

**CAN TAXPAYERS RELY ON MINNESOTA
TAX COURT DECISIONS?
WHY MINNESOTA SHOULD ADOPT THE FIVE-FACTOR
PROSPECTIVE APPLICATION TEST AFTER DEPARTURE
FROM A PRIOR DECISION**

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**CAN TAXPAYERS RELY ON MINNESOTA TAX COURT
DECISIONS? WHY MINNESOTA SHOULD ADOPT THE
FIVE-FACTOR PROSPECTIVE APPLICATION TEST WHEN
THE TAX COURT SUDDENLY DEPARTS FROM A PRIOR
DECISION**

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Like mothers, taxes are often misunderstood, but seldom forgotten.
-Lord Bramwell²

I. INTRODUCTION

The taxation system has long perplexed Americans. Indeed, the endless tax codes and complex rules are so formidable and cause enough litigation that states have established special administrative agencies to hear and determine tax complaints.³ These “tax courts” are agencies within the executive branch of government with delegated power to clarify ambiguities in tax codes and resolve taxation disputes.⁴ Tax court decisions are relied on by taxpayers in order to understand the tax codes and to determine their future taxpaying activities.

A tax court, like other courts, will occasionally decide cases in a way that contradicts a prior decision.⁵ When this occurs in judicial courts, an explicit and reasoned explanation for the reversal must be given.⁶ Where the change in the court’s interpretation or application detrimentally affects the citizen who relied on the prior holding, judicial courts may give the new

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² Internal Revenue Service: United States Department of the Treasury, <http://www.irs.gov/newsroom/article/0,,id=110483,00.html> (last visited April 20, 2007).

³ See Jerome A. Geis & Barry R. Geller, *The Minnesota Tax Court: The Taxpayer’s Choice of Forum to Litigate a State Tax Liability*, 21 HAMLINE L. REV. 407, 409-10 (1998) (describing the creation and purpose of the Minnesota Tax Court); see, e.g. IND. CODE ANN. § 33-26-1-1 (2006) (establishing the Indiana Tax Court).

⁴ See Geis & Geller, *supra* note 3, at 409-10 (describing the history and creation of the Minnesota Tax Court).

⁵ See *infra* notes 32-36 and accompanying text (describing one instance where the tax court reversed its analysis of a statute).

⁶ See *Oanes v. Allstate Ins. Co.*, 617 N.W.2d 401, 406 (Minn. 2000) (finding that a court may only overturn a previous ruling where there is a compelling reason to do so); see also *State ex. rel. Foster v. Naftalin*, 74 N.W.2d 249, 267-68 (Minn. 1956) (concluding that the rule of stare decisis precludes the court from overturning a previous court decision unless the court is convinced there is a good reason to do so).

ruling only a prospective application.⁷ The prospective application doctrine, however, has not been found to be applicable in Minnesota Tax Court.⁸

The Minnesota Supreme Court made this determination in *Kmart Corp. v. County of Stearns (Stearns III)*.⁹ This case was decided after Kmart had come to the state supreme court asking for prospective relief from a Minnesota Tax Court decision.¹⁰ Kmart had relied on the tax court's repeated and consistent interpretation of a Minnesota tax statute, commonly known as the "60-day rule," to determine the information it needed to provide in connection with the petition Kmart had filed in the tax court.¹¹ Abruptly, however, the tax court departed from its prior holdings and made a contradictory ruling.¹² The court's change of heart resulted in the dismissal of Kmart's petition because Kmart was not in compliance with the new interpretation of the 60-day rule requirements.¹³ Upon appeal, the Minnesota Supreme Court did not find the tax court's abrupt turnabout, and the harm it caused to Kmart, to meet the necessary requirements for prospective relief.¹⁴ Therefore, the state supreme court affirmed the tax court's dismissal.¹⁵

This Note will focus on the applicability of the prospective application doctrine in the Minnesota Tax Court.¹⁶ This Note argues that the Minnesota Supreme Court should have used the prospective application test

⁷ See Pamela J. Stephens, *The New Retroactivity Doctrine: Equality, Reliance and Stare Decisis*, 48 SYRACUSE L. REV. 1515, 1517 (1998) (stating that state courts historically have prospectively applied their decisions "in circumstances where to do otherwise would have seriously disrupted reliance interests"). The prospective application doctrine is "a doctrine or set of rules for determining when past precedent should be applied to a case before the court." *American Trucking Ass'n v. Smith*, 496 U.S. 167, 196 (1990). Courts generally give their rulings retroactive effect. See e.g. *State v. Baird*, 654 N.W.2d 105, 110 (Minn. 2002). However, there are circumstances where a court will make an exception to the general rule. *Id.* A court may announce a new decision or ruling to be "purely prospective" in which the new ruling does not apply to any events preceding the ruling. Stephens, *supra* note 7, at 1516. Alternatively, the court may announce its new decision to be retroactive to all but the parties before it in the instant case and for those parties alone, the ruling is prospective. *Id.* For purposes of this paper, the prospective application doctrine refers to the purely prospective formulation. However, in either instance, the prospective application doctrine is applied in state and federal cases to "protect those who had in good faith and with good reason relied upon and acted in accordance with the prior rule." *Id.* at 1560.

⁸ See *infra* notes 60-71 (discussing the court's holding on the issue).

⁹ *Kmart Corp. v. County of Stearns ("Stearns III")*, 710 N.W.2d 761, 771 (Minn. 2006) (declining to give tax court decisions prospective application).

¹⁰ *Id.* at 764.

¹¹ See *id.* at 768 (discussing Kmart's argument that it had relied on a series of Minnesota Tax Court decisions).

¹² See *infra* notes 32-36.

¹³ *Kmart Corp. v. County of Stearns ("Stearns I")*, Nos. CX-00-404, CX-01-1465, C2-02-1387, 2005 WL 94810 at *1 (Minn. Tax Regular Div. Jan. 4, 2005), *aff'd*, 710 N.W.2d 761 (Minn. 2006).

¹⁴ See *Stearns III*, 710 N.W.2d at 769-71 (refusing to apply the prospective application doctrine to tax court decisions).

¹⁵ *Id.* at 772.

¹⁶ See *infra* notes 26-256 and accompanying text.

used by federal courts in cases where an administrative agency change in practice or interpretation has a detrimental effect on those that relied on the prior practice or interpretation.¹⁷ Part II of this Note discusses the *Stearns* facts, the tax court rulings, and the majority and dissenting opinions of the Minnesota Supreme Court.¹⁸ A brief history of the Minnesota Tax Court and a general background on administrative agency precedent is provided in Part III.¹⁹ Part III then discusses the history of the 60-day rule and the interpretations of the rule from both the Minnesota Supreme Court and the Minnesota Tax Court.²⁰ Finally, Part III focuses on the prospective application doctrine and on two tests developed for determining the prospectivity of an announced decision.²¹ Part IV argues that the court undervalued the precedential value of tax court opinions.²² Additionally, Part IV argues that the court used the wrong test to determine if a tax court decision should be prospectively applied and that Minnesota should adopt the federal prospective test for tax court decisions.²³ Moreover, this Note argues the federal prospective application doctrine applies to agency interpretation of statutes as well as to an agency's own policies and rules.²⁴ Finally, Part IV argues that Kmart met the federal prospective test and, thus, the new tax court interpretation of the 60-day rule should not be retroactively applied to Kmart.²⁵

II. STATEMENT OF THE CASE

A. Facts

Under the terms of a retail property lease in Stearns County, Minnesota, Kmart was responsible for paying the property taxes of its leased property.²⁶ Kmart disputed three years of the property's valuations by the Stearns County tax assessor.²⁷ Following the tax dispute procedure in Minnesota statute § 278, Kmart filed timely petitions in the Minnesota Tax Court for a determination of its claims.²⁸ Subdivision 6(a) of Minnesota statute § 278.05 requires such petitioners in the tax court to submit income

¹⁷ See *infra* notes 26-256 and accompanying text.

¹⁸ See *infra* notes 26-94 and accompanying text.

¹⁹ See *infra* notes 95-111 and accompanying text.

²⁰ See *infra* notes 112-156 and accompanying text.

²¹ See *infra* notes 157-183 and accompanying text.

²² See *infra* notes 194-215 and accompanying text.

²³ See *infra* notes 218-256 and accompanying text.

²⁴ See *infra* notes 237-241 and accompanying text.

²⁵ See *infra* notes 242-256 and accompanying text.

²⁶ *Stearns I*, Nos. CX-00-404, CX-01-1465, C2-02-1387, 2005 WL 94810, at *1.

²⁷ *Id.* Kmart disputed the valuations for the years 2000, 2001, and 2002. *Id.*

²⁸ *Id.* Chapter 278 provides taxpayers with an "an adequate, speedy, and simple remedy" for any disputes arising from claims that real estate has been unfairly or improperly assessed. *Stearns III*, 710 N.W.2d at 763 (quoting *Cont'l Sales & Equip. Co. v. Town of Stuntz*, 257 N.W.2d 546, 548 (Minn. 1977)).

and expense figures to the county tax assessor within sixty days after the petition is filed in the tax court.²⁹ This rule is commonly known as the “60-day rule.”³⁰ To comply with the rule, subsequent to the filing of each petition, Kmart submitted a site drawing of the leased property and a copy of its lease to the Stearns County tax assessor.³¹

Kmart relied on prior decisions of the Minnesota Tax Court in its determination that the site drawing and the copy of its lease were sufficient to meet the 60-day rule requirements.³² Moreover, Kmart relied on prior tax court decisions that the 60-day rule did not require submission of tenant-paid expenses.³³ However, Stearns County moved to dismiss Kmart’s petitions on the ground that Kmart had not provided the required expense information under the rule.³⁴ The tax court looked to the language of the statute to determine what expenses must be provided to the tax assessor.³⁵ The court distinguished prior cases that interpreted the disclosure requirements under the 60-day rule and held that all real estate expenses must be provided, regardless of whether the expenses are the responsibility of the landlord or tenant.³⁶ Thus, the court found that Kmart had not complied with the 60-day rule and the court dismissed its petitions.³⁷

²⁹ MINN. STAT. § 278.05 (6)(a) (West 2006); *see also Stearns III*, 710 N.W.2d at 763-64 (explaining the statute). If a petitioner fails to submit the information required under this rule, the petition will be dismissed unless such failure was due to the unavailability of the information. *Id.* at 764.

³⁰ *Stearns III*, 710 N.W.2d at 763.

³¹ *See id.* at 764 (listing the information Kmart provided to the assessor); *see also Stearns I*, 2005 WL 94810 at *1 (describing in part the information Kmart provided to the county tax assessor). The lease specified the expenses for which Kmart was responsible and included such expenses as property taxes, insurance, repair and maintenance costs, and utilities. *Stearns III*, 710 N.W.2d at 764.

³² *See Stearns III*, 710 N.W.2d at 767-68. (discussing Kmart’s reliance argument).

³³ *See Stearns I*, 2005 WL 94810 at *3 (noting Kmart’s argument that it provided all information required by the 60-day rule because the court had previously ruled tenant-paid expenses were not required under the 60-day rule).

³⁴ *Id.* at *1.

³⁵ *Id.* at *2.

³⁶ *Id.* at *3. The court found that *Kmart Corp. v. County of Douglas* was distinguishable because the main holding in the case dealt with an escalator clause in the lease. *See id.* (discussing *Kmart Corp. v. County of Douglas* (“*County of Douglas*”), No. C7-00-309, 2001 WL 40361 (Minn. Tax Ct. Jan. 11, 2001)). The court found this was also the issue in a second case. *See id.* (discussing *Kmart v. County of Saint Louis* (“*County of Saint Louis*”), Nos. C1-00-600670, CX-00-600666, C3-00-600671, C8-00-600665, 2001 WL 40370 (Minn. Tax Ct. Jan. 11, 2001)). The *Stearns I* court went on to find that a third case that held tenant-paid expenses were excluded from the 60-day rule was distinguishable because in that case the main issue was whether petitioners must disclose information unavailable to the petitioner. *See id.* (discussing the holding in *Kmart Corp. v. County of Anoka* (“*Anoka*”), Nos. CX-01-2784, C5-02-2881, C8-03-4232, 2004 WL 612777 (Minn. Tax Regular Div. March 4, 2004)).

³⁷ *Id.* at *4.

*B. Tax Court Opinion on Reconsideration*³⁸

Kmart motioned the Minnesota Tax Court to reconsider its ruling on the 60-day rule requirements in *Stearns I*.³⁹ Alternatively, Kmart argued that if tenant-paid expenses are indeed required under the rule, that ruling should only be applied prospectively.⁴⁰ Kmart argued that the tax court had abruptly departed from its previous interpretation of the 60-day rule which made retrospective application of the new interpretation inequitable for those who had acted in reliance on the court's prior interpretations.⁴¹ Thus, Kmart maintained that the court had announced a new principle of law that was contrary to prior tax court decisions and therefore, the principle only warranted a prospective application.⁴²

The court found the appropriate test for prospective application came from the test used by the Minnesota Supreme Court in *Hoff v. Kempton*.⁴³ The three-prong *Hoff* test requires each factor to be met in favor of the proponent of the prospective application doctrine before a court will decide its holding will only be prospectively applied.⁴⁴ The factors are:

First, the decision to be applied nonretroactively must establish a new principle of law, either by overruling clear past precedent on which litigants have relied, . . . or by deciding an issue of first impression whose resolution was not clearly foreshadowed, . . . Second, it has been stressed that "we must . . . weigh the merits and demerits in each case by looking to the prior history of the rule in question, its purpose and effect, and whether retrospective operation will further or retard its operation." . . . Finally, we weighed the inequity imposed by retroactive application, for "[w]here a decision of this Court could produce substantial inequitable results if applied retroactively, there is ample basis in our cases for avoiding the 'injustice or hardship' by a holding of nonretroactivity."⁴⁵

³⁸ Kmart Corp. v. County of Stearns ("*Stearns II*"), Nos.CX-00-404, CX-01-1465, C2-02-1387, 2005 WL 937620 (Minn. Tax Regular Div. March 3, 2005).

³⁹ *Id.* at *1.

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² *Id.* Kmart argued that because the tax court had announced a new principle of law, it should be required either to reverse its holding or its holding should be given only prospective application. *Id.* This note only discusses whether the court's holding should be given prospective application, not whether the ruling should be reversed in its entirety.

⁴³ *Id.* (citing *Hoff v. Kempton*, 317 N.W.2d 361 (Minn. 1982) (providing the test to determine if special circumstances exist that merit a prospective application of a court ruling)).

⁴⁴ *Stearns II*, 2005 WL 937620 at *2 (explaining and applying the *Hoff* test).

⁴⁵ *Id.* (quoting from *Hoff*, 317 N.W.2d at 363).

Using this test, the court in *Stearns II* denied Kmart's motion for prospective relief for three independent reasons.⁴⁶

First, the *Stearns II* court held that a new principle of law had not been established because the tax court did not overturn clear past precedent on which litigants may have relied.⁴⁷ Since Kmart did not establish this prong, it failed to meet the *Hoff* test.⁴⁸ However, the court held that even if a new principle had been established, the test had still not been met because a retrospective application of the *Stearns I* holding furthered the 60-day rule's goal of providing an expedient resolution of a tax dispute.⁴⁹ Further, the court held that the last prong could not be met because the tax court is not a court of equity and thus, does not engage in an analysis of whether a decision is inequitable.⁵⁰ After refusing to give Kmart prospective relief, the court then affirmed its original holding that the 60-day rule requires *all* real estate expense information available to a petitioner to be produced and denied Kmart's motion for reconsideration.⁵¹ Kmart appealed to the Minnesota Supreme Court.⁵²

C. Minnesota Supreme Court Opinion⁵³

The Minnesota Supreme Court reviewed two issues upon Kmart's appeal.⁵⁴ First, it considered whether the 60-day rule requires tenant-paid real estate expenses to be disclosed to the county tax assessor when a taxpayer files a Chapter 278 petition.⁵⁵ It then addressed whether it should apply the prospective application doctrine to its decision.⁵⁶

1. Majority Opinion

The Minnesota Supreme Court acknowledged that the tax court had repeatedly ruled that tenant-paid expenses were not required by the 60-day rule in a series of cases in which Kmart was a party.⁵⁷ Nonetheless, the state supreme court found that the language of the statute did not exclude

⁴⁶ *Id.*

⁴⁷ *Id.* The court also held that a new principle of law may alternately be established where a decision is one of first impression. *Id.* The court summarily dismissed any argument that this could be a case of first impression in any manner. *Id.*

⁴⁸ *Stearns II*, 2005 WL 937620 at *2.

⁴⁹ *Id.* The court found that to further expediency goals, all property expenses must be provided in a timely manner, and various ways of categorizing expenses does not change this requirement. *Id.*

⁵⁰ *Stearns II*, 2005 WL 937620 at *2.

⁵¹ *Id.* at *9.

⁵² *Stearns III*, 710 N.W.2d at 764.

⁵³ *Id.*

⁵⁴ *Id.* at 763.

⁵⁵ *Id.*

⁵⁶ *Id.* at 767.

⁵⁷ *Id.* at 765.

particular expenses and further held that tenant-paid expenses are useful and relevant in the determination of real estate valuation.⁵⁸ Thus, the court affirmed the tax court and held the 60-day rule requires all expenses to be produced regardless of whether tenant or landlord paid.⁵⁹

Next, the Minnesota Supreme Court addressed whether it should give relief to a taxpayer who had relied on prior erroneous tax court decisions by only applying the court's holding prospectively.⁶⁰ The court looked to the *Hoff* three-prong test for the determination of the issue.⁶¹ Through its analysis, the *Stearns III* court found that Kmart failed to show that the decision established a new principle of law that overruled a past precedent upon which Kmart could have justifiably relied.⁶² Thus, the first prong was not met.⁶³ The court then gave three independent reasons for why the first prong had not been met.⁶⁴

First, the *Stearns III* majority reasoned that a new principle of law had not been established because the prior tax court cases sustaining petitions that lacked information on tenant-paid expenses did not clearly and specifically rely on the fact that the excluded expenses were tenant-paid in its decisions to not dismiss prior petitions.⁶⁵ The supreme court went on to explain that even if it was clear that the tax court had excluded tenant-paid expenses from the 60-day rule in prior decisions, reliance on tax court decisions is not justified because tax court decisions are not precedential.⁶⁶ Minnesota Tax Court decisions lack precedential value, the state supreme court elaborated, because the tax court is not a judicial court.⁶⁷ Rather, the tax court is an administrative agency in the executive branch of the government and as such, has little precedential effect.⁶⁸ Therefore, the Minnesota Supreme Court held that the tax court had not established a past precedent in its prior 60-day rule interpretations that had the capacity to be overturned.⁶⁹ Finally, the *Stearns III* court stated that even if the tax court's prior decisions had established a precedent, the tax court was free to depart from its prior interpretations of the 60-day rule because those interpretations

⁵⁸ *Stearns III*, 710 N.W.2d at 765-66. In the Minnesota Supreme Court's departure from the prior tax court decisions, the court recognized it was not bound by tax court decisions. *Id.* at 769-770.

⁵⁹ *Id.* at 766.

⁶⁰ *Id.* at 767.

⁶¹ *Id.* at 768.

⁶² *See id.* at 769 (finding that prior tax court decisions do not establish clear precedent).

⁶³ *Stearns III*, 710 N.W.2d at 769 (concluding that Kmart had not shown the tax court overturned established precedent).

⁶⁴ *Id.* at 764.

⁶⁵ *Id.* at 768.

⁶⁶ *Id.* at 769.

⁶⁷ *See id.* (distinguishing the tax court as an administrative agency court rather than a judicial court).

⁶⁸ *Id.*

⁶⁹ *Stearns III*, 710 N.W.2d at 769.

were in conflict with a legislative statute.⁷⁰ A tax court interpretation of a statute is non-binding if the interpretation directly contradicts the statute and, in any case, a tax court interpretation of any statute does not bind the Minnesota Supreme Court.⁷¹

After concluding that Kmart had failed to meet the first prong of the *Hoff* test, the majority ended its analysis of whether the 60-day rule should be given only prospective application.⁷² It then addressed the dissent's argument that the court erred in using the *Hoff* test instead of the federal five-factor test to determine whether to invoke the prospective application doctrine for a new agency ruling.⁷³

The majority argued the federal five-factor test does not apply to an administrative agency's interpretation of a statute.⁷⁴ The court found that the federal courts had only applied the test in cases where an agency changed its interpretation or application of its own rules or regulations to the detriment of a party that had relied on the prior agency interpretation or rule.⁷⁵ The test had not been used for agency interpretations of legislative statutes.⁷⁶ Thus, the *Stearns III* court dismissed the dissent's argument for the federal five-factor test because the tax court had interpreted a statute upon which it had no authority to make policy.⁷⁷ The Minnesota Supreme Court then affirmed the dismissal of Kmart's petition.⁷⁸

⁷⁰ *Id.* at 770.

⁷¹ *Id.* (citing *Care Inst., Inc.-Maplewood v. County of Ramsey*, 576 N.W.2d 734, 738 n.4 (Minn. 1998)).

⁷² *Stearns III*, 710 N.W.2d at 770.

⁷³ *Id.*

⁷⁴ *Id.* The majority made a distinction between agency actions that are quasi-legislative and those that are quasi-judicial. *Stearns III*, 710 N.W.2d at 770. A tax court's interpretation of a statute is within the court's quasi-judicial power. *Id.* An agency's power to make its own policies and rules is within the agency's quasi-legislative power. *Id.* The majority found that the federal prospective application doctrine did not apply to an agency that acted within its quasi-judicial power. *Id.*

⁷⁵ *Id.* The court acknowledged that "[o]bviously, agency decisions based on its own policies, rules and regulations should have greater precedential effect . . ." but maintained that agencies are not bound to its past decisions if it had a reasonable basis for departing from precedent. *Id.* at 770-71.

⁷⁶ *Stearns III*, 710 N.W.2d at 770. The court, however, did point out that one federal court did use a balancing approach to determine whether retroactive effect should be given to an agency's new interpretation of how a statutory benefit is calculated where the statute conferred policymaking authority on the calculation issue to the agency. *Id.* at 771 (discussing the 5th Circuit's balancing test in *Microcomputer Tech. Inst. v. Riley*, 139 F.3d 1044 (5th Cir. 1998)).

⁷⁷ *Stearns III*, 710 N.W.2d at 771.

⁷⁸ *Id.*

2. *Dissenting Opinion*

Justice Paul Anderson dissented in part with the *Stearns III* majority.⁷⁹ While he concurred that Kmart was required to provide tenant-paid expenses under the 60-day rule, he first disagreed with how the majority characterized the precedential value of tax court decisions within that court. Secondly, he disagreed with the majority's refusal to apply the prospective application doctrine to its holding.⁸⁰

The dissent argued that the Minnesota Tax Court cannot depart from its prior decisions without giving a reasoned explanation and, hence, tax court decisions have some precedential value.⁸¹ The Justice acknowledged that tax court decisions do not bind that court to the same extent as *stare decisis* binds a judicial branch court but, nevertheless, he argued that the tax court, as an agency, cannot abandon its prior decisions without explanation.⁸² The tax court must confer some respect to its past decisions as "an agency may [not] abandon its own precedent without reason or explanation."⁸³ This duty to accord some respect to a prior decision, the Justice argued, supports the proposition that an agency decision does have some precedential value, even though it may not be as binding as *stare decisis*.⁸⁴

The Justice then addressed the majority's refusal to prospectively apply its holding on the 60-day rule.⁸⁵ In his dissent, the Justice disagreed with the majority's use of the *Hoff* test to determine the applicability of the prospective application doctrine.⁸⁶ He concluded this was an improper test for tax court decisions.⁸⁷ Instead, the tax court, as an administrative agency, should be held to the federal five-factor test used in *Williams Natural Gas Co. v. Federal Energy Regulatory Commission* to determine whether prospective application is appropriate.⁸⁸ The test's considerations are:

⁷⁹ *Id.* at 772 (P. Anderson, J., concurring in part and dissenting in part).

⁸⁰ *Id.*

⁸¹ *Id.* at 772-73.

⁸² *Stearns III*, 710 N.W.2d at 772. See *infra* note 111 (discussing *stare decisis*).

⁸³ *Stearns III*, 710 N.W.2d at 772 (citing *In re Whitehead*, 399 N.W.2d 226, 229 (Minn. Ct. App. 1987)). The dissent further found that if an agency fails to explain a reversal from prior decision then that is an indication that the agency's action was "arbitrary and capricious" and thus, the decision is unsupported. *Stearns III*, 710 N.W.2d at 772.

⁸⁴ *Id.* at 773.

⁸⁵ *Id.*

⁸⁶ *Id.* at 773-74.

⁸⁷ *Id.*

⁸⁸ *Id.* at 774 (citing *Williams Natural Gas Co. v. Fed. Energy Regulatory Comm'n*, 3 F.3d 1544, 1554 (D.C. Cir. 1993)).

(1) whether the particular case is one of first impression,⁸⁹ (2) whether the new rule represents an abrupt departure from well established practice or merely attempts to fill a void in an unsettled area of the law, (3) the extent to which the party against whom the new rule is applied relied on the former rule, (4) the degree of the burden which a retroactive order imposes on a party, and (5) the statutory interest in applying a new rule despite the reliance of a party on the old standard.⁹⁰

This test is followed by several federal courts and, the dissent argued, is a more equitable test for determination of the appropriateness of the prospective application doctrine.⁹¹ The Justice refuted the majority's contention that the five-factor test is not applicable when an agency interprets a statute.⁹² He argued that any distinction between the interpretation of an agency rule or policy and a statute is meaningless, as the purpose of the federal prospective application doctrine is to avoid penalizing those that reasonably rely on an agency's prior decisions.⁹³ The Justice concluded that Kmart met the *Williams* five-factor test and thus, the *Stearns III* court should have only prospectively applied its holding on the 60-day rule.⁹⁴

III. BACKGROUND

A. General History of the Minnesota Tax Court

The Minnesota Tax Court was created under Minnesota statute § 271.01 as an independent agency of the executive branch of the state government to hear and determine all questions of law and fact arising under Minnesota tax laws.⁹⁵ The present full-time court replaced the prior part-

⁸⁹ "First impression" for purposes of the federal prospective application test has a different meaning than what the term is normally understood to mean. *See Clark-Cowlitz Joint Operating Agency v. Fed. Energy Regulatory Comm'n*, 826 F.2d 1074, 1081 (D.C. Cir. 1987). The first impression prong of the federal test is met if the decision in question has not been a decision that the agency has announced before. *Id.* at 1082. It does not matter if the agency has decided on the *issue* before for the first impression analysis in the federal test. *Id.* However, if the agency has not previously announced the particular *decision* in question, then this prong has been satisfied. *Id.*

⁹⁰ *Stearns III*, 710 N.W.2d at 774 (P. Anderson, J., concurring in part and dissenting in part).

⁹¹ *Id.* at 773.

⁹² *Id.* at 775.

⁹³ *Id.*

⁹⁴ *Id.* at 776.

⁹⁵ MINN. STAT. § 271.01(1), (5) (2006); *see also* Nagaraja v. Comm'r of Revenue, 352 N.W.2d 373, 374 n.1 (Minn. 1984) (stating tax court is an independent agency vested with statewide jurisdiction over questions of law and fact arising in Minnesota under the state's tax laws). The Minnesota State Constitution guarantees all persons a remedy in law for

time tax court that existed until 1977.⁹⁶ The primary purpose of the present court is to provide taxpayers with an efficient and convenient forum for tax dispute resolution.⁹⁷ The tax court serves as an alternative forum for taxpayers.⁹⁸ Taxpayers have the option to file in district court, although the district court may transfer a case to the tax court after it reviews the claim.⁹⁹ However, taxpayers primarily choose to litigate their claims in the tax court.¹⁰⁰

The Minnesota Tax Court is the sole and final authority for determination of the issues brought therein with a few exceptions, including appeals to the Minnesota Supreme Court.¹⁰¹ However, the tax court generally does not have original jurisdiction to decide the constitutionality of a statute.¹⁰² Tax court decisions are issued in a written order explaining the court's reasoning and are made available to the public in both printed and

harms or wrongs to his person or property. MINN. CONST. art I. § 8. The tax court provides a forum for disputes arising under state tax laws as guaranteed by the Constitution. *See* MINN. STAT. § 271.01(1), (5) (establishing the tax court to hear and decide tax appeals).

⁹⁶ *See* Geis & Geller, *supra* note 3, at 410.

⁹⁷ *See* Geis & Geller, *supra* note 3, at 410. The current court "was established in response to perceived needs for: a specialized, full-time Tax Court, handling only tax matters; resolution of a heavy back-log of property valuation cases pending in the District Courts; early resolution of tax disputes by an independent court, minimizing expense and inconvenience to individual taxpayers; and elimination of a backlog of cases in the existing part-time Tax Court." *Id.*

⁹⁸ *See* Geis & Geller, *supra* note 3, at 407.

⁹⁹ *See* Wulf v. Tax Court of Appeals, 288 N.W.2d 221, 224-25 (Minn. 1979) (describing the different courts in which a tax claim may be brought in order to support the court's upholding of the constitutionality of the Minnesota Tax Court). Although both the tax court and the district court can hear tax disputes, the tax court "may not exercise general equitable principles to assume jurisdiction over matters not statutorily prescribed." Geis & Geller, *supra* note 3, at 440. District courts, however, are courts of equity, possessing more equitable powers. *Id.*

¹⁰⁰ *See* Geis & Geller, *supra* note 3, at 448. Taxpayers weigh different factors in the decision over which forum would best suit their needs. *Id.* The factors considered include "existing precedent, convenience, or rules of procedure of the Tax Court and the District Court . . ." *Id.* at 448.

¹⁰¹ MINN. STAT. § 271.01(5). Additionally, decisions of the small claims division of the tax court cannot be appealed. MINN. STAT. § 271.21(8). Small claims decisions are final and "shall not be considered as judicial precedent and shall have no force or effect in any other case, hearing, or proceeding." *Id.* One commentator has argued that this language leaves open the possibility that regular tax court decisions do have precedential value. *See* Geis & Geller, *supra* note 3, at 431-32.

¹⁰² *See* Geis & Geller, *supra* note 3, at 413-14. There are three exceptions to the general lack of authority to decide the constitutionality of a state statute. *Id.* The tax court may decide the constitutionality where there has been a "1) transfer of a case to the Tax Court from the District Court; 2) the 'Erie Shuffle' [where a constitutional question is first raised in the tax court, the tax court transfers the question to the district court for determination of the issue, but then the district court transfers it back to the tax court for final resolution]; and 3) consideration of the constitutionality of statutes 'as applied' to particular taxpayers." *Id.* at 413-14.

electronic copies.¹⁰³ Persons that were a party in the proceeding before the tax court may appeal the final order to the state supreme court.¹⁰⁴ The Minnesota Supreme Court may grant review of the tax court decision but are not bound to follow the tax court's ruling.¹⁰⁵

B. General Background on Administrative Agency Precedent

Administrative agencies have power to make rules in both adjudicative and legislative proceedings.¹⁰⁶ While an agency does not have free rein in its power to promulgate rules, it may formulate the rules, regulations, and policies necessary to effectuate a statutorily created

¹⁰³ MINN. STAT. § 271.08(1). The court is a court of record that holds public hearings in all cases. MINN. STAT. 271.06(6). The court must, except in the small claims division of the court, prepare a written record of every decision. MINN. STAT. §§ 271.06(6), 271.08. Regular tax court division decisions may be found on the Minnesota Tax Court website (<http://www.taxcourt.state.mn.us/>), the LexisNexis website (<http://www.lexisnexis.com>), the WestLaw website (www.westlaw.com), and are also available in print version at the Minnesota State Law Library, the Minnesota Legal Register, and at Minnesota's law schools' libraries.

¹⁰⁴ MINN. STAT. § 271.10(1). Upon review, tax court decisions are only reviewed to determine if the court lacked jurisdiction, if the court's decision was supported by the evidence and conformed to the law, or whether the court committed any other error of law. *Bond v. Comm'r of Revenue*, 691 N.W.2d 831, 835 (Minn. 2005); *see also* MINN. STAT. § 271.10(1) (2006) (outlining the grounds upon which a tax court decision may be reviewed). The Minnesota Supreme Court will only overturn a tax court decision if the court determines that the decision could not reasonably be supported by the evidence and thus, is clearly erroneous. *Id.* at 836; *but cf.* MINN. STAT. § 14.69 (2007) (outlining the less deferential scope of judicial review for administrative agencies generally).

¹⁰⁵ MINN. STAT. § 271.10(1); *see also* *A&H Vending Co. v. Comm'r of Revenue*, 608 N.W.2d 544, 546 (Minn. 2000) (holding that tax court decisions are not binding on the Minnesota Supreme Court). The tax court, however, does consider its own opinions to have precedential value for future tax court proceedings. *See SPX Corp. v. County of Steele*, Nos. C1-00-350, CX-01-342, 2002 WL 1988180, at *3 (Minn. Tax Ct. Aug. 19, 2002) (announcing the tax court would follow its own precedent because “[p]rior Tax Court decisions have precedential value . . .”); *see also* *Engdahl v. Comm'r of Revenue*, No. 6600, 1996 WL 85850, at *2 (Minn. Tax Ct. Feb. 26, 1996) (holding its decision was controlled by a prior decision that addressed the same precise issue); *see also* *Lucero v. Comm'r of Revenue*, No. 7404-R, 2002 WL 1732987, at *5 (Minn. Tax Ct. Jul. 24, 2002) (disagreeing with appellant's claim that only United States Supreme Court decisions have precedential value and holding that when interpreting Minnesota law, the tax court will not only follow the decisions of the Minnesota Supreme Court and legislation passed by the Minnesota Legislature, but that it would also follow prior tax court decisions “as they have precedential value”).

¹⁰⁶ *See NLRB v. A.P.W. Products Co.*, 316 F.2d 899, 905 (2d Cir. 1963) (explaining procedures for when an administrative agency makes laws as a legislature would and when the agency makes rules as a court would).

program.¹⁰⁷ Valid agency rules and rulings are binding, and citizens are duty bound to honor such decisions.¹⁰⁸

If an agency departs from a prior action, the agency must give a reasoned explanation for such departure.¹⁰⁹ Both Minnesota and federal courts have refused to give effect to agency decisions that are unexplained because such a lack of reasoning “indicates that the agency’s action is arbitrary and capricious.”¹¹⁰ While no court has held that an agency is bound

¹⁰⁷ See *Morton v. Ruiz*, 415 U.S. 199, 231 (1974) (holding that “[t]he power of an administrative agency to administer a congressionally created and funded program necessarily requires the formulation of policy and the making of rules to fill any gap left, implicitly or explicitly, by Congress”).

¹⁰⁸ See *Hammond v. Lenfest*, 398 F.2d 705, 715 (2nd Cir. 1968) (holding that agency decisions bind individuals subject to the regulation).

¹⁰⁹ *In re Whitehead*, 399 N.W.2d 226, 229 (Minn. Ct. App. 1987); see also *Peoples Natural Gas Co. v. Minn. Public Utils.*, 342 N.W.2d 348, 353 (Minn. Ct. App. 1983) (stating administrative agencies have a duty to “conform to its prior norms and decisions or explain the reason for its departure from such precedent”) (quoting *Miss. Valley Gas Co. v. FERC*, 659 F.2d 488, 506 (5th Cir. 1981)); see also *In re Detailing Criterion & Standards*, 700 N.W.2d 533, 539 (Minn. Ct. App. 2005) (finding an agency must have a reasonable basis before it departs from precedent). The purpose of an agency providing a reasoned explanation for a break with precedent is to “indicat[e] that prior policies and standards are being deliberately changed, not casually ignored.” *Ramaprakash v. Fed. Aviation Admin.*, 346 F.3d 1121, 1124-25 (D.C. Cir. 2003) (quoting *Greater Boston Television Corp. v. FCC*, 444 F.2d 841, 852 (D.C. Cir. 1970). See also *infra* note 110 for a discussion of Minnesota judicial review of an agency decision.

¹¹⁰ *In re Whitehead*, 399 N.W.2d at 229; see also *Brock v. Dun-Par Engineered Form Co.*, 843 F.2d 1135 (8th Cir. 1988) (reversing and remanding a case where the Occupational Safety and Health Review Commission failed to provide an adequate reason for shifting the burden of proof). The Minnesota standard of review for administrative agencies is set out in Minnesota statute § 14.69 of the Minnesota Administrative Procedure Act and provides that

[i]n a judicial review . . . the court may affirm the decision of the agency or remand the case for further proceedings; or it may reverse or modify the decision if the substantial rights of the petitioners may have been prejudiced because the administrative finding, inferences, conclusion, or decisions are [made in violation of constitutional provisions or the agency’s statutory authority, made upon or affected by errors in law, are unsupported by substantial evidence, or are arbitrary or capricious].

MINN. STAT. § 14.69 (2006).

Generally, Minnesota appellate courts are not bound by an agency decision when that decision is legal rather than factual in nature. *No Power Line, Inc. v. Minn. Env’tl. Quality Council*, 262 N.W.2d 312, 320 (Minn. 1977); see also *Busch v. Comm’r of Revenue*, 713 N.W.2d 337, 343 (Minn. 2006) (holding that when the issue before the reviewing court is an issue of law and not an issue of fact, the standard of review is *de novo*). Nevertheless, courts defer to the agency’s skill and technical expertise and presume agency decisions are correct unless the court finds the decision reflects an error of law, is unsubstantiated by the evidence, or is arbitrary and capricious. *Crookston Cattle Co. v. Minn. Dep’t of Natural Res.*, 300 N.W.2d 769, 777 (Minn. 1980).

to adhere to its own precedent to the same extent as a judicial court is bound, an agency cannot simply ignore its past decisions.¹¹¹

C. History of the 60-day Rule

The tax court may hear appeals from taxpayers regarding their assessed property tax.¹¹² Chapter 278 of the Minnesota statutes provides for “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.”¹¹³ Such petitioners must conform to the requirements of a procedural rule known as the “60-day rule.”¹¹⁴ The rule requires the petitioner to provide the county tax assessor with “[i]nformation, including income and expense figures, verified net rentable areas, and anticipated income and expenses, for income-producing property . . . no later than 60 days after the applicable filing deadline”¹¹⁵ The tax court will dismiss petitions if the taxpayers fails to provide the assessor with the information required under the rule unless the petitioner can show that the failure was due to the unavailability of the evidence.¹¹⁶

The purpose of Chapter 278 is to provide taxpayers with an efficient recourse for tax related disputes.¹¹⁷ The 60-day rule furthers this purpose by requiring tax payers to provide information that would be useful to the determination of property value and thus, facilitates expedient decisions in the tax court.¹¹⁸

¹¹¹ *Id.* Judicial courts are held to the principle of stare decisis. The doctrine of stare decisis is a doctrine that gives stability to the law so that parties before a court have reasonable certainty of their position. *Care Institute, Inc.-Maplewood v. County of Ramsey*, 576 N.W.2d 734, 737 (Minn. 1998). Stare decisis holds that “law, once established is applicable to subsequent cases in the same court in which the facts are substantially the same, even if the parties are not, and is binding on all other courts of equal and lower rank.” *Id.* Thus, courts are extremely reluctant to deviate from past decisions and will only do so when there is a compelling reason. *State v. Lee*, 706 N.W.2d 491, 494 (Minn. 2005). In such cases, prospective application of a new ruling allows a court to change a law where it is necessary to do so but still affords due respect to the principle of stare decisis. *American Trucking Ass’ns, Inc. v. Smith*, 496 U.S. 167, 197 (1990).

¹¹² MINN. STAT. § 271.01(5) (2006).

¹¹³ *Stearns I*, 710 N.W.2d at 763 (quoting *Land O’Lakes Dairy Co. v. Sebeka Village*, 31 N.W.2d 660, 665 (1948)).

¹¹⁴ *Stearns I*, 710 N.W.2d at 763. While the tax court follows many of the usual Minnesota rules of civil procedure, the court also has its own procedural rules, including the 60-day rule. See *Geis & Geller, supra* note 3, at 423-430, 442-444 (detailing the differences and similarities between tax court and district court procedures, including pre-trial procedure and discovery, motion practices, time periods for filing an appeal, and prepayment requirements).

¹¹⁵ MINN. STAT. § 278.05(6) (2006).

¹¹⁶ *Id.*

¹¹⁷ *Kmart Corp. v. County of Becker*, 639 N.W.2d 856, 859 (Minn. 2002).

¹¹⁸ *Id.*

D. 60-Day Rule Interpretations

1. Minnesota Supreme Court

The Minnesota Supreme Court addressed the 60-day rule information requirements in *BFW Co. v. County of Ramsey* in July 1997.¹¹⁹ BFW filed a petition to dispute the valuation of its Crown Plaza Shopping Center.¹²⁰ The Minnesota Tax Court dismissed BFW's petition after it found that BFW had failed to comply with the 60-day rule requirements.¹²¹ BFW challenged the dismissal, arguing its failure to provide the information was excused under the rule because the information it had was inaccurate, and thus, "unavailable" under the rule.¹²² The Minnesota Supreme Court disagreed.¹²³

The main issue in *BFW* was whether a petitioner is required to report income and expense information that is inaccurate.¹²⁴ The court considered the plain language of the statute and the legislative intent to find that the statute's text requires the petitioner to provide all information within its possession, even if "the petitioner deems certain portions of that information to be incomplete or not fully accurate."¹²⁵ In conclusion, the court held that even inaccurate information must be produced if the petitioner has such information in its possession.¹²⁶

2. Tax Court Interpretations

The Minnesota Tax Court further interpreted the 60-day rule in a series of cases after *BFW* in which Kmart was the petitioner.¹²⁷ Whereas *BFW* addressed whether a taxpayer was excused from providing income and expense information, the Kmart series of cases addressed whether tenant-

¹¹⁹ *BFW Co. v. County of Ramsey*, 566 N.W.2d 702 (Minn. 1997).

¹²⁰ *Id.* at 703.

¹²¹ *Id.* BFW did not provide the assessor with *any* income and expense figures. *Id.*

¹²² *Id.* at 703-704. In 1995, BFW changed property management firms. *Id.* at 703. The change resulted in a change to the property's accounting method and therefore accurate income and expense information was not tabulated from the time of the change until at least August of 1996. *BFW Co.*, 566 N.W.2d at 704.

¹²³ See *id.* at 705 (holding that even inaccurate expense information was required under the 60-day rule).

¹²⁴ *Id.* at 704. Thus, the court focused its decision on whether there was an excuse for the failure to produce the required information. *Id.*

¹²⁵ *BFW Co.*, 566 N.W.2d at 705.

¹²⁶ *Id.* The court found "[s]trict enforcement of the 60-day rule is consistent with this [legislative] purpose [to facilitate expedient tax dispute resolutions], except when the required information is simply not available to a petitioner." *Id.* The court held that when information is unreliable, however, the petitioner should inform the assessor. *Id.* The petitioner later can provide the assessor updated information and then argue that the updated information more accurately reflects the property's value. *Id.*

¹²⁷ See *infra* notes 129-156 and accompanying text.

paid real estate operation expenses must be provided to the tax assessor under the 60-day rule.¹²⁸

*a. Kmart Corp. v. County of Saint Louis*¹²⁹

Kmart petitioned the tax court under Chapter 278 for review of the county assessor's valuations of four of its leased properties in Saint Louis County.¹³⁰ Subsequently, Kmart provided the county with lease summaries for the four properties.¹³¹ The leases listed the base rent and an escalator clause that provided for an increase in rent if Kmart's gross sales exceeded a certain amount and a rent adjustment clause if the real estate taxes Kmart paid exceeded a threshold amount.¹³² The issues in dispute were whether the rule required Kmart to disclose whether the escalator clause had been triggered and whether the tax payment threshold had been met.¹³³ The court cited *BFW* in its holding, which required Kmart to disclose all available information that allowed the county to meaningfully appraise the property.¹³⁴ Thus, the court required Kmart to disclose both the escalator clause trigger information and tax payment information.¹³⁵ In a final note, the court further stated that other tenant-paid operating expenses such as "insurance, utilities, and common area maintenance and repair expenses that . . . do not reduce the income to the landlord" need not be disclosed under the rule.¹³⁶

*b. Kmart Corp. v. County of Douglas*¹³⁷

The tax court again addressed the requirements under the 60-day rule in its reconsideration of a dismissed Chapter 278 petition.¹³⁸ In *Kmart Corp. v. County of Douglas*, the tax court found that information Kmart did not provide to the Douglas county tax assessor was directly related to the real estate at issue.¹³⁹ Thus, it was information more likely to be required by the 60-day rule than in prior cases where income and expense information was

¹²⁸ See *infra* notes 129-156 and accompanying text.

¹²⁹ *Kmart Corp. v. County of Saint Louis*, 2001 WL 40370 (Minn. Tax Ct. 2001).

¹³⁰ *Id.* at *1.

¹³¹ *Id.*

¹³² *Id.* at *1-2. One store's lease did not have either the escalator clause or rent adjustment clause. *Id.* at *1. Thus, the county did not dispute that that lease met the requirements of the 60-day rule. *Id.*

¹³³ *County of Saint Louis*, 2001 WL 40370 at *2.

¹³⁴ *Id.*

¹³⁵ *Id.*

¹³⁶ *Id.* at *3.

¹³⁷ *Kmart v. County of Douglas*, 2001 WL 40361 (Minn. Tax Ct. 2001).

¹³⁸ *Id.* at *2

¹³⁹ *Id.* The omitted information included such expenses as the cost to heat and light the property. *Id.* at *1.

more indirectly related.¹⁴⁰ However, the court maintained that *BFW* implicitly made a distinction between information relevant to property valuation and information irrelevant for such purposes.¹⁴¹ The purpose of the 60-day rule is to facilitate a speedy valuation of a claim, and tenant-paid expenses are not useful in property appraisal.¹⁴² Thus, the court found that dismissal of a case was an unduly severe punishment for Kmart's failure to provide irrelevant information.¹⁴³ The court doubted "the legislature and the [Minnesota] Supreme Court would command such a draconian penalty. . . ." ¹⁴⁴ Therefore, the court held that "under normal situations the tenant business data, including expenses relating to the real estate that are paid by the tenant, . . . is not required to be provided under the 60 Day Rule."¹⁴⁵

*c. The Anoka Trilogy*¹⁴⁶

On March 4th, 2004, the Minnesota Tax Court decided three Kmart cases in Anoka County arising from disputes over the 60-day rule

¹⁴⁰ *Id.* at *2. The court found information on the income and expenses of tenant business operations, including arena ticket sales, indirectly related to the real estate. *Id.* (citing *Kmart Corp. v. County of Otter Tail*, No. C9-00-551, 2000 WL 1719925 (Minn. Tax Ct. Nov. 16, 2000) and *Minn. Timberwolves Ltd. P'ship v. County of Hennepin*, Nos. TC-26329, TC-6856, 1999 WL 236600 (Minn. Tax Ct. Apr. 20, 1999)).

¹⁴¹ *County of Douglas*, 2001 WL 40361 at *2.

¹⁴² *Id.* at *3

¹⁴³ *See id.* (finding that dismissal was a harsh result for noncompliance).

¹⁴⁴ *Id.* The court found that it would be "absurd" to interpret *BFW* to require irrelevant information that could potentially require stacks of information to be provided in every case and frustrate the legislature's intent. *Id.*

¹⁴⁵ *Id.* The court then considered omitted income information related to an escalator clause in the lease that the tax court had not decided previously. *County of Douglas*, 2001 WL 40361 at *3. The court looked to its holding in *County of Saint Louis* that held that all meaningful information must be provided. *Id.* at 4 (citing *County of Saint Louis*, 2001 WL 40370 at *1). The court concluded that rent information is not meaningfully provided where an escalator clause exists but is not disclosed. *County of Douglas*, 2001 WL 40361 at *4. Thus, escalator trigger information is required under the 60-day rule and the court affirmed the dismissal of Kmart's petition under those grounds alone. *Id.* at 5. The Minnesota Supreme Court affirmed the ruling that escalator clause information was required under the 60-day rule in a series of three cases decided the same day, known as the *Kmart Trilogy*. *See Kmart Corp. (Blaine) v. County of Anoka*, Nos. C1-00-2775, C1-01-2785, C2-02-2885, C1-03-4234, 2004 WL 612789 at *2 (Minn. Tax Regular Div. Mar. 4, 2004) (citing to the *Kmart Trilogy* holdings as establishing that "specific information about the triggering of a percentage rent clause must be provided under the 60 Day Rule."). The three cases decided making up the *Kmart Trilogy* were: *Kmart Corp. v. County of Douglas*, 639 N.W.2d 863 (Minn. 2002), *Kmart Corp. v. County of Saint Louis*, 639 N.W.2d 866 (Minn. 2002), and *Kmart Corp. v. County of Becker*, 639 N.W.2d 856 (Minn. 2002).

¹⁴⁶ *See Kmart Corp. (Blaine) v. County of Anoka*, 2004 WL 612789 (Minn. Tax Regular Div. 2004); *Kmart Corp. (Anoka) v. County of Anoka*, Nos. CX-01-2784, C5-02-2881, C8-03-4232, 2004 WL 612777, (Minn. Tax Regular Div. 2004); and *Kmart Corp. (Columbia Heights) v. County of Anoka*, No. C3-01-2786, Minn. Tax Reports 16,377 (Minn. Tax Regular Div. 2004) (hereinafter "*Anoka Trilogy*").

requirements.¹⁴⁷ In all three cases, the county made a motion to dismiss Kmart's Chapter 278 petitions on the ground that Kmart failed to provide sufficient information to the tax assessor.¹⁴⁸ In all three cases, Kmart provided the county assessor with information regarding its lease, supplemental lease information, and net profit reports.¹⁴⁹ However, in each case the county argued Kmart had not provided sufficient information on income and expenses because the real estate operation records were not disclosed.¹⁵⁰ The court held in all three cases that tenant-paid operation expenses do not have to be disclosed under the rule because such expenses do not affect the valuation of the property.¹⁵¹ Thus, the court found Kmart had provided sufficient information under the 60-day rule and denied the county's motion to dismiss in all three cases.¹⁵²

Both the Minnesota Supreme Court and the Minnesota Tax Court recognize that the purpose of the 60-day rule is to expedite the resolution of tax claims.¹⁵³ As such, petitioners are required to provide all information relevant to the valuation of the property.¹⁵⁴ Irrelevant information, however, thwarts the rule's purpose.¹⁵⁵ Therefore, the Minnesota Tax Court has repeatedly held that tenant-paid expenses, which are irrelevant to property valuation, are not required under the rule.¹⁵⁶

E. Prospective Application Doctrine

The prospective or retroactive effect of statutes, rules and judicial orders has been a subject of legal conversations since before the time of Blackstone.¹⁵⁷ The Ex Post Facto Clause in the United States Constitution

¹⁴⁷ See *Anoka Trilogy*, *supra* note 146.

¹⁴⁸ See *Anoka Trilogy*, *supra* note 146.

¹⁴⁹ See *Anoka Trilogy*, *supra* note 146.

¹⁵⁰ See *Anoka Trilogy*, *supra* note 146. The court also found that Kmart had provided sufficient information on the other issues the county disputed, including that Kmart had provided the necessary information on its escalator clauses in its leases. *See id.*

¹⁵¹ See *Anoka Trilogy*, *supra* note 146. The court made this determination by considering its handling of the issue in prior cases. *Id.* The court in *Kmart Corp. (Columbia Heights) v. County of Anoka* cited a prior tax case as its authority that income and expense information related to real estate ownership that is not available to a tenant petitioner is not required by the 60-day rule. *Kmart Corp. (Columbia Heights) v. County of Anoka* No. C3-01-2786 at *2 (Minn. Tax Ct. 2004) (citing *Kmart Corp. v. County of Otter Tail*, No. C9-00-551 (Minn. Tax Ct. 2000)). Thus, the court held that Kmart in the Columbia Heights petition would not have provide real estate ownership expenses not available to it as a tenant. *Id.*

¹⁵² See *Anoka Trilogy*, *supra* note 146. The court also found that Kmart had provided sufficient information on the other issues the county disputed. *Id.*

¹⁵³ See *supra* notes 126 and 142 and accompanying text.

¹⁵⁴ See *supra* note 126 and accompanying text.

¹⁵⁵ See *supra* note 144.

¹⁵⁶ See *supra* notes 145-151 and accompanying text.

¹⁵⁷ See Rojer J. Traynor, *Quo Vadis, Prospective Overruling: A Question of Judicial Responsibility*, 28 HASTINGS L.J. 533 (1976) (discussing the history of the prospective

bars ex post facto criminal laws and reflects the nation's concern for fairness in the application of newly announced laws.¹⁵⁸ Ex post facto laws are retroactive laws that penalize or change the penalties for actions taken prior to the law's existence.¹⁵⁹ Such laws are "manifestly unjust and oppressive" hence, the Constitutional bar on retroactive application of new criminal laws.¹⁶⁰ Courts have recognized this same inequity in civil cases when a litigant has relied and acted on a bad judicial interpretation that needs to be overruled.¹⁶¹ To resolve the dilemma of either adhering to a bad law or unjustly harming those litigants who relied on the bad law, courts employ the technique of prospective application.¹⁶² This doctrine's twin aims, affording litigants fair rulings and correcting bad laws, serves justice by only applying a new decision that departs from prior rulings to future parties before the court.¹⁶³

1. *The Hoff Test*

In *Hoff v. Kempton*, a litigant had relied on the Minnesota Supreme Court's affirmation of the constitutionality of a state statute that allowed for a certain method to establish jurisdiction.¹⁶⁴ However, after the United States Supreme Court ruled that the method was unconstitutional, the *Hoff* court had to determine whether the litigant's reliance on the court's prior ruling merited only a prospective application of the newly announced rule.¹⁶⁵

application principle from ancient Roman law to English common law as well as the United States legal history).

¹⁵⁸ See *Calder v. Bull*, 3 U.S. 386, 389 (1798) (finding that Constitution contains the ex post facto clause to prevent government brutality and injustice); see also *Malloy v. South Carolina*, 237 U.S. 180, 183 (1915) (explaining that the ex post facto clause was "intended to secure substantial personal rights against arbitrary and oppressive legislative action"); see also U.S. CONST. art. 1, § 9, cl. 3, § 10, cl. 1.

¹⁵⁹ *Weaver v. Graham*, 450 U.S. 24, 28 (1980) (quoting *Cummings v. Missouri*, 71 U.S. 277, 325-26 (1867)).

¹⁶⁰ *Calder*, 3 U.S. at 391. The Framers had such an aversion to ex post facto laws that the Ex Post Facto Clause is found twice in the Constitution and applies to both the federal government and the states. *Weaver*, 450 U.S. at 29 n. 8 (quoting *Kring v. Missouri*, 107 U.S. 221, 227 (1883)); see also U.S. CONST. art. 1 § 9, cl. 3, § 10, cl. 1 (prohibiting the passage of ex post facto laws by Congress and by states).

¹⁶¹ See Traynor, *supra* note 157, at 539-43 (discussing reluctance by judges to harm to litigants who relied on prior holdings in civil cases, such as when the Ohio Supreme held legislative divorces invalid but refused to invalidate forty years of divorces granted under the invalid rule (citing *Bingham v. Miller*, 17 Ohio 44 (Ohio 1848)).

¹⁶² See Traynor, *supra* note 157, at 542.

¹⁶³ See Traynor, *supra* note 157, at 539 (discussing the harms resulting from retroactive application of a judicial decision); see also *Stearns III*, 710 N.W.2d 761, 773 (Minn. 2006) (P. Anderson, J., concurring in part and dissenting in part) (discussing that the prospective application doctrine better serves justice where there was reliance on either the prior rule or interpretation).

¹⁶⁴ *Hoff v. Kempton*, 317 N.W.2d 361, 362 (1982).

¹⁶⁵ *Id.* at 363.

The court adopted the three-prong special circumstances test laid out by the United States Supreme Court in *Chevron Oil v. Huson*.¹⁶⁶

First, the decision to be applied nonretroactively must establish a new principle of law, either by overruling clear past precedent on which litigants have relied . . . or by deciding an issue of first impression . . . Second, . . . “we must . . . weigh the merits and demerits in each case by looking to the prior history of the rule in question, its purpose and effect, and whether retrospective operation will further or retard its operation” . . . Finally, we weighed the inequity imposed by retroactive application for “[w]here a decision of this Court could produce substantial inequitable results if applied retroactively, there is ample basis in our cases for avoiding the ‘injustice or hardship’ by a holding of nonretroactivity¹⁶⁷

Minnesota’s adoption of the *Hoff* test has strictly limited the cases in which the court finds the prospective application doctrine applicable and is only found to apply where “special circumstances” exist.¹⁶⁸

The limited cases where special circumstances are found, however, is not due to a limitation on the scope of the *Hoff* test by the Minnesota Supreme Court. The *Hoff* test is applied to a wide range of judicial decisions

¹⁶⁶ See *id.* (citing *Chevron Oil Co. v. Huson*, 404 U.S. 97 (1971)). The *Chevron Oil* test was announced in a 1971 case where a prior United States Supreme Court decision declared that the admiralty doctrine of laches did not apply in personal injury actions. *Chevron Oil*, 404 U.S. at 97, 99 (1971) (discussing *Rodrigue v. Aetna Cas. & Sur. Co.*, 395 U.S. 352 (1969)). Instead, the state’s statute of limitations applied which had the effect of barring the *Chevron Oil* plaintiff from bringing his personal injury claim. *Chevron Oil*, 404 U.S. at 99, 107. The Supreme Court found that prospective application of judicial decision was not limited to just criminal cases but that the Court had also declined to retroactively apply its decisions in a number of civil cases. *Id.* at 105-06. From its past decisions on retroactivity, the Court noted that three factors were generally considered relevant in a prospective analysis. See *id.* at 106. The Supreme Court continued to use this test in its prospective analysis for some time, but in 1982 the Court found that “[r]etroactivity must be rethought” for criminal cases. *U.S. v. Johnson*, 457 U.S. 537, 548 (1982). The Court then held in a series of cases that retroactive analysis must be different for future criminal cases but continued to use the *Chevron Oil* test in civil cases. See Bradley Scott Shannon, *The Retroactive and Prospective Application of Judicial Decisions*, 26 HARV. J.L. & PUB. POL’Y 811, 821-26 (2003) (detailing prospective application analysis in the United States Supreme Court).

¹⁶⁷ *Hoff*, 317 N.W.2d at 363 (quoting *Chevron Oil*, 404 U.S. at 106-07 (citations omitted)).

¹⁶⁸ See *Stearns III*, 710 N.W.2d at 767-68 (noting that under the *Hoff* test, the prospective application doctrine is only applied in limited situations); see also *State v. Baird*, 654 N.W.2d 105, 111 (Minn. 2002) (explaining that while the special circumstances test has been used by the state supreme court, it is rare that the court will find the existence of such circumstances to warrant a purely prospective ruling).

requiring prospective application analysis. The test has been used to determine prospective application in cases ranging from the court's rulings on the scope of the intentional act exclusion in insurance policies to the court's interpretation of the constitutionality of a statute.¹⁶⁹ The *Hoff* test, while not a true balancing test, provides Minnesota courts with a tool to craft fairer decisions by weighing the harm of retroactive application to a particular litigant with the state's interest in similar treatment of similarly situated parties.¹⁷⁰

2. *The Federal Five-Factor Prospective Application Doctrine*

The United States Supreme Court considered the problem of retrospectively applying an agency's decision in *SEC v. Chenery*.¹⁷¹ The Securities and Exchange Commission ("SEC") found that a proposed stock reorganization plan was inconsistent with a federal statute.¹⁷² Therefore, the SEC held it would only approve the plan if it was amended, so as to preclude profits from such plan by management.¹⁷³ Proponents of the distribution plan argued that the SEC was foreclosed from applying its holding to them because, although the agency may promulgate such a rule, the SEC order could only be prospectively applied.¹⁷⁴ The Supreme Court disagreed.¹⁷⁵

¹⁶⁹ See *B.M.B. v. State Farm Fire and Cas. Co.*, 664 N.W.2d 817, 825-26 (Minn. 2003) (analyzing whether a Minnesota Supreme Court rule that a jury must determine whether an insured's acts were unintentional due to mental illness where there is a genuine issue of material fact on the matter); see also *Bongard v. Bongard*, 342 N.W.2d 156, 158-60 (Minn. Ct. App. 1983) (applying the *Hoff* test to conclude that the Minnesota Supreme Court's ruling that a statute was unconstitutional did not have the requisite "special circumstances" to merit only a prospective application).

¹⁷⁰ See *State v. Baird*, 654 N.W.2d 105, 111-112 (Minn. 2002) (discussing the rationale behind the *Hoff* test). The *Hoff* test is not a true balancing test because it does not weigh the three prongs against each other. *Id.* The first factor, that the decision established a new principle of law, must be initially triggered to continue analysis under the test. Then for a litigant to meet the rest of the test, a court must find each prong in favor of that litigant. See e.g. *Stearns III*, 710 N.W.2d at 768-69 (finding Kmart failed to meet the *Hoff* test because it had failed the first prong but then continuing analysis on the two other prongs to show that even if Kmart had met the first prong, it would still not meet the *Hoff* test).

¹⁷¹ *SEC v. Chenery*, 332 U.S. 194 (1947).

¹⁷² *Id.* at 199-200. The federal statute was the Public Utility Holding Company Act of 1935 (the "Holding Company Act"). *Id.* at 197. The SEC, however, did not provide a clear reasoning for its decision. *Id.* at 198. Hence, on appeal, the U.S. Supreme Court remanded the case back to the SEC. *Id.* at 196. On remand, the SEC again made the same findings but based its decision on the agency's experience and gave such clear reasons for its conclusion that the reorganization plan violated the Holding Company Act. This time, however, the Supreme Court expressed "no doubt as to the underlying basis of the [SEC's] order." *Id.* at 199.

¹⁷³ *Chenery*, 332 U.S. at 197-98.

¹⁷⁴ *Id.* at 200. The proponents argued that the SEC prohibition on the proposed plan could not be made in a quasi-judicial order. See *id.* at 199. Instead, the proponents argued that the rule had to be made under the SEC's quasi-legislative powers and, therefore, the rule could not have retroactive effect. See *id.* at 199-200 (arguing all the SEC could do in

The Supreme Court found that prospective application analysis must balance the statutory, legal, or equitable interest in retroactively applying an agency ruling with the resulting harm of the retroactive application.¹⁷⁶ If the harm of a retroactive application of a new standard is outweighed by other principles, then retroactive application is permissible.¹⁷⁷

In 1972, the D.C. Circuit Court looked to the *Chenery* case and the subsequent developments to the *Chenery* balancing approach to formulate a five-factor test for prospective application of an administrative agency decision.¹⁷⁸ The D.C. Circuit Court found that agency decisions that are “fair” will be retrospectively applied by courts, but courts will often refuse to retrospectively apply “unfair” decisions.¹⁷⁹ The determination of what is fair and what is unfair could be ascertained by balancing five primary considerations:¹⁸⁰

- (1) whether the particular case is one of first impression, (2) whether the new rule represents an abrupt departure from well established practice or merely attempts to fill a void in an unsettled area of law, (3) the extent to which the party against whom the new rule is applied relied on the former rule, (4) the degree of the burden which a retroactive order imposes on a party, and (5) the

this case was to enter an order to allow an amendment of the proposed plan). The Supreme Court held that administrative agencies need to have the flexibility to act and formulate rules through either quasi-legislative proceedings or by adjudication. *Id.* at 202. For an excellent concise explanation of *SEC v. Chenery*, see Russell L. Weaver & Linda D. Jellum, *Chenery II and the Development of Federal Administrative Law*, 58 ADMIN. L. REV. 815 (2006).

¹⁷⁵ *Chenery*, 332 U.S. at 200. The Court disagreed with the contention that an agency’s rule-making authority is confined to legislative proceedings. *See id.* (rejecting the argument that the SEC could not make a rule by an order). The Court found that administrative agencies must be given latitude to resolve problems through rule-making authority in both adjudicative and legislative functions. *Id.* at 202-03. As such, agency announced rules are not always to be given only prospective effect. *See id.* at 203 (holding that the retroactive effect of an agency or court decision must be balanced by other countervailing principles).

¹⁷⁶ *Id.* at 203. The court held “such retroactivity must be balanced against the mischief of producing a result which is contrary to a statutory design or to legal and equitable principles. If that mischief is greater than the ill effect of the retroactive application of a new standard, it is not the type of retroactivity which is condemned by law.” *Id.*

¹⁷⁷ *Chenery*, 332 U.S. at 203.

¹⁷⁸ *Retail, Wholesale and Dep’t Store Union v. NLRB (“Retail”)*, 466 F.2d 380, 390 (D.C. Cir. 1972).

¹⁷⁹ *Id.* The court found that when an agency decision changes a party’s prior action from being beyond reproach to an action subject to penalty, the agency decision is one that “raises judicial hackles.” *Id.* at 389 (quoting from *NLRB v. Majestic Weaving Co.*, 355 F.2d 854 (2d Cir. 1966)). Additionally, “the hackles bristle still more when a financial penalty is assessed for action that might well have been avoided if the agency’s changed disposition had been earlier made known . . .” *Retail*, 466 F.2d at 389.

¹⁸⁰ *Id.* at 390.

statutory interest in applying a new rule despite the reliance of a party on the old standard.¹⁸¹

This five-factor test became the framework test for prospective application analysis of agency decisions in the D.C. Circuit, as well as in other circuits.¹⁸² Circuits that have not formally adopted the five-factor test still use a balancing approach and consider varying factors in the prospectivity analysis to ensure the fairest result.¹⁸³

In a long line of tax court decisions, the 60-day rule was repeatedly held to exclude tenant-paid expenses because such expenses are not relevant to property appraisal.¹⁸⁴ Upon review of the tax court's departure from these rulings, a judicial court may only reverse if clearly erroneous.¹⁸⁵ However, if not clearly erroneous, the tax court's ruling may be given only prospective effect where a party had detrimentally relied on a prior decision. The prospective application doctrine enshrines the principle of fairness, regardless of the test used to determine prospectivity.¹⁸⁶ In an administrative agency context, the

¹⁸¹ *Id.*

¹⁸² *See id.* (promulgating and adopting the five-factor test in the D.C. Circuit); *see also* *Montgomery Ward & Co. v. Fed. Trade Comm'n*, 691 F.2d 1322, 1333 (9th Cir. 1982) (adopting the five-factor test in *Retail*); *Farmers Telephone Co. v. FCC*, 184 F.3d 1241, 1251 (10th Cir. 1999) (stating the 10th Circuit uses the *Retail* five-factor test to determine if an agency's ruling should be given prospective application); *Laborers' Int'l Union of North America v. Foster Wheeler Corp.*, 26 F.3d 375, 392 (3d Cir. 1994) (using the five-factor test); *NLRB v. Oakes Mach. Corp.*, 897 F.2d 84, 90 (2d Cir. 1990) (stating the 2nd Circuit weighs five factors to determine the retroactive effect of agency decisions). The five-factor test is not limited to the decisions of any particular type of agency. It has been used to analyze the prospective application of decisions promulgated by agencies such as the National Labor Relations Board ("NLRB"), the Federal Communications Commission ("FCC"), the Immigration and Naturalization Service ("INS"), and the Federal Energy Regulatory Commission. *See e.g.* *Chang v. U.S.*, 327 F.3d 911, 928 (9th Cir. 2003) (applying the five-factor test to an INS decision).

¹⁸³ *See* *Microcomputer Tech. Inst. v. Riley*, 139 F.3d 1044, 1050 (5th Cir. 1998). The 5th Circuit has affirmatively decided to not adopt the five-factor test, still using a balancing test that evaluates the "ills of retroactivity against the disadvantages of prospectivity." *Id.* The circuit has simply declined to be bound by specific factors and instead examines prospectivity on a case-by-case basis. *Id.* Other circuits lean toward a "manifest injustice" standard. *See* *C.E.K. Indus. Mech. Contractors, Inc. v. NLRB*, 921 F.2d 350, 358 (1st Cir. 1990) (declining to retroactively apply a ruling that would "plainly disappoint reasonable private expectations existing at the time of the relevant conduct" and would result in "manifest injustice"); *see also* *Ryan Heating Co. v. NLRB*, 942 F.2d 1287, 1288-89 (8th Cir. 1991) (finding a NLRB decision would apply retroactively unless to do so would be manifestly unjust).

¹⁸⁴ *See supra* notes 129-152 and accompanying text (detailing the history of cases in which the tax court interpreted the rule).

¹⁸⁵ *See supra* note 104 (giving the standard of review for tax court opinions).

¹⁸⁶ *See supra* notes 161-163 and accompanying text (discussing the purpose and aims of the prospective application doctrine).

federal five-factor test best addresses this principle and yields more just results.¹⁸⁷

IV. ANALYSIS

The Minnesota Supreme Court correctly interpreted the 60-day rule requirements.¹⁸⁸ Its decision, however, to apply its ruling retrospectively was in error for two reasons.¹⁸⁹ First, the court ignored the reliance value tax court decisions have for taxpayers.¹⁹⁰ Second, the court erred in its use of the *Hoff* test to determine whether to apply the prospective application doctrine to an agency decision when the framework established in the federal courts is more appropriate for such a determination.¹⁹¹ Moreover, the five-factor test is not limited to agency interpretations of its own rules and rulings.¹⁹² Kmart met the five-factor test in *Stearns* and, thus, should have been granted prospective relief and allowed to continue its petition before the tax court.¹⁹³

A. Precedential Value of the Minnesota Tax Court

The public may access Minnesota Tax Court records both online and in law libraries.¹⁹⁴ A prudent taxpayer may use tax court decisions to determine the appropriate course of action in taxpaying activities. While taxpayers are not justified in relying on these decisions in the same way they would be justified in relying on a judicial court decision, it is reasonable for taxpayers to find precedential value in tax court opinions.¹⁹⁵ The purpose and procedure of the tax court, the statute establishing the tax court, agency case law, and the tax court's own treatment of its decisions all support the conclusion that taxpayers should be able to rely on the tax court to give due regard to its past decisions.¹⁹⁶

¹⁸⁷ See *supra* notes 178-183 and accompanying text (describing the five-factor test).

¹⁸⁸ See *supra* notes 58-59 and accompanying text (concluding that the 60-day rule requires that petitioners provide tenant-paid expenses to the county tax assessor).

¹⁸⁹ See *infra* notes 194-256 and accompanying text (arguing the *Stearns III* majority erred in its refusal to provide Kmart prospective relief).

¹⁹⁰ See *supra* notes 66-68 and accompanying text (discussing the *Stearns III* majority's dismissal of any claim that tax court litigants could justifiably rely on tax court decisions).

¹⁹¹ See *supra* notes 171-183 and accompanying text (discussing the applicability of the federal five-factor prospective application test to agency rulings).

¹⁹² See *infra* notes 237-241 and accompanying text.

¹⁹³ See *infra* notes 242-256 and accompanying text.

¹⁹⁴ See *supra* note 103 and accompanying text (describing the various ways tax court opinions and records may be accessed).

¹⁹⁵ See *infra* notes 196-217 and accompanying text.

¹⁹⁶ See *infra* notes 197-256 and accompanying text.

1. Purpose and Procedure of the Tax Court

The current Minnesota Tax Court was established for the primary purpose of providing taxpayers with an efficient and convenient forum for tax dispute resolution.¹⁹⁷ The court has been fulfilling this purpose, as evidenced by taxpayers' preference to litigate their tax disputes in the tax court rather than in district court.¹⁹⁸ Some adherence to precedent is important if the tax court is to maintain taxpayer confidence.¹⁹⁹ If the tax court appears to make arbitrary and inconsistent decisions, taxpayers will view the tax court as a less convenient forum than a district court and, potentially, come to distrust the tax court.²⁰⁰ In this event, taxpayers will choose district court over the tax court. Thus, the tax court's purpose would be contravened because the backlog and expense the forum was created to prevent would again exist since tax disputes will fill district court dockets.²⁰¹ Therefore, to maintain taxpayer confidence in the Minnesota Tax Court, and accordingly fulfill the purpose of the tax court, it must accord some respect to its past decisions. While this Note does not advocate that tax court decisions should have the same stare decisis value as judicial court decisions, it does argue that the tax court has some duty to the taxpayers to issue decisions upon which taxpayers can rely. This proposition is particularly true in cases such as *Stearns*, where the tax court has repeatedly made the same assertion in prior cases in which one party was a litigant.²⁰²

2. Minnesota Tax Court Establishment Statute

The Minnesota statute that established the small claims division of the tax court indicates, by negative inference, that tax court decisions, other than those issued by the small claims division, have precedential effect.²⁰³ The statute specifically states that judgments from the small claims division "shall not be considered as judicial precedent and shall have no force or effect in any other case, hearing, or proceeding."²⁰⁴ The legislature did not

¹⁹⁷ See *supra* note 97 and accompanying text (explaining why the tax court was created).

¹⁹⁸ See *supra* note 100 and accompanying text (describing the various reasons taxpayers have for choosing a forum and that the tax court is the favored forum for tax disputes).

¹⁹⁹ See *supra* note 100 (listing existing precedent as a factor when a litigant chooses a forum).

²⁰⁰ See *supra* note 100 (finding convenience as a factor that litigants consider when choosing a court in which to file a tax dispute).

²⁰¹ See *supra* note 97 and accompanying text (describing the tax court's purpose).

²⁰² See *supra* notes 97-152 and accompanying text (noting the cases in which Kmart was a litigant and the tax court found that tenant-paid expenses were excluded from the 60-day rule requirements).

²⁰³ See *supra* note 101 (discussing the precedential value of small claims tax court decisions).

²⁰⁴ See *supra* note 101.

draft this limitation on decisions of the regular division of the tax court; which gives rise to the implication that regular division decisions do have precedential effect.²⁰⁵

3. Agency Precedence Case Law

Federal courts have held agencies responsible for giving some deference to their past decisions and interpretations.²⁰⁶ Similarly, the Minnesota Court of Appeals has maintained that agencies cannot ignore their prior decisions.²⁰⁷ An agency must either “conform to its prior norms and decisions” or provide a reasoned explanation for such departure.²⁰⁸ Both Minnesota and federal courts have refused to give effect to agency decisions that deviate from past decisions without an adequate, reasoned explanation.²⁰⁹ Judicial refusal to uphold unsupported agency decisions reflects the significance of agency decisions and their precedential value. Thus, the Minnesota Tax Court, as an administrative agency, must give its prior opinions due deference.

The tax court fulfilled its duty to provide a reasoned explanation for its new, contrary interpretation of the 60-day rule.²¹⁰ Kmart, as well as other Chapter 278 petitioners, now have notice of the new 60-day rule disclosure requirements and the reasoning therefore.²¹¹ Prior to filing its *Stearns* petition, however, Kmart did not have such notice and detrimentally relied on the tax court’s prior decisions as a guide for the rule’s disclosure requirements.²¹² A tax court that is bound to either adhere to its precedent or to have a reasonable explanation for any departure cannot ignore that its decisions will summon taxpayer reliance upon those decisions.

²⁰⁵ See *supra* note 101.

²⁰⁶ See *supra* note 110 and accompanying text (describing federal courts refusal to affirm an unexplained agency decision that departs from its prior rulings because such unexplained departure indicates the ruling was arbitrary).

²⁰⁷ See *supra* notes 109-110 and accompanying text (explaining the court’s position on agency decisions that depart from the agency’s past decisions).

²⁰⁸ See *supra* note 109 (noting administrative agencies’ duty in announcing a decision).

²⁰⁹ See *supra* note 110 and accompanying text (describing federal courts refusal to affirm an unexplained agency decision that departs from its prior rulings because such unexplained departure indicates the ruling was arbitrary).

²¹⁰ See *supra* notes 35-36 and accompanying text (describing the tax court’s arrival at its conclusion).

²¹¹ See *supra* notes 36-37 and accompanying text (noting the tax court’s announcement of its new interpretation).

²¹² See *supra* notes 32-33 and accompanying text (noting Kmart’s reliance on prior tax court decisions).

4. The Tax Court Considers Its Decisions Precedential

The Minnesota Tax Court cites prior holdings issued from that court in two ways that indicate that the tax court finds precedential value in its opinions. First, the court cites prior decisions in its reasoning to reach a specific ruling.²¹³ Second, the court cites prior tax court holdings as the authority to issue a specific ruling.²¹⁴ While the Minnesota Supreme Court is not bound to follow the decisions of the tax court, the *Stearns III* majority was hasty in its conclusion that tax court decisions have little, if any, precedential value. The *Stearns III* court failed to consider the reasonableness of a taxpayer's reliance on prior tax court holdings where the tax court itself finds it is reasonable to use its prior holdings as a guide for determining cases.²¹⁵

In past cases in which Kmart was a litigant, the tax court used its prior decision in both of the ways that indicate prior tax court decisions have precedential value. In *Kmart Corp. v. County of Otter Tail*, the tax court cited a prior decision as its authority for ruling that real estate expenses unavailable to a tenant do not have to be provided under the 60-day rule.²¹⁶ In *Kmart Corp. v. County of Douglas*, the tax court looked to a prior case to support its reasoning.²¹⁷ The Minnesota Supreme Court wrongly brushed aside the tax court's own reliance on its past decisions and thus unfairly penalized Kmart for its justifiable reliance on tax court interpretations of the 60-day rule.

B. The Five-Factor Test is the Correct Test for Prospective Analysis of Agency Decisions

The Minnesota Supreme Court erroneously used the *Hoff* test, which was a test formulated to determine the prospective application of judicial decisions, not agency decisions.²¹⁸ Federal courts have recognized the difference between judicial and agency decisions and, thus, have formulated a five-factor test that better accounts for the less constrictive effect of

²¹³ See *supra* note 145 (describing how the tax court concluded that escalator clauses were required under the 60-day rule).

²¹⁴ See *supra* note 151 (stating how the tax court cites to prior rulings as authority for making a ruling).

²¹⁵ See *supra* notes 145, 151 (describing how the tax court uses prior decisions to make a new decision).

²¹⁶ See *supra* note 151.

²¹⁷ See *supra* note 145.

²¹⁸ See *supra* notes 164-166 and accompanying text (describing the evolution of the *Hoff* test from the *Chevron Oil* test, developed for prospective analysis of a judicial decision).

precedent on agency decisions.²¹⁹ The five-factor test best addresses the differences between judicial and agency decisions and yields fairer results.

The prospective application doctrine is a doctrine of fairness.²²⁰ In accordance with this principle, the five-factor test places more emphasis on justice and less emphasis on precedent.²²¹ Unlike the *Hoff* test, which requires all parties requesting prospective relief to overcome several hurdles formulated for prospective analysis of judicial decisions, the federal test's factors reflect the realities of administrative agency decision-making.²²²

The *Hoff* test's first hurdle requires a showing that the new principle announced overturned clear, past precedent.²²³ This is an unreachable criterion for litigants requesting relief from an agency decision in Minnesota because the *Stearns III* majority has summarily dismissed the argument that agencies can establish precedent.²²⁴ Even if the Minnesota Supreme Court had held otherwise, the agency must unmistakably make the ruling as part of the decision's holding.²²⁵ If the agency fails to do so, the court may deny prospective relief because the precedent was not clear enough, regardless of how often the agency made the ruling.²²⁶ Conversely, the five-factor test looks to whether the agency has announced the decision before and if the agency has, then the factor weighs in the prospective application proponent's favor.²²⁷ The five-factor test then considers the extent that the agency has followed that decision or practice.²²⁸ The more established the decision or practice, the more this factor will weigh in favor of prospective application.

The second *Hoff* factor, the extent to which retrospectivity will further or hinder the rule's purpose and effect, is also a factor in the five-factor test.²²⁹ However, the five-factor test also looks to the reliance a party may have had on the prior standard in the test's consideration of the statutory

²¹⁹ See *supra* notes 171-177 and accompanying text (describing the federal five-factor test).

²²⁰ See *supra* notes 157-163 and accompanying text (describing prospective application generally and as applied in courts).

²²¹ See *supra* notes 171-177 and accompanying text (describing the five-factor test).

²²² See *supra* notes 164-177 and accompanying text (discussing the *Hoff* test and the five-factor test).

²²³ See *supra* note 167 and accompanying text (noting the first factor of the *Hoff* test).

²²⁴ See *supra* notes 66-68 and accompanying text (discussing the precedential value of the tax court).

²²⁵ See *supra* note 65 and accompanying text (noting the Minnesota Supreme Court's finding that the tax court's holdings that tenant-paid expenses were excluded from the 60-day rule requirements was not dispositive of the cases).

²²⁶ See *supra* note 65 and accompanying text (noting the *Stearns III* court's failure to find the first-prong of the *Hoff* test satisfied because the tax court did not clearly rely on its interpretation of the 60-day rule to make its final holding).

²²⁷ See *supra* note 89 (discussing the first impression factor of the five-factor test).

²²⁸ See *supra* note 90 and accompanying text (noting the second factor of the five-factor test).

²²⁹ See *supra* notes 167, 181 and accompanying text (discussing the two tests).

interest the new rule's application.²³⁰ Thus, the purpose of prospective application is not forgotten in this factor's analysis under the five-factor test.

Even if first two *Hoff* hurdles could possibly be met by an administrative agency, the last hurdle may be impossible for tax court litigants, and litigants in other agencies, to realize. While the final *Hoff* factor correctly considers the potential unfairness of a retroactive application of a ruling, the focus on equity may foreclose the test's applicability to the tax court, which is not a court of equity, when read too narrowly as did the *Stearns II* court.²³¹ The five-factor test more appropriately considers a party's reliance on the former standard and the degree of burden that party would have to bear if the new standard is retrospectively applied.²³²

Federal courts have adopted the five-factor test for prospective application analysis of agency decisions because the balancing of factors better serves justice. Even those circuits that have not adopted the five-factor test prefer a balancing approach.²³³ The *Chevron Oil* test, from which the *Hoff* test was adopted, is ill-suited for determining prospective relief.²³⁴ Thus, federal circuit courts prefer a balancing approach and, moreover, prefer the five-factor test.

Kmart's request for prospective relief did not have a fighting chance under the *Hoff* test and neither will future tax court litigants' requests for similar relief. The *Hoff* test was designed to analyze *judicial* decisions.²³⁵ When applied to agency decisions, the test is nothing more than a charade because it fails to seriously consider the reliance value of agency decisions. Further, the *Hoff* test loses sight of the purpose of prospective application; correcting or modifying past unsound rulings while ensuring litigants have a fair ruling.²³⁶

C. The Federal Five-Factor Test is Applicable to Agency Interpretation of Statutes

Contrary to the majority opinion in *Stearns III*, the five-factor test applies equally to agency interpretations of statutes and agency interpretations of its own promulgated rules. The agency power to interpret a

²³⁰ See *supra* note 181 and accompanying text (stating the fifth factor of the five-factor test).

²³¹ See *supra* notes 50, 99 and accompanying text (discussing the tax court equitable powers and the tax court's determination of this factor in *Stearns II*).

²³² See *supra* note 181 and accompanying text (stating the third and fourth factors of the five-factor test).

²³³ See *supra* note 183 and accompanying text.

²³⁴ See *supra* notes 166-167 and accompanying text (explaining the *Chevron Oil* test).

²³⁵ See *supra* notes 164-166 and accompanying text (describing the *Hoff* test evolution).

²³⁶ See *supra* notes 111, 163 and accompanying text (discussing the aims of prospective application).

statute is a function of an agency's quasi-judicial power.²³⁷ The agency power to make its own rules stems from the agency's quasi-legislative powers and then the agency may apply and interpret those rules through its quasi-judicial powers.²³⁸ The United States Supreme Court in *Chenery* announced agencies are free to take action under either power.²³⁹ Thus, any distinction between an agency interpretation of a statute and an agency interpretation of its own rule is meaningless for purposes of the prospective application doctrine because agencies can have the power to interpret both.

The distinction made by the *Stearns III* majority failed to consider two important points. First, the majority ignored the purpose of the prospective application doctrine by making such a distinction.²⁴⁰ Unjust punishment imposed on parties for their reliance on a former ruling is the same regardless of whether the reliance was based on an agency's interpretation of its own rule or its interpretation of a statute. In either case, the taxpayer is duty bound to abide by the court's ruling unless the ruling is overturned on appeal.²⁴¹ Kmart's reliance on the tax court's repeated assertion that the 60-day rule excluded tenant-paid expenses was the same whether or not the rule was administratively promulgated or legislatively enacted. Second, the majority's conclusion that the five-factor test had only been used for agency rulings, and therefore could only be applied to an agency's own rulings, failed to consider that the federal courts simply had not yet had an opportunity to use the five-factor test for prospective analysis of an agency interpretation of a statute. The majority does not, and cannot, point to a case where a court specifically did not use the five-factor test because it was analyzing an agency interpretation of a statute. Therefore, the five-factor test applies to all agency decisions regardless of whether the agency made an interpretation of its own rule or of a statute.

D. Kmart Met the Five-Factor Test

The five factors federal courts use to determine prospective application are balanced to determine if justice is better served by prospectively applying an agency's ruling.²⁴² Agencies that change their disposition without warning cause alarm in judicial courts.²⁴³ Thus, federal courts engage in balancing before a retroactive application of a newly

²³⁷ See *supra* note 74 (discussing quasi-judicial power).

²³⁸ See *supra* note 74 (discussing quasi-legislative and quasi-judicial power).

²³⁹ See *supra* note 174 (discussing the holding of *SEC v. Chenery*, 332 U.S. 194 (1947)).

²⁴⁰ See *supra* note 74.

²⁴¹ See *supra* notes 104-105 and accompanying text (explaining the authority of the tax court).

²⁴² See *supra* notes 171-177 and accompanying text (explaining the federal five-factor test).

²⁴³ See *supra* note 179 (providing one court's concerns when an agency reverses past practice).

announced standard is imposed on a party.²⁴⁴ As applied to *Stearns*, each factor weighs in Kmart's favor for prospective relief. Therefore, Kmart met the five-factor test and should have been allowed to continue its Chapter 278 petition.

First, Kmart's case was a case of first impression.²⁴⁵ The tax court had not ruled that tenant-paid expenses were required under the 60-day rule prior to *Stearns I*.²⁴⁶ It had in fact, held the opposite time and time again in cases in which Kmart was a litigant.²⁴⁷ The court's prior consistent rulings that the rule excluded tenant-paid expenses show that the court had a well established practice to exclude such expenses.²⁴⁸ Thus, the second factor of the test, abrupt departure, was also met.

The third factor, reliance, also weighs in Kmart's favor. Kmart clearly had relied on the court's prior rulings when it provided the tax assessor with its income and expense information.²⁴⁹ Kmart was a litigant in five cases over five years where the issue of whether tenant-paid expenses were required under the 60-day rule was addressed by the court.²⁵⁰ The court ruled five times that tenant-paid expenses were not required by the rule.²⁵¹ Kmart was justified in at least two of its petitions considered in *Stearns I* in its reliance on these rulings from the tax court.²⁵² Furthermore, Kmart had shown it actually had relied on tax court interpretations to determine what income and expense information was required under the 60-day rule.²⁵³

The fourth factor, burden, also weighs heavily in Kmart's favor. The court's retrospective application of its holding imposed an undue and unfair burden upon Kmart. The 60-day rule's penalty for noncompliance is harsh; it mandates complete dismissal of a claim.²⁵⁴ Ultimately, the court did not resolve the issue of the assessor's property valuation, which was disputed in Kmart's petition. However, this was an unintentional consequence of Kmart's failure to fulfill the 60-day procedural requirement.²⁵⁵ Now, if the

²⁴⁴ See *supra* notes 180-181 and accompanying text.

²⁴⁵ See *supra* note 89 (explaining "first impression" for purposes of federal prospective application analysis).

²⁴⁶ See *supra* notes 127-152 and accompanying text (describing the Minnesota Tax Court's prior interpretations of the 60-day rule requirements).

²⁴⁷ See *supra* notes 129-152 and accompanying text (discussing the tax court's rulings on various petitions brought to the court by Kmart).

²⁴⁸ See *supra* notes 136-151 and accompanying text (discussing the tax court's rulings that the 60-day rule did not require disclosure of tenant-paid expenses).

²⁴⁹ See *supra* notes 32-33 and accompanying text (discussing Kmart's reliance).

²⁵⁰ See *supra* notes 129-152 and accompanying text (outlining cases where the court resolved issues regarding the rule's requirements in which Kmart was a litigant).

²⁵¹ See *supra* notes 129-152 and accompanying text.

²⁵² See *supra* note 27 (listing the three disputed valuations the *Stearns I* court considered); see also *supra* notes 127-152 and accompanying text (discussing the tax court's ruling on the 60-day rule).

²⁵³ See *supra* note 145 (explaining that Kmart provided escalator clause information to county assessors after the court ruled it was required).

²⁵⁴ See *supra* note 116 and accompanying text.

²⁵⁵ See *supra* note 78 and accompanying text.

Stearns County assessor's valuations are incorrect, Kmart is nonetheless required to pay the over-assessment because Kmart is barred from pursuing a correction of the matter.

Additionally, the court's refusal to prospectively apply its holding does not significantly further the 60-day rule's statutory interest.²⁵⁶ While the rule's purpose is to expedite tax disputes, to allow Kmart to submit the now required tenant-paid expense information would not greatly hamper the efficiency of the tax court. Thus, the fifth factor of the federal prospective test is also met by Kmart.

A consideration of these five factors makes it clear that Kmart met the federal five-factor prospective application test for an agency decision. The federal test is a balancing test where any one factor can be so strong that the test may be met even if other factors are not. However, in this case, all the factors weigh in Kmart's favor. Kmart should not be punished by the tax court's new interpretation of the 60-day rule. Thus, Kmart was entitled to prospective relief.

V. CONCLUSION

The Minnesota Supreme Court erred in its denial of prospective relief for Kmart. Not only did the court fail to recognize the precedential value of tax court decisions, the court also failed to consider the harm done to litigants who have relied on the tax court's decisions to guide their actions. Where a taxpayer has relied on past tax court decisions and is then prejudiced by the tax court's abrupt departure from its prior decisions, principles of fairness and justice dictate that the new decision should be given meaningful prospective application analysis.

Meaningful prospective analysis for a tax court decision cannot be fulfilled by a *Hoff* test analysis. It does not account for the precedential value of tax court decisions, nor does it adequately consider a taxpayer's reliance on the tax court's decisions. The federal five-factor test is a fairer and more commonsense test for determining the prospectivity of a tax court decision because it better accounts for the lessened, but by no means eliminated, precedential value of an agency's decisions. The five-factor test better embodies the fairness principle behind prospective application. Thus, Minnesota should follow federal courts in the recognition that prospective application analysis for agency decisions should be different than for judicial courts. The five-factor test is the framework adopted by many federal courts and Minnesota should follow suit because the test best serves the twin aims of prospectivity: to change law where necessary, while affording fairness to a litigant who trusted and relied on the old standard.

²⁵⁶ See *supra* note 113 and accompanying text (explaining the rule's purpose).