



STATE OF MINNESOTA
IN SUPREME COURT

A09-2030

Andrew Hohmann, in propria persona, in sumo jure

Realtor

v.

BRIEF of the REALTOR

Minnesota Commissioner of Revenue

Respondent

Now comes Andrew Hohmann, in propria persona by Certiorari from Order of the Tax Court and states as follows:

ISSUE

1. When notice of appeal, affidavit of service and filing fee to the tax court are mailed prior to the deadline, there is a statutory provision that mailing suffices as timely filing.
2. M.S. Sec. 270C provides for the appeal to the Tax Court. Said statute also provides that timely MAILING is treated as timely FILING.
3. Federal Law provides that MAILING is considered FILING. Minnesota law references said Federal Law *as controlling*.

FACTS

1. Andrew Hohmann received a Letter, dated February 27, 2009 from the Minnesota Department of Revenue that stated an appeal must be taken within 60 days of the date of said letter. Sixty days from Feb. 27, 2009 is April 28, 2009
2. The appeal of Andrew Hohmann was mailed, certified U.S. mail, postage prepaid on April 27, 2009.

3. The tax court administrator received the appeal on April 29, 2009, but did not file the appeal until April 30, 2009.
4. The Minnesota Department of Revenue moved for and was granted a motion to dismiss Hohmann's appeal as being untimely.

ARGUMENT

Hohmann argued before the tax court and restates now the following:

1. **The Tax Court was bound by the rules of the district court.**

M.S. Sec. 271.06
APPEALS FROM ORDERS

Subd. 2. Time; notice; intervention.

Except as otherwise provided by law, within 60 days after notice of the making and filing of an order of the commissioner of revenue, the appellant, or the appellant's attorney, **shall serve a notice of appeal upon the commissioner and file the original, with proof of such service, with the Tax Court administrator or with the court administrator of district court acting as court administrator of the Tax Court;** provided, that the Tax Court, for cause shown, may by written order extend the time for appealing for an additional period not exceeding 30 days. The notice of appeal shall be in the form prescribed by the Tax Court.....

Subd. 7. Rules.

Except as provided in section 278.05, subdivision 6, the **Rules of Evidence and Civil Procedure for the district court of Minnesota shall govern the procedures in the Tax Court**, where practicable. The Tax Court may adopt rules under chapter 14. The rules in effect on January 1, 1989, apply until superseded

The appeal made by Hohmann was a review of an administrative action. As such, the appeal is NOT the commencement of an action, but rather an appeal of said administrative action. Said administrative action was commenced by service by MAIL, and not by personal service.

Accordingly, the appeal to the tax court must be controlled by the rules concerning an “appeal to the district court”.

See as follows:

M.R.C.P. Rule 81.02
Appeals to District Courts

These rules do not supersede the provisions of statutes relating to appeals to the district courts.

Appeals to the district court include appeals from the conciliation court. In these types of appeals, the manner in which service and filing is effective is by MAIL.

For reference concerning appeals to the district court:

Minnesota Supreme Court Website
<http://www.mncourts.gov/default.aspx?page=513&item=84&itemType=packetDetails>

**Instructions for Appealing a Conciliation Court Judgment
Conciliation Court**

4. Serve a copy of the form

A copy of the “Demand for Removal/Appeal form Conciliation Court to District Court and Affidavit of Good Faith” must be served on each opposing party or their attorney by **first class mail.....**

2. **The Minnesota Rules concerning appeals to the Tax Court are specific as to filing being effective by MAIL, and THREE DAYS are to be added to the prescribed time.**

Minnesota Administrative Rules
CHAPTER 8610
TAX COURT RULES OF PROCEDURE
8610.0070 MOTION PRACTICE

Subp. 3. Time.

The time limits in this part are to provide the tax court adequate opportunity to prepare for and promptly rule on matters, and the tax court may modify the time limits. The time allowed for summary judgment motions, however, may not be less than the time established by Minnesota Rules of Civil Procedure 56.03. **If this part requires documents to be filed with the tax court administrator within a prescribed period of time before a specific event, filing may be accomplished by mail, subject to the following:**

- A. three days must be added to the prescribed period; and**

B.filing may not be considered timely unless the documents are deposited in the mail within the prescribed period.

Minnesota Rules of Civil Procedure, 5.02 and 6.05, apply regarding service of documents by mail.

In accordance with the specific rules of the Tax Court, THREE DAYS are added to the PRESCRIBED TIME when service is accomplished by mail. Additionally, the Tax Court is specifically controlled by M.R.C.P. 5.02 and 6.05.

The fact that three days must be added to the prescribed time has been upheld in *Gary Reynolds v Minnesota Department of Human Services*, Minnesota Court of Appeals A06-1943, August 21, 2007.

M.R.C.P. Rule 5.02
Service; How Made

Whenever under these rules service is required or permitted to be made upon a party represented by an attorney, the service shall be made upon the attorney unless service upon the party is ordered by the court. Written admission of service by the party or the party's attorney shall be sufficient proof of service. Service upon the attorney or upon a party shall be made by delivering a copy to the attorney or party; transmitting a copy by facsimile machine to the attorney or party's office; or by mailing a copy to the attorney or party at the attorney's or party's last known address or, if no address is known, by leaving it with the court administrator. Delivery of a copy within this rule means: Handing it to the attorney or to the party; or leaving it at the attorney's or party's office with a clerk or other person in charge thereof; or, if there is no one in charge, leaving it in a conspicuous place therein; or, if the office is closed or the person to be served has no office, leaving it at the attorney's or party's dwelling house or usual place of abode with some person of suitable age and discretion then residing therein. Service by mail is complete upon mailing. Service by facsimile is complete upon completion of the facsimile transmission.

M.R.C.P. Rule 6.05
Additional Time After Service by Mail or Service Late in Day

Whenever a party has the right or is required to do some act or take some proceedings within a prescribed period after the service of a notice or other paper upon the party, and the notice or paper is served upon the party by United States Mail, three days shall be added to the prescribed period. If service is made by any means other than United States Mail and accomplished after 5:00 p.m. local time on the day of service, one additional day shall be added to the prescribed period.

Advisory Committee Comment—2007 Amendment

Rule 6.05 is amended to make the rule definite as to what forms of service qualify as "service by mail." The rule as amended explicitly allows three additional days only for service by United States Mail; the use of any other delivery or courier service does not constitute "United States Mail," and therefore does not qualify for additional time. This rule is now consistent with Minn. R. Civ. P. 4.05, which specifies "first-class mail" as the means for service by mail.

3. M.S. Sec. 270C provides for the appeal to the Tax Court. Said statute also provides that timely MAILING is treated as timely FILING.

M.S. Sec. 270C.33 Subd 4(d) states: An order of assessment is final when made but, as applicable, is reviewable administratively under section 270C.35, or appealable to Tax Court under chapter 271.

M.S. Sec. 270C is the statute authorizing the jurisdiction of the Tax Court to consider an appeal. Said statute also SPECIFICALLY states that TIMELY MAILING is TIMELY FILING.

M.S. 270C.395, which follows M.S. Sec.270.33, specifically states:

M.S. Sec. 270C.395

TIMELY MAILING TREATED AS TIMELY FILING AND PAYING

Subdivision 1.Date of delivery.

When a document, including a return, claim, or statement, is required to be filed, or a payment is required to be made to the commissioner within a prescribed period, or on or before a prescribed date, and if the document or payment is delivered by electronic means or by United States mail after the period or the date to the place prescribed for filing or payment, then the date of delivery or of payment is the date of the confirmation time-and-date stamp of the transaction, if delivered by electronic means, or the date of the United States postmark stamped on the cover in which the document or payment is mailed, if delivered by United States mail, as the case may be.

Subd. 2.Mailing requirements.

Subdivision 1 applies only if:

(1) the postmark date falls within the prescribed period or on or before the prescribed date,

(i) for filing (including any extension granted for the filing) of the document, or

(ii) for making the payment (including any extension granted for making the payment); and

(2) the document or payment was within the time prescribed in clause (1), deposited in the mail in the United States in an envelope or other appropriate wrapper, postage prepaid, properly addressed to the office of the Department of Revenue with which the document is required to be filed or to which payment is required to be made.

M.S Sec. 270C is the controlling statute concerning the authority of the Tax Court to hear an appeal. Said statute, after directing where to make an appeal, sets forth the controlling law concerning filing, and specifically states that **TIMELY MAILING IS TIMELY FILING**.

4. Federal Law provides that MAILING is considered FILING. Minnesota law references said Federal Law as controlling

M.S Sec. 270C 395 subd. 5 states:

M.S. Sec. Subd. 5. Private delivery services.

A reference in this section to the United States mail shall be treated as including a reference to any designated delivery service, and any reference in this section to a postmark by the United States Postal Service shall be treated as including a reference to any date recorded or marked by any designated delivery service in accordance with section 7502(f) of the Internal Revenue Code.

Section 7502 of the Internal Revenue Code provides “Timely mailing treated as timely filing and paying”, stating below in relevant part:

Timely mailing treated as timely filing and paying

(a) General Rule.

(1) **Date of delivery.** If any return, claim, statement, or other document required to be filed, or any payment required to be made, within a prescribed period or on or before a prescribed date under authority of any provision of the internal revenue laws is, after such period or such date, delivered by United States mail to the agency, officer, or office with which such return, claim, statement, or other document is required to be filed, or to which such payment is required to be made, the date of the United States postmark stamped on the cover in which such return, claim, statement, or other document, or payment, is mailed shall be deemed to be the date of delivery or the date of payment, as the case may be.

CONCLUSION

The tax court failed to make Findings of Fact as required by statute. Said Order by the tax court did not contain the legal arguments made by Hohmann. Including, but not limited to the specific controlling Rules for the Tax Court (Minnesota Administrative Rules Chapter 8610).

M.S. Sec 271 is the controlling statute in this matter. It is under said statute that an appeal can be brought to the Tax Court. And, it is under said statute that TIMELY MAILING is TIMELY FILING.

Hohmann TIMELY MAILED his appeal to the Tax Court. As a matter of statutory law, he thereby TIMELY FILED his appeal. Additionally, when three days are added to the deadline when documents are mailed, *as provided by statute*, Hohmann's appeal was timely.

In the recent case of *Langer v. Department of Revenue* the above arguments and statutory law were apparently not raised, as the Supreme Court did not address these specific controlling statutes. In this case, Hohmann fully raises and argues the statutory provisions that timely mailing is timely filing *and* that three days must be added to the deadline when documents are served and filed in the U.S. mail.

Lastly, the Minnesota legislature has specifically included 7502(f) of the Internal Revenue Code in reference to timeliness of filing. Said federal statute provides filing is complete upon mailing.

Accordingly, as Hohmann timely mailed the appeal, pursuant to M.S. Sec. 270C.395 he timely filed the appeal.

Additionally, because he mailed the documents, three days are required to be added to the deadline for filing. When the three days are added to the deadline, the appeal was timely filed.

Realtor rests.

Date: 4 Dec 09

Andrew P. Hohmann
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