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NOTE

WHAT CAN THE ERIE SHUFFLE DO FOR YOU?: ORIGINAL AND ACQUIRED EQUITABLE POWERS OF THE MINNESOTA TAX COURT

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I. INTRODUCTION

The Minnesota Tax Court (“Tax Court”) is a unique semi-judicial entity that exists for the sole purpose of deciding tax appeals in the State of Minnesota. While the Minnesota District Court (“District Court”) also has jurisdiction over tax appeals, the Tax Court was specifically created to relieve the District Court of the work associated with the yearly cycle of tax appeals.

The Minnesota Legislature (“Legislature”) created the Tax Court as an administrative agency within the Executive Branch of the Minnesota state government granting it limited judicial powers.¹ Throughout the years of the Tax Court’s existence the questions of what powers it has and what powers it may acquire have been addressed repeatedly. However, unlike traditional administrative agencies, it may not decide such issues until they are presented by a party to a case.

The purpose of this paper is to look at the Tax Court through an academic lens and discuss whether it has the power to reduce the tax owed by a taxpayer based on circumstances the Court deems to be unjust or unfair. The two views of this argument are relatively straightforward. Either the Tax Court should have the power to rule for the taxpayer in the name of fairness and to avoid the state being unjustly enriched at the expense of

* University of South Dakota, B.S. 2005; University of St. Thomas, J.D. *cum laude* 2013. I would like to thank Professor Scott Taylor for his comments and assistance in creating this note. I would also like to thank the University of St. Thomas Law Journal staff for their hard work and thoughtful feedback during the editing experience. Most of all I would like to thank my amazing wife Jillian for her love and support in everything I do.

1. MINN. STAT. § 271.01, subd. 1 (2012) (establishing the Minnesota Tax Court and setting out criteria for the appointment of judges).

other taxpayers or the Tax Court should not be able to circumvent the state's revenue system by exercising non-enumerated powers.

Admittedly, this could be strictly an academic argument because the facts or circumstances that would give the Tax Court the opportunity to exercise certain non-enumerated equitable powers may never be raised in a case. However, practical applications of this idea can be found. The main example I will provide involves the procedural rule known as the "60-day rule." The 60-day rule illustrates a situation in which the Tax Court could provide relief to a taxpayer for missing the 60-day deadline, which would normally result in the automatic dismissal of the case.

Part I will give a brief history of the Tax Court, including its creation, structure, and general authority. Part II will discuss the Tax Court's authority to decide issues related to tax appeals, including both state and federal constitutional issues, and the process by which it may gain that authority. Finally, Part III will address whether the Tax Court may exercise equitable powers, what authority grants the Tax Court equitable powers, and in what situations the Tax Court may apply those powers.²

II. HISTORY

Minnesota has had some form of tax appeal board or court dating back to 1939, when the Legislature created a part-time board of tax appeals.³ In 1977, the Legislature created the current Tax Court, a full-time entity designed to decide tax appeals that is independent of the Department of Revenue.⁴ The Tax Court is created by, and its powers are defined under, Minnesota Statutes section 271.

The Tax Court that currently exists is not a court within the judicial branch, but rather "an independent agency of the executive branch of [the Minnesota] government."⁵ Unlike other administrative agencies, it has been granted unique judicial powers to decide cases related to tax appeals.⁶ Also unlike other administrative agencies, it does not have the power to create regulations or policy independently. The Tax Court is "the sole, exclusive, and final authority for the hearing and determination of all questions of law

2. As a precursor, I should specify what I mean by "equitable powers" for the purpose of this paper. There are several types of equitable remedies: specific performance, constructive trusts, property liens, etc. While these types of equitable remedies may be included in the powers the Tax Court may have or acquire, I am not addressing those here. What I am specifically discussing is if the Tax Court may grant an injunction to prevent the collection of a certain amount of taxes owed based on a certain calculation or assessment, or the equitable relief of restitution to avoid the state being unjustly enriched at the expense of the taxpayer.

3. Act of Apr. 22, 1939, ch. 431, art. 6 § 10, 1939 Minn. Laws 932.

4. See Act of May 27, 1977, ch. 307, 1977 Minn. Laws 606 (amending MINN. STAT. § 271).

5. MINN. STAT. § 271.01, subd. 1 (2012); see also *Wulff v. Tax Court of Appeals*, 288 N.W.2d 221, 222 (Minn. 1979) (discussing the Minnesota Tax Court as a constitutionally permissible delegation of judicial power by the legislature).

6. See MINN. STAT. § 271.01, subd. 5 (2012) (outlining the Tax Court's jurisdiction).

and fact arising under the tax laws of [Minnesota].”⁷ It does not have jurisdiction to decide any criminal or probate case, nor can it grant title of property.⁸ It has statewide jurisdiction and each county is required to provide a location to hold hearings that the judges travel to.⁹

The Tax Court is made up of three full-time judges who are appointed for six-year terms by the governor and subject to senate approval.¹⁰ The judges must be citizens of Minnesota and are selected based on “experience with and knowledge of taxation and tax laws.”¹¹ The three judges hear all cases filed in the Tax Court statewide.

There are four ways a taxpayer may dispute his or her tax assessment. First, a taxpayer may go through the administrative appeal processes offered by the Department of Revenue, county property tax assessor, or other taxing agency. Second, a taxpayer may file suit in a Minnesota District Court. Although the Tax Court was created to handle all tax appeals, this option remains available to the taxpayer. The reason this option is still available is that a tax appeal is within the District Court’s original jurisdiction. Minnesota Statutes section 271.09, subdivision 1 explicitly reserves this right by stating “unless an appeal is taken to the district court, the right of appeal herein provided shall be the exclusive remedy for reviewing the action of the commissioner of revenue or the appropriate unit of government respecting any tax.”¹² Removal of the case to the Tax Court may be requested by either party or may be transferred without a request by the District Court.¹³ Third, a taxpayer may file an appeal with the Tax Court. If the case meets the criteria in Minnesota Statutes section 271.21, the taxpayer has the option to file in the Small Claims Division of the Tax Court.¹⁴ Claims brought in the Small Claims Division are not appealable by either party.¹⁵ Finally, a taxpayer may file an appeal in the Regular Division regardless of the value of the claim.¹⁶ Decisions made in the Regular Division may be appealed directly to the Minnesota Supreme Court.¹⁷

7. *Id.*

8. *Id.*

9. MINN. STAT. § 271.04, subd. 1 (2012).

10. MINN. STAT. § 270.01, subd. 1 (2012). Article VI, section 7 of the Minnesota Constitution requires all judges of the judiciary to be elected. However, the Tax Court judges avoid this requirement since the Tax Court is part of the executive branch.

11. MINN. STAT. § 271.01, subd. 1 (2012).

12. MINN. STAT. § 271.09, subd. 1 (2012).

13. MINN. STAT. § 271.01, subd. 5 (2012).

14. MINN. STAT. § 271.21, subd. 2 (2012). Criteria to file in Small Claims Division are: (a) an appeal from a denial of homestead classification in the current year, (b) the petition is for one parcel homestead property assessed at \$300,000 or less, or (c) the amount in controversy is \$5,000 or less. The filing fee for Small Claims Division is \$150, compared to \$310 for Regular Division.

15. *Id.* at subd. 8 (2012).

16. MINN. STAT. § 271.01, subd. 5 (2012).

17. MINN. STAT. § 271.10 (2012). The Supreme Court standard of review is “on the ground that the Tax Court was without jurisdiction, that the order of the Tax Court was not justified by the

Although the Tax Court is “the sole, exclusive, and final authority for the hearing and determination of all questions of law and fact arising under tax laws of [Minnesota],”¹⁸ the Minnesota Supreme Court has held that the Tax Court does not have the original authority to determine constitutional issues.¹⁹ However, the Minnesota Supreme Court has decided that the Tax Court may acquire the authority to decide constitutional issues through one of two procedural methods as explained in the 1984 case *Erie Mining Company v. Commissioner of Revenue*.²⁰ The Minnesota Supreme Court has not decided what other powers not enumerated by statute the Tax Court has or may acquire. However, the Tax Court has limited its own powers through its precedent beginning with the 1980 case *Simon v. Commissioner of Revenue*.²¹ I will show that the precedent stemming from the *Simon* case is incorrect and that the Tax Court does possess some equitable powers through the language of the statutes that govern it. I will also show that any other equitable powers that the Tax Court does not have may be acquired through the procedures outlined in *Erie*, procedures which I will discuss below.

III. THE *ERIE* SHUFFLE

In 1984 the Minnesota Supreme Court decided *Erie Mining Company v. Commissioner of Revenue*, the last of three cases addressing whether the Tax Court could decide constitutional issues.²² The Court in *Erie* laid out the specific procedural method through which the Tax Court could acquire the power to do so.²³ This procedure has come to be known as the *Erie* Shuffle.

The authority of the Tax Court to determine constitutional questions initially came from two prior cases, *Matter of McCannel*²⁴ and *Guilliams v. Commissioner of Revenue*.²⁵ *Matter of McCannel* was a consolidated case

evidence or was not in conformity with law, or that the Tax Court committed any other error of law.” *Id.* at subd. 1.

18. MINN. STAT. § 271.01, subd. 5 (2012).

19. See *Matter of McCannel*, 301 N.W.2d 910, 919–20 (Minn. 1980) (holding that the Tax Court has the power to decide constitutional issues only when they are raised in the district court before being transferred to the Tax Court).

20. See *Erie Mining Co. v. Comm’r of Revenue*, 343 N.W.2d 261, 264 (Minn. 1984) (upholding the rule from *Matter of McCannel*, and adding that should a constitutional issue arise in the Tax Court, it is to stay the proceedings and transfer the case to a district court, which may then transfer it back).

21. See *Simon v. Comm’r of Revenue*, No. 3549, 1983 WL 1845, at *3 (Minn. T.C. Feb. 10, 1983) (holding that the Tax Court is a “creature of statute,” and cannot grant equity relief under current law).

22. *Erie Mining*, 343 N.W.2d at 264; *Guilliams v. Comm’r of Revenue*, 299 N.W.2d 138, 139 n.1 (Minn. 1980); *McCannel*, 301 N.W.2d at 919–20.

23. *Erie Mining*, 343 N.W.2d at 264.

24. *McCannel*, 301 N.W.2d at 919–20.

25. See *Guilliams*, 299 N.W.2d at 139 n.1 (affirming the holding in *McCannel* that the Tax Court has no original jurisdiction over constitutional questions).

involving several petitioners who originally filed in District Court.²⁶ In *McCannel*, the respondent, Hennepin County, challenged the Tax Court's authority to decide the constitutional questions raised in the case.²⁷ The Minnesota Supreme Court held that the Tax Court was essentially an administrative agency with "uniquely judicial powers," and since the

[d]ecisions 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.²⁸

The Supreme Court then quoted Minnesota Statutes section 271.01, subdivision 5²⁹ and stated:

This language indicates that when a case is transferred from the district court to the tax court, the tax court acquires the district court's jurisdiction to decide *all issues* in a particular case, implicitly including all constitutional issues. The language designating the tax court as the "sole, exclusive, and final authority" for all issues raised in a particular case suggests that the legislature intended the tax court to have the power to decide each case completely.³⁰

The *Guilliams* case, which was decided very shortly after *McCannel*, raised a different procedural issue.³¹ Unlike *McCannel*, the *Guilliams* petition had originally been brought in the Tax Court and not the District Court.³² So, based on the ruling in *McCannel*, the Tax Court should not have had jurisdiction to determine the constitutional issue presented.³³ However, footnote 1 of *Guilliams* allows the appeal by stating "[s]ince constitutional questions were raised, the proceeding should have been brought in district court. Since, however, *McCannel* has only just been announced and since the issue is now here, we will entertain the appeal."³⁴ The Supreme Court then stated that constitutional issues must be brought first in, and subsequently transferred from, the District Court in order for the Tax Court to have jurisdiction.³⁵

26. *McCannel*, 301 N.W.2d at 913.

27. *Id.* at 919.

28. *Id.*

29. "Except for an appeal to the supreme court or any other appeal allowed under this subdivision, 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 the state . . . in any case that has been transferred by the district court to the tax court." *Id.* at 919-20.

30. *McCannel*, 301 N.W.2d at 920 (emphasis added). The emphasis added to "all issues" in this quote is important to the question of whether the Tax Court has equitable powers, which is addressed later in this paper.

31. *Guilliams v. Comm'r of Revenue*, 299 N.W.2d 138, 139 n.1 (Minn. 1980).

32. *McCannel*, 301 N.W.2d at 919.

33. *Id.* at 919-20.

34. *Guilliams*, 299 N.W.2d at 139 n.1 (emphasis added).

35. *Id.*

Finally we reach *Erie*.³⁶ In *Erie*, the Tax Court had consolidated appeals that were initially filed with the Tax Court both prior to and after the *McCannel* and *Guilliams* decisions.³⁷ The Supreme Court held that the Tax Court had jurisdiction in this instance to decide constitutional issues because the consolidated case included appeals from before the *Guilliams* decision.³⁸ However, the Supreme Court went a step further and elaborated on its rule determining how the Tax Court could acquire jurisdiction to decide constitutional issues. It stated:

We perceive no difficulty in enforcing [the *Matter of McCannel*] rule. All tax matters over which the tax court has jurisdiction should be filed with the tax court. If any party raises a constitutional issue, the tax court should stay the proceedings and refer the constitutional question to the district court. The district court may either decide the constitutional issue or refer the matter back to the tax court which will then have subject matter jurisdiction to rule initially on the constitutional issue. If the tax court should declare any matter unconstitutional and no appeal is taken to this court, that ruling shall only be the law of the particular case involved.³⁹

And with that, the *Erie* Shuffle was born.

The *Erie* Shuffle is now a common procedure in Tax Court cases. If a constitutional issue is raised, the Tax Court must stay the case and transfer it to the District Court. The District Court will then certify the constitutional question and transfer the case back to the Tax Court. While this process does delay the case, it also allows the Tax Court to decide the entire case, which ultimately makes the procedure a successful exercise in judicial efficiency.

However, as discussed above, this paper is not interested in whether the Tax Court has the power to decide constitutional issues. That question has already been answered. The question presented here is whether the Tax Court has original or acquired equitable powers. As I will discuss next, it is my determination that any equitable power may be acquired through the *Erie* Shuffle. The question of original equitable powers will be discussed later.

IV. EQUITABLE POWERS MAY BE OBTAINED THROUGH THE *ERIE* SHUFFLE

The Minnesota Supreme Court has clearly established that the Tax Court may obtain jurisdiction to decide constitutional issues and has defined the procedural mechanism for the Tax Court to obtain that jurisdic-

36. *Erie Mining Co. v. Comm'r of Revenue*, 343 N.W.2d 261, 264 (Minn. 1984).

37. *Id.*

38. *Id.*

39. *Id.*

tion.⁴⁰ The next logical question is what other powers may the Tax Court obtain through transfer of a case from the District Court. This paper discusses the power of the Tax Court to provide a specific equitable relief. I contend that *McCannel* and *Erie* leave little room to argue the Tax Court cannot request and obtain power that is within the original jurisdiction of the District Court.

When the Supreme Court stated in *McCannel* that the Tax Court may “acquire[] the district court’s jurisdiction to decide all issues in a particular case,” it was addressing the Tax Court’s power to decide constitutional issues.⁴¹ However, the language specifically states “all issues,” which encompasses more than just constitutional issues.⁴² This indicates that a case transferred from the District Court provides the Tax Court with the power to provide equitable relief to a party if requested.

The question becomes less clear when a case is initially filed with the Tax Court. The *Erie* case did not address whether the Tax Court could transfer a case to the District Court where only equitable relief was requested.⁴³ *Erie* only reinforced the rule in *McCannel* that the Tax Court can obtain jurisdiction over constitutional issues, while also stating that all cases the Tax Court has jurisdiction over “should” be filed in Tax Court.⁴⁴ *Erie* specifically states if a *constitutional* issue is raised “the tax court should stay the proceedings and refer the constitutional question to district court.”⁴⁵ However, this does not mean all hope for equitable relief in the Tax Court is lost.

The *Erie* Shuffle has become common practice when a constitutional issue is raised, but procedural limitations have developed over time. For example, the case *L.G.S.R.G. Partnership v. O’Connor*⁴⁶ was originally filed in District Court and involved a petitioner who raised a constitutional issue.⁴⁷ The District Court then transferred the case to the Tax Court.⁴⁸ Once in the Tax Court, the petitioner made a motion to do the *Erie* Shuffle.⁴⁹ The Tax Court denied the motion citing that the District Court had already granted the Tax Court full jurisdiction to decide all issues in the case.⁵⁰ The important language for our purposes comes from the transfer order, which states:

40. *Id.*

41. Matter of *McCannel*, 301 N.W.2d 910, 920 (Minn. 1980).

42. *Id.*

43. See *Erie Mining Co.*, 343 N.W.2d at 264.

44. *Id.*

45. *Id.*

46. *L.G.S.R.G. P’ship v. O’Connor*, No. 97-567, 1998 WL 765701, at *1 (Minn. T.C. Oct. 30, 1998).

47. *Id.*

48. *Id.*

49. *Id.*

50. *Id.* at *2.

The Motion for Transfer of Jurisdiction to the Minnesota Tax Court of the Hennepin County Defendants is hereby granted placing with the Tax Court the District Court's full legal and *equitable powers* for determination of all matters that might come before it and placing sole, exclusive, and final authority over this action with the Tax Court.⁵¹

Even though this was a case originally filed with the District Court, it is clear that the District Court accepts that, in transferring a case, it is transferring all its jurisdiction and power to decide the case to the Tax Court.⁵² Therefore, it is logical to conclude a case that undergoes the *Erie* Shuffle would also receive the same response from the District Court. Further, I contend that if the language of the transfer order from the District Court is broad, equitable powers would be implied under the umbrella of the language transferring “all” or “full” jurisdiction.

The final part of my question regarding the *Erie* Shuffle and the Tax Court's ability to obtain equitable powers is whether the Tax Court can stay proceedings and transfer a case for the sole purpose of obtaining those equitable powers. Although *Erie* specifically stated that the Tax Court could transfer a case to the District Court to obtain the power to decide a constitutional issue, it also upheld the rule created in *McCannel* that “the tax court acquires the district court's jurisdiction to decide all issues in a particular case.”⁵³ This implies that a motion could be brought to transfer the case to District Court to grant a specific equitable power to the Tax Court.

V. ORIGINAL JURISDICTION OF THE TAX COURT

As stated above, the Tax Court is an administrative agency in the executive branch of the Minnesota state government that has been given unique judicial powers.⁵⁴ The jurisdiction and power of the Tax Court, like other administrative agencies, is specifically defined by statute.⁵⁵ The original jurisdiction granted in those statutes is then interpreted and further defined by case law, just like courts in the judicial branch.

Following the principle of *stare decisis*, the Tax Court—like judicial branch courts—bases its decisions on its own prior case law.⁵⁶ The only appeal option from the Tax Court is to the Minnesota Supreme Court, and

51. *Id.* (emphasis added).

52. *L.G.S.R.G. P'ship*, 1998 WL 765701, at *2.

53. *Matter of McCannel*, 301 N.W.2d 910, 920 (Minn. 1980).

54. MINN. STAT. § 271.01, subd. 1 (2012); *see Wulff v. Tax Court of Appeals*, 288 N.W.2d 221, 225 (Minn. 1979).

55. MINN. STAT. §§ 271.01–22 (2012).

56. This is not true for Small Claims Division as MINN. STAT. § 271.21, subd. 8 specifically states “[t]he judgment shall not be considered as judicial precedent and shall have no force or effect in any other case, hearing, or proceeding.”

whether the appeal is taken under review is not guaranteed.⁵⁷ Therefore, when a decision is made in the Tax Court, it essentially becomes the self-created precedent of the Tax Court.

The precedent-setting case that is pertinent for this discussion is *Simon v. Commissioner of Revenue*.⁵⁸ The *Simon* case involved a taxpayer who had claimed an exemption on his Minnesota individual income tax return for losses incurred by a foreign small business corporation.⁵⁹ The taxpayer had not originally claimed the status of the business properly under Minnesota law and was contesting the Commissioner's ruling that he owed taxes.⁶⁰ However, the taxpayer's argument was not convincing to the Tax Court and it ruled against the taxpayer.⁶¹ Arguing in the alternative, the taxpayer requested the Tax Court to rule in his favor solely on the basis that the result of upholding the law as written was inequitable.⁶² The Tax Court responded by stating:

Even if the Court were to agree that the result is inequitable the Tax Court is a creature of statute and has not been granted equity powers. The Court can grant equity relief only when such authority has been granted to the Commissioner and he has failed to exercise it. In the instant case the statute does not give the Commissioner equity powers so the Court is without jurisdiction to grant relief.⁶³

This statement is of particular interest for two reasons. First, it is consistently quoted as the reason the Tax Court cannot, or will not, exercise an equitable power. Second, it does not cite *any* source as a basis. No statute. No case law.

I am not saying that the Tax Court was incorrect in the *Simon* case when it stated that it is a "creature of statute."⁶⁴ It is a creature of statute in that it was not constitutionally or administratively created, but created by legislatively enacted statute.⁶⁵ Nor am I saying that the Tax Court was incorrect when it stated only that it "has not been granted equity powers."⁶⁶ This is an accurate statement in that the statutes governing the Tax Court do not explicitly grant it, by itself, any equitable powers. What I am saying is

57. MINN. STAT. § 271.10 (2012). Only a case filed in the Regular Division of the Tax Court may be appealed to the Supreme Court. MINN. STAT. § 271.21 creates the Small Claims Division of the Tax Court, and subdivision 8 states that a Tax Court decision in the Small Claims Division may not be appealed. MINN. STAT. § 271.21, subd. 8 (2012).

58. See *Simon v. Comm'r of Revenue*, No. 3549, 1983 WL 1845, at *3 (Minn. T.C. Feb. 10, 1983).

59. *Id.* at *1.

60. *Id.* at *3.

61. *Id.*

62. *Id.*

63. *Id.*

64. *Simon*, 1983 WL 1845, at *3.

65. MINN. STAT. § 271 (2012).

66. *Simon*, 1983 WL 1845, at *3.

the statement in *Simon* is incomplete, and it is this incomplete statement that has become the basis for an incorrect precedent followed by the Tax Court. I say this because the Tax Court truly is a creature of statute, and as such it has the authority to exercise any power granted to the Commissioner of Revenue that the Commissioner chooses not to exercise itself.⁶⁷ This means the Tax Court may choose to grant equitable relief in situations where the Commissioner has failed to exercise its authority to do so. The result is that the Tax Court does in fact have the authority to grant equitable relief in certain situations, one of which includes the situation presented in the *Simon* case.⁶⁸

It is true that the Tax Court is a unique entity created by statute and that the legislature did not specifically grant the Tax Court itself equity powers.⁶⁹ However, the Tax Court does have the ability to exercise powers granted to the Commissioner of Revenue if the Commissioner fails or declines to exercise the power it is granted.⁷⁰ This was made clear in *Simon* and subsequent cases.⁷¹ As a result, the Tax Court may grant equitable relief in certain situations where the Commissioner has the power to grant equitable relief but chooses not to.⁷²

The tax year in question in *Simon* was 1978. The relevant statute for that tax year was Minnesota Statutes section 270.07, subdivision 1, which read:

The commissioner of revenue . . . shall hear and determine all matters of grievance relating to taxation. Except as otherwise provided by law, he shall have power to grant such reduction or abatement of assessed valuations or taxes and of any costs, penalties or interest thereon as he may deem just and equitable, and to order the refundment, in whole or in part, of any taxes, costs, penalties or interest thereon which have been erroneously or unjustly paid. . . . The commissioner may by written order abate, reduce, or refund any penalty or interest imposed by any law relating to taxation, if in his opinion the enforcement of such a penalty or the payment of such interest would be unjust and inequitable. . . . An appeal may not be taken to the tax court from

67. *Id.*

68. To clarify, I am not arguing that *Simon* was wrongfully decided. The reason for this is that the issue of the Tax Court's authority to exercise equitable relief was tangential to the primary issue of the case. What I am arguing is that the dicta used in *Simon* that has become the foundational precedent upon which the Tax Court relies to state that it does not have the power to grant equitable relief was incorrect.

69. MINN. STAT. § 271 (2012).

70. *Simon*, 1983 WL 1845, at *3.

71. *Id.*; *Ewing v. Comm'r of Revenue*, No. 3816, 1984 WL 2970, at *2 (Minn. T.C. Feb. 2, 1984); *Stelzner v. Comm'r of Revenue*, No. 7005, 2000 WL 37865, at *7 (Minn. T.C. Jan. 12, 2000) *aff'd sub nom.* *Stelzner v. Comm'r of Revenue*, 621 N.W.2d 736 (Minn. 2001); *Pipestone Performing Arts Ctr. v. Comm'r of Revenue*, Minn. No. 7253-R, 2000 WL 1275320, at *2 (Minn. T.C. Sept. 7, 2000).

72. *Simon*, 1983 WL 1845, at *3.

any order of the commissioner of revenue made in the exercise of the discretionary authority granted to him in this subdivision in response to a taxpayer's application for an abatement, reduction or refund of taxes, assessed valuations, costs, penalties or interest.⁷³

Thus, the statute at the time of the *Simon* case allowed taxpayers the opportunity to request relief from the Commissioner should a tax, penalty, or interest cause an inequitable result.⁷⁴ The statute also allowed the Commissioner to use its discretion to grant such equitable relief.⁷⁵ The main sticking point in the statute is that the decision from the application for equitable relief was specifically not appealable to the Tax Court.⁷⁶ However, since the taxpayer in *Simon* had not applied for equitable relief from the Commissioner, and instead requested equitable relief from the Tax Court, it is at least arguable that the Tax Court had the authority to exercise the Commissioner's power to provide equitable relief as the Commissioner had decided not to do so.

Minnesota Statutes section 270.07, subdivision 1 was amended in 1982, one year before the *Simon* decision. The amendment still allowed the Commissioner to reduce or abate taxes, valuations, penalties, etc., that were inequitable, but required "reasonable cause" for the Commissioner to waive or reduce penalties or interest from unpaid taxes.⁷⁷

The statute has since been amended and renumbered several times. The current version is Minnesota Statutes section 270C.86, subdivision 1, which states:

[T]he commissioner shall have power to grant such reduction or abatement of net tax capacities, taxes imposed by the property tax laws, or special assessments, and of any costs, penalties, or interest thereon as the commissioner may deem just and equitable, and to order the refundment, in whole or in part, of any taxes or special assessments, and costs, penalties, or interest thereon which have been erroneously or unjustly paid. . . . No reduction, abatement, or refundment of any special assessments made or levied by any municipality for local improvements shall be made unless it is also approved by the board of review or similar taxing authority of such municipality. . . . An appeal may not be taken to the Tax Court from any order of the commissioner made in the exercise of the discretionary authority granted in paragraph (a) with respect to the reduction or abatement of real or personal property taxes in

73. MINN. STAT. § 270.07, subd. 1 (1975) (current statute MINN. STAT. § 270C).

74. *See id.*

75. *Id.*

76. *Id.*

77. MINN. STAT. § 270.07, subd. 1 (1982) (current statute MINN. STAT. § 270C).

response to an application for an abatement, reduction, or refund of taxes, net tax capacities, costs, penalties, or interest.⁷⁸

While the language of the statute has changed, the Legislature has continued to give the Commissioner the power to grant relief in specific circumstances that it deems to be inequitable.⁷⁹ However, the *Simon* case, and all subsequent cases quoting *Simon*, have failed to recognize that the Commissioner has the power to grant equitable relief to the taxpayer in certain situations.⁸⁰

The Tax Court sets its own precedent unless overturned by the Minnesota Supreme Court.⁸¹ The ability to create your own precedent offers a particularly useful opportunity when a previous ruling presents a misinterpretation of the law. Unlike other courts, the Tax Court has the option, and the power, to change its mind by simply overturning or clarifying its prior decisions to the extent necessary in order to change direction and provide a correct interpretation of the law.

VI. THE EFFECTS AND REACHES OF EQUITABLE POWERS

As I have shown above, the Tax Court does have the power to grant certain equitable relief when the Commissioner of Revenue chooses not to, or it may request the power to grant any equitable relief sought in a case from the District Court through the *Erie* Shuffle. Now I would like to address the example raised at the beginning of the paper regarding when the Tax Court may exercise equitable powers in practice. Hypothetically, let us say a grocery store owns a physical location where it conducts business. The store disagrees with the current valuation assessment of its property. It appeals the assessment and provides the required information to the government. However, it fails to provide certain income and expense information because the information was not yet available due to an issue with its accountant. In this instance, the grocery store would have its appeal automatically dismissed due to its failure to comply with the 60-day rule.⁸²

Cases involving the strict application of the 60-day rule are the most common use of the *Simon* language. The 60-day rule, which is set forth in Minnesota Statutes section 278.05, subdivision 6, requires petitioners who are disputing valuations of income-producing property to provide income and expense information to the government within sixty days.⁸³ The reason

78. MINN. STAT. § 270C.86, subd. 1 (2012).

79. *Id.*

80. See *Simon v. Comm'r of Revenue*, No. 3549, 1983 WL 1845 (Minn. T.C. Feb. 10, 1983); *Pipstone Performing Arts Ctr. v. Comm'r of Revenue*, No. 7253-R, 2000 WL 1275320 (Minn. T.C. Sept. 7, 2000); *Faust v. Comm'r of Revenue*, No. 7630-R, 2004 WL 1714087 (Minn. T.C. July 8, 2004); *Grove Rainbow LP v. Cnty. of Washington*, No. 82-CV-10-2423, 2010 WL 4867991 (Minn. T.C. Nov. 24, 2010).

81. MINN. STAT. § 271.10 (2012).

82. MINN. STAT. § 278.05, subd. 6 (2012).

83. *Id.*

this is the type of case where *Simon* and its successors are most commonly quoted is because petitioners will miss the 60-day deadline and then argue that strict enforcement of the law resulting in their case being dismissed is inequitable. This argument is made even stronger when the deadline was missed by only a few days or when the taxpayer had substantially complied with the rule.⁸⁴ However, the Tax Court consistently has held that because it has no equitable powers, it cannot grant the desired relief to disregard the statutory time requirements.⁸⁵

In the example of the 60-day rule, neither Minnesota Statutes section 278.05, subdivision 6 nor section 270C.86, subdivision 1 expressly allow the Commissioner or the Tax Court to disregard the time requirement.⁸⁶ However, as discussed above, if the taxpayer requests a waiver of the 60-day rule, the Tax Court could still have the ability to waive the time requirement if the case had been transferred from the District Court or underwent the *Erie* Shuffle as this procedure would have granted the Tax Court all of the powers of the District Court. As a result, the holdings of the cases that state that the Tax Court does not have the original power to grant equitable relief by waiving the time requirement of the 60-day rule are correct, they are just based on an initial statement that is not.⁸⁷

Ultimately, the Tax Court's ability to grant certain equitable relief is limited. Tax Court judges should be hesitant to reduce tax liability to a petitioner who believes his house is over-assessed, or who paid income taxes in another jurisdiction and feels it is inequitable to be charged in Minnesota, or who failed to pay sales and use taxes but argues the liability will end the business. The reason the judges should be hesitant is two-fold. First, they will be setting a new precedent that could be used to argue that the Tax Court has the ability to arbitrarily reduce a petitioner's tax liability if the taxpayer is sympathetic. Second, the Regular Division is appealable to the Minnesota Supreme Court, which could overturn a ruling that at least appears arbitrary and permanently remove any ability of the Tax Court to

84. See, e.g., *Grove Rainbow*, 2010 WL 4867991 (denying an appeal filed twenty-six days late); *Kmart Corp. v. Cnty. of Stearns*, No. CX-00-404, 2005 WL 937620 (Minn. T.C. Mar. 3, 2005) (denying appeal and discussing exceptions to the 60-day rule).

85. The Tax Court has a stronger reasoning that it frequently uses as well. *BFW Co. v. County of Ramsey* was a Minnesota Supreme Court case that stated strict enforcement of the 60-day rule was most in line with the intent of the statute, which was to provide "an adequate, speedy, and simple remedy for any taxpayer to have the validity of his claim, defense, or objections determined by the . . . court in matters where the taxpayer claims that his real estate has been partially, unfairly, or unequally assessed . . ." *BFW Co. v. Cnty. of Ramsey*, 566 N.W.2d 702, 705 (Minn. 1997) (quotations omitted).

86. MINN. STAT. § 278.05, subd. 6 (2012); MINN. STAT. § 270C.86, subd. 1 (2012).

87. Again this point may be somewhat moot due to the holding in *BFW Co.* regarding the strict enforcement of the 60-day rule. However, if the facts of a case could be distinguished (i.e., the production requirements are met, but some issue made it impracticable for the production to occur within the 60-day timeframe), the Tax Court may be presented with an opportunity to acquire equitable power through the *Erie* Shuffle and waive the 60-day rule requirement.

exercise or obtain equity powers. Again, the Tax Court would not have the power to avoid the time requirement of the 60-day rule, unless the case was transferred from District Court. But even this would be an issue because petitioners would quickly learn they could simply flood the District Court with petitions that will inevitably be transferred to the Tax Court, which will then allow the 60-day rule to be avoided.

The one type of case where the Tax Court's application of equitable powers would be most successful would be in a property tax petition involving a valuation dispute. So long as the petitioner presents itself as sympathetic and provides adequate evidence to support its claim that the valuation is too high, the Tax Court may be willing to reduce the valuation of the property beyond what the evidence supports for that petitioner. However, even this could have widespread negative effects as consistent reductions to property valuation would not only have an economic effect on state and local operating revenues, but it could ultimately reduce the overall value of the housing market in areas where petitioners are relatively successful at convincing the Tax Court that higher valuations are inequitable.

VII. RECOMMENDATIONS ON THE USE OF EQUITABLE RELIEF

As I have shown, the Tax Court has a limited original power to grant relief when a result would be inequitable, and it has the ability to acquire general equitable powers. However, it is my recommendation that these powers be used sparingly, if at all. My remaining recommendations for the Tax Court and the use of its original and acquired equitable powers are few and specific.

First, the Tax Court should reverse its position regarding the portion of the *Simon* decision stating that the Tax Court has no equitable powers. As presented above, the Tax Court has equitable powers and can acquire more by request from the District Court. When it reverses its position in *Simon*, the Tax Court should specifically explain what powers it originally possesses and what powers it is able to acquire, as well as the process by which they can be acquired.

Second, the Tax Court should continue to unmistakably state it does not have the original authority to avoid the time requirement of the 60-day rule.⁸⁸ Even though its effects are strict and possibly inequitable, the legislature enacted the 60-day rule for a reason, one of which may have been to limit the ability to appeal property valuations for businesses when the petitioner is not vigilant enough to comply with the clearly stated rules. However, if a taxpayer requests the *Erie* Shuffle specifically so the Tax Court can obtain the power to waive the time requirement, the Tax Court should

88. Until the facts are distinguishable from *BFW Co.*, follow the Minnesota Supreme Court precedent.

allow the transfer and grant the motion to disregard the time requirement of the 60-day rule in that instance.

Finally, the Tax Court should not exercise its original power of equitable relief unless the situation is excessively inequitable or it would be judicially efficient. By this I mean the Tax Court should limit its use of equitable relief to property valuation or income tax cases where it is clear the tax owed is too high regardless of the evidence presented.