

No. A12-0378

STATE OF MINNESOTA
IN SUPREME COURT

William D. Larson,

Relator,

vs.

Commissioner of Revenue,

Respondent.

RESPONDENT'S BRIEF

FREDRIKSON & BYRON, P.A.

SUE ANN NELSON
Attorney Reg. No. 78244

MASHA M. YEVZELMAN
Attorney Reg. No. 387887

200 South Sixth Street, Suite 4000
Minneapolis, MN 55402-1425
(612) 492-7000

ATTORNEYS FOR RELATOR
WILLIAM D. LARSON

OFFICE OF THE ATTORNEY GENERAL
State of Minnesota

JEREMY D. EIDEN
Assistant Attorney General
Atty. Reg. No. 0388289

TAMAR N. GRONVALL
Assistant Attorney General
Atty. Reg. No. 0307166

445 Minnesota Street, Suite 900
St. Paul, Minnesota 55101-2127
(651) 757-1224 (Voice)
(651) 296-1410 (TTY)

ATTORNEYS FOR RESPONDENT
COMMISSIONER OF REVENUE

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LEGAL ISSUES

- I. Was Mr. Larson domiciled in Minnesota, and therefore a resident of Minnesota, under Minn. Stat. 290.01 subd. 7(a) for the tax years 2002 through 2006?

The Minnesota Tax Court correctly applied the residency statute, Minn. Stat. 290.01, and the 26 factor test found in Minnesota Rule 8001.0300, to determine that Mr. Larson did not change his domicile to Nevada and was still domiciled in Minnesota for the tax years at issue.

Most Apposite Cases:

Sanchez v. Comm'r of Revenue, 770 N.W.2d 523 (Minn. 2009)

Stamp v. Comm'r of Revenue, 296 N.W.2d 867 (Minn. 1980)

Minn. Stat. § 290.01 (2004)

Minn. R. 8001.0300 (2003)

- II. May the Tax Court determine credibility of testimony in determining the weight, if any, to give testimony that contradicts documented actions and stipulations of fact?

The Minnesota Tax Court determined documents and stipulations of fact were more reliable and credible than much of the testimony at trial, according them more weight in reaching its decision that Mr. Larson was domiciled in Minnesota for the tax years 2002 through 2006.

Most Apposite Cases:

Sanchez v. Comm'r of Revenue, 770 N.W.2d 523 (Minn. 2009)

Dreyling v. Comm'r of Revenue, 753 N.W.2d 698, (Minn. 2008)

Sandberg v. Comm'r of Revenue, 383 N.W.2d 277 (Minn. 1986)

Stamp v. Comm'r of Revenue, 296 N.W.2d 867 (Minn. 1980)

STATEMENT OF THE CASE

This is a review by certiorari of an Order of the Minnesota Tax Court (“Tax Court”), after trial presided over by the Honorable George W. Perez. The Tax Court affirmed the Commissioner of Revenue’s Notice of Determination on Appeal, which found the Relator William D. Larson (“Mr. Larson”) was a Minnesota resident for the tax years 2002 through 2006. The Tax Court found that Mr. Larson was a resident of Minnesota pursuant to Minn. Stat. 290.01, subd. 7(a), which defines a resident as someone who is domiciled in Minnesota. The State of Minnesota has the power to tax all of the income of its residents pursuant to Minn. Stat. § 290.14, subd. 1.

Mr. Larson filed his individual income tax return as a full-time resident of Minnesota for the year 1998. Mr. Larson filed a Minnesota return as a non-resident for the years 1999 through 2006. His individual income tax returns were the subject of two audits, comprising the tax years 2002 through 2006. The Commissioner determined Mr. Larson was a resident of Minnesota for the years 2002 through 2006 and assessed Mr. Larson additional tax and interest in two separate Commissioner’s Orders dated June 20, 2007, and November 20, 2008.

Mr. Larson administratively appealed the two tax orders on September 17, 2007. The Commissioner issued a Notice of Determination on Appeal dated April 17, 2009, upholding the Commissioner’s Orders assessing Mr. Larson additional income tax as a resident of Minnesota.

Mr. Larson appealed the Notice of Determination on Appeal to the Tax Court on July 15, 2009. On April 6, 2011, the Tax Court held a day-long trial at the Judicial

Center in St. Paul, Minnesota. At trial, Mr. Larson and the Commissioner stipulated to the admissibility of four volumes of exhibits, and additionally stipulated to certain facts contained in three Stipulations of Fact (App-1 – App-18).¹ Mr. Larson called five witnesses to testify at trial. At the conclusion of trial, the parties briefed the issues for the Tax Court and each submitted proposed findings of fact.

The Tax Court issued its Findings of Fact and Conclusions of Law on January 11, 2012. This appeal followed.

¹ App- refers to Relator's Appendix and Add- refers to Relator's Addendum.

STATEMENT OF FACTS

The record consists of four volumes of stipulated exhibits, three joint stipulations of fact, and trial testimony. The voluminous record spans eight years, from 1998 until 2006. After careful review of the record it is clear that Mr. Larson was still domiciled in Minnesota through 2006.

I. MR. LARSON HAS DEEP FAMILY, SOCIAL, AND BUSINESS TIES TO MINNESOTA.

Mr. Larson was born and raised in Minnesota, attended Minnetonka High School, and his sister, niece, children and grandchildren have continuously resided here.² After service in the U.S. Marines, Mr. Larson returned to Minnesota and joined the family trucking business, Larson Transfer & Storage Co., Inc., in Minnesota. First Supplemental Stipulation of Facts (“FSSF”) ¶ 11 at App-5; Tr. at p. 21, ll. 3-20. Mr. Larson was married in 1957, and had two children through this marriage. FSSF ¶ 15 at App-7. Mr. Larson’s marriage lasted until 1978. *Id.* Mr. Larson moved to Las Vegas, Nevada, in 1981, for three years. FSSF ¶ 16 at 7 at App-5. At the request of his daughter, Mr. Larson then moved to Phoenix, Arizona, in 1984, for five years. FSSF ¶ 16 at App-7. Although Mr. Larson resided in Arizona, he became involved with a Minnesota woman and in 1987 his son was born. *Id.* The relationship with this woman continued until the mid-1990’s. *Id.*

Mr. Larson returned to Minnesota from Arizona in 1989. FSSF ¶ 17 at App-7. His Minnesota business was in trouble, and he spent considerable time and energy to

² Tr. at p. 19, ll. 20-21; *id.* at p. 41, ll. 9-22; *id.* at p. 44, ll. 3-11; p. 42 ll. 5-8; p. 43 ll. 2-4. “Tr.” refers to the transcript page, and “ll.” refers to lines in the transcript.

rehabilitate them. FSSF ¶ 17 at App-7; Tr. 25, ll. 17-25; Tr. 26-31. In order to save his business Mr. Larson needed to cultivate his personal relationships with Minnesota banks. Tr. at 130, ll. 17-25. The business would have failed if Mr. Larson did not return to Minnesota to personally handle the issues that threatened his business. Tr. 130, ll. 5-25.

Mr. Larson has retained exclusive control over the decisions and success of his Minnesota business. He has created multiple different companies owned and operated under the umbrella of W.D. Larson Companies, Inc. (“Larson Companies”), a Minnesota corporation. FSSF ¶ 12 at App-5 to App-6, Ex. 1, 2, 4. Larson Companies itself is owned by the W.D. Larson Revocable Trust (the “Trust”), which was created by Mr. Larson’s Minnesota attorneys in Minnesota. Ex. 10; Tr. 134, ll. 6-22; Tr. 133, ll. 13, 14. The Trust documents state it is established under the trust laws of Nevada. Ex. 10, TX 98.³ The Trust documents, however, were signed by Mr. Larson in Minnesota on July 12, 2000. Ex. 10, TX 117. The Trust was amended, and the amendment was signed into the Trust in Minnesota on February 28, 2006. Ex. 10, TX 121, 122. Mr. Larson did not give up direct control of the companies in this transfer to the Trust, it just set up an ordered way to control the companies at Mr. Larson’s passing. Ex. 10; Tr. 133, ll. 8-12; Tr. 135, ll. 11-14.

Mr. Larson is the Chairman of the parent company, Larson Companies. Tr. 115, ll. 17-19. He has been and continues to be compensated annually as Chairman of the company. *Id.* at 23-25. He also signs any and all personal guarantees for business credit for the businesses. Tr. 186, ll. 1-4. During the periods in question and continuing today,

³ Each exhibit is bates numbered, preceded with a “TX.”

Mr. Larson retains exclusive control over the important decisions regarding the ultimate success of his Minnesota business. To that end, he remains in contact with his managers of his Minnesota businesses over the telephone and checks in with them and visits the dealerships in Minnesota on occasion to see how things are going. Tr. 82, ll. 2-7, p. 166, 11. 18-25, p. 178-179, p. 193, 11. 23-25.

Larson Companies owns 13 truck dealerships, five of which are in Minnesota. Ex. 4. The other eight are in the Dakotas, Montana, Wisconsin, and Ohio. *Id.* The Trust also owns All Wheel, Inc. in Bloomington, Minnesota; Marketing Underwriters Acquisitions, Inc., of Bloomington, Minnesota. *Id.* There are 12 entities which have no listed place of business or corporation. *Id.*

As business got better, Mr. Larson's day-to-day involvement was reduced and turned over to his managers, Glenn E [redacted] and Al O [redacted]. FSSF ¶ 17, 20 at App-7, App-9. Mr. E [redacted] and Mr. O [redacted] were hired by Mr. Larson in the 1970's. FSSF ¶ 18(a), 18(b) at App-8; Tr. 131, ll. 5-7.

In 1990, Mr. E [redacted] became the president of Larson Companies. FSSF ¶ 18(a) at App-8. He retired in 2005, but returned to consult after the tax periods at issue. *Id.* In the early 1990's, Mr. O [redacted] received management responsibilities for Citi-Cargo. FSSF ¶ 18(b) at App-8. Eventually, he also received management responsibilities for Allstate Leasing, LLC, and Larson Properties. *Id.* Mr. O [redacted] continues to manage the day-to-day operations of these businesses and holds the title of Senior V.P./Corporate Secretary of Larson Companies. *Id.*

In the late 1990s, the Peterbilt corporation adopted a strategy of local ownership and management within a territory. FSSF ¶ 14 at App-6 to App-7. Mr. Larson was chosen to own and operate Peterbilt dealerships in Minnesota, Wisconsin, North Dakota, South Dakota, and Montana. FSSF ¶ 14(a) at App-6. Due to these Peterbilt franchise requirements, Mr. Larson sold his companies F.B. Hart and Hart Truck Rental. FSSF ¶ 14(b) at App-7. These businesses were sold prior to Mr. Larson's purchase of the first Nevada condominium. Mr. Larson also sold his Transport America company in 1996. FSSF ¶ 22 at App-10, Ex. 1.

II. MR. LARSON'S FAILED ATTEMPT TO PURCHASE THE PETERBILT DEALERSHIP IN NEVADA.

In 1997, Mr. Larson became interested in purchasing the Las Vegas Peterbilt dealership. FSSF ¶ 23 at App-10 to App-11. The Peterbilt franchisor mandated that Mr. Larson sell his Minnesota and Wisconsin dealerships as a condition of purchasing the Las Vegas dealership, and that he live in Nevada so there would be local management. FSSF ¶ 23 at App-10 to App-11; Tr. 131-132, ll. 23; Tr. 132, ll. 7-9. Another condition of purchasing the Las Vegas Peterbilt dealership was that Mr. Larson had to live in Las Vegas. Tr. 36, ll. 22-25, p. 37, ll. 2-5, 16-24. To fulfill that requirement, Mr. Larson purchased a condominium in Las Vegas. An attorney with Leonard, Street and Dienard, a Minnesota firm, was retained to prepare draft contracts for sale of Larson Companies. Tr. 147, ll. 20-22. However, the sale of Larson Companies was ultimately unsuccessful, and Mr. Larson also was then unable to purchase the Las Vegas dealership. Tr. 131, ll.

18-22; Tr. 156, ll. 4, 5. Despite the failed business deal Mr. Larson kept his Las Vegas condominium. Nevada, unlike Minnesota, is a state that does not have a state income tax.

III. MR. LARSON MAINTAINED HIS MINNESOTA DOMICILE DURING 2002 TO 2006.

For purposes of determining whether a person is domiciled in Minnesota for tax purposes, the trier of fact must apply Minnesota Rule 8001.0300, subp. 3, which contains a non-exhaustive list of 26 factors. The trier of fact must determine and weigh the facts as to the relevant factors in determining the person's domiciliary status. In recognition of the factors and their place in deciding whether a person is domiciled in Minnesota, the Commissioner evaluated the facts to address each of the relevant factors.

A. Most Of Mr. Larson's Travels Are To And From Minnesota.

Minn. R. 8001.0300 subp. 3(W). Mr. Larson flies extensively, and considers himself a "traveling man." Tr. 52, ll. 20-22. An examination of Mr. Larson's American Express and WorldPerks records for the tax period in question, reveals that most of Mr. Larson's flights were going to or leaving Minnesota. Ex. 39, 53. Mr. Larson used the Minneapolis/St. Paul airport as his origination airport 77 times from 2002 through 2006, and flew in to Minneapolis/St. Paul 64 times during this period. *Id.* Mr. Larson only originated flights from Las Vegas 22 times, and only flew in to Nevada 15 times during the same four-year period. *Id.*

B. Mr. Larson's Location Of Domicile Was In Minnesota For Years Prior To The Audit.

Minn. R. 8001.0300 subp. 3(A). Mr. Larson has extensive family, friends, business and social ties to Minnesota. Except for 1999, when he spent more time in

Mexico pursuing a relationship, Mr. Larson spent most of his time each year in Minnesota after buying his Nevada condominium on September 28, 1998. FSSF ¶ 29 at App-13; Ex. 11, TX 127. Mr. Larson testified that when he was in Minnesota, he spent his time with friends and family, looking for investment properties, visiting the properties he owns in Minnesota, and going into his businesses for brief visits. Tr. 106, ll. 17-19.

Mr. Larson grew up in Minnesota, and went to Minnetonka High School. Tr. 19, ll. 20, 21. He took over his family's Minnesota business, which he grew into a very large corporation with many other business, almost all of which are based in Minnesota. Ex. 4; Tr. 21, ll. 15-25; Tr. 22, ll. 1-6. In 1981, Mr. Larson moved to Las Vegas, Nevada, for three years. FSSF ¶ 16 at App-7. In 1984, Mr. Larson moved to Arizona to be with his daughter, , for five years. *Id.* In 1989, Mr. Larson moved back to Minnesota, because his business was going through a series of financial difficulties. FSSF ¶ 17 at App-7. Mr. Larson was a resident of Minnesota for roughly a decade before he claims to have changed his domicile again in 1998. FSSF ¶ 24 at App-11; Tr. 19, ll. 9-11.

C. Where Mr. Larson Is Registered To Vote.

Minn. R. 8001.0300 subp. 3(B). Mr. Larson never registered to vote until 1998, when he registered in Nevada. FSSF ¶ 24 at App-11; Tr. 78, ll. 15-24. Mr. Larson testified that he never registered to vote in Minnesota, or any other jurisdiction prior to his 1998 registration in Nevada, because he did not want to be on jury duty. Tr. 78, ll. 15-22. Though he registered to vote in Nevada, he never actually voted as a resident of that state. *Id.*, ll. 22-24.

D. Classification Of Mr. Larson's Employment, And Location Of Employment.

Minn. R. 8001.0300 subp. 3(D), (E). Mr. Larson is the current chairman of Larson Companies. Tr. 115, ll. 17-19. Larson Companies has, at all times, been a Minnesota corporation. *Id.*, ll. 20-22. During the tax periods in question and thereafter, Mr. Larson was compensated for his continued work as the chairman of Larson Companies. *Id.*, ll. 23-25. All personal guarantees that need to be signed for the business are signed by Mr. Larson. Tr. 186, ll. 1-4. Although the day-to-day affairs are handled by his employees Glenn E [redacted] and Al O [redacted], FSSF ¶ 19 at App-9, Mr. Larson testified that his managers consult him on many important business decisions, including financing, acquiring a building, selling some trucks, or being sued by an employee. FSSF ¶ 17, 18 at App-7 to App-8. Mr. O [redacted] testified that he would consult Mr. Larson regarding updates on the business, such as adding trucks to the fleet, and the approval of acquisitions of assets with long term financing deals. Tr. 180, ll. 11-25; Tr. 181, ll. 1.

E. Locations Of Mr. Larson's Residences.

1. Minnesota residences.

Minn. R. 8001.0300, subp. 3(F), (G), (I). Mr. Larson stipulated that he maintained an abode in Minnesota for 1998. FSSF ¶ 4, App-2. Mr. Larson maintained numerous residences during tax years 2002 to 2006. From 1999 until January of 2006, Mr. Larson owned the house at [redacted] (“Wayzata Property”) in Wayzata, Minnesota for personal use. FSSF Ex. 3 at App-17; Tr. 66, ll. 18-20. When he purchased that \$6 million dollar, 40,000 square foot home, he renovated it to make it look more like a

“home.” Tr. 66, ll. 1, 7-9; Tr. 65, ll. 22. When Mr. Larson sold the Wayzata Property, he purchased _____, Wayzata, Minnesota (“Second Wayzata Property”) for \$4.2 million in March of 2006 and used that home as his residence when he was in Minnesota. FSSF Ex. 3 at App-17; Tr. 67, ll. 4-6.

2. Nevada residences.

Minn. R. 8001.0300 subp. 3(I). Mr. Larson claimed _____, Las Vegas, Nevada, as his residence from 1998 until he sold the property on November 30, 2006. FSSF ¶ 24 at App-11; Ex. 3; Tr. 47, ll. 1. Mr. Larson homesteaded this property. Ex. 15. For the taxable years 2002 through 2004, Mr. Larson also reported rental income from this residence and claimed deductions from this unit, inconsistent with his contention that it was his exclusive home. Ex. 40, TX 1239; Ex. 41, TX 1350; Ex. 42, TX 1511. In 2005, Mr. Larson did not claim rental income or expense — but in 2006 the unit reappeared on Mr. Larson’s federal tax return as being rented with deductions for expenses. Ex. 44, TX 2022. At trial, Mr. Larson testified that he would never rent out the property because it was his home. Tr. 109, ll. 11-19; Tr. 142, 16-22. Mr. Larson did admit, however, that these were the tax returns that he filed with the Internal Revenue Service, and that they were true and correct to the best of his knowledge. Tr. 109, ll. 20-24 Tr. 143, ll. 1.

In 2006, Mr. Larson purchased 2857 Paradise Road #106, Las Vegas, Nevada, and claimed that as his primary residence. FSSF Ex. 3 at App-17; Tr. 59, ll. 12-25.

3. Texas residences.

Minn. R. 8001.0300 subp. 3(I). Mr. Larson owned multiple properties in Texas during the periods at issue. When he is in Texas, he stays at 3535 Gillespie #71, Dallas, Texas. FSSF ¶ 27(d) at App-12 to App-13; Ex. 3; Tr. 74, ll. 7-12. During the tax years at issue, Mr. Larson also owned three other properties in the Dallas area:

. Ex. 3.

4. Mexico residences.

When Mr. Larson was in Mexico, he owned and stayed at the Villa Eternidad property, which he purchased on May 20, 1997. FSSF ¶ 27(b) at App-12; Ex. 3; Tr. 34, ll. 21-25, Tr. 35 ll. 1-10. He also rents out the Villa Eternidad property.

F. Present Status Of Mr. Larson's Residences.

The Wayzata Property was sold in 2006. FSSF Ex. 3. The Nevada, property was also sold in 2006. *Id.* The property is a rental/investment property. *Id.* The property is currently owned and used as a residence. *Id.*; Tr. 19, ll. 4-8. The Second Wayzata Property is currently owned by Mr. Larson, and is for sale. FSSF Ex. 3 at App-17; Tr. 67, ll. 4-6.

G. Jurisdiction In Which Mr. Larson Has A Valid Driver's License.

Minn. R. 8001.0300 subp. 3(J). In June of 1998, Mr. Larson acquired a Nevada drivers' license and cancelled his Minnesota driver's license. FSSF ¶ 24 at App-11; Tr. 78, ll. 8, 9.

H. Jurisdiction In Which Mr. Larson Has Motor Vehicles Registered And The Actual Location Of Those Vehicles.

Minn. R. 8001.0300 subp. 3(M). Mr. Larson has many vehicles, which he uses in multiple states. At trial, Mr. Larson stated, “I like to own a variety of cars where I live and where I visit.” Tr. 95, ll. 7, 8. Mr. Larson purchased and sold the majority of his vast vehicle collection in Minnesota during the audit period. Mr. Larson directs his assistants to register his cars on his behalf. Tr. 98, ll. 8-13. Mr. Larson has registered two cars in Nevada, and has registered twelve cars in Minnesota. Ex. 25. Mr. Larson testified that three of the cars were in use by his son, two were at Glenn’s Truck Center for its use; one was in Las Vegas; and two were in Wisconsin. Tr. 95, 96, 97, 98. At trial, Mr. Larson admitted that he would have at least two cars for his use while he was in Minnesota, “for sure.” Tr. 113, ll. 12-19; Tr. 113, ll. 22-25. Additionally, Mr. Larson has 22 recreational vehicles registered in Minnesota and Wisconsin. Ex. 25; Tr. 98, ll. 21-25; Tr. 99, ll. 2-10, 20-23.

The automobiles that Mr. Larson owned, per stipulation, Ex. 25:

Vehicle	Purchased or leased (if known)	Sold or returned (if known)	State of Registration	Testimony of Actual Physical Location
2003 Ford F150	08/03	03/07	Minnesota	Las Vegas
1999 Cadillac			Minnesota	Minnesota
2006 Jeep Commander	11/06		Minnesota	Minnesota
2006 Chrysler 300	06/05	08/05	Minnesota	Minnesota
2005 Dodge Durango	02/04	12/06	Minnesota	Minnesota, used by an employee

2005 Dodge Ram	11/04	03/08	Minnesota	Minnesota, used by an employee
2003 Jeep Wrangler	10/05	06/07	Minnesota	Minnesota, used by son
2006 Jeep Commander	11/06		Minnesota	Minnesota, used by son
2004 Jeep Cherokee	05/04	08/07	Minnesota	Texas
2004 Mercedes S600	08/05	03/07	Minnesota	Unknown
2003 Cadillac Escalade		2003	Minnesota	Wisconsin
2003 Cadillac Escalade		2004	Minnesota	Wisconsin
2005 Power Wagon	04/05			Minnesota
2005 Suburban	2005		Mexico	Minnesota, used by an employee
2000 GMC Savanna				Wisconsin
1999 Chrysler 300			Mexico	Mexico
2003 VW Jetta			Mexico	Mexico
2004 Jeep Cherokee			Mexico	Mexico
1988 Bentley			Nevada	Nevada
1994 Chevrolet Camaro			Nevada	Nevada
2006 Bentley Continental GT	01/06	06/06	Texas	Texas

I. Where Mr. Larson Filed An Income Tax Return.

Minn. R. 8001.0300 subp. 3(O). Mr. Larson filed as a resident of Minnesota for the tax year 1998. Stip. of Facts (“SoF”) ¶ 4 at App-2. From 1999 through 2006, Mr.

Larson timely filed as a Minnesota non-resident, and paid income tax as a non-resident.

Id. ¶¶ 7, 8 at App-3.

J. The Location Of Mr. Larson's Financial Accounts, And Which Accounts Are Most Active.

Minn. R. 8001.0300 subp. 3(Q), (R). Mr. Larson has a number of bank accounts, including some accounts of which he claims he may not be personally aware. Tr. 116, ll. 1-6; Tr. 117, ll. 4; Tr. 121, ll. 7, 8; Tr. 22, ll. 2-8.

1. Minnesota accounts.

Most of Mr. Larson's bank accounts were located in Minnesota, and one in Wisconsin. Ex. 28, 29, 30, 31, 32, 33, 34, 35. The Associated Bank account ending in 80 ("Associated Bank 80") was the most active of Mr. Larson's accounts. Ex. 33, 34, 35. This account, as with all the Minnesota bank accounts, was opened sometime before 1995. Tr. 227, ll. 22-24. The Associated Bank 80 is also the most active account for Mr. Larson's personal expenses. Tr. 230, ll. 7-10. The compensation that Mr. Larson received as Chairman of Larson Companies was deposited in this account. Ex. 33, 34, 35; Tr. 230, ll. 11-13. The Associated Bank 80 was also the account that was primarily used to pay Mr. Larson's credit card balances. Tr. 214, ll. 2-4.

Mr. Larson also had an Associated Bank savings account in Minnesota ("Associated Bank 16"). Ex. 29, 30; Tr. 207, ll. 15. Mr. Larson and one of his former assistants, Sue O , had authority over this account. Tr. 207, ll. 21-25. Any transfers out of this account were for the benefit of Mr. Larson, and it was Mr. Larson's money in the account. Tr. 208, ll. 1-9.

Mr. Larson had another Minnesota bank account with LB Community Bank in Minnesota. Ex. 31; Tr. 209, ll. 1-7. His assistant, Ruth B would deposit money into the account for Mr. Larson, and LB Community Bank would debit the account to pay a loan that Mr. Larson had taken out with the bank. *Id.*, ll. 1-7, 13-14, 18-20.

Mr. Larson had another Minnesota account with Anchor Bank, which was opened by Ruth B . Tr. 120, ll. 3-4. The money in the Anchor Bank account was Mr. Larson's money, and was spent for the benefit of Mr. Larson. Tr. 208, ll. 3-9.

2. Nevada account.

Mr. Larson has maintained a Bank of the West account in Nevada since 1998, but testified that he only accesses this account when he runs out of money when he is in Las Vegas. Ex. 50; Tr. 117, ll. 14-16. In the five years at issue, the record shows this account was accessed less than 75 times. Mr. Larson accessed it personally between two and four times, in 2003 and 2004. He conducted no other transactions with this account. His assistant, Ms. B a, accessed the account 66 times. He made two transactions in 2003 in the Nevada account. Tr. 118, ll. 8-10. Mr. Larson may have, but cannot specifically recall, conducting two transactions in the account in 2004. Tr. 119, ll. 1-4. In the rest of the years at issue (2002-2006), he did not conduct any transactions in the Bank of the West account at all. Ex. 27. The other 66 transactions were done by Ms. B , his assistant. Tr. 116, ll. 1-6; Tr. 205, ll. 15-19. The Bank of the West account, holding primarily rent from the Las Vegas properties, was essentially emptied on December 21, 2004. Ex. 27, TX 310. Ms. B emptied the account, but for reasons she could not

recall. Tr. 119, 5-11; Tr. 206, ll. 5-12. No other Nevada accounts were opened or maintained during the tax periods at issue.

When the Nevada Bank of the West account was emptied, the money went into the Anchor Bank account in Minnesota. Tr. 206, ll. 5-12.

3. Wisconsin account.

The last bank account was the Chippewa Bank account in Hayward, Wisconsin. Ex. 32. Mr. Larson testified he could not recall accessing the account, but did not rule out the possibility. Tr. 122, ll. 5-8. Mostly, the caretaker of his Hayward property uses this account. *Id.*

4. Texas and Mexico accounts.

Ms. B a also testified that beyond the accounts that were reported to the Commissioner, Mr. Larson has a Texas account that he never uses, and an account in Mexico that is used for the maintenance of his Mexico properties. Tr. 223, ll. 21-25; Tr. 224, ll. 1-4.

For clarity purposes, the chart below lists Mr. Larson's bank accounts:

Account Name	State	Year Opened
Associated Bank 80	Minnesota	Pre-1995
Associated Bank 16	Minnesota	Pre-1995
L.B. Community Bank	Minnesota	Approx. 1995
Anchor Bank	Minnesota	Pre-1995
Bank of the West	Nevada	1998
Chippewa Bank	Wisconsin	Pre-1995
Unknown Mexican Bank	Mexico	Unknown
Unknown Texas Bank	Texas	Unknown

5. Credit card accounts.

Mr. Larson used his credit cards extensively, especially his American Express accounts. Ex. 36, 37, 38, 39; Tr. 126, 14-21. All of the credit card bills were sent to his businesses in Minnesota, so Ms. B could collect and pay the accounts. *Id.*; Tr. 123, ll. 18-19, 24-25; Tr. 127, ll. 5-7; Tr. 128, ll. 2-4, 12-16.

Mr. Larson testified that Ms. B in Minnesota, dealt with all the banks and the credit cards. Tr. 123, ll. 24-25; Tr. 127, ll. 5-10; Tr. 129, ll. 18-25. Although Ms. B testified that the banks “don’t care” where Mr. Larson is, and that she could have opened bank accounts anywhere, the fact is she opened them in Minnesota. Tr. 228, ll. 2-6, 14-16, 20-23. She testified that most of the accounts, the Minnesota ones, were opened before she was employed with Mr. Larson, and were opened because Mr. Larson was in Minnesota. Tr. 227, ll. 21-24. Mr. Larson’s most active personal accounts have been, throughout the whole time period, his Minnesota accounts. Tr. 230, ll. 2-13.

K. Location Of Mr. Larson’s Business Relationships, And Where His Business Is Transacted.

Minn. R. 8100.0300 subp. T. As previously stated, Mr. Larson is employed as chairman of Larson Companies, a Minnesota company. Tr. 115, ll. 17-19, 20-22. Al O, senior vice president and secretary of Larson Companies, testified that the business was like a child to Mr. Larson. Tr. 177, ll. 2-3; Tr. 183, ll. 5-8.

He employs Ruth B, in Minnesota, as his personal accountant. Tr. 188, ll. 10-11. Mr. Larson’s attorneys and accountants, who work with Ms. B are mostly in Minnesota, and he did not have regular attorneys in Nevada. Tr. 90, ll. 3-7, 9-15, 20-25.

Mr. Larson did testify at trial that he retained a Nevada attorney for a personal injury matter. Tr. 90, ll. 22-25.

Ms. B a also sets up financing for Mr. Larson's property acquisitions and his sales of real estate, and setting up tenants for the lease of his properties. Tr. 188, ll. 17-19. Ms. B a testified that the real estate company was a Nevada corporation, but that all the business she conducted was in Minnesota. Tr. 226, ll. 10-12; Tr. 203, ll. 18-25 to Tr. 204, ll. 10.

Mr. Larson's stipulated doctors appointments for 2005-2006 were in Minnesota, Florida, and Texas. Ex. 25, TX 7. Although no documentation was turned over to the Commissioner, Mr. Larson testified that he saw a Nevada doctor for his knee but the visit did not help. Tr. 94, ll. 17-24. Mr. Larson also testified that he saw "numerous" doctors in Nevada for skin allergies over the years, but did not turn over documentation. Tr. 94, ll. 3-5. His knee replacement surgery, done during the tax periods at issue, was conducted in Minnesota. Tr. 94, ll. 6-8. Mr. Larson testified that the list of doctor appointments in trial Exhibit 25 is only a partial list of his doctors for 2005 and 2006, but did not produce any substantiation to show otherwise. Tr. 93, ll. 10-24. Other than the doctor appointments in Minnesota, with a few in Texas, Florida, and possibly Nevada, he claims that he has consulted with Dr. Navarro from the private hospital at his Acapulco residence. Tr. 93, ll. 20-24.

L. Location Of Mr. Larson's Social And Fraternal Organizations.

Minn. R. 8100.0300 subp. U. Mr. Larson claims that he has spent most of his social time at the Stirling Club in Las Vegas, Nevada, which he joined when he first

bought his property in 2006. Ex. 3; Tr. 101 ll. 1-3. He stated that he would attend the Stirling Club every day he was in Las Vegas. Tr. 101, ll. 10-11. Mr. Larson purchased the Paradise Road properties in May of 2006, and only spent 52 days in Nevada in the whole year of 2006. FSSF Ex. 3 at App-17. So, during the four years at issue – a total of 1,461 days, Mr. Larson spent a grand total of 52 days, at the very most, utilizing this club. The Stirling Club is a part of the complex in which the Paradise Road properties are located. Tr. 115, ll. 10-12.

Mr. Larson is also a member of the Baccus Wine Society in Minnesota, but testified he only attended one session and does not know why he is still a member. Tr. 102, ll. 11-17.

Mr. Larson is also a member of the Sons of Norway Lodge in Minnesota. Ex. 25. Mr. Larson's father was a founding member of the Sons of Norway Lodge in Minnesota, and thus Mr. Larson feels an obligation to remain a member to honor his father. Tr. 103, ll. 10-18.

M. Address Where Mr. Larson's Mail Is Received.

Minn. R. 8100.0300 subp. V. Mr. Larson's bank statements and credit card bills are all sent to Minnesota, to his business address. Tr. 116, ll. 1-6; Tr. 123, ll. 24-25; Tr. 124, ll. 1-4. There is no evidence that any mail was sent to any of Mr. Larson's Nevada addresses, other than the first statement for his Bank of the West account. Ex. 50. Ms. B testified that virtually all Mr. Larson's mail is sent to a central location in Minnesota, where she receives it. Tr. 191, ll. 10-11. This central mail location has always been in Minnesota. *Id.*, ll. 14-21.

N. Percentage Of Time That Mr. Larson Is Physically Present In Minnesota.

Minn. R. 8100.0300 subp. W. As stipulated, for the tax periods at issue Mr. Larson spent more time in Minnesota than any other place. FSSF ¶ 29 at App-13. In 1999, the year after Mr. Larson contends he moved his domicile to Nevada, he spent 21 days in Nevada and 87 in Minnesota. *Id.* The bulk of the time for 1999 was spent in Mexico, where he testified that he had a romantic relationship. Tr. 51, ll. 16-20. The actual stipulated percentage of time Mr. Larson spent in each area (per the 365 day year) are as follows:

Tax Year	Minnesota	Nevada	Mexico
1999	24%	6%	36%
2001	38%	10%	26%
2002	42%	15%	28%
2003	44%	6%	23%
2004	46%	11%	22%
2005	43%	10%	24%
2006	35%	14%	18%

The actual stipulated days Mr. Larson spent in each area are as follows:

Tax Year	Minnesota	Nevada	Mexico
1999	87	21	130
2001	138	35	95
2002	154	53	103
2003	159	21	83
2004	169	41	82
2005	156	35	86
2006	126	52	65

O. Location Of Schools That Mr. Larson's Minor Child Attends School, And Whether Tuition Is Charged At That School.

Minn. R. 8100.0300 subp. 4. During the tax periods at issue, Mr. Larson's minor son, attended a private Wayzata high school until 2003. Tr. 42, ll. 15-16, Tr. 82, ll. 8-13. During 2003-2004, Mr. Larson spent about 31 days in Minnesota to find a new school for so he could graduate from high school. Tr. 83, ll. 14-17. agreed to attend Access Academy, a Minnesota private school, from which he graduated. *Id.*, ll. 3-6.

STANDARD OF REVIEW

This Court “review[s] a decision of the tax court to determine if it is not justified by the evidence or not in conformity with the law.” *Dreyling v. Comm’r of Revenue*, 711 N.W.2d 491, 494 (Minn. 2006). “When reviewing the tax court’s findings of fact, [the Court] determine[s] whether sufficient evidence exists to support the tax court’s decision. *Id.* (citing *Wybierala v. Comm’r of Revenue*, 587 N.W.2d 832, 835 (Minn. 1998)).

“As in any civil action, this court does not substitute its judgment for that of the tax court on questions of fact, leaving the factual findings undisturbed where the evidence, as a whole, supports the decision.” *Manthey v. Comm’r of Revenue*, 468 N.W.2d 548, 550 (Minn. 1991) (citing *Busch v. County of Hennepin*, 380 N.W.2d 813, 815 (Minn. 1986)). “The tax court sits in a better position to judge credibility and sincerity...” *Manthey*, 468 N.W.2d at 550; see also *Stamp v. Comm’r of Revenue*, 296 N.W.2d 867, 870 (Minn. 1980); *F-D Oil Company, Inc. v. Comm’r of Revenue*, 560 N.W.2d 701, 706 (Minn. 1997).

“Minnesota statutes provide that the commissioner’s orders are presumed to be valid and correctly determined and the taxpayer has the burden of demonstrating the incorrectness or invalidity of the commissioner’s orders.” *F-D Oil Company, Inc.*, 560 N.W.2d at 707; Minn. Stat. 270.68, subd. 3 (2008); Minn. Stat. § 289A.37, subd. 3 (2008). The burden on the taxpayer promotes the efficiency of government time and minimizes the possibility that the taxpayer will destroy evidence. *F-D Oil Company, Inc.*, at 707.

ARGUMENT

I. THE TAX COURT CORRECTLY DETERMINED THAT MR. LARSON CONTINUED HIS DOMICILE IN MINNESOTA FOR MINNESOTA INCOME TAX PURPOSES BECAUSE HE DID NOT ESTABLISH A NEW DOMICILE IN NEVADA.

Minnesota taxes the income of a “resident individual.” Minn. Stat. § 290.014, subd. 1 (2004). A “resident” is “any individual domiciled in Minnesota.” Minn. Stat. § 290.01, subd. 7(a) (2004). The corresponding administrative rules define “domicile” as follows:

The term “domicile” means the bodily presence of an individual person in a place coupled with an intent to make such a place one’s home. The domicile of any person is that place in which that person’s habitation is fixed, without any present intentions of removal therefrom, and to which, whenever absent, that person intends to return.

Minn. R. 8001.0300, subp. 2 (2003).

The Court can consider “the acts and circumstances of [the taxpayer] in evaluating the sincerity” of a claimed intent to change a domicile. *Sanchez v. Comm’r of Revenue*, 770 N.W.2d 523, 526 (Minn. 2009) (quoting *Stamp*, 296 N.W.2d 867, 869 (Minn. 1980)). Thus, Minnesota employs a non-exclusive list of twenty-six factors to determine whether the taxpayer’s stated intent coincides with the taxpayer’s actions. Minn. R. 8001.0300, subp. 3.

In evaluating a claimed domicile change, Minnesota distinguishes between the legal concept of “domicile” versus the physical notion of “residency.” See *Sanchez*, 770 N.W.2d at 526 (“While individuals can be residents of more than one state, as residency only requires physical presence in a place, individuals can have only one domicile at any time.”). The Court has held that to “establish one’s ‘domicile’ requires one’s bodily

presence in a place with an intent to make such place one's home." *Manthey v. Comm'r of Revenue*, 468 N.W.2d 548, 549 (Minn. 1991). Continued "existence of a Minnesota domicile does not require continued physical presence in Minnesota or continued maintenance of an abode in Minnesota." *Morrissey v. Comm'r of Revenue*, No. 4275, 1985 WL 6220, 5 (Minn. T.C., Dec. 17, 1985) (quoting *Lindberg v. Comm'r of Revenue*, No. 339 (Minn. T.C., Mar. 30, 1950) and noting that "one's domicile and one's place of abode need not necessarily be the same"); see also *Dreyling v. Comm'r of Revenue*, 711 N.W.2d 491, 494 (Minn. 2006) (noting that presumed continuation of existing domicile means that "one may live in another state for a period of time without affecting one's Minnesota domicile"). No "magic formula exists for determining a change in one's domicile . . . but once established, a domicile is presumed to continue until the contrary is shown." *Manthey*, 468 N.W.2d at 550. "Each case turns on its own peculiar facts and circumstances." *Stamp*, 296 N.W.2d at 870.

It is uncontested that Mr. Larson has the financial capability to purchase properties and maintain a presence in more than one location, including Nevada, a state without state income tax. The question, however, is which location is his domicile.⁴ The record amply supports the determination of the Tax Court that Mr. Larson's domicile is

⁴ "When a person with the capacity to acquire a domicil of choice has more than one dwelling place, his domicil is in the earlier dwelling place unless the second dwelling place is his principal home." Restatement (Second) of Conflict of Laws § 20 (1971). "As between two homes, a person's principal home is that to which he is more closely related or, stated in other words, that which is more nearly the center of his domestic, social and civil life." *Id.*, comment b.

Minnesota based on the relevant factors in Minn. R. 80001.0300 and the Tax Court's evaluation of the evidence and its credibility.

A. Family Connections To Minnesota.

The Tax Court correctly determined that Mr. Larson's family all reside in Minnesota. ADD-2, ADD-12. Mr. Larson's sister, his niece, and his adult children and grandchildren all reside in Minnesota. Tr. 41, ll. 3-6. Mr. Larson testified that he "provides" a car and house for his elderly sister and his niece. Tr. 41, ll. 12-18; *Id.*, ll. 21-22. Mr. Larson also "provides" a house, insurance, and cars for his adult son and his family. Tr. 42, ll. 9-11; Tr. 73, ll. 11-13. In addition, during the tax periods at issue, he "provided" a house for his ex-girlfriend and his minor child, Tr. 72, ll. 20-25. Mr. Larson provides a house in Minnesota for his family to get together, for holidays and a house for vacations in Wisconsin. Tr. 74, ll. 22-25; 75, ll. 1-7.

Mr. Larson testified that the raising of his minor son and his education were the responsibility of his ex-girlfriend. Tr. 83, ll. 7-13; Tr. 84, ll. 2, 3. However, when was expelled from a private Wayzata high school in 2003, Mr. Larson spent a month in Minnesota finding a new high school during 2003-2004. Tr. 82, ll. 8-13; Tr. 83, ll. 14-17.

Mr. Larson attempted to establish that his family was the basis for "unexpected needs" to return to Minnesota, but over those two years he was already in Minnesota for a stipulated 328 days. FSSF ¶ 29 at App-13. Implicit in its decision, the Tax Court correctly concluded that Mr. Larson's testimony that he had "unexpected needs" to return to Minnesota was not credible. Additionally, the time Mr. Larson spent with his ex-

girlfriend and his minor son while he recovered from surgery in 1999 belies a distant or acrimonious relationship. Tr. 40, ll. 15-17.

Mr. Larson also has an adult daughter, who is married and has two children in Minnesota. Tr. 43, ll. 2-4, 7-9. is the “joy” of Mr. Larson’s life. Tr. 43, ll. 3-4. Mr. Larson’s grandchild, son, is an accomplished tennis player and has won singles and doubles tennis championships in Minnesota numerous times. Tr. 43, ll. 10-12. Mr. Larson has attended numerous sporting events of his grandchild in Minnesota. Tr. 43; ll. 14, 15. Mr. Larson also spends time with his two grandchildren through his adult son, although admits he spends most of his time with children. Tr. 43, ll. 20-23.

Mr. Larson admits he “wasn’t divorcing” himself from his family, and that he intended to visit them occasionally for Christmas and Thanksgiving. Tr. 48, ll. 12-14. However, Mr. Larson’s actions do not support the assertion that the visits to Minnesota were only occasional. As outlined above, Mr. Larson spent a considerable time in Minnesota and admits that his plan to leave so the family could “stand on their own two feet” did not work. Tr. 85, ll. 6-13.

Considering these facts, the Tax Court had a sufficient basis to conclude that Mr. Larson’s family relations was a factor in its decision that he was domiciled in Minnesota and not in Nevada, a state without income tax.

B. Time Spent In Each Jurisdiction.

The Tax Court determined that Mr. Larson spent most of his time in Minnesota, and correctly used that as a factor to determine his domicile was Minnesota. ADD-15,

ADD-23. The Tax Court explained that although Mr. Larson testified that he intended to change his domicile to Nevada in 1998, the following year he only spent 6% of the year in Nevada, and declared on his federal tax return that he only spent 10% of his time at his claimed Nevada residence. ADD-23.

In 1999, the first full year of Mr. Larson's claimed domicile in Nevada, he stayed only 21 days of the year in Nevada. He spent more than triple that time, 24% or 87 days, in Minnesota. Mr. Larson attempts to explain the discrepancy by stating that he had spent an inordinate amount of time in Mexico pursuing a romance; and that had it not been for that, he would have been in Nevada — but the latter years do not bear that out. In 2001, the pattern remained the same — he spent only 10% of the year in Nevada and 38% in Minnesota. The amount of time he spent in Minnesota increased in 2002 through 2006. The Tax Court correctly concluded that these acts contradict Mr. Larson's stated intention that he meant to make Nevada his home and remain there and the Tax Court's determination is clearly supported by the record.

Mr. Larson explains the amount of time that he spent in Minnesota was only natural because he has many obligations with friends, family, business, and investments. Tr. 81, ll. 4-15; 106, ll. 1-6. His testimony, taken together with all the evidence, confirms that the locus of Mr. Larson's domestic, civic, and social life was and remained in Minnesota, notwithstanding his interests in Mexico and Nevada.

C. Mr. Larson's Control Over His Physical Presence Shows Intent To Remain In Minnesota.

In its Order, the Tax Court identifies the amount of control that Mr. Larson has over his life and travels, ADD-24, and where he spends his time. As the Tax Court noted, if Mr. Larson had genuinely wanted to domicile in Nevada he could have done so. Instead, as the Tax Court explained, "time and time again [Mr. Larson] chooses Minnesota." ADD-24 to ADD-25.

This determination is well supported by the facts in the record. Mr. Larson leaves from and returns to Minnesota with far greater regularity than he does Nevada. Mr. Larson's American Express accounts and the WorldPerk records demonstrate that Mr. Larson did not make a single round-trip originating from Nevada which returned to Nevada. In contrast, Mr. Larson took at least sixteen flights that originated in Minnesota that returned to Minnesota during the tax years at issue. In total from 2002 through 2006, Mr. Larson flew to Nevada 15 times, and flew to Minnesota 64 times. While his flights originated from Nevada 22 times, during the same time period his flights originated from Minnesota a total of 77 times. At trial, Mr. Larson testified that he decides where he wants to be each day as he is having his morning coffee at 9:00 a.m., and that is the way he has always been. Tr. 80, ll. 4-8. Given Mr. Larson's personal control over where he chooses to be at any one time, Mr. Larson by his own actions demonstrates that he has chosen to be in Minnesota more than any other place in the world.

These facts amply support the Tax Court's determination to reject Mr. Larson's claimed domicile change. *See, e.g., Dreyling*, 753 N.W.2d at 703 (rejecting taxpayer's

“uncorroborated and self-serving testimony”); *Stamp*, 296 N.W.2d at 870 (“the taxpayers’ acts contradicted their stated intent to change their domicile and, in fact, established that they intended to retain their existing one”). Because actions “must be given more weight than declarations” of intent, Mr. Larson’s actions are compelling support for the Tax Court’s Order. See Minn. R. 8001.0300, subp. 2; see also *Nagaraja v. Comm’r of Revenue*, 352 N.W.2d 373, 377 (Minn. 1984) (rejecting reliance on taxpayer’s stated intent and noting that “a taxpayer’s actions can contradict his stated intent”). Put another way, the evidence offered fails to meet his burden to show that the Tax Court erred.

D. Mr. Larson Did Not Limit Or Sever His Ties To Minnesota.

The Tax Court correctly noted that although one does not need to sever all family and business ties to Minnesota in order to be domiciled elsewhere, the facts show that Mr. Larson’s Minnesota ties continued through all the tax years at issue. ADD-24.

The Tax Court properly found that Mr. Larson continued his ties with Minnesota: Mr. Larson almost exclusively uses Minnesota bank accounts; he continues to own multiple Minnesota businesses; he is an employee of a Minnesota company from which he receives the bulk of his income; and he owns multiple Minnesota properties and vehicles registered in Minnesota. Beyond stated weather-related and personal enjoyment reasons for purchasing property in Nevada, Mr. Larson’s actions evidence few connections with that state. Indeed, the rental properties and accounts of Mr. Larson’s Nevada businesses are controlled by his personal assistant, Ruth B a, in Minnesota.

E. Mr. Larson Held The Vast Majority Of His Personal Property In Minnesota And Retained Almost All Of His Professionals In Minnesota.

Mr. Larson maintained the majority of his personal property in Minnesota because he stayed in Minnesota the majority of the time and was comfortable doing so. He continued to keep the majority of his cars in Minnesota. He continued to retain and use the majority of his professional advisors in Minnesota, including his doctors, attorney, tax preparers and accountants. *See* ADD-22, ADD- 24; FSSF ¶ 19 at App-9; Ex. 25; Tr. 112, ll. 1-6.

In fact, Mr. Larson’s connections to Minnesota were so strong that Mr. Larson utilizes a personal Minnesota accountant to handle all of his banking, bill-paying, and his “hobby” of buying and selling Nevada properties. Tr. 188, ll. 13-23; Tr. 224, ll. 9-12; Tr. 225, ll. 3-6.

F. Mr. Larson’s Evidence Of His Intent To Become A Nevada Resident Are Nothing More Than Self-Serving Declarations.

The Tax Court correctly evaluated the weight and credibility of the evidence as to the factors concerning Mr. Larson’s driver’s license, voting registration, motor vehicle registration, and homestead declaration. ADD-5, ADD-8, ADD-9, ADD-13, ADD-20, ADD-21. While Mr. Larson claimed he took several steps to change his domicile to Nevada, such as getting a Nevada driver’s license, registering to vote in Nevada, homesteading the Las Vegas property, opening a bank account in Las Vegas, and registering a few cars in Nevada, not one of these “actions” is any more than a self-serving statement.

In order to get a Nevada driver's license all Mr. Larson needed to do is state he is a resident and give a Nevada street address. Under Nevada statutes, a "resident" includes, but is not limited to, a person "Who declares himself to be a resident of this state to obtain privileges not ordinarily extended to nonresidents of this state." Nev. Stat. 483.141 subd. 1(d) (1998). In order to register to vote, you need to furnish a driver's license and fill out an application. Nev. Stat. 293.507 (1998). In order to register a vehicle, a person must fill out a form that includes his address and show proof of insurance covering the motor vehicle. Nev. Stat. 428.215 (1998). Each one of these "actions," at its core, is nothing more than a declaratory statement by Mr. Larson that he had a condo in Nevada.

While Mr. Larson claims that opening a Nevada bank account is evidence of his intent, it is, but not in the way he claims. Mr. Larson opened a bank account in Nevada, and only accessed it two to four times during the four-year period. Tr. 118, ll. 8-10. The bank account served as a repository for the rent from his Las Vegas properties, until it was emptied into a Minnesota account in 2004 by his Minnesota personal assistant, Ms. B a. Ex. 27, TX 310; Tr. 119, ll. 5-11; 206, ll. 5-12. This amounts to nothing more than another empty declaration by Mr. Larson, which the Tax Court correctly recognized in determining that this factor favors Minnesota domicile. ADD-22.

In its totality, the evidence supports the Tax Court's conclusion that Mr. Larson maintained his longstanding and deep connections to Minnesota and made Minnesota his home. He retained all his professional relationships in Minnesota, and used Minnesota accountants and lawyers to advise him as to Nevada matters. Ten of the twelve cars that

have a purchase and registration date in the record were purchased and registered in Minnesota during the time Mr. Larson claimed to be a Nevada resident. Ex. 25. He continued to deposit his Larson Company compensation in his Minnesota bank account. He owned more investment property in Minnesota than in any other state or country.

Mr. Larson's actions and testimony are consistent with the Tax Court's conclusion that although he purchased a condo in Nevada to add to his numerous other residences, he retained his longstanding Minnesota domicile. *See Sarek*, No. 2524, 1979 WL 1107, at *5 (Minn. Tx. Ct. Apr. 19, 1979) (stating that "once we go beyond the mere declaration of appellant and look at what he actually did during the last half of 1975, there can be no doubt that his domicile remained in Minnesota during that period"). Time and again after his purchase of the Nevada condo, Mr. Larson left from and returned to Minnesota, whether for business or pleasure. Mr. Larson's contention that he changed his domicile to Nevada is not supported by the evidence.

In sum, Mr. Larson's actions carry far greater weight than his words. His actions consistently demonstrate he retained his Minnesota domicile and evidence his "acceptance and enjoyment of benefits accorded Minnesota residents." *Manthey* at 550.

II. THE TAX COURT ANALYZED THE FACTS IN ACCORD WITH MINNESOTA LAW, AND DID NOT CREATE AND APPLY A "NEW" TEST.

A. Mr. Larson's Intent Was Correctly Determined By The Tax Court Based On His Actions Not Merely His Stated Intent.

The Tax Court went through each of the relevant factors and correctly applied Minnesota Rule 8001.0300, subp. 7. Contrary to Mr. Larson's trial testimony, his stated intent to change his domicile is wholly inconsistent with his actions. "Acts are generally

regarded as more important than declarations, and written declarations are usually more reliable than oral ones.” *Sarek*, 1979 Westlaw 1107 at *5.

The Tax Court did not use a “domiciliary presence” test as Mr. Larson claims. According to Mr. Larson, the “new test” that the Tax Court invented consists of: where his family is; where his bank accounts are; where his employer and business are; how much time Mr. Larson physically spent in Minnesota; where he employs his legal, medical, and professional assistants. Relator’s Br. at 6, 19-20, 23. Contrary to Mr. Larson’s assertions, this is not a new “domiciliary presence” test; rather each is a factor which actually describes his actions and which are properly analyzed when determining his domicile. “We called [*Stamp*] ‘admittedly close’ but concluded that the tax court ‘permissibly found that taxpayers’ Minnesota-related activities contradicted their stated intent to make Florida their home.” *Dreyling*, 753 N.W.2d at 703 (citing and quoting *Stamp*, 296 N.W.2d at 870). Unlike *Stamp*, Mr. Larson’s case is far from close, and the Tax Court correctly gave more weight to Mr. Larson’s actions than to his stated intent to change his domicile to Nevada.

In order to help the trier of fact determine the intent of the taxpayer for domicile purposes, Minnesota Rule 8001.0300, subp. 3, sets forth a non-exclusive list of factors, which include all of the above that Mr. Larson complains of. These factors have been considered by the tax court and this Court for many years. (see, e.g. *Dreyling*, 753 N.W.2d at 704, “Although [*Roger Dreyling*] had a checking account in Florida, the bulk of his financial dealings was in Minnesota, including checking accounts, retirement assets, and investments.”) In *Stamp*, the Tax Court and this Court considered the fact that

the Stamps continued to use local bank accounts and local charge cards, continued to own property in Minnesota, and were members of a Minnesota club even though they did not attend. *Stamp*, 296 N.W.2d at 868-869. In *Sandberg*, this Court found that the Tax Court evaluated the taxpayer's actions in light of the general rules and "clearly used the factors for determining domicile set forth in Minn. Rules 8001.0300." *Sandberg*, 383 N.W.2d at 283.

B. Mr. Larson Stipulated He Maintained An Abode And Was Present In Minnesota For More Than 182 Days In 1998.

Mr. Larson claims in his brief that he changed his domicile in 1998 when he was physically present in Nevada and purchased a condo there. Relator's Br. at 10. While Mr. Larson moved a "significant" amount of clothes and shoes to Nevada, he testified that he retained or purchased enough in Minnesota to live comfortably when he travels back to Minnesota. Tr. 112, ll. 1-6. Although Mr. Larson testified that he moved his prized wine collection to Nevada, he did not do so until a few years after he purchased the Nevada property. Tr. 110, ll. 16-18. Mr. Larson testified that he purchases his expensive fine wine for his consumption in bulk while he is in Minnesota. Tr. 110, ll. 16-18; Tr. 112, ll. 5-6.

In addition, Mr. Larson stipulated with the Commissioner of Revenue as follows:

Mr. Larson timely filed his Minnesota individual income tax return (Form M-1) for the tax year 1998 as a Minnesota resident. Mr. Larson was physically present in the State of Minnesota for more than 182 days in tax year 1998 and maintained an abode in the state.

FSSF ¶ 4, App-2.

Mr. Larson did not file as a partial resident, but as a full-time resident of Minnesota. The stipulated fact that he was in the state more than 182 days and maintained an abode in the state is, when considered with the totality of the other facts and circumstances, is sufficient evidence for the Tax Court to conclude that Mr. Larson did not change his domicile in 1998. ADD-2, ADD-23.

C. The Court Made A Factual Determination That Mr. Larson's Federal Tax Return For 2002 And 2003 Was Correct, And Mr. Larson Has Not Show That The Tax Court Was In Error.

The Tax Court specifically found Mr. Larson's 2002 through 2003 federal tax returns to be credible, notwithstanding Mr. Larson's testimony disputing the returns. ADD-23, ADD-24. "The tax court sits in a better position to judge credibility and sincerity, and its decision is supported by the evidence as a whole." *Manthey*, 468 N.W.2d at 550.

In his brief, Mr. Larson claims that the Tax Court ignored the "evidence" that the report of rental income from his Las Vegas property were typographical errors. Relator's Br. at 27. The evidence Mr. Larson points to is his own trial testimony, which the Tax Court did not find credible since it was inconsistent with unamended federal tax returns. This is a credibility determination that the Tax Court permissibly made, which should not be overturned unless the determination is not supported by the record.

D. The Tax Court Made A Credibility Determination That Mr. Larson Spent Time In Minnesota Beyond The Time He Spent In Minnesota Dealing With His "Stressful" Family Life.

The Tax Court, in its discussion regarding the time Mr. Larson spent in Minnesota from 1999 to 2006, did not explicitly mention Mr. Larson's testimony of his "stressful"

family life. ADD-23, ADD-26. This is not an error, but a credibility determination by the Tax Court in its overall determination and in its consideration of Factor W under Minn. R. 8001.0300 subp. 3. The Tax Court found that given “all factors, along with Mr. Larson’s acts and circumstances in their totality, the evidence indicates Mr. Larson’s continued presence in Minnesota.” ADD-24. The Tax Court clearly did not credit Mr. Larson’s testimony that he spent the preponderance of time in Minnesota only due to family emergencies. Mr. Larson has failed to show that the Tax Court’s factual determination is not supported by the record.

E. The Tax Court Correctly Made Factual Evaluations Of The Evidence In Favor Of The Commissioner On Factors E, G, H, I, M, Q, U, And V.

The Tax Court weighed the credibility of the evidence in making its determination as to factors E, G, H, I, M, Q, U and V Minn. R. 8001.0300 subp. 3. The Tax Court did not make “factual errors” as argued by Mr. Larson, Relator’s Br. 23-26, but as the trier of fact made credibility determinations as to the evidence.

Factor E. Mr. Larson complains that the Tax Court did not address that he was not involved in day-to-day control of his business, that most of his businesses were located outside of Minnesota, and that his employment was not tied to Minnesota. Clearly, the Tax Court was convinced that day-to-day control was not determinative compared to the amount of control and direction Mr. Larson had in his employment as Chairman of the Minnesota corporation Larson Companies. Mr. Larson again argues that he “pulled back” on the amount of interaction he had with the business – but it is undisputed that he never gave up control of the businesses and is still an active chairman

and employee of the business. Far from being retired, if there is a major decision to make it is clear the only one with the requisite authority is Mr. Larson. Tr. 180, ll. 11-25; Tr. 181, ll. 1; Tr. 184, ll. 20-25; Tr. 185, ll. 1-15. The Tax Court was correct when it found that Mr. Larson owned and operated multiple companies under Larson Companies, which is a Minnesota corporation. Mr. Larson offered very little evidence regarding businesses headquartered outside of Minnesota, instead focusing on the Minnesota trucking and storage companies. Ex. 1, 2, 4. Mr. Larson offered no evidence that any of the companies headquartered outside of Minnesota were not controlled from Minnesota.

Factor G. Mr. Larson makes factual assertions which are clearly not supported by the record. While Mr. Larson claims the stipulations show that none of the Minnesota properties were his home, it was not stipulated that his Nevada properties were his home. There was no factual stipulation regarding Mr. Larson's "home".

Mr. Larson has not shown there was a clear error in any of the Tax Court's findings. That the Tax Court did not make a specific finding as to every piece of testimony and evidence in the record is not an error.

Factor H. The Tax Court correctly noted that Mr. Larson homesteaded his Nevada property. While the Tax Court did not make an express finding that Mr. Larson did not homestead his Minnesota properties, ADD-5, the lack of a specific finding as to the status of his other properties is not an error.

Factor I. The mere fact the Tax Court did not mention every single property that Mr. Larson owned is likewise not an error. Rather, the Tax Court addressed the properties in the two principal jurisdictions at issue, Minnesota and Nevada. ADD-21.

Factor M. The Tax Court did not err in specifically finding that some of the vehicles Mr. Larson owned in Minnesota were used by others. Mr. Larson owns those vehicles and they are registered in Minnesota. Mr. Larson has always had the option of transferring the ownership of the vehicles to the business and his family members, but has not done so.

Factor Q. The Tax Court did in fact find that Mr. Larson's assistant, Ruth B a, used the bank accounts. ADD-14. These accounts are Mr. Larson's accounts, in Minnesota, and the money is used to pay his living expenses — whether he or Ms. B a is writing the checks. As noted above, Mr. Larson testified that he does not personally handle his financial affairs, his affairs are handled by Ms. B a in Minnesota. The finding that the Nevada bank account was closed in 2004 when it remained open, but inactive with a very small balance is not a material error.

Factor U. The Tax Court did make a finding that Mr. Larson was a member of the Son's of Norway as a tribute to his father. ADD-9. This is not an error.

Factor V. The Tax Court did make findings that Ms. B a handled all his financial and much of his business affairs from Minnesota. ADD-9, ADD-10, ADD-14, ADD-15, ADD-24. This finding is amply supported by the record.

In short, the evidence in the record amply supports the determinations of the Tax Court.

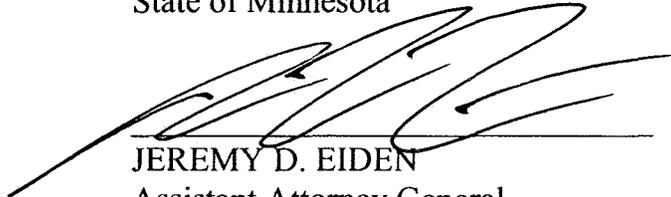
CONCLUSION

The Tax Court looked at the evidence in its totality, correctly applied these facts to the law, and correctly concluded that Mr. Larson was domiciled in Minnesota and therefore a resident for income tax purposes for the tax years 2002 through 2006, inclusive. The Commissioner of Revenue asks the Court to uphold the decision of the Minnesota Tax Court in its entirety.

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Respectfully submitted,

OFFICE OF THE ATTORNEY GENERAL
State of Minnesota



JEREMY D. EIDEN
Assistant Attorney General
Atty. Reg. No. 0388289

TAMAR N. GRONVALL
Assistant Attorney General
Atty. Reg. No. 0307166

445 Minnesota Street, Suite 900
St. Paul, Minnesota 55101-2127
(651) 757-1224 (Voice)
(651) 296-1410 (TTY)

ATTORNEYS FOR THE
COMMISSIONER OF REVENUE