STATE OF MINNESOTA

IN SUPREME COURT

A22-1069

Tax Court | Gildea, C.J.
Took no part, Anderson, J.

Commissioner of Revenue,

Appellant,

vs.

CenterPoint Energy Resources Corp.,
dba CenterPoint Energy Minnesota Gas,
aka CenterPoint Energy Minnegasco,

Filed: June 14, 2023
Office of Appellate Courts

Respondent.

Keith Ellison, Attorney General, Kristine K. Nogosek, Jennifer A. Kitchak, Assistant Attorneys General, Saint Paul, Minnesota, for relator.

Paul B. Kilgore, Eric S. Johnson, Fryberger, Buchanan, Smith & Frederick, P.A., Duluth, Minnesota, for respondent.

S Y L L A B U S

1. The tax court did not err in rejecting some of the testimony of the Commissioner of Revenue's expert.

2. The tax court applied the proper burden of proof when evaluating the taxpayer's claim of external obsolescence and did not clearly err in determining that the subject property suffered external obsolescence.

Affirmed.

O P I N I O N

GILDEA, Chief Justice.

In a proceeding before the Minnesota Tax Court, Minnesota CenterPoint Energy Resources Corp., dba CenterPoint Energy Minnesota Gas, aka CenterPoint Energy Minnegasco (Minnegasco) challenged the Commissioner of Revenue's valuations of its natural gas distribution pipeline system for January 2, 2018, and January 2, 2019. The tax court reduced the Commissioner's valuations and ordered the Commissioner to recalculate Minnegasco's tax liability. The Commissioner appeals the tax court decision, challenging the court's income-capitalization approach and its cost approach. On the income-capitalization approach, the Commissioner argues that the court erred when it disregarded the capitalization-rate opinions of the Commissioner's expert. And on the cost approach, the Commissioner argues that the court erred in its external-obsolescence analysis by applying the wrong burden of proof and by determining that Minnegasco's property suffered external obsolescence. For the reasons that follow, we reject the Commissioner's arguments and affirm the tax court.

FACTS

Minnegasco owns and operates a natural gas distribution pipeline system in Minnesota. Minnegasco's pipeline system is taxed in Minnesota, and the Commissioner values and assesses pipeline systems for tax purposes. Minn. Stat. § 272.02, subd. 9(a) (2022); Minn. Stat. § 273.33, subd. 2 (2022). The Commissioner assessed Minnegasco's pipeline system property as of January 2, 2018, and January 2, 2019.

Minnegasco challenged the Commissioner's assessments for both years. The tax court consolidated the challenges and heard them in a 3-day trial. The parties offered conflicting expert testimony in support of their respective positions. In support of its position that the Commissioner's valuations were excessive, Minnegasco presented expert appraisals and testimony from Thomas K. Tegarden. The Commissioner relied on the expert opinion and reports of James B. Heaton (Heaton), to support higher valuations of Minnegasco's pipeline system than the amounts originally calculated in the Commissioner's 2018 and 2019 valuations. Minnegasco also offered a financial expert to review Heaton's valuations. In response to Minnegasco's experts, the Commissioner presented two other experts.

After considering the evidence, the tax court conducted its own independent valuations and issued a thorough order specifying its findings of fact and conclusions of law. The court's valuations differed from both parties' expert reports, but ultimately, the court agreed with Minnegasco that the Commissioner's 2018 and 2019 valuations must be reduced. In valuing Minnegasco's property, the court used two of the three approaches to valuing property, the income-capitalization and cost approaches.[1]

In the tax court's income-capitalization analysis, the court noted concerns with the methodologies that Heaton advocated for and ultimately rejected parts of his testimony and conclusions. Specifically, the court noted Heaton's attempts to distance himself from the

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[1] The Commissioner does not challenge the tax court's decision to not use the third approach, market comparison. *See Equitable Life Assurance Soc'y of U.S. v. County of Ramsey*, 530 N.W.2d 544, 552 (Minn. 1995) (listing the market-comparison approach as one of three basic approaches).

appraisal profession and his use of only one model without any check for one of the inputs. The court also referenced Heaton's criticism of certain models that the Commissioner used and relied on for the initial assessments of Minnegasco's pipeline system.

In the tax court's cost approach, the court deducted for external obsolescence over the Commissioner's objection. The court grounded its external-obsolescence conclusion in the testimony of Minnegasco's experts.

Ultimately, the tax court ordered the Commissioner to reduce the unit values of Minnegasco's property and recalculate Minnegasco's taxable value for both years. *CenterPoint Energy Res. Corp. v. Comm'r of Revenue*, Nos. 9252-R, 9358-R, 2022 WL 995851, at *1–2 (Minn. T.C. Mar. 16, 2022). The following table summarizes the Commissioner's original valuations, the valuations proposed by the parties' experts, and the court's market value determination, for each year:

Taxable Year	Commissioner's Assessment	Tegarden (Minnegasco)	Heaton (Commissioner)	Tax Court
2018	$1,078,779,200	$835,000,000	$1,154,693,655	$932,396,000
2019	$1,075,887,400	$780,000,000	$1,337,170,725	$874,422,000

See id. at *1–3.

The Commissioner filed a timely petition for a writ of certiorari in our court.

ANALYSIS

The Commissioner challenges the tax court's valuations on appeal. The Commissioner objects to both the court's income-capitalization approach and its cost approach. In challenging the court's income-capitalization approach, the Commissioner

argues that the court erred by disregarding the capitalization-rate opinions of the Commissioner's expert. And in challenging the court's cost approach, the Commissioner argues that the court erred as a matter of law by shifting the burden to the Commissioner to contradict Minnegasco's prima facie showing of external obsolescence and clearly erred in its external-obsolescence conclusions.

In reviewing a tax court's valuation of a property, "we defer to the tax court's determination unless it clearly misvalued the property or failed to explain its reasoning." *Minn. Energy Res. Corp. v. Comm'r of Revenue* (*MERC I*), 886 N.W.2d 786, 792 (Minn. 2016). Our review is limited and deferential; we consider "whether the tax court lacked subject matter jurisdiction, whether the tax court's decision is supported by evidence in the record, and whether the tax court made an error of law." *Hohmann v. Comm'r of Revenue*, 781 N.W.2d 156, 157 (Minn. 2010). "We review the tax court's market value determinations for clear error and its legal determinations de novo." *Enbridge Energy, Ltd. P'ship v. Comm'r of Revenue* (*Enbridge II*), 945 N.W.2d 859, 864 (Minn. 2020).

Minnesota Rules 8100.0100 to 8100.0600 (2021) are relevant to the valuation decisions at issue here. The administrative rules outline a four-step process for valuing utility company property and allocating taxes. *Comm'r of Revenue v. Enbridge Energy, LP* (*Enbridge I*), 923 N.W.2d 17, 21 (Minn. 2019). The process begins with the Commissioner "establish[ing] an estimate of the unit value" of the subject property. Minn. R. 8100.0200. Steps two through four involve allocating and apportioning the estimate of the unit value. *See id.* Rule 8100.0200 also includes a discretionary paragraph that outlines

the Commissioner's "right to exercise discretion whenever the circumstances of a valuation estimate dictate the need for it."

Here, the parties focus on the Commissioner's discretion and step one—establishing the estimate of the unit value. "Unit value" is "the value of the entire system plant of a utility company taken as a whole without any regard to the value of its component parts." Minn. R. 8100.0100, subp. 16.

In determining the unit value, the cost and income-capitalization approaches provided in Rule 8100.0300 are used to determine the cost and income indicators of value. *Enbridge II*, 945 N.W.2d at 865. These indicators of value are then weighted to calculate the unit value. Minn. R. 8100.0300, subp. 5. The default weightings of the indicators of value place equal weight on the cost and income indicators (50 percent each). *Id.*

With this background in mind, our analysis begins with the tax court's income-capitalization approach and then we turn to the court's cost approach.

I.

Under the income-capitalization approach, the value of income-producing property is determined "by capitalizing the income the property is expected to generate over a specific period of time at a specified capitalization yield rate." *Cont'l Retail, LLC v. County of Hennepin*, 801 N.W.2d 395, 402 (Minn. 2011). In this approach, the utility company's "net income is capitalized by applying a capitalization rate that is computed by using the band of investment method." Minn. R. 8100.0300, subp. 4. The band of investment method considers various factors listed in Rule 8100.0300, subpart 4. As relevant here, the Commissioner calculates capitalization rates annually for electric companies, gas

distribution companies, natural gas transmission systems, and fluid pipeline companies. *Id.* The Commissioner produces these rates and methodologies in capitalization rate studies and uses these studies to determine unit valuations of utility, pipeline, and railroad operating property in Minnesota. The capitalization rates that the Commissioner used in the 2018 and 2019 initial assessments of Minnegasco's pipeline system can be found in the capitalization rate studies for 2018 and 2019. The studies include a general discussion of the financial models used to calculate the band of investment method.

At trial, both Minnegasco's expert, Tegarden, and the Commissioner's expert, Heaton, advocated for capitalization rates that differed from the capitalization rates the Commissioner published in his annual rate studies. Although Tegarden and Heaton both used the band of investment method required by Rule 8100.0300, they disagreed on certain aspects of determining capitalization rates. Specifically, the parties' experts disagreed on selected capital structures, the appropriate models to derive the cost of equity, and the correct beta[2] to use for one of those models. For capital structures, Tegarden and the Commissioner's initial assessments considered long-term debt, but Heaton considered short-term debt. In determining the cost of equity, Tegarden and the Commissioner's initial assessments relied on multiple models. In comparison, Heaton relied on only one model. For the comparable 2019 beta figures, Tegarden's figure aligned more closely with the Commissioner's initial assessments than Heaton's figure aligned with the Commissioner's initial assessments.

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[2] "Beta" is "the measure of a stock's volatility compared with a measurement of the overall market." Minn. R. 8100.0100, subp. 3a.

After setting out the calculations and positions of the parties' experts, the tax court largely rejected Heaton's opinion and adhered more closely to Tegarden's analysis. The Commissioner argues that the court committed legal error in its income-capitalization approach because (1) the Commissioner's initial assessments are irrelevant for determining market value de novo and (2) the administrative rules do not prevent the Commissioner from presenting expert testimony that conflicts with the Commissioner's initial assessments. We address each argument in turn.

A.

Because the tax court is to value the property de novo, the Commissioner argues that the court erred by relying in part on the Commissioner's initial assessments of Minnegasco's pipeline system. As the Commissioner notes, the court relied on the fact that Heaton advocated for different capitalization rates than the Commissioner used in his initial assessments in rejecting Heaton's opinion. The Commissioner contends that reliance on the initial assessments is not consistent with de novo review.

The tax court must review each appeal de novo, and the Commissioner's assessment order is presumed to be valid. Minn. Stat. § 271.06, subd. 6 (2022); *Conga Corp. v. Comm'r of Revenue*, 868 N.W.2d 41, 53 (Minn. 2015). If the taxpayer offers sufficient evidence to overcome the prima facie validity of the assessment, the tax court must independently determine the market value of the property. *S. Minn. Beet Sugar Coop v. County of Renville*, 737 N.W.2d 545, 559 (Minn. 2007). Nevertheless, the tax court "may still determine that the value of the property is equal to the estimated market value reflected

in the assessment, but such a conclusion requires independent support in the record evidence." *Id.*

In reviewing the Commissioner's valuations, we have noted that "the assessed value of property for tax purposes is not relevant to the question of that same property's market value." *EOP-Nicollet Mall, L.L.C. v. County of Hennepin*, 723 N.W.2d 270, 283 (Minn. 2006). The Commissioner relies on our statement in *EOP-Nicollet* to argue that the Commissioner's initial assessments are irrelevant for de novo review of market value. *EOP-Nicollet* does not compel the conclusion that the tax court erred here.

In *EOP-Nicollet*, the tax court rejected evidence of the county's assessed value for property tax purposes of comparable properties used in the county's expert appraisal analysis. *Id.* at 282–83. We affirmed and held that the court's ruling was "in accord with the rule 'that the assessed value of property for tax purposes, in and of itself, is generally not admissible as direct evidence of value for purposes other than taxation' of that property." *Id.* at 283 (quoting *Lienemann v. City of Omaha*, 215 N.W.2d 893, 894 (Neb. 1974)).

EOP-Nicollet is distinguishable. The tax court here did not solely rely on the Commissioner's initial assessments to determine the market value of Minnegasco's property; rather, the court noted the assessments in evaluating the reliability of the experts' methodologies and valuations. And the tax court relied on the fact that the methods, analysis, and conclusions in the Commissioner's initial assessments differed from the approach the Commissioner's trial expert used as one of the reasons the court rejected the opinion of the Commissioner's trial expert.

Our review of the record shows that the court carefully considered the reports of each expert and undertook a detailed analysis in fulfilling the court's duty of valuing the subject property. *Cf. S. Minn. Beet Sugar Coop*, 737 N.W.2d at 559–60 (remanding to the tax court because the tax court refused to value the property). For these reasons, we conclude that the court did not err in the way the court used the Commissioner's initial assessments when evaluating the totality of the evidence and making its independent valuations.

B.

The Commissioner also argues that the tax court erred as a matter of law when it interpreted the discretionary paragraph in Rule 8100.0200 as constraining the court from considering expert opinions that differ from the Commissioner's initial assessments. Minnegasco contends that the court did not create a new legal rule but rather acted within its discretion in considering the conflicting expert opinions. We agree with Minnegasco.

The tax court questioned if the Commissioner could "*rely on J.B. Heaton's opinions* to effectively repudiate the results of [the Commissioner's studies], which furnished the yield rates the Commissioner applied to all similarly situated taxpayers" in the Commissioner's assessments. *CenterPoint Energy*, 2022 WL 995851, at *13 (footnote omitted). The court reasoned that the reliance on testimony that conflicted with the studies "undermines 'predictability and stability in estimations of market value,' and runs contrary to [the Commissioner's] duty 'to ensure that utility valuation is easily understood.' " *Id.* at *14 (quoting Minn. R. 8100.0200). The court explained that "Minnegasco's appeal of the Commissioner's assessments should not subject it to capitalization rates derived *in a*

different manner than those the Commissioner applied to similarly situated taxpayers—particularly considering that the Commissioner still has not changed his own administrative practice concerning how to derive rates." *Id.* "Based on all the evidence in the record—and particularly the Commissioner's consistent and continued use of Value Line five-year adjusted betas," the court rejected Heaton's testimony. *Id.*

There is language in the decision that supports the Commissioner's assertion that the tax court was influenced by Rule 8100.0200. But our review of the decision convinces us that the court did not make its determinations based on a legal conclusion. Rather, the court found Heaton's testimony unreliable when assessed against other evidence in the record.

For example, the tax court rejected certain aspects of Heaton's opinions regarding the type of debt percentage to be used in calculating a capital structure, the type of models needed to determine the cost of equity, and the proper beta version, because the court was not persuaded by Heaton's testimony. The court was concerned that Heaton relied on only one model in his calculation of cost equity. The court pointed out that "[o]nly Dr. J.B. Heaton—who took pains to emphasize that he is *not* a certified appraiser and is *not* bound by the professional standards governing appraisers—was unconcerned about using a single model without any check." *Id.* at *10 (footnote omitted). The court also acknowledged Tegarden's opinion about the benefits of using multiple models. *Id.* Moreover, the court made its determinations based on all the evidence in the record.

To be sure, the tax court noted when the opinions of Heaton and the Commissioner's initial assessments conflicted.[3] The court explained the differences in the methodologies used in the valuations when analyzing the type of debt percentage used in calculating a capital structure, the type of models needed to determine the cost of equity, and the proper beta version. But the court carefully considered the reports and testimony of both sides' experts, along with the strengths and weaknesses of different methodologies, and ultimately decided to reject the inputs the court deemed unreliable.

In sum, the tax court was presented with one expert, Tegarden, who was a certified general appraiser in Minnesota holding appraisal designations from the Appraisal Institute and International Association of Assessing Officers, and who testified that he has been involved in the appraisal or assessment of natural gas utility properties for over 50 years. Meanwhile, Heaton went to great lengths to distance himself from the appraisal profession. Presented with competing expert reports and opinions, the court was in the best position to weigh the conflicting opinions regarding the specific methodology to use in its income-capitalization approach. "We afford the tax court 'broad discretion' to rely upon or

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[3] In his briefs, the Commissioner also argues that the tax court erred by relying on the Commissioner's 2021 capitalization rate study that was not introduced as evidence at trial. The Commissioner prepared the study so he cannot claim to be unaware of it. And the Commissioner does not argue that the court could not have taken judicial notice of the 2021 study, but only that the court did not follow the appropriate process for taking judicial notice. *See* Minn. R. Evid. 201 (discussing judicial notice). Specifically, the Commissioner argues that "the tax court failed to give the parties the required notice and opportunity to be heard." The rule provides, however, that a party may request to be heard on the issue even "after judicial notice has been taken." Minn. R. Evid. 201(e). The Commissioner did not request an opportunity to be heard in the tax court on the court's reliance on the 2021 study, and his objection therefore is forfeited.

disregard the evidence presented at trial." *Court Park Co. v. County of Hennepin*, 907 N.W.2d 641, 645 (Minn. 2018) (quoting *Menard, Inc. v. County of Clay*, 886 N.W.2d 804, 813 (Minn. 2016)). Given the tax court's broad discretion in evaluating the reports and testimony of experts at trial, we cannot say that the tax court clearly erred when it decided to adopt the expert opinion of Tegarden over Heaton's opinion. *See Macy's Retail Holdings, Inc. v. County of Hennepin*, 899 N.W.2d 451, 457–58 (Minn. 2017) (deferring to the fact-finder, whose role is to weigh the evidence and assess the credibility of the witnesses); *MERC I*, 886 N.W.2d at 794 ("[T]he tax court, as the finder of fact, was entitled to resolve the conflicts in the record and determine how much weight to give each expert report.").[4]

II.

The Commissioner also contests the tax court's cost approach by arguing that the court erred by finding external obsolescence. For the cost approach, the cost factor is "the original cost less depreciation of the system plant," plus other measurements. Minn. R. 8100.0300, subp. 3A. The use of additional indicators of value, including obsolescence, is allowed under Chapter 8100 when calculating the unit value. Minn. R. 8100.0300, subp. 4a. External obsolescence is "the measurement of a property's loss in value as a

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[4] In asserting that the tax court announced a new legal rule that interprets Rule 8100.0200 as preventing the court from considering expert opinions that differ from the Commissioner's initial assessment, the Commissioner argues the rule interferes with the Commissioner's trial strategy, hinders expert witnesses, and protects utility taxpayers from the risk that the tax court may increase the value of their property on appeal. Because we determine the tax court did not create a legal rule and did not abuse its discretion, we do not discuss these potential effects of such a rule.

result of factors beyond the physical boundaries of the property and beyond the owner's control." *Guardian Energy, LLC v. County of Waseca*, 868 N.W.2d 253, 262–63 (Minn. 2015). It is a form of depreciation "that can decrease the market value of a property under the cost approach." *MERC I*, 886 N.W.2d at 797.

The experts' opinions differed on whether the subject property suffered external obsolescence. Heaton did not include external obsolescence in his calculations, but Minnegasco's expert, Tegarden, determined the property suffered external obsolescence in 2018 and 2019. Thus, in determining his cost-approach values, Tegarden calculated the original cost less depreciation of Minnegasco's pipeline system. He then reduced these values by external obsolescence. Tegarden's external-obsolescence determination was due to Minnegasco's public utility status. Minnegasco is rate-regulated by the Minnesota Public Utilities Commission (MPUC). According to Minnegasco's evidence, the MPUC limits Minnegasco's ability to earn a return on a portion of its property. Tegarden opined that this limitation is external obsolescence. Specifically, Tegarden determined that because the rate regulators "will not allow [Minnegasco] to earn a return on [certain investments], an increasing portion of [Minnegasco]'s net book value is generating no net operating income—thus external obsolescence significantly affects the property's market value." The tax court accepted Tegarden's analysis and determined external-obsolescence estimates of $214,742,218 for Minnegasco's 2018 assessment and $449,586,965 for its 2019 assessment. *CenterPoint Energy*, 2022 WL 995851, at *21.

On appeal, the Commissioner first argues that the tax court erred as a matter of law by applying the wrong burden of proof, specifically that the court shifted the burden to the

Commissioner to disprove Minnegasco's prima facie showing of external obsolescence. Second, the Commissioner argues that even if the court did not apply the wrong burden of proof, its external-obsolescence conclusions were clearly erroneous. We address each argument in turn.

A.

In *MERC I*, we analyzed the standard for proving external obsolescence, held that MERC had made a prima facie showing of external obsolescence, and remanded to the tax court. *Minn. Energy Res. Corp. v. Comm'r of Revenue* (*MERC I*), 886 N.W.2d 786, 798–99 (Minn. 2016) (concluding that the tax court applied the wrong legal standard). When the case returned to us, we clarified the standard, stating: "Even if MERC presented a prima facie case before the tax court, this showing did not shift to the Commissioner the burden to prove the *absence* of external obsolescence. Rather, even with a prima facie showing, MERC retained the burden of persuasion to show the *presence* of external obsolescence." *Minn. Energy Res. Corp. v. Comm'r of Revenue* (*MERC II*), 909 N.W.2d 569, 573 (Minn. 2018). We have determined therefore that "[a]fter a taxpayer presents a prima facie case demonstrating that the property's value has been impacted by external obsolescence, the taxpayer retains the burden of proving, by a preponderance of the evidence, the amount of that external obsolescence." *Enbridge Energy, Ltd. P'ship v. Comm'r of Revenue* (*Enbridge II*), 945 N.W.2d 859, 868–69 (Minn. 2020).

Here, the tax court concluded that "Minnegasco presented evidence making a prima facie showing" of external obsolescence. *CenterPoint Energy*, 2022 WL 995851, at *20 (citing *Enbridge II*, 395 N.W.2d at 868–69). The Commissioner does not contest the legal

standard applied by the court in making that threshold determination. Rather, the Commissioner argues that the court shifted the burden of proof to the Commissioner to contradict the existence of external obsolescence.[5] The Commissioner emphasizes the court's statement that "the Commissioner presented no credible evidence to contradict Minnegasco's prima facie showing," *CenterPoint Energy*, 2022 WL 995851, at *20, and argues that statement shows that the court shifted the burden to the Commissioner. We disagree.

The Commissioner fails to view the tax court's statement in its proper context. In the sentence the Commissioner relies on, the court determined that Minnegasco had conclusively demonstrated that "rate-regulated utilities may not earn a return on [a] portion of their net plant" and that "Minnegasco proved by a preponderance of the evidence that the regulatory treatment of rate-regulated utilities causes external obsolescence." *CenterPoint* Energy, 2022 WL 995851, at *20. In making its determination, the court cited to the proper precedent and held Minnegasco to its burden of proof. *Id.* (citing *Enbridge II*, 945 N.W.2d at 868–69). The court confirmed that it applied the proper burden of proof by specifically stating in the burden of proof section of the court's order that "Minnegasco presented sufficient evidence through the testimony of its appraiser, Mr. Tegarden, to overcome prima facie validity. *We therefore determine market value based on a*

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[5] The Commissioner also argues the tax court erred by considering a 2020 tax court decision to be binding precedent. *See CenterPoint Energy*, 2022 WL 995851, at *15–16 (citing *CenterPoint Energy Res. Corp. v. Comm'r of Revenue*, No. 9125-R, 2020 WL 4045620, at *20–22 (Minn. T.C. July 15, 2020)). Whatever reliance the tax court may have placed on the 2020 *CenterPoint Energy* decision is not material to our review because the tax court's decision in that case is not binding on our court.

preponderance of the evidence." *Id.* at *5 (emphasis added) (citing *MERC II*, 909 N.W.2d at 573). Considering the entire decision, we conclude that it is clear the court applied the correct burden of proof when evaluating external obsolescence.

B.

We turn next to the Commissioner's argument that the tax court's external-obsolescence determinations are clearly erroneous. The court determined that Minnegasco proved—by a preponderance of the evidence—that the regulatory treatment of rate-regulated utilities causes external obsolescence and thus included an input for external obsolescence in its cost approach. *CenterPoint Energy*, 2022 WL 995851, at *20–21. The Commissioner makes several points in arguing that the court clearly erred, including that only the Commissioner presented testimony at trial from experts in the field of rate regulation, that the court's conclusions are inconsistent with the regulatory requirement that the MPUC set just and reasonable rates, that rate regulation preserves rather than destroys value, and that the court's conclusions are unsupported by the evidence.

When reviewing the tax court's valuations for clear error, we will not disturb the decision unless "the decision is not reasonably supported by the evidence as a whole." *Equitable Life Assurance Soc'y of U.S. v. County of Ramsey*, 530 N.W.2d 544, 552 (Minn. 1995). The decision is clearly erroneous only when we are "left with a definite and firm conviction that a mistake has been committed." *Id.* (citations omitted) (internal quotation marks omitted).

External obsolescence is "a loss in value caused by outside influences that is 'almost always incurable.' " *MERC II*, 909 N.W.2d at 571 n.2 (quoting *MERC I*, 886 N.W.2d at

797). Calculating external obsolescence by "[d]irect comparison of similar properties with and without external obsolescence can be the most persuasive measurement of the effect of negative externalities on value" if there is enough data. *The Appraisal of Real Estate* 594 (15th ed. 2020); *see also MERC I*, 886 N.W.2d at 799. But external obsolescence also may be measured by the capitalization of income lost due to the effect of the externality. *The Appraisal of Real Estate*, *supra*, at 594; *see also Enbridge II*, 945 N.W.2d at 869. Minnegasco's expert, Tegarden, and the tax court used the "capitalization-of-lost-income method" to calculate the external obsolescence caused by the MPUC's regulatory treatment of certain Minnegasco property. *CenterPoint Energy*, 2022 WL 995851, at *21.

Minnegasco presented two experts to support its external-obsolescence argument. Minnegasco primarily relied upon certified general appraiser Tegarden who testified that he has extensive experience in the appraisal or assessment of natural gas utility properties. Although Tegarden testified to his expertise in appraising public utility properties, he acknowledged that he does not hold himself out to be an expert in utility ratemaking issues related to cost of capital in rate cases. Tegarden's report included excerpts from three books on property valuation that provided support for his opinion that rate regulation can be a source of external obsolescence. Minnegasco also called its financial expert, who testified that he has prepared about 100 expert reports involving the valuation of utility property. Minnegasco's financial expert provided a report and testimony criticizing Heaton's opinion for not including external obsolescence in his report.

Minnegasco also offered testimony from a director of regulatory portfolio management and an income tax department manager. These witnesses explained how the

MPUC's regulations reduce the property on which a utility like Minnegasco may earn a return on investment.

For his part, the Commissioner offered experts who acknowledged the MPUC regulations but explained that the regulations do not negatively impact the market value of Minnegasco's property. One of the Commissioner's experts testified that rate regulation increases value rather than decreases the value. The Commissioner argued that concluding otherwise would be contrary to United States Supreme Court precedent that requires the MPUC to set just and reasonable rates. *See Fed. Power Comm'n v. Hope Nat. Gas Co.*, 320 U.S. 591, 600–03 (1944) (discussing the "just and reasonable" rate principle in the Natural Gas Act). Additionally, the Commissioner's experts presented analyses showing that Minnegasco is not underperforming in a way that reduces market value and that rate-regulated assets do not sell for less than the assets' net book value on the open market.

Ultimately, after considering all the expert testimony and other evidence regarding external obsolescence, the tax court relied upon Minnegasco's experts in concluding that the regulatory treatment causes external obsolescence. *CenterPoint Energy*, 2022 WL 99581, at *20. The court was simply unpersuaded by the Commissioner's experts.

Upon review of a tax court decision, our role "is not to reweigh the evidence, and it is firmly within the tax court's province, as the factfinder, to weigh the evidence and assess the credibility of the witnesses." *Macy's Retail Holdings, Inc. v. County of Hennepin*, 899 N.W.2d 451, 457 (Minn. 2017). We recognize that "property valuation is an 'inexact' science and therefore we will 'defer to the decision of the tax court unless the tax court has either clearly overvalued or undervalued the subject property, or has completely failed to

explain its reasoning.' " *Id.* at 455 (quoting *Equitable Life*, 530 N.W.2d at 552). In light of these principles, we affirm the tax court.

Here, Minnegasco presented two expert witnesses who testified that the regulatory treatment caused external obsolescence. With evidence and expert testimony in the record supporting the tax court's decision, we are not left with a definite and firm conviction that the court made a mistake. *See Equitable Life*, 530 N.W.2d at 552. And although we acknowledge the dispute between the experts regarding whether the MPUC regulatory treatment of Minnegasco would affect a willing buyer, we have upheld other tax court decisions based on expert testimony regarding hypothetical market behavior. *See Marquette Bank Nat'l Ass'n v. County of Hennepin*, 589 N.W.2d 301, 305–06 (Minn. 1999) (affirming a decision regarding functional obsolescence where the tax court was presented with expert testimony that banks want "smaller, less ornate buildings than the subject property"). And "[w]e have encouraged the tax court to exercise its independent skill and judgment because of the particular expertise of that court," which the court did here in a thorough decision. *Inland Edinburgh Festival, LLC v. County of Hennepin*, 938 N.W.2d 821, 829 (Minn. 2020). We also have accepted that "market value determinations involve the exercise of complex and sophisticated judgments of market conditions, anticipated future income, and investor expectations." *Eden Prairie Mall, LLC v. County of Hennepin*, 797 N.W.2d 186, 194 (Minn. 2011). Although we will "not endorse[] the tax court's exercise of its independent judgment and skill without any credible or reliable evidence from the parties who ask for that court's decision," *Inland Edinburgh Festival*, 938 N.W.2d at 829, we conclude here there is sufficient evidence in the record to support the tax court's

decision that Minnegasco's property suffered external obsolescence; that determination therefore is not clearly erroneous.[6]

CONCLUSION

For the foregoing reasons, we affirm the decision of the tax court.

Affirmed.

ANDERSON, J., took no part in the consideration or decision of this case.

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[6] The Commissioner also argues that the tax court's decision "fails to explain why its external obsolescence amounts increased 47.7% between the two assessment dates while Minnegasco's [relevant] balances decreased 2.2%." Minnegasco responds by arguing that the Commissioner is inappropriately focusing upon only a one-year period. The tax court did not clearly err in resolving this evidentiary dispute in favor of Minnegasco.