

No. A07-615

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STATE OF MINNESOTA  
IN SUPREME COURT

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DEANNA L. BYERS,

Relator,

vs.

COMMISSIONER OF REVENUE,

Respondent.

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**RELATOR'S INFORMAL REPLY BRIEF**

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## INTRODUCTION

The Commissioner of Revenue served his answering brief on Relator Deanna L. Byers by mail on May 29, 2007. The Commissioner's brief raises a new matter to which a reply is required. Minn. R.C.A.P. 128.02, Subd. 3

In her opening brief, Mrs. Byers questioned whether a "second" *Erie* transfer of the constitutional claim that was raised in the amendment to her notice of appeal had actually taken place in November 2005, as alleged by the Tax Court.

For the first time in the case, there has surfaced what is alleged to be the two court orders that supposedly comprised the "second" *Erie* transfer. C.A. 63-64, 66; R.W. 21. Both purported court orders, however, failed to properly effect a lawful "second" *Erie* transfer.

To address this new matter, Mrs. Byers submits this informal reply brief. Mrs. Byers does not waive any jurisdictional argument set forth in her opening brief.

## STATEMENT OF FACTS

The Tax Court, in its April 4, 2006 dated order, stated that a "second" *Erie* transfer of the constitutional claim raised by Mrs. Byers in an amendment to her notice of appeal was properly effected by a (1) Tax Court transfer order dated November 2, 2005 and a (2) District Court retransfer order dated November 7, 2005. C.A. 72. (In its January 11, 2007 dated order, the Tax Court stated that the District Court's "second" *Erie* transfer order was dated November 9, 2005. C.A. 90.)

In the Tax Court, and in this Court, Mrs. Byers questioned that there was ever a "second" *Erie* transfer. R.W. 12, 14, 17; Rel. Brief at 17-18.

For three reasons, Mrs. Byers doubted that the "second" *Erie* ever took place:

First, the Tax Court admitted in its June 27, 2006 dated Order that the parties were not notified of the "second" *Erie* transfer;

Second, no copies of the "second" *Erie* transfer were ever sent to the parties as required by law; and

Third, despite requests made to both courts, Mrs. Byers was unable to obtain a copy of either the Tax Court or the District Court orders. In fact, on at least three occasions, the court administrator for the District Court informed Mrs. Byers that the District Court's records reflected no action taken in any case of hers between December of 2004 and July of 2006.

Respondent alleges that the "second" *Erie* transfer orders of November 2005 are "in the Tax Court's files." Resp. Brief at 18-19. Indeed, Respondent purports to reproduce these orders in his appendix. C.A. 63-64, 66. Respondent also reproduces what purports to be a November 2, 2005 dated letter transmitting Mrs. Byers' case from the Tax Court to the District Court. C.A. 65.

Their inclusion in Respondent's appendix marks the first time that the documents allegedly comprising the "second" *Erie* transfer have appeared in the case. A careful examination of these documents, however, reveals that the "second" *Erie* transfer was legally invalid.

## ARGUMENT

### I. Standard of Review

The Supreme Court determines the validity of judicial orders applying a *de novo* standard of review.

### II. The Tax Court Transferred Mrs. Byers' Second Constitutional Issue To The District Court In A Manner That Violated The Directives of *Erie*.

Although the Tax Court's order dated November 2, 2005, appears to be facially valid, its purported transfer of the constitutional issue to the District Court is invalid. As a result, the Tax Court's part of the purported "second" *Erie* transfer order is void and of no legal effect.

When the Tax Court is confronted with a constitutional challenge, it must then recur to this Court's fundamental constitutional principles set down in *Erie Mining Co. v. Commissioner of Revenue*, 343 N.W. 2d. 261:

"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* at 264. [Emphasis added.]

Thus, according to *Erie*, the Tax Court must meet the constitutional challenge that first confronts it by (after staying its proceedings in the case) simply transferring the constitutional question to the District Court.

Notwithstanding the wording of its order dated November 2, 2005, the Tax Court did not follow *Erie* by merely transferring Mrs. Byers' constitutional issue to the District Court. Instead, the Tax Court transmitted Mrs. Byers' case to the District Court by letter, also dated November 2, 2005, that:

A. Informed the District Court that "[w]e have transferred the case to the District Court for a re-transfer back to the Tax Court for a determination of all of the issues." (Emphasis added.)

B. Enclosed a Tax Court drafted "Order of Transfer for a transfer from District Court back to Tax Court."

C. Asked the District Court to bring the Order of Transfer to a specific judge, Judge Marilyn Brown Rosenbaum, "for action as soon as possible." And,

D. Requested that the District Court "expedite this transfer."

The wording of the Tax Court's transmittal letter to the District Court reveals the Tax Court's express intent to turn the "*Erie* Shuffle" into "The *Erie* Express."

Although *Erie* is plain in what it requires of the Tax Court whenever constitutional questions come before it, here the Tax Court corrupted that simple process.

Shockingly, the Tax Court strongly "suggested" to the District Court which of the two *Erie* approved courses, i.e. decision by the District Court or retransfer to the Tax Court, it believed the District Court ought to take. Even more troubling, the Tax Court actually drafted for the District Court, and presented to it, an order that contained precisely the outcome in the case that the Tax Court desired.

While the Tax Court's order may appear facially valid, the manner in which the Tax Court transferred Mrs. Byers' constitutional issue to the District Court violated the plain directives of *Erie*. Accordingly, the Tax Court's part of the alleged "second" *Erie* transfer order is void and of no legal effect.

**III. The District Court's Order Dated November 7, 2005, Is Not A Valid Order Because It Is Facially Defective And Because The District Court Never Filed It.**

Unlike the Tax Court's supposed "second" *Erie* transfer order, the purported District Court order dated November 7, 2005 is facially defective. Furthermore, the purported District Court order was never filed in the District Court. For these reasons, the District Court order is also void and of no legal effect.

As explained in part II., above, while purporting to transfer Mrs. Byers' second constitutional claim, the Tax Court "suggested" to the District Court which of the two permitted *Erie* courses it should take. In fact, the Tax Court was "thoughtful" enough to provide the District Court with a prepared order that adopted the *Erie* course desired by the Tax Court.

Yet in its zeal for a predetermined outcome, the Tax Court was careless in drafting the order that it wished for the District Court to sign and enter.

The purported District Court order dated November 7, 2005 contains the following unique features:

A. A District Court judge's signature on a paper that clearly indicates at its top that the issuing authority is the Minnesota Tax Court (i.e. "Tax Court, Regular Division").

B. Absence of the name of the court in whose name the order is supposedly issued (i.e. the District Court, Fourth Judicial District). Cf. C.A. 61, 86.

C. Absence of any District Court docket, or file, number.

D. Referral to the parties as only "Appellant-Appellee." And,

E. In a remarkable demonstration of prescience for an "original" November 2005 document, a notation indicating that Mrs. Byers would seek Supreme Court review of her case and would be assigned "Docket No. A07-615."

Not surprisingly, perhaps, the parties never received notice from the District Court that the November 7, 2005 dated order was filed. Minn. R. Civ. P. 77.04 (Court administrator required to send notice to the parties of any filed order and to make a notice in the court records of the mailing).

In stark contrast, on the previous and subsequent occasions that

the District Court acted in this case, the parties not only received the notice required by Minn. R. Civ. P. 77.04, but they also received prior notice and opportunity for hearing before transfer.

The lack of required notice to the parties by the District Court is perhaps easily explainable: on account of the "expedited" manner in which the Tax Court and the District Court handled Mrs. Byers' second constitutional claim, and the facially defective appearance of the purported District Court order, such order was never filed in the District Court as required by law.

(See e.g. Minnesota Stat. § 485.07 (1) (requiring every court administrator to keep a register of actions in every cause brought before it and to prepare a minute of each paper filed in the cause and all proceedings in them); Minnesota Stat. § 485.07 (2)(requiring every court administrator to keep a judgment roll, for each judgment rendered) and Minnesota R. Civ. P. 58.01 (judgment in all cases shall be entered and signed by the court administrator in the judgment roll; the entry constituting the entry of judgment, which judgment is not effective before such entry)).

That the District Court order was never filed no doubt accounts for why the District Court administrator told Mrs. Byers three times in mid-2006 that no such order existed. It may also explain why Respondent's counsel (who somehow obtained this "original" document and who can likely account for its prescient notation of "Docket No. 07-615") is very careful to note that the District Court's order can be found "in the tax court's file."

The purported District Court order dated November 7, 2005 is facially invalid and was never filed in the District Court according to law. Consequently, the order is void and of no legal effect.

**IV. Because Both Portions of The Purported "Second" *Erie* Transfer Were Invalid, The Tax Court Lacked Jurisdiction To Enter Its Decision.**

Among other reasons, the Tax Court lacked jurisdiction to conduct proceedings in this case after Mrs. Byers raised her second constitutional claim because the Tax Court's "second" *Erie* transfer was void and without legal effect.

Despite its lack of jurisdiction to proceed in Mrs. Byers' case, the Tax Court conducted trial, scheduled and received briefing, made

findings of fact and conclusions of law, ruled on post-trial motions and entered decision.

Even if the Tax Court effected a proper "second" *Erie* transfer, for the reasons set forth in part III., above, it cannot overcome the invalidity of the District Court's November 7, 2005 dated order.

It follows, then, that while the Tax Court might have properly commenced a "second" *Erie* transfer to the District Court in November 2005, the District Court failed to initiate a proper "second" *Erie* retransfer to the Tax Court. Thus, the "second" *Erie* transfer was still never accomplished and the Tax Court lacked jurisdiction to conduct proceedings in the case.

Equally important, neither the Tax Court's nor the District Court's part in the failed "second" *Erie* transfer is either mooted or resurrected by either court's role in the so-called "third" *Erie* transfer, i.e. the Tax Court's order dated June 27, 2006 and the District Court's order dated August 24, 2006.

To explain, the Tax Court's "third" *Erie* transfer took place well after the date on which the Tax Court made its findings of fact and

conclusions of law, despite its lack of jurisdiction arising from the invalidity of either the Tax Court's attempted November 2, 2005 transfer or the November 7, 2005 District Court order.

Furthermore, except with respect to Mrs. Byers' second constitutional claim, the Tax Court's final order did not amend its April 4, 2006 findings or conclusions. Indeed, rather than restating its findings and conclusions in its final order, the Tax Court simply adopted them by reference and entered the order on January 27, 2007. See Minn. Stat. § 271.08, subd. 1 (providing that the Tax Court must determine every regular appeal by written order containing findings of fact and the Tax Court's decision, and must append a memorandum thereto stating the grounds for the decision).

As a result, because the Tax Court's final order rests on findings and conclusions made after the Tax Court had already lost jurisdiction to conduct proceedings in the case, this appeal rests on an invalid decision.

## CONCLUSION

Mrs. Byers files this reply brief because the Respondent raises a new matter on appeal. For the first time in this case, documents appear that purport to evidence that Mrs. Byers' second constitutional issue was handled by a proper "second" *Erie* transfer.

Yet the purported Tax Court transfer of Mrs. Byers' constitutional issue on November 2, 2005 grossly violated *Erie's* directives. Therefore, that part of the transfer was invalid.

Even if the Tax Court's "second" *Erie* transfer is valid, the purported District Court order dated November 7, 2005 is facially invalid and was never filed. Thus, it is void and of no legal effect.

The fact that either the Tax Court transfer or the District Court order is void and of no legal effect furnishes yet another ground for why the Tax Court lacked jurisdiction to proceed in this case.

For the reasons foregoing, and for the reasons detailed in her opening brief, Mrs. Byers respectfully requests that this Court reverse the decision of the Tax Court on either of the grounds set forth in her opening brief's conclusion.

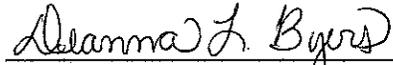
Relator's Informal Reply Brief

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Dated: June 8, 2007

Respectfully submitted,



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