

No. A07-0394

**STATE OF MINNESOTA
IN SUPREME COURT**

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APPELLATE COURTS

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Southern Minnesota Beet Sugar Coop,

Relator,

vs.

County of Renville,

Respondent.

**BRIEF AND ADDENDUM OF AMICUS CURIAE
MINNESOTA CHAMBER OF COMMERCE**

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On behalf of its more than 2,500 members, including businesses of all types and sizes throughout the State, the Minnesota Chamber of Commerce (“the Chamber”) submits this amicus brief¹ to point out two major errors of analysis in the Tax Court’s opinion in this case – errors that, unless corrected, will have major harmful consequences to the Chamber’s members and all owners of business property in the State. The Chamber has no interest in the ultimate result of this case – the proper assessed value of the subject property – but it has a strong interest in insuring that the result, in what is a case of first impression in this Court, is reached according to sound principles and correct interpretation of the applicable statutes. As is more fully discussed below, the Tax Court’s opinion in this case falls far short of those goals.

STATEMENT OF LEGAL ISSUES

This amicus brief addresses the following issues:

1. Does the Minnesota Tax Court’s apparent adoption of a per se rule under which only the cost method of valuation will be considered in determining the fair market value of special-purpose property violate the principles of property valuation established by this Court’s previous decisions?

Most apposite authorities:

Minn. Stat. § 272.03, subd. 8

Minn. Stat. § 273.11, subd. 1

¹ In accordance with Minn. R. Civ. App. P. 129.03, the Chamber states (1) that no counsel for any party in this action authored this brief in whole or in part and (2) that no person or entity other than the Chamber, its members, and its counsel made any monetary contribution to the preparation or submission of the brief.

Minn. Stat. § 273.12

McNeilus Truck & Mfg. v. County of Dodge, 705 N.W.2d 410 (Minn. 2005)

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Federal Reserve Bank v. State, 313 N.W.2d 619 (Minn. 1981)

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2. Ponderous tanks and other structures that are integral parts of a manufacturing process are exempt from property taxation as “equipment” under Minn. Stat. 272.03, subd. 1(c)(i). Does the fact that all such items must have some type of external structure to maintain their shape and dimensional integrity nevertheless subject such items to taxation under subd. 1(c)(iii) of the statute?

Most apposite authorities:

Minn. Stat. § 272.03, subd. 1(c)(i)

Minn. Stat. § 272.03, subd. 1(c)(iii)

KDAL, Inc. v. County of St. Louis, 240 N.W.2d 560 (Minn. 1976)

Crown CoCo, Inc. v. Commissioner of Revenue, 336 N.W.2d 272 (Minn. 1983)

STATEMENT OF THE CASE AND OF THE FACTS

The Chamber adopts the Statement of the Case and Statement of Facts contained in the Brief of Relator Southern Minnesota Beet Sugar Coop (“SMBSC”).

ARGUMENT

I. The Tax Court's adoption of a per se rule establishing the cost approach as the sole method for valuing special-purpose properties is contrary to law.

- A. Minnesota law requires that property be assessed at its fair market value, which ordinarily must be determined using at least two methods of valuation.

Minn. Stat. § 273.11, subd. 1, provides that, with exceptions not relevant here, “all property shall be valued at its market value.” This fundamental principle is reinforced by Minn. Stat. § 273.12, which provides in relevant part:

It shall be the duty of every assessor and board, in estimating and determining the value of lands for the purpose of taxation, to consider and give due weight to every element and factor affecting the market value thereof. . . . [and] to consider and give due weight to lands which are comparable in character, quality, and location, to the end that all lands similarly located and improved will be assessed upon a uniform basis and without discrimination

It is significant that consideration of the value of property “comparable in character, quality, and location” – the “market comparison approach” to valuation, “which is based on prices paid in actual market transactions involving comparable properties,” *Equitable Life Assurance Society v. County of Ramsey*, 530 N.W.2d 544, 552 (Minn. 1995) – is the only method of assessment specifically recognized by statute.²

² This Court has recognized, as appropriate in particular instances, two other valuation methods: “the cost approach, which is founded on the proposition that an informed buyer would pay no more for the property than the cost of constructing new property having the same utility as the subject property; and . . . the income approach, which is predicated on the capitalization of the income the property is expected to generate.” *Equitable Life*, 530 N.W.2d at 552 (citations omitted).

These two statutory hallmarks – that valuation must be based on “market value” and that the value of comparable property must be considered in determining the market value of the property being assessed – gain added importance from the statutory definition of “market value”:

“Market value” means the usual selling price at the place where the property to which the term is applied shall be at the time of assessment; being the price which could be obtained at a private sale or an auction sale, if it is determined by the assessor that the price from the auction sale represents an arm’s-length transaction.

Minn. Stat. § 272.03, subd. 8. This Court has made the same point in even plainer language, defining “market value” as “the price for which property would sell upon the market at private sale.” *Equitable Life*, 530 N.W.2d at 555 (citation omitted).

In light of section 273.12’s requirement that assessors “consider and give due weight to every element and factor affecting the market value thereof,” this Court has stated that, “[w]henever possible, appraisers should apply at least two approaches to market value because the alternative value indications derived can serve as useful checks on each other.” *Northwest Racquet Swim & Health Clubs v. County of Dakota*, 557 N.W.2d 582, 587 (Minn. 1997); *see also Equitable Life*, 530 N.W.2d at 553.

Accordingly, circumstances “rarely warrant giving weight to only one [valuation] approach.” *American Express Financial Advisors, Inc. v. County of Carver*, 573 N.W.2d 651, 657 (Minn. 1998). Instead, appraisers must consider the quality and quantity of all available data to determine “which approaches are useful and how much weight each is given.” *Northwest Racquet*, 557 N.W.2d at 587.

- B. This Court's precedents do not permit reliance on the cost approach alone in valuing special-purpose properties if relevant, qualifying market or income data has been introduced.
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In *American Express*, this Court defined the category of special-purpose property as follows:

A structure does not qualify as a special purpose property simply because it was built for a particular purpose. Rather, a special purpose property is one that, due to its unique function or design, is not likely to be sold on the market and cannot readily be converted to other uses without a large capital investment or a substantial loss in the investment value of the property's special features.

573 N.W.2d at 656. Thus, the limited market for a property is relevant in classifying it as special-purpose property. Because of this element of the definition, the Court has observed that it "generally permits" appraisers to rely exclusively on the cost approach in valuing special-purpose properties:

In the narrow context of special purpose properties, we have generally permitted the use of a cost approach alone because, "[t]he very nature of special purpose property is such that market value cannot readily be determined by the existence of an actual market, and therefore other methods of valuation, such as reproduction cost, must be resorted to."

Id. at 657, quoting *McCannel v. County of Hennepin*, 301 N.W.2d 910, 924 (Minn. 1980); see also *Federal Reserve Bank v. State*, 313 N.W.2d 619, 622 (Minn. 1981).

But this Court has never held that, because sales of special-purpose property may occur only infrequently or cyclically, the Tax Court is free to ignore evidence derived from such sales when they do occur. On the contrary, the Court's use of the phrase "have generally permitted" indicates that the cost approach is *not* the only viable method of

valuing special purpose properties. Rather, the Court has always been careful to leave open the possibility that there may be circumstances in which the use of the cost approach alone would *not* be permitted. Indeed, in *Federal Reserve*, the Court expressly considered whether the Tax Court had erred by relying solely on the cost approach given the facts of that case. The Court concluded that “it was not error, *in this instance*, to use a single-emphasis approach,” going on to note that “[u]sually, as in our case here, comparable sales are not available for a building that is a special use property.” 313 N.W.2d at 624 (emphasis added). The clear implication of the Court’s language is that, if comparable sales and income data had been available, the Court would have considered them, despite the property’s special-purpose character. Similarly, in *Northwest Racquet*, 557 N.W.2d at 587, the Court observed that, in cases involving special-purpose property in which “there was insufficient market or income data to make the other approaches reliable, we have upheld tax court decisions that were based on the cost approach and gave little or no weight” to income or market approaches. Again the clear implication of the Court’s language is that reliance on the cost approach alone would not have been proper if evidence derived from the market or income approach had been available.

C. In this case, the Tax Court erroneously stated and applied a per se rule favoring the cost approach and apparently ignored Relator’s evidence of market data.

In the present case, the Tax Court, applying the definition of special-purpose property set forth in *American Express*, found that SMBSC’s sugar beet plant in Renville County is a special-purpose property. *Southern Minnesota Beet Sugar Coop v. County of Renville*, No. C5-04-286 and CV-05-100 (Minn. Tax. Ct., Dec. 22, 2006), slip op. at 30.

The Chamber takes no position regarding this classification on the facts of this case, but it urges the Court to address – and correct – the Tax Court’s apparent belief that, simply because of the classification, it was free to disregard evidence of market value derived by other recognized methods of valuation and to rely only on the cost method. In so holding, the Tax Court distorted the general principles established by this Court for determining market value for purposes of tax assessment.

In *McNeilus Truck & Manufacturing v. County of Dodge*, 705 N.W.2d 410, 413 (Minn. 2005), this Court held that the Tax Court’s adoption of a per se rule disallowing the use of comparable sales occurring outside Minnesota “violate[d] the tax court’s obligation to use its independent judgment in evaluating all testimony and evidence before the court.” The Tax Court has committed a similar error in this case. Although Relator SMBSC’s appraiser apparently presented market evidence concerning the sales of several arguably comparable properties, *see* Relator’s Brief at p. 11-12, 24-26, the Tax Court did not mention any of this evidence in its decision. Instead, it focused exclusively on evidence under the cost approach method, apparently believing that it was justified in doing so because it had classified the subject property as special-purpose:

The fourth issue we address is the valuation of the Subject Property. We consider the three traditional approaches (cost, income, and sales) to determine market value. Since we determined that there were additional structures included as taxable real property and we determined the Subject Property is a special purpose property, a thorough and complete analysis under the cost approach is necessary. When valuing a special purpose property, it is appropriate to rely solely on the cost approach to value.

Southern Minnesota, slip op. at 31 (internal citation omitted).

Other than its observation that it had found the property at issue to be special-purpose property, the Tax Court made no attempt to explain why it disregarded SMBSC's proffered market evidence. This failure violates the basic principle that the Tax Court has a duty to "use its independent judgment in evaluating all testimony and evidence before the court." *McNeilus*, 705 N.W.2d at 413. In cases in which the Tax Court is persuaded "that traditional appraisal methodologies do not accurately value the property, the defects of those methods need to be made clear" in the court's opinion. *Westling v. County of Mille Lacs*, 512 N.W.2d 863, 866 (Minn. 1994). Although this Court will not reverse the Tax Court's exclusion of evidence unless "the exclusion materially prejudice[s] the appealing party," this Court also will not "defer to the tax court's property valuation when the court 'completely fail[s] to explain its reasoning.'" *McNeilus*, 705 N.W.2d at 414, quoting *Hansen v. County of Hennepin*, 527 N.W.2d 89, 93 (Minn. 1995).

Moreover, in relying on the cost approach as the exclusive means for valuing special-purpose property, the Tax Court ignores the significant problems associated with that approach. The cost approach rests on the assumption that market participants relate value to cost and therefore "tend to judge the value of an existing structure not only by considering the prices and rents of similar buildings but also by comparing the cost to create a new building with optimal physical condition and functional utility." The Appraisal Institute, *The Appraisal of Real Estate* 349 (12th ed. 2001). As this Court has observed,

Under [the cost approach], appraisers rely on industry publications to determine the cost of constructing a similar building and then decrease this figure to account for accrued depreciation. Although the cost approach is considered to be somewhat imprecise, especially for older buildings, it is generally accepted as a useful method for putting a ceiling on the value of the property.

Montgomery Ward & Co. v. County of Hennepin, 450 N.W.2d 299, 302-03 (Minn. 1990).³ Thus, the cost approach is useful to establish an upper limit of the range a buyer would be willing to pay for a property; it does not, however, reflect fair market value, as “the estimation of depreciation and entrepreneurial [profit] is difficult, the cost approach may be of limited usefulness in valuing older improved properties.” *American Express*, 573 N.W.2d at 657; *Carson Pirie Scott & Co. v. County of Hennepin*, 576 N.W.2d 445, 450 (Minn. 1998) (“This court has recognized that the cost approach is imprecise . . .”). Given these limitations, the cost approach certainly should not be embraced, as the Tax Court did in this case, as the only evidence that may ever be considered in determining the market value of special-purpose property.

D. The Tax Court’s erroneous per se rule has significant implications beyond this case.

The Chamber has no opinion about whether the market evidence proffered by SMBSC in this case was sufficiently probative or whether the Tax Court had reasons,

³ Given this “imprecision,” the fact that the two leading Minnesota cases discussing that approach, *American Express* and *Federal Reserve*, involved property that was relatively new at the time of the disputed assessment limits those cases’ relevance where, as in this case, older industrial equipment is involved.

albeit unstated, for placing no weight on that evidence. But the Chamber does urge this Court to make clear that the only basis that the Tax Court gave for ignoring the evidence – the mere classification of the property as special-purpose – is not, in and of itself, sufficient justification for ignoring evidence of market value and relying entirely on the cost approach. On the contrary, the goal in assessing special-purpose property is the same as for any other type of property – *i.e.*, determining its market value – and the same principles govern that determination in this context as in any other. *All* relevant evidence must be considered in making that determination, including evidence of comparable market sales, if such evidence is available. This Court should also remind the Tax Court that, regardless of how much or how little weight it gives particular evidence of market value, the court must explain its reasoning.

Proper analysis of market value of special-purpose property is a matter of great importance to members of the Chamber. Many business properties in Minnesota, including not only manufacturing and processing plants but also specialized retail facilities such as gas stations, may be classified as special-purpose properties. For many such properties, little or no market-sale data may be available on which to base a comparable-sale analysis. But vigorous markets exist for the sale of some types of special-purpose properties such as gas stations. Whether the evidence of comparable sales for such properties is limited or extensive, that evidence is relevant to the central task of determining fair market value. It should not be ignored simply because the Tax Court finds it easier to pigeon-hole the property as special-purpose and thereby artificially limit the evidence that it needs to consider. As this Court made clear in

McNeilus, such arbitrary and artificial rules are improper. The judgment in this case, based on a legally erroneous analysis, therefore should be vacated. The case should be returned to the Tax Court with instructions to consider all evidence bearing on the fair market value of the subject property, regardless of the method of valuation on which that evidence is based, or to provide explanations, specific to the quality of the particular evidence rather than the category of the property, of why the court has given the evidence no weight.

II. Ponderous process-related manufacturing equipment is not taxable as real property under Minn. Stat. § 272.03, subd. 1.

Under Minn. Stat. § 272.03, subd. 1(a), “real property” is defined for the purposes of taxation as “the land itself, rails, ties, and other track materials annexed to the land, and all buildings, structures, and improvements or other fixtures on it” Buildings and structures are defined as including

the building or structure itself, together with all improvements or fixtures annexed to the building or structure, which are integrated with and of permanent benefit to the building or structure, regardless of the present use of the building, and which cannot be removed without substantial damage to itself or to the building or structure.

Minn. Stat. § 272.03, subd. 1(b). The Legislature has, however, expressly provided a broad exemption for tools, implements, machinery, and equipment:

Real property does not include tools, implements, machinery, and equipment attached to or installed in real property for use in the business or production activity conducted thereon, regardless of size, weight or method of attachment . . .

Minn. Stat. § 272.03, subd. 1(c)(i) (“the equipment exemption”).

As this Court explained in *KDAL, Inc. v. County of St. Louis*, 240 N.W.2d 560, 561 (Minn. 1976), the equipment exemption was enacted to overrule this Court's decision in *Abex Corp. v. Commissioner of Taxation*, 207 N.W.2d 37 (Minn. 1973), in which the Court ruled that foundry equipment filling a seven-story, 80,000-square-foot building was taxable as real property. In enacting the equipment exemption, the Legislature declared its intention to exempt all equipment used in the "production activity" conducted on the property, "regardless of size, weight, or method of attachment."

In 1985, however, for reasons discussed below, the Legislature enacted an exception to the equipment exemption. Minn. Stat. § 272.03, subd. 1(c)(iii) provides:

The exclusion provided in clause (i) does not apply to the exterior shell of a structure which constitutes walls, ceilings, roofs, or floors if the shell of the structure has structural, insulation, or temperature control functions or provides protection from the elements. Such an exterior shell is included in the definition of real property even if it also has special functions distinct from that of a building.

Although clause (c)(iii) has been the law since 1985, it has been discussed in only two Tax Court cases⁴, and, despite the direct appealability of Tax Court decisions, it has never been the subject of an appeal to this Court until now. Thus, the interpretation of clause (c)(iii) is a question of first impression for this Court.

⁴ *County of Scott v. Commissioner of Revenue*, 1989 WL 102973 (Minn. Tax Ct., Aug. 2, 1989); *Lewis & Harris v. County of Hennepin*, 1993 Minn. Tax WL 117570 (Minn. Tax Ct., Apr. 15, 1993). Copies of these and all other unpublished opinions cited herein are included in the Addendum to this Brief.

- A. This Court has historically applied a “functionality test” when deciding whether a structure qualifies for tax-exemption as equipment.

In determining whether component parts of manufacturing plants are taxable, the statute requires an initial determination regarding whether they qualify as buildings, structures, or other fixtures on the land. Minn. Stat. § 272.03, subd. 1(a). If so, the component is taxable. However, this provision must be reconciled with the equipment exemption in clause (c)(i). What happens when the component in question functions as equipment in the business or production activity, but is so large that it also arguably functions as a “structure”?

This Court first addressed this “dual-function” issue in 1976 in *KDAL*, which considered whether an 800-foot-tall tower that held up an antenna was real property. The Court noted that the tower fit into the category of “buildings, structures, and improvements” under Minn. Stat. § 272.03, subd. 1(a) and therefore was taxable unless it qualified under the equipment exemption in Minn. Stat. § 272.03, subd. 1(c) (now subd. 1(c)(i)). 240 N.W.2d at 561. The Court observed that, when the Legislature enacted the equipment exemption, it “did not intend to exempt buildings, but *it did intend to exempt certain other kinds of stationary, outdoor structures.*” *Id.* (emphasis added). The Court concluded that “[t]he terms ‘structure’ and ‘equipment’ are not mutually exclusive.” *Id.* Thus, under the statute, although some structures are taxable, structures that qualify as “equipment” are not. In resolving whether the radio antenna tower was exempt as equipment, the Court held that the tower’s function was to hold the antenna – which the parties agreed was equipment – aloft. *Id.* at 561. Because the tower “serves the essential

function of holding the antenna aloft,” the Court held it was used in the business or production activity of the taxpayer and was therefore exempt. *Id.* at 561-62.

Seven years later, this Court decided *Crown CoCo, Inc. v. Commissioner of Revenue*, 336 N.W.2d 272 (Minn. 1983), involving the Tax Court’s determination that a shingled canopy over gas pumps was exempt as equipment because it was “integral to the operation of a self-service station.” *Id.* at 274. In reversing and holding that the canopy was real property, this Court relied on *KDAL*’s reference to the “function” of the antenna and adopted a functionality test: “To be exempt as equipment, an item must perform functions distinct and different from the functions ordinarily performed by buildings and other taxable structures.” *Id.* at 274.

Shortly after *Crown CoCo* was decided, the Tax Court decided *Farmers Union Grain Terminal Association v. County of Winona*, 1983 WL 1103 (Minn. Tax Ct., Dec. 15, 1983). The central issue in that case was whether the prefabricated concrete panels that constituted the exterior shells of malthouses and a kiln building were equipment or buildings. *Id.* at * 34. The county had taxed the exterior walls of these buildings, but the taxpayer argued to the Tax Court that the walls were an integral part of the processing chambers used in the activity of transforming barley into malt. Therefore, it asserted, the walls were exempt. *Id.*

The Tax Court analyzed the relevant language regarding “function” in *KDAL* and *Crown CoCo*, citing *Crown CoCo*’s functionality test. The court observed that it was unclear whether the functionality test required the item in question to perform *exclusively* functions distinct and different from the functions ordinarily performed by buildings, or

whether the test required only that the *primary* function be distinct. *Id.* at *14. It concluded that “the primary functions of the item [are] controlling and that, therefore, all of the items whose primary function is essentially different from the function of buildings and other structures, are exempt from taxation.” *Id.* Because the malhouses and kiln building were used primarily to transform barley into malt, they were entirely exempt, including their exterior walls. *Id.* at *16.

In direct response to the holding in *Farmers Union* (which was not appealed to this Court), the Legislature amended Minn. Stat. § 272.03, subd. 1, to add clause (c)(iii) – the “exterior-shell exclusion.” In doing so, the Legislature resolved the question of how structures having both an equipment function and a shelter function should be assessed. Under the exterior-shell exclusion, the “exterior shell” of a plant component that otherwise qualifies as equipment used in the production activity is taxable, but only *if* that shell 1) “constitutes walls, ceilings, roofs, or floors” *and* 2) “has structural, insulation or temperature control functions or provides protection from the elements.”

B. Clause (c)(iii) superseded this Court’s decisions in *Busch v. County of Hennepin* and *Barton Enterprises, Inc. v. County of Ramsey*.

Clause (c)(iii) was enacted in 1985 and therefore controls cases involving taxes assessed after 1985 of structures having both equipment and shelter functions. This point bears emphasis only because this Court released two “dual-function” cases *after* the exterior-shell exemption was enacted. These cases – *Busch v. County of Hennepin*, 380 N.W.2d 813, 816 (Minn. 1986); *Barton Enterprises, Inc. v. County of Ramsey*, 390

N.W.2d 776 (Minn. 1986) – were expressly decided under the statute as it stood prior to the addition of clause (c)(iii). *See* 390 N.W.2d at 777; 380 N.W.2d at 815.

Neither *Busch* nor *Barton* addresses the scope or applicability of clause (c)(iii). Rather, both rely on the “shelter rule” articulated in *Crown CoCo* and reject the “primary function” test articulated by the Tax Court in *Farmers Union*. Of course, in enacting clause (c)(iii), the legislature clarified the extent to which the “shelter rule” should be applied and rendered the “primary function” test from *Farmers Union* moot. Thus, after 1985, when valuing a structure having both structure and equipment functions, it is no longer proper to use the analysis followed in either *Farmers Union* or *Busch* and *Barton*. Instead, a court must employ the analytical framework established by clauses (c)(i) and (c)(iii). To the extent that the reasoning enunciated in these cases overlaps or conflicts with clause (c)(iii), the cases are superseded by the statute.

In the present case, however, the Tax Court appears to have relied on both *Busch* and *Barton* to support its determination that various pieces of SMSBC’s processing equipment are taxable, not recognizing that those decisions have been superseded by the statute. *Southern Minnesota*, slip op. at 19-20. Relator SMBSC likewise seems to believe, mistakenly, that the two cases are still good law, although it argues that they are distinguishable. *See* Relator’s Brief at 42-43. This Court should therefore make clear that continued reliance on *Busch* or *Barton* in analyzing dual-function cases is misplaced. Indeed, in *Busch* the Court pointedly observed that “[t]he issue raised in the case at bar [regarding the taxability of the exterior shell of a greenhouse] *has been mooted* for taxes levied in 1985 and later,” citing the newly-adopted clause (c)(iii). *Busch*, 380 N.W.2d at

815. *All* analysis of the taxable status of ponderous processing equipment that has both a structure and an equipment function now must be conducted according to the language of clause (c)(iii) – not the reasoning in *Busch* or *Barton*.

C. The Legislature intended clause (c)(iii) to apply only to the exterior shells of structures that have the features of ordinary buildings, but to continue the exemption of processing tanks and other process-related structures.

Clause (c)(iii) is not a model of drafting clarity. Certain parts of structures that otherwise would be exempt as “equipment” under clause (c)(i) are made taxable – namely, “the exterior shell of a structure which constitutes walls, ceilings, roofs or floors.” But the statute does not define those terms. Presumably there are “structures” within the exemption of clause (c)(i) that are not excluded by clause (c)(iii). Otherwise, if the Legislature had intended to tax all exterior shells, it could simply have said that clause (c)(i)’s exemption “does not apply to the exterior shell of a structure.” Instead, the Legislature chose to limit the category of exterior shells that are taxable only those shells “which constitute[] walls, ceilings, roofs, or floors.” This list of features invites the obvious question: What kinds of exterior shells do *not* constitute walls, ceilings, roofs, or floors, and therefore were intended by the legislature to be exempted from taxation? The statute is ambiguous on this point.

The ambiguity is resolved by the legislative history of clause (c)(iii), to which this Court may properly refer. *See* Minn. Stat. § 645.16 (in interpreting an ambiguous statute, “the intention of the legislature may be ascertained by considering,” *inter alia*, the occasion and necessity for the law, the circumstances under which it was enacted, the mischief to be remedied, and the object to be attained). That history makes clear that the

Legislature enacted clause (c)(iii) to overrule the Tax Court's decision in *Farmers Union* and intended the exterior-shell exclusion to apply only to structures that resemble ordinary buildings, with traditional, building-like features: walls, ceilings, roofs, and floors.⁵

The House Committee considered the addition of clause (c)(iii) on April 1, 1985. At the hearing, the Shakopee City Administrator testified that a malting company in Shakopee was seeking a 50% reduction in its real estate assessment based on the *Farmers Union* decision, which had held that kiln buildings and malthouses were not real property. (House T. at 1:23-25; 4:2-5.) A witness from the Minnesota Association of Commerce and Industry ("MACI") pointed out that only four malting plants in the state would be affected by the *Farmers Union* decision and feared the proposed legislation could be read to "extend the property tax in areas that go far beyond the four malting plants in question," with the result that "huge machinery that is built and ordered in one large package which includes . . . an integrated set of walls and ceilings and floors may become subject to Minnesota's fairly impressive property tax rate." (House T. at 3: 24-25; 4: 7-13.)

During the Committee's deliberations, one of the members expressly asked:

In . . . Shakopee, are there *any of the tanks or things that are actually used in the process that are included?* . . . I'm just looking through the court case and it looks like in Winona County they included some things that I would say are

⁵ Full transcripts of the taped House Committee and Senate Committee meetings are included in the Addendum to this brief.

obviously equipment and machinery. It sounds to me like you're saying you're just literally are taxing the building.

(*Id.* at 6:12-16.) (emphasis added). The Shakopee City Administrator replied that he had toured the facility and “*everything that you and I would normally think of as the building – floor, the walls, separating walls within that – were defined as real property and the machinery was defined as attached machinery. It’s just that . . . they were trying to have this envelope defined as air conditioning under”* the statute. (*Id.* at 6: 21-24) (emphasis added).

At the end of the hearing, an unidentified representative observed:

One of the interesting things I think that is lending towards this kind of decision by the tax court is that the exterior building provides two functions – that is it’s an envelope for some kind of processing and I suppose if things got really elastic, every building is an envelope because you got controlled temperature heat in there even it it’s your house in the winter in Minnesota. So, again, *we’re not interested in narrowing the definition of attached machinery, we’re interested in not allowing [a] real expansive definition of attached machinery include what’s traditionally been real property.*

(*Id.* at 8: 9-15.) (emphasis added.)

The Senate Tax Committee considered the bill on April 16, 1985. The Senate sponsor stated that the bill was being introduced to “simply make the point that the exterior shell or structure – walls, ceilings, roofs, floors of shells – would be recognized as real property.” (*Id.* at 1:15-17.) The Shakopee City Administrator testified that the proposed legislation would allow the county to tax the “exterior shell that houses a manufacturing operation.” (*Id.* at 3:21-22.) The ensuing discussion among the

committee members focused on whether the amendment would unintentionally render taxable facilities that had previously been classified as machinery. (*Id.* at 4:1 – 7:19.) A representative for the Department of Revenue testified that he did not believe the amendment would affect structures other than the malting facilities and airline test cell facilities. (*Id.* at 4:7-15.)

As in the House Committee hearing, a witness from MACI expressed concern that the “vague and ambiguous” wording of the amendment might be construed by county assessors to include property that had previously been considered exempt. (*Id.* at 7:1-19.) In response, the Shakopee City Administrator emphasized that the shells of the malthouses at the local malting plant were made out of prefabricated concrete panels that sat on a permanent foundation and were simply tilted up to form the building’s walls. (*Id.* at 10:5-14.) He observed that “you could park any kind of equipment in there, store anything in there – in the structure.” (*Id.* at 10:12-15.)

“The object of all interpretation and construction of laws is to ascertain and effectuate the intention of the legislature.” Minn. Stat. § 645.16. If the Legislature had intended to subject the shells of all equipment structures that sit independently on a plant site to taxation as real property, it could simply have excluded “all exterior shells.” However, the Legislature clearly intended to tax the exterior shells *only* of structures having the ordinary qualities of a building: *i.e.*, exterior shells “which constitute walls, ceilings, roofs or floors,” such as the malthouses that were the immediate cause of the provision’s adoption. Interpreting clause (c)(iii) to mean that *all* exterior shells of equipment and machinery are taxable, as the Tax Court did here, renders the phrase

“which constitute walls, ceilings, roofs or floors” superfluous, thereby violating the rule that every law must be construed, if possible, to give effect to all its provisions. Minn. Stat. § 645.16. To give meaning to every word in clause (c)(iii), the qualifying language – “which constitute walls, ceilings, roofs or floors” – must be construed to limit the exclusion to less than the complete class of equipment with exterior shells.

D. The Tax Court’s interpretation of clause (c)(iii) cannot be reconciled with the statute’s language and legislative history.

In determining the taxable status of several “bins, tanks, silos and land improvements” at issue in this case, the Tax Court began by observing that, under Minn. Stat. § 272.03, subd. 1(a), all buildings, structures and land improvements are presumptively taxable. *Southern Minnesota*, slip op. at 18. The court then summarized the holdings of *Busch* and *Barton* – which are irrelevant, for the reasons previously noted – before stating:

The language in *Barton* and *Busch* is similar to the language in Subdivision 1(c)(iii) regarding the test for determining the taxable status of structures that provide process related functions. To summarize the current law, a structure is taxable real property that: (1) Has walls, ceilings, roofs, *or* floors, *and* (2) Provides building-like functionality including structural, insulation, or temperature control functions, *or* (3) Provides protection from the elements, even if it also has special functions distinct from that of a building.

Id. at 20-21.

This purported paraphrase of clause (c)(iii) was the first misstep in the Tax Court’s analysis. The court grossly oversimplified and distorted the statute’s actual wording. The statute does not say that “a structure” is taxable, but only that the “exterior shell of a structure” is taxable. The consequence of the court’s careless language is to subject to

taxation the entirety of structures to which the statute applies, rather than merely the structures' exterior shell.

Moreover, the Tax Court misread clause (c)(iii) as applying to structures to which it was not intended to apply. As has been noted, although the language of the statute is ambiguous, the legislative history makes clear that the Legislature, by adding the qualifying phrase "which constitutes walls, ceilings, roofs, or floors," intended to tax the exterior shells only of structures with traditional, building-like qualities. The Tax Court ignored this ambiguity, proceeding as if the Legislature's reference to "exterior shells" and the qualification "which constitutes" were mere surplusage. It bears emphasizing that the court found that the "fourteen thick juice tanks," "four concrete sugar silos and Weibull bin," and the "other eleven tanks" at issue provide "process-related functions." Thus, the court apparently recognized that these components are "equipment" used in production activity, within the meaning of clause (c)(i). Indeed, the court's analysis of these structures occurs entirely under the rubric of clause (c)(iii) – which applies only to components already deemed exempt as equipment under clause (c)(i).

The Tax Court's entire analysis of the "thick juice tanks" consists of the following: "[T]he steel shell of the thick juice storage tanks has walls, a roof and/or ceiling and floors. The shell performs a structural function. The [tanks] protect their contents, the thick juice, from the elements." Therefore, the court concluded, the tanks "are taxable real property even if they are part of the sugar production process." *Southern Minnesota*, slip op. at 22. The court repeated the same mantra with respect to the "other eleven tanks," which apparently include process tanks (water clarifier and condenser tank), tanks that simply hold end-product (pellet storage tanks), tanks that

appear to hold waste products (betaine tank and ash tank), and tanks that hold fuel presumably used to run the equipment.⁶

Under the governing statute and case law, a court first must determine whether the structure at issue qualifies as “equipment,” by asking whether it performs “functions distinct and different from the functions ordinarily performed by buildings.” *Crown Coco*, 336 N.W.2d at 274. If so, the structure is exempt as equipment under clause (c)(i). *Id.* Only if the structure falls within clause (c)(i) should the court consider whether the structure meets the limited criteria of the exterior-shell exclusion. As the legislative history demonstrates, the Legislature intended to tax the shells – and only the shells – only of structures with ordinary, building-like features. Instead, the Tax Court has interpreted the words “walls, ceilings, roofs, or floors” as if they were synonymous with “sides, tops, or bottoms.” Under the court’s interpretation, the exception of clause (c)(iii) would completely swallow the tax exemption conferred by clause (c)(i),

⁶ The court’s decision to analyze all of these tanks *en masse*, as if there were no functional differences among them warranting different treatment under the various provisions of Section 272.03, subd. 1, appears dubious. Although the court did not address the relative structural and functional roles of these eleven tanks, it seems questionable whether the fuel tanks perform a process function that qualifies them as “equipment” under clause (c)(i), assuming their only function is to store fuel. If so, no clause (c)(iii) analysis of those tanks was required. In contrast, the “water clarifier” and “condenser tank” clearly appear to be part of the processing system, making them exempt “equipment” unless clause (c)(iii) compels a different result as to their exterior shells.

effectively encompass every three-dimensional structure that contains anything. That is, under the court's reasoning, the exterior shell of virtually any piece of equipment that has a three-dimensional structure has a "wall, ceiling, roof, or floor." And virtually every piece of processing equipment, in addition to its normal function in the manufacturing process, could be said also to "shelter" its contents or to play a role in controlling the temperature of the contents, whether the equipment sits outside or is housed entirely inside a building.⁷ If the Tax Court's reasoning is not corrected, therefore, virtually every piece of process equipment in any manufacturing plant that functions as a container of anything will potentially become taxable. Even process-related piping could be a taxable "structure," because the pipes serve as "walls" that "shelter" from the elements the process-related materials that pass through them. Such a result is wholly at odds with the legislative intent of clause (c)(iii).

The Chamber cannot overstate the importance of the present case to business owners throughout the state. Many of the Chamber's members operate manufacturing and processing plants with ponderous processing equipment that traditionally has been deemed exempt under clause (c)(i). If the Tax Court's erroneous reading of clause (c)(iii) is not corrected, virtually any process-related tank or container at any manufacturing or processing facility in Minnesota will be liable to taxation in the future. Such a result

⁷ For example, an insulated and covered tank inside an unheated building "shelters" its contents from the unregulated air temperature and from dust or other impurities that might be present in the building. This would seem to be enough, according to the Tax Court's reasoning, to subject such an "inside" process tank to taxation.

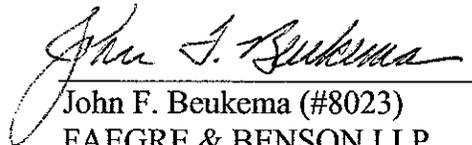
would contravene the Legislature's limited intent in enacting clause (c)(iii) -- to tax only the exterior shells of building-like structures only. This Court should unequivocally reject the Tax Court's overbroad reading of clause (c)(iii) and interpret that clause narrowly in accordance with legislative intent.

CONCLUSION

For the foregoing reasons, the Minnesota Chamber of Commerce urges this Court to make clear in deciding this case (1) that industrial and commercial property in this State must be valued for tax purposes according to sound principles that considers all evidence relevant to the property's market value, rather than a subset of that evidence limited by simplistic per se rules; and (2) that Minn. Stat. § 272.03, subd. 1(c)(iii) applies only to the outer shell of process-related manufacturing equipment that resembles what is normally thought of as a building and does not apply at all to other production equipment exempted by section 272.03, subd. 1(c)(i).

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STATE OF MINNESOTA
IN SUPREME COURT

Southern Minnesota Beet Sugar Coop,

Relator,

CERTIFICATION OF
BRIEF LENGTH

vs.

County of Renville,

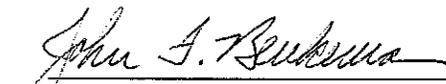
Appellate Court
Case Number: A07-0394

Respondent.

I hereby certify that this brief conforms to the requirements of Minn. R. Civ. App. P. 132.01, subds. 1 and 3, for a brief produced with a proportional font. The length of this brief is 6,927 words. This brief was prepared using Microsoft Word 2003 software.

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The appendix to this brief is not available for online viewing as specified in the *Minnesota Rules of Public Access to the Records of the Judicial Branch*, Rule 8, Subd. 2(e)(2) (with amendments effective July 1, 2007).