

STATE OF MINNESOTA

TAX COURT

COUNTY OF ANOKA

REGULAR DIVISION

Menard, Inc.,

Petitioner,

vs.

County of Anoka,

Respondent.

**ORDER GRANTING MENARD'S
MOTION FOR *ERIE* TRANSFER**

File Nos: 02-CV-15-2043
02-CV-16-1997

Filed: March 27, 2018

This matter came before the Honorable Bradford S. Delapena, Chief Judge of the Minnesota Tax Court, on petitioner Menard, Inc.'s motion for an *Erie* transfer.

Robert A. Hill, Robert Hill Law, Ltd., and Christopher W. Madel and Aaron R. Thom, Madel, P.A., represent petitioner Menard, Inc.

Jason J. Stover and Christine Carney, Assistant County Attorneys, represent respondent Anoka County.

These consolidated cases concern the market value of petitioner Menard, Inc.'s store in Coon Rapids, Minnesota. Menard moves to transfer this tax court matter to the Anoka County District Court under the procedure first approved in *Erie Mining Co. v. Commissioner of Revenue*, 343 N.W.2d 261 (Minn. 1984). Respondent Anoka County opposes Menard's request. We grant Menard's motion, but defer initiation of the *Erie* transfer procedure until we have determined the market value of the subject property as of the assessment dates.

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

ORDER

1. Petitioner Menard, Inc.'s motion for an *Erie* transfer is granted.
2. Trial on valuation of the subject property as of January 2, 2014, and 2015, is bifurcated from trial on Menard's statutory and constitutional unequal assessment claims. Trial on valuation shall be scheduled once the case is trial-ready on March 26, 2018.
3. Initiation of the *Erie* transfer will be deferred until we have determined the market value of the subject property as of January 2, 2014, and 2015.
4. Trial on Menard's statutory and constitutional unequal assessment claims shall be scheduled upon completion of the *Erie* transfer.

IT IS SO ORDERED.

BY THE COURT,




Bradford S. Delapena, Chief Judge
MINNESOTA TAX COURT

DATED: March 27, 2018

MEMORANDUM

I. BACKGROUND

These consolidated cases concern the market value of petitioner Menard, Inc.'s store in Coon Rapids as of January 2, 2014, and 2015. In each case, Menard filed a two-count tax court petition "pursuant to Minnesota Statutes section 278.01."¹ Count I of each petition alleges that the subject property "was assessed at a valuation greater than the real, actual or market value." Count II of each petition alleges unequal assessment "in violation of Minn. CONST. Art. X, Section 1, and U.S. CONST. Amend. XIV." Menard filed its petition challenging the 2014 assessment on April 24, 2015, and its petition for the 2015 assessment on April 26, 2016.²

On August 31, 2016, we consolidated the cases³ and ordered that they be trial-ready approximately fourteen months later, on October 30, 2017.⁴ Our scheduling order set a discovery deadline of July 31, 2017, and required the exchange of written appraisal reports no later than August 28, 2017.⁵

On July 18, 2017, shortly before the close of discovery, the County filed a motion to compel,⁶ which Menard opposed.⁷ The County's reply included a request to extend the County's appraisal-exchange deadline "to give it a reasonable opportunity to evaluate whatever information Menard eventually produces."⁸ On August 9, 2017, recognizing that our resolution

¹ Pet., Docket No. 02-CV-15-2043 (filed Apr. 24, 2015); Pet., Docket No. 02-CV-16-1997 (filed Apr. 26, 2016).

² Pet., Docket No. 02-CV-15-2043; Pet., Docket No. 02-CV-16-1997.

³ Order on Menard's Mot. Consol. (filed Aug. 31, 2016).

⁴ Sched. Order ¶ 2 (filed Aug. 31, 2016).

⁵ Sched. Order ¶¶ 1, 5.

⁶ Resp't's Mot. Compel Disc. (filed July 18, 2017).

⁷ Pet'r's Mem. Opp'n Compel Disc. (filed July 27, 2017).

⁸ Resp't's Reply Mem. 7-8 (filed July 31, 2017).

of the County's motion to compel might "affect the quantity and character of information to which the County has access, and may thus affect the analysis of its expert appraiser," we filed an order continuing "all *unexpired* deadlines in our August 31, 2016 Scheduling Order."⁹ Although this continuance extended the appraisal-exchange deadline, it foreclosed further discovery, the deadline for which had expired on July 31, 2017.¹⁰ On September 26, 2017, we granted in its entirety the County's motion to compel, giving Menard 21 days to comply.¹¹ On December 1, 2017, we filed a Second Amended Scheduling Order requiring the parties to exchange written appraisal reports no later than January 22, 2018, and making the case trial-ready on March 26, 2018.¹²

On January 10, 2018, the County filed a motion *in limine* seeking to prevent seven named persons from testifying at trial because: (1) Menard had not timely disclosed them as expert witnesses; and (2) the named persons had no relevant lay testimony to provide.¹³ On January 25, 2018, we heard the County's motion, granting it in part on the record (so the parties could continue to prepare for trial).¹⁴

On February 7, 2018, the County filed a motion for discovery sanctions, requesting a range of remedies up to and including outright dismissal of Menard's petitions.¹⁵ The next day, February 8, 2018, Menard filed its motion for an *Erie* transfer.¹⁶

⁹ Am. Sched. Order (filed Aug. 9, 2017).

¹⁰ Sched. Order ¶¶ 1, 5.

¹¹ Order Granting Mot. Compel Disc. (filed Sept. 26, 2017).

¹² Second Am. Sched. Order ¶¶ 1, 3 (filed Dec. 1, 2017).

¹³ Resp't's Mot. Limine Exclude Witnesses (filed Jan. 10, 2018).

¹⁴ Tr. 20-22 (Jan. 25, 2018).

¹⁵ Resp't's Mot. Disc. Sanctions (filed Feb. 7, 2018).

Menard contends that because it raised “several significant constitutional issues”¹⁷ in its petitions, “all tax court proceedings *are to be immediately stayed* pending the district court’s decision whether to retain jurisdiction or transfer jurisdiction to the tax court.”¹⁸ Now asserting that its constitutional issues “predominate over its valuation claims,”¹⁹ Menard argues that “as a matter of both law and practicality, resolution of these constitutional issues *should precede resolution of the valuation claims*”²⁰

The County opposes Menard’s motion. Noting that Menard filed its petition challenging the 2014 assessment almost three years ago, but waited until shortly before trial to request an

¹⁶ Menard e-mailed the tax court administrator on January 24, 2018—the day before we heard the County’s motion *in limine* to exclude witnesses—to request a hearing date (during the week of March 12, 2018) for an *Erie* transfer motion. E-mail from Kari Alstad, Robert Hill Law, Ltd., to Lisa Pister, Tax Court Administrator (Jan. 24, 2018) (on file with the Minnesota Tax Court). Menard reiterated that request a week later. E-mail from Aaron R. Thom, Madel P.A. to Lisa Pister (Jan. 31, 2018) (on file with the Minnesota Tax Court). On February 1, 2018, the tax court administrator contacted the parties to indicate that the court typically grants *Erie* transfer motions as a matter of course and without a hearing, but asking whether Menard nevertheless wished to proceed by written motion. E-mail from Lisa Pister to Aaron R. Thom (Feb. 1, 2018) (on file with the Minnesota Tax Court). On February 2, 2018, Menard indicated that it preferred the latter course. E-mail from Aaron R. Thom to Lisa Pister (Feb. 2, 2018) (on file with the Minnesota Tax Court). Menard filed its motion on February 8, 2018. Pet’r’s Not. Mot. & Mot. *Erie* Shuffle (filed Feb. 8, 2018) (not specifying a hearing date). On February 9, 2018, the County e-mailed the court to request the opportunity to be heard. E-mail from Jason Stover to Lisa Pister (Feb. 9, 2018) (on file with the Minnesota Tax Court). By correspondence dated February 13, 2018, Menard requested an immediate *Erie* transfer without a hearing. Letter from Christopher W. Madel to Lisa Pister (Feb. 13, 2018) (on file with the Minnesota Tax Court). On February 14, 2018, during a telephonic conference with the parties, the court indicated that the matter must be set on for a hearing. Thus, on February 16, 2018, Menard filed an amended notice of motion and motion for *Erie* transfer. Pet’r’s Am. Not. Mot. & Mot. *Erie* Shuffle (filed Feb. 16, 2018). We heard the matter on March 2, 2018.

¹⁷ Pet’r’s Mem. Supp. Mot. *Erie* Shuffle 1 (filed Feb. 16, 2018).

¹⁸ Pet’r’s Mem. Supp. Mot. *Erie* Shuffle 3 (emphasis added) (citing *Erie Mining Co. v. Comm’r of Revenue*, 343 N.W.2d 261 (Minn. 1984)).

¹⁹ Pet’r’s Mem. Supp. Mot. *Erie* Shuffle 2.

²⁰ Pet’r’s Mem. Supp. Mot. *Erie* Shuffle 2 (emphasis added).

Erie transfer, the County argues that Menard is forum shopping.²¹ Specifically, the County argues that Menard now hopes: (1) to have all of its claims adjudicated by the district court (rather than the tax court);²² (2) to re-open discovery in that new forum;²³ (3) to evade our January 25, 2018 ruling granting in part the County’s motion to exclude witnesses from trial;²⁴ and (4) to deprive us of jurisdiction to rule on the County’s pending motion for discovery sanctions, including dismissal.²⁵ The County also observes that Menard’s unequal assessment claims cannot (as Menard asserts) be resolved *before* its valuation claims: “Menard’s unequal assessment claims necessarily require it to show evidence of the actual market value of its property.”²⁶ Because “the valuation issue over which this Court already has jurisdiction is ready for trial,” the County asks that we bifurcate the proceedings; determine the market value of the subject property as of the assessment dates; and only then—if Menard establishes values capable of supporting its unequal assessment claims—allow Menard to prosecute those claims.²⁷

By way of reply, Menard asserts that its claims “cannot be split in the manner requested by the County.”²⁸ More specifically, Menard contends that “if this Court were to rule against Menard on the valuation claims, these same valuation claims would have to be *reheard* by the

²¹ Resp’t’s Mem. Opp’n Erie Shuffle 1-5 (filed Feb. 23, 2018).

²² Resp’t’s Mem. Opp’n Erie Shuffle 1, 3, 9.

²³ Resp’t’s Mem. Opp’n Erie Shuffle 1, 4, 9-10.

²⁴ Resp’t’s Mem. Opp’n Erie Shuffle 4-5, 9.

²⁵ Resp’t’s Mem. Opp’n Erie Shuffle 3, 7-9.

²⁶ Resp’t’s Mem. Opp’n Erie Shuffle 5-6; *see also id.* at 6 (“Menard cannot proceed with its constitutional claim until this Court first determines the market value of its property.”).

²⁷ Resp’t’s Mem. Opp’n Erie Shuffle 5-6.

²⁸ Pet’r’s Reply Mem. 1 (filed Feb. 27, 2018).

district court because no further ruling of this Court can *affect* Menard's constitutional claims now that the constitutional issue has been raised.”²⁹

II. GOVERNING LAW

“The legislature created the tax court as an administrative agency of the executive branch.” *Wilson v. Comm’r of Revenue*, 619 N.W.2d 194, 199 (Minn. 2000). “An administrative agency’s jurisdiction ... is limited and is dependent entirely upon the statute under which it operates.” *Id.* (quoting *McKee v. Cty. of Ramsey*, 310 Minn. 192, 195, 245 N.W.2d 460, 462 (1976)). Chapter 271 specifies the tax court’s jurisdiction, and provides in pertinent part:

Except for an appeal to the supreme court or any other appeal allowed under this subdivision, the Tax Court shall be the sole, exclusive, and final authority for the hearing and determination of all questions of law and fact arising under the tax laws of the state, as defined in this subdivision, in those cases that have been appealed to the Tax Court and in any case that has been transferred by the district court to the Tax Court. The Tax Court shall have no jurisdiction in any case that does not arise under the tax laws of the state

Minn. Stat. § 271.01, subd. 5 (2016). As the foregoing statute makes plain, “[t]he tax court has limited jurisdiction and no original jurisdiction to hear constitutional matters.” *Wilson*, 619 N.W.2d at 199. The tax court can, however, *acquire* jurisdiction to decide constitutional issues necessary to the resolution of questions arising under the tax laws.

First, the tax court “has subject matter jurisdiction to hear constitutional claims if the case comes to it from the district court.” *Wilson*, 619 N.W.2d at 199 (citing *In re McCannel*, 301 N.W.2d 910, 919-20 (Minn. 1980)). Second, pursuant to a procedure first described in *Erie Mining Co. v. Commissioner of Revenue*, 343 N.W.2d 261 (Minn. 1984), the tax court can “gain

²⁹ Pet’r’s Reply Mem. 5 (emphasis added). Menard alleges for the first time in its reply memorandum that “the County stonewalled Menard in discovery.” *Id.* Because Menard has not filed a motion to compel or to re-open discovery, that allegation is not before us.

jurisdiction over constitutional matters even if a case originated in tax court.” *Wilson*, 619 N.W.2d at 199.

If the tax court stays proceedings and refers the case to the district court for determination of the constitutional issue, and if after declining to make a constitutional determination the district court refers the case back to the tax court, the tax court may then exercise jurisdiction over the constitutional issue.

Id. This transfer procedure is sometimes referred to as an “*Erie* shuffle.”

III. ANALYSIS

The critical thesis underlying Menard’s belated *Erie* transfer motion is this: “When a petitioner raises a constitutional challenge, all tax court proceedings *are to be immediately stayed* pending the district court’s decision whether to retain jurisdiction or transfer jurisdiction to the tax court.”³⁰ We conclude that this proposed rule of law lacks textual foundation, contravenes settled legal principles, and would unacceptably undermine the tax court’s ability to ensure the orderly administration of justice.

A. Menard’s Proposed Rule Lacks Textual Foundation

It is well settled that the tax court lacks original jurisdiction over constitutional issues. *See, e.g., Wilson*, 619 N.W.2d at 199. It is equally clear that the court can *acquire* jurisdiction to decide such issues only if a case is transferred to it by the district court (either after a case is originally filed in district court or by means of an *Erie* transfer). *See id.* (“In essence, the district court transfers its legal and equitable powers to the tax court, thereby giving the tax court jurisdiction to hear constitutional issues.”). No authority of which we are aware, however, holds that the tax court must *immediately* stay all proceedings at the moment a litigant raises a constitutional claim (or, as here, at the moment it belatedly moves for an *Erie* transfer). Menard

³⁰ Pet’r’s Mem. Supp. Mot. *Erie* Shuffle 3 (emphasis added).

acknowledges that it has cited no such authority.³¹ Consequently, we conclude that Menard’s proposed rule of law lacks textual support in controlling authority, and that we have discretion to determine *when* to initiate the *Erie* transfer procedure.³²

B. Menard’s Proposed Rule Contravenes Settled Law

In addition, Menard’s proposed rule contravenes settled legal principles. Although the tax court may not decide a constitutional issue without having acquired jurisdiction to do so, nothing prevents the court from resolving tax claims over which it has jurisdiction *before* reaching constitutional issues (and, if necessary, acquiring the authority to decide those issues). Indeed, courts avoid constitutional questions when other grounds for resolution are available. *See, e.g., State v. Bourke*, 718 N.W.2d 922, 925-26 (Minn. 2006) (addressing whether a nighttime search violated a state statute—rather than reaching the question of whether it violated the United States and Minnesota constitutions—“because ‘[o]ur general practice is to avoid a constitutional ruling if there is another basis on which a case can be decided.’ ” (quoting *Erlandson v. Kiffmeyer*, 659 N.W.2d 724, 732 n.7 (Minn. 2003))).

In this case, there is a statutory ground for resolution that would allow the court to avoid any constitutional issue. Menard’s petitions “pursuant to Minnesota Statutes section 278.01” each allege two claims: (1) overvaluation, and (2) unequal assessment.³³ Each claim is

³¹ Tr. 25-26 (Mar. 2, 2018).

³² Considering that Menard raised constitutional issues in its petitions, *see* Pet., Docket No. 02-CV-15-2043; Pet., Docket No. 02-CV-16-1997, Menard’s participation in this litigation for approximately three years without previously requesting an *Erie* transfer certainly undermines the credibility of its present assertion that an *Erie* transfer must be commenced the very moment a litigant raises a constitutional claim.

³³ Pet., Docket No. 02-CV-15-2043; Pet., Docket No. 02-CV-16-1997.

statutory,³⁴ although an unequal assessment claim has a constitutional dimension as well. *See, e.g., Chodek v. Cty. of Otter Tail*, No. 56-CV-13-1038 et al., 2017 WL 6813397, at *4 (Minn. T.C. Dec. 4, 2017) (noting that “[c]laims of unequal assessment, although statutory, are based on” the constitution). This court has jurisdiction over Menard’s *statutory* claims because each arises “under the tax laws of the state.” Minn. Stat. § 271.01, subd. 5.³⁵ When a statute implements a constitutional protection, a court should first adjudicate the matter under the statute in order to avoid—if possible—unnecessarily reaching a constitutional question. *Bourke*, 718 N.W.2d at 925-26; *see also State v. Bakken*, 871 N.W.2d 418, 423 (Minn. App. 2015) (noting that the Legislature “adopted section 609.035 to broaden the protection afforded by our constitutional provisions against double jeopardy” and analyzing the defendant’s challenge to multiple sentencing under the cited statute rather than the constitution), *aff’d*, 883 N.W.2d 264

³⁴ Section 278.01 provides that any qualifying person who claims that property “has been assessed at a valuation greater than its real or actual value” or “has been partially, unfairly, or unequally assessed” may “have the validity of the claim ... determined by the district court of the county in which the tax is levied or by the Tax Court” Minn. Stat. § 278.01, subd. 1(a) (2016).

³⁵ Section 271.01 provides, in pertinent part, that “laws dealing with property valuation, assessment or taxation of property for property tax purposes ... shall be considered tax laws of this state subject to the jurisdiction of the Tax Court.” Minn. Stat. § 271.01, subd. 5.

(Minn. 2016). Thus, under controlling precedent, we must adjudicate Menard's *statutory* unequal assessment claim *before* reaching any related constitutional issue.³⁶

We reject Menard's argument that we lack authority to adjudicate its chapter 278 overvaluation claims because our determinations would "affect" Menard's (constitutional) unequal assessment claims. In support of this argument, Menard cites authority that a tax court ruling concerning a claim of which the court lacks subject matter jurisdiction is not effective for purposes of *res judicata*.³⁷ Such authority is inapposite, however, because we *have* jurisdiction to adjudicate Menard's statutory overvaluation claim. Minn. Stat. § 271.01, subd. 5. In addition, Menard's theory would prevent us from adjudicating its statutory unequal assessment claim, which similarly requires a market-value determination, and of which we have jurisdiction. *Id.*

We likewise reject Menard's assertion that it has the right to have *all issues in this case*—both tax and constitutional—determined by the district court.³⁸ Chapter 278 allows a petitioner to elect—in the first instance—whether to file its property tax claims in district court or tax court. *See* Minn. Stat. § 278.01, subd. 1(a) (providing that a petitioner "may have the validity of

³⁶ We recently proceeded in just this manner, and thus avoided unnecessarily reaching a constitutional issue. *See Menard, Inc. v. Cty. of Clay*, No. 14-CV-12-1500 et al., 2016 WL 382891, at *1, *3 (Minn. T.C. Jan. 29, 2016) (amending previous order and granting Menard's "unopposed request for equalization relief with respect to the 2011 valuation"), *aff'd*, 886 N.W.2d 804 (Minn. 2016). In the Clay County matter, Menard pleaded a constitutional unequal assessment claim identical to those asserted in the present case. *Compare* Pet., Docket No. 14-CV-12-1500 (filed Apr. 26, 2012) (Clay County petition for the January 2, 2011 assessment) *with* Pet., Docket No. 02-CV-15-2043, *and* Pet., Docket No. 02-CV-16-1997 (petitions for the present actions). Menard, however, urged us to adjudicate its unequal assessment claim under section 278.01, subdivisions 1 and 4, which set forth a statutory cause of action and remedy for unequal assessment. *See* Pet'r's Mem. Supp. Amend. Findings 33-34, Docket No. 14-CV-12-1500 (filed Oct. 21, 2015). We did so, and thus had no need to reach Menard's constitutional unequal assessment claim. Notably, Menard never moved for an *Erie* transfer in the Clay County matter.

³⁷ Pet'r's Reply Mem. 4 (citing *Hauser v. Mealey*, 263 N.W.2d 803, 808 (Minn. 1978); *Wilson v. Comm'r of Revenue*, 619 N.W.2d 194, 200 (Minn. 2000)).

³⁸ Pet'r's Mem. Supp. Mot. *Erie* Shuffle 2, 4; Tr. 30-31 (Mar. 2, 2018).

[its] claim, defense, or objection determined by the district court of the county in which the tax is levied or by the Tax Court”). Menard elected to file its petition—raising both tax and constitutional issues—in tax court. As a result of Menard’s election, this court has exclusive authority to decide Menard’s tax issues.

This exclusive authority arises from the text of section 271.01, which provides in pertinent part:

Except for an appeal to the supreme court or any other appeal allowed under this subdivision, the Tax Court shall be the sole, exclusive, and final authority for the hearing and determination of all questions of law and fact arising under the tax laws of the state, as defined in this subdivision, in those cases that have been appealed to the Tax Court and in any case that has been transferred by the district court to the Tax Court.

Minn. Stat. § 271.01, subd. 5 (emphasis added). Menard’s theory would contravene the statute’s plain meaning by conferring upon the district court the authority to decide tax issues in cases “appealed to the Tax Court.” *Id.* In addition, by creating an exception to the tax court’s exclusive authority *beyond* those contained in the opening clause of the excerpted statutory text, Menard’s theory would violate the canon that “exceptions expressed in a law shall be construed to exclude all others.” Minn. Stat. § 645.19 (2016). Although a taxpayer may in the first instance elect to have its tax claims “determined by the district court ... or by the Tax Court,” Minn. Stat. § 278.01, subd. 1(a), the taxpayer may not—as Menard asserts—file its tax claims in tax court, *then* remove those tax claims to district court for determination.

The supreme court’s careful formulation in *Erie* verifies that, for appeals originally filed in tax court, an *Erie* transfer confers upon the district court only the authority to determine constitutional issues:

If any party raises a constitutional issue, the tax court should stay the proceedings and refer the constitutional question to the district court. The district court may either decide the constitutional issue or refer the matter back to the tax court

which will then have subject matter jurisdiction to rule initially on the constitutional issue.

Erie, 343 N.W.2d at 264 (emphasis added).

C. Menard's Proposed Rule Undermines the Administration of Justice

Finally, Menard's proposed rule of law mandating an *immediate* transfer whenever a litigant requests an *Erie* shuffle would unacceptably undermine the tax court's ability to ensure the orderly administration of justice. Indeed, this court has long been concerned that parties might misuse the *Erie* transfer procedure to accomplish improper objectives.

In *Murray v. Timmons*, No. C1-97-5261-R, 1999 WL 305224 (Minn. T.C. May 11, 1999), for example, plaintiffs filed tax claims in the district court which—pursuant to a stipulation—transferred the case here. *Id.*, 1999 WL 305224, at *1. Plaintiffs subsequently moved to transfer the case back to district court, purportedly to add constitutional claims that had been inadvertently “omitted.” *Id.* Defendants argued that plaintiffs were “using the mechanical process of the Erie Shuffle to get out of Tax Court and remain in District Court.” *Id.*

This court observed that “[i]n this case and its related cases in other counties, there have been serious allegations of forum shopping and judge shopping” and, accordingly, commented that it shared defendants’ concern that plaintiffs had “used various techniques to change forums over and over.” *Id.* The court declared: “Should Plaintiffs now use the Erie Shuffle process to circumvent that stipulated order [transferring the original district court case to the tax court], we would be hard pressed to explain the actions as anything but forum shopping.” *Id.* The court ultimately cautioned plaintiffs that they faced sanctions “should they continue to frustrate the integrity of the litigation process.” *Id.* Anoka County pointedly notes that Menard’s lead counsel in the present case was counsel for the plaintiffs in *Murray*.³⁹

³⁹ Resp’t’s Mem. Opp’n Erie Shuffle 2.

In the same vein, the taxpayer in *Byers v. Commissioner of Revenue*, No. 7408R, 2006 WL 995717 (Minn. T.C. Apr. 4, 2006), attempted to use the *Erie* transfer procedure to delay an imminent trial. *Id.*, 2006 WL 995717, at *2. Byers appealed a state income tax assessment and raised constitutional issues, thereby prompting the court *sua sponte* to complete an *Erie* transfer. *Id.* Thereafter, “[t]rial was scheduled and continued four times during September and October 2005,” but was ultimately commenced on October 26. *Id.* “At the beginning of trial, Appellant asked that the proceedings be stayed in light of her Motion to Amend,” which sought to add yet more constitutional issues. *Id.* Because the Commissioner did not oppose amendment, and because “the witnesses were there ready to proceed,” the tax court “allowed the Amendment but decided to proceed with trial on the factual issues as no new facts, only new legal issues, were raised in the Amendment.” *Id.* (citation omitted). Only after trial did the court complete a second *Erie* transfer, to ensure it had authority to decide the later-added constitutional issues. *Id.* at *2, *3.

We think it plain in this case that Menard is misusing the *Erie* transfer procedure to accomplish improper objectives: evading an impending trial and, possibly, obtaining a different forum for the resolution of all of its claims. Menard filed its petition for the 2014 assessment on April 24, 2015, and its petition for the 2015 assessment on April 26, 2016. Each petition raised the constitutional issues Menard now, belatedly, cites as the basis for its *Erie* transfer motion. On August 31, 2016, we consolidated the cases⁴⁰ and ordered that they be trial-ready approximately fourteen months later, on October 30, 2017.⁴¹ Menard’s failure to respond to the County’s written discovery,⁴² however, required us to defer that October 30, 2017 trial-ready

⁴⁰ Order on Menard’s Mot. Consol.

⁴¹ Sched. Order ¶ 2.

⁴² Order Granting Mot. Compel Disc.

date.⁴³ On December 1, 2017, after granting the County's motion to compel, we filed a Second Amended Scheduling Order making the case trial-ready as of March 26, 2018.⁴⁴

On February 8, 2018, however—after its witness list had been sharply limited (for non-disclosure) and facing a sanctions motions seeking (among other things) outright dismissal—Menard filed its motion demanding an *immediate Erie* transfer and asserting the right to have all of its claims determined by the district court.

We have already rejected Menard's arguments (1) that an *immediate* transfer is required, and (2) that Menard has the right to a district court determination of its tax claims. We therefore agree with the County that—because Menard's valuation claims are trial-ready as of March 26, 2018, and because valuation is a necessary ingredient of Menard's statutory and constitutional unequal assessment claims—trial on valuation should be bifurcated from trial on the unequal assessment claims. *See Am. Crystal Sugar Co. v. Cty. of Polk*, No. C1-05-574 et al., 2007 WL 4531027, at *1 (Minn. T.C. Nov. 28, 2007) (so bifurcating trial in that matter). Trial on valuation will be scheduled once the case is trial-ready. And although we grant Menard's motion for an *Erie* transfer, initiation of that procedure will be deferred until we have determined the subject property's market value as of the assessment dates. Even if this approach did not so strongly recommend itself on practical grounds, Menard's transparent attempt to procure for itself a stay of trial on the valuation issues, and possibly to engage in improper forum shopping, equally justify bifurcation and a discretionary deferral of the *Erie* transfer in this matter.

B.S.D.

⁴³ Am. Sched. Order.

⁴⁴ Second Am. Sched. Order.