

A09-414

STATE OF MINNESOTA
SUPREME COURT

Henry J. Langer, Relator
Patricia K. Langer, Appellant Below,

Vs.

Commissioner of Revenue
Respondent.

APPELLANT'S REPLY BRIEF

Henry J. Langer, Relator
Patricia K. Langer, Appellant Below

7101 Antrim Court
Edina, Minnesota 55439
(952) 941-6434

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LEGAL ISSUES

- I. The Tax Court erred in issuing a final order against the Appellant because the final order is unwarranted by the evidence.

RESPONDENT'S STATEMENT OF FACTS

The statement of facts in Respondent's brief contains a statement that needs to be commented on:

1. "Relators, however, did not file their Notice of Appeal with the Tax Court by July 7, 2008."
 - a. The Tax Court **would have received the original** Minnesota Tax Court Form 1, the Affidavit of Service by Mail, and the filing fee **on July 3, 2008, if the envelope had not been "lost"**.

RESPONDENT'S ARGUMENT

The argument in Respondent's brief contains statements that need to be commented on:

1. "The parties do not dispute the underlying facts on which the Tax Court Order dismissed Relators' appeal."
 - a. The cited statement is simply no true.
2. "Because Relators' Notice of Appeal was not received – and therefore not filed – by the Tax Court by July 7, 2008, the Tax Court was deprived of subject matter jurisdiction and properly dismissed Relators' appeal."
 - a. The Tax Court **would have received the original** Minnesota Tax Court Form 1, the Affidavit of Service by Mail, and the filing fee **on July 3, 2008, if the envelope had not been "lost"**.

3. "The jurisdictional issue in this case arises from the statutorily-imposed limitations on the Tax Court, because Relators did not file a timely appeal."
 - a. Relator, **in good faith and diligence**, mailed the properly addressed envelopes with postage prepaid to the Minnesota Tax Court and The Commissioner of Revenue. The envelope sent to the Commissioner of Revenue was received and the envelope sent to the Minnesota Tax Court was "**lost**".

4. In their brief, Relators acknowledge that the "clerk of court never received the appeal ... mailed on July 2, 2008."
 - a. The cited statement is correct; however, Respondent neglected to inform the Court why Relators made that acknowledgement. The acknowledgement was made because: **the appeal, affidavit of service by mail and filing fee were "lost" either in the mail or at the Minnesota Tax Court.**

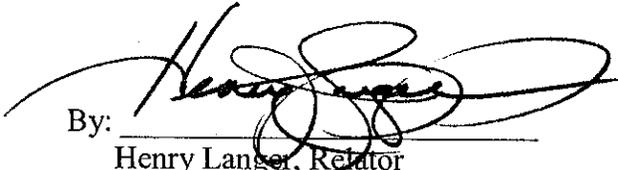
5. "Therefore, Relators' argument that they mailed their Notice of Appeal prior to July 7, 2008, is irrelevant and should be rejected as merit less."
 - a. Relator, **in good faith and diligence**, mailed the properly addressed envelopes with postage prepaid to the Minnesota Tax Court and The Commissioner of Revenue. The envelope sent to the Commissioner of Revenue was received and the envelope sent to the Minnesota Tax Court was "**lost**".

CONCLUSION

WHEREFORE, Relator prays:

1. The Order is reversed and the Commissioner's Motion not be granted and the Appeal not be dismissed.
2. For such other and further relief as this Court deems just and equitable under the circumstances.

Respectfully submitted this 5th day of June, 2009.

By: 

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