

No. A09-2030

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STATE OF MINNESOTA

IN SUPREME COURT

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Andrew P. Hohmann,

Relator,

vs.

Commissioner of Revenue,

Respondent.

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**RESPONDENT'S SUPPLEMENTAL LETTER ARGUMENT**

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## SUPPLEMENTAL LETTER ARGUMENT

Respondent, the Minnesota Commissioner of Revenue, submits this letter argument pursuant to Minn. R. Civ. App. P. 128.01, subd. 2 to supplement his memoranda submitted to the Minnesota Tax Court. The Tax Court's decision is attached as an Addendum hereto. The Tax Court memoranda submitted by Respondent and Relator are attached as an Appendix hereto.

The facts in this case are not in dispute. On February 27, 2009, the Commissioner of Revenue issued a Notice of Determination on Appeal assessing Relator additional individual income taxes for the years 2005-2007. Add. 2. On April 27, 2009, Relator mailed a Notice of Appeal to the Tax Court. *Id.* The appeal documents were not received by the Tax Court until April 30, 2009, two days after the 60th day following the Commissioner's Order. *Id.*<sup>1</sup>

The Tax Court granted the Commissioner's motion to dismiss the appeal for lack of subject matter jurisdiction. The Tax Court held that an appeal to the Tax Court must be received by that court within 60 days after the Commissioner's Order and that the appeal documents in this case were not received until 62 days after the Commissioner's Order. Add. 2-3.

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<sup>1</sup> In his brief to this Court, Relator asserts that the Tax Court administrator received the appeal documents on April 29, 2009, but did not file the appeal until the following day. Relator's brief at 2. He did not make this assertion to the Tax Court, and there is no support in the record for the assertion. In any case, even if the appeal documents were received on April 29th, the appeal still would have been filed one day late.

Subsequent to the Tax Court decision in this case and the filing of the appeal to this Court, this Court issued a decision in *Langer v. Commissioner*, 773 N.W.2d 77 (Minn. 2009). In *Langer* this Court decided the precise question at issue in this case. Specifically, this Court held in *Langer* that, under the statute granting the Tax Court jurisdiction, Minn. Stat. § 271.06 (2008), filing an appeal with the Tax Court is not complete upon mailing, but only complete upon receipt of the appeal documents by the Tax Court.

Relator addresses *Langer* only in passing on the last page of his brief. He argues that *Langer* is not controlling because this Court did not address in *Langer* the arguments and statutes that Relator believes to be persuasive. Relator's brief at 7.

Indeed, Relator raises no new arguments which have any merit. First, he argues that appeals to the Tax Court from Commissioner orders are governed by the same rules governing appeals to state district courts from conciliation courts, which authorize the commencement of actions by serving the opposing party by mail. Relator's brief at 2-3. However, appeals to the Tax Court are governed by the statute establishing Tax Court jurisdiction, Minn. Stat. § 271.06 (2008), and not by conciliation court rules.<sup>2</sup>

Second, Relator cites to Minnesota Tax Court Rule 8610.0070, subp. 3, for the proposition that filing with the Tax Court may be accomplished by mail, and that three days is added to the filing deadline if filing is done by mail. Relator's brief at 3.

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<sup>2</sup> In addition, Relator only cites to conciliation court rules governing service of the removal notice and not to conciliation court rules governing filing of that notice. See Minn. Gen. R. Prac., 521(b)(2).

However, this rule governs the service and filing of motions before the Tax Court, not the filing of the original Notice of Appeal. In addition, Relator's argument also fails because he did not mail the appeal papers three days prior to the jurisdictional deadline for filing the appeal.

Next, Relator cites to the Minnesota Rules of Civil Procedure governing service of documents by mail. Relator's brief at 4-5. However, the Tax Court held that it had no jurisdiction over the appeal because the appeal papers were not timely filed, not because of any defect regarding service of the appeal papers.

Fourth, Relator cites Minn. Stat. § 270C.395 (2008) for the proposition that a document is deemed filed if mailed by the deadline. Relator's brief at 5. However, that statute governs documents which are required to be filed with the Commissioner of Revenue, such as a tax return. It does not govern documents filed with the Tax Court.

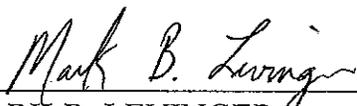
Finally, Relator cites a reference in Minn. Stat. § 270C.395, subd. 5 (2008) to the section of the Internal Revenue Code which also provides that documents are deemed to be filed upon the date when they are mailed. Relator's brief at 6. However, this federal statutory provision governs documents which are required to be filed with the Internal Revenue Service, such as tax returns, not documents filed with the U.S. Tax Court.

In conclusion, this appeal is governed by the *Langer* decision. The Tax Court properly dismissed Relator's appeal to the Tax Court on the grounds that the Tax Court lacked subject matter jurisdiction because the appeal was not timely filed.

Dated: Jan. 5, 2010

Respectfully submitted,

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