

STATE OF MINNESOTA

IN SUPREME COURT

A19-0889

Tax Court

Enterprise Leasing Co. of Minnesota,

Relator,

vs.

County of Hennepin,

Respondent.

Lillehaug, J.  
Concurring in part, dissenting in part, Chutich,  
Anderson, Thissen, JJ.

Filed: January 15, 2020  
Office of Appellate Courts

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Gary A. Van Cleve, Timothy A. Rye, Larkin Hoffman Daly & Lindgren Ltd., Minneapolis, Minnesota, for relator.

Michael O. Freeman, Hennepin County Attorney, Sara L. Bruggeman, Assistant County Attorney, Minneapolis, Minnesota, for respondent.

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S Y L L A B U S

1. Concession fees paid for the use of airport property are subject to the mandatory-disclosure requirements of Minn. Stat. § 278.05, subd. 6 (2018).

2. Minnesota Statutes § 278.05, subd. 6(a), requires that the mandatory disclosures be made by the petitioner, not by a third party.

Affirmed.

## OPINION

LILLEHAUG, Justice.

In this appeal from the Minnesota Tax Court, the taxpayer, Enterprise Leasing Co. of Minnesota (Enterprise), challenges the tax court’s dismissal of its property tax petition for failure to disclose certain concession fee information as required by Minn. Stat. § 278.05, subd. 6 (2018). We conclude that the tax court did not err in dismissing the petition, and thus affirm.

The facts of this case are largely undisputed and, for the most part, the same as set forth in *Avis Budget Car Rental LLC v. County of Hennepin*, No. A19-0886, \_\_\_ N.W.2d \_\_\_ (Minn. Jan. 15, 2020). Thus, we provide here only a summary of the facts regarding Enterprise’s tax liability for the space it leases at the Minneapolis-Saint Paul International Airport, which is owned and operated by the Metropolitan Airports Commission (MAC).

Like Avis, Enterprise has entered into a General Terms and Conditions Lease Agreement and Supplemental Lease Agreements with MAC. Enterprise is also subject to a Temporary Lot F Parking Space Lease Agreement, which provides for the payment of “ground rent” for temporary parking space in Lot F at the airport. Enterprise pays MAC either “concession fees” or a “minimum annual guarantee,” whichever is greater.

MAC itself is exempt from property taxation under Minn. Stat. § 360.035 (2018). But lessees of property at the airport, like Enterprise, are assessed property tax “in the same amount and to the same extent as though the lessee or user was the owner of such property.” Minn. Stat. § 272.01, subd. 2(a) (2018); *see also Nw. Airlines, Inc. v. Cty. of Hennepin*, 632 N.W.2d 216, 220–21 (Minn. 2001) (concluding that tax provisions “shift the real

property tax liability to relator as a personal property tax in an amount MAC would have had to pay had MAC not been an exempt property owner”). Hennepin County therefore assessed the value of Enterprise’s property at the airport as of January 2, 2016, for taxes payable in 2017, which Enterprise then challenged in the Minnesota Tax Court.

During the proceeding in the tax court, the County provided Enterprise with a compliance checklist for the disclosures required by Minn. Stat. § 278.05, subd. 6. Enterprise represented in its disclosure that it had a lease agreement by which it was paying base rent on 933,508.25 square feet. It represented that its “current monthly rent” was \$635,875. This number included \$537,149 for “MAG 2014 Contract.” Although Enterprise disclosed base rent calculations that were based, in part, on the minimum annual guarantee, it did not disclose that, pursuant to the Lease Agreement, the fee it was obliged to pay was the higher of the concession fee—a percentage of gross revenue—and the minimum annual guarantee. Nor did it disclose whether the actual payments to MAC were based on the fee or the guarantee.

Hennepin County had, independently, received information from MAC regarding Enterprise’s sales revenue, percentage rent, minimum annual guarantee, and overall rent paid for 2014 and 2015. The County nonetheless moved to dismiss Enterprise’s petition for failure to comply with the mandatory-disclosure requirements of section 278.05, subdivision 6(a). The tax court granted this motion. Enterprise appealed, raising the same two issues presented by, and decided in, *Avis*.

For the reasons explained in *Avis*, the tax court did not err in dismissing Enterprise’s petition because the concession fees were rent, or at least income, and thus subject to the mandatory-disclosure requirements of Minn. Stat. § 278.05, subd. 6. Further, the disclosures required by this statute must be made by the petitioner, not a third party. Regardless of the information the County had from MAC, Enterprise did not disclose the information; thus, Enterprise did not comply with the requirements of the statute and its petition was properly dismissed. *See* Minn. Stat. § 278.05, subd. 6(b) (stating that the “[f]ailure to provide the information required” by the statute “shall result in the dismissal of the petition”).

We therefore affirm the decision of the tax court.

Affirmed.

## CONCURRENCE & DISSENT

CHUTICH, Justice (concurring in part, dissenting in part).

For the reasons stated in my concurrence and dissent in *Avis Budget Car Rental LLC v. County of Hennepin*, No. A19-0886, \_\_\_ N.W.2d \_\_\_ (Minn. Jan. 15, 2020), I also concur in part and dissent in part from the court's decision in this case.

ANDERSON, Justice (concurring in part, dissenting in part).

I join in the concurrence and dissent of Justice Chutich.

THISSEN, Justice (concurring in part, dissenting in part).

I join in the concurrence and dissent of Justice Chutich.