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Challenging Unequal Property Tax Assessments in Minnesota

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CHALLENGING UNEQUAL PROPERTY TAX ASSESSMENTS IN MINNESOTA

HON. EARL B. GUSTAFSON†

Payment of property taxes is a concern for individuals and corporations in today's economic climate. Few property owners are willing to carry an unequal burden in the payment of their property taxes. In his Article, Judge Gustafson sets out a step-by-step analysis for equalizing property tax burdens in the Minnesota Tax Court.

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INTRODUCTION

Individual taxpayers and taxpayer associations frequently complain that they are shouldering more than their "fair share" of Minnesota's property taxes. Much of this perceived inequality results from a complex statutory scheme that applies significantly different tax rates to different classes of property.¹

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1. The Minnesota Tax Study Commission found that Minnesota has the oldest and one of the most complex real property tax classification systems in the nation. It clearly has the greatest number of classes. Depending upon whether various credits

Assuming reasonable classification, however, this type of "discrimination" is considered constitutionally permissible and any remedy lies with the legislature, not with the courts.² The Minnesota Supreme Court has not ruled any statutory tax classification unreasonable since 1939.³

Another source of discrimination is the intentional or unintentional practice of local assessors in valuing property at a fraction of market value. No discrimination results from valuing all real property at the same percentage of market value, whatever that percentage might be. For example, if all property were valued at either 50% of market value or at 110% of market value, there would be no unequal treatment. A specific dollar amount must be raised annually from property within each taxing district to finance schools and local government. For this reason, unequal assessments automatically and unfairly shift the tax burden within the district from property with

are considered, the number of classes have been estimated from between 20 and 70. FINAL REPORT OF THE MINNESOTA TAX STUDY COMMISSION, FINDINGS AND RECOMMENDATIONS, 291 (Butterworth 1986). Rates applied to the assessor's estimated market value to arrive at assessed value vary dramatically. Agricultural homesteads and farmland are taxed at a 14% rate for the first \$64,000 of estimated market value and the remaining market value is valued and assessed at an 18% rate. MINN. STAT. § 273.13, subd. 6 (1986). Non-homestead residential property has a rate of 28% for three units or less and 34% for four units or more. *Id.* § 273.13, subd. 19. Commercial and industrial property is assessed at 28% of the first \$60,000 of market value and over \$60,000 in estimated market value has a rate of 43%, *id.* § 273.23, subd. 24, and unmined iron ore at a rate of 50%. *Id.* § 273.13, subd. 30.

2. The legislature is given wide latitude in making classifications for tax purposes. Legislative determinations will not be disturbed unless the classification is clearly arbitrary and bears no reasonable relation to a governmental purpose. *Lund v. County of Hennepin*, 403 N.W.2d 617, 619-20 (Minn. 1987); *In re McCannel*, 301 N.W.2d 910, 916-17 (Minn. 1980); *Miller Brewing Co. v. State*, 284 N.W.2d 353, 356-57 (Minn. 1979); *Elwell v. County of Hennepin*, 301 Minn. 63, 75-76, 221 N.W.2d 538, 546 (1974); *In re Cold Spring Granite Co.*, 271 Minn. 460, 466, 136 N.W.2d 782, 787 (1965); *State v. Donovan*, 218 Minn. 606, 609, 16 N.W.2d 897, 898 (1944); *Montgomery Ward & Co. v. Commissioner*, 216 Minn. 307, 309-10, 12 N.W.2d 625, 627 (1943).

In Hegenes v. State, 328 N.W.2d 719 (Minn. 1983), the supreme court, in affirming the tax court, found that taxing small non-homestead properties (three units or less) at 32% of market value and larger properties (four units or more) at 40% of market value under Minnesota Statutes section 273.13, subdivision 19 was based on rational distinction between two types of properties and therefore did not violate either the uniformity clause of the Minnesota Constitution or the equal protection clause of the United States Constitution. *Id.* at 721-22.

3. *National Tea Co. v. State*, 205 Minn. 443, 447-49, 286 N.W. 360, 362-64 (1939).

a low fractional assessment to that with a higher fractional assessment.

Minnesota has long required assessors to value all real property at full market value not at some lower percentage of market value.⁴ The current statute provides that “all property shall be valued at its market value [T]he assessor shall not adopt a lower or different standard of value because the same is to serve as a basis of taxation”⁵ In the past, many assessors did not follow the law and, instead, yielding to political pressure, valued individual parcels and, more often, entire classes of property at a fraction of market value. For example, in rural counties, agricultural land would traditionally be undervalued and, in urban areas, homesteads might be undervalued.

In 1964, the Minnesota Supreme Court, in *Dulton Realty, Inc. v. State*,⁶ made the following observation:

From the foregoing it can be ascertained that the solution to the problem before us is difficult, not only because our statutory scheme of assessment is antiquated and inadequate, but also because its basic requirements have to a great extent been ignored. Instead of using the market or true and full value of property to be assessed as the basis for its taxation, as the statutes require, each assessor has established a formula under which only a percentage of such value is used for assessment purposes. These percentages vary greatly from one taxing district to another even within counties.⁷

The law pertaining to this latter type of inequality or unequal treatment by assessors and the development of court-fashioned remedies to overcome this discrimination is the general subject of this Article.

Since the late 1970's, there has been a significant increase in the volume of property tax appeals raising the issue of unequal treatment. This coincided with the change in the part-time tax court to a full-time court in 1977, and the expansion of its jurisdiction to include property tax appeals.⁸ Since 1980, two

4. 1878 Minn. Gen. Laws, ch. 11, § 28, at 219; *see also* *State v. Thayer*, 69 Minn. 170, 175, 71 N.W. 931, 933 (1897).

5. MINN. STAT. § 273.11, subd. 1 (1986).

6. 270 Minn. 1, 132 N.W.2d 394 (1964).

7. *Id.* at 20, 132 N.W.2d at 407-08.

8. Act of May 27, 1977, ch. 307, §§ 1-32, 1977 Minn. Laws 606, 606-19 (codified as amended at MINN. STAT. §§ 271.01-.22 (1986)). Although district courts have

factors have undoubtedly given rise to the increase in the volume of unequal treatment or discrimination cases. These were the elimination of the requirement that intentional undervaluation of other property must be proven⁹ and the availability of government financed assessment/sales ratio studies as evidence¹⁰ in establishing a prima facie case of discrimination.¹¹ This, in turn, has created a substantial body of new case law generated, first, by the tax court and, on appeal, by the Minnesota Supreme Court. This Article will discuss the constitutional basis of a "discrimination" claim, past and recent developments in this area of the law, and the proof required when claiming unequal assessment.

To present a claim of discrimination or unequal treatment, the taxpayer must first file a petition in either district court or tax court under Chapter 278 of the Minnesota Statutes. When this petition comes on for hearing, the petitioner/owner must be prepared to prove the market value of the subject property on the assessment date in question. Only after the market value has been determined is the court in a position to make a finding that an individual parcel has suffered unequal treatment when a comparison is made to the level of assessment (percentage of market value) at which other properties in the taxing district are valued. This general "level of assessment" can only be proven through assessment/sales ratio studies. If the taxpayer's property is valued by the assessor at approximately the same percentage of market value as most other properties in the taxing district, there is no discrimination. On the other hand, if most other property is valued at a substan-

dual jurisdiction with the tax court in property tax appeals brought under Chapter 278, Minnesota Statutes, most cases are automatically transferred to tax court. This can and is done without first obtaining the approval of the parties. The Hennepin County District Court voted to transfer its entire backlog of property tax appeals to the new tax court shortly after it was established. See Minutes of the Special Meeting of the Judges of District Court, Hennepin County, Minnesota (August 11, 1977). Most other counties have done likewise. Brent Peterson, Clerk of Tax Court, estimates that 98% of Chapter 278 property tax petitions are now heard in tax court.

9. *United Nat'l Corp. v. County of Hennepin*, 299 N.W.2d 73, 76 (Minn. 1980).

10. MINN. STAT. § 278.05, subd. 4 (1982).

11. *In re Objection to Real Property Taxes*, 353 N.W.2d 525, 530-31 (Minn. 1984) (a consolidated appeal from two Minnesota Tax Court decisions, *Short v. County of Hennepin*, Nos. 0110, 0455, 0869, 1088 (Minn. Tax Ct. Aug. 1982) and *3030 Drew Co. v. State of Minn. and County of Hennepin*, Nos. 0145, 0324, 0604, 1134, 1560 (Minn. Tax Ct. 1982)).

tially lower percentage of market value, then the valuation of the subject property, for tax purposes, should be reduced.

This Article will not examine the proof required in "market value" cases where the sole claim presented is that the assessor has valued the property in excess of its market value. Pure valuation cases usually turn on the testimony of the expert appraisal witnesses called by each party. No consideration is given to the level of assessment of other properties in the taxing district. A market value issue maybe raised and litigated—and often is—without advancing a claim of discrimination. The reverse, however, is not true. To prevail in a "discrimination" case, the court must first have sufficient evidence to establish the market value of the subject property before it can determine whether it should be equalized with other property in the taxing district.¹² Both a valuation issue and an unequal assessment issue may be raised in the same case. An allegation in the petition that the property has been "unfairly and unequally assessed" is sufficient to raise both issues.¹³

I. CONSTITUTIONAL BASIS OF CLAIM

The equal protection clause of the Fourteenth Amendment of the United States Constitution and the uniformity clause of the Minnesota Constitution¹⁴ have both been invoked by the Minnesota Supreme Court in striking down unequal property tax assessments.¹⁵ Claims of discriminatory action by a state or its agencies in violation of the Fourteenth Amendment are usually brought in federal court. Two factors militate against seeking this relief in the area of property taxes. First, there is a higher degree of proof required in federal court, namely estab-

12. *Renneke v. County of Brown*, 255 Minn. 244, 248, 97 N.W.2d 377, 380 (1959).

13. A new property tax petition must be filed each year with the Clerk of District Court in the county in which the property is situated no later than May 15th of the year in which taxes are due and payable. Service of notice and filing requirements are strictly followed. Both first and second half taxes must also be paid when due or the court loses jurisdiction and the petition is automatically dismissed. *Land O'Lakes v. County of Douglas*, 225 Minn. 535, 538, 31 N.W.2d 474, 476 (1948); MINN. STAT. § 278.03 (1986). Reinstatement is permitted in limited circumstances where failure to pay taxes on time cannot be attributable to petitioner. *Thunderbird Motel Corp. v. County of Hennepin*, 289 Minn. 239, 240-41, 183 N.W.2d 569, 570 (1977).

14. MINN. CONST. art. X, § 1.

15. *Elwell*, 301 Minn. at 75-76, 221 N.W.2d at 546; *Cold Spring Granite Co.*, 271 Minn. at 466, 136 N.W.2d at 787; see also MINN. STAT. §§ 273.11 and 278.01 (requiring all property to be fairly and equally valued for tax purposes at its market value).

lishing that the assessor *intentionally* made unequal assessments,¹⁶ and second, there is a statutory requirement that all reasonable state remedies be exhausted before relief in federal court is sought.¹⁷ Prior to *Hamm v. State*,¹⁸ the Minnesota Supreme Court appeared reluctant to grant judicial relief from "unconstitutional" property tax assessments.¹⁹

The United States Supreme Court, as early as 1918, construed the Fourteenth Amendment of the United States Constitution as a bar to intentional and arbitrary over-assessment of one property to the detriment of its owner while other property in the taxing district was systematically being assessed at a much lower percentage of market value.²⁰ In *Sunday Lake Iron v. Township of Wakefield*,²¹ the United States Supreme Court said:

The purpose of the equal protection clause of the Fourteenth Amendment is to secure every person within the State's jurisdiction against intentional and arbitrary discrimination, whether occasioned by express terms of a statute or by its improper execution through duly constituted agents. And it must be regarded as settled that intentional systematic undervaluation by state officials of other taxable property in the same class contravenes the constitutional right of one taxed upon the full value of his property.²²

The Minnesota Supreme Court had earlier held that a taxpayer had no standing to present a claim of unequal treatment if his property was not assessed in excess of market value.²³ Because few, if any, properties were valued at full market value, this precluded virtually all taxpayers from presenting a claim that their property was overvalued as compared to other property. In 1959, the Minnesota Supreme Court reversed itself and held that taxpayers have a constitutional right to have their property assessment reduced to the same lower level as

16. *E.g.*, *Snowden v. Hughes*, 321 U.S. 1, 8 (1944); *Southland Mall, Inc. v. Garner*, 455 F.2d 887, 889 (6th Cir. 1972).

17. *See* 28 U.S.C. § 1341 (1987 supp).

18. 255 Minn. 64, 95 N.W.2d 649 (1959).

19. *See* *State v. Fritch*, 175 Minn. 478, 221 N.W. 175 (1928); *State v. Cudahy Packing Co.*, 103 Minn. 419, 115 N.W. 1039 (1908); *State v. Lakeside Land Co.*, 71 Minn. 283, 73 N.W. 970 (1898).

20. *Sunday Lake Iron Co. v. Township of Wakefield*, 247 U.S. 350, 352-53 (1918); *see also* *Sioux City Bridge Co. v. Dakota County*, 260 U.S. 441 (1923).

21. 247 U.S. 350, 358 (1918).

22. *Id.* at 352-53.

23. *See Cudahy Packing Co.*, 103 Minn. at 421, 115 N.W. at 646.

others even though their property might already be assessed at less than market value.²⁴

II. *HAMM V. STATE AND ITS PROGENY*

In the landmark decision of *Hamm v. State*,²⁵ the Minnesota Supreme Court held:

In the *Cudahy* case, decided 50 years ago, this court refused to grant relief to a taxpayer whose property was assessed at its approximate market value even though other property of the same class was assessed at far less than market value. The *Cudahy* case is clearly wrong in giving validity to a principle which denies relief to a taxpayer who is saddled with a substantially disproportionate share of the tax burden as a result of inequality in assessment

* * *

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.*²⁶

After *Hamm*, a taxpayer could obtain a reduction in the assessor's valuation if it was shown that the property was (1) systematically, arbitrarily or intentionally (2) valued substantially higher than (3) other property of the same class (4) in the same taxing district.²⁷

A. *Requirement of Intent Eliminated*

The rule remains essentially the same today with one exception. The need to prove intentional undervaluation of other property *vis-a-vis* the taxpayer's property was removed by *United National Corp. v. County of Hennepin*.²⁸ This was a change from the federal rule which continues to require proof of intentional overvaluation when compared to other property. The other three elements of the rule, namely, (1) substantial inequality with property of the (2) same class in the (3) same taxing district, have not changed but all have been clarified or

24. See *Hamm*, 255 Minn. at 70, 95 N.W.2d at 654-55.

25. 255 Minn. 64, 95 N.W.2d 649.

26. *Id.* at 68-70, 95 N.W.2d at 653-54 (emphasis added).

27. See *id.*

28. 299 N.W.2d 73 (Minn. 1980).

expanded within the past seven years.²⁹

B. Taxing District Expanded to Counties

What constitutes the same "taxing districts" has been *expanded* by statute.³⁰ Minnesota case law, after the *Hamm* decision, interpreted the "same taxing district" to be the city or township where the property was located.³¹ This was changed by the 1980 legislature.³² Comparisons may now be made with property *throughout the same county*.³³

C. Property of Same Class Expanded to All Classes

What constitutes "other property of the same class" has also been expanded, or at least, clarified by case law.³⁴ Typically, in the metropolitan area, the taxpayer offers evidence of undervaluation of other property within the same tax classification as the subject property. Commercial property is compared with other commercial property and homestead property is compared with other homesteads. In rural areas of the state, where there often are insufficient sales in one class to make a valid analysis of the level of assessment, the trial judge has considered evidence of the level of assessment of all classes of property.³⁵

After *Hamm*, the next major discrimination case was *In re Dulton Realty, Inc. v. State*,³⁶ in which the court ordered equalization between classes of property at the lowest level in the

29. See, e.g., Note, *Grounds and Procedures for Attacking Real Property Tax Assessments in Minnesota*, 4 WM. MITCHELL L. REV. 371 (1978) (review and analysis of attacks on property tax assessments prior to 1978).

30. Act of Apr. 3, 1980, ch. 443, § 2, 1980 Minn. Laws 270, 270-71 (codified at MINN. STAT. § 278.01, subd. 1 (1986)).

31. *Bethke v. County of Brown*, 301 Minn. 380, 384-85, 223 N.W.2d 757, 760 (1974); *Johnson v. County of Ramsey*, 290 Minn. 307, 311, 187 N.W.2d 675, 678-79 (1971); *Dulton Realty, Inc. v. State*, 270 Minn. 1, 17, 132 N.W.2d 394, 405-06 (1964).

32. Act of Apr. 3, 1980, ch. 443, § 2, 1980 Minn. Laws 270, 270-71 (codified at MINN. STAT. § 278.01, subd. 1 (1986)).

33. *Id.*; see also *Objection to Real Property Taxes*, 353 N.W.2d at 529-30.

34. See *Objection to Real Property Taxes*, 353 N.W.2d at 530; see also *Gamble Dev. Co. v. County of St. Louis*, No. 135535 (Minn. Tax Ct. July, 1981); *George v. Mille Lacs County*, No. 11666 (Minn. Tax Ct. Nov., 1980); *Pillsbury Co. v. Commissioner*, No. 2578 (Minn. Tax Ct. Jan., 1980).

35. *Gamble Dev. Co.*, No. 135535 (Minn. Tax Ct. July, 1981); *George*, No. 11666 (Minn. Tax Ct. Nov., 1980); *Pillsbury Co.*, No. 2578 (Minn. Tax Ct. Jan., 1980).

36. 270 Minn. 1, 132 N.W.2d 394 (1964).

taxing district.³⁷ The Duluth City Assessor, without statutory authority, had deliberately been valuing different classes of property at varying percentages of market value.³⁸ Homesteads were allegedly valued at 30% while commercial property was allegedly valued at 40%.³⁹ The trial court found that certain parcels of downtown commercial property owned by petitioners were, in reality, being singled out and valued between 68.75% and 90.38% of market value.⁴⁰ Meanwhile, property outside of Duluth in St. Louis County was being equalized at 20% of market value by the county assessor.⁴¹ Using the county as a taxing district, the trial court ordered the downtown Duluth parcels under petition to be reduced in value to the non-Duluth county-wide assessment level.⁴² The supreme court held this county-wide equalization was too broad and too deep and that any equalization should be made within the City of Duluth as the taxing district.⁴³ The court did, however, order a reduction to the lowest level of assessment in Duluth, namely, the 30% level of assessment at which homesteads were valued.⁴⁴ The remedy of reduction to the lowest level was changed in 1980 by *McCannel v. County of Hennepin*⁴⁵ to the average level of assessment.

The supreme court has recently approved this extension from comparisons within the same class to comparisons including all classes. In *3030 Drew Co.*,⁴⁶ the court approved the use of ratio studies and a weighted average designed by the trial court to compare *all classes* of property in Hennepin County in arriving at an average level of assessment for equalization purposes.⁴⁷ In the companion case,⁴⁸ the court also approved the usual method of using ratio studies within the *same class*.⁴⁹

37. *Id.* at 21, 132 N.W.2d at 408.

38. *Id.* at 8, 132 N.W.2d at 399.

39. *Id.*

40. *Id.* at 5, 132 N.W.2d at 298.

41. *Id.*

42. *Id.* at 15, 132 N.W.2d at 402.

43. *Id.* at 17-20, 132 N.W.2d at 406-07.

44. *Id.* at 21, 132 N.W.2d at 408.

45. 301 N.W.2d 910 (Minn. 1980).

46. *3030 Drew Co.*, No. 2361 (Minn. Tax Ct. Aug., 1982), *aff'd sub nom. In re Objection to Real Property Taxes*, 353 N.W.2d 525 (Minn. 1984).

47. *Objection to Real Property Taxes*, 353 N.W.2d at 533.

48. *Short*, Nos. 0110, 0455, 0869, 1088 (Minn. Tax Ct. Mar., 1982), *aff'd sub nom. In re Objection to Real Property Taxes*, 353 N.W.2d 525 (Minn. 1984).

49. *In re McCannel* remains good authority for the use of a sales ratio derived

In the vast majority of cases, the tax court continues to make comparisons only within the same class. This undoubtedly is because the rule in the leading case, *Hamm*, refers only to equality within the same class and, therefore, is the comparison requested by most petitioners. Since the decisions in *Short* and *3030 Drew*, the court clearly has discretionary power to make comparisons within and between all classes of property in a given taxing district whenever it deems it necessary to provide equal protection.⁵⁰

D. "Substantial" Undervaluation or Inequality and
the Ninety Percent Rule

The rule in *Hamm* requires a showing of *substantial* undervaluation of other property before relief will be granted to a complaining taxpayer.⁵¹ Specifically, the *Hamm* Court held that, "[u]niformity and equality in a constitutional sense does not require mathematical exactitude in the valuation of property for taxation. Absolute equality is impracticable of attainment and the taxpayer may not complain unless the inequality is *substantial*."⁵²

The issue then becomes what constitutes "substantial undervaluation." The Minnesota Tax Court has developed a rule that substantial undervaluation or inequality only exists where other property of the same class as the subject property in the same taxing district is found to be assessed at an average of less than 90% of market value.⁵³ In *Federal Reserve Bank of Min-*

from a comparison of properties in the *same class* in determining unequal assessment in certain factual situations. 301 N.W.2d at 922. This was the measure of relief requested in *Short*.

50. *Id.*

51. *Hamm*, 255 Minn. at 70, 95 N.W.2d at 655.

52. *Id.* (emphasis added).

53. Fairmount Greens v. County of Hennepin, No. 2361 (Minn. Tax Ct. Dec., 1985), *summarily aff'd*, No. C1-86-201 (Minn. May, 1986) (issued without opinion pursuant to MINN. R. CIV. APP. P. 136.01, subd. 1(b)); *see also* MINN. STAT. § 278.01, subd. 2. That section contains language authorizing the filing of a petition on homestead property if it is claimed that:

[S]aid parcel has been assessed at a valuation which exceeds by ten percent or more the valuation which the parcel would have if it were valued at the average assessment/sales ratio for real property in the same class, in that portion of the county in which that parcel is located, for which the commissioner is able to establish and publish a sales ratio study. . . .

Id.

This provision is somewhat redundant because it merely codifies the current tax

neapolis v. State,⁵⁴ the Minnesota Supreme Court affirmed the tax court's finding that assessment levels of 85 to 90% in Minneapolis did not constitute substantial undervaluation.⁵⁵ In *Fairmount Greens v. County of Hennepin*,⁵⁶ the tax court found that an assessment level of 93% for apartment building property in Minneapolis did not constitute "substantial" inequality compelling a reduction from a value stipulated by the parties.⁵⁷ This decision was summarily affirmed by the Minnesota Supreme Court.⁵⁸

III. PROVING CLAIM OF UNEQUAL ASSESSMENT

A. Procedure in Tax Court

The procedure in tax court does not differ from that in district court. A property tax petition challenging the taxes must be filed for each assessment year pursuant to Minnesota Statutes section 278.01. There are no other pleadings. The petition is first served on the county auditor, the county treasurer, and the county attorney.⁵⁹ The petition is then filed, with proof of service, with the district court administrator before the sixteenth day of May of the year in which the tax becomes payable.⁶⁰ The district court administrator in each county acts

court practice. It does, however, indicate an indirect approval by the legislature of the 90% rule employed by the tax court in all cases, not merely homestead cases.

Another provision relating to all classes of property and apparently limiting any reduction in discrimination cases to a level of 10% below the average sales ratio was passed in 1984. See Act of Apr. 25, 1984, ch. 502, art. 11, § 5, 1984 Minn. Laws 493, 605-06 (codified at MINN. STAT. § 278.05, subd. 4 (1984)). This language in subdivision 4(d) has not been interpreted by any court and was repealed in 1986. See Act of Apr. 1, 1986, ch. 473, § 6, 1986 Minn. Laws 1080, 1083.

Interestingly, the New Jersey Tax Court applies a 15% rule mandated by statute. N.J.S.A. 54:51A (West 1986). No relief for equalization is allowed unless the ratio of the assessor's value to market value exceeds the upper limit of the "common level range." The "common level range" is defined by statute as that range which is plus or minus 15% of the average ratio for a given taxing district. *Id.* § 54:1-35a. If the subject property's assessment to market value ratio falls below the lower limit of this "common level range" the court must raise the assessor's valuation.

54. 313 N.W.2d 619 (Minn. 1981).

55. *Id.* at 624. *Federal Reserve Bank v. ———*, Nos. 1633, 2321 (Minn. Tax Ct. ___, 19__).

56. Nos. 3207, 4104 (Minn. Tax Ct. Dec., 1985).

57. *Id.*

58. See No. Cl-86-201 (Minn. May 25, 1986) (issued without opinion pursuant to MINN. R. CIV. APP. P. 136.01, subd. 1 (b)).

59. MINN. STAT. § 287.01, subd. 1 (1986).

60. *Id.*

as clerk of tax court so the petition and other court documents are not filed with the Tax Court Administrator in St. Paul, Minnesota.⁶¹ A tax court judge will be sent to hear the case in the county where the property is located.⁶² Again, pre-trial discovery, trial procedure and the rules of evidence are the same as district court.⁶³ Both the tax court and the district court are directed by the statute to hear tax petitions without delay and at trial to “disregard technicalities and matters of form not affecting the merits.”⁶⁴

Prior to the filing of a petition, it is advisable to confer with the local assessor informally to determine if settlement is possible. The local boards of equalization meet in the spring of the assessment year—the year before the taxes are payable⁶⁵—and a taxpayer may find it beneficial to appear before these boards before coming to the tax court, but this is not required.

In proving a claim of unequal assessment, the taxpayer should first establish the market value of the subject property.⁶⁶ Once the value of the subject property is established, proof should be offered to determine the general level of assessment in the taxing district.⁶⁷ This is done through assessment/sales ratio studies.⁶⁸ If other property in the taxing district has consistently been valued at substantially below market value, the taxpayer is entitled to have the property reduced in value.⁶⁹ The reduction is to the *average* assessment level, not the *lowest* percentage of assessment of other property.⁷⁰

For example, if the market value of a parcel of commercial property is \$1,000,000 and the assessor has it valued at \$900,000—90% of the market value—and it can be shown that the average level of valuation of commercial property in the same city or county is at 70% of market value, the property should be reduced in value to that 70% level, or \$700,000.

61. *Id.* § 271.02.

62. *Id.* § 271.04.

63. *Id.* § 271.06, subd. 7.

64. *Id.* § 278.05, subd. 1.

65. *Id.* § 274.01, subd. 1(a).

66. *See Renneke*, 255 Minn. at 248, 97 N.W.2d at 380.

67. *Id.*

68. *See generally* MINN. STAT. § 278.05, subd. 4 (discussing the admissibility of sales ratio studies).

69. *See McCannel*, 301 N.W.2d at 921-22.

70. *Id.*

B. Use of Assessment/Sales Ratio Studies

The level of assessment in a taxing district can be proven through assessment/sales ratio studies which compare the adjusted sale prices of recent sales with the assessor's estimated market values (EMVs) of these same properties. Showing that two or three other properties in the municipality are undervalued is insufficient.⁷¹ Both private and public assessment/sales ratio studies can be used. Private studies, however, have not, as yet, passed judicial muster in the Minnesota Supreme Court.⁷² Many assessors prepare their own studies which can be subpoenaed and used by taxpayers. Assessment/sales ratio studies prepared by the Department of Revenue for purposes of computing and distributing educational aids, once barred from use as evidence, may now be introduced into evidence without calling a state official to provide foundation.⁷³ There also is an assessment/sales ratio study that has been specially constructed by the Department of Revenue for the Minnesota Tax Court. If there were no statutes either barring or authorizing the use of state studies, they undoubtedly would be admissible as a public record, report, or data compilation.⁷⁴

A 1984 amendment to Minnesota Statutes section 278.05, subdivision 4 precludes the use of the Department of Revenue's assessment/sales ratio studies unless "(a) the sales prices are adjusted for terms of sale to reflect market value, (b) the sales prices are adjusted to reflect the difference in the date of sale compared to the assessment date, and (c) there is an adequate sample size" ⁷⁵ This amendment was held to only apply prospectively to causes of action that arise after the Department of Revenue has the data available that will allow it to make adjustments for financing terms and time of sale.⁷⁶ The Department of Revenue is now making these adjustments in its

71. See *Ploetz v. County of Hennepin*, 301 Minn. 410, 414, 223 N.W.2d 761, 764 (1974).

72. *United Nat'l Corp.*, 299 N.W.2d at 770.

73. MINN. STAT. § 278.05, subd. 4 (1986).

74. See, e.g., MINN. R. EVID. 803(8) (stating records, reports or data compilations are not excluded by the hearsay rule); and *id.* 901(7) (stating that the requirement of authentication or identification as a condition precedent to admissibility is waived if record, report or compilation is from the public office where such items are normally kept).

75. Act of Apr. 25, 1984, ch. 502, art. 11, § 5, 1984 Minn. Laws 493, 605.

76. See *Bethune Assoc. v. County of Hennepin*, 362 N.W.2d 323, 325 (Minn. 1985).

assessment/sales ratio studies. There appears, therefore, to be no bar to their admissibility and use.

The fact that an assessment/sales ratio study is admitted into evidence does not mean that its conclusions are binding or will be adopted by the tax court.⁷⁷ Evidence of reliability or unreliability may be offered and scrutinized by either party.⁷⁸ A representative sample of sales that is statistically reliable will satisfy the court.⁷⁹ Assessment/sales ratio studies published by the Department of Revenue are sufficient to establish a prima facie case of unequal assessment.⁸⁰

Through a legislative change in 1980, the assessor's records including field cards and property appraisal cards are available to taxpayers through pre-trial discovery and for use as evidence at trial.⁸¹ This amendment also made evidence of comparable sales including the sales prices admissible,⁸² thus overruling *State v. Winiecki*,⁸³ which held evidence of comparable sales was inadmissible.

C. *Reduction in Value not Automatic with Low Ratio*

As indicated above, the court must first make a finding of market value for the subject property before any ratio can be applied equalizing this value with other property.⁸⁴ This market value finding is where danger lurks for the petitioning taxpayer who comes to court confidently armed with a low assessment/sales ratio study indicating that other property of the same class in the same taxing district is assessed at, for example, 75% of market value. A reduction in value to this substantially lower level is not automatic. The court may, based on all the evidence adduced at trial, find that the market value exceeds the assessor's estimated market value being challenged. This court-determined value is the one to which the ratio is applied. Frequently, the assessor or his appraisal wit-

77. MINN. STAT. § 278.05, subd. 4 (1986).

78. *Id.*

79. *Id.*

80. *Objection to Real Property Taxes*, 353 N.W.2d at 531.

81. See Act of Apr. 3, 1980, ch. 443, § 3, 1980 Minn. Laws 270, 271 (codified at MINN. STAT. § 278.05, subd. 3 (1986)).

82. *Id.*

83. 263 Minn. 86, 91, 115 N.W.2d 724, 727 (1962).

84. See *Renneke*, 255 Minn. at 248, 97 N.W.2d at 380.

nesses testify at trial to a higher value than the official EMV on the tax rolls.

For example, if the assessor's EMV is \$1,000,000 and he testifies at trial that, after a review appraisal, he is of the opinion that the property actually had a market value of \$1,500,000 on the assessment date, the court, hypothetically, after weighing all the evidence, might find the market value to be \$1,400,000. If the court further found, based upon assessment/sales ratio studies, that the average level of assessment is at 75% of market value, the property's value after equalization would be set at \$1,040,000 or a \$40,000 increase in value over the EMV.⁸⁵

CONCLUSION

The Minnesota Constitution, article 10, section 1, provides that, "[t]axes shall be uniform upon the same class of subjects . . ." and the Fourteenth Amendment to the United States Constitution guarantees that no state shall "deny to any person within its jurisdiction the equal protection of the laws." In 1959, the *Hamm* decision struck down the rule of *State v. Cudahy Packing Co.*⁸⁶ that a person whose property was valued at less than 100% of market value had no standing to present a claim of discrimination.⁸⁷ Nevertheless, the average Minnesota taxpayer had not been able to effectively challenge unequal property assessments until the time when the Department of Revenue's assessment/sales ratio studies became available for use as evidence to prove a claim of unequal treatment.⁸⁸

"Unequal assessment" or "discrimination" claims can be raised in any tax petition case.⁸⁹ The taxpayer first must prove the market value then—usually through assessment/sales ratio studies—prove that the property is unequally assessed by being singled out and valued at a substantially higher level than most other properties in the city or county.

If the taxpayer's property is valued at approximately the same percentage of market value as most other properties in

85. Since 1986, the tax court and district courts have the power to increase values. Act of Apr. 1, 1986, ch. 473, § 5, 1986 Minn. Laws 1080, 1081-82 (codified at MINN. STAT. § 287.05, subd. 1 (1986)).

86. 103 Minn. 419, 115 N.W. 645 (1908).

87. *Hamm*, 255 Minn. at 68-70, 95 N.W.2d at 653-54.

88. *Cudahy Packing Co.*, 103 Minn. at 421-23, 115 N.W. at 646-47.

89. See MINN. STAT. § 278.05, subd. 4; see also *Objection to Real Property Taxes*, 353 N.W.2d at 525.

the taxing district, there obviously is no unequal treatment and no claim upon which relief will be granted. If most other property is valued at a substantially lower level—over 10% lower—than the taxpayer's property, then the subject property will be reduced in value accordingly.