

A12-0499

STATE OF MINNESOTA
IN SUPREME COURT

Kenneth B. Mauer,

Relator,

v.

Commissioner of Revenue,

Respondent.

RELATOR'S OPENING BRIEF & APPENDIX

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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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LEGAL ISSUE

Whether Mauer became a Florida domiciliary in July 2003 and remained so thereafter.

- The Tax Court found that Mauer remained a Minnesota domiciliary, rather than becoming a Florida domiciliary, for tax years 2003 and 2004.

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

Eden Prairie Mall, LLC v. Cnty. of Hennepin, 797 N.W.2d 186 (Minn. 2011)

Page v. Comm'r of Revenue, 1986 WL 15695 (Minn. T.C. Mar. 12, 1986)

STATEMENT OF THE CASE

This is an income tax residency case for 2003 and 2004. In July 2003, Kenneth Mauer, a long-time Minnesota domiciliary, bought a residence in Fort Myers, Florida, in the same community where his cousin Joe Mauer had recently purchased a home. Ken Mauer immediately homesteaded his Fort Myers residence and surrendered the homestead status of his Afton, Minnesota residence. Mauer also took many other actions to manifest and document his intent to make Florida his new state of domicile.

For tax year 2003, Mauer filed a Minnesota individual income tax return as a part-year resident, paying tax for the time he acknowledged he was a Minnesota resident, but not for the time he claimed to be a Florida resident. Stip. ¶ 78. Mauer did not file a Minnesota individual income tax return for tax year 2004. Stip. ¶ 82.

On May 16, 2007, the Commissioner issued an Audit Report concluding that Mauer remained a Minnesota domiciliary during 2003 and 2004. Stip. ¶ 85; Ex. 39. Mauer administratively appealed that determination. On March 31, 2009, the Commissioner issued a Notice of Determination on Appeal (“Notice”) affirming the Commissioner’s earlier conclusion and assessing Mauer \$97,055.04 in tax, penalty and interest. Stip. ¶ 86; Ex. 41.

Mauer appealed the Notice to the Minnesota Tax Court challenging the Commissioner’s domicile determinations and raising several constitutional claims. On February 6, 2012, the Tax Court, the Honorable George W. Perez, entered an Order affirming the Commissioner’s domicile determinations and rejecting Mauer’s constitutional claims. *See Addendum (“Add.”) at 1-40.*

STATEMENT OF FACTS

HISTORICAL FACTS

Kenneth B. Mauer was born on April 23, 1955, in St. Paul, Minnesota (T.109). His father was a high school baseball and football coach, and also refereed high school and college football and basketball games (T.112-13). Throughout his childhood, Mauer attended sporting events refereed by his father (T.113).

After graduating high school, Mauer spent a year at Anoka Ramsey Junior College, where he played three sports and was named a Junior College All American in baseball (T.112). This distinction earned Mauer a scholarship to the University of Minnesota, where he played baseball for three more years, graduating in 1977 (T.112). During his freshman year in college, Mauer took an officiating course (T.113). During the balance of his college years, Mauer refereed junior high football, baseball and basketball games (T.113-14). Somewhat unexpectedly, Mauer found that he loved officiating, particularly basketball (T.113-14).

After graduating from college at age twenty-one, Mauer continued refereeing high school baseball, football and basketball games (T.114). When he was twenty-four, Mauer realized that if he wished to advance as a basketball referee, he must attend NBA summer camps, during which athletes train and referees practice their craft (T.114-15). Accordingly, over the next several years, Mauer attended NBA summer camps at Milwaukee, Detroit, Chicago, Las Vegas, and Los Angeles (T.115-16). Mauer continued, during the balance of the calendar year, to referee high school and college football, baseball and basketball games, in addition to basketball games for a minor league

system—the Continental Basketball Association (T.115, 120). This local officiating kept Mauer on the road constantly within the five-state area constituted by Minnesota, Wisconsin, Iowa, and the Dakotas (T.116-17, 120).

Mauer became an NBA referee in 1986 (T.116). Whereas Mauer had formerly spent considerable time on the road in the five-state area (T.117), employment with the NBA required Mauer to travel extensively on a national basis each year between late September and early June. Stip. ¶ 11. During the NBA season, Mauer spends as many as 27 days per month on the road, sleeping in other beds (T.117-18). Mauer is now in his 26th year as an NBA referee (T.117). During the summer months, when Mauer is not traveling for work, he frequently travels abroad (T.237, 241, 264).

In 1987, Mauer purchased a six-acre plot in Afton, Minnesota commanding a view of the St. Croix River. (T.59, 122-23); Stip. ¶ 8. Mauer hired architect Gregory Hallback to design a year-round, large, log-cabin style residence for the property. (T.59, 123-24); Stip. ¶ 8. Mauer cut ground in May 1990. (T.125); Stip. ¶ 8. He was the general contractor for the house; hired every subcontractor who worked on the structure; and ordered all of the lumber and materials, etc. (T.60, 124-25). Mauer personally worked long hours on the construction of the home, and solicited help from family and friends, who also contributed time and labor (T.60).

Mauer moved into the partially completed house in September 1991. (T.125); Stip. ¶ 8. During the next twelve years, Mauer finished and furnished separate rooms and sections of the house as funds became available. (T.126-27); Stip. ¶ 9. By 2002, all

10,600 square feet of the house were finished and furnished (T.127); Stip. ¶ 9. Mauer occupied the Afton house as his sole residence until July 2003. Stip. ¶ 9.

On September 12, 1994, the Internal Revenue Service (“IRS”) initiated “Operation Slam Dunk,” an investigation into whether NBA referees had evaded federal income tax through their use of airline ticket refund policies. Stip. ¶ 27. The IRS Civil Division audited approximately 45 NBA referees and assessed them for additional tax, penalty, and interest. (T.132); Stip. ¶ 27. The Justice Department subsequently indicted 22 of the referees, including Mauer. (T.132); Stip. ¶ 27. Twenty of the 22 indicted referees pleaded guilty to one or more criminal charges (T.132). Referee Steven M. Javie went to trial in federal district court in Philadelphia and was acquitted (T.132). Mauer went to trial in St. Paul and was convicted of endeavor to obstruct and impede due administration of tax laws and three counts of tax evasion. Stip. ¶ 28.

On April 24, 2001, Judge Donovan Frank sentenced Mauer to five months in prison with community service and work release privileges, and to five months of home confinement. Stip. ¶ 29. With respect to community service, Judge Frank required Mauer “to establish a program or expand a program for kids in St. Paul and/or Minneapolis ... that’s a combination of mentoring and other activities” Stip. ¶ 29. Pursuant to Judge Frank’s sentencing order, Mauer spent 9-10 hours a day for five months coaching and officiating youth basketball at a community center in Duluth (T.133).

Mauer’s life was significantly affected by Operation Slam Dunk. First, it constituted his major concern between 1994 and the end of his home confinement in June

2003 (T.136-37). Second, it effectively prevented Mauer from acting upon a longstanding wish to move to a warmer climate, while simultaneously augmenting his desire to do so (T.136-37). Specifically, Mauer felt it was unfair that the U.S. Attorney for Minnesota chose to prosecute him, whereas U.S. Attorneys in other districts chose not to prosecute other NBA referees who had used the same ticketing practices (T.134-36). Also, the guilty verdicts returned by a Minnesota jury left a bad taste in Mauer's mouth (considering that Steven Javie was acquitted by a Philadelphia jury). (T.132-36). Having served his sentence, and having completed the Afton house after twelve years of constant effort, Mauer wanted to make a fresh start elsewhere (T.134-36).

Mauer had long discussed with friends like Richard Lesch, and with his accountant Michael Deegan, the idea of moving to Florida or another state with warmer weather (T.7-8, 62, 140-41, 155-56). Mauer dislikes the cold (T.136). His feet were partially frostbitten when he was ten years old (T.136), and as one who's profession requires him to travel extensively during the winter months, Mauer found Minnesota an unfavorable location for a home base (T.136). Prior to 2001, Mauer had viewed houses in Texas and California; on both coasts of Florida; and in Las Vegas, Scottsdale and Phoenix (T.136-37).

In 2001, Mauer's choice where to move was greatly simplified. His cousin Joe was drafted by the Minnesota Twins, who annually hold spring training in Fort Myers, Florida, and Joe had purchased a home in Heritage Palms, a residential development in Fort Myers (T.137-38, 144). The sports-loving Mauer family had thus acquired a strong

connection with Fort Myers, and would inevitably be spending significant time there in the foreseeable future (T.138, 144).

In early 2003, Accountant Deegan advised Mauer concerning the numerous measures Mauer must take to establish and document his intention to establish Florida as his new state of residence, and sent him information obtained from the Minnesota and Florida Departments of Revenue. (T.11-12, 25-26, 141-42, 196-97); Ex. 72. Deegan also advised Mauer that, if he spent any time in Minnesota after he moving to Florida, he must keep detailed records of his whereabouts to establish that he spent less than one-half of his time in Minnesota (T.12-15, 196-97).

Mauer's final day of home confinement was June 30, 2003 (T.142). On July 1, 2003, Mauer flew from Minneapolis to Fort Myers to meet with two realtors (T.139, 143). On July 3, 2003, Mauer signed an agreement to buy a townhouse near Joe's in the Heritage Palms development in Fort Myers for \$228,000, with a total purchase price of \$235,038.51. (T.144); Stip. ¶ 30. That same day, Mauer obtained a Florida driver's license and surrendered to Florida officials his Minnesota driver's license. (T.146-47); Stip.¶ 32; Ex. 29. He also registered to vote in Florida and obtained (but did not execute) a Florida declaration of domicile. (T.146-49); Stip.¶ 33; Ex. 90 (Florida Registered Voter Identification Card).

The closing on Mauer's Fort Myers residence occurred on July 9, 2003. (T.144); Stip. ¶ 31; Ex. 6. That same day, Mauer signed a Florida Declaration of Domicile, which Florida officials had told Mauer not to sign until he actually closed on his Florida residence. (T.148-49); Stip.¶ 34; Ex. 8. On August 12, 2003, Mauer engaged Dave

Goldberg of Heritage Tax & Consulting Services, Inc., Fort Myers, Florida, to assist him with Florida taxation issues. (T.37, 40-41); Stip. ¶ 35; Ex. 9. Pursuant to accountant Deegan's advice, Mauer now began keeping a daily calendar log of his physical location and travel. (T.12-13); Ex. 30.

On August 27, 2003, Mauer rented a truck and moved a portion of his furniture and personal belongings from his Afton residence to his Fort Myers residence. (T.153-54); Stip. ¶ 36; Ex. 28. That same day, Mauer filed with the Florida Department of Revenue an Original Application for Ad Valorem Tax Exemption requesting a homestead exemption for his Fort Myers residence. (T.149-50); Stip. ¶ 37; Ex. 10. Correspondingly, Mauer surrendered the homestead status of his Afton residence beginning in January 2004. (T.150-51); Stip. ¶¶ 37-38; Exs. 10-12.

After purchasing the Fort Myers residence in July 2003, Mauer telephoned the NBA assignment secretary, provided her with his Fort Myers address, and told her that it was now his primary residence. (T.170-71); Stip. ¶ 39. This information was reflected on the NBA's referee address list for the 2003-04 season, which listed Mauer's Fort Myers address above his Afton address. (T.172-73); Ex. 14. During September 2003, Mauer designated his "home airport" as "Fort Myers" on an Air Travel Election form provided by the NBA. (T.175-76); Ex. 3. In addition, Mauer consistently filled out work- and tax-related forms listing Fort Myers as his home address. Stip. ¶¶ 40-43, 78-79, 81, 83. *See infra* at 21-25 (enumerating and discussing forms).

During the final months of 2003 and the early months of 2004, Mauer participated in a testy exchange of correspondence and communications with NBA officials, who

questioned whether he had truly moved to Fort Myers. (T.178-87); Stip. ¶¶ 44-47; Exs. 21-24. Although Mauer had promptly informed the NBA of his move, Stip. ¶ 39, its travel agency computed Mauer's October travel allowance using an itinerary based in Minneapolis (T.178-80). Mauer faxed Stu Jackson, Vice President of Operations, to complain about the error and to demand that the league recognize his move. (T.178-80); Stip. ¶ 44; Ex. 21. Mauer specifically noted that he had homesteaded his Fort Myers residence. (T.180); Ex. 21.¹

This workplace dispute was referred to the NBA's legal department and to the National Basketball Referee's Association, of which Mauer was a member (T.181, 184). Richard Buchanan, the league's lead counsel (T.181), threatened Mauer with fines, suspension and possible termination. (T.181-85); Stip. ¶¶ 45-46; Exs. 22-23. Eventually, however, the NBA relented, acknowledged Mauer's move to Florida, and agreed to compute his travel allowance based on Fort Myers itineraries. (T.182); Ex. 22.

After purchasing his Fort Myers residence, Mauer contacted childhood friend and Minnesota-licensed realtor Richard Lesch about the sale of his Afton residence. (T.54-55, 58, 155-56); Stip. ¶ 50; Ex. 27. Because Lesch was unable to sell that residence by the close of calendar year 2003, Mauer continued to own it for all of 2003.

Although Mauer took steps beginning in July 2003 to establish and document his intent to make Florida his domicile, he could neither immediately moved to Florida nor

¹ The NBA believed that Fort Myers travel itineraries would cost it more than Minneapolis itineraries (T.186-87). An analysis prepared by Mauer's travel agent at the end of the 2003-04 season demonstrates that Fort Myers itineraries actually saved the League money. *See* Ex. 24.

suddenly sever all his ties with Minnesota. First, the Fort Myers residence was still being completed when Mauer purchased it, and was not ready for immediate occupancy (T.277). Mauer moved into the house in late August 2003 (T.153-54). Second, Mauer had pre-existing engagements in Minnesota during Autumn 2003, such as officiating high school football games and attending banquets and shows. (T.140, 244, 278-79); Ex. 30 at 84, 88, 89, 91, 93, 104. Third, in January 2004, plumbing and heating pipes in Mauer's Afton residence froze and burst (T.166-67). During January and February of 2004, therefore, Mauer was frequently in Minnesota to supervise repairs. (T.279-80); Ex. 30 at 108-10. Finally, as Mauer candidly acknowledged during trial, he never intended to sever all his ties to Minnesota (T.139-40). The day-count produced by Mauer's travel schedule for the 2003-04 NBA season was as follows:

| Month | Minnesota | Florida | Other |
|---------------|------------------|----------------|--------------|
| October | 16 | 3 | 12 |
| November | 12 | 5 | 13 |
| December | 8 | 7 | 16 |
| January | 12 | 7 | 12 |
| February | 14 | 6 | 9 |
| March | 0 | 11 | 20 |
| April | 20 | 2 | 8 |
| May | 24 | 3 | 4 |
| Totals | 106 | 44 | 94 |

Add. at 27.

In 2003, Mauer spent a total of 203 days in Minnesota; 31 days in Florida; and 131 days elsewhere. After purchasing the Fort Myers residence on July 3, 2003, however, he spent a total of 85 days in Minnesota; 24 days in Florida; and 73 days elsewhere. Add.

at 8. As advised by Accountant Deegan, Mauer spent less than one-half of his time in Minnesota following his purchase of the Fort Myers residence (T.12-15, 196-97).

Mauer testified at trial that he never planned to stay in Florida during its sultry summer months (T.282-83, 290). Having failed to attract serious interest on the Afton residence at its \$3.1 million asking price, Mauer allowed his one-year listing agreement with Richard Lesch to lapse (T.163, 169), and spent a significant amount of Summer 2004 in Minnesota:

| Month | Minnesota | Florida | Other |
|---------------|------------------|----------------|--------------|
| June | 23 | 7 | 0 |
| July | 15 | 0 | 16 |
| August | 16 | 7 | 8 |
| September | 30 | 0 | 0 |
| Totals | 84 | 14 | 24 |

Ex. 40 at 2. The day-count produced by Mauer's travel schedule for the start of the 2005-05 NBA season was as follows:

| Month | Minnesota | Florida | Other |
|---------------|------------------|----------------|--------------|
| October | 12 | 7 | 12 |
| November | 7 | 8 | 15 |
| December | 8 | 6 | 17 |
| Totals | 37 | 21 | 44 |

Add. at 27. In 2004, then, Mauer spent a total of 181 days in Minnesota; 64 days in Florida; and 121 days elsewhere. Add. at 8. Again, as advised by Deegan, Mauer spent less than one-half of his time in Minnesota (T.12-15, 196-97).

Mauer purchased a second residence in the Heritage Palms development as an investment property in August 2004. (T.197-98, 201-02); Stip. ¶ 58.

During the time Mauer's heavy travel schedule allows him to enjoy his Fort Myers' home, he relaxes, visits with relatives, attends ball games, socializes with others in the Heritage Palms community, and shops with his wife (T.197-99).² Mauer also patronizes the Heritage Palms clubhouse, which he supports by paying two golf memberships, one for each house he owns in the community (T.198-99).

PROCEDURAL FACTS

Minnesota's law contains two tests for income tax residency: domicile (physical presence combined with intent to make a place one's home), *see* Minn. Stat. § 290.01, subd. 7(a)³; and bodily presence in Minnesota for more than one-half the tax year while maintaining an "abode" here, *id.* subd. 7(b) (the "183-day Rule"). Minnesota Rule 8001.0300 (the "Residency Rule") contains a list of 26 "items" that "will be considered in determining whether or not a person is domiciled in this state." *See id.* subp. 3.

Before purchasing his Fort Myers residence in 2003, Mauer obtained from the Department and from Accountant Deegan information on domicile generally, and on the 26 factors in particular. (T.141-42); Ex. 72. During the Commissioner's residency audit for tax years 2003 and 2004, Mauer argued that fair application of the 26 factors demonstrated he had become a Florida domiciliary as of July 2003. *See, e.g.*, Ex. 54. The auditor rejected Mauer's argument relying exclusively on Factor W of the Residency Rule, concerning the number of days a taxpayer spends in respective jurisdictions:

² Appellant met Danielle Mauer, a Florida resident, in Florida in March 2003. They began dating in 2004, obtained a marriage license from Ramsey County, Minnesota, and were married in St. Paul, Minnesota on January 25, 2007. Stip. ¶ 5.

³ All citations are to the 2004 Minnesota Statutes unless otherwise indicated.

Although the taxpayer took some steps consistent with establishing Florida domicile, the manifestations of his intent to make Florida his domicile are not convincing in the light of the fact that he continued to spend substantially more time in Minnesota than any other jurisdiction.

Ex. 39 at 11. In so reasoning, the Commissioner did not consider either that Mauer had many legitimate reasons to travel to Minnesota or that mandated professional travel sharply limited the time he spent in Florida (T.308).

This reliance on Factor W was repeated in the Commissioner's Notice denying Mauer's administrative appeal. *See* Ex. 41 at 4-5 (again citing only the number of days Mauer spent in Minnesota and Florida respectively). In addition to affirming that Mauer remained a Minnesota domiciliary, the Notice also concluded that Mauer was a Minnesota resident for 2003 by virtue of the statutory 183-Day Rule. *Id.* at 5.

Mauer appealed to the Tax Court. As part of his discovery, the Commissioner subpoenaed hundreds of pages of documents from the NBA. *See, e.g.*, Exs. 3, 20, 23. The Commissioner thereby unearthed evidence (summarized above) both of Mauer's acrimonious 2003 residency dispute with the NBA concerning his true domicile, *see* (T.181-85); Stip. ¶¶ 45-46; Ex. 22-23, and of the numerous work- and tax-related forms Mauer had filled out listing Fort Myers as his home. *See, e.g.*, Exs. 3, 16-17, 20.

Relying extensively on this additional evidence verifying his intent, Mauer asked the Tax Court, the Honorable George W. Perez, to conclude: (1) that Mauer became a Florida domiciliary in July 2003, and remained so thereafter; and (2) that although he continued to own a dwelling in Minnesota during the balance of 2003, he did not maintain an "abode" in Minnesota—and thus was not subject to the 183-day Rule for

2003—because he “moved personal furnishings and belongings from the dwelling and [made] a good faith effort to sell ... the dwelling.” Minn. R. 8001.0300, subp. 6 (defining “abode”). There was no 183-day Rule issue for 2004.

In the alternative, Mauer asked the Tax Court to conclude that the Commissioner’s application of Factor W without regard to employer-mandated travel violated the Commerce Clause of the United States Constitution and the equal protection provisions of the United States and Minnesota Constitutions.

The Commissioner contended that Mauer remained a Minnesota domiciliary for the tax years in issue because he continued to initiate and terminate travel in Minnesota and spent more time physically present in Minnesota than in Florida. In the alternative, the Commissioner argued that Mauer was a Minnesota resident for tax year 2003 by virtue of the 183-day Rule, and that the Commissioner’s application of Factor W of the Residency Rule was not unconstitutional.

On January 20, 2012, the Tax Court entered Findings of Fact, Conclusions of Law [and] Order for Judgment sustaining the Commissioner’s Notice. *See* Add. at 1-40. The court affirmed the Commissioner’s determination that Mauer remained a Minnesota domiciliary for the tax years in issue. Add. at 20-30. Accordingly, the court did not reach Mauer’s alternative residency argument for 2003: that although he continued to own a dwelling in Minnesota for the balance of the year, he did not maintain an “abode” in Minnesota and, consequently, was not subject to the 183-day Rule for 2003. The court also rejected Mauer’s constitutional claims. Add. at 30-39. This appeal follows.

SUMMARY OF ARGUMENT

Statutes and administrative rules are published to provide citizens with notice of what the law requires. In 2003, Mauer decided to sell his Afton residence and to make Florida his new home. Mauer researched the residency laws of Florida and Minnesota, obtaining the Department's own summary of Minnesota's 26-factor Residency Rule.

After purchasing his Fort Myers residence, Mauer took numerous steps to manifest and document his intent. He reasonably believed these actions rendered him a Florida domiciliary and that—having changed domicile—he was free to spend up to 182 days per year in Minnesota. Mauer kept a log of his travels and spent less than one-half his time in Minnesota to avoid becoming a non-domiciliary resident. Full compliance with Minnesota law rendered Mauer a Florida domiciliary beginning in July 2003.

The Tax Court's finding that Mauer remained a Minnesota domiciliary is infected by two pervasive errors. First, the evidence as a whole does not reasonably support the court's decision. Indeed, the court appears never to have evaluated the evidence *as a whole*. The court never acknowledged the principal reason Mauer moved to Fort Myers; placed undue weight on Minnesota physical presence; relied on fragments of evidence taken out of context; and ignored the most probative evidence of Mauer's intent—his willingness to risk his job to have the NBA recognize his move to Fort Myers.

Second, like the Commissioner, the Tax Court improperly applied Factor W of the Residency Rule so as to obscure rather than illuminate Mauer's intent, and improperly gave that single factor determinative weight. More generally, the Court failed to justify or reconcile its decision with either positive or decisional law.

ARGUMENT

MAUER BECAME A FLORIDA DOMICILIARY IN JULY 2003 AND REMAINED SO THEREAFTER.

The term “domicile” means the bodily presence of a person in a place coupled with an intent to make such a place the person’s home. In July 2003, Mauer bought his Fort Myers residence and entered a listing agreement to sell his Afton residence.

Mauer’s actions and declarations establish the existence and sincerity of his intent to make Florida his new home. The Residency Rule’s 26 factors verify Mauer’s Florida domicile. The record demonstrates that Mauer became a Florida domiciliary in July 2003, and remained so thereafter. The Tax Court’s contrary determination is “clearly erroneous because the evidence as a whole does not reasonably support the decision.”

Bond v. Comm’r of Revenue, 691 N.W.2d 831, 835-36 (Minn. 2005).

A. Standard of Review

This Court reviews tax court decisions to determine whether that court lacked jurisdiction, whether its decision is supported by the evidence and is in conformity with the law, and whether the court committed any other error of law. *Gonzales v. Comm’r of Revenue*, 706 N.W.2d 909, 910-11 (Minn. 2005); Minn. Stat. § 271.10. “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 v. Comm’r of Revenue*, 770 N.W.2d 523, 525 (Minn. 2009) (quoting *Davidner v. Davidner*, 232 N.W.2d 5, 7 (Minn. 1975)).

B. Governing Statute And Rule.

“All net income of a resident individual is subject to tax” Minn. Stat.

§ 290.014, subd. 1. Minnesota law provides in relevant part:

Subd. 7. **Resident.** (a) The term “resident” means any individual domiciled in Minnesota ...

Minn. Stat. § 290.01, subd. 7(a). Subpart 1 of the Residency Rule paraphrases the foregoing statutory language. Minn. R. 8001.0300, subp. 1 (Add. at 41). Subpart 2 “adopts the traditional common law definition of domicile.” *Dreyling v. Comm’r of Revenue*, 2005 WL 473893, at *5 (Minn. T.C. Feb. 25, 2005), *aff’d in part and rev’d in part*, 711 N.W.2d 491 (Minn. 2006). That provision is worth quoting at some length:

Subp. 2. **Domicile; definition and presumptions.** 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...

A person who leaves home to go into another jurisdiction for temporary purposes only is not considered to have lost that person’s domicile. But if a person moves to another jurisdiction with the intention of remaining there permanently or for an indefinite time as a home, that person has lost that person’s domicile in this state...

The domicile of a single person is that person’s usual home...

The mere intention to acquire a new domicile, without the fact of physical removal, does not change the status of the taxpayer, nor does the fact of physical removal, without the intention to remain, change the person’s status. The presumption is that one’s domicile is the place where one lives. An individual can have only one domicile at any particular time. A domicile once shown to exist is presumed to continue until the contrary is shown... No positive rule can be adopted with respect to the evidence necessary to prove an intention to change a domicile but such intention may be proved by acts and declarations, and of the two forms of evidence, acts must be given more weight than declarations....

Minn. R. 8001.0300, subp. 2 (Add. at 41-42). Subpart 3 of the Rule sets forth 26 “items” that “will be considered in determining whether or not a person is domiciled in this state.”

Id. subp. 3. It also provides that “[a]ny one of the items listed above will not, by itself, determine domicile.” *Id.* (Add. at 42-43).

A taxpayer has the burden of proving a new domicile outside of Minnesota. *Sandberg v. Comm’r of Revenue*, 383 N.W.2d 277, 283 n.7 (Minn. 1986). Intent is evaluated at the time a taxpayer moves to another jurisdiction. *Sanchez*, 770 N.W.2d at 526-27. *See also Page v. Comm’r of Revenue*, 1986 WL 15695, at *6 (Minn. T.C. 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 had expressed it to others at the time.”); *Syfco v. Comm’r of Revenue*, 1987 WL 5138, at *5 (Minn. T.C. Feb. 11, 1987) (“the key to determining appellant’s residency is their intent at the time of their decision to move”). “Intent is evaluated on a case-by-case basis, and a taxpayer’s actions are of more significance than his or her statements.” *Sanchez*, 770 N.W.2d at 526 (citing Minn. R. 8001.0300, subp. 2).

Rather than viewing each of the Residency Rule’s 26 common law factors in isolation, a court “must look at the overall picture presented to determine the taxpayers’ intent.” *Page*, 1986 WL 15695, at *7. *See also Sarek v. Comm’r of Revenue*, 1979 WL 1107, at *5 (Minn. T.C. Apr. 19, 1979) (noting with respect to intent that “all the facts of a particular case must be taken into account”) (court’s emphasis). *Accord Dreyling v. Comm’r of Revenue*, 711 N.W.2d 491, 496 (Minn. 2006) (addressing domicile issue by “[t]aking the factors under Rule 8001.0300, subp. 3, as a whole”).

C. Mauer's Acts Demonstrate His Intent To Make Florida His Domicile.

As an initial matter, Mauer's transient lifestyle entails a relatively superficial attachment to *any* community. Since graduating from college in 1977, Mauer's career has kept him on the road for eight months each year (T.116-18, 120); Stip. ¶ 11. In addition, rather than having a wife and children to anchor him during the years in issue, Mauer was a single man who traveled frequently, even when work did not require him to do so. (T.152, 237, 241, 264); Stip. ¶ 5; Add. at 29. Thus, although Mauer was a lifelong Minnesota resident through June 2003, he had no deep roots to extract from Minnesota soil. *Cf. Sandberg v. Comm'r of Revenue*, 1985 WL 6174, at *7 (Minn. T.C. Mar. 18, 1995) (domicile does not change “when deep roots remain embedded in the social and economic life of the old community”).

Mauer's acts demonstrate his intent to make Florida his domicile. Minn. R. 8001.0300, subp. 2 (“intention may be proved by acts”) (Add. at 42). Before moving to Florida, Mauer obtained from three separate sources—accountant Michael Deegan, the Department, and a friend who had recently moved—information about how to establish domicile in Florida. (T.141); Ex. 72 (letter from accountant Deegan enclosing the Department's residency materials). On July 3, 2003, Mauer signed the purchase agreement for his Fort Myers residence. (T.144); Stip. ¶ 30. That same day, he registered to vote in Florida, obtained a Florida driver's license (surrendering his Minnesota driver's license), and picked up a Florida Declaration of Domicile (which officials told him not to sign until he actually owned his Florida home). (T.145-49); Stip. ¶¶ 32-33; Exs. 29, 90. *Cf. Sarek*, 1979 WL 1107, at *6 (noting unfavorably that “it was

not until after appellant had received a letter from the Minnesota Department of Revenue ... that appellant applied for a Florida driver's license, filed a Florida Declaration of Domicile, registered to vote in Florida and registered his automobile in Florida.”).

Purchase of the Fort Myers residence closed on July 9, 2003. (T.144-45); Ex. 6. By that time, Mauer was back in Minnesota preparing to go on a European vacation with his brother (T.152). Mauer executed and dispatched the Florida Declaration of Domicile he had previously obtained. (T.149); Stip. ¶ 34; Ex. 8. In mid-August 2003, Mauer signed a retainer agreement with David Goldberg, a Florida accountant, to assist him in complying with all Florida tax requirements. (T.37, 40-41); Stip. ¶ 39; Ex. 9.

Shortly after purchasing his Fort Myers residence, Mauer filed with the Florida Department of Revenue an Original Application for Ad Valorem Tax Exemption seeking a homestead exemption for his Fort Myers residence (T.149-50); Stip. ¶ 37; Ex. 10. In conjunction with this application, Mauer surrendered homestead status on his Afton residence. (T.150-51); Stip. ¶¶ 37-38; Exs. 11-12. He also engaged realtor Richard Lesch to sell the Afton residence. (T.54-55, 58, 155-56); Stip. ¶ 50; Ex. 27.

Mauer hired a decorator to faux paint some rooms and to replace numerous fixtures in the Fort Myers home (T.277). In late August 2003, he rented a U-haul truck, loaded it with furniture and personal belongings, and paid his cousin to drive the truck to Florida with one of Mauer's cars in tow. (T.152-54); Stip. ¶ 36; Ex. 28. Although Mauer had no significant previous contacts with Florida (T.139), he spent 24 days there starting July 3, 2003. Ex. 40 at 26. This despite traveling for work, attending to his move, and fulfilling previous social and professional engagements in Minnesota (T.140, 279-79).

As the Commissioner's discovery revealed, in August 2003, Mauer telephoned the NBA to report that Fort Myers was now his primary residence (T.170-71). During September 2003, likewise, Mauer designated his "home airport" as "Fort Myers" on an NBA Air Travel Election form. (T.175-76); Ex. 3. *See Syfco*, 1987 WL 5138, at *5 (favorably noting that taxpayers informed their employers of their new address).

From October 2003 to January 2004, Mauer fought to have the NBA bureaucracy recognize Fort Myers as his new home. Mauer first contacted Stu Jackson, the NBA's Vice President of Operations, specifically noting that he had homesteaded his Fort Myers residence. (T.178-80); Ex. 21. When the dispute escalated, Mauer dealt directly with Richard Buchanan, the NBA's chief counsel (T.181). Buchanan threatened Mauer with fines, suspension, and possible termination. (T.181-85); Ex. 22-23. Buchanan and the NBA eventually relented, however, recognized Mauer's move, and agreed to compute his future travel allowance using Fort Myers itineraries. (T.185); Ex. 22.

D. Mauer's Oral And Written Declarations Demonstrate His Intent To Make Florida His Domicile.

Mauer's oral and written declarations likewise demonstrate his intent to make Florida his domicile. Minn. R. 8001.0300, subp. 2 ("intention may be proved by ... declarations") (Add. at 42); *see also Miller v. Comm'r of Taxation*, 59 N.W.2d 925, 927 (Minn. 1953) ("There was evidence presented that Miller made definite statements that it was his intention to make Florida his permanent residence and home."). For years before he actually purchased the Florida residence, Mauer discussed with accountant Michael Deegan, and with lifelong friend Richard Lesch, his intention of moving to a warmer

climate (T.7-8, 62, 140-41, 155-56). *See Syfco*, 1987 WL 5138, at *5 (noting that taxpayers changed domicile from Minnesota to their Wisconsin lake home in part “to enjoy the lake setting year-around”).

Mauer filed with the State of Florida two sworn declarations concerning residency. On July 9, 2003, he executed before a Minnesota notary, and filed with the State of Florida, a formal Florida Declaration of Domicile, which stated in relevant part:

I hereby declare that I reside in and maintain a place of abode at: [11309 Wine Palm Road, Fort Myers, Lee, 33912, Florida], which place of residence I recognize and intend to maintain as my permanent home and, if I maintain another place or places of abode in some other state or states, I hereby declare that my above-described residence and abode in the State of Florida constitutes my predominant and principal home, and I intend to continue it permanently as such. I am at the time of making this declaration, a bona fide resident of the state of Florida.

Ex. 8. At trial, Mauer testified that he considered himself a Florida resident as of July 9, 2003, the date on which he signed this Declaration (T.149).

On August 27, 2003, Mauer filed a Florida Department of Revenue, Original Application for Ad Valorem Tax Exemption for his Fort Myers residence. Ex. 10. He included on the form the address of his Afton residence, and authorized Florida officials “to obtain information necessary to determine my eligibility for the exemption(s) applied for.” *Id.* By signing the form, Mauer swore: “I am a permanent resident of the State of Florida and I own and occupy the property described above.” *Id.*

As the Commissioner’s discovery revealed, Mauer made numerous oral and written declarations concerning residency to the NBA. In August 2003, Mauer telephoned the NBA assignment secretary, stated that he had moved to Fort Myers, and

asked that the League update its records. (T.170-71); Ex. 14 (NBA referee address list for the 2003-04 season listing Fort Myers as primary address). During September 2003, Mauer designated his “home airport” as “Fort Myers” on an NBA Air Travel Election form. (T.175-76); Ex. 3. During the ensuing travel reimbursement dispute with the League, Mauer faxed Stu Jackson indicating with respect to Fort Myers, “I’m homesteaded there.” Ex. 21.

On September 29, 2003, Mauer signed a document titled “Exhibit B, Acknowledgement of NBA Intellectual Property.” Ex. 16. He listed Fort Myers as “Employee’s Home Address.” *Id.*

In October 2003, an NBA representative sent Mauer forms for obtaining a Canadian work permit, which required Mauer to furnish address information for the past ten years. Ex. 26. Mauer indicated that from September 1991 to July 2003, he had lived in Afton, and that from July 2003 to the present, he had lived in Fort Myers. *Id.* He also listed Fort Myers as his current address. *Id.* Mauer certified that this information was “true and complete.” *Id.*

The NBA annually publishes the NBA Officials Media Guide. *See, e.g.,* Ex. 18-19. In September 2004, just before the start of the 2004-05 season, the NBA required referees to complete a Media Guide Questionnaire, which the League used to update the Media Guide. Ex. 20. Mauer submitted the questionnaire on September 18, 2004, and listed Fort Myers as his “Current Residence.” *Id.*

On September 25, 2005, Mauer filled out, signed and returned to the NBA a form titled “Background Check Authorization, Acknowledgement & Release.” Ex. 58. Mauer

listed Fort Myers as his “Current Address.” NBA490. In addition, Mauer indicated on the form that he had “lived” in Afton, Minnesota from 1991 to 2003, and that he had lived in Fort Myers from 2003 to the present. *Id.*

Mauer also declared Fort Myers as his residence when communicating with taxing authorities. On September 30, 2003, Mauer signed, dated, and filed a document titled “New York State, City of New York, and City of Yonkers Certificate of Nonresidence and Allocation of Withholding Tax.” Ex. 17. He listed Fort Myers as his “Street Address.” *Id.* Mauer also filed for 2003 and 2004 New York Nonresident and Part-Year Resident individual income tax returns. Exs. 34 & 37. On these returns, Mauer likewise listed Fort Myers as his mailing address.

By Letter Number 2797 addressed to Mauer and dated June 21, 2004, the IRS sought updated address information. Mauer filled out, signed and returned the form to the IRS, listing Fort Myers as his updated address. Ex. 36.

In October 2005, Mauer filed his 2003 Minnesota individual income tax return as a part-year resident. Stip. ¶ 65. He paid Minnesota individual income tax for the time he acknowledged he was a Minnesota resident, and paid no tax for the time he claimed to be a Florida resident. On this 2003 return, Mauer listed Fort Myers as his mailing address. Stip. ¶ 78.

The Residency Rule provides that intention to change a domicile “may be proved by acts and declarations.” *See* Minn. R. 8001.0300, subp. 2 (Add. at 42). Mauer’s acts and declarations—especially his willingness in 2003 to risk his very employment by insisting that the NBA recognize his move to Fort Myers—powerfully demonstrate the

existence and sincerity of Mauer's intent—at the time he moved—to make Florida his state of domicile. This acts-and-declarations analysis is verified by application of the Residency Rule's 26 factors.

E. Application Of The Residency Rule's 26 Factors Confirms Mauer's Intent To Make Florida His Domicile.

The Residency Rule sets forth 26 “items” that represent circumstantial evidence of intent and that “will be considered in determining whether or not a person is domiciled in this state.” Minn. R. 8001.0300, subp. 3 (Add. at 42-43). Application of these factors confirms that Mauer intended in July 2003 to make Florida his home.

The parties submitted a detailed Joint Stipulation of Fact pertaining to these “items.” *See* Stip. ¶¶ 52-77. Some do not apply to this case,⁴ while others are clearly neutral.⁵ The material factors here are as follows:

- A. **Location of domicile for prior years:** Mauer acknowledged himself a Minnesota domiciliary until July 11, 2003. Stip. ¶ 52.
- B. **Where person votes:** Mauer did not vote in 2003. On July 3, 2003, Mauer registered to vote in Florida. *See* Ex. 90. On November 2, 2004, election day,

⁴ Items not applicable here include Factor C, status as student; Factor K, professional licenses; Factor N, fishing and hunting licenses; Factor X, source of unemployment compensation; Factor Y, location of schools; and Factor Z, statements to insurance companies. *See* Stip. ¶¶ 54, 61, 64, 75-77.

⁵ Clearly neutral items include Factor D, permanency of employment; Factor E, location of employment; Factor L location of union membership; Factor S, location of places of worship; and Factor V, addresses where mail was received. *See* Stip. ¶¶ 55-56, 62, 69, 73. As will be argued below, other items appear to be neutral as well.

Mauer left Fort Myers for Cleveland. *See* Ex. 40 at 50. Consequently, he voted in Florida by absentee ballot. Stip. ¶ 53.

- F. **Location/Status of new living quarters:** Fort Myers, Florida; owned.
- G. **Status former living quarters:** Afton, Minnesota; owned; offered for sale July 15, 2003, through July 15, 2004 (except period between early January and late March 2004, during repair of water damage from burst pipes). (T.166-70); Ex. 27.
- H. **Homestead status of living quarters:** In July through September 2003, Mauer surrendered homestead status for his Afton, Minnesota residence and obtained homestead status for his Fort Myers residence effective January 2004. Stip. ¶ 37; Exs. 10-12.
- I. **Ownership of other real property:** On August 31, 2004, Mauer purchased a second residential property Fort Myers' Heritage Palms development. Stip. ¶ 58.
- J. **Driver's license:** On July 3, 2003, Mauer surrendered his Minnesota driver's license and obtained a Florida driver's license. Stip. ¶ 60; Ex. 29. *Compare Wright v. Comm'r of Revenue*, 1980 WL 1207, at *7 (Minn. T.C. June 4, 1980) ("Wright also surrendered his Minnesota driver's license and had a Florida driver's license.") *with Dreyling*, 711 N.W.2d at 493 ("Dreyling obtained an Alaska driver's license but never physically surrendered his Minnesota license.").
- M. **Licensing/location of vehicles:** Mauer owned, registered, and garaged automobiles in both Florida and Minnesota. Stip. ¶ 63 (listing vehicles and locations).

- O. **Status claimed on Minnesota income tax return:** In October 2005, Mauer filed a 2003 Minnesota individual income tax return as a part-year resident. He did not file a Minnesota individual income tax return for tax year 2004. Stip. ¶ 65. On his 2003 return, Mauer listed Fort Myers as his mailing address. Stip. ¶ 78.
- P. **Fulfilling tax obligations:** Mauer fulfilled all tax obligations in both Minnesota and Florida (assuming he was not a Minnesota resident during the latter half of 2003 and throughout 2004). Stip. ¶¶ 78-79, 82-83.
- Q. **Location of bank accounts and especially most active checking account:** Mauer maintained bank accounts in both Florida and Minnesota. Stip. ¶ 67 (listing accounts). As of December 2003, Mauer had the NBA deposit his salary equally between his Minnesota and Florida checking accounts. Add. at 7. Courts consider the establishment of new accounts in new jurisdictions favorably, but do not negatively view the continuation of previous accounts. *See Sarek*, 1979 WL 1107, at *6 (“It is important to note that appellant did not have a checking account, savings account, savings certificates or a safe deposit box in any other state, including the State of Florida.”); *Sycco*, 1987 WL 5138, at *6 (“Continuing an established banking relationship and simple convenience are not conclusive of an intent to remain attached to a state as a resident.”).
- R. **Other financial institution transactions:** During the period in question, Mauer used a Worldperks Visa Gold credit card issued by U.S. Bank National Association in Minneapolis, Minnesota. Stip. ¶ 68.

- T. **Location of business relationships/transactions:** Mauer used the services of Minnesota accountants, a Minnesota dentist, insurance agent/broker, and real estate agent/broker. He also used the services of a Florida accountant, a Florida real estate agent/broker, and a Florida insurance broker. (T.138, 143); Stip. ¶ 70.
- U. **Location of clubs, etc:** Mauer was not a member of any social organizations or clubs, but was a member of the Minnesota Officials Association and/or Capital City Officials Association (n/k/a St. Paul Officials Association), a Minnesota organization that provides trained officials for Minnesota football and other athletic events. Stip. ¶ 72. Mauer had one golf membership at Heritage Palms in 2003 and two memberships there beginning in September 2004. Add. at 8.
- W. **Percentage of time present in Minnesota and other jurisdictions:** In 2003, Mauer spent 203 days in Minnesota; 31 days in Florida; and 131 days in other jurisdictions. *See* Ex. 40 at 26. After July 3, 2003, he spent 85 days in Minnesota; 24 days in Florida; and 73 days in other jurisdictions. *See* Ex. 40 at 26, 34-39. In 2004, Mauer spent 181 days in Minnesota; 64 days in Florida; and 121 days in other jurisdictions. *See* Ex. 40 at 27. *See also* Supplemental Stip. ¶ 5.

Factors A, R, and W (former domicile, location of non-bank financial transactions, and days spent in respective jurisdictions) favor a Minnesota domicile. Factors B, F, H, I, J, and O (voting jurisdiction, location/status of new living quarters, homestead location, location of other real property, driver's license, and asserted residency on Minnesota tax returns) favor a Florida domicile. Factor G (location/status of former living quarters) is essentially neutral because, although Mauer continued to own the Afton residence, he

listed it for sale between July 2003 and July 2004. (T.163); Ex. 27. *See* Minn. R. 8001.0300, subp. 6 (definition of abode). Factors M, Q, T and U are likewise neutral because Mauer maintained vehicles, bank accounts, business relationships, and club memberships in both jurisdictions in approximately equal quantities. Finally, Factor P is neutral because Mauer complied with all tax requirement in both Minnesota and Florida.

In sum, six factors favor Florida domicile, while only three favor Minnesota domicile. Naturally, however, courts do more than just *count* factors. For example, they traditionally *weigh* heavily a taxpayer's surrender of a Minnesota homestead exemption:

The fact that Wright did not apply for a homestead classification for the [Minnesota] house he owned during the taxable years in question shows a strong and significant intent to abandon the dwelling place as his permanent home. Merely because Wright owned a house in Minnesota and stayed in that house when he came back to visit his sick wife here is not of any significance.

Wright, 1980 WL 1207, at *7. Here, likewise, Mauer's surrender of the Afton homestead exemption demonstrates that he was willing to accept all of the consequences—favorable or not—of his decision to become a Florida domiciliary. *Cf. Manthey v. Comm'r of Revenue*, 1990 WL 73501, at *6 (Minn. T.C. May 16, 1990) (rejecting claim of changed domicile and noting, “Mr. Manthey apparently was attempting to have the benefits of residency in two states at once.”).⁶

Factor W, time spent in respective jurisdictions, is plainly the consideration that appears most strongly to favor a finding of Minnesota domicile. For several reasons,

⁶ *See also Rowe v. County of Lake of the Woods*, 2003 WL 22461811, at *5 (Minn. T.C. Oct. 23, 2003) (finding taxpayer not a Minnesota resident—and thus not entitled to Minnesota tax benefits—where taxpayer “testified that [his] Louisiana residence has a homestead classification in Louisiana and he and his wife have no intention of relinquishing such classification”).

however, the application of Factor W is problematic in this case. At any rate, this single factor cannot be given determinative weight.

First, Minnesota law does not require the sudden or complete abandonment of the state to establish domicile elsewhere: “Many people retain some allegiance to the place of their youth. The fact that a person changes his domicile from one place to another does not mean that he must tear up all his roots in the social life of the former domicile.” *Skoe v. Comm’r of Taxation*, 1967 WL 22, at *5 (Minn. T.C. Sept. 28, 1967). *Accord Sanchez*, 770 N.W.2d at 526 (noting that “a party does not need to prove abandonment of present domicile”).

Mauer had pre-existing engagements in Minnesota during Autumn 2003, such as officiating high school football games and attending banquets and shows. (T.140, 244, 278-79); Ex. 30 at 84, 88, 89, 91, 93, 104. In addition, Mauer’s inability to sell the Afton residence, and his consequent need to maintain that residence—especially after pipes froze and burst in January 2004—gave Mauer additional cause to travel frequently to Minnesota (T.166-70). Mauer’s effort to sell Afton verifies his intention to relinquish Minnesota as his domicile. *See, e.g., Setness v. Comm’r of Revenue*, 1989 WL 146003, at *6 (Minn. T.C. Nov. 30, 1989) (“One of the key facts supporting this conclusion [that appellants did not establish a new domicile outside Minnesota] is that the appellants never attempted to sell their home in Minnesota.”). Moreover, a finding of Minnesota domicile is not warranted merely because Mauer fulfilled pre-existing professional and social engagements, and scrupulously maintained his property. *Cf. Miller*, 59 N.W.2d at 927 (noting that “Miller never actually disposed of his former residence in St. Paul but, in

fact, actually resided there while in Minnesota,” but concluding that this did not mandate finding of Minnesota domicile).

Second, Factor W inquires about the “percentage of time (not counting hours of employment) that the person is physically present in Minnesota and the percentage of time (not counting hours of employment) that the person is physically present in each jurisdiction other than Minnesota.” Minn. R. 8001.0300, subp. 3.W (Add. at 42). This item is based on the straightforward inference that a person will spend more time in the place he considers home. The twice-repeated parenthetical qualification recognizes that employment-related presence in a jurisdiction is *not* indicative of intent with respect to domicile. *See Luther v. Comm’r of Revenue*, 588 N.W.2d 502, 506, 508-09 (Minn. 1999) (court reviews de novo lower court’s interpretations of statutes and rules).

Relator does not challenge the basic soundness of the inference underlying Factor W. The degree to which that factor accurately reflects Mauer’s intent with respect to domicile, however, must be evaluated in the context of the facts presented.

Mauer testified at trial: (1) that he moved to Fort Myers, in part, to avoid Minnesota winters; and (2) that despite his change of domicile, he always intended to spend the summer months in Minnesota (or some other place with a climate less tropical than Florida’s). (T.282-83, 290). It is undisputed that the NBA requires Mauer to travel extensively between October and May. Stip. ¶11. Consequently, during the very months Mauer would otherwise spend in Florida, he is required by his employer to be on the road for work.

Under the circumstances, Mauer’s relatively low Florida day-counts (24 days after July 3, 2003, and 64 days in 2004) do not undermine his claim to Florida domicile. *Cf. Sandberg*, 383 N.W.2d at 278, 284-85 (holding taxpayer Minnesota domiciliary even though spending only 50-60 days each year on property owned in state). Employer-mandated *absence from* a jurisdiction is no more indicative of intent with respect to domicile than is employer mandated *presence in* a jurisdiction. *Cf. Minn. R. 8001.0300, subp. 3.W* (Add. at 42). Because the rationale underlying Factor W is vitiated by Mauer’s heavy employer-mandated travel, it cannot accurately reveal Mauer’s intent with respect to domicile. To the contrary, Mauer’s mandated travel clarifies how he could: (1) actually and reasonably consider Florida his domicile; yet (2) spend a relatively modest amount of time physically present in Fort Myers during the NBA season.

In any event, Factor W cannot be given decisive weight. The Residency Rule expressly provides that no single factor shall “by itself, determine domicile.” *Minn. R. 8001.0300, subp. 3* (Add. at 43). *See also Luther*, 588 N.W.2d at 508-09 (rules must be given plain meaning); *Dreyling*, 711 N.W.2d at 495 (citing provision and “reject[ing] any attempt to elevate the importance of one factor over another.”).

Intent with respect to domicile is evaluated at the time a taxpayer moves to another jurisdiction. *Sanchez*, 770 N.W.2d at 527; *Page*, 1986 WL 15695, at *6. A court “must look at the overall picture presented to determine the taxpayers’ intent.” *Page*, 1986 WL 15695, at *7; *see also Dreyling*, 711 N.W.2d at 496 (relying on factors as a whole). Mauer’s actions and declarations—particularly those related to his late-2003 residency dispute with the NBA—establish the existence and sincerity of Mauer’s intent to make

Florida his new home. Fair application of the Residency Rule's 26 factors verifies that Mauer became a Florida domiciliary in July 2003, and remained so thereafter.

F. The Tax Court's Determination That Mauer Remained A Minnesota Domiciliary Is Not Reasonably Supported By The Evidence As A Whole, And Is Not Justified By The Law.

The Tax Court's determination that Mauer remained a Minnesota domiciliary is infected by two pervasive errors. First, the evidence as a whole does not reasonably support the court's decision. Minn. Stat. § 271.10 (2010) (review available on ground that Tax Court's order "was not justified by the evidence"); *Eden Prairie Mall, LLC v. Cnty. of Hennepin*, 797 N.W.2d 186, 192 (Minn. 2011) (noting that tax court's decision is clearly erroneous if, among other things, the decision is not reasonably supported by the evidence as a whole). Second, the court failed to justify or reconcile its decision with either positive or decisional law. Minn. Stat. § 271.10 (2010) (review available on ground that Tax Court "committed any other error of law"); *McLane Minn., Inc. v. Comm'r of Revenue*, 773 N.W.2d 289, 293 (Minn. 2009) ("We review the tax court's conclusions of law and interpretation of statutes de novo.").

1. The Tax Court's Decision Is Not Supported By The Evidence As A Whole.

Relator will not discuss every instance in which the lower court's decision ignores undisputed fact or takes evidentiary details out of context.⁷ Instead, Relator will focus on material instances and will state why error is alleged. First, the Tax Court ignored undisputed evidence that favored a finding of Florida domicile:

- The court cites Stipulated Exhibits 22 and 23 for the proposition that the NBA denied Mauer some travel reimbursement in October and November 2003 on the ground that he flew primarily in and out of Minnesota rather than Fort Myers those months. Add. at 6, 13-14. The court fails to acknowledge, however, that Stipulated Exhibit 22 also indicates the League recognized Mauer's Florida residency beginning in January 2004, and agreed to compute all of his future travel reimbursement based on Fort Myers itineraries. Ex. 22. In addition to ignoring Mauer's highly probative residency dispute with the NBA, *see infra* at 27-38, the Tax Court essentially reverses the true import of the stipulated exhibits generated by that dispute.
- In its factor analysis, the court indicates that Mauer had three cars registered and located in Minnesota and only one in Fort Myers. Add. at 22; *see also id.* at 11. This is contrary both to the parties' Stipulation and to the court's own

⁷ Naturally, the Tax Court sitting as finder of fact may make credibility determinations and resolve disputed issues of fact. *See, e.g., Dreyling*, 711 N.W.2d at 494. The court is not at liberty, however, to simply disregard stipulated or uncontroverted fact. *Cf. Dreyling v. Comm'r of Revenue*, 753 N.W.2d 698, 702-03 (Minn. 2008) (stating principle but refusing to apply it to taxpayer's "uncorroborated and self-serving testimony").

findings, which both indicate that Mauer's Lexus remained in Minnesota only until late 2003. Stip. ¶ 63(b); Add. at 7. For 2004, therefore, Mauer had two cars in each jurisdiction.

- The court states that Mauer's family relationships were located primarily in Minnesota. Add. at 29. The record indicates, however, that Mauer bought a home in the Heritage Palms development in Fort Myers specifically because his cousin Joe Mauer had purchased a home there two years earlier, after being drafted by the Twins. (T.137-38, 144). The entire Mauer family had thus acquired a strong attachment to Fort Myers, where the Twins annually hold spring training (T.138, 144). It is impossible to accurately evaluate Mauer's intent with respect to domicile without even *acknowledging* that he moved to Florida generally, and to Heritage Palms specifically, because his extended family would be spending significant time there for the foreseeable future (T.138, 144). Yet the court never mentions it.

Second, the Tax Court cites in support of its decision many evidentiary details that—when viewed in light of all the evidence—do not support its decision:

- Commenting on the location of professional relationships, the court states that Mauer used a Minnesota realtor to purchase his Fort Myers residence. Add. at 15. The record indicates, however, that the Minnesota realtor merely telephoned correspondent real estate agents in Florida, who then assisted Mauer in purchasing the Fort Myers residence. (T.138, 143). Again, full context reverses the true probative force of the evidence.

- The court notes that in its Official’s Media Guide for the 2004-05 season, the NBA listed Mauer as residing in Minnesota. Add. at 5. The court fails to acknowledge, however, that in the Questionnaire Mauer filled out before publication of the 2004-05 Media Guide, he told the NBA that he lived in Fort Myers. Stip. ¶ 43; Ex. 20. Surely, the questionnaire—in which Mauer designated Fort Myers as his home—is more relevant to *Mauer’s intent* than is the NBA’s failure to update its publication. Yet again, the unacknowledged evidence entirely inverts the probative force of the cited evidence.
- The court comments unfavorably on Mauer’s failure to obtain a 2003 homestead exemption for the Fort Myers residence he purchased in July 2003. Add. at 11. Exemption status, however, is based upon ownership as of January 1st of each calendar year. *See Fla. Stat. § 196.031*. Consequently, Mauer could not possibly have obtained a Florida homestead exemption for 2003. Why cite against Mauer an action he could not possibly have taken?
- The court based its domicile finding, in part, on evidence that Mauer’s “luxury home” was his \$3 million dollar Afton residence, not his \$228,000 Fort Myers residence. Add. at 30. The record indicates, however, that Mauer could not afford to buy a “luxury” Florida home unless and until he sold Afton (T.280-81); that he was unwilling to sell Afton for less than he believed it was worth (T.162-63, 280); and that he did not wish to delay his move to Florida while the Afton house was on the market (T.142-43).

Finally, the Tax Court refused even to *acknowledge* the most significant evidence manifesting Mauer’s intent with respect to domicile—his documented dispute with the NBA concerning his home airport. Mauer promptly informed the NBA in July 2003 of his move to Fort Myers (T.170-71); Stip. ¶ 39; Ex. 3. Nevertheless, the League’s travel agency computed Mauer’s October travel allowance using a Minneapolis-based itinerary (T.178-80). Mauer faxed NBA officials to complain about the error and to demand that the League recognize his move. Stip. ¶ 44. Mauer specifically noted that he had homesteaded his Fort Myers residence. (T.178-80); Stip. ¶ 44; Ex. 21.

This dispute escalated and was ultimately referred to the NBA’s legal department and to the National Basketball Referee’s Association (T.181, 184). Richard Buchanan, the league’s chief counsel (T.181), threatened Mauer with fines, suspension, and possible termination.⁸ (T.181-85); Stip. ¶¶ 45-46; Exs. 22-23. Eventually, however, the NBA relented, acknowledged Mauer’s move to Florida, and agreed to compute his travel allowance based on Fort Myers itineraries. (T.182); Ex. 22 at 2. Mauer’s willingness to incur the wrath of his employer over a dispute concerning his true home demonstrates the existence and sincerity of his intent—at the time he moved—to establish Florida as his domicile. *See Page*, 1986 WL 15695, at *9 (“the evidence which supports appellants’

⁸ The final paragraph of Exhibit 22, Buchanan’s December 2, 2003, letter to Mauer, reads:

As reflected here and in our prior discussions, we have serious concerns about the manner in which you have handled your travel arrangements. Any other misconduct in this area in the future will result in further discipline, up to and including termination of employment.

Ex. 22 at 2.

contention that they changed their domicile ... consists of acts which no taxpayer would do merely to create an illusion of a change of domicile”).

Moreover, the Tax Court should have given this evidence considerable weight. As previously noted, it was unearthed *by the Commissioner* during litigation. Because Mauer had never cited the evidence during the audit or administrative appeal, *see, e.g.*, Exs. 47, 49, 51, 52, 54 & 88 (audit and appeal correspondence), it is clear that Mauer did not manufacture the NBA dispute in preparation for a residency audit; had he done so, he surely would have raised and emphasized the matter during audit. The Tax Court’s refusal even to acknowledge this critical episode vitiates its entire intent analysis.

Certiorari review is available on the ground that Tax Court’s order “was not justified by the evidence,” Minn. Stat. § 271.10 (2010), and clear error is present when the court’s decision is not reasonably supported by the evidence as a whole. *Eden Prairie Mall*, 797 N.W.2d at 192. The foregoing analysis indicates that the Tax Court never actually viewed the evidence as a whole.

Specifically, the court never acknowledged the actual reason Mauer moved to the Heritage Palms development; interpreted evidentiary details without regard to the evidence as a whole; and ignored the most probative evidence of Mauer’s intent—the fact that Mauer was willing to risk his job to have the NBA recognize his move to Fort Myers. With respect to the Tax Court’s finding that Mauer intended to retain a Minnesota domicile for the tax periods at issue, this Court should have “a definite and firm conviction that a mistake has been committed.” *Kmart Corp. v. Cnty. of Becker*, 709

N.W.2d 238, 241 (Minn. 2006). Accordingly, the Court should conclude that the Tax Court's finding of intent with respect to domicile is clearly erroneous. *Id.*

2. The Tax Court Failed To Justify Or Reconcile Its Decision With Either Positive Or Decisional Law.

The Tax Court failed to justify or reconcile its decision with either published statutes and rules, or with existing decisional law. Minn. Stat. § 271.10 (2010). First, because the court refused to acknowledge Mauer's residency dispute with the NBA, the court perforce failed to consider Mauer's "acts and declarations" as required by the Residency Rule. Minn. R. 8001.0300, subp. 2 (intent proved by acts and declarations).

Second, the court improperly gave determinative weight to Factor W. *See Add.* at 24-28, 30. The court's analysis focuses almost exclusively on Mauer's travel to and from Minnesota and on the number of days he spent here. *Id.* The court notes, for example, that "Appellant was free to choose where to travel between game assignments yet, more often than not, Appellant chose to return to Minnesota." *Add.* at 27.

In so reasoning, the court acknowledges neither that Mauer had no obligation to sever all ties with Minnesota, nor that he had many reasons to travel to Minnesota (in that he had moved only recently, and still owned property here). *See supra* at 30-31. In addition, contrary to law and precedent, not one of the many acts and declarations detailed above, *see supra* at 19-25, such as Mauer's filing a Florida Declaration of Domicile or surrendering the homestead exemption on his Afton, etc., receives any mention or weight in the court's analysis of intent with respect to domicile. *Add.* 24-30.

As previously demonstrated, Factor W is not a reliable indicator of Mauer's intent given his heavy employer-mandated travel. *See supra* at 31-32. Indeed, applying Factor W to Mauer's case without regard to employer-mandated travel obscures rather than clarifies his intent. *Id.* In addition, the Residency Rule expressly prohibits any single factor from being given determinative weight. Minn. R. 8001.0300, subp. 3 (Add. at 43). For all of these reasons, the Tax Court's decision is contrary to law.

Third, the Tax Court failed to distinguish or even discuss its most germane prior case, in which taxpayers were likewise physically present both in Minnesota and another jurisdiction during substantial portions of the years in issue. *Page v. Comm'r of Revenue*, 1986 WL 15695 (Minn. T.C. Mar. 12, 1986). In *Page*, the Tax Court found that Alan Page and his wife Diane were Illinois residents for 1979-82, even though they lived in Minnesota during the off-season so Page could pursue his legal career. *Page*, 1986 WL 15695, at *2.

Page played for the Viking from 1967 to 1978. *Page*, 1986 WL 15695, at *1. During that time he earned a law degree and secured off-season employment at Lindquist and Venum. *Id.* In the fall of 1978, Page learned that the Vikings had fired him. *Id.* The Pages "were very bitter about the firing," believing that Minnesota fans had supported it. *Id.* Page immediately agreed to play for the Chicago Bears, which he did through 1981. *Id.* In early 1979, the Pages bought a house in Highland Park, Illinois, which they occupied with their children in August. *Id.* "During the off-seasons in 1979, 1980 and 1981, appellants came up to Minnesota for Mr. Page's employment with

Lindquist and Venum.” *Id.* at *2. The Pages rented out their Minneapolis house during the NFL season, and their Highland Park house during the off-season. *Id.*

The Tax Court began its analysis in *Page* by commenting:

The facts of this case are somewhat unique because Alan Page was a professional athlete during the time at issue, so that his primary employment was seasonal and he had the financial means to maintain completely furnished permanent homes in more than one location.

Page, 1986 WL 15695, at *6. The court next noted that “Appellants’ physical presence was established in both Minnesota and Illinois for part of each year at issue” and that the case therefore “turns on appellants’ intent”: “their frame of mind at the time of their move to Illinois, both as expressed by them and as they had expressed it to others at the time.” *Id.*

Importantly for present purposes, the *Page* Court specifically rejected the Commissioner’s contention that the Minnesota ties the Pages retained, and the significant amount of time they continued to spend in Minnesota, defeated their intent to become Illinois residents. *Id.* Indeed, the court ultimately found that the Pages “became domiciliaries of Illinois in February, 1979 and remained domiciled in Illinois thereafter through 1981.” *Id.* at *3. The Court concluded that

the evidence which supports appellants’ contention that they changed their domicile to Illinois consists of acts which no taxpayer would do merely to create an illusion of a change of domicile: purchasing an expensive home; enrolling their children in Illinois schools; voting in Illinois and not voting in Minnesota; paying resident taxes in Illinois and non-resident taxes in Minnesota; and considering running for elective office in Illinois.

Page, 1986 WL 15695, at *6.

Although *Page* is not literally on all fours with the present case, there are striking similarities. Like *Page*, Mauer became embittered about Minnesota based on public events. Mauer was found guilty of Slam Dunk charges by a Minnesota jury, whereas a Philadelphia jury acquitted Steve Javie of similar charges (T.132-36). Like *Page*, Mauer had sufficient resources to maintain homes in two jurisdictions. Like *Page*, Mauer had good reason to reside where he moved: *Page* had obtained employment in Illinois, whereas Mauer sought a warmer climate, a more reliable winter airport from which to travel, and proximity to his family, which had been drawn to Fort Myers by Joe Mauer's employment with the Twins (T.136-38). Like *Page*, Mauer's employment was seasonal, allowing him to enjoy the benefits of his two residences as his work schedule permitted. Like *Page*, Mauer registered to vote and voted in his new domicile.

Not surprisingly, some factors present in *Page* are absent here. The *Page* Court noted, for example, that the Pages enrolled their children in the Highland Park Schools, and that Alan Page considered running for elective office in Illinois. *Page*, 1986 WL 15695, at *6. Mauer was childless, and had no ambition for elective office. The absence of complete symmetry is to be expected, and does not tell against Mauer.

First, the missing parallels highlight that Mauer's bachelor and itinerant existence attach him less to *any* community than did *Page*'s role as father and sports hero. Second, there are differences that favor Mauer. He immediately surrendered his Minnesota driver's license, whereas *Page* did not. *Page*, 1986 WL 15695, at *8. Likewise, Mauer immediately surrendered homestead status for his Minnesota residence, whereas *Page* did not. *Id.* at *7. And, whereas *Page*'s move was welcomed by his employer, Mauer's was

resisted by the NBA. Whereas Page's intent was clarified by facts specific to his case (a possible run for elective office), *id.* at *6, Mauer's intent is powerfully confirmed by his willingness to battle the NBA for recognition of his change in residence. The Tax Court's failure to distinguish or even discuss *Page*, which involves similar facts and legal issues, further demonstrates that the court's decision is contrary to law.

Finally, the Tax Court's decision in this case decision renders Minnesota's residency standard unascertainable. Statutes and administrative rules are published to provide citizens with notice of what the law requires and prohibits. *See, e.g., State v. Rourke*, 773 N.W.2d 913, 917 (Minn. 2009); *Cheek v. United States*, 498 U.S. 192, 199 (1991) (presumption that citizens know the law is "[b]ased on the notion that the law is definite and knowable"). The Residency Rule can furnish such notice only if a person of average intelligence can read, understand and apply its provisions. *State v. Suess*, 52 N.W.2d 409, 414 (Minn. 1952). The Commissioner himself has argued that proper application of the Rule requires only "common sense." *State v. Enyeart*, 676 N.W.2d 311, 321 (Minn. Ct. App. 2004) (noting that, in opposing vagueness challenge to Residency Rule, Department official testified "that the [Rule] is not 'extremely difficult,' and that the rule's application is governed by 'common sense'").

In preparation for his move, Mauer researched the Residency Rule. (T.141-42); Ex. 72. He then purchased a house in Fort Myers which he considered his new home, and in which he intended to live when he was not traveling for work or summering in Minnesota or elsewhere (T.146, 282-83, 289-93). Mauer thus acquired in Florida "bodily presence ... coupled with an intent to make such ... place [his] home." Minn. R.

8001.0300, subp. 2 (Add. at 41). Viewing Subpart 3 of the Rule as specifying actions that would further manifest and confirm his intent (T.11, 141-42), Mauer obtained a Florida driver's license, registered to vote in Florida, obtained homestead status there, etc. *See supra* at 19-25 (listing measures taken).

Reasonably concluding that he had become a Florida resident, Mauer believed that—like any other non-domiciliary—he was free to spend less than one half of each year in Minnesota without being considered a non-domiciliary resident (regardless of how often he traveled here). (T.11-14, 278, 293). *See* Minn. Stat. § 290.01, subd. 7(b) (183-day Rule). Indeed, the Residency Rule provides in part as follows:

Records. Any person domiciled outside Minnesota who maintains a place of abode within Minnesota and claims to be a nonresident of the state must have available for examination adequate records to substantiate that more than one-half of the tax year was spent outside Minnesota.

Minn. R. 8001.0300, subp. 5 (Add. at 43). *See also Dreyling*, 753 N.W.2d at 702 n.4 (noting that where taxpayer argues against Minnesota domicile based, in part, “on the claim that [he] was in Minnesota for less than one-half the calendar year,” statutory 183-day Rule and cited Records provision are relevant). Accordingly, at the advice of his accountant, Mauer kept a detailed contemporaneous log of his physical presence to ensure that he spent less than one-half of his time in Minnesota and, accordingly, that he did not inadvertently render himself a non-domiciliary resident. (T.11-15, 196-97 278, 293); Ex. 30 (travel calendar).

The Tax Court's application of the Residency Rule is at odds with both common sense and the plain meaning of the Rule. According to the court, a Minnesotan wishing

to become the resident of another jurisdiction, and having substantial bodily presence there, can buy a residence; homestead it; surrender his Minnesota homestead exemption; file a formal declaration of domicile there; obtain a driver's license; register to vote and vote there; receive mail there; maintain bank accounts; register and maintain vehicles there; and spend a substantial amount of time there, and yet fail to become a domiciliary of that other jurisdiction so long as the person spends "too much" time—though fewer than 183 days—in Minnesota.

It defies common sense that a person can possess the subjective intent required by law, and can take virtually all of the actions relevant under law, yet still fail to achieve a change in domicile. If the Tax Court's arbitrary application of the Residency Rule is affirmed, it will be impossible for citizens to read the Rule and to understand what the law requires. *Cf. Luther*, 588 N.W.2d at 510 ("[T]he Due Process Clause is concerned with fairness in the form of notice to a taxpayer that she may be subject to a state tax[.]"). The positive law will be rendered affirmatively misleading, and will provide those wishing to comply with its provisions no notice concerning what is necessary to change domicile. This notice problem will be exacerbated if the Commissioner and the Tax Court are permitted—contrary to the express language of the Rule—to base a finding of continued Minnesota domicile upon a single "favorable" factor.

A non-domiciliary who maintains a Minnesota abode and spends at least 183 days here is deemed a non-domiciliary resident. Minn. Stat. § 290.01, subd. 7(b); Minn. R. 8001.0300, subp. 5 (Add. at 43). Under the Tax Court's approach to domicile, a person who maintains a Minnesota abode and spends *fewer than* 183 days here—but more than

some unspecified number—must be considered a *domiciliary* resident, notwithstanding copious evidence of intent to make another jurisdiction home. The court’s interpretation renders the Rule counter-intuitive and impossible of principled application.

CONCLUSION

This Court is not bound by decisions of the Tax Court. *A & H Vending Co. v. Comm’r of Revenue*, 608 N.W.2d 544, 546 (Minn. 2000). The evidence as a whole does not reasonably support the Tax Court’s domicile finding because the court never acknowledged the principal reason Mauer moved to Fort Myers; relied on fragments of evidence taken out of context; and ignored the most probative evidence of Mauer’s intent—his willingness to risk his job to have the NBA recognize his move to Fort Myers. The court’s decision is contrary to law because it applied Factor W of the Residency Rule so as to obscure rather than illuminate Mauer’s intent; improperly gave that factor determinative weight; and failed to reconcile its decision with either positive or decisional law.

For all these reasons, Relator respectfully requests that this Court reverse the Tax Court’s domicile determination and remand the matter for further proceedings.

Dated: April 18, 2012

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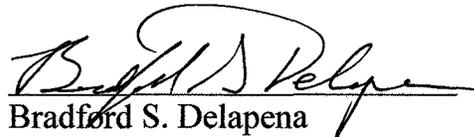
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**CERTIFICATE OF COMPLIANCE
WITH MINN. R. CIV. APP. P. 132.01**

I hereby certify that this brief conforms to the requirements of Minnesota Rule of Civil Appellate Procedure 132.01, subdivisions 1 and 3. It was prepared using a proportional spaced font size of 13 pt. The length of this brief, including footnotes, is 12,415 words. The word count is stated in reliance on Microsoft Word 2008, Version 12.3.1, the word processing system used to prepare this submission.

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