

Legal Update

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50th Anniversary



Kentucky Dept. of Rev. v. Marathon Pipe Line, LLC

Procedural Posture: On appeal from the Franklin Circuit Court

Issue: Should the pipeline (trunk line) be classified as real property or tangible personal property (in FTZ taxed at FTZ rate)? What is the taxable value of the pipeline?

Disposition: Marathon's pipeline is personal property; lower court valuation affirmed

Summary: The Department argued that Marathon's pipeline should have been classified as real property because it:

- (1) increases the "value or utility" of the land,
- (2) U.S. District Court (Ky.) held that a similar underground pipeline should be classified as real property, and
- (3) a Kentucky regulation classifies a transmission pipeline as real property

Kentucky Dept. of Rev. v. Marathon Pipe Line, LLC

The Court rejected the Department's arguments with the following rationale:

1. Marathon embedded pipeline for "the sole purpose of furthering its business [to carry crude oil to refinery]."
2. Pipeline was buried to avoid obstructions and not adapted to the use of the land above it
3. Record shows intention of the parties was:
 - NOT to make the pipeline part of the realty (that is, a permanent accession to the freehold)
 - To move or replace the pipe when needed (as shown in easements and other agreements with landowners)

Dispositive Factors

- NOT annexed to the realty
 - NOT adapted to the use of purpose of the land above it; and
 - Parties intended pipeline to be moved, not a permanent accession to the land
- Therefore, Marathon's pipeline is not real property (is personal property)**

Other Issues

- Insufficient record to determine if trunk lines and transmission lines are different
- Department's **classification was not uniform** to other similar situations
- Trial court valuation upheld

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Colonial Pipeline Co. v. TN State Board of Equalization

Procedural Posture: Appeal from Board of Equalization to TN Court of Appeals

Colonial appealed to the TN Court of Appeals, raising the following issues:

Does Chapter 719 apply to the pipelines owned by Colonial where it does not apply to locally assessed piping used in the manufacturing or refining process?

Did the BOE properly determine, in denying Colonial's equal protection and uniform taxation claims, that the statute had **not** been **inconsistently** applied among similarly situated taxpayers?

Did the ALJ, in denying equalization relief to Colonial, improperly rely on a deposition errata sheet?

- **Appellate Court holds the ALJ's footnote indicates that the deposition errata sheet did not affect the ALJ's decision to deny Colonial's appeal.**

Disposition:

The statute applies to Colonial

Appellate Court holds the ALJ's footnote indicates that the deposition errata sheet did not affect the ALJ's decision

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Colonial Pipeline Co. v. TN State Board of Equalization

For purposes of the classification and assessment of property, **real property** includes: Mains, pipes, **pipelines** and tanks **permitted or authorized to be built**, laid or placed in, upon, or under any public or private street or place for conducting steam, heat, water, oil, electricity or any property, substance or product capable of transportation or conveyance therein or that is protected thereby, **excluding** propane tanks for residential use and above ground storage tanks that can be moved without disassembly and are not affixed to the land[.]

Tennessee Code Annotated section 67-5-501(10)(B)(iii) (or “Chapter 719”)

Issue	Decision	Rationale
Application of Chapter 19	Yes	The key phrase in the statute is “permitted or authorized” pipelines. Piping laid by easements requires legal authorization, but piping laid by landowners on their own property is not “authorized” within the meaning of the statute.
Equal Protection	Claim fails	Persons similarly situated must be treated alike. The Board properly interpreted Chapter 719 as not applicable to most locally assessed piping because it is not “permitted or authorized” unlike Colonial’s based pipelines
Uniform Taxation (Tennessee Constitution)	Claim fails	“whether locally assessed commercial and industrial pipe is correctly classified as real property or personal property requires a case-by-case analysis and application of the law of fixtures to the relevant facts.” Chapter 719 does not generally apply to piping that is on the owner’s property.

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BNSF Railway Co. v. County of Alameda

Procedural Posture: Interlocutory Appeal on Motion for Preliminary Injunction

Issue:

1. In a 4- R Act request for preliminary injunction, is the correct standard whether the railroad had shown a ‘reasonable cause to believe’ that the 4-R Act was being violated?
2. Does comparison require that the railroad entity only be compared with other unitary assessed entities?
3. Does the statute require the taxpayer to demonstrate the tax is discriminatory?

Disposition: 1. Yes 2. No 3. No

Relevance: Nonstandard approaches should be considered

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BNSF Railway Co. v. County of Alameda

Summary:

- 1. In a 4- R Act request for preliminary injunction, is the correct standard whether the railroad had shown a ‘reasonable cause to believe’ that the 4-R Act was being violated?**

General Preliminary Injunction Standard - The Court of Appeals generally considers traditional equitable factors when evaluating requests for preliminary injunctions

4-R Act Preliminary Injunction Standard – The 4-R Act falls within a limited category which has its own standard.

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BNSF Railway Co. v. County of Alameda

- 2. Does comparison require that the railroad entity only be compared with other unitary assessed entities? Which is the correct comparison class?**

The Counties asserted that the Court may only look to centrally assessed taxpayers, which is how railroads are assessed.

The Court rejected that rationale and found the requisite comparison, is other industrial and commercial taxpayers. Not simply those subject to similar taxes.

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BNSF Railway Co. v. County of Alameda

3. Does the statute require the taxpayer to demonstrate the tax is discriminatory?

No, that requirement is absent from subsection (b)(3), which is the genesis of the suit.

BNSF Ry. Co. v. County of Alameda,
7 F.4th 874 (9th Cir. 2021)

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Union Pacific Railroad Co. v. Utah State Tax Comm'n.

Procedural Posture: On appeal to Utah Federal District Court from the Utah State Tax Commission

Issue:

1. Does the taxpayer have a threshold burden to prove the assessed value of commercial and industrial property?
2. Is the taxpayer's workforce intangible property?

Disposition: 1. No 2. No

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Union Pacific Railroad Co. v. Utah State Tax Comm'n.

1. Does the taxpayer have a threshold burden to prove the assessed value of commercial and industrial property?

“There is no language in the 4-R Act—or any other legal authority—that supports the idea that a railroad would have to prove the reliability or accuracy of a state's taxation of other commercial and industrial property.”

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Union Pacific Railroad Co. v. Utah State Tax Comm'n.

2. Is the taxpayer's workforce intangible property?

UPRR's trained workforce was not intangible because:

- (1) it “fails the test of ownership separate from that of tangible property;”
- (2) “is not transferable;”
- (3) “does not arise from contract or legal rights;”
- (4) “does not appear in or share characteristics with the listed types of exempt intellectual property;” and
- (5) it is “not accounting goodwill, nor should it be valued apart from accounting goodwill.” *Id.* at 57.

Union Pac. R.R. Co. v. Utah State Tax Comm'n.
No. 2:18-CV-00630-DAK, 2021 WL 2920678, (D. Utah July 12, 2021)

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Level 3 Communications, LLC v. Oregon Dept. of Rev.

Procedural Posture: On appeal from Tax Court to Oregon Supreme Court

Issue: What is the proper definition of taxable “property”? May it include investment attributes, enterprise value, or both?

Disposition: Yes. Taxable property may include investment attributes and enterprise value

Summary:

Level 3 argued that a centrally assessed company is distinct from the property that it owns, holds, or uses

- Value determination should not include investment attributes from value of Level 3 as a company (ex. Level 3’s ability to acquire property in the future and put that property to profitable use, potential M&A, present value of growth opportunities)

Level 3 primarily argued for an income approach, but the Tax Court examined all three approaches to determining real market value of industrial property (income, cost, market)

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Level 3 Communications, LLC v. Oregon Dept. of Rev.

The Oregon Supreme Court closely examined the Tax Court opinion and affirmed

Tax Court (Generally upholds Department’s valuation)

Approach	Decision	Rationale
Income (focus of Court because given most weight be parties)	Income approach may include the value of the company based on “investment attributes”	Examined the statutory text and context: “no indication...that the legislature intended a distinction between the value of a company to its shareholders and the value of its tangible and intangible property.” • Under income approach, revenue growth is attributable to Level 3’s operating property and may be considered for valuation purposes (including investment attributes)
Cost	No weight to either party’s proffered result	Level 3 gave no weight and convinced Court that the Department’s analysis was flawed
Market	Accepts Department’s analysis (even though much higher than cost or income)	• Uses “stock and debt” valuation for companies like Level 3 that are rarely sold • Level 3’s objections investment attributes use dismissed because Court already held that IA could be used.

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Level 3 Communications, LLC v. Oregon Dept. of Rev.

The Oregon Supreme Court closely examined the Tax Court opinion and affirmed

Oregon Supreme Court (AFFIRMED)

Argument on Appeal	Decision	Rationale
Did the TC erroneously hold that the [central assessment] scheme permitted taxation of the entire enterprise value of the company itself in the hands of its shareholders?	No	Statutes require valuing all company property (with inapplicable exceptions). Nothing in the text suggests that department or the Tax Court may not consider enterprise value under the income approach, or the stock and debt under the market approach, to centrally assess the tangible and intangible property value.
Under the statutory definition of property, are investment attributes “used or held”?	Yes	Level 3’s focus on obsolete tangible property, ignores value of intangible assets management relied on for company’s continued growth (e.g., ability to covert future purchases into assets).
Did the Tax Court erroneously uphold Department’s valuations?	No	Rejected because the court AFFIRMS the Tax Court rationale.

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CenterPoint v. Minnesota Dept. of Rev.

Procedural Posture: On appeal from the Department to Minnesota Tax Court.

Issue: Does accumulated deferred income tax (ADIT) indicate economic obsolescence?

Disposition: Yes.

Summary: CenterPoint argued that ADIT lowers the return on all operating property.

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CenterPoint v. Minnesota Dept. of Rev.

In Response, the Department argued that:

1. obsolescence is offset by growth in customer base and NOI;
2. obsolescence can't exist because rate regulated utilities are safer during economic downturns;
3. rate regulation can't be a form of obsolescence because it would violate the MPUC's mandate to set just and reasonable rates, and;
4. during M&A transactions purchasers often pay above net book value for the system.

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CenterPoint v. Minnesota Dept. of Rev.

The Court rejected the Department's logic with the following rationale:

1. growth in customer base is an intangible not subject to taxation,
2. safeness is already accounted for in the entities published investment ratings,
3. it was never asserted that rates weren't just and reasonable, it was asserted that ADIT isn't included in rate base and as a result are not earned a return on,
4. The Department's own expert testified that purchasers often seek an entity because of the synergies that it will create with their existing operations, implying an investment value purchase price, and not a market value analysis and the recent sales of entities does not factor in deductions for intangibles or account for which assets were sold.

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CenterPoint v. Minnesota Dept. of Rev.

Secondary Issue: Does economic obsolescence create impairment?

Answer: No.

CenterPoint Energy Res. Corp. v. Comm'r of Revenue,
No. 9252-R, 2021 WL 7542568, at *18 (MN Tax Ct., Mar. 16, 2022)

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Delta Airlines v. Property Tax Division

Procedural Posture: Utah State Tax Commission's legal and factual findings and conclusion.

First Issue: Under the Utah Constitution, which requires all taxable property to be assessed at a uniform and equal rate in proportion to its fair market value, is the Utah allocation statute or valuation statute unconstitutional (requiring a higher assessment on Delta)?

Answer: No.

Summary:

County argued allocation statute was unconstitutional because it was limited to hours for flights landing and taking off from UT, not those passing through. These "nowhere" hours and miles were not captured by the formula

County argued valuation statute was unconstitutional because resulted in below fair market valuation, required rote-application of required Airline Pricing Guide (APG) and allowed a fleet discount; supported using unitary valuation method introducing evidence of a higher assessment using that method

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Delta Airlines v. Property Tax Division

Delta Argued that:

- UT Constitution gave legislature authority to enact valuation mechanism, the Commission properly followed statute (reflecting value of the airplanes), and multiple states use APGs (including in the course of business).

The Commission rejected County's arguments with the following rationale:

1. The Tax Commission lacks authority to determine the constitutionality of Utah laws
2. Commission chose to apply the statutes as written to determine the proper assessment.
3. Division's interpretation of Subsection 59-2-201(4) was reasonable, but it *could* use an alternative valuation method if: (i) "clear and convincing" evidence that the aircraft values reflected in the guide do not reasonably reflect aircraft fair market value; and (ii) cannot identify alternative aircraft pricing guide.
4. Commission determined the standard was not met, so 20% fleet reduction discount upheld
5. Commission likewise finds the allocation statute was correctly followed

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Delta Airlines v. Property Tax Division

Second Issue: Under Utah law, which requires businesses operating on city-owned property to pay a privilege tax, does Delta meet a statutory exception (and can avoid the tax)

Disposition: Yes and No

Summary:

Delta argued that its air transportation business on Airport property is a "**concession**" and meets the applicable exemption from the tax

In the alternative, Delta argued that it does not have "**exclusive possession**" of the Airport Property

The fact that Delta previously paid the privilege tax on the property in question was not dispositive

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Delta Airlines v. Property Tax Division

The Commission rejected Delta's concession argument:

1. Concession was undefined in the statute, but Commission noted that bars, restaurants, and snack bars are usually considered concessions. Therefore, Delta's air transportation business on Airport Property did not make it a concession within the meaning of the statute.

The Commission partially rejected and partially accepted Delta's exclusive possession argument:

1. Exclusive possession is not defeated if owner has the right to enter the premises, approve leasehold improvements, or inspect the premises (so Delta hangar facilities were held to be exclusively possessed).

2. The remaining properties were subject to the *Alliant I and II* test.

Alliant I, II Test (All factors must be present to show "exclusive possession")			
Facility	Factor 1: Ability to exclude City from property (not including subsection 4(b))	Factor 2: Authority to make broad use of the property	Factor 3: Power over a definite space for a definite time
MRT Complex	YES	YES	YES
Terminal	YES	YES	NO (City retained right to move Terminal Facilities and Cargo Facilities from one area within the airport to another area)
Cargo	YES	YES	NO (See above)
Holding	Delta does not have exclusive possession of its cargo and terminal facilities. Therefore, these facilities are exempt from the privilege tax		

As of June 21, 2022, The County has appealed to the UT Supreme Court challenging the constitutionality the valuation statute. Neither party appealed the privilege tax or allocation statute

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Alaska Airlines v. Oregon Dept. of Rev.

Procedural Posture: Motions and cross motions for summary judgement to the Oregon Tax Court.

Issue: : Is the "Director's conference" a formal meeting or is it a process that includes informal discussions with the Department?

Disposition: It is a formal meeting.

Relevance: Observe administrative procedures.

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Alaska Airlines v. Oregon Dept. of Rev.

Summary:

ORS. 308.584 “A conference with the director is an administrative remedy that must be exhausted before an appeal of the valuation or apportionment of an assessment may be made to the Oregon Tax Court. The valuation or apportionment of an assessment under ORS 308.505 to 308.674 may not be appealed to the tax court if the person or company does not file a timely request for a conference under this section prior to seeking an appeal before the tax court.”

Alaska and the Department engaged in email and phone discussions regarding valuations.

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Alaska Airlines v. Oregon Dept. of Rev.

What is a “conference?”

- It is a formal meeting, with the Director or its representative.

Is requesting the conference enough, or must it be held as well?

- It must be held, unless the Department waives it.

Alaska Airlines, Inc. v. Dept. of Revenue,
No. TC-MD 200363G, 2021 WL 6145562,
at *10 (Or. T.C. Dec. 30, 2021)

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Vision Net v. Montana Dept. of Rev.

Procedural Posture: On appeal to Montana Supreme Court from order granting the Department's Motion for Summary Judgment.

Issue:

1. Does Vision Net own and operate single and continuous property in more than one county, such that it is subject to central assessment?
2. Does central assessment violate rights of equal protection or equalization?

Disposition: Yes and No.

Relevance: Observe administrative procedures.

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Vision Net v. Montana Dept. of Rev.

SUMMARY:

Vision Net provides internet services and network management, and it owns telecommunications equipment that is connected by fiber optic cables.

It only owned 7.43 miles of cable, which did not cross county lines.

All fiber that connected its equipment was leased.

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Vision Net v. Montana Dept. of Rev.

1. Single & Continuous Property Positions:

Vision Net asserted it is not subject to central assessment because “[i]t does not operate a single and continuous intercounty property as required under the statute. Vision Net acknowledges that it owns property throughout the state, but contends because none of its owned property crosses county lines, it does not qualify for central assessment.”

The Department asserted that “even though Vision Net's network includes some leased property, the company nonetheless still operates a single and continuous property in more than one county, subjecting it to central assessment. The Department argues Vision Net operates as a ‘functionally integrated property’ that broadly provides internet services to Montana customers across the state.”

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Vision Net v. Montana Dept. of Rev.

2. Equal Protection Positions:

Vision Net asserted that diverse industries and fields also lease, manage, and operate their businesses across county lines, and such have not been subject to centrally assessed taxation.

The Department asserted that Vision Net has not provided the requisite evidence to show a comparable class

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Vision Net v. Montana Dept. of Rev.

1. Single & Continuous Property Ruling:

The Montana Supreme Court agreed noting that “Although Vision Net leases connecting cable, its network as a whole is ‘functionally integrated over a wide area,’ allowing the company to ‘enjoy a unity of use and management,’ and is operated as a single and continuous property.”

2. Equal Protection Ruling:

“It is now settled by a long line of decisions that ... the equal protection clause is not violated by prescribing a different rule of taxation for such companies than for concerns engaged in other lines of business.”

Vision Net, Inc. v. Dept. of Revenue,

2019 MT 205, 397 Mont. 118,
447 P.3d 1034. (Supreme Court of Montana, 8/27/2019)

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