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STATE OF MINNESOTA

IN SUPREME COURT

A09-2030

Andrew Hohmann, in propria persona, in sumo jure

Relator

v.

Minnesota Commissioner of Revenue

Respondent

REPLY BRIEF of the RELATOR

Now comes Andrew Hohmann, in propria persona by Certiorari from Order of the Tax Court and replies to the Respondent's Supplemental Letter Argument as follows:

Respondent argues that appeals to the Tax Court are governed by the statute establishing the Tax Court jurisdiction, Minn. State Sec. 271.06 (2008), and not by conciliation court rules. (page 2).

Relator responds: Relator has not argued that the Tax Court is governed by conciliation court rules, but that the Tax Court is governed by district court rules. Relator has argued that the appeal to the Tax Court is akin to an appeal from conciliation court to the district court, as the action is an *appeal* of an administrative action, not a commencement of a district court action.

The Tax Court is governed by the Minnesota Rules of Civil Procedure. (M.S. Sec. 271.06 sub. 7). M.S. Sec. 271.06 sub2 does not require PERSONAL SERVICE to commence the appeal. Said statute, extensively discusses the authority of the Commissioner of Revenue and the manner in which to make an appeal to the Tax Court. Said statute directs to make an appeal to the Tax

court and sets forth the controlling law concerning filing, and said statute specifically states that

TIMELY MAILING IS TIMELY FILING.

> 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.

Respondent argues that Minnesota Tax Court Rule 8610.0070, subp. 3 governs the service and filing of motions before the Tax Court, not the filing of the original Notice of Appeal. And, additionally argues Relator's argument fails because he did not mail the appeal papers three days prior to the jurisdictional deadline for filing the appeal. (pg. 2 & 3)

Relator responds: The Tax Court "Rules" are silent concerning the specific requirement that the commencement of the appeal is accomplished by the physical filing of the Notice of Appeal with the tax court administrator. Instead, the ONLY reference in the Tax Court Rules concerning FILING direct the MAILING of DOCUMENTS constitutes filing, as follows:

> 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.

Respondent argues that Realtor did not mail the Notice of Appeal within the prescribed period. However, the record clearly shows Realtor mailed the Notice of Appeal within the prescribed period. Accordingly, three days were required to be added to the prescribed period. As such, the Notice of Appeal was timely filed at the tax court administrator.

Respondent argues that M.S. Sec. 270C.395 subd 5 (2008) that determines that documents mailed are deemed filed upon the mailing date governs documents that are required to be filed with the Internal Revenue Service.

Relator responds: M.S. Chap. 270C has absolutely nothing to do with filing documents with the Internal Revenue Service. Said statute is Minnesota law concerning the actions of the Minnesota government. Said statute incorporates *section 7502(f) of the Internal Revenue Code* and that timely mailing is timely filing, in state documents, not federal.

Respondent argues that *Langer* is controlling.

Relator responds: *Langer* is distinctly different than this instant case. In *Langer* the taxpayer did not mail the required documents within the prescribed time. In this case, Relator DID mail the documents within the prescribed time. Additionally, the Supreme Court in *Langer* determined that, "And while our civil rules are silent with respect to whether filing is complete upon mailing, our rules of appellate procedure expressly address filing by mail and indicate that so long as the papers to be filed are deposited in the mail within the time fixed for filing, the filing is timely."

The Relator made an appeal. The only civil rules concerning appeals is the Minnesota Rules of Appellate Procedure, unless the court is to apply the methodology of making an appeal from the conciliation court to the district court.

Applying either process, Relator was timely in his appeal.

Relator rests

Date: 15 Jan 10

Andrew P. Hohmann

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