contact."

At 8 S.R. 1456, 6 MCAR § 4.4211 K., change "6 MCAR § 4.9310 G.1. and 2." to "6 MCAR § 4.9320 G.1. and 2."

At 8 S.R. 1468, 6 MCAR § 4.4223 B.3.a., change "The permittee" to "the permittee."

At 8 S.R. 1472, 6 MCAR § 4.4311 C.1., the semicolon at the end of the phrase should be underlined.

At 8 S.R. 1473, 6 MCAR § 4.4313 A.1., change "a new parking facility" to "a new parking facility."

At 8 S.R. 1473, 6 MCAR § 4.4314, the title should read as follows:

~~(e)~~ 6 MCAR § 4.314 Exemptions.

At 8 S.R. 1473, 4.4314 D., change "a new or modified airport" to "a new or modified airport."

At 8 S.R. 1474, 4.4315, underline the period after "Assessment."

At 8 S.R. 1477, 4.4320, underline the period after "Permit conditions."

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Briefly/Preview—Senate news and committee calendar; published weekly during legislative sessions. Contact Senate Public Information Office, Room B29 State Capitol, St. Paul MN 55155, (612) 296-0504.

Perspectives—Publication about the Senate. Contact Senate Information Office.

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This Week—weekly interim bulletin of the House. Contact House Information Office.