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OFFICE OF
APPELLATE COURTS

NOV - 5 1998

November 5, 1998

FILED

Frederick K. Grittner
Supreme Court Administrator
305 Minnesota Judicial Center
25 Constitution Avenue
St. Paul, MN 55155-6102

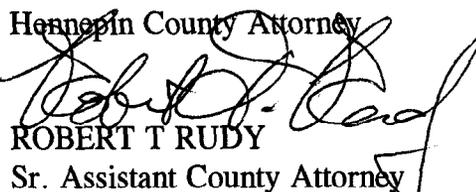
Re: In re Minnesota Property Tax Litigation Involving the Application
of Minn. Stat. § 273.13, subd. 24 to Class 3 (a) Commercial,
Industrial or Utility Property
Supreme Court No.

Dear Mr. Grittner:

Enclosed for filing with the Court please find an original and three copies of a Motion
to Assign All Cases to the Minnesota Tax Court for Determination with regard to the above-
entitled matter. Also attached is an affidavit showing that counsel has been served.

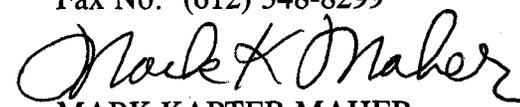
Sincerely,

MICHAEL O. FREEMAN
Hennepin County Attorney



ROBERT T RUDY

Sr. Assistant County Attorney
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MARK KAPTER MAHER

Assistant County Attorney
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MKM:mb

Enclosures

c: Alan Kildow, Robert Hill, Keith Simons

HENNEPIN COUNTY IS AN AFFIRMATIVE ACTION EMPLOYER

STATE OF MINNESOTA

OFFICE OF
APPELLATE COURTS

IN SUPREME COURT

NOV 5 1998

NO. C1-98-2035

FILED

In re Minnesota Property Tax
Litigation Involving The
Application of Minn Stat.
§ 273.13, subd. 24 to Class 3 (a)
Commercial, Industrial or
Utility Property

Motion to Assign All Cases
To the Minnesota Tax Court
For Determination.

To: The Chief Justice and the Associate Justices of the Minnesota Supreme Court.

Pursuant to Minn. Stat. § 2.724, subd. 2, wherein the Chief Justice is given the authority to “supervise and coordinate the work of the courts of the state,” the undersigned respectfully request the Court to issue an Order transferring to the Minnesota Tax Court for determination, all cases which involve the property tax controversy concerning whether particular parcels of property are entitled to receive the “low or preferred rate” of Class 3 (a) property or the “general rate” of Class 3 (a) property.

1. Statement of Facts necessary to an understanding of the issues presented.

Minn. Stat. § 273.13 subd. 24 provides that property which is identified as class 3 (a) pursuant to Minn. Stat. § 273.13 subd. 24 (hereinafter referred to as “Commercial”) property is entitled to receive a reduced or preferred tax rate on the first \$100,000 of market value (first \$60,000 of market value for taxes payable in 1987 and 1988). However, an owner is only

entitled to receive this reduced or preferred tax rate for one parcel of property per county or if that parcel does not have enough market value, additional commercial parcels can receive the reduced rate, but only up to the maximum of \$100,000 or \$60,000.

Plaintiffs own Commercial properties in a number of Counties in the State of Minnesota. They allege that they were entitled to receive the reduced or preferred tax rate and did not receive it. They seek certification of a putative class which may have paid excess property taxes in 1987 and subsequent years. In most complaints: Counts I, VI and VII claim a right to recover these alleged overpayments under various provisions of Minnesota's property tax laws; Counts II, III, IV and V assert various common law theories for recovery of the alleged overpayments; Counts VIII and IX assert that collection of the alleged overpayments violated the equal protection and due process clauses of the Fourteenth Amendment to the United States Constitution, and Count X alleges violation of the equal protection and uniformity clauses of the Minnesota Constitution.

The following is a listing of cases filed by attorneys Alan Kildow, Robert Hill and/or Keith Simons:

County	Case Number	Case Name	Judge (Court)	Status
Hennepin	DC-97-567	LGSRG (Burkholder)	Perez (TxCt)	Transferred to Tax Court by Judge Neville 2/29/97 Plaintiffs' Motion to transfer to District Court Denied by Judge Perez 10/30/98. Pretrial Order entered.
Hennepin	DC-97-2321	Programmed Land I	Perez (TxCt)	Transferred to Tax Court by Judge Ginsberg 3/20/97

County	Case Number	Case Name	Judge (Court)	Status
Hennepin	DC-98-10713	Programmed Land II	Larson (4 th Dist)	Motion to transfer to Tax Ct. pending
Hennepin	DC-98-10715	Schuler	Larson (4 th Dist)	Motion to transfer to Tax Ct. pending
Carver	C-5-98-1013	Taco Bell	(Tx Ct)	Defendants' motion to transfer to Tax Court Granted by Judge Lynch 9/30/98, Plaintiffs' Petition for Writ of Mandamus to the Court of Appeals denied 10/27/98
Dakota	C-4-97-9320	Eggum Investments	McCarthy (1 st Dist)	Scheduling Order setting trial on stip facts
Itasca	C-9-97-1465	Klegstad	Perez (Tx Ct)	
Anoka	C-5-97-6090	Burkholder	(Tx Ct)	Defendants' Motion to transfer to Tx Ct. granted by Judge Hoffman 10/13/98
Ramsey	C4-97-3732	Multi-Tech Systems	Krause (Tx Ct)	
Ramsey	C1-97-5261	Murray	Krause (Tx Ct)	
Scott	1997-16032	Lange	Krause (Tx Ct)	
Washington	C6-97-4400	Zimmerman	Perez (Tx Ct)	
Wright	C3-97-3160	Fehn	Krause (Tx Ct)	
Olmsted	98-002164	Gores	(Dist Ct)	Motion to transfer to Tax Court pending.

2. Statement of Issues.

- 1) The Minnesota Supreme Court has the authority to assign a judge or the Minnesota Tax Court to preside over all cases involving the issues presented in these cases.
- 2) The Minnesota Tax Court has the authority to hear cases involving the issues presented in these cases because they arise under the tax laws of this state.
 - i) Constitutional issues can be heard by the Minnesota Tax Court so long as the case was originally filed in District Court and transferred to the Tax Court pursuant to In Re Petition of McCannel, 301 N.W.2d 910, 911

(Minn. 1980).

- ii) Plaintiffs' are not entitled to jury trials in cases that arise under the tax laws of this state even if they are pled as common law, declaratory judgment or constitutional actions.

3. Argument.

1. **The Minnesota Supreme Court has the authority to assign a judge or the Minnesota Tax Court to preside over all cases involving the issues presented in these cases.**

Minn. Stat. § 2.724 subd. 2 provides that in order “[t]o promote and secure more efficient administration of justice, the chief justice of the supreme court of the state shall supervise and coordinate the work of the courts of the state.” Additionally, the Supreme Court assigned one judge of the district court to preside over all asbestos related claims brought in Minnesota state courts. In re Minnesota Asbestos Litigation, Order, December 14, 1987. This was because,

...the asbestos claims “will involve, in numerous instances, similar questions of law and fact, problems in discovery, theories of recovery and defense,” and that the assignment of all cases to one judge was “necessary for the convenience and economy of the parties, all counsel, the public and the Court.”

Mn. Personal Injury Asbestos Cases v. Keene Corporation, 481 N.W.2d 24, 26 (Minn. 1992).

Most cases which have been filed involving the Commercial property classification have already been transferred to the Minnesota Tax Court. Some cases in the Tax Court have proceeded to a point where the parties are in the midst of discovery and some substantive orders have already been issued. Clearly, the Minnesota Supreme Court has the authority to manage the court system and has issued an order before assigning a group of cases to a single

judge. Therefore, for the “convenience, economy of the parties, all counsel, the public and the Court,” it makes sense to transfer to the Minnesota Tax Court the remaining cases involving this tax issue that are before District Court Judges.

2. The Minnesota Tax Court has the authority to hear cases involving the issues presented in these cases because they arise under the tax laws of this state.

There is no dispute between the parties that these cases arise under the tax laws of this state. The plaintiffs’ allege overpayment of property taxes based on not receiving the reduced or preferred tax rate on the first \$100,000 or \$60,000 of value of their commercial property.

Minn. Stat. § 271.01 subd. 5 states as follows:

The tax court shall have statewide jurisdiction. ... the tax court shall be the sole, exclusive, and final authority for the hearing and determination of all questions of law and fact arising under the tax laws of this state, as defined in this subdivision, in those cases that have been appealed to the tax court and in any case that has been transferred by the district court to the tax court.

After Judge Lynch granted Defendants’ motion to transfer the Carver County case (Taco Bell) to the Minnesota Tax Court, Plaintiffs’ petitioned the Court of Appeals for a Writ of Mandamus to prohibit the transfer. On October 27, 1998, Chief Judge Toussaint issued an order in Taco Bell of California, et al. vs. Donald F. Dahlke, et al., #C1-98-1886 denying the petition for Writ of Mandamus. The Court stated:

... The supreme court has held that the tax court has authority to determine constitutional questions in matters transferred from the district court. (citation omitted) To the extent that petitioners dispute that holding or the scope of the tax court’s jurisdiction, mandamus from this court, directed at the district court’s decision to transfer this case, is inappropriate.

- (i) **Constitutional issues can be heard by the Minnesota Tax Court so long as the case was originally filed in District Court and transferred to the Tax Court pursuant to In Re Petition of McCannel, 301**

N.W.2d 910, 911 (Minn. 1980).

The Minnesota Tax Court is an independent agency of the executive branch of government. As such, it cannot hear constitutional issues without the case first being filed in District Court and then transferred to the Tax Court with the knowledge that there are constitutional issues to be decided.

Violations of state and federal constitutional protections in Plaintiffs' complaints are based on the claim that the taxing authority misapplied a state property tax law. In Matter of McCannel, supra, this Court held that the Tax Court has jurisdiction over constitutional challenges to both the facial validity of and the administration of the tax laws, in cases transferred to it:

However, we also emphasized in Wulff that the tax court, unlike other administrative agencies, is given uniquely judicial powers. Decisions of the tax court are accorded the same finality and deference as those of the district court. The tax court may acquire jurisdiction in the first instance through transfers of cases from the district court, which does have jurisdiction to determine the constitutionality of legislative acts.

Id. 301 N.W.2d 919. See also, Guilliams v. Commissioner of Revenue, 299 N.W.2d 138, 139, footnote 1 (Minn. 1980). In McCannel, the Court determined that the consolidated Tax Court decisions it was reviewing included both challenges to the validity of a tax statute, Id. 301 N.W.2d at 916 ("claim is really that § 273.11, subd. 2, created a class of property ... cushioned temporarily against taxation at its full value to the detriment of other property, ..."); as well as to discriminatory application, Id. 301 N.W.2d at 920 ("McCannel's claim is that ... assessor followed practices which systematically underestimated the value of these comparables, thus unconstitutionally discriminating against McCannel's property.

Analytically, this claim is one of discrimination in fact,”) These cases involve a challenge to the administration rather than the validity of a tax law, and McCannel is directly on point.

The Tax Court’s jurisdiction to decide constitutional issues in matters referred to it by the District Court was confirmed in Nagaraja v. Commissioner of Revenue, 352 N.W.2d 373 (Minn. 1984). In Nagaraja, state and federal constitutional issues were first raised in Tax Court. The Tax Court transferred the case to the District Court, finding it did not have original jurisdiction over constitutional issues. The Supreme Court held that the Tax Court became vested with jurisdiction to decide the constitutional issues when the District Court transferred the case back to the Tax Court:

McCannel holds that the “tax court ... has jurisdiction to determine the constitutionality of tax statutes when, in the first instance the constitutional issue is raised in the district court before the case is transferred to the tax court.” Guilliams, 299 N.W.2d at 139 n. 1. In the instant case the Commissioner, noting the tax court’s lack of original jurisdiction to decide constitutional issues, moved to have the case transferred to district court. The tax court outlined the constitutional issues in its order transferring the case to Ramsey County. Consequently, the district court was aware of the constitutional issues when it transferred the case back to the Tax Court. Hence jurisdiction is present under McCannel and Guilliams, *supra*.

Id. 352 N.W.2d 374, n.1.

The Petitioners have contended in the past that the Tax Court may not decide a federal constitutional issue. This position flies in the face of established precedent. In McCannel, *supra*, the petitioners alleged violations of both the Minnesota Constitution and the Fourteenth Amendment to the Federal Constitution. The same was true in Erie Mining Co. v. Commissioner of Revenue, 343 N.W.2d 261, 263 (Minn. 1984), and Guilliams v. Commissioner of Revenue, *supra*. In each of those cases the Supreme Court specifically held

that the Tax Court could decide the constitutional issues. The Supreme Court also affirmed the Tax Court's decisions on state and federal constitutional issues in United National Corporation v. County of Hennepin, 299 N.W.2d 73 (Minn. 1980), and Westling v. County of Mille Lacs, 581 N.W.2d 815 (Minn. 1998).

- (ii) **Plaintiffs' are not entitled to jury trials in cases that arise under the tax laws of this state even if they are pled as common law, declaratory judgment or constitutional actions.**

In opposing motions to transfer these cases to the Minnesota Tax Court, Plaintiffs have argued that they are entitled to a jury trial and the Tax Court is without authority to give a jury trial. Since the cases are being transferred from the District Courts, the Tax Court "acquires the district court's jurisdiction to decide all issues in a particular case." McCannel, supra, at 301 N.W.2d 920. That would seem to imply that the Tax Court could hold a jury trial if it were appropriate. However, Plaintiffs do not have a right to a jury trial because this is a tax case, and more particularly, a dispute as to the proper amount of a tax. In an analogous situation, this Court held that there is no right to a jury trial upon appeal of an assessment.

The right to a jury trial must be found in either the Minnesota Constitution or provided specifically by statute. The Minnesota Constitution does not give a right to jury trial to one who appeals a special assessment. First, Minn. Const. Art. 1, § 4 provides that

"the right to trial by jury shall remain inviolate, and shall extend to all cases at law"

This court has consistently held that this provision was intended to guarantee that the right to trial by jury exist as it had at the time that the constitution was adopted, that the right should be neither enlarged or diminished. (citations omitted) Second, the right to appeal from an assessment is a right established by statute and not a right existing at common law. (citations omitted) Thus, the right to jury trial guaranteed by the Minnesota Constitution does not apply to appeals from assessments.

... In all the statutes cited by appellants, the right to jury trial was explicitly granted and the procedure for appeal is set out in detail. Strictly construed, as suggested in earlier cases, there is no right to jury trial since none is explicitly granted. Appellants must make their arguments before the legislature. It alone can award them a jury trial.

Ewert v. City of Winthrop, 278 N.W.2d 545,550 (Minn. 1979) (emphasis added). In Wade v. Drexel, 60 Minn. 164, 62 N.W. 261 (1895), involving a challenge to the apportionment of a tax lien between the interests of co-owners of property, the Supreme Court said:

The appellants were not entitled to a jury trial under the statute, and the constitution gives them no such right for several reasons. No such proceeding as this was know to the common law, and this proceeding is not a substitute for any common law remedy. On the contrary, if the statute provided the right without prescribing the remedy, as was the case before the law of 1893, the remedy would be a bill in equity, not an action at law. Besides, the proceeding is part of the general machinery for the assessment and collection of taxes, and the remedies for apportioning the amount of the same, in which a jury trial is not a matter of right.

Id., 60 Minn. at 167, 62 N.W. at 261.

This Court explicitly held that there is no right to a jury trial where the issue is the proper amount of a property tax assessed, in Commissioners of Mille Lacs County v. Morrisson, 22 Minn. 178 (1875), which is squarely on point. In the Mille Lacs case, the taxpayer challenged a judgment authorizing a tax sale of his property on the grounds that he had been denied a jury trial on the issue of the proper amount of the tax. The Court rejected the argument, finding the only possible jury issues were those relating to the validity of the proceedings affecting the titled derived from the tax sale.

In no case could he have a jury try and determine how much the tax ought to have been. Under the act of 1874 the only things really essential to the right to sell the land for the tax are the jurisdiction of the court, and its judgment determining the amount of the tax and directing the sale. When the judgment is

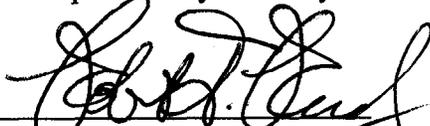
entered, the right to sell is determined. It is then immaterial that the assessors, auditors and boards of equalization have or have not strictly complied with the requirements of law in the assessment and levy of the tax. Upon the application for judgment it is not material that they have or have not done so, except so far as any failure or omission to do so may be shown to have prejudiced the defending party. This can be shown only by proof that the tax, as it appears on the list, is too high. Upon such proof the court determines how much it ought to be reduced in order to be fair and equal. It corrects the assessment or tax to that extent. There can be no right to the intervention of a jury in making such correction, nor can there be such a right with respect to the regularity of those proceedings, the regularity of which is made not essential to the judgment.

Id., 22 Min. at 183-184. The analysis of the jury trial issue is thus straightforward in this instance. Because resolution of Plaintiffs' claims involves nothing more than a determination of the proper amount of a tax, there is no right to a jury trial.

WEREFORE, the undersigned request an Order granting this motion to transfer to the Minnesota Tax Court all cases which involve the property tax controversy concerning entitlement to the "low or preferred rate" of Class 3 (a) property under Minn. Stat § 273.13, subd. 24.

Dated: 11/5/98

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Hennepin County Attorney



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Dated: November 5, 1998

SUSAN GAERTNER
Ramsey County Attorney



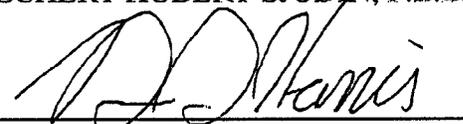
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Carver County joins in the motion of Hennepin County to assign all cases to the Minnesota Tax Court for determination.

MELCHERT HUBERT SJODIN, P.L.L.P.

Dated: November 4, 1998.

By:



R. Lawrence Harris

Co-Counsel for Defendants, Donald F. Dahlke, in his capacity as Treasurer; Mark Lundgren as Auditor for Carver County; Carver County Board of Commissioners; and Carver County, Minnesota
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Dated: 5 Nov 1998

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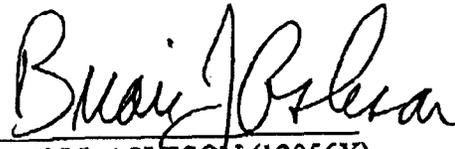
Dated: Nov 5, 1998

JAMES C. BACKSTROM
DAKOTA COUNTY ATTORNEY

By  _____

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STATE OF MINNESOTA
COUNTY OF RAMSEY

AFFIDAVIT OF SERVICE

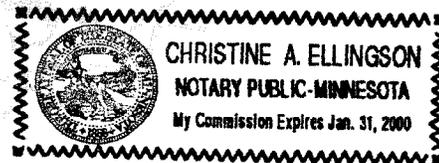
METRO LEGAL SERVICES

William L. Verrall, being duly sworn, on oath says: that on the 5th day of November, 1998, at 2:30 p.m. (s)he served the attached Motion to Assign All Cases to the Minnesota Tax Court for Determination upon Keith Simons therein named, personally at 310 Norwest Bank Building, 1011 First Street South, Hopkins, County of Hennepin, State of Minnesota, by handing to and leaving with Pat Karnitz, receptionist, an expressly authorized agent for service for said Keith Simons, a true and correct copy thereof.



Subscribed and sworn to before me,
November 5, 1998.

Christine A. Ellingson
Notary Public



Charge \$

**STATE OF MINNESOTA
COUNTY OF RAMSEY**

AFFIDAVIT OF SERVICE

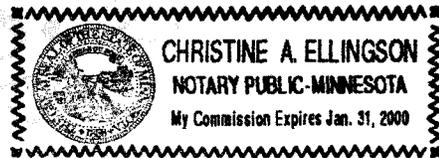
METRO LEGAL SERVICES

William L. Verrall, being duly sworn, on oath says: that on the 5th day of November, 1998, at 2:50 p.m. (s)he served the attached Motion to Assign All Cases to the Minnesota Tax Court for Determination upon Alan Kildow therein named, personally at 1500 Norwest Financial Center, 7900 Xerxes Avenue South, Bloomington, County of Hennepin, State of Minnesota, by handing to and leaving with Kari Rotzien, receptionist, an expressly authorized agent for service for said Alan Kildow, a true and correct copy thereof.



Subscribed and sworn to before me,
November 5, 1998.

Christine A. Ellingson
Notary Public



Charge \$

MN Property Tax
Litigations
AFFIDAVIT OF SERVICE

STATE OF MINNESOTA
COUNTY OF RAMSEY

METRO LEGAL SERVICES

Mike Kowalsky, being duly sworn, on oath says: that on the 5th day of November, 1998, at 2:35 p.m. (s)he served the attached Motion to Assign All Cases to the Minnesota Tax Court for Determination upon Robert A. Hill therein named, personally at 2450 Centre Village, 431 South 7th Street, Minneapolis, County of Hennepin, State of Minnesota, by leaving in a conspicuous place therein namely on the reception desk, a true and correct copy thereof.

OFFICE OF
APPELLATE COURTS

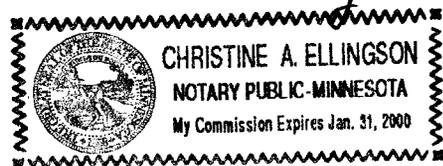
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FILED

Mike Kowalsky

Subscribed and sworn to before me,
November 6, 1998.

Christine A. Ellingson
Notary Public



Charge \$