



June 30, 2023

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SENT VIA E-MAIL TO: [sonars@lrl.leg.mn](mailto:sonars@lrl.leg.mn)

**Re: In The Matter of the Proposed Permanent Rules and Amendments to Rules of Tax Court Procedure of the Tax Court, Minnesota Rules 8610.0020 Practice Before Tax Court by Nonresident Lawyers, 8610.0030 Extension of Time to Appeal from an Order of Commissioner of Revenue, 8610.0070 Motion Practice, 8610.0080 Motions to Reconsider, 8610.0100 Stipulation of Facts, 8610.0110 Submission Without Hearing, 8610.0130 Documentary Evidence, 8610.0150 Request for Costs and Disbursements, 8610.0160 E-file and E-service, 8610.0170 Voluntary Alternative Dispute Resolution; Revisor's ID Number R-04729**

Dear Librarian:

The Minnesota Tax Court intends to adopt rules and amendments governing practice in front of the Court. The Court is proposing additions and changes to reflect current practices in the court as they have evolved, to conform to the rules of procedure applicable to district courts, and to recognize the acquisition of modern technology. In addition to proposing three new rules, the court proposes amendments to several existing rules to conform to actual practice in the court, to changes in technology, and to the adoption of the e-filing and e-service rule by the court (proposed rule 8610.0160). We plan to publish a Notice of Intent to Adopt Rules without a Public Hearing in the July 10, 2023 State Register.

The Tax Court has prepared a Statement of Need and Reasonableness. As required by Minnesota Statutes, sections 14.131 and 14.23, the Tax Court is sending the Library an electronic copy of the Statement of Need and Reasonableness at the same time we are mailing our Notice of Intent to Adopt Rules.

## Minnesota Rulemaking Manual - Appendix

If you have questions, please contact me at 651-539-3260.

Yours very truly,



Jane N. Bowman, Chief Judge  
Minnesota Tax Court

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Enclosure: Statement of Need and Reasonableness

## Minnesota Rulemaking Manual - Appendix

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## **STATEMENT OF NEED AND REASONABLENESS**

In the Matter of Proposed Revisions of Minnesota  
Rule 8610; R-04729

Minnesota Tax Court

January 24, 2023

## General information

- 1) Availability: The State Register notice, this Statement of Need and Reasonableness (SONAR), and the proposed rules and amendments were available during the public comment period on the Minnesota Tax Court's Public Notices website, <https://mn.gov/tax-court/>, the Office of Administrative Hearing's eComments website, and the State Register's website.
- 2) A copy of older rule records is available through the Minnesota Legislative Reference Library at <https://www.revisor.mn.gov/rules/status/rule/R-04729> (last accessed June 22, 2021).
- 3) Agency contact for information, documents, or alternative formats: Upon request, this Statement of Need and Reasonableness can be made available in an alternative format, such as large print, braille, or audio. To make a request, contact Lisa Pister, Court Administrator, Minnesota Tax Court, 245 Minnesota Judicial Center, 25 Rev. Dr. Martin Luther King Jr. Blvd., St. Paul, MN 55155; telephone 651-539-3260; e-mail [lisa.pister@state.mn.us](mailto:lisa.pister@state.mn.us); or use your preferred telecommunications relay service.
- 4) How to read a Minnesota Statutes citation: Minn. Stat. § 271.06, subd. 1 is read as Minnesota Statutes section 271.06, subdivision 1.
- 5) How to read a Minnesota Rules citation: Minn. R. 8610.0070, subp. 5.A.1 is read as Minnesota Rules chapter 8610, part 0070, subpart 5, item A, subitem 1.

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## **Acronyms**

APA	Administrative Procedures Act
Minn. R.	Minnesota Rules
Minn. Stat.	Minnesota Statutes
MMB	Minnesota Management and Budget
MN	Minnesota
MORS	MN Office of the Revisor of Statutes
OAH	Office of Administrative Hearings
SONAR	Statement of Need and Reasonableness

# **Introduction and overview**

## **Introduction**

The Minnesota Tax Court is a court of record and independent agency of the executive branch. Minn. Stat. § 271.01, subd. 1. The Tax Court has statewide jurisdiction to decide all questions of law and fact arising under the tax laws of the state. Minn. Stat. § 271.01, subd. 5.

In 1977, the Tax Court first adopted rules of procedure. Following minor revisions to those rules on August 8, 1988, the Tax Court Rules of Procedure (the “Tax Court Rules”) were revised in their entirety to their current form on May 13, 1997.

The Tax Court is now proposing amendments to the Tax Court Rules to reflect current practices in the court as they have evolved, to conform to the rules of procedure applicable to district courts, and to recognize the acquisition of modern technology. In addition to proposing three new rules, the court proposes amendments to several existing rules to conform to actual practice in the court, to changes in technology, and to the adoption of the e-filing and e-service rule by the court (proposed rule 8610.0160).

The proposed rules are necessary to effectively administer Tax Court litigation. The Tax Court will undertake review of its rules on a periodic basis to ensure that the rules remain consistent with statutory requirements and to ensure that the rules continue to meet the needs of Tax Court litigants.

## **Statement of General Need**

The Tax Court follows the Minnesota Rules of Civil Procedure for the district courts and the Minnesota Rules of Evidence where practicable as required by Minn. Stat. § 271.06, subd. 7. Since the Tax Court Rules of Procedure were first adopted in 1977, and revised in 1997, the practice before the Tax Court has changed considerably. Tax practitioners are likely to practice in Minnesota district court and to be familiar with the General Rules of Practice for District Courts (the “District Court Rules”), which address conventional aspects of modern litigation such as the use of alternative dispute resolution; and electronic filing and service, which may be described as e-filing and e-service in this SONAR.

Review of the current Tax Court Rules showed that some of the rules no longer conform to modern litigation expectations or are out of step with typical practices in the Minnesota state and federal district courts. In addition, the current Tax Court Rules do not address some common trial procedures. To the extent the Tax Court Rules presently do not address these items, such as motions to reconsider, the court has referred to the District Court Rules for guidance. As the Tax Court is an executive branch tribunal, and not a judicial branch court, however, the District Court Rules are not binding on the Tax Court or the parties. Furthermore, Tax Court personnel have been subjected to questions about

practices familiar to the district courts for which the current Tax Court Rules provide no guidance. This void of authority makes the current rulemaking necessary.

## **Scope of the proposed amendments**

The following parts of of the Minnesota Rules are affected by the proposed changes:

The proposed rules create new Minnesota Rules 8610.0080, .0160, and .0170.

The proposed rules amend Minnesota Rules 8610.0020, .0030, .0070, .0100, .0110, .0130, and .0150.

## **Background**

**New Rules.** The new provisions include: (1) motions to reconsider; (2) e-filing and e-service; and (3) voluntary mediation.

**Proposed Rule 8610.0080.** This rule adopts District Court Rule 115.11 (titled Motions to Reconsider) to maintain uniformity with the rules and procedures of Minnesota district courts.

**Proposed Rule 8610.0160.** This rule adopts most aspects of District Court Rule 14 (titled E-Filing and E-Service) to maintain uniformity with the rules and procedures of Minnesota district courts concerning e-filing and e-service.

**Proposed Rule 8610.0170.** This rule sets forth the Tax Court’s existing, longstanding practices regarding voluntary alternative dispute resolution (“ADR”) (titled Voluntary Alternative Dispute Resolution) of cases pending in the court.

**Amendments.** Several proposed amendments will conform existing rules to actual court practices, primarily those involving the use of e-mail and remote technology, other than telephone. The changes are as follows:

**Rule 8610.0020, subpart 2:** Replaces the provision authorizing hearings by telephone with one authorizing hearings by telephone or other remote technology.

**Rule 8610.0030:** Replaces the provision requiring requests for extension to be made by telephone or mail with one requiring requests to be made by telephone, e-mail or mail.

**Rule 8610.0070, subpart 11:** Replaces the provision concerning telephonic hearings with one concerning remote hearings, including those by telephone, and clarifies when hearings must or may be transcribed.

**Rule 8610.0100:** Replaces the provision requiring filing the original and one copy of the stipulation of facts with a provision stating when and how stipulations of fact must be made part of the record.



**Rule 8610.0110:** Replaces the provision requiring notice to be given by mail with one requiring notice to be given by any means authorized by these rules.

**Rule 8610.0130:** Removes the last sentence of the rule.

**Rule 8610.0150:** Simplifies the service provisions of the rule to conform to the service requirements of motion practice in current rule 8610.0160.

## **Statutory authority**

The Tax Court’s statutory authority to adopt rule amendments is set forth in Minn. Stat. § 271.06, subd. 7, which provides:

Except as provided in section 278.05, subdivision 6, the Rules of Evidence and Civil Procedure for the district court of Minnesota shall govern the procedures in the Tax Court, where practicable. The Rules of Civil Procedure do not apply to alter the 60-day period of time to file a notice of appeal provided in subdivision 2. *The Tax Court may adopt rules under chapter 14.*

(Emphasis added). Under this statute, the Tax Court has the necessary statutory authority to adopt the proposed rules and amendments to existing rules.

## **Reasonableness of the amendments**

### **General Reasonableness**

The Tax Court is not an agency within the meaning of Minnesota Statutes chapter 14. Minn. Stat. § 14.02, subd. 2 (specifically excluding the Tax Court from the definition of “agency”). Accordingly, Minnesota Statutes section 14.131, which requires an agency to prepare and make available a statement of need and reasonableness, does not apply to the Tax Court. *See* Minn. Stat. § 14.23. Nonetheless, the following is a general description of how the proposed rules and amendments address the statutory requirements. A more specific response to each of these requirements, if applicable, is discussed under the pertinent rule part.

The proposed rules address conventional aspects of modern litigation such as requests for reconsideration; the use of alternative dispute resolution; and electronic filing and service. To the extent the Tax Court Rules presently do not address any of these items, the court routinely has referred to the District Court Rules of practice for guidance. Accordingly, each of the proposed rules is based on existing District Court Rules. These rules are reasonable as a whole because they were promulgated by the Judicial Council and have demonstrated their utility and reasonableness through long use in Judicial Branch proceedings, and have gained currency in that forum.

The proposed rules will be familiar to practitioners and easy to understand, particularly for self-represented parties, who make up a substantial portion of the Tax Court's docket. Adopting Tax Court Rules that conform to those in use in the district courts ensures consistent expectations among practitioners in judicial proceedings in the state of Minnesota and demonstrates this court's commitment to fairness, transparency, and professionalism in the exercise of justice.

## **Rule-by-Rule Analysis**

### **Proposed Rule 8610.0080 Motions to reconsider**

Proposed Rule 8610.0080 adopts District Court Rule 115.11 (titled Motions to Reconsider) to maintain uniformity with the rules and procedures of Minnesota district courts. Since most attorneys are already familiar with District Court Rule 115.11, adopting it will make litigating before the Tax Court the same as any other district court and therefore makes the proposed rule reasonable.

Moreover, adopting this rule removes any ambiguity over the applicable rules in Tax Court matters. This proposed rule conforms to the actual practice in Tax Court, while resolving the uncertainty whether that practice is uniform among judges. Therefore, this proposed rule is both reasonable and necessary.

### **Proposed Rule 8610.0160 E-Filing and E-Service**

Proposed Rule 8610.0160 adopts most aspects of District Court Rule 14 (titled E-Filing and E-Service) to maintain uniformity with the rules and procedures of Minnesota district courts. Since most attorneys are already familiar with District Court Rule 14, adopting it will make litigating before the Tax Court the same as any other district court. At the same time, since a large proportion of the Tax Court's annual case load comprises filings by self-represented individuals, an e-filing/e-service rule ensures clarity and consistency for a process that may be unfamiliar to infrequent litigants. For those reasons, the proposed rule is reasonable.

Moreover, adopting this rule reduces the number of rules governing e-filing and e-service that practitioners must remember, reducing the burden on practitioners as well as the potential for confusion. It also increases the likelihood of compliance with the e-filing and e-service requirements both in district court and Tax Court. This proposed rule conforms to the District Court Rule and establishes a uniform practice in Tax Court. Therefore, this proposed rule is both reasonable and necessary.

## **Proposed Rule 8610.0170 Voluntary alternative dispute resolution**

Proposed Rule 8610.0170 sets forth the Tax Court’s existing, longstanding practices regarding voluntary alternative dispute resolution (“ADR”) (titled Voluntary Alternative Dispute Resolution) of cases pending in the court.

The proposed rule sets forth the current procedures for selection of a neutral who, in the case of a current judge of the Tax Court, is bound by the ethical standards in District Court Rule 114 and may not receive compensation for mediating a Tax Court case. The proposed rule also states that ADR is confidential and establishes the parameters for communications between parties and the neutral, as well as the admissibility of ADR-related information in subsequent litigation.

The proposed rule is reasonable because it provides transparency to court practices that were not previously obvious to the public, but have been available for many years. Promulgation of the proposed rule will substantially increase awareness by litigants and counsel of the existence of the ADR process in the court, ensure accountability concerning ethical standards and the confidentiality of the process, and potentially reduce the cost to taxpayers of resolving tax disputes, on account of access to this free service. Moreover, a published rule will reduce confusion among litigants about whether the court offers ADR and the implications of ADR for a pending case.

Unlike other proposed rules, this rule does not fully incorporate District Court Rule 114 because (1) ADR is generally voluntary in the tax court, rather than mandatory as in the district court, and (2) the District Court Rule addresses proceedings outside the jurisdiction of the Tax Court, such as family court proceedings.

### **Amendments**

These amendments avoid any ambiguities resulting from the promulgation of new rules concerning e-filing and e-service. In addition, these amendments conform to existing practice in the Tax Court relating to updated technology such as e-mail and remote hearing technology (e.g., Zoom and Microsoft Teams). Because these amendments resolve ambiguity and burden rather than creating them, the proposed amendments to the existing rules are both reasonable and necessary.

### **Regulatory analysis**

This part addresses the the specific questions state agencies are to address in the SONAR under Minnesota Statutes section 14.131. *See* Minn. Stat. § 14.23. In some cases, the response will depend on the particular rule or amendment being proposed and detail will be provided. For most of the questions, however, the Tax Court’s response can be general and will apply across all of the components of this rulemaking, regardless of the proposed rule or amendment.

**A. Description of the classes of persons who probably will be affected by the proposed rule, including classes that will bear the costs of the proposed rule and classes that will benefit from the proposed rule.**

The proposed rules and amendments will affect any person challenging a property tax assessment (i.e., valuation, classification, exemption) or the Commissioner of Revenue's assessment of Minnesota state taxes. Succinctly stated, the proposed rules and amendments will affect any litigant or possible litigant in Tax Court. Attorneys who represent litigants will similarly be affected by the proposed rules.

**B. The probable costs to the agency and to any other agency of the implementation and enforcement of the proposed rule and any anticipated effect on state revenues.**

The proposed rules are not intended to increase costs to the Tax Court, nor are they expected to have any effect on state revenues. The proposed rules are intended to lessen costs by increasing predictability and consistency. Moreover, as the court already has implemented an E-Filing System, promulgation of an e-filing and e-service rule reduces considerable costs to the court (and to litigants) that otherwise would result from questions about the appropriate procedures and use of the E-Filing System.

**C. A determination of whether there are less costly methods or less intrusive methods for achieving the purpose of the proposed rule.**

The purpose of the proposed rules is to provide one uniform set of procedural rules for litigants in Tax Court to follow, and to reduce the amount of confusion for practitioners in multiple courts by reconciling Tax Court rules with the rules in district court. Although the Tax Court has issued general orders to address procedural issues, such orders are not less costly or intrusive methods for achieving the purpose of the proposed rules. Whether the court sets forth procedural expectations and requirements in a general order or a procedural rule, the effect on litigants is the same. Because of these reasons, the Tax Court does not believe there are less costly or less intrusive methods of providing procedural rules for litigants to follow in Tax Court.

**D. A description of any alternative methods for achieving the purpose of the proposed rule that were seriously considered by the Agency and the reasons why they were rejected in favor of the proposed rule.**

In drafting these rules of court procedure, we closely reviewed and in most cases incorporated the District Court Rules, as well as local rules in the United States District Court for the District of Minnesota. In researching these other courts' rules, we considered how other courts addressed and handled issues the Tax Court faces. We adapted these other courts' procedural rules to the practice as it has evolved before the Minnesota Tax Court. We rejected certain provisions adopted by these other courts, however, because the Tax Court is a specialized court and has specific statutory authority. For example, we did not consider provisions in the District Court Rules concerning criminal or family court cases.

In summary, we did not seriously consider alternative methods for providing rules of procedure. We recognized that rules of procedure were necessary to effectively administer tax litigation in Minnesota. We did seriously consider how other courts manage their caseloads, but rejected provisions that were inconsistent with current practice at the Tax Court, statutory provisions governing the Tax Court, or the subject matter jurisdiction of the Tax Court.

**E. The probable costs of complying with the proposed rule, including the portion of the total costs that will be borne by identifiable categories of affected parties, such as separate classes of governmental units, businesses, or individuals.**

The Tax Court has not identified any likely costs of compliance with the proposed rules. The proposed rules are the court's rules of procedure and are not intended or anticipated to increase costs for litigants. Rather, litigants in Tax Court, their counsel, and the Tax Court itself will benefit from the proposed rules and amendments. The proposed rules answer common procedural questions and will thereby reduce the costs of litigation. Moreover, because the proposed rules are based on parallel rules applicable to district court practice, confusion for litigants resulting from real or perceived differences between district court and Tax Court will be substantially reduced. Accordingly, any costs of complying with the proposed rules are mitigated by the benefits of clear and consistent rules.

Although parties incur compliance costs with respect to litigation, the Tax Court has determined the costs associated with the proposed rules is no greater, and is probably less, than the compliance costs under the existing rules.

**F. The probable costs or consequences of not adopting the proposed rule, including those costs or consequences borne by identifiable categories of affected parties, such as separate classes of government units, businesses, or individuals.**

Currently, parties can either e-file or electronically file (i.e., e-mailing documents to the court that are then docketed by a member of the court staff). By implementing the e-filing rule, parties would be obligated to use the court's e-filing system, thereby streamlining the process and lessening the administrative burden on the court.

**G. An assessment of any differences between the proposed rule and existing federal regulations and a specific analysis of the need for and reasonableness of each difference.**

No federal regulations apply to the Minnesota Tax Court concerning the proposed rulemaking. Accordingly, there are no differences.

**H. An assessment of the cumulative effect of the rule with other federal and state regulations related to the specific purpose of the rule.**

No federal regulations apply to the Minnesota Tax Court concerning the proposed rulemaking. Accordingly, there are no differences.

## **Notice Plan**

Minnesota Statutes require that an agency include in its SONAR a description of its efforts to provide additional notification to persons or classes of persons who may be affected by the proposed rule or must explain why these efforts were not made. Minn. Stat. § 14.23; Minn. Stat. § 14.22.

The Tax Court is not an agency within the meaning of Minnesota Statutes chapter 14. Minn. Stat. § 14.02, subd. 2 (specifically excluding the Tax Court from the definition of “agency”). Accordingly, because the Tax Court is not ordinarily subject to chapter 14, it does not maintain a mailing list of interested persons. *See* Minn. Stat. § 14.14, subd. 1a; Minn. Stat. § 14.22. Despite this, the tax court sent a notice e-mail to attorneys (including representatives from all county attorneys offices) of the proposed changes, and link to the proposed changes from the tax court’s website. Under Minnesota Statutes section 14.22, the Tax Court’s regular means of notice, which included publication in the *State Register* and to its website, including a link to Request for Comments on OAH’s eComments website adequately provided notice of this rulemaking to persons interested in or affected by these rules. OAH’s eComments website was open and available for comment for 60 days; the proposed rules received one comment which was evaluated and responded to. The proposed rules and amendments will be further available during the Intent to Adopt period. The Tax Court will also provide notice as required by Minn. Stat. § 14.116 to the chairs and ranking minority members of the legislative policy and budget committees with jurisdiction over the subject matter of this proposed rulemaking and to and the Legislative Coordinating Commission.

## **Performance-based rules**

In drafting the proposed rules the Tax Court was aware of the statutory mandate that where feasible, agencies should develop rules that balance the needs of the agency in meeting its objectives, while maintaining some flexibility for the affected parties. The purpose of the proposed rules and amendments is not regulatory. Rather, the Tax Court’s primary objective is to update and clarify the Tax Court’s procedural rules so that litigants will find it easier to understand and comply with procedural requirements.

## **Consult with MMB on local government impact**

As required by Minnesota Statutes section 14.131, the Tax Court will consult with the Commissioner of Minnesota Management and Budget (MMB). The Tax Court is not an agency within the meaning of chapter 14. Minn. Stat. § 14.02, subd. 2 (specifically excluding the Tax Court from the definition of “agency”). Nonetheless, as required by Minnesota Statutes section 14.131, the Tax Court is consulting with the Commissioner of the Minnesota Management & Budget Department (formally “Finance”) in a letter dated January 24, 2023, to help evaluate the fiscal impact and fiscal benefits of the proposed rule changes on units of local government.

## **Impact on local government ordinances and rules**

Minnesota Statutes section 14.128, subdivision 1, requires an agency to make a determination of whether a proposed rule will require a local government to adopt or amend any ordinances or other regulation in order to comply with the rule. The Tax Court is not an agency within the meaning of chapter 14. Minn. Stat. § 14.02, subd. 2. Nonetheless, as required by Minnesota Statutes section 14.128, the Tax Court has determined that the proposed rules and amendments do not require local government to adopt or amend any ordinances or regulations to comply with the rules.

## **Costs of complying for small business or city**

Minnesota Statutes section 14.127, subdivisions 1 and 2, require an agency to “determine if the cost of complying with a proposed rule in the first year after the rule takes effect will exceed \$25,000 for: (1) any one business that has less than 50 full-time employees; or (2) any one statutory or home rule charter city that has less than ten full-time employees.”

The Tax Court is not an agency within the meaning of chapter 14. Minn. Stat. § 14.02, subd. 2. Accordingly, section 14.127 does not apply to the Tax Court. Nonetheless, the Tax Court has determined the cost of compliance with the proposed rules does not exceed \$25,000 for any business or city as defined in section 14.127, subdivision 1.

## **Differences with federal and other state standards**

No federal regulations apply to the Minnesota Tax Court concerning the proposed rulemaking. Accordingly, there are no differences between federal and state standards.

## **List of witnesses and exhibits**

The Tax Court expects that the proposed rules and amendments will be noncontroversial. In the event that a hearing is necessary, the Tax Court anticipates having the following individuals testify in support of the need for and reasonableness of the rules.

- 1) Jane N. Bowman is the Chief Judge of the Tax Court and will introduce the required jurisdictional documents into the record.
- 2) Monique Halet, Law Clerk, is the project rule coordinator and will testify on any Minnesota Administrative Procedures Act process questions.

The following exhibits comprise the hearing record:


- 1) Proposed Rules 8610.0080, .0160, and .0170;
- 2) Proposed Amendments to Rules 8610.0020, .0030, .0070, .0100, .0110, .0130, .0150;

- 3) Letter to Commissioner of the Minnesota Management & Budget Department, dated January 24, 2023; and
- 4) State Register notice.

## **Conclusion**

In this SONAR, the Tax Court has established the need for and the reasonableness of each of the proposed amendments to Minnesota Rules chapter 8610. The Tax Court has provided the necessary notice and in this SONAR documented its compliance with all applicable administrative rulemaking requirements of Minnesota statute and rules.

Based on the forgoing, the proposed rules and amendments are both necessary and reasonable.

  
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Jane N. Bowman, Chief Judge  
Minnesota Tax Court  
January 24, 2023