

A12-0378

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STATE OF MINNESOTA  
IN SUPREME COURT

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William D. Larson,

Relator,

v.

Commissioner of Revenue,

Respondent.

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BRIEF AND ADDENDUM  
OF  
RELATOR WILLIAM D. LARSON

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The appendix to this brief is not available for online viewing as specified in the *Minnesota Rules of Public Access to the Records of the Judicial Branch*, Rule 8, Subd. 2(e)(2).

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## STATEMENT OF LEGAL ISSUES

1. **Did the tax court err as a matter of law in concluding that Relator was a Minnesota “domiciliary resident” for the tax years 2002 through 2006 by failing to apply the relevant legal analysis to the stipulated facts and supplemental trial testimony regarding Relator’s change in domicile from Minnesota to Nevada in 1998?**

Issue Raised to Tax Court: Relator William D. Larson appealed to the tax court to challenge Respondent Commissioner of Revenue’s determination that Relator was a Minnesota “resident” for the tax years 2002 through 2006. (See App-24 to App-38.<sup>1</sup>) In his appeal, Relator maintained that he was not a Minnesota resident for any tax year following his change in domicile to Nevada in 1998. (App-44, App-48 to App-52.) Before trial, Respondent conceded that Relator was not a “physical presence” resident of Minnesota in any of the tax years 1999 through 2006. (Stip. ¶ 3 at App-1 to App-2.) The issue then for decision by the tax court was whether Relator had changed his domicile from Minnesota to Nevada in 1998 and, therefore, whether he was not a Minnesota domiciliary resident in any of the tax years 2002 through 2006. (Stip. ¶ 3 at App-1 to App-2; App-48 to App-52; App-127.) The record before the tax court supporting Relator’s domicile change to Nevada in 1998—and his intent at the time of the change—consisted of the parties’ comprehensive stipulations of fact, exhibits, and the testimony of five witnesses. (App-1 to App-20; Trial Transcript (hereinafter “Tr.”).)

Tax Court’s Holding: The tax court states that the relevant inquiry in determining an individual’s change in domicile is whether there was “both physical presence and intent to make a home in the new place” and “since ‘mere physical removal [from the prior domicile] is insufficient . . . [t]he inquiry focuses on intent, examining actions and words to discover that intent.’” (Add-18.) The tax court, however, never conducts any meaningful analysis of the relevant undisputed evidence in the case establishing the facts and circumstances surrounding Relator’s change in domicile from Minnesota to Nevada in 1998 and his intent at the time of his domicile change. Instead, the tax court focuses on Relator’s “connections” to or “presence” in Minnesota during the years 2002 through 2006 and, after fashioning and applying a “domiciliary presence” test, holds that Relator was domiciled in Minnesota for those years. (Add-23 to Add-25.)

Preservation of Issue: Substantive questions of law that were properly raised below are preserved for review on appeal. *Alpha Real Estate Co. of Rochester v. Delta Dental Plan of Minnesota*, 664 N.W.2d 303, 310 (Minn. 2003).

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<sup>1</sup> Citations to “App-\_\_\_” refer to Relator’s Appendix and citations to “Add-\_\_\_” refer to Relator’s Addendum. Citations to “Stip. ¶ \_\_\_” and “Ex.” refer to the parties’ stipulated facts and exhibits. (See App-1 to App-20.)

Most Apposite Cases/Statute/Rule: *Sanchez v. Comm'r of Revenue*, 770 N.W.2d 523 (Minn. 2009); *Miller v. Comm'r of Taxation*, 59 N.W.2d 925 (Minn. 1953); Minn. Stat. § 290.01, subd. 7(a) (1998); Minn. R. 8001.0300 (1997).

2. **Even if “connections” to or “presence” in Minnesota in 2002 through 2006 has relevance to a determination of Relator’s domiciliary status, are the tax court’s findings nonetheless clearly erroneous in light of the record as a whole?**

Issue Raised to Tax Court: The parties’ stipulated facts, as supplemented by the witness testimony at trial, established the facts and circumstances surrounding Relator’s change in domicile from Minnesota to Nevada in 1998, Relator’s intent at the time of his domicile change, his continued and expanded connections to Nevada during the years 1999 through 2006, and the 26 factors under Minnesota Rule 8001.0300, subpart 3, evidencing Relator’s Nevada domiciliary status. (See Stip. ¶ 3 at App-1 to App-2; Stip. ¶¶ 11–30 at App-5 to App-14; Exs. 1–3 at App-15 to App-17; App-54 to App-70; Tr. 18-232.) The record before the tax court also highlighted the numerous errors and omissions in the statements and assumptions made by Respondent in his order and post-trial proposed findings of fact regarding Relator’s so-called “connections” to Minnesota during the years 2002 through 2006. (Stip. ¶¶ 8, 17–27 at App-3, App-7 to App-13; App-143 to App-178; Exs. 49–50; Tr. 88–104.)

Tax Court Held: The tax court ignores a significant portion of the record that addressed Relator’s 1998 domicile change and the many deficiencies in Respondent’s proposed basis for determining Relator’s Minnesota “domiciliary resident” status in the tax years 2002 through 2006. Instead, the tax court appears to adopt many of Respondent’s erroneous or incomplete proposed findings of fact and, in doing so, fails to independently review and take into consideration the record as a whole and the evidence therein that supports Relator’s change in domicile to Nevada in 1998 and his Minnesota nonresident status during the tax years 2002 through 2006.

Preservation of Issue: Evidentiary support in the record for the tax court’s decision is an issue that is automatically preserved for review on appeal. *Gruenhagen v. Larson*, 246 N.W.2d 565, 569 (Minn. 1976).

Most Apposite Cases: *Byers v. Comm’r of Revenue*, 735 N.W.2d 671 (Minn. 2007); *Great Lakes Gas Transmission L.P. v. Comm’r of Revenue*, 638 N.W.2d 435 (Minn. 2002); *Skelly Oil Co. v. Comm’r of Taxation*, 131 N.W.2d 632 (Minn. 1964).

## STATEMENT OF CASE

This is a review by certiorari of an Order of the Minnesota Tax Court, the Honorable George W. Perez presiding, which affirmed a determination of the Commissioner of Revenue (“Commissioner” or “Respondent”) that Relator William D. Larson (“Mr. Larson” or “Relator”) was a Minnesota “resident” for the tax years 2002 through 2006. As relevant here, Minnesota Statutes § 290.01, subdivision 7(a), defines the term “resident” as an “individual domiciled in Minnesota”<sup>2</sup> and Minnesota Statutes § 290.014, subdivision 1, gives the state the power to tax all of the income of its residents.

Mr. Larson brought this case before the Minnesota Tax Court to challenge the Commissioner’s determination (and the proposed assessment of additional Minnesota individual income taxes in the amount of \$1,047,681.00, plus interest, for the years 2002 through 2006),<sup>3</sup> maintaining that he became a Nevada domiciliary in 1998 and properly filed his Minnesota income tax returns as a nonresident for each of the tax years 1999 through 2006. (*See* App-21 to App-26; App-43 to App-52; App-126 to App-141.)

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<sup>2</sup> Minnesota Statutes § 290.01, subd. 7(b), also defines a “resident” as any “individual domiciled outside the state who maintains a place of abode in the state and spends in the aggregate more than one-half of the tax year in Minnesota.” The Commissioner conceded before trial that Mr. Larson was not a “physical presence” resident of Minnesota in any of the tax years 1999 through 2006. (Stip. ¶ 3 at App-1 to App-2.)

<sup>3</sup> The Commissioner’s order originally asserted additional Minnesota income taxes in the total amount of \$1,472,971.00 against Mr. Larson for 2002 through 2006 (*see* App-27); however, it was stipulated before trial that the Commissioner had not taken into account \$425,390.00 in income taxes paid by Mr. Larson with his timely filed 2006 Minnesota nonresident income tax return (Stip. ¶ 8 at App-3).

Mr. Larson paid over \$1 million in income taxes to the State of Minnesota on his 2002 through 2006 nonresident income tax returns (and over \$525,000 in income taxes for those tax years to states other than Minnesota). (Stip. ¶¶ 9, 30 at App-3, App-14.)

The Commissioner did not question Mr. Larson's 1998 Nevada domiciliary change or his Minnesota nonresident status for tax years 1999 and thereafter until June 2006 when he commenced an audit of Mr. Larson's 2002, 2003 and 2004 nonresident income tax returns (later expanding the audit to tax years 2005 and 2006). (Stip. ¶ 6 at App-2.) At the conclusion of the audit and subsequent administrative appeal, the Commissioner issued an order assessing tax on all of Mr. Larson's 2002 through 2006 income based on a determination that, largely because Mr. Larson had "connections" to Minnesota during those years, he was a Minnesota resident. (App-27 to App-38.)

Before trial of the case on April 6, 2011, the parties entered into comprehensive stipulations of fact. (See Stip. ¶¶ 1-32 at App-1 to App-20.) While not reflected in the tax court's findings, the stipulated facts established the circumstances surrounding Mr. Larson's change of domicile from Minnesota to Nevada in 1998, his reasons at the time for doing so, and Mr. Larson's many actions that demonstrated his intent to make Las Vegas his home. (See Stip. ¶¶ 11-29 at App-5 to App-13; Exs. 1-3 at App-15 to App-17; Exs. 20-21, 24, 47-51.) These stipulated facts were supplemented by the testimony at trial of the day-to-day managers of Mr. Larson's businesses (Al O and Glenn E ) (see Tr. 159-87), Mr. Larson's legal counsel who represented him in negotiations to sell many of his Minnesota and other Midwest truck dealerships in 1998 (Mark Jacobson) (see Tr. 146-58), Mr. Larson's personal financial assistant (Ruth B )

(*see* Tr. 187–232), and Mr. Larson (*see* Tr. 18–145). The Commissioner did not present any witnesses at trial, nor did he dispute (or present any evidence to controvert) the testimony presented at trial.<sup>4</sup>

After trial, the parties filed proposed findings of fact and post-trial briefs. (*See* App-43 to App-52; App-54 to App-70; App-72 to App-106; App-107 to App-125.) Mr. Larson also filed detailed objections to the Commissioner’s proposed findings of fact, setting forth the numerous errors and omissions in his proposed findings based on the record in the case. (App-143 to App-178.)

In its Findings of Fact, Conclusions of Law, and Order for Judgment dated January 11, 2012 (“Order,” “Opinion” or “decision”), the tax court finds that Mr. Larson was a Minnesota domiciliary resident for the years 2002 through 2006. (Add-11.) In its Order, the tax court largely ignores the stipulated facts and trial testimony establishing Mr. Larson’s change in domicile to Nevada in 1998 and his intent at the time for doing so. (Add-1 to Add-25.) Instead, the tax court focuses on many of the Commissioner’s erroneous proposed findings and assertions regarding Mr. Larson’s “connections” to and “presence” in Minnesota in the years 2002 through 2006 and ultimately holds that

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<sup>4</sup> Perhaps the sole exception would be the emphasis placed by the Commissioner (and, later, by the tax court in its decision) on the rental schedules attached to Mr. Larson’s 2002 and 2003 income tax returns that reflected the purported rental of Mr. Larson’s Las Vegas residence during 2002 and 2003. (Tr. 107–09; App-82; Add-23 to Add-24.) Even if relevant to the determination of Mr. Larson’s domicile change in 1998 and his domiciliary resident status in the tax years 2002 through 2006, the stipulated facts and exhibits (Stip. ¶¶ 23–24, 27 at App-10 to App-12; Ex. 3 at App-17; Ex. 40 at TX1240; Ex. 41 at TX1351) and Mr. Larson’s testimony (Tr. 140–41) explain the likely typographical error on the schedules. *See infra* pp. 26–27. Such an error has no tax impact and does not require any amended return filings as suggested by the tax court. (*See* Add-24.)

Mr. Larson was a Minnesota “resident” in each of those years based on what appears to be a “domiciliary presence” test. (*See* Add-23 to Add-25.)

Mr. Larson appealed the tax court’s Order to this Court with a petition for writ of certiorari. (App-194 to App-195.)

### STATEMENT OF FACTS

#### **I. CIRCUMSTANCES SURROUNDING MR. LARSON’S RETURN TO MINNESOTA IN 1989 AND HIS DECISION TO MOVE BACK TO NEVADA IN 1998**

As stipulated by the parties, Mr. Larson was a Minnesota resident until 1981 when he first moved to Las Vegas, Nevada, following his divorce in 1978. (Stip. ¶¶ 15–16 at App-7.) Mr. Larson remained a Nevada resident until 1984 when he moved to Phoenix, Arizona, at the urging of his daughter who was attending an Arizona college at the time. (Stip. ¶ 16 at App-7.) Mr. Larson purchased a home in Phoenix and resided there until early 1989 when he was summoned to return to Minnesota to address a series of financial difficulties and challenges facing his truck dealerships and related businesses.<sup>5</sup> (Stip. ¶¶ 16–17 at App-7.)

This sudden return to Minnesota in 1989 was required by a threatened default on, and the immediate need to fund, a \$1 million dollar credit facility held by one of Mr. Larson’s businesses’ major lenders (First Bank). (Tr. 25–26.) This crisis forced Mr. Larson to sell his Arizona home and eventually move into a back room of the

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<sup>5</sup> A description of Mr. Larson’s truck dealerships and related businesses, including the heavy-duty Peterbilt truck dealerships owned through his wholly-owned Subchapter S corporation, W.D. Larson Companies, Inc., is set forth in Stip. ¶¶ 11-14 and 18 at App-5 to App-8 and Exs. 1–2 at App-15 to App-16. (*See also* Tr. 20–23, 160–63, 172–75.)

company offices as a means of raising as much cash as quickly as possible to stave off First Bank and other creditors with the hope of saving his companies. (Tr. 27–31; *see also* Stip. ¶ 17 at App-7.) Over the course of the next six years and under incredibly stressful conditions, Mr. Larson gradually resolved the companies’ financial issues, together with a cascade of other debts triggered by the crisis with First Bank (including a large IRS liability and personal judgments obtained by his ex-wife and former business partner). (Stip. ¶¶ 17-18 at App-7 to App-8; Tr. 25–31, 164–65, 175–76.)

The financial turmoil during 1989–1995 took a tremendous toll on Mr. Larson. (Stip. ¶ 17 at App-7; Tr. 29-31, 164, 176–77.) Not surprisingly, as soon as the businesses’ financial problems appeared under control and the proverbial “light at the end of the tunnel” was in sight, Mr. Larson began taking steps in 1996 to “pull back” from the day-to-day involvement in the operations of his businesses and turned over all day-to-day management to others, including trusted, long-time managers Glenn E. and Al O. (Stip. ¶¶ 17–18 at App-7 to App-9; Tr. 34, 164–66, 177–80.) As Mr. Larson testified at trial:

Well, I had all the fun I wanted to have being a truck dealer and being as highly leveraged as I was. And I just decided that I would try and sell everything possible and back off and take it easy.

(Tr. 32.)

At the same time, Mr. Larson tied up some other “loose ends” in his business and personal life in Minnesota, including (i) selling his stock in a company that he had owned since the 1970’s (Transport America) for \$6 million (which provided him with the much needed funds to do the things he now wanted to do) (Stip. ¶ 20.a at App-9; Ex. 20;

Tr. 32), (ii) ending the relationship with his girlfriend and mother of his son (Stip. ¶ 20.c at App-9; Tr. 33–34), and (iii) paying off the IRS liability and personal judgments obtained by his ex-wife and his former business partner (the satisfaction of the judgment owed to his ex-wife being particularly liberating for Mr. Larson) (Stip. ¶ 20.b at App-9, Ex. 24, Tr. 28, 33, 193). With his businesses in good hands and his “loose ends” resolved, Mr. Larson decided to move back to Las Vegas—his favorite place in the world and a city he knew quite well, having already lived there for 4 years. (Stip. ¶ 16 at App-7; Tr. 24, 34, 48.)

In tandem with his plans to move back to Las Vegas and now having funds available from his sale of Transport America, Mr. Larson purchased investment property in Acapulco, Mexico, in May 1997 for personal and rental use. (Stip. ¶ 22 at App-10; Ex. 3 at App-17; Tr. 34–35.) Although Mr. Larson vacationed in Acapulco and had a girlfriend there for a period of time, he never viewed Acapulco as his home. (Tr. 35, 51-52.)

At about the same time as his purchase of the Acapulco property, Mr. Larson began taking steps to move to Las Vegas. He initiated negotiations to purchase a Las Vegas truck dealership, an acquisition that would require him to live in Las Vegas (a requirement he met in mid-1998 when he purchased his Las Vegas condominium residence and moved to Las Vegas). (Stip. ¶ 23 at App-10 to App-11; Tr. 35–37.) The Las Vegas dealership was exactly the type of operation Mr. Larson would enjoy in his less stressful life in Las Vegas—it was a small, more manageable operation with only 30 employees and had a territory covering most of the State of Nevada. (Tr. 36.)

Mr. Larson, with the help of a business broker (Ralph T       ), entered into intensive negotiations to sell his Minnesota and other Midwest truck dealerships for \$45 million; however, the deal fell through before its closing date of November 1, 1998, solely due to issues that developed at the buyer's end. (Stip. ¶ 23 at App-10 to App-11; Trial Ex. 57; Tr. 36–38, 147–56.) The purchase of the Las Vegas dealership also ultimately fell through due to continuously increased asking prices by the seller (Stu Eng). (Stip. ¶ 23 at App-10 to App-11.)

In the midst of his negotiations to buy the Las Vegas truck dealership and sell many of his Minnesota and other Midwest truck dealerships, Mr. Larson received the devastating diagnosis of kidney cancer during the course of a routine life insurance physical in the Fall of 1997. (Stip. ¶ 21 at App-9; Tr. 38–39.) Mr. Larson's long-term prognosis was uncertain and his doctor told him to "get his affairs in order." (Stip. ¶ 21 at App-9; Tr. 39.) Following his kidney cancer surgery in the Fall of 1997, Mr. Larson convalesced for two weeks in Minnesota and then for approximately 6 months at his Acapulco property. (Stip. ¶ 21 at App-9 to App-10; Tr. 39–41.) This recovery period allowed time for Mr. Larson to contemplate what he truly wanted to do with the rest of his life, solidifying the decision that he had already made to remove himself from the stresses of his business and personal life in Minnesota, move to Las Vegas, and enjoy whatever time he had left. (Stip. ¶ 21 at App-10; Tr. 40–41.)

**II. MR. LARSON'S ACTIONS IN 1998 DEMONSTRATE BOTH HIS INTENT TO MAKE LAS VEGAS HIS HOME AND HIS EXPANDED CONNECTIONS TO THAT COMMUNITY.**

In June 1998, Mr. Larson purchased a condominium at the Marie Antoinette complex (“Las Vegas home”) and, within a month, packed up his personal belongings (including his clothes, two pieces of artwork having special meaning to him, and sizeable wine collection) in a large van and moved from Minnesota to Las Vegas. (Stip. ¶ 24 at App-11; Ex. 3 at App-17; Tr. 46–47, 53–55.) As stipulated by the parties and as supplemented by testimony at trial, Mr. Larson took a number of additional actions in 1998 that demonstrate his intention to make Las Vegas his home and Nevada his new domicile, including:

- Obtaining a Nevada driver’s license and canceling his Minnesota driver’s license
- Registering to vote in Nevada (and not registering to vote in Minnesota)
- Homesteading his Las Vegas residence (and not homesteading any property in Minnesota)
- Opening a bank account in Las Vegas
- Registering and moving some of his cars to Nevada
- Informing his key advisors and the day-to-day managers of his businesses that he was moving to Nevada.

(Stip. ¶ 24 at App-11; Ex. 3 at App-17; Ex. 13, 47–51; Tr. 62, 95–96, 156–57, 165, 178, 193, 195–202; *see also* App-55 to App-57.)

Following his move to Las Vegas in 1998, Mr. Larson decided that his new, more relaxed business life would include pursuing his interest and enjoyment in buying and selling real estate. (Stip. ¶ 25 at App-11.) His real estate investments were located in Minnesota, Nevada, Texas, Wisconsin, and Acapulco, Mexico, with the vast majority of the properties located outside the State of Minnesota. (Stip. ¶ 27 at App-12; Ex. 3 at App-17.)

As stipulated by the parties and supplemented by Mr. Larson's and Ms. Busta's testimony, Mr. Larson's connections to the Las Vegas community continued to grow over time. For example, Mr. Larson:

- Purchased five additional units in the very popular and in-demand Marie Antoinette condominium complex as investment rental property
- Established a home office in his Las Vegas residence
- Hired a personal assistant (Bud Smick) to join him in Las Vegas to help organize his home office, maintain his calendar and oversee his rental properties
- Purchased ever-larger residences in Las Vegas located at the Turnberry Tower development
- Became an active member in the exclusive Las Vegas Turnberry Club (also known as The Stirling Club)
- Incorporated Larson Properties, LLC, a Nevada entity, to hold his various commercial property investments

- Maintained wine cellars at each of the Las Vegas residences to hold his extensive collection of expensive wine (a collection that eventually expanded to approximately 2,000 bottles).

(Stip. ¶¶ 24, 27.b at App-11 to App-12; Ex. 3 at App-17; Tr. 55–62, 100–01, 203, 227; *see also* App-57 to App-58.)

Since 1998, Mr. Larson has considered Las Vegas to be his home in every sense of the word. (Tr. 48–53, 79–80.) Described as a “traveling man,” when Mr. Larson “goes home” from his many travels, he goes home to Las Vegas. (Tr. 48–53, 79–80, 179–80.)

As Mr. Larson stated at trial:

[T]he reason I consider [Las Vegas] home is it’s where I am comfortable and my personal possessions are. It’s peaceful for me there. It’s the only place I go where I can actually take off my shoes, sit down and relax and enjoy myself.

(Tr. 50.)

### **III. MR. LARSON’S “CONNECTIONS” TO MINNESOTA DURING 2002 THROUGH 2006 MUST BE VIEWED IN THE CONTEXT OF HIS 1998 DOMICILE CHANGE AND THE RECORD AS A WHOLE.**

After moving to Las Vegas in 1998, Mr. Larson did not sever all ties with Minnesota; however, as reflected in the facts surrounding his domicile change in 1998, *see supra* pp. 6–12, and in the discussion below, any characterization of Mr. Larson’s “connections” to Minnesota in 2002 through 2006 is incomplete and misleading unless viewed within the context of the record as a whole. A complete and accurate review of Mr. Larson’s acts and circumstances during these years is entirely consistent with his Nevada domicile change in 1998.

**A. Mr. Larson's Businesses Were Managed by Others and Most Were Located Outside the State of Minnesota.**

As discussed above, *see supra* p. 7, and as stipulated by the parties, all day-to-day management of Mr. Larson's businesses was turned over to others before he moved to Las Vegas, principally by his trusted and long-time managers Mr. O and Mr. E. (Stip. ¶¶ 17–18 at App-7 to App-8; *see also* Tr. 34, 164–66, 177–80.) It was also stipulated that, after purchasing his Las Vegas residence, Mr. Larson primarily communicated with Mr. O and Mr. E by telephone or fax and, as Mr. O and Mr. E both testified, Mr. Larson rarely ever visited the offices after his move to Las Vegas. (Stip. ¶¶ 17–19, 25 at App-7 to App-9, App-11; Tr. 34, 81-82, 89, 137, 165–66, 177–81.) Both also stated that Mr. Larson felt very comfortable in moving to Nevada knowing that the businesses were in good hands. (Tr. 165–66, 177-81.)

As stipulated by the parties, most of Mr. Larson's businesses were located outside the State of Minnesota in South Dakota, North Dakota, Wisconsin, Montana, Kentucky, and Ohio, with several of them acquired by Mr. Larson after moving to Las Vegas. (Stip. ¶ 26 at App-11; Exs. 1–2 at App-15 to App-16) Mr. Larson's Nevada entity, Larson Properties, LLC, held his commercial property investments. (Tr. 203, 227.)

**B. None of Mr. Larson's Minnesota Real Estate Properties Was His Home and Most of His Real Estate Investments Were in Nevada, Texas and Mexico.**

As stipulated by the parties, and following his move to Las Vegas, Mr. Larson pursued in earnest his interest and enjoyment in buying and selling investment real estate.

(Stip. ¶ 27 at App-12.) Mr. Larson's investment properties were located in Minnesota, Nevada, Texas and Mexico, with the majority of the properties located in Nevada, Texas and Mexico. (Stip. ¶ 27 at App-12 to App-13; Ex. 3 at App-17.) Of the properties located in Minnesota, all were held for investment and sale and managed by a full-time property manager (Stip. ¶ 27.a at App-12) and three were used by Mr. Larson's family members (his sister , his son and family, and his son and mother) (Tr. 72–74). None was homesteaded by Mr. Larson and none was his home. (Ex. 3 at App-17, Exs. 47–48, 51; Tr. 62–74, 195–202.)

**C. All of Mr. Larson's Minnesota Personal Financial and Legal Matters Were Managed by His Minnesota Personal Financial Assistant.**

While Mr. Larson had bank accounts, professional advisors, and mail delivery in Minnesota following his move to Las Vegas, this was primarily for the convenience of his personal financial assistant, Ms. Busta, who lived in Minnesota and handled all of Mr. Larson's personal financial and legal matters (banking, communications with legal and accounting professionals, real estate closings, opening mail, and paying bills). (Tr. 116, 188, 190–91, 227–29.) Both Mr. Larson and Ms. Busta testified that Ms. Busta primarily communicates with Mr. Larson by telephone (and rarely sees him in person) and that Mr. Larson rarely dealt directly with any of the banks or professional advisors (and, to the limited extent that he did, he usually did so by telephone). (Tr. 89–90, 106, 116, 133, 193–94.)

**D. Most of Mr. Larson's Personal Use Vehicles Were Located in Nevada, Texas and Mexico and, of the Vehicles Located in Minnesota, Most Were Used By Others.**

During the audit of Mr. Larson's 2005 and 2006 tax returns, the Commissioner requested and was provided with a list of Mr. Larson's registered vehicles for those years ("2005-2006 list"). (See App-33 to App-34.) At trial, Mr. Larson, who described himself as a "car junky" and someone who likes to buy and sell cars (Tr. 94-95), testified that of the vehicles on the 2005-2006 list, three were located in Nevada (two of which were registered there), four were registered and located in Mexico (one of which was used by an employee there), three were located in Wisconsin, two were located in Texas (one of which was registered there), and of the remaining vehicles located in Minnesota, most were used by others and one was owned for only 2 months. (Tr. 95-99; see also App-117.)

**E. The Center of Mr. Larson's Social Life Was Outside Minnesota.**

As Mr. Larson testified, he thoroughly enjoyed (and continues to enjoy) all the nightlife, first class restaurants and gambling that Las Vegas has to offer (Tr. 48-49) and often entertained business associates and friends at hotels located along the Las Vegas strip (Tr. 101-02). After joining The Stirling Club in Las Vegas, he would spend most of his time there enjoying the workout facilities and restaurants. (Tr. 59-60.) Mr. Larson also testified that, as a traveling man, he had numerous friends around the country and one friend in particular from California—as two bachelors, they would spend a lot of time together, including traveling on the friend's private aircraft and visiting Europe together. (Tr. 52-53.)

**F. Mr. Larson's Move to Nevada Offered Refuge from His Stressful Family Situation in Minnesota.**

As Mr. Larson testified at trial, while he certainly loved his family in Minnesota (and particularly enjoyed returning for visits to see his grandson compete in sporting events), the unrelenting emotional and financial demands of certain members of his family (including his sister [redacted] and her adult daughter [redacted], his adult son [redacted] and [redacted] family, and his now adult son [redacted]) had become an ever-increasing source of stress in Mr. Larson's personal life. (Tr. 41–46.) As a single man of some means, Mr. Larson candidly described his family situation as follows:

Well, I probably created the situation myself, but these are a group of very needy people. \*\*\* If I bought a new car for my sister—which I did on a regular basis—then my niece thought she should have a new car. And [I] attempted to keep peace in the family [but to] keep all these people living well was almost a full-time job. \*\*\* They would think nothing [of] coming over wherever I was living, at the office, or whatever totally unannounced with some kind of crisis on their behalf. And it was stressful and difficult dealing with these people.

(Tr. 45–46.) Mr. Larson was hopeful that his move to Las Vegas would relieve him from the stresses of his family's demands (at least they “couldn't come knocking on [his] door”) (Tr. 46–47) and that perhaps “they would start handling their own issues and problems and deal with things themselves without being dependent on [him] for everything” (Tr. 48, 85).

In fact, after moving to Las Vegas, Mr. Larson had only planned to return to Minnesota to visit his family for Thanksgiving and Christmas. (Tr. 48.) Unfortunately, unanticipated issues and problems involving his two sons (for example, [redacted] expulsion

from school due to behavioral problems and ongoing substance abuse and emotional issues) forced Mr. Larson to visit Minnesota more often than he had originally planned. (Tr. 79–81, 82–86, 104–12.)

## ARGUMENT

### **I. STANDARD OF REVIEW**

This Court reviews a decision of the Minnesota Tax Court to determine whether the decision was in conformity with the law or justified by the evidence, or whether “the Tax Court committed any other error of law.” Minn. Stat. § 271.10, subd. 1. Relator challenges the tax court’s decision on two grounds—(1) whether the tax court properly applied the law and (2) whether the tax court’s decision was justified by the evidence.

In the present case, the record before the tax court consisted of stipulated facts and trial testimony supplementing those stipulated facts. The question of whether the tax court properly applied the law to stipulated facts is reviewed *de novo*. See *Chapman v. Comm’r of Revenue*, 651 N.W.2d 825, 830 (Minn. 2002) (explaining that when the facts are stipulated, this Court “need only consider whether the law was properly applied”); *Sprint Spectrum LP v. Comm’r of Revenue*, 676 N.W.2d 656, 658 (Minn. 2004) (“[W]e review *de novo* whether the lower court erred in its application of the law.”) (citing *Burlington N. R.R. Co. v. Comm’r of Revenue*, 606 N.W.2d 54, 57 (Minn. 2000); *Amoco Corp. v. Comm’r of Revenue*, 658 N.W.2d 859, 871 (Minn. 2003)).

Moreover, the tax court’s decision is held to be “not justified by the evidence” when the decision is “clearly erroneous” and not supported by “the evidence as a whole.” See *Byers v. Comm’r of Revenue*, 735 N.W.2d 671, 673 (Minn. 2007) (quoting *Bond v.*

*Comm'r of Revenue*, 691 N.W.2d 831, 835–36 (Minn. 2005)); *see also Skelly Oil Co. v. Comm'r of Taxation*, 131 N.W.2d 632, 643 (Minn. 1964). This Court has stated that it will reverse the tax court's factual findings "where a review of the entire record leaves [the Court] with a 'firm conviction that a mistake has been made.'" *Great Lakes Gas Transmission L.P. v. Comm'r of Revenue*, 638 N.W.2d 435, 438 (Minn. 2002) (citing *Krech v. Comm'r of Revenue*, 557 N.W.2d 335, 338 (Minn. 1997)).

## **II. THE TAX COURT ERRED AS A MATTER OF LAW BY APPLYING THE WRONG LEGAL ANALYSIS IN DETERMINING MR. LARSON'S DOMICILE.**

As recently reaffirmed by this Court in *Sanchez v. Commissioner of Revenue*, "to 'establish or change one's 'domicile' requires one's bodily presence in a place coupled with an intent to make such place one's home.'" 770 N.W.2d 523, 527 (Minn. 2009) (quoting *Manthey v. Comm'r of Revenue*, 468 N.W.2d 548, 549 (Minn. 1991)); *see also* Minn. R. 8001.0300, subp. 2; *Miller v. Comm'r of Taxation*, 59 N.W.2d 925, 926 (Minn. 1953). "Whether departure from an established domicile and residence in a new state effects a change in domicile is 'ordinarily a question of fact, depending . . . upon the purpose and intent of the change.'" *Sanchez*, 770 N.W.2d at 525 (quoting *Davidner v. Davidner*, 232 N.W.2d 5, 7 (Minn. 1975)).

There is no dispute that Mr. Larson had "bodily presence" in Nevada in 1998 and every year thereafter. (Stip. ¶¶ 24, 29 at App-11, App-13; Ex. 11 at TX131; Tr. 19, 46–47, 77.) The issue then is whether Mr. Larson had the requisite intent in 1998 coupled with such bodily presence to make Nevada his home. His intent—or frame of mind—and accompanying declarations, acts, and circumstances are all to be evaluated as of the time

of the domicile change. See Minn. R. 8001.0300, subp. 2; *Sanchez*, 770 N.W.2d at 525; *In re Miller's Estate v. Comm'r of Taxation*, Docket No. 323 (Minn. Bd. Tax App. May 7, 1952), *aff'd Miller*, 59 N.W.2d 925 (explaining that statements of intent are of “compelling importance in any domicile question”); *Morrissey v. Comm'r of Revenue*, Docket No. 4866, 1988 WL 91653, at \*10 (Minn. Tax Ct. Aug. 15, 1988) (“What is crucial is the intent of the appellant at the time that he moved out of the State of Minnesota.”); *Page v. Comm'r of Revenue*, No. 4011, 1986 WL 15695, at \*6 (Minn. Tax Ct. Mar. 12, 1986) (“A big factor in discerning appellants’ intent was their frame of mind at the time of their move to Illinois, both as expressed by them and as they expressed to others at the time.”).

In its Opinion, the tax court acknowledges the relevant authorities in determining a taxpayer’s domicile change (Add-18) and alludes to 1998 as the relevant time to evaluate Mr. Larson’s domicile change (Add-5 to Add-6, Add-12 to Add-14, Add-20 to Add-23); however, the court errs as a matter of law by never applying those relevant authorities to the 1998 time period. Absent from the tax court’s domicile analysis is any review of the extensive record before it regarding Mr. Larson’s intent and frame of mind *at the time of* his move to Las Vegas in 1998. See *supra* pp. 6–12.

The tax court, instead, focuses its entire analysis on the 2002–2006 time frame and Mr. Larson’s “connections” to and “presence” in Minnesota during those years. (Add-23 to Add-25.) In so focusing its analysis, the tax court provides three reasons for its ultimate conclusion that Mr. Larson was a Minnesota resident during 2002 through 2006, namely, Mr. Larson’s purported rental of his Las Vegas home in 2002 and 2003, various

selective and incomplete “connections” to and “presence” in Minnesota during 2002 through 2006, and Mr. Larson’s need to pay his “fair share” of Minnesota taxes. (Add-23 to Add-25.) None of these reasons is relevant to whether, in 1998, Mr. Larson had bodily presence in Nevada coupled with intent to make Las Vegas his home. In reviewing the sum and substance of the tax court’s reasoning (and putting aside for a moment the 2002 and 2003 rental issue raised by the tax court, which is addressed by Relator *supra* at note 4 and *infra* p. 23), it becomes clear that the tax court compounds its erroneous legal analysis by fashioning a “domiciliary presence” test—a residency test not found in Minnesota law.<sup>6</sup>

Having adopted this new residency test, the tax court proceeds to enumerate examples of Mr. Larson’s retained “connections” to or “presence” in Minnesota during 2002 through 2006 and concludes that “the evidence indicates Appellant’s continued presence in Minnesota” and that “the locus of his life is in Minnesota.” (Add-24.) As such, the tax court (i) fails to acknowledge and take into account the *entirety of the evidence* that shows the material errors and omissions in the tax court’s stated facts, *see infra* pp. 22–30, (ii) fails to completely and meaningfully analyze the 26 factors under Minnesota Rule 8001.0300, subpart 3, *see infra* pp. 23–26, and (iii) erroneously presumes

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<sup>6</sup> The tax court cites no authority for its “domiciliary presence” test. In this regard, it is noted that the Minnesota Legislature has enacted only one resident “presence” test—the “physical presence” test under Minnesota Statutes § 290.01, subdivision 7(b), which does not apply to Mr. Larson for the tax years 1999 through 2006. (Stip. ¶ 3 at Add-1 to Add-2; App-2.) *See supra* p. 1 and note 2. The Minnesota Rules, as cited by this Court in *Sanchez*, contain only a “bodily presence” test to establish or change one’s domicile, which Mr. Larson met by being bodily present in Nevada. (Stip. ¶¶ 24, 29 at App-11, App-13; Add-10.)

that Mr. Larson’s “presence” in Minnesota during 2002–2006 is either relevant to or indicative of his intent to change his domicile in 1998. *See Truex v. Comm’r of Revenue*, Docket No. 3246, 1982 WL 1509, at \*4 (Minn. Tax Ct. Nov. 5, 1982) (holding that a taxpayer’s “presence” and “activity” in Minnesota “does not give us a conclusive answer to the question of intent. Namely, did Appellants intend to move their permanent residence from Minnesota to Florida?”); *Marcotte v. Comm’r of Revenue*, Docket No. 4541, 1987 WL 10252, at \*2 (Minn. Tax Ct. Mar. 13, 1987) (finding the taxpayer’s retained connections to Minnesota irrelevant).

In what appears to be a variation of this “domiciliary presence” theme, the tax court then references this Court’s decision in *Luther v. Comm’r of Revenue*, 558 N.W.2d 502 (Minn. 1999). Here, the tax court remarks that as “a person of great means, ability, and mobility . . . time and again [Mr. Larson] chooses Minnesota.” (Add-23 to Add-24.) Apart from the obvious factual inaccuracies of this statement as noted *infra* pp. 27–29, the mere fact that an individual has the means and wherewithal to travel where he wants and when he wants is not determinative of where his home is. *See In re Miller’s Estate*, Docket No. 323, *aff’d Miller*, 59 N.W.2d 925.

The tax court then implies that *Luther* supports its conclusion by commenting that, by virtue of Mr. Larson’s “presence” in Minnesota during 2002 through 2006, he should pay to contribute to the costs associated with the “services, benefits, and protections afforded by Minnesota.” (Add-24 to Add-25.) While the tax court may or may not have recalled that Mr. Larson had already paid over \$1 million in taxes to Minnesota as a nonresident in the tax years 2002–2006 (Stip. ¶ 30 at App-14), the tax court’s reliance on

*Luther* is in any event entirely misplaced. In *Luther*, this Court held that Minnesota's taxation of the taxpayer was proper under the "physical presence" test because Ms. Luther was present in the state for more than 183 days. 558 N.W.2d at 508–10. Moreover, this Court's recognition in *Luther* that the taxpayer was a domiciliary of Florida despite all of her connections to and presence in Minnesota directly conflicts with the tax court's proposed "domiciliary presence" test. *See Luther*, 558 N.W.2d at 504.

Importantly, none of the tax court's foregoing reasons addresses Mr. Larson's change in domicile from Minnesota to Nevada in 1998 or his intent for doing so. Because a correct application of the relevant legal analysis to the undisputed evidence of Mr. Larson's frame of mind, actions, and declarations in 1998 supports Mr. Larson's domicile change from Minnesota to Nevada, the tax court's decision should be reversed.

### **III. THE TAX COURT'S FINDINGS OF FACT ARE CLEARLY ERRONEOUS AND ITS DECISION IS NOT JUSTIFIED BY THE EVIDENCE.**

As noted above, the tax court omits relevant undisputed facts and makes factual findings that are clearly contrary to the record. Significantly, the tax court's decision ignores many of the facts relating to Mr. Larson's 1998 domicile change and ever-expanding connections to Las Vegas, *see supra* pp. 6–12, and misstates the nature and extent of Mr. Larson's "connections" to and "presence" in Minnesota during 2002 through 2006. An examination of the entire record in this case, much of which was stipulated, supports the conclusion that the evidence as a whole does not reasonably support the tax court's decision.

**A. The Tax Court’s Review of the 26 Factors Under Minnesota Rule 8001.0300, Subpart 3, Misstates the Nature and Extent of Mr. Larson’s Connections to Las Vegas and Minnesota.**

At pages 18-23 of its Opinion, the tax court discussed the 26 factors under Minnesota Rule 8001.0300, subpart 3, noting that no single factor is determinative in analyzing whether an individual is domiciled in Minnesota. (Add-18 to Add-23.) In its discussion, the tax court ignores relevant facts relating to Mr. Larson’s connections to Nevada and, instead, appears to over-emphasize selective and incomplete facts supportive of Mr. Larson’s so-called “domiciliary presence” in Minnesota. For example, and as highlighted below, in its discussion of Factors E, G, H, I, M, Q, U, V and W of the Rule, the tax court omits relevant and material facts well-established in the record and summarized in Relator’s post-trial submission to the court (*see* App-140 to App-141).

Factor E (“Classification and location of employment”)

While asserting that Mr. Larson was “active” in his businesses because he consulted on various business decisions (Add-20 to Add-21), the tax court omits the following facts:

- Mr. Larson was not involved in day-to-day operations of his Minnesota businesses and rarely visited the offices after his move to Las Vegas. (Stip. ¶¶ 17–19, 25 at App-7 to App-9, App-11; Tr. 34, 81–82, 89, 137, 165–66, 177-81.)
- Most of Mr. Larson’s businesses are located outside Minnesota. (Stip. ¶ 26 at App-11; Exs. 1–2 at App-15 to App-16.)

- Because Mr. Larson communicated with his managers primarily by telephone and fax, the “location” of his “employment” was not tied to the location of his businesses. (*See* Stip. ¶ 29 at App-13.)

Factor G (“Present status of the former living quarters”)

In its discussion of Mr. Larson’s Minnesota real estate properties (Add-21), the tax court omits the following facts:

- All of Mr. Larson’s Minnesota properties were held for investment and sale (Stip. ¶ 27.a at App-12; Ex. 3 at App-17) or used by members of his family (Tr. 72–74).
- None of Mr. Larson’s Minnesota properties was his home. (Stip. ¶ 27.a at App-12; Ex. 3 at App-17.)

Factor H (“Homestead Status”)

In its discussion of homestead status (Add-21), the tax court omits the fact that Mr. Larson had not homesteaded any of his Minnesota properties. (*See* Exs. 47–48, 51; Tr. 62, 195–202.)

Factor I (“Ownership of Other Real Property”)

In its discussion of Mr. Larson’s real estate properties (Add-21), the tax court omits the fact that most were located outside Minnesota. (*See* Stip. ¶ 27 at App-12 to App-13; Ex. 3 at App-17.)

Factor M (“Motor Vehicles”)

In its discussion of where Mr. Larson’s vehicles were registered and located (Add-22), the tax court omits the fact that the vast majority of the vehicles in Minnesota owned by Mr. Larson were used by others. (*See* Tr. 94–99.)

Factor Q (“Bank Accounts”)

In its discussion of Mr. Larson’s bank accounts (Add-22), the tax court omits the following facts:

- Mr. Larson’s Minnesota bank accounts were all managed by his personal financial manager, Ms. Busta, not by Mr. Larson. (Tr. 116, 188, 190–91, 227–29.)
- Mr. Larson, who rarely wrote any checks, could access his bank accounts from anywhere. (Tr. 227–28.)
- While a large transfer was made from the Nevada bank account in 2004, the account remained opened and retained a small balance. (Ex. 27.)

Factor U (“Location of Social Organizations”)

In mentioning that Mr. Larson is a member of the Sons of Norway Lodge located in Minnesota (Add-22), the tax court omits the fact that Mr. Larson does not participate in this organization, has never attended a meeting, and remains a member solely as a tribute to his father who founded the organization. (Tr. 103.)

Factor V (“Address Where Mail Is Received”)

In stating that all of Mr. Larson’s mail is sent to a Minnesota address (Add-22), the tax court omits the fact that Mr. Larson’s mail was sent to Minnesota because it was

received by his personal financial manager, Ms. Busta, not by Mr. Larson. Ms. Busta opened his mail and paid his bills. (*See* Tr. 191.)

Factor W (“Percentage of Time Spent Within and Outside Minnesota”)

In discussing where Mr. Larson spent his time (Add-23), the tax court omits the following facts:

- Mr. Larson testified that he spent only 21 days in Las Vegas in 1999, the year following his change in domicile to Nevada, because he was romantically involved with a woman in Mexico and, despite his many efforts, was unable to get a visa for her to visit the United States. (*See* Tr. 51–52.)
- Mr. Larson testified that he had to travel to Minnesota more often than he originally intended to deal with unexpected family issues and problems. (*See* Tr. 48, 79–86, 104–12.)

Interestingly, while it recites certain facts as they relate to each factor of Minnesota Rule 8001.0300, subpart 3, the tax court never ultimately analyzes the factors in arriving at its domicile determination. (*See* Add-20 to Add-25.) Had it done so, the analysis would have revealed that the vast majority of the factors support Mr. Larson’s domicile change to Nevada in 1998. (*See* App-140 to App-141.)

**B. The Tax Court’s Analysis of Mr. Larson’s “Connections” to and “Presence” in Minnesota in 2002 Through 2006 Similarly Contains Significant Inaccuracies.**

At pages 23 to 25 of its Opinion, the tax court inordinately singles out Mr. Larson’s alleged rental of his Las Vegas home (Unit 401) in 2002 and 2003 as “evidence” that he was domiciled in Minnesota in 2002 through 2006. (Add-23 to Add-

24.) Apart from ignoring the parties' stipulated facts that Mr. Larson acquired the condominium as his residence in June 1998 and physically moved there the following month (Stip. ¶¶ 24–25 at App-11; Ex. 3 at App-17), the tax court also ignores the evidence in the record that explained the typographical errors on the 2002 and 2003 rental schedules that mistakenly listed Unit 401 instead of another rental unit in the same complex<sup>7</sup> (Tr. 140–41) and mistakenly reflected Acapulco as being in *New Mexico* (Ex. 40, TX1240; Ex. 41, TX1351; Tr. 140). Thus, even if relevant to Mr. Larson's change of domicile in 1998 (which Relator submits it is not), the tax court's emphasis on the 2002 and 2003 rental schedules is simply not supported by the evidence in the record.

The tax court, in applying its “domiciliary presence” test, then focused on Mr. Larson's Minnesota “presence” and listed the following select facts as evidence of Mr. Larson's Minnesota “connections”:

[M]ost of Appellant's business, be it Larson Companies or buying or selling real estate, occurred in Minnesota; most of his agents (and business relationships), attorneys, accountants, doctors, personal assistants, real estate agents, are located in Minnesota; his most active bank accounts are located in Minnesota; all his mail is received in Minnesota; and his family (children and grandchildren) which require his frequent visits are located in Minnesota.

(Add-24.)

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<sup>7</sup> See *supra* note 4. Apart from his home in Unit 401, Mr. Larson owned rental units in the same condominium complex (the Marie Antoinette)—two rental units in 2002 (Units 1005 and 311) and five rental units in 2003 (Units 1005, 311, 1008, 124, 402). The schedules attached to Mr. Larson's 2002 and 2003 tax returns mistakenly reported rental income from Unit 401 instead of Unit 1005. (Stip. ¶27.b at App-12; App-17; Ex. 40 at TX1240; Ex. 41 at TX1351; Tr. 140–41.)

The tax court's statement that "most" of Mr. Larson's "business, be it Larson Companies or buying or selling real estate, occurred in Minnesota" is simply incorrect and contrary to the record. The court appears to rely, in part, on the Commissioner's Proposed Finding of Fact 45 (*see* App-112), which was shown to be in error in Relator's detailed objection to the proposed finding (demonstrating that by 2006, only 25% of Mr. Larson's truck dealership entities were in Minnesota and that of all entities falling under the revocable trust, only 31% were in Minnesota) (App-156 to App-157). The tax court appears to have merely adopted the Commissioner's proposed finding as fact without any independent review of the record. *See 444 Lafayette, LLC v. Cnty. of Ramsey*, No. A11-1014, 2012 WL 204534 (Minn. 2012). Further, the tax court's implication that "most" of Mr. Larson's investment real estate was in Minnesota is also contrary to the stipulated facts and exhibits, which demonstrate that out of the 21 investment properties, only seven, or one-third, were in Minnesota. (Ex. 3 at App-17; Stip. ¶ 27 at App-12 to App-13.) *See also supra* pp. 13–14.

Second, in referencing that Mr. Larson's attorneys, accountants, and bank accounts were in Minnesota and that his mail is received in Minnesota, the tax court fails to mention the relevant fact that Mr. Larson's financial and legal matters were managed by his long-time personal financial assistant, Ms. Busta, who resided in Minnesota. *See supra* p. 14. As Ms. Busta testified, she was hired in August 1995, before Mr. Larson moved to Nevada. (Tr. 188.) Ms. Busta rarely sees Mr. Larson in person (Tr. 193–94) and can perform her duties from anywhere in the country (Tr. 228). That Mr. Larson

continued to employ his trusted Minnesota assistant after moving to Las Vegas does not convert Ms. Busta's Minnesota connections to those of Mr. Larson.

Third, the tax court's suggestion that the location of Mr. Larson's family members in Minnesota somehow demonstrates his Minnesota "presence" and domicile is clearly erroneous. Inexplicably, the tax court omits any discussion of Mr. Larson's stressful family situation and the fact that he was hopeful that his move to Las Vegas in 1998 would relieve him from the unrelenting demands of certain members of his family. *See supra* pp. 16–17.

Finally, at pages 15 and 24–25 of its Opinion, the tax court alludes to the fact that Mr. Larson continued to spend time in Minnesota, emphasizing his alleged travel patterns (Add-15, Add-24 to Add-25); however, the court makes no reference to the fact that Mr. Larson traveled to Minnesota more often than he had originally expected or wanted due to unexpected family issues and problems. *See supra* pp. 16–17. As to Mr. Larson's alleged travel patterns, the tax court appears to be referring to its findings of fact 49 and 50 on page 9 of its Opinion. (*See* Add-9.) These findings of fact were adopted from the Commissioner's proposed findings almost verbatim (*see* App-112) and contain the same deficiencies and errors as pointed out in Relator's detailed objections filed with the tax court (showing that the Commissioner's proposed findings were based on incomplete travel records, related only to the years 2005 and 2006, and were contrary to the very "data" relied upon by the Commissioner in "calculating" the alleged "number of flights"). (*See* App-155 to App-156; App-178.)

In sum, the tax court's decision is not justified by the evidence.

## CONCLUSION

The record before the tax court established that Mr. Larson became a Nevada domiciliary resident in 1998—the stipulated facts and supplemental trial testimony clearly showing that Mr. Larson had bodily presence in the State of Nevada coupled with the intent to make Las Vegas his home. The tax court’s failure to apply the relevant legal authorities to the record—and the court’s erroneous focus on 2002–2006 under a newly-created “domiciliary presence” test—are errors as a matter of law. It has also been established that, because the tax court based its findings on incomplete and incorrect facts not supported by the record as a whole, its decision is clearly erroneous. Accordingly, the tax court’s determination that Mr. Larson was a Minnesota resident during 2002–2006 should be reversed in its entirety.

Respectfully Submitted,



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ATTORNEYS FOR RELATOR  
WILLIAM D. LARSON

Dated: April 4, 2012

5098926

STATE OF MINNESOTA  
IN SUPREME COURT

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William D. Larson,

Relator,

**CERTIFICATION OF BRIEF  
LENGTH**

vs.

Commissioner of Revenue,

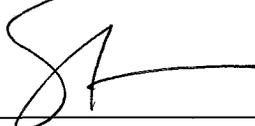
SUPREME COURT CASE NUMBER: A12-0378

Respondent.

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I hereby certify that this brief conforms to the requirements of Minn. R. Civ. App. P. 132.01, subds.1 and 3, for a brief produced with a proportional font. The length of this brief is 8,719 words. This brief was prepared using Microsoft Office Word 2003.

Dated: April 4, 2012

  
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