STATE OF MINNESOTA | TAX COURT

COUNTY OF GOODHUE | REGULAR DIVISION

Estate of Jeannette L. Anderson, Trustee/ Fiduciaries/ Mary C. Wagner and Kevin S. Anderson,
Appellants,

vs.

Commissioner of Revenue,
Appellee.

ORDER ON CROSS-MOTIONS FOR SUMMARY JUDGMENT

File No. 9489-R

Filed: December 12, 2022

This matter came before the Honorable Wendy S. Tien, Judge of the Minnesota Tax Court, on the parties' cross-motions for summary judgment.

Brian N. Niemczyk and Earl H. Cohen, Hellmuth & Johnson, PLLC, represent appellants Estate of Jeannette L. Anderson, Trustee/ Fiduciaries/ Mary C. Wagner and Kevin S. Anderson.

Matt Mason, Assistant Attorney General, represents appellee Commissioner of Revenue.

The court, upon all the files, records, and proceedings herein, now makes the following:

ORDER FOR JUDGMENT

1. Appellants' motion for summary judgment is denied.

2. The Commissioner's motion for summary judgment is granted.

IT IS SO ORDERED. THIS IS A FINAL ORDER. ENTRY OF JUDGMENT IS STAYED FOR 30 DAYS. LET JUDGMENT BE ENTERED ACCORDINGLY.

BY THE COURT:

Wendy S. Tien

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Wendy S. Tien, Judge
MINNESOTA TAX COURT

Dated: December 12, 2022

MEMORANDUM

I. FACTUAL BACKGROUND

The material facts are undisputed. Jeannette L. Anderson died on November 8, 2018, as a domiciliary of Minnesota.[1] The sole asset of her estate is the Jeannette L. Anderson Trust dated May 21, 1998 (the "Trust").[2] Ms. Anderson established the Trust upon the death of her husband in 1998,[3] while she was living in South Dakota.[4] In 1999, Ms. Anderson moved to Minnesota, where she remained until her death.[5] At that time, the Trust comprised property both with a situs in Minnesota, valued at $1,039,905.00 (the "Minnesota Property"), and with a situs in South Dakota, valued at $5,850,000.00 (the "South Dakota Property").[6]

[1] Decl. Mary C. Wagner ¶ 7 (signed July 28, 2022); Decl. Matt Mason ¶ 2 & Ex. A, at 20 (signed July 29, 2022). Ms. Anderson's domicile at the time of her death is not at issue in this case.

[2] Mason Decl. ¶ 2 & Ex. A, at 14.

[3] Wagner Decl. ¶ 4 & Ex. A; Mason Decl. ¶ 2 & Ex. A, at 15.

[4] Wagner Decl. ¶ 4 & Ex. A; Mason Decl. ¶ 2 & Ex. A, at 15. The residency of the Trust is not at issue in this case.

[5] Wagner Decl. ¶ 7 & Ex. A; Mason Decl. ¶ 2 & Ex. A, at 20.

[6] Decl. Brian N. Niemczyk ¶ 2 & Ex. A, at 11, 14 (signed July 29, 2022); Mason Decl. ¶ 2 & Ex. A, at 9, 12. The situs of both the Minnesota Property and the South Dakota Property, as defined in Minnesota Statutes section 291.005, subdivision 8 (2020), is not a disputed issue in this case.

Ms. Anderson's estate (the "Estate"), through the Trust's co-successor trustees (the "Trustees"), filed both a federal estate tax return[7] and several Minnesota estate tax returns.[8] The Trustees filed a Minnesota estate tax return on August 5, 2019, an amended return on November 26, 2019, and paid the estate tax imposed for 2018.[9]

On March 25, 2020, the Trustees filed a second amended return seeking refund of the Minnesota estate tax previously paid in the amount of $91,161.00, plus interest.[10] The second amended return contended, in an accompanying letter (the "Letter"), that the Minnesota estate tax as applied to the Estate improperly imposed a tax on the South Dakota Property.[11]

The Commissioner issued a Tax Order, with a notice date of June 14, 2021, ("Tax Order") denying the Estate's request for a refund.[12] On July 28, 2021, Appellant appealed the Tax Order to this court,[13] and the *Erie* transfer procedure was completed for the portion of this matter involving "[w]hether Minnesota's estate tax as applied to the estate violates the Due Process and

[7] Niemczyk Decl. ¶ 2 & Ex. A, at 14-15; Mason Decl. ¶ 2 & Ex. A, at 14-15.

[8] Wagner Decl. ¶¶ 9-10 &Ex. C; Mason Decl. ¶ 2 & Ex. A, at 20-24.

[9] Wagner Decl. ¶ 9; Mason Decl. ¶ 2 & Ex. B, at 2027-31.

[10] Comm'r's Mem. Law Supp. Mot. Summ. J. 3 (filed July 29, 2022). The Commissioner did not include a supporting affidavit as to the filing date for the initial return and the first amended return, but the Estate does not dispute these dates.

[11] Niemczyk Decl. ¶ 2 & Ex. A, at 16-21; Mason Decl. ¶ 2 & Ex. A, at 14-19.

[12] Niemczyk Decl. ¶ 2 & Ex. A, at 6-15; Mason Decl. ¶ 3 & Ex. B, at 32-41.

[13] Not. Appeal (filed July 28, 2021); Mason Decl. ¶ 2 & Ex. A.

Commerce Clauses of the United States Constitution." [14] On July 29, 2022, the parties filed cross-motions for summary judgment.[15] This court heard oral argument on September 22, 2022.

II. APPLICABLE LAW

Minnesota Statutes section 271.06, subdivision 7 (2020), provides that, in general, the Minnesota Rules of Evidence and Civil Procedure govern the procedures in the tax court, where practicable. *Cnty. of Aitkin v. Blandin Paper Co.*, 883 N.W.2d 803, 810 (Minn. 2016) (noting application of the rules of evidence to tax court proceedings); *Piney Ridge Lodge, Inc. v. Comm'r of Revenue*, 718 N.W.2d 861, 862 n.1 (Minn. 2006) (observing both the rules of evidence and civil procedure govern in tax court proceedings).

A. Summary Judgment

Summary judgment is to be granted "if the movant shows that there is no genuine issue as to any material fact and the movant is entitled to judgment as a matter of law." Minn. R. Civ. P. 56.01; *Henson v. Uptown Drink, LLC*, 922 N.W.2d 185, 189-90 (Minn. 2019). Summary judgment "permits the court to make a prompt disposition of an action on the merits if there is no genuine dispute regarding the material facts, and a party is entitled to judgment under the law applicable to such established facts." *In re Bush's Est.*, 302 Minn. 188, 211, 224 N.W.2d 489, 503 (1974) (cleaned up).

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[14] Order of Transfer (filed Aug. 27, 2022) (conferring jurisdiction on the tax court pursuant to *Erie Mining Co. v. Comm'r of Revenue*, 343 N.W.2d 261 (Minn. 1984), *In re McCannel*, 301 N.W.2d 910 (Minn. 1980), *Guilliams v. Comm'r of Revenue*, 299 N.W.2d 138 (Minn. 1980), *Nasgaraja v. Comm'r of Revenue*, 352 N.W.2d 373, 374 n.1 (Minn. 1984), and *Gonzales v. Comm'r of Revenue*, 706 N.W.2d 909 (Minn. 2005)).

[15] Appellants' Not. Mot. & Mot. Summ. J. (filed July 29, 2022); Appellants' Mem. Law Supp. Mot. Summ. J. (filed July 29, 2022); Comm'r's Not. Mot. & Mot. Summ. J. (filed July 29, 2022); Comm'r's Mem.

The court's function in ruling on a motion for summary judgment is to determine whether there is an issue of fact to be tried. *Anderson v. Twin City Rapid Transit Co.*, 250 Minn. 167, 186, 84 N.W.2d 593, 605 (1957). A party asserting that there is no genuine issue as to any material fact must support the assertion by:

> (1) citing to particular parts of materials in the record, including depositions, documents, electronically stored information, affidavits, stipulations (including those made for purposes of the motion only), admissions, interrogatory answers, or other materials; or
>
> (2) showing that the materials cited do not establish the absence or presence of a genuine issue for trial, or that an adverse party cannot produce admissible evidence to support the fact.

Minn. R. Civ. P. 56.03(a).

In considering a motion for summary judgment, "all inferences from circumstantial evidence and all doubts must be resolved against the movant, without undertaking to determine credibility." *Forsblad v. Jepson*, 292 Minn. 458, 459-60, 195 N.W.2d 429, 430 (1972); *see also O'Malley v. Ulland Bros.*, 549 N.W.2d 889, 892 (Minn. 1996) (noting that all inferences must be drawn in favor of the nonmoving party). "[I]f any doubt exists as to the existence of a genuine issue as to a material fact, the doubt must be resolved in favor of finding that the fact issue exists." *Rathbun v. W. T. Grant Co.*, 300 Minn. 223, 230, 219 N.W.2d 641, 646 (1974). A fact dispute is material, for summary judgment purposes, "if its resolution will affect the outcome of a case." *O'Malley*, 549 N.W.2d at 892. The substantive law identifies which facts are material. *Bond v. Comm'r of Revenue*, 691 N.W.2d 831, 836 (Minn. 2005). Upon determining a genuine issue of material fact exists, the court is not to engage in judicial factfinding by resolving factual disputes in the context of summary judgment. *J.E.B. v. Danks*, 785 N.W.2d 741, 747-48 (Minn. 2010).

Summary judgment is a suitable vehicle for addressing the application of law to undisputed facts. *DLH, Inc. v. Russ*, 566 N.W.2d 60, 69 (Minn. 1997) (noting summary judgment is proper where no genuine dispute of material fact exists and the moving party is entitled to judgment as a matter of law); *Anderson v. Christopherson*, 816 N.W.2d 626, 630 (Minn. 2012); *Kimberly-Clark Corp. & Subsidiaries v. Comm'r of Revenue*, No. 8670-R, 2015 WL 3843986, at *8 (Minn. T.C. June 19, 2015), *aff'd*, 880 N.W.2d 844 (Minn. 2016). While the moving party "bears the initial responsibility of informing the district court of the basis for its motion, and identifying those portions of the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, which it believes demonstrate the absence of a genuine issue of material fact," *Celotex Corp. v. Catrett*, 477 U.S. 317, 323, 106 S. Ct. 2548, 2553, 91 L.Ed.2d 265 (1986) (cleaned up), once it has done so, the nonmoving party must then "go beyond the pleadings and by [its] own affidavits, or by the 'depositions, answers to interrogatories, and admissions on file,' designate 'specific facts showing that there is a genuine issue for trial.' " *Id.* at 324, 106 S. Ct. at 2553; *see also DLH*, 566 N.W.2d at 71 (citing *Celotex* for the proposition that "when the nonmoving party bears the burden of proof on an element essential to the nonmoving party's case, the nonmoving party must make a showing sufficient to establish that essential element").

In the event of cross-motions for summary judgment,

> each party is both a moving party who bears the burden of establishing the absence of a genuine issue of material fact, and a non-moving party who bears the burden of coming forward with specific facts creating such an issue of fact. The Court must decide whether there are genuine issues of material fact present, and if not, which party is entitled to judgment as a matter of law. If the Court determines that there are genuine issues of material fact, the Court should not enter summary judgment for either party.

W.S.A., Inc. v. Liberty Mut. Ins. Co., No. CV-3-92-162, 1992 WL 544960, at *4 (D. Minn. Sept. 30, 1992) (applying Fed. R. Civ. P. 56).[16] When parties file cross-motions for summary judgment, they "tacitly agree[ ] that there exist no genuine issues of material fact...." *Remodeling Dimensions, Inc. v. Integrity Mut. Ins. Co*., 819 N.W.2d 602, 610 (Minn. 2012) (cleaned up).

B. Estate Taxation In Minnesota

Beginning in 1905, Minnesota imposed an inheritance tax on transfers by estates of decedents, Act of Apr. 19, 1905, ch. 288, art. 3, 1905 Minn. Laws 718-54, which it repealed and replaced with an estate tax in 1979. Act of June 1, 1979, ch. 303, art. 3, 1979 Minn. Laws 718-54; Minn. Stat. § 291.01 (2020) (imposing an estate tax "upon the transfer of estates of decedents"). Estate tax imposes a tax on the transfer of property of the estate, *cf. Matter of Est. of Shapiro*, 380 N.W.2d 796, 798 (Minn. 1986) (observing that "federal estate tax is not an inheritance tax on beneficiaries, but rather a transfer tax on the estate of the decedent"),[17] whereas inheritance tax imposes a tax on the beneficiary's receipt of estate property. *First Nat. Bank of Minneapolis v. Comm'r of Tax'n*, 250 Minn. 122, 125-26, 84 N.W.2d 55, 58 (1957) (describing inheritance tax as "an exaction upon the privilege of receiving the property. The thing burdened by the tax is the right of an appointee, beneficiary, legatee, or heir to receive a portion of the property"). For ease of reference, this memorandum will refer collectively to estate tax, inheritance tax, and other tax

[16] Minnesota Rule 56.01 and Federal Rule of Civil Procedure 56(a) are virtually identical. Where state and federal rules of procedure are identical or virtually so, federal cases interpreting the analogous federal provision are helpful. *See Johnson v. Soo Line R.R. Co.*, 463 N.W.2d 894, 899 n.7 (Minn. 1990) ("When our rules of practice are modeled after the federal rules, federal cases interpreting the federal rule are helpful and instructive but not necessarily controlling on how we will interpret our state counterpart."); *State by Mattson v. Boening*, 276 Minn. 151, 152, 149 N.W.2d 87, 89 (1967).

[17] Similarly to the Minnesota estate tax, the federal estate tax provides that "[a] tax is hereby imposed on the transfer of the taxable estate of every decedent who is a citizen or resident of the United States." I.R.C. § 2001(a) (2018).

schemes that impose a tax on the transfer of property by a decedent's estate or the receipt of property by a beneficiary upon the decedent's death, as "transfer taxes."

Following its initial enactment in 1979, the Legislature changed the structure of the estate tax several times. From 1985 until 2001, Minnesota's estate tax was set to the allowable amount of the federal credit for state death taxes under I.R.C. § 2011, which meant the state merely "picked up" the amount of the federal credit without potentially adding to the overall transfer tax burden on the estate. Act of June 28, 1985, ch. 14, art 13, 1985 Minn. Laws 2595-602 (1st Spec. Sess.).[18] From 2002 until 2014, Minnesota's estate tax was generally imposed based on a ratio between Minnesota and federal estates[19] as applied to the federal credit for state death taxes. *See* Act of May 18, 2002, ch. 377, art. 12, § 12, 2002 Minn. Laws 1221;[20] Act of June 2, 2005, ch. 151, art. 6, §§ 19-20, 2005 Minn. Laws 1521-22 (introducing the definition of the Minnesota adjusted taxable estate and applying to it a ratio between the Minnesota and federal gross estates to apply

[18] The federal government previously allowed estates to deduct, from the initial computation of federal estate taxes imposed under I.R.C. § 2001, the amount of "any estate, inheritance, legacy, or succession taxes actually paid to any State or the District of Columbia, in respect of any property included in the gross estate." I.R.C. § 2011(a). Because any transfer tax paid to a state reduced the federal estate tax by the same amount, the state transfer tax imposed no burden (other than filing costs) on taxpayers; the state simply "picked-up" a share of what would have been paid to the federal government. Congress abolished I.R.C. § 2011 in 2014. Tax Increase Prevention Act of 2014, Pub. L. No. 113-295, Div. A, § 221(a)(95)(A)(i), 118 Stat. 4051 (2014). As discussed below, Minnesota also changed the basis for its estate tax computation in 2014. *See* Act of Mar. 21, 2014, ch. 150, art. 3, §§ 4-5, Minn. Laws 34-38 (substituting a tax rate schedule for the federal credit).

[19] The specific calculation–whether based on a ratio between gross estates or taxable estates–changed from 2002 to 2005. *See infra* nn.20-21.

[20] The tax is imposed in "an amount equal to the proportion of the maximum credit [under I.R.C. § 2011] as the Minnesota gross estate bears to the value of the federal gross estate." Act of May 18, 2002, ch. 377, art. 12, § 12, subd. 1, 2002 Minn. Laws 1221.

to the federal credit for state death taxes).[21] The current formula, which substitutes a Minnesota-specific tax rate schedule for the federal credit for state death taxes, was adopted in 2014. Act of Mar. 21, 2014, ch. 150, art. 3, §§ 4-5, 2014 Minn. Laws 34-38.

In the case of a decedent who has an interest in property with a situs in Minnesota, the personal representative must submit a Minnesota estate tax return, if a federal estate tax return is required to be filed, Minn. Stat. § 289A.10, subd. 1(1) (2020), or if the sum of the federal gross estate and federal adjusted taxable gifts made within three years of death exceeds $2.4 million for decedents dying in 2018. *Id.* § 289A.10 subd. 1(2). The statute employs two concepts in computing the estate tax. One concept is the Minnesota taxable estate, which forms the basis for computing the tax imposed. Minn. Stat. §§ 291.016 (2020) (defining the Minnesota taxable estate[22]), 291.03 (2020) (applying both a tax rate and a ratio based on the Minnesota and federal gross estates to the MTE to determine the amount of tax imposed). The starting point for computing the MTE is the federal taxable estate,[23] as defined in I.R.C. § 2051 (2018). Minn. Stat. § 291.016, subd. 1. To the FTE, the estate is to make certain Minnesota-specific additions,[24] as

[21] The tax is imposed in "an amount equal to the proportion of the maximum credit for state death taxes [under I.R.C. § 2011] but using Minnesota adjusted taxable estate instead of federal adjusted taxable estate, as the Minnesota gross estate bears to the value of the federal gross estate." Act of June 2, 2005, ch. 151, art. 6, § 20, subd. 1, 2005 Minn. Laws 1522.

[22] This memorandum will use the short form "MTE" for Minnesota taxable.

[23] This memorandum will use the short form "FTE" for federal taxable estate.

[24] These additions comprise the value of certain marital property of the estate previously credited for Minnesota-only purposes, Minn. Stat. § 291.016, subd. 1(1), the amount of any deductions for state and foreign death taxes allowed in calculating the FTE, *id.* § 291.016, subds. 1(2) & 2(2), and the value of any gifts made within three years of death. *Id.* § 291.016, subds. 1(2) & 2(3).

well as certain Minnesota-specific subtractions.[25] In 2018, the fixed-dollar subtraction amount was $2.4 million. *Id.* § 291.016, subd. 3(b)(ii).

In general terms, the computation of the MTE can be expressed as follows:

MTE = FTE + Minnesota Marital Credit[26] + Additions[27] - Subtractions.[28]

The other concept in estate taxation is the ratio in section 291.03 (the "apportionment ratio"[29]), which is applied to the MTE. The apportionment ratio is the ratio between the Minnesota and federal gross estates. Minn. Stat. § 291.005, subd. 1(2) & (4) (2020) (defining the "federal gross estate" and "Minnesota gross estate," respectively).[30]

In general terms, the computation of the apportionment ratio can be expressed as follows:

AR = MGE ÷ FGE.[31]

In general terms, the computation of the estate tax can be expressed as follows:

Tax imposed = MTE × AR × Tax Rate.[32]

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[25] The estate also is to subtract a fixed-dollar amount based solely on the year of death, Minn. Stat. § 291.016, subds. 1(3) & 3(b)(2), as well as the lesser of the sum of qualified business property and qualified farm property or $5 million. *Id.* § 291.016, subds. 1(3) & 3(a)(ii).

[26] Minn. Stat. § 291.016, subd. 1 (requiring addition back of value of certain qualifying life estate property for which the estate took a credit for Minnesota but not federal estate tax purposes).

[27] Minn. Stat. § 291.016, subd. 2.

[28] Minn. Stat. § 291.016, subd. 3.

[29] This memorandum may use the short form "AR" for apportionment ratio.

[30] This memorandum will use the short forms "FGE" for federal gross estate and "MGE" for Minnesota gross estate.

[31] Both the MGE and FGE are to be increased by the value of gifts under Minnesota Statutes section 291.016, subd. 2(3). Minn. Stat. § 291.03, subd. 1 (increasing MGE by Minnesota-situs gifts and FGE by gifts as defined in I.R.C. § 2053 (2018)).

[32] Minn. Stat. § 291.03, subd. 1(b) (tax rates applicable to estates of decedents dying in 2018 or later).

C. Taxation Of Estates And Inheritances: Constitutional Aspects

Statutes are presumptively constitutional. *Singer v. Comm'r of Revenue*, 817 N.W.2d 670, 675 (Minn. 2012) (invoking "every presumption in favor of a statute's constitutionality"); *Minn. Automatic Merch. Council v. Salomone*, 682 N.W.2d 557, 561 (Minn. 2004). A party contending a statute is unconstitutional bears the heavy burden of "demonstrating beyond a reasonable doubt that the statute violates some constitutional provision." *Id.* (noting the court is "very deferential in our review of tax legislation because taxation policy is peculiarly a legislative function") (cleaned up).

There are two types of challenges to the constitutionality of a statute: facial and as-applied. *See Rew v. Bergstrom*, 845 N.W.2d 764, 778 (Minn. 2014). "A facial challenge to the constitutionality of a statute requires a showing that no set of circumstances exists under which the [statute] would be valid." *SooHoo v. Johnson*, 731 N.W.2d 815, 821 (Minn. 2007) (internal quotation marks and citation omitted). In an as-applied challenge, the court examines the constitutionality of the statute, "limited to the context of the specific circumstances presented in the case." *State v. Final Exit Network, Inc.*, 889 N.W.2d 296, 304 (Minn. App. 2016) (cleaned up), *cert.* denied, 138 S. Ct. 145, 199 L.Ed.2d 36 (2017). "An as-applied challenge uses the same substantive [constitutional] standards as a facial challenge but involves a judgment as to the constitutionality of a statute based on the harm to the litigating party." *Id.* at 303-04 (cleaned up). The same substantive constitutional standard applies to determining both as-applied and facial challenges to Minnesota statutes. *Rew*, 845 N.W.2d at 778.

If a statute implicates a fundamental right, the court must apply strict-scrutiny review and "will only find a statute constitutional if it advances a compelling state interest and is narrowly tailored to further that interest." *State v. Holloway*, 916 N.W.2d 338, 344 (Minn. 2018) (cleaned up). But "[i]f a statute does not implicate a fundamental right, rational-basis review applies, which

requires only that the statute not be arbitrary or capricious; in other words, the statute must provide a reasonable means to a permissible objective." *Id.* at 344-45 (cleaned up); *see also Dean v. City of Winona*, 843 N.W.2d 249, 260 (Minn. App. 2014) (noting that, "[u]nless a fundamental right is at stake, judicial scrutiny is not exacting and substantive due process requires only that the statute not be arbitrary or capricious"). Where an economic regulation is involved, due process requires only rational basis review. *Contos v. Herbst*, 278 N.W.2d 732, 741 (Minn. 1979) (applying the due process standard to taxation such "that [the economic regulation] be a reasonable means to a permissive objective").

1. Due Process Challenges

The state and federal Due Process Clauses are textually similar, and the supreme court has described the scope of their protections as "identical." *Turner v. Comm'r of Revenue*, 840 N.W.2d 205, 209 (Minn. 2013). In the tax context, due process generally requires that two elements are met. First, there must be a "minimum connection" between the taxing state and "the person, property, or transaction subject to the tax." *Fielding v. Comm'r of Revenue*, 916 N.W.2d 323, 328 (Minn. 2018). Second, the "income subject to the tax is rationally related to the benefits conferred on the taxpayer by the State." *Id.* Due process challenges to taxing statutes require the court to "look beyond the statutory definition that identifies who is subject to a tax in order to evaluate the relationship between the [subject] taxed and the benefits provided by the state." *Id.* at 329 (holding, in the context of a due process challenge to the State's taxation of a taxpayer as a resident, the court may "examine all relevant contacts between the taxpayer and the State, including the relationship between the income attributed to the state and the benefits the taxpayer received from its connections with the state").

Tangible personal property (as opposed to intangibles)[33] and real property are constitutionally subject to taxation only in the state of situs. *See Union Refrigerator Transit Co. v. Kentucky*, 199 U.S. 194, 26 S. Ct. 36, 50 L.Ed. 150 (1905); *City Bank Farmers' Tr. Co. v. Schnader*, 293 U.S. 112, 55 S. Ct. 29, 79 L.Ed. 228; *see also California v. Texas*, 437 U.S. 601, 602 n.1, 98 S. Ct. 3107, 3108, 57 L.Ed.2d 464 (1978) (per curiam) (Stewart, J., concurring) (reviewing the history of cases concerning taxation of tangible property). In the transfer tax context, a state may not tax property beyond its territorial jurisdiction, consistent with due process. *Maxwell v. Bugbee*, 250 U.S. 525, 539, 40 S. Ct. 2, 6 (1919).

The Supreme Court addressed the constitutional parameters of state transfer taxes in a series of three principal cases, none of which is recent. In *Maxwell*, the first of these cases, the Court considered the due process and other constitutional claims by the James J. Hill Estate against the State of New Jersey, in assessing an inheritance tax on transfers of property located in New Jersey calculated in part using the ratio of the New Jersey property to the entire estate wherever situated. *Id.* at 532-33, 40 S. Ct. at 4. Noting that the inheritance tax in question is a tax on the transfer of property, "to be paid upon turning it over to the administrator or executor at the domicile of the decedent," *id.* at 536, 40 S. Ct. at 5, the Court held the use of an apportionment ratio based on property located both within and outside of New Jersey did not violate due process. *Id*. at 539, 40 S. Ct. at 6. "[T]he state imposes a privilege tax, clearly within its authority, and it has adopted as a measure of that tax the proportion which the specified local property bears to the entire estate of the decedent. That it may do so, within limitations which do not really make the tax one upon

[33] *Treichler v. Wisconsin*, 338 U.S. 251, 256, 70 S. Ct. 1, 3, 94 L.Ed. 37 (1949) (observing that "[w]e have consistently upheld the domicile's levy when it was based upon intangible property with technical title without the jurisdiction"). This appeal does not present a dispute concerning the situs of intangible property.

property beyond its jurisdiction." *Id.* Accordingly, "[w]hen the state levies taxes within its authority, property not in itself taxable by the state may be used as a measure of the tax imposed." *Id.*

After *Maxwell*, the Court addressed the constitutionality of transfer taxes in two further cases. In *Frick v. Pennsylvania*, 268 U.S. 473, 45 S. Ct. 603 (1925), the Court invalidated a segment of Pennsylvania's law which sought to impose an inheritance tax on the transfer of tangible property, the largest part of which comprised a notable New York City-based art collection. The state law in question imposed a tax on the transfer of all real or personal property of a decedent domiciled in Pennsylvania, on the basis of the gross value of the estate wherever located, less debts and expenses of administration, but without any deduction or credit for taxes paid to any other state or the federal government. *Id.* at 488, 45 S. Ct. at 604. The Court articulated a rule that a direct state tax on out-of-state tangible personal and real property is inconsistent with due process. *Id.* at 489, 45 S. Ct. at 604 ("[W]hile a State may so shape its tax laws as to reach every object which is under its jurisdiction it cannot give them any extraterritorial operation."); *accord Farmers' Loan & Tr. Co. v. Minnesota*, 280 U.S. 204, 210, 50 S. Ct. 98, 100, 74 L.Ed. 371 (1930) ("[N]o state can tax the testamentary transfer of property wholly beyond her power or impose death duties reckoned upon the value of tangibles permanently located outside her limits) (citation omitted).

In distinguishing *Maxwell*, the Court drew a distinction between the unconstitutional attempt in *Frick* to compute (and apply) the tax on the estate as a whole, including property located outside the taxing state, versus statutory schemes where a graduated tax based on the entire estate is applied to the transfer of the portion of the estate within the taxing state. The latter scheme, present in *Maxwell*:

> provided for a tax graduated in rate according to the value of the entire estate, and required that where the estate was partly within and partly without the state the transfer of the part within should bear a proportionate part of what according to the graduated rate would be the tax on the whole. The only bearing which the property without the state had on the tax imposed in respect of the property within was that it affected the rate of the tax. Thus, if the entire estate had a value which put it within the class for which the rate was three per cent. that rate was to be applied to the value of the property within the state in computing the tax on its transfer, although its value separately taken would put it within the class for which the rate was 2 per cent. There was no attempt, as here, to compute the tax in respect of the part within the state on the value of the whole.

Id. at 495-96, 45 S. Ct. at 607.

The Court endorsed its holding in *Frick* in its last examination of estate tax laws a quarter of century later. *Treichler*, 338 U.S. at 256, 70 S. Ct. at 3. In invalidating a Wisconsin emergency tax that resulted in "80% of the basic federal tax, rated and measured by the entire estate, regardless of situs, and therefore including the property located in Illinois and Florida, *id.* at 254, 70 S. Ct. at 3, the Court concluded that "Wisconsin made but 80% of the federal tax its own; and as it did not apportion that 80% to property within the state, the presence of property therein is simply a fortuity which cannot help the taxing jurisdiction." *Id.* at 254-55, 70 S. Ct. at 3. "Wisconsin's statute may be more sophisticated than Pennsylvania's, but in terms of ultimate consequences this case and the Frick case are one." *Id.* at 256, 70 S. Ct. at 3 (observing that "[w]e have consistently upheld the domicile's levy when it was based upon intangible property with technical title without the jurisdiction").[34] *See Fasken*, 19 Cal. 3d at 424-25, 138 Cal. Rptr. at 283, 563 P. 2d at 839

[34] The Court implied that Wisconsin's estate tax, which formed the basis for the emergency tax but was not the subject of the appeal, might also be inconsistent with due process. *Treichler*, 338 U.S. at 253, 70 S. Ct. at 2-3 (noting the estate tax was "not under explicit attack here"); *see also Est. of Fasken*, 19 Cal. 3d 412, 426, 138 Cal. Rptr. 276, 284, 563 P.2d 832, 840 (Cal. 1977) (noting that, although the estate tax in *Treichler* was not under appeal, "it necessarily suffered from the same constitutional infirmity which rendered the emergency tax invalid" because the emergency tax was calculated based on a percentage of the estate tax. "If the emergency tax was constitutionally defective because it reached property outside Wisconsin's borders, then the death tax, which was the basis for the measure of the emergency tax, necessarily also reached such outside property"). Following remand, the Wisconsin assembly amended the estate tax to limit its

(providing a thorough discussion of *Treichler* and acknowledging that "the basis for the disapproval of the Wisconsin emergency tax is not clearly stated;" interpreting *Treichler* to hold that "because the federal credit for state death taxes is 'rated and measured by the entire estate, regardless of situs,' no state can assert a claim to *all* of that credit when some taxable portion of the estate is located in another state. Likewise, Wisconsin could not measure its emergency tax as a percentage of the whole of that credit") (citation omitted); *Rigby v. Clayton*, 2 N.C. App. 57, 63, 162 S.E.2d 682, 685 (N.C. Ct. App. 1968), *aff'd*, 274 N.C. 465, 164 S.E.2d 7 (N.C. 1968) (discussing the trilogy of Supreme Court cases and affirming a North Carolina tax on succession "which merely uses the value of the entire estate wherever located to determine the *rate* of tax to be applied to transfer of property within the state").

2. Dormant Commerce Clause

The Commerce Clause states that Congress may "regulate Commerce ... among the several States." U.S. Const. art. I, § 8. This affirmative grant of authority includes a "negative or dormant implication." *Minn. Sands, LLC v. Cnty. of Winona*, 940 N.W.2d 183, 193 (Minn. 2020) (quoting *Gen. Motors Corp. v. Tracy*, 519 U.S. 278, 287, 117 S. Ct. 811, 818, 136 L.Ed.2d 761 (1997). The dormant Commerce Clause precludes states from "discriminating between transactions on the basis of some interstate element." *Comptroller of Treasury of Md. v. Wynne*, 575 U.S. 542, 549, 135 S. Ct. 1787, 1794, 191 L.Ed.2d 813 (2015) (cleaned up). State regulations may not discriminate against interstate commerce; and states may not impose undue burdens on interstate

application to the portion of the federal credit for death taxes attributable only to property within the borders of Wisconsin. The Court dismissed a portion of the appeal after remand as it pertained to the amended estate tax. *Treichler v. Wisconsin*, 340 U.S. 868, 71 S. Ct. 120, 95 L.Ed. 633 (1950).

commerce. *South Dakota v. Wayfair, Inc.*, __ U.S. __, 138 S. Ct. 2080, 2091, 201 L.Ed.2d 403 (2018).

Although the Commerce Clause generally prohibits facially discriminatory statutes, *Chapman v. Comm'r of Revenue*, 651 N.W.2d 825, 832-33 (Minn. 2002) (characterizing such laws as "virtually per se invalid"), it is "not the purpose of the Commerce Clause to relieve those engaged in interstate commerce from their just share of state tax burden. And it is certainly not the purpose of the Commerce Clause to permit the [j]udiciary to create market distortions." *Wayfair*, __ U.S. at __, 138 S. Ct. at 2093-94 (holding that South Dakota sales tax statute did not violate either due process or dormant Commerce Clause with respect to out-of-state retailers with no physical presence in the state; overruling prior decisions setting forth a physical presence rule with respect to sales tax) (cleaned up).

Commerce Clause challenges to state tax schemes involve a two-step inquiry. *Chapman*, 651 N.W.2d at 832-33; *Stelzner v. Comm'r of Revenue*, 621 N.W.2d 736, 740 (Minn. 2001). As a threshold matter, the court must determine whether the challenged statute implicates the Commerce Clause. *Chapman*, 651 N.W.2d at 832-33. Three broad categories of activity fall under the purview of the Commerce Clause: (1) the use of the channels of interstate commerce, (2) the instrumentalities of interstate commerce, or the persons or things in interstate commerce, and (3) activities having a substantial effect on interstate commerce. *Id.* at 833 (citing *United States v. Lopez*, 514 U.S. 549, 558-59, 115 S. Ct. 1624, 1629-30, 131 L.Ed.2d 626 (1995)).

If the challenged statute implicates the Commerce Clause, the court next must evaluate whether it violates that clause. *Id.* As "interstate commerce may be required to pay its fair share of state taxes," *Wayfair*, __ U.S. at __, 138 S. Ct. at 2091 (quoting *D.H. Holmes Co. v. McNamara*, 486 U.S. 24, 31, 108 S. Ct. 1619, 1623, 100 L.Ed.2d 21 (1988)), a state "may tax exclusively

interstate commerce so long as the tax does not create any effect forbidden by the Commerce Clause." *Id.* (quoting *Complete Auto Transit, Inc. v. Brady*, 430 U.S. 274, 285, 97 S. Ct. 1076, 1082, 51 L.Ed.2d 326 (1977)). A state tax will be sustained under a dormant Commerce Clause inquiry if it "[1] is applied to an activity with a substantial nexus with the taxing State, [2] is fairly apportioned, [3] does not discriminate against interstate commerce,[35] and [4] is fairly related to the services provided by the State." *Complete Auto*, *430 U.S.* at 279, 97 S. Ct. at 1079. State laws that "regulate even-handedly to effectuate a legitimate local public interest will be upheld unless the burden imposed on such commerce is clearly excessive in relation to the putative local benefits." *Wayfair*, __ U.S. at __, 138 S. Ct. at 2091 (cleaned up). For this reason, "[t]he Court's Commerce Clause jurisprudence has 'eschewed formalism for a sensitive, case-by-case analysis of purposes and effects.' " *Id.*, 138 S. Ct. at 2094 (quoting *West Lynn Creamery, Inc. v. Healy*, 512 U.S. 186, 201, 114 S. Ct. 2205, 129 L.Ed.2d 157 (1994). "So long as a state law avoids any effect forbidden by the Commerce Clause, courts should not rely on anachronistic formalisms to invalidate it. *Id.*, 138 S. Ct. at, 2094-95 (cleaned up).

The United States Supreme Court has not considered the constitutionality, under the dormant Commerce Clause, of any state's transfer tax scheme, as *Maxwell*, *Frick*, and *Treichler* were decided on due process grounds alone. Nor has this state's supreme court considered the

[35] Discrimination, in the tax context, occurs if a state tax "taxes a transaction or incident more heavily when it crosses state lines than when it occurs entirely within the State," *Mayo Collaborative Servs., Inc. v. Comm'r of Revenue*, 698 N.W.2d 408, 412 (Minn. 2005), *as amended on denial of reh'g* (July 29, 2005) (cleaned up), or "gives differential treatment to in-state and out-of-state economic interests that benefits the former and burdens the latter." *Id.* (cleaned up). Such discrimination may occur in one of three ways: "if it is facially discriminatory, has a discriminatory intent, or has the effect of unduly burdening interstate commerce." *Id.* (quoting *Amerada Hess Corp. v. Dir., Div. of Tax'n, N.J. Dep't of Treas.*, 490 U.S. 66, 75, 109 S. Ct. 1617, 1623, 104 L.Ed.2d 58 (1989); *Caterpillar, Inc. v. Comm'r of Revenue*, 568 N.W.2d 695, 699 (Minn. 1997).

constitutionality of the Minnesota estate tax scheme under the Commerce Clause. Generally, however, to demonstrate that a Minnesota state tax violates the Commerce Clause, the petitioner bears the burden of demonstrating that the tax does not satisfy at least one prong of the *Complete Auto* test. *Mayo*, 698 N.W.2d at 410 n.2.

III. ANALYSIS

Although the parties did not submit a stipulation of facts, the material facts are undisputed.[36] The court agrees with the parties that the issues are ripe for summary judgment.[37]

The Estate contends the Commissioner "seek[s] to enforce an estate tax law which purports to impose a tax on the value of real property located entirely within South Dakota, and thus with a situs outside of Minnesota," [38] and such an "estate tax should therefore be invalidated as a violation of the Due Process Clause." [39] The Commissioner poses the question whether "Minnesota's estate tax as applied to the Estate violate[s] the Due Process and Commerce Clauses of the United States Constitution." [40] As the parties both reference Minnesota Statutes sections 291.005, subdivision 1(2) and (4), 291.016, and 291.03, subdivision 1, as they pertain to the computation of the MTE and the apportionment ratio, the court will consider the interpretation, and relationship, among all three statutes.[41] The court will consider whether either the determination of MTE based on FTE, or the apportionment ratio set forth in Minnesota Statutes section 291.03, violates the Due Process

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[36] Tr. 5 (Sept. 22, 2022).

[37] Appellants' Mem. 1; Comm'r's Mem. 3-4.

[38] Appellants' Mem. 1.

[39] Appellants' Mem. 1. The Notice of Appeal attaches the Tax Order but does not state a specific contention of statutory, constitutional, or other error.

[40] Comm'r's Mem. 2.

[41] This memorandum will collectively reference these three statutes as the "Minnesota estate tax scheme." Although other statutes also govern estate taxation in Minnesota, they are not part of this appeal.

Clause or, in the alternative, the dormant Commerce Clause, of the United States Constitution, as applied to the Estate. The Estate states its challenge to the constitutionality of the Minnesota estate tax scheme is as-applied, not a facial challenge. [42]

The court concludes the application to the Estate of the relevant portions of the Minnesota estate tax scheme does not violate either due process or the dormant Commerce Clause. The Tax Order is affirmed.

A. Due Process

The Estate argues that the Minnesota estate tax scheme violates due process because, under the scheme as applied, an estate tax was imposed on the estate that would not have been imposed if Minnesota law did not compute the MTE by including the South Dakota Property.[43] Specifically, the Estate contends that, if MTE were computed by excluding the South Dakota Property, the MTE would have been zero.[44] The Estate also contends that the apportionment ratio in section 291.03, subdivision 1, also violates due process.[45]

By contrast, the Commissioner argues that Minnesota law first computes the MTE with reference to the FTE without a deduction for non-Minnesota situs property, and then applies an apportionment ratio when determining the amount of tax imposed.[46] The Commissioner contends

[42] Because it was unclear to the court which of the cited statutes the Estate contends violates the Due Process and Commerce Clauses, the court asked Estate counsel whether this appeal constitutes a facial or an as-applied challenge to Minnesota law, and whether only the apportionment ratio in section 291.03 was at issue. Estate counsel stated that this appeal is an as-applied challenge to the constitutionality of the apportionment ratio only. Tr. 17-20.

[43] Appellants' Mem. 18-27.

[44] Appellants' Mem. 5.

[45] Appellants' Mem. 23-27 (contending the use of the apportionment ratio is a "fig leaf" to disguise due process violations).

[46] Comm'r's Mem. 5-6.

that, by applying the apportionment ratio, the state does not tax non-Minnesota situs property.[47] The court agrees with the Commissioner.

1. Minimum Connection.

Due process first requires a "minimum connection" between the taxing state and "the person, property, or transaction subject to the tax." *Fielding*, 916 N.W.2d at 328. The parties do not dispute the situs of any of the Estate assets or Ms. Anderson's domicile at the time of her death. The Estate contends, however, that:

> Minnesota provides no public services for that property, no road repair, no snow removal, no utilities or any other services for the benefit of the property and its owners. Minnesota has no jurisdiction over the real estate, how it is used, how it is rented, the crops it produces, or the income it generates.[48]

Consequently, the Estate asserts that "Minnesota has offered, and can offer, no services, benefits, or protections to the South Dakota real estate in the Trust," and accordingly "indirectly tax[es] the transfer of the part of the estate which was under the exclusive jurisdiction of others," [49] as well as "reach[es] beyond its borders and fasten[s] upon" foreign property, giving "nothing for which it can ask [in] return." [50] In the end, the Estate contends the Minnesota estate tax scheme makes property with a situs outside Minnesota "a subject upon which [to exercise] her taxing power." [51]

The Commissioner contends a minimum contacts analysis is unnecessary because "[t]he statute's plain language provides that out of state property will not be taxed and evidences a legislative intent to avoid the imposition of any such tax." [52] Although the Commissioner

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[47] Comm'r's Mem. 5-6, 12-13.

[48] Appellants' Mem. 20.

[49] Appellants' Mem. 20-21 (quoting *Frick*, 268 U.S. at 495, 45 S. Ct. at 606-07).

[50] Appellants' Mem. 21 (quoting *Treichler*, 338 U.S. at 256-57, 70 S. Ct. at 4).

[51] Appellants' Mem. 21 (quoting *Frick*, 268 U.S. at 490, 45 S. Ct. at 605).

[52] Comm'r's Mem. 5.

acknowledges the starting point for MTE is the FTE, after applying several statutory deductions from FTE, the "resulting amount is then apportioned to remove any share of the estate that is not subject to Minnesota tax, including out of state real property. Minnesota's apportionment ratio reduces the tax amount by the proportion of the Minnesota gross estate with a Minnesota situs to the federal gross estate." [53] In other words, the Commissioner contends the Minnesota estate tax scheme does not impose a tax on the South Dakota Property.[54]

Concerning the existence of minimum contacts between the South Dakota Property and the state for due process purposes, the court agrees with the Commissioner. The Minnesota estate tax scheme does not impose a tax on the South Dakota Property. To determine whether a statute is ambiguous, the court shall read and construe a statute as a whole, rather than in isolation. *Sheridan v. Comm'r of Revenue*, 963 N.W.2d 712, 718 (Minn. 2021) (citing *State v. Riggs*, 865 N.W.2d 679, 683 (Minn. 2015)) (noting the application of the whole-statute canon when determining whether a statute is ambiguous in the first instance). The whole-statute canon applies to statutes that are part of the same legislative enactment. *See State v. Prigge*, 907 N.W.2d 635, 640-41 (Minn. 2018) (distinguishing between the "related statutes canon," which applies only "after a determination of ambiguity," and the "whole-statute canon," which "does not require ambiguity before it may be applied").

Section 291.016, subdivision 1, and section 291.03, subdivision 1, constitute part of the same legislative enactment and therefore should be construed as a whole. Act of Mar. 21, 2014, ch. 150, art. 3, §§ 4-5, 2014 Minn. Laws 34-38 (enacting current sections 291.016 and 291.03, respectively). Neither section 291.016, subdivision 1, which defines MTE as the FTE with

[53] Comm'r's Mem. 6 (citing Minn. Stat. § 291.03, subd. 1).

[54] Comm'r's Mem. at 5-6, 12-13 (contending the Minnesota estate tax statute does not tax out-of-state property).

state-specific additions and subtractions, nor section 291.03, subdivision 1, which establishes an apportionment ratio based on the MGE divided by the FGE, can be read without reference to the other for purposes of determining the estate tax.[55] Taken alone, the MTE in section 291.016, subdivision 1, as applied to this appeal, plainly includes the South Dakota Property, which the Commissioner does not dispute.[56] But the Minnesota estate tax is not imposed on the MTE alone; rather, section 291.03, subdivision 1, imposes the estate tax on only the proportion that Minnesota situs property bears to the total gross estate. Minn. Stat. § 291.03, subd. 1 (requiring the product of the tax rate and the MTE to be "multiplied by a fraction, not greater than one, the numerator of which is the value of the Minnesota gross estate plus the value of gifts under section 291.016, subdivision 2, clause (3), with a Minnesota situs, and the denominator of which is the federal gross estate plus the value of gifts under section 291.016, subdivision 2, clause (3)").

The apportionment ratio plainly eliminates the value of the South Dakota Property from the MTE before applying the estate tax rate to the MTE. The MTE is only taxed in its proportion to the FTE–in other words, only to the extent of Minnesota situs property. *Maxwell*, 250 U.S. at 539, 40 S. Ct. at 6 (finding constitutional an inheritance tax where the measure of that tax is "the proportion which the specified local property bears to the entire estate of the decedent"); *Frick*, 268 U.S. at 495-96, 45 S. Ct. at 607 (distinguishing the unconstitutional taxation of the estate without regard to the physical situs of the property from the graduated rate in *Maxwell*). Moreover, "[i]t has long been the rule that States may refer to nontaxable out-of-State assets in setting their

[55] Indeed, both provisions were enacted at the same time and replaced the previous statutory scheme for computing the Minnesota estate tax. Act of Mar. 21, 2014, ch. 150, art. 3, §§ 4-5, 2014 Minn. Laws 34-38 (enacting new section 291.016; replacing former section 291.03, which computed the Minnesota estate tax based on the federal credit for state death taxes, with the current scheme). *See supra* section II.B for the history of the legislative enactments relevant to this case.

[56] Comm'r's Mem. 5-6 (acknowledging the MTE begins with the FTE).

rates for taxable assets." *McGinley v. Madigan*, 366 Ill. App. 3d 974, 989, 303 Ill. Dec. 522, 535, 851 N.E.2d 709, 722 (Ill. App. Ct. 2006) (citing numerous cases and rejecting the proposition that *Maxwell* is no longer good law).

Although the Estate contends the Minnesota estate tax scheme resulted in $91,160[57] in tax it only paid on account of property located outside the state,[58] the applicable statutes do not bear this interpretation. If all the Estate's corpus had a Minnesota situs, for example, the MTE would be the same, but the apportionment ratio would be 1.00. Under those circumstances, the tax under section 291.03, subdivision 1, would be $583,687.65. Conversely, if none of the Estate's corpus had a Minnesota situs (for example, supposing the entire Estate's corpus comprised real property located outside the state), the apportionment ratio would be zero and the resulting tax would be $0. It is not clear, and the Estate does not explain, how the Minnesota estate tax scheme imposes any Minnesota estate tax on the transfer of any tangible Estate property located outside the state.

2. Rational Relationship

Due process also requires that the amounts subject to the tax be "rationally related to the benefits conferred on the taxpayer by the State." *See Fielding*, 916 N.W.2d at 328 (concerning income from a nonresident trust). To satisfy this requirement, a tax must reflect a rational relationship between the amounts (such as income or property) attributed to the state for tax purposes and the "values connected with the taxing state." *See Luther v. Comm'r of Revenue*, 588 N.W.2d 502, 509 (Minn. 1999) (quoting *Moorman Mfg. Co. v. Bair*, 437 U.S. 267, 273, 98 S. Ct. 2340, 57 L.Ed.2d 197 (1978)).

[57] $91,160 = $91,134(tax) + $27(interest). Niemczyk Decl. ¶ 2 & Ex. A, at 6; Mason Decl. ¶ 3 & Ex. B, at 32.

[58] Appellants' Mem. 18-23.

The Estate contends "the only connection between the South Dakota property and Minnesota was that Ms. Anderson happened to move to Minnesota in her final years." [59] By way of illustration, the Estate states that "[w]hile 87.52% of the value of the property making up the estate at issue in *Treichler* had an in-state situs, nearly 85% of the value of the Trust's property here has a situs in South Dakota." [60] As described above, however, unlike in *Treichler*, where the Court found the tax unconstitutional as it was not apportioned in any way, *Treichler*, 338 U.S. at 254-55, 70 S. Ct. at 3 (noting that the tax in question is not apportioned to property within the state), the Minnesota estate tax scheme uses the apportionment ratio to ensure the estate tax does not apply to the South Dakota Property. Although the Estate contends the apportionment ratio "cannot save the tax," [61] that is exactly its function.[62] Accordingly, while approximately 84 percent of the value of the FGE may be due to the South Dakota Property, the apportionment ratio is approximately 16 percent, and Minnesota tax is only assessed on that basis, not on any of the 84 percent of the FGE that comprises the South Dakota Property.[63] Because the Minnesota estate tax

[59] Appellants' Mem. 24.

[60] Appellants' Mem. 25 (describing the estate tax "as applied to the Trust's South Dakota real estate" as "even worse than the taxes struck down in *Frick* and *Treichler*").

[61] Appellants' Mem. 24.

[62] The Estate incorrectly argues that in *Frick*, the Supreme Court invalidated a Pennsylvania inheritance tax that applied an apportionment ratio to the property of the estate as a whole. Appellants' Mem. 24-25 (citing *Frick*, 268 U.S. at 494-95, 45 S. Ct. at 606). Although several courts have noted the challenges in understanding *Frick* and *Treichler*, *see Fasken*, 19 Cal. 3d at 424-25, 138 Cal. Rptr. at 283-84, 563 P.2d at 839-40, and *Tharalson v. State Dep't of Revenue*, 281 Or. 9, 19-20, 573 P.2d 298, 303 (Or. 1978), the Pennsylvania statute at issue in *Frick* applied a tax rate of either two or five percent to the inheritance of all property, "whether the property be in that state or elsewhere." *Frick*, 268 U.S. at 487-88, 45 S. Ct. 604. Unlike the Minnesota estate tax scheme, Pennsylvania did not apportion that amount or otherwise exclude the value of out-of-state property, nor did it provide for the deduction or credit for taxes paid to other states on account of that property. *Id.*

[63] Minn. Stat. § 290.03, subd. 1 (MGE ÷ FGE).

determines what percentage of an estate is located in Minnesota, and then levies a tax only on the transfer of property with a situs in Minnesota, it is reasonably "founded upon the protection afforded" the estate in Minnesota. *Luther*, 588 N.W.2d at 509 (quoting *Maguire v. Trefry*, 253 U.S. 12, 14, 40 S. Ct. 417, 418, 64 L.Ed. 739 (1920)) (noting the party challenging constitutionality of a tax statute bears the burden of proving beyond a reasonable doubt that the tax associated with providing the "many services, benefits, and protections" received is not rationally related to receipt of those benefits). These protections include laws applicable to property located in Minnesota and the ability of the estate to marshal assets located in this state.

The Estate contends it would not have owed any tax if the MTE were not calculated with reference to the FTE (and not subject to the apportionment ratio).[64] That is, rather than using the FTE as the starting point for computing the MTE, the Estate asserts that Minnesota could have simply excluded from consideration the South Dakota Property from the definition of MTE.[65] This constitutes a different estate tax structure, which takes no property interests outside of Minnesota into account when defining the MTE or the MGE.[66] The Estate is not entitled to its desired tax scheme. *See, e.g.*, *Fasken*, 19 Cal. 3d at 429, 138 Cal. Rptr. at 286, 563 P.2d at 842 ("A different apportionment, even though it may exact a heavier tax in a given situation, would also be constitutionally permissible if in so apportioning the taxing state confines its jurisdictional reach within its own borders."). The legislature's power to tax is inherently broader and its exercise

[64] Appellants' Mem. 5 (suggesting "the South Dakota real estate was the but-for cause of the Trust paying *any* Minnesota estate tax," and that "[h]ad the estate tax been calculated based only on the Minnesota gross estate, which included only property with a situs in Minnesota … the trust would have paid *no* estate tax").

[65] Appellants' Mem. 23-27 (contending "the sole basis for the imposition of the estate tax against the entire Trust is South Dakota real property—which is the *only* real property in the trust").

[66] Appellants' Mem. 5-6, 32-33 (positing alternative tax schemes in which the value of non-Minnesota situs tangible property was not considered in any way).

more flexible than in other areas. *Reed v. Bjornson*, 191 Minn. 254, 263, 253 N.W. 102, 106 (1934); *Maland v. Comm'r of Revenue*, No. 3134, 1982 WL 1489, at *2 (Minn. T.C. June 10, 1982), *aff'd*, 331 N.W.2d 486 (Minn. 1983).[67]

B. Dormant Commerce Clause

A statute may violate the Commerce Clause even if it does not offend standards of due process. *Walgreens Specialty Pharmacy, LLC v. Comm'r of Revenue*, 916 N.W.2d 529, 537 (Minn. 2018); *Luther*, 588 N.W.2d at 510. "While the Due Process Clause is concerned with fairness in the form of notice to a taxpayer that she may be subject to a state tax, the Commerce Clause focuses on structural concerns about the effects of state regulation on the national economy." *Luther*, 588 N.W.2d at 510 (cleaned up). Nonetheless, "there are significant parallels" between due process and Commerce Clause analysis in the tax context. *Wayfair*, __ U.S. at __, 138 S. Ct. at 2093.

1. Application of the dormant Commerce Clause

The dormant Commerce Clause will not apply unless there is actual or prospective competition between entities in an identifiable market and state action that either expressly discriminates against or places an undue burden on interstate commerce. *Id.*; *Chapman*, 651 N.W.2d at 833-34. Because the Minnesota estate tax first determines what percentage of an estate is located in Minnesota, and then levies a tax only on the transfer of property with a situs in Minnesota, the court agrees with the Commissioner that the Minnesota estate tax scheme does not concern any activities in interstate commerce.[68]

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[67] Moreover, the Estate's desired statutory scheme is far beyond the jurisdiction of this court to enact.

[68] The Estate argued only that the Minnesota estate tax scheme violates the dormant Commerce Clause, Appellants' Mem. 27-33, and did not address whether the dormant Commerce Clause applies at all.

The transfer of Estate assets subject to tax in Minnesota is not "use the channels of interstate commerce" nor does it concern "activities having a substantial effect on interstate commerce," as the application of the apportionment ratio removes the South Dakota Property from the application of the tax rate. *See Chapman*, 651 N.W.2d at 833. Nor does it concern an instrumentality of, or things in, interstate commerce, for the same reasons. *Id.* The dormant Commerce Clause is intended to protect "markets and participants in markets," and not "state residents from their own state taxes." *Luther*, 588 N.W.2d 511.

Because the Commerce Clause is not implicated through application of the Minnesota estate tax scheme, it is not necessary to decide whether the Minnesota estate tax scheme, or any part of it, is constitutional under the Commerce Clause. *Id.* at 512. Regardless, however, the Estate's challenge to the Minnesota estate tax scheme, as applied, also does not violate the dormant Commerce Clause under any of the four prongs of the *Complete Auto* test, 430 U.S. at 279, 97 S. Ct. at 1079.[69]

2. Violation of the dormant Commerce Clause

a) Nexus

First, although the Estate contends Minnesota "acts to tax property with *no* nexus to Minnesota," [70] the apportionment ratio ensures that the tax rate is applied only to the extent of Minnesota situs property. *Maxwell*, 250 U.S. at 539, 40 S. Ct. at 6; *Frick*, 268 U.S. at 495-96, 45

[69] The Commissioner argued only that the Minnesota estate tax scheme does not implicate the dormant Commerce Clause, Comm'r's Mem. Law Opp'n Appellants' Mot. Summ. J. 8-11 (filed Aug. 24, 2022), and did not address whether it violates the Commerce Clause. *Id.* at 10 (arguing that it is not necessary to reach the issue of whether the Minnesota estate tax scheme as applied to the Estate is constitutional).

[70] Appellants' Mem. 27.

S. Ct. at 607. Accordingly, the Minnesota estate tax scheme only taxes property with a nexus to Minnesota, not the South Dakota Property in this case.

b) Fair apportionment

Second, the Estate argues the tax in this case is not fairly apportioned under the internal consistency test for the dormant Commerce Clause.[71] "Internal consistency is preserved when the imposition of a tax identical to the one in question by every other State would add no burden to interstate commerce that intrastate commerce would not also bear." *Oklahoma Tax Comm'n v. Jefferson Lines, Inc.*, 514 U.S. 175, 185, 115 S. Ct. 1331, 1338, 131 L.Ed.2d 261 (1995). The relevant inquiry under the internal consistency test is: "[w]hat would happen if all States did the same?" *Am. Trucking Ass'ns, Inc. v. Michigan Public Serv. Comm'n*, 545 U.S. 429, 437, 125 S. Ct. 2419, 2425, 162 L.Ed.2d 407 (2005).

The court disagrees with the Estate. As the supreme court described in *Walgreens*, a tax statute is internally consistent if every state were to adopt the same statutory language without adding any burden to interstate commerce–in other words, if "Minnesota does not seek more than its fair share of taxes from an interstate transaction." 916 N.W.2d at 538 (cleaned up). Accordingly, the internal consistency test asks what the effect on interstate commerce would be if Minnesota and South Dakota each were to adopt the Minnesota estate tax scheme.

The Minnesota estate tax scheme applied as follows with respect to the Estate:

MTE = $6,889,905$_{FTE}$ - $2,400,000$_{SUB}$ = $4,489,905

AR = 1,082,388$_{MGE}$ ÷ $6,932,388$_{FGE}$ = .1561

Tax imposed = $4,489,905$_{MTE}$ × .1561$_{AR}$ × .13$_{RATE}$ = $91,134.

[71] Appellants' Mem. 28-30 (citing *Walgreens*, 916 N.W.2d at 537). Although the Estate relies on the internal consistency test to argue the tax is not fairly apportioned, it also applies the test in the context of the discrimination prong of *Complete Auto*. *See* Appellants' Mem. 30-31.

If South Dakota were to adopt a tax scheme identical to that in Minnesota, its estate tax scheme would compute the South Dakota taxable estate ("SDTE") by reference to the FTE, Minn. Stat. § 291.016, and would deduct the same subtractions as provided in Minn. Stat. § 291.016, subd. 1(3). The hypothetical South Dakota apportionment ratio would be computed by including the South Dakota Property in the South Dakota gross estate ("SDGE"), and dividing that amount by the FGE. Minn. Stat. § 291.03, subd. 1. The tax imposed would be the product of the hypothetical SDTE, the hypothetical apportionment ratio, and the tax rate as follows:

SDTE = $6,889,905$_{FTE}$ - $2,400,000$_{SUB}$ = $4,489,905

AR = $5,850,000$_{SDGE}$ ÷ $6,932,388$_{FGE}$ = .8439

Tax imposed = $4,489,905$_{SDTE}$ × .8439$_{AR}$ × .13$_{RATE}$ = $492,554.

Because each of Minnesota and South Dakota would impose a (hypothetical) transfer tax only once on the basis of property located in each respective state, the Minnesota estate tax scheme is internally consistent and therefore fairly apportioned. *See Walgreens*, 916 N.W.2d at 538 (finding no violation of the Commerce Clause in the Legend Drug Tax where "[t]he taxable person's receipt of 'legend drugs for resale or use in Michigan' is mutually exclusive of the taxable person's receipt of 'legend drugs for resale or use in Minnesota' "). As further demonstration of this internal consistency, the sum of the Minnesota apportionment ratio and the hypothetical South Dakota apportionment ratio is 1.00; it does not impose a multiple tax burden on the same transfer in either state. *See Am. Trucking Ass'ns.*, 545 U.S. 429, 437-38, 125 S. Ct. at 2425 (noting that, under the internal consistency test, if all states applied tax identically and paid actual tax on that basis, the taxpayer would pay considerably more because it was engaged in local business with each state, not because of multiple taxation of the same event).

c) Discrimination

Third, the Estate argues the tax in this case discriminates against interstate commerce.[72] The Estate concedes the Minnesota estate tax scheme is not facially discriminatory,[73] and does not assert that the tax has a discriminatory intent. But it contends that, because neither the United States nor South Dakota imposed estate tax on the Trust (South Dakota having abolished the estate tax), the reinstatement of a South Dakota estate tax as applied to the transfer of the South Dakota Property would result in double taxation.[74]

Application of the internal consistency test demonstrates that no double taxation results from the Minnesota estate tax scheme. Rather, the Estate's Minnesota situs property, but not the South Dakota Property, is subject to estate tax in Minnesota, due to the application of the apportionment ratio. Conversely, the South Dakota Property, but not Minnesota situs property, would hypothetically be subject to estate tax in South Dakota for purposes of the internal consistency test only, again due to the application of the apportionment ratio. The internal consistency test is merely an exercise that "asks nothing about the degree of economic reality reflected by the tax, but simply looks to the structure of the tax at issue to see whether its identical application by every State in the Union would place interstate commerce at a disadvantage as compared with commerce intrastate." *Jefferson Lines*, 514 U.S. at 185, 115 S. Ct. at 1338. Again, because each state only would impose a (hypothetical) transfer tax once, on the basis of property located in each respective state, the Minnesota estate tax scheme does not unfairly burden or discriminate against interstate commerce. *See Am. Trucking Ass'ns*, 545 U.S. at 437-38.

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[72] Appellants' Mem. 30-32 (citing *Walgreens*, 916 N.W.2d at 537).

[73] Appellants' Mem. 31.

[74] Appellants' Mem. 31 (citing *Wynne*, 575 U.S. at 559, 135 S. Ct. at 1800).

d) Relationship to the State

Finally, the Estate argues that the estate tax as applied to the South Dakota Property bears no relation to any services, benefits, or protections provided by Minnesota.[75] As the apportionment ratio ensures the Minnesota estate is imposed only on Minnesota situs property, however, the estate tax is not applied to the South Dakota Property and does not violate the Commerce Clause on the basis of an insufficient relationship to that state.[76] "*Complete Auto*'s fourth criterion asks only that the measure of the tax be reasonably related to the taxpayer's presence or activities in the State" imposing the tax, *Jefferson Lines*, 514 U.S. at 200, 115 S. Ct. at 1346, not about its relationship to property in other states.

The Estate's motion for summary judgment is denied and the Commissioner's motion for summary judgment is granted.

W.S.T.

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[75] Appellants' Mem. 32-33.

[76] As support for the contention that the Minnesota estate tax scheme is not fairly related to the services offered by the state, the Estate offers a hypothetical in which

> Minnesota decedent C dies in 2018, leaving $2.5 million in Minnesota gross estate, as well as family farmland valued at $4.6 million with a situs that extends along the four corners of Arizona, Utah, Colorado, and New Mexico. Instead of paying $325,000 in estate taxes, C's estate pays $540,140.85.

Appellants' Mem. 5-6, 32. As discussed *supra* part III.A.2, however, the apportionment ratio eliminates the value of non-Minnesota situs property from the MTE before applying the estate tax rate to the MTE; accordingly, estate tax is not applied to the real property outside this state. This court cannot rewrite the Minnesota estate tax scheme to change its plain language.