MN HOUSE RESEARCH

State-Assessed Property Tax Appeals

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Under current law, a taxpayer may appeal the commissioner's valuation determination by filing an administrative appeal with the commissioner, or by directly filing an appeal with the tax court. During either process the parties are able to settle at any point.

The Enbridge Case (*Enbridge Energy Limited Partnership v. Commissioner of Revenue*)

Summary of pertinent facts

- Enbridge Energy, LP. (EELP) owns an oil pipeline system (the Lakehead system) that stretches across Canada and several states.

- Minnesota counties include Aitkin, Beltrami, Carlton, Cass, Clearwater, Hubbard, Itasca, Kittson, Marshall, Pennington, Polk, Red Lake, and St. Louis.

Assessment years under appeal

EELP has challenged the commissioner's assessments based on valuations for tax years 2012, 2013, 2014, 2015, 2016, 2017, and 2018.

Procedural history

Tax years 2012, 2013, and 2014

- EELP timely filed separate appeals with the tax court to contest each of the tax years listed above. The tax court consolidated the appeals into one case because they involved a common question of law or fact.
- **May 2018** - Tax Court issued a ruling assigning the values listed in the summary of the court's decision.
- **July 2018** - Commissioner appealed to the supreme court for discretionary review of whether the tax court is bound by Rule 8100.
- **November 2018** - Oral arguments were held. A final decision is still pending.

Tax years 2015 and 2016

- **January 2016** - Proceedings were stayed by the court pending the decision of the *MERC*[1] case.
- **August 2018** - Commissioner motioned the tax court for a stay in proceedings while the supreme court considered the 2012-2014 petition.

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[1] *Minnesota Energy Resources Corp. v. Commissioner of Revenue*, 886 N.W.2d 786 (Minn. 2016) (holding administrative rules governing valuation of property belonging to utility companies allow for the exercise of discretion when deviating from the formula will lead to a more accurate valuation of property). The parties requested the stay based on the grounds that the issues in the two cases were similar and the EELP case may be resolved on its own depending on the outcome of *MERC*.

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- **September 2018** – Tax court denied motion to stay.
- **December 2018/January 2019** – Trial.
- **Spring/Summer 2019** – Tax court issues a decision.

Summary of the tax court's decision

The market value of the entire pipeline system was determined to be:

	Commissioner's Assessment	Tax Court's Determination (Income approach)
2012	$3,751,118,693	$3,595,398,000
2013	$4,180,770,714	$3,292,362,000
2014	$5,605,458,900	$3,416,667,000

- Tax court disregarded the cost approach after finding it was not bound by Rule 8100 and that the cost approach would have resulted in an inaccurate valuation.
- Parties will have to determine the appropriate method for allocating the value of the entire pipeline to Minnesota.

What did the tax court say about Rule 8100?

1) Rule 8100 applies only to the commissioner and only during her initial valuation of the property

- Rule 8100 does not mention the tax court and only makes reference to the commissioner. It would violate the rules of statutory interpretation to substitute the word "commissioner" for the words "tax court."
- There are provisions in Rule 8100 that cannot be applied to the tax court. For example, to substitute "tax court" for the "commissioner" would require the utility to file its annual utility report with the court and the commissioner even before an appeal is filed with the court.
- When a statue or administrative rule prescribes something to be done by a particular person, there is an implication that it is not to be done by someone else.

2) Rule 8100 does not require valuing property that the utility does not own

- By using the method prescribed by Rule 8100, the court would have to determine the pipeline's value under the cost approach by using figures reported by EELP to FERC (Federal Energy Regulatory Commission). These figures included depreciation expenses for a portion of the pipeline that is owned by another company. This would be contrary to Minnesota law.

3) Rule 8100 only applies to the assessment process, not the appeal

- Tax court reviews the case *do novo* without relying on the commissioner's original valuation.

Issues on appeal for years 2012, 2013, and 2014

Commissioner of Revenue asserts:

- The tax court was bound by the supreme court's ruling in *MERC* to use Rule 8100 when determining valuation.
- Rule 8100 restricts the commissioner, as well as the tax court, to using only "original cost," as reported by EELP to FERC.

Enbridge asserts:

- According to *MERC*, the discretionary paragraph of Rule 8100 authorizes departure from its instructions if necessary to achieve a reasonable estimate of market value.
- The tax court did not disregard Rule 8100 by choosing not to implement it.
- The commissioner is supplementing Rule 8100 by adding in "tax court" where it says "commissioner."

Potential outcomes

- The supreme court will make a determination on whether or not the tax court erred by holding it is not bound by Rule 8100.
- If it finds the court erred, the case will be remanded back to the tax court for it to make a determination on valuation using Rule 8100.
- If it finds the court did not err, then per the tax court's decision, the parties still need to determine the portion of the total value that is allocated to Minnesota.
- The parties will conference to make that determination, however, if they cannot come to an agreement, the tax court will make the final determination.
- Once the parties (or the court) determine the amount allocated to Minnesota, then local jurisdictions will be required to pay Enbridge a refund of taxes paid for years 2012-2014, plus interest.
- Lastly, the parties are still waiting for final determination of the 2015 and 2016 tax years.

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