

No. A07-615

---

STATE OF MINNESOTA  
IN SUPREME COURT

---

Deanna L. Byers,

Relator,

vs.

Commissioner of Revenue,

Respondent.

---

**RESPONDENT'S BRIEF AND APPENDIX**

---

DEANNA L. BYERS  
16808 Prospect Place  
Wayzata, MN 55391  
(952) 476-2199  
RELATOR PRO SE

LORI SWANSON  
Attorney General  
State of Minnesota

CATHERINE M. KEANE  
Assistant Attorney General  
Atty. Reg. No. 015006X  
445 Minnesota Street, Suite 900  
St. Paul, MN 55101-2127  
(651) 296-0982  
ATTORNEYS FOR RESPONDENT  
COMMISSIONER OF REVENUE

---

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).

## TABLE OF CONTENTS

	Page
TABLE OF AUTHORITIES .....	iii
LEGAL ISSUES .....	1
STATEMENT OF THE CASE .....	2
STATEMENT OF FACTS.....	5
ARGUMENT .....	14
I. STANDARD OF REVIEW .....	14
II. THE TAX COURT HAD SUBJECT MATTER JURISDICTION OVER RELATOR'S APPEAL.....	16
A. The First Erie Transfer Gave the Tax Court Jurisdiction Over Relator's New Constitutional Claim.....	17
B. The Second Erie Transfer was Valid Even Though the Tax Court Did Not Immediately Stay Proceedings on the Non-Constitutional Issues.....	18
C. The Third Erie Transfer Cured any Jurisdictional Defect. ....	21
D. This Court Has Jurisdiction to Consider All of Relator's Claims. ....	22
III. THE STATUTE PLACING THE BURDEN OF ESTABLISHING THE INCORRECTNESS OR INVALIDITY OF A COMMISSIONER'S ASSESSMENT ON THE TAXPAYER IS CONSTITUTIONAL.....	22
IV. THE COMMISSIONER'S ASSESSMENT WAS VALID EVEN THOUGH IT DID NOT EXPLAIN THE PROCEDURES FOR FILING REFUND CLAIMS OR TAXPAYER COMPLAINTS AS PROVIDED BY THE MINNESOTA TAXPAYERS' BILL OF RIGHTS.....	26
V. SUFFICIENT EVIDENCE SUPPORTS THE TAX COURT'S FINDINGS THAT RELATOR RECEIVED TAXABLE INCOME DURING THE YEARS IN DISPUTE.....	31
CONCLUSION .....	34
APPENDIX	

## TABLE OF AUTHORITIES

	Page
<b>FEDERAL CASES</b>	
<i>Cheatham v. United States</i> , 92 U.S. 85 (1875) .....	24
<i>Day v. Commissioner</i> , 975 F.2d 534 (8th Cir. 1992) .....	25
<i>Dodge v. Commissioner</i> , 981 F.2d 350 (8th Cir. 1992) .....	25
<i>Ferguson v. United States</i> , __ F.3d __, 2007 WL 1225379 (8th Cir. 2007) .....	25
<i>Graham v. Du Pont</i> , 262 U.S. 234, 43 S.Ct. 567 (1923) .....	24
<i>Helvering v. Taylor</i> , 293 U.S. 507, 55 S.Ct. 287 (1935) .....	24
<i>Landis v. North American Co.</i> , 299 U.S. 248, 57 S.Ct. 163, 167 (1936) .....	20
<i>Lucas v. Structural Steel Co.</i> , 281 U.S. 264, 50 S.Ct. 263 (1930) .....	24, 25
<i>Phillips v. Commissioner</i> , 283 U.S. 589, 51 S.Ct. 608 (1931) .....	24
<i>Rockwell v. Commissioner</i> , 512 F. 2d 882 (9th Cir. 1975) .....	24
<i>United States v. Janis</i> , 428 U.S. 433, 96 S.Ct. 3021, 3026 (1976) .....	25
<i>Wilcox v. Commissioner</i> , 848 F.2d 1007 (9th Cir. 1988) .....	24

## STATE CASES

<i>A&amp;H Vending Co. v. Commissioner of Revenue</i> , 608 N.W.2d 544 (Minn. 2000).....	15
<i>Bond v. Comm'r of Revenue</i> , 691 N.W.2d 831 (Minn. 2005).....	1, 15, 31
<i>Council of Indep't Tobacco Mfrs. of America v. State of Minnesota</i> , 713 N.W.2d 300 (Minn. 2006).....	23
<i>Dreyling v. Comm'r of Revenue</i> , 711 N.W.2d 491 (Minn. 2006).....	1, 15, 31, 33
<i>Erie Mining v. Comm'r of Revenue</i> , 343 N.W.2d 261 (Minn. 1984).....	1, 2, 16, 19
<i>F-D Oil Co. v. Comm'r of Revenue</i> , 560 N.W.2d 701 (Minn. 1997).....	23
<i>Gonzales v. Comm'r of Revenue</i> , 706 N.W.2d 909 (Minn. 2005).....	1, 16, 22
<i>Hutchinson Tech.Inc. v. Comm'r of Revenue</i> , 698 N.W.2d 1, 6 (Minn. 2005).....	15
<i>Kuiters v. County of Freeborn</i> , 430 N.W.2d 461 (Minn. 1988).....	22
<i>Larson v. Comm'r of Revenue</i> , 581 N.W.2d 25 (Minn. 1998).....	1, 23, 24
<i>Manthey v. Comm'r of Revenue</i> , 468 N.W.2d 548 (Minn. 1991).....	1, 15, 31, 32
<i>Matter of McCannel</i> , 301 N.W.2d 910 (Minn. 1980).....	16, 17
<i>MBNA America Bank</i> , N.A. v. Comm'r of Revenue, 694 N.W. 2d 778 (Minn. 2005).....	1, 26, 29
<i>T.M.G. Life Insurance v. County of Goodhue</i> , 540 N.W.2d 848 (Minn. 1995).....	33

*Walker v. Zuehlke*,  
642 N.W.2d 745 (Minn. 2002)..... 23

*Wybierala v. Comm'r of Revenue*,  
587 N.W.2d 832 (Minn. 1998)..... 24

**FEDERAL STATUTES**

26 U.S.C. § 7453 ..... 24

**STATE STATUTES**

Minn. Stat. § 270.0603 (2004) ..... passim

Minn. Stat. § 270C.28 (2006)..... 28, 31

Minn. Stat. § 270C.33 (2006)..... passim

Minn. Stat. § 270C.35 (2006)..... 27

Minn. Stat. § 271.01 (2006) ..... 1, 21

Minn. Stat. § 271.06 (2006) ..... 27

Minn. Stat. § 271.10 (2006) ..... 14

Minn. Stat. § 289A.37 (2004) ..... passim

Minn. Stat. § 289A.40 (2006) ..... 28, 29

Minn. Stat. § 289A.50 (2006) ..... 28, 29

Minn. Stat. § 289A.65 (2004) ..... 27

**STATE RULES**

Minn. R. Evid. 803(6) ..... 33

**FEDERAL RULES**

U.S. Tax Court Rule 142(a) ..... 24

## LEGAL ISSUES

- I. Did the tax court have subject matter jurisdiction over Relator's appeal?

*The tax court held in the affirmative.*

*Erie Mining v. Comm'r of Revenue*, 343 N.W.2d 261 (Minn. 1984).

*Gonzales v. Comm'r of Revenue*, 706 N.W.2d 909 (Minn. 2005).

Minn. Stat. § 271.01, subd. 5 (2006).

- II. Is the statute providing that the Commissioner's assessment is prima facie correct, constitutional as applied to an assessment based upon unreported income?

*The tax court held in the affirmative.*

*Larson v. Comm'r of Revenue*, 581 N.W.2d 25 (Minn. 1998).

Minn. Stat. § 270C.33, subd. 6 (2006) (formerly Minn. Stat. § 289A.37 (2004)).

- III. Was the Commissioner's assessment valid even though it did not include notice of the procedures for filing refund claims and making complaints as provided by the Minnesota Taxpayers' Bill of Rights?

*The tax court held in the affirmative.*

Minn. Stat. § 270.0603, subd. 3 (2004).

*MBNA America Bank, N.A. v. Comm'r of Revenue*, 694 N.W. 2d 778 (Minn. 2005).

- IV. Was the tax court's determination of Relator's taxable income reasonably supported by the evidence as a whole?

*The tax court held in the affirmative.*

*Bond v. Comm'r of Revenue*, 691 N.W.2d 831 (Minn. 2005).

*Dreyling v. Comm'r of Revenue*, 711 N.W.2d 491 (Minn. 2006).

*Manthey v. Comm'r of Revenue*, 468 N.W.2d 548 (Minn. 1991).

## STATEMENT OF THE CASE

By Order dated June 15, 2001, Respondent Commissioner of Revenue (the "Commissioner") assessed Relator Deanna L. Byers (the "Relator") unpaid individual income tax, penalty and interest for the taxable years 1996, 1997 and 1998 (the "years in dispute") (Commissioner's Appendix (C.A.) 40-42). Because Relator had not filed her own tax returns for the years in dispute, the Commissioner based his Order on returns he prepared based upon documented sources of income (C.A. 34-40). Relator filed a request for reconsideration with the Commissioner on August 1, 2001 (C.A. 43-52). On August 9, 2001, the Commissioner issued a Notice of Determination on Appeal, affirming the June 15, 2001 Order in all respects (C.A. 53-55). On November 5, 2001, Relator appealed to the Minnesota Tax Court, stating that the reasons for appeal included a "naked assessment of taxes, interest and penalties and misapplication of tax laws" (Relator's Appendix (R.A.) 1-2).

On October 9, 2003, the Tax Court, the Honorable Kathleen H. Sanberg presiding, noting that Relator had raised constitutional issues over which the tax court does not have original jurisdiction, sua sponte issued an Order pursuant to *Erie Mining Company v. Comm'r of Revenue*, 343 N.W.2d 261 (Minn. 1984), transferring the case to Hennepin County District Court (C.A. 58-60). That Order was filed with the Hennepin County District Court on September 15, 2004 (Return to Writ of Certiorari (R.W.) # 51). Following a hearing on December 8, 2004, the Hennepin County District Court, the Honorable Marilyn B. Rosenbaum presiding, issued an Order on December 9, 2004, transferring the case back to the tax court (C.A. 61-62).

The matter came on for trial on October 26, 2005. Relator moved to amend her Notice of Appeal raising what she claimed to be a new constitutional issue — the constitutionality of Minn. Stat. § 289A.37 — and asserting for the first time that the Assessment was invalid for failure to provide her with complete notice of her rights under the Taxpayers' Bill of Rights (Trial Transcript (T.) at 4; R.A. 17-25; R.W. # 32). The tax court granted the motion (T. 12-13).<sup>1</sup> Relator moved for a stay of the proceedings and referral of the new constitutional claim to district court (T. 13-14). The tax court declined to immediately stay the proceedings, and indicated that it would proceed with the trial on the legal and factual issues over which it had jurisdiction, and would refer the constitutional issue to the district court after trial (T. 16-17, 125-27). The court further indicated that if the district court transferred the issue back, the tax court would ask the parties to include that issue in their post-trial briefs (T. 125-27). The tax court also denied the Relator's request for a stay to file an interlocutory appeal (T. 17).

On November 2, 2005, the Tax Court issued an order staying proceedings and referring the constitutional issue raised in Relator's Amended Notice of Appeal to the district court (C.A. 63-65; R.W. # 21). On November 7, 2005, the district court issued an Order of Transfer, referring the matter back to to the tax court for decision (C.A. 66; R.W. # 21). By letter sent to the parties on November 30, 2005, the tax court set a briefing schedule (C.A. 67; R.W. # 20).

---

<sup>1</sup> The tax court was inclined to deny the motion to amend because Relator had twice failed to comply with the court's instructions for doing so and because the case had been delayed more than once (T. 4-13). After the Commissioner, however, indicated he had previously consented to the amendment and did not now object, she allowed it (T. 11-13).

After briefing was completed, the tax court issued its Findings of Fact, Conclusions of Law and Order for Judgment on April 4, 2006, affirming the Commissioner's Order of August 9, 2001 (C.A. 68-80). The tax court found that Relator received taxable wages and concluded that she was liable for taxes, penalties, interest and other charges as assessed by the Commissioner for the years in dispute. In addition, noting that the district court had twice transferred jurisdiction to the tax court over constitutional issues, the tax court rejected Relator's legal arguments that: (1) the tax court lacked jurisdiction; (2) the assessment was invalid because Relator did not receive information on the procedure for filing refund claims and taxpayer complaints as required by Minn. Stat. § 270.0603, subd. 3; (3) Minn. Stat. § 289A.37 was unconstitutional; (4) wages are not taxable income; and (5) the state lacks authority to tax income because the sixteenth amendment was never ratified.

Relator filed a motion for rehearing, amended findings of fact and conclusions of law, and a new trial asserting, inter alia, that she had not received notice of the November 2, 2005 transfer to the district court or the November 7, 2005 transfer back to tax court (R.W. 14 & 15). Relator waived any hearing on the motion and the tax court considered it based upon the parties' written submissions.

On June 27, 2006, the tax court issued an order granting Relator's motion in part (C.A. 81-85). The court observed that upon review of Relator's motion, it learned that because of a clerical error, the tax court had not sent the parties written notice of the November 2005 *Erie* transfer. Accordingly, the court transferred the matter to the district court for either a determination of the sole constitutional issue raised in the amended notice

of appeal or for transfer back to the tax court. The court also directed the Tax Court Administrator to set the matter on for hearing on the constitutional issue raised in Relator's amended pleading if the district court referred the issue to the tax court. The tax court denied Relator's motion in all other respects.

After Relator waived a hearing, on August 24, 2006, the Hennepin County District Court issued an Order transferring all constitutional issues to the tax court for decision (C.A. 86-87). Relator also waived further hearing in tax court but in written submissions asked the court to conclude: (1) that it did not have jurisdiction over the appeal because it had not properly transferred the constitutional issues to the district court; and (2) that Minn. Stat. § 289A.37 was unconstitutional (R.W. #4).

On January 11, 2007, the tax court issued an Order again affirming the Order of the Commissioner of Revenue dated August 9, 2001 (C.A. 88-94). The tax court concluded first that it had subject matter jurisdiction over all of the issues--constitutional and otherwise---raised in the Notice of Appeal and Amended Notice of Appeal. The tax court also concluded that Minn. Stat. § 289A.37 is constitutional.

The tax court issued Notice of Entry of its order on January 27, 2007. Relator timely filed a Petition for Writ of Certiorari on March 22, 2007.

## **STATEMENT OF FACTS**

### **Relator's Failure to File Tax Returns.**

Relator filed joint Minnesota individual income tax returns with her husband, Ronald E. Byers, for the tax years 1994 and 1995 (T. 58-59). On or about April 20, 1996,

Relator sent an affidavit to the Minnesota Department of Revenue in which she essentially stated that she had recently become convinced that she was not obligated to pay individual income taxes and was not subject to withholding for that purpose (T. 25, 59; Trial Exhibit (Ex.) 100). Relator sent the same affidavit to twenty eight other local, state and federal appointed and elected officials (T. 31; Ex. 114). She did not file Minnesota Individual Income Tax Returns for tax years 1996, 1997 and 1998 (the “years in dispute”)(T. 58).

On or about April 20, 1996, Relator also sent what she entitled a “Notice of Revocation” to the Internal Revenue Service (IRS), “revoking” the United States individual income tax returns and attachments she had filed with the IRS for the years 1965 through 1995 (T. 33; Ex. 117). On or about April 22, 1996, Relator’s husband, signing as President of Glen Lake Bakery, sent a letter to the IRS enclosing a “Certificate of Exemption from Withholding In Lieu of W-4” completed by Relator in which she certified that she was exempt from all federal tax withholdings and stated that she had incurred no tax liability in the “past year or in previous years” and would not knowingly do so in the “current year or future years.” (T. 31-32, 100-02; Exs. 115, 117). In his letter, Mr. Byers stated: “It is our understanding that *our employee* is a non-privileged ‘natural born free citizen’ of the United States of America, and thus is not subject to withholding as claimed” (Ex. 115) (emphasis added). In addition, the letter stated that pursuant to the Internal Revenue Code, “we are not held responsible for, and instead are relieved from withholdings of, federal taxes that are otherwise required to be withheld in accord with your Form W-4.” (*Id.*).

On or about April 30, 1996, the IRS sent a letter to Relator stating, inter alia, that the IRS is authorized to impose an income tax (T. 33, 102; Ex. 116). Relator responded in a letter dated May 6, 1996 (T. 33; Ex. 118). Among other things, Relator challenged the IRS' jurisdiction over her on the grounds that she received "*wages* for [her] labor, not [taxable] *income*." (Ex. 118) (emphasis in original).

#### **The IRS Determination.**

On or about November 4, 1999, the IRS sent Relator a letter indicating that it had not received a Federal income tax return from her for the years in dispute, and asking that she mail them by December 5, 1999 (T. 34, 102-03; Ex. 119). In her response, Relator asserted that she had concluded from her analysis of the Internal Revenue Code that "wages, salaries and compensation for services" do not fall within the definition of "income," and that she therefore had no taxable income. (T. 34; Ex. 120).

On May 30, 2000, the IRS sent Relator an Examination Report for the tax years in dispute (T. 36-37, 103-04; Exs. 122, 124). The IRS prepared the Examination Report based upon W-2's for Relator it had received from the Social Security Administration (T. 106). Employers are required by law to provide W-2's to each employee each year and to file them with the Social Security Administration, which in turn, transmits that information to the IRS (T. 106-07, 113-14; Exs. 127, 128 & 129). Employers submit the W-2's together with a W-3 on which they report the total number of statements they are filing, and information about the amounts of compensation paid, and taxes withheld (T. 113; Exs. 127, 128 & 129). Employers sign W-3's under penalty of perjury (*Id.*).

The Examination Report asserted that Relator earned wages which she had not reported of \$47,240, \$46,500, and \$41,650 for the tax years 1996, 1997 and 1998 respectively (T. 106; Ex. 124). Based upon those wages, the Examination Report asserted that Relator was liable for tax deficiencies of \$8,965, \$8,641 and \$7,166 for the tax years 1996, 1997 and 1998 respectively, as well as commensurate penalties as provided by the Internal Revenue Code (T. 105). The deficiency for 1996 credited Relator for \$534 in taxes that had been withheld from her wages (T. 106).

The Examination Report instructed Relator to sign and return it if she agreed to the proposed deficiencies (Ex. 124). Relator did not do so but responded with a letter nearly identical to those she submitted in response to the IRS's letter of November 4, 1999, and included the same attachments (T. 37; Ex. 123).

On September 29, 2000, the IRS issued Relator a Notice of Deficiency for the years in dispute along with an explanation of tax changes (T. 38, 107-08; Exs. 125, 125A). The Notice of Deficiency noted the same amount owed in tax and penalties as contained on the Examination Report (T. 108). Relator had 90 days within which to petition the United States Tax Court for a redetermination of the deficiency (T. 107; Ex. 125). She did not do so (T. 114). She did, however, send a letter to the IRS dated October 18, 2000, asserting, inter alia, that the Internal Revenue Code did not impose a tax "on the income of U.S. citizens living and domiciled in the United States, whose income is derived from sources within the United States." (T. 39-40; Ex. 126).

### **The Commissioner's Review of Relator's Wage Information.**

On or about March 7, 2001, the IRS provided the Minnesota Commissioner of Revenue (the "Commissioner") with a federal audit report--a Statement of Income Tax Change--reporting the changes it had made to Relator's federal income tax liability for the tax years in dispute as reflected on the Examination Report and Notice of Deficiency (T. 60; Exs. 101, 124, 125 & 125A). The Commissioner also received from the IRS a transcript of the W-2 information the IRS had received for Relator for the tax years in dispute (T. 64; Ex. 102). The transcript documented that Relator had received from the Glen Lake Bakery the amounts of wages shown on the other IRS documents (T. 62-64; Exs. 101, 102, 124, 125 & 125A).

The Commissioner also received information about Relator's wages for the years in dispute from the Minnesota Department of Economic Security ("DES") (now known as the Department of Employment and Economic Development) (T. 66). Specifically, DES provided quarterly wage detail reports documenting that Relator received wages from the Glen Lake Bakery for each quarter during the years in dispute (T. 66-68, 88-93; Ex. 103). Employers are required by law to provide to DES this quarterly "wage detail" information for each employee for purposes of establishing their unemployment insurance tax rate (T. 70-71, 93, 94).<sup>2</sup> The total amount of wages Glen Lake Bakery reported it had paid to

---

<sup>2</sup> The DES quarterly reports for 1994 and 1995 as to the wages received by Relator and her husband are consistent with the amount of wages they reported on their joint tax returns for those years (T. 81-82).

Relator for the years in dispute was the same as the amounts the IRS reported to the Commissioner based on her W-2's (T. 78-80, 88-96; Exs. 101, 102, 103).

The Commissioner requested from the President of the Glen Lake Bakery, Relator's husband Ronald E. Byers, a copy of the Wage and Tax Statement the bakery provided to Relator for the tax years in dispute (T. 85). Byers did not produce anything in response to the request (*Id.*).

#### **The Commissioner's Assessment and Relator's Administrative Appeal.**

Because the information the Commissioner obtained from the IRS and the DES showed that Relator had income that exceeded the filing requirements for the tax years in dispute, the Commissioner sent her a letter, dated April 9, 2001, requesting that she file returns (T. 72; Ex. 104). The letter informed Relator that if she did not do so, the Commissioner would prepare and file returns for her based upon available information (Ex. 104). In response, Relator sent the Commissioner a letter dated May 9, 2001, asserting, inter alia, that she believed that wages, salaries and compensation for services were not taxable income and that she was therefore not required to file returns (T. 26, 72; Ex. 105). The text of the letter is similar to those she submitted to the IRS and she enclosed the same attachments (Exs. 105, 120, 123).

Because Relator did not file returns, the Commissioner issued an Order, a Notice of Change in Tax, dated June 15, 2001, assessing Relator Minnesota individual income tax, penalties and interest for tax years in dispute (T. 73; Ex. 109). The Order was based upon returns the Commissioner filed based upon the information he obtained from the IRS and the DES showing that Relator received wages from the Glen Lake Bakery in the amounts

of \$47,240, \$46,500 and \$41,650 for the years 1996, 1997 and 1998 respectively (T. 73, Exs. 106, 107 & 108). Based upon this income, the Commissioner assessed tax in the amounts of \$3,073, \$2,995, and \$2,588 for the years 1996, 1997 and 1998 respectively, along with penalties and interest (Ex. 109).

On August 1, 2001, Relator submitted a Request for Reconsideration to the Commissioner, in which she asserted, inter alia, that the assessment was not supported by evidence, that wages, salaries and compensation for services do not constitute income, and that Minnesota cannot impose income tax because the 16th Amendment was not ratified (T. 74; Ex. 110). In a Notice of Determination on Appeal dated August 9, 2001, the Commissioner affirmed the June 15, 2001 assessment (T. 74, 75; Exs. 111, 112).

**Relator's Trial Testimony.**

At trial, Relator first testified in response to questioning by the tax court, that she did not receive "anything" from the Glen Lake Bakery, including checks or money (T. 19-20). She claimed that she did not do any work for the bakery and had no connection with it (T. 20).

On cross-examination, Relator admitted that the Glen Lake Bakery was previously owned and operated by her husband's parents (T. 21). She also admitted that at some point in time her husband had purchased the bakery from them, but she claimed not to know when that had occurred and said she did not recall if he was the president of the bakery at that time (T. 21-22). She further admitted that she worked at the bakery when her husband's parents owned it (T. 22-23, 43, 44). She worked the counter and worked with customers (T. 22-23). When asked whether she received checks or payments for her work,

Relator first responded "I don't remember. Probably, but I don't remember" (T. 49). She added that she "must have been paid, yeah, somehow," but said she didn't remember how (*Id.*).

Relator claimed that she stopped providing services at the Glen Lake Bakery when her husband purchased it, and that she "did not have ties with it then" (T. 23). She also claimed that she did not receive any money, funds or anything of value from the bakery after her husband purchased it (T. 49-50). She claimed that she was unemployed after that (T. 50). She also claimed that she did not know whether her husband received anything from the bakery (*Id.*).

The court attempted to clarify when Relator stopped working for the bakery (T. 43-45). Relator claimed that she did not recall but claimed that she had never worked there after her husband bought it (T. 43). When asked if she could identify when that occurred by reference to any life event, Relator stated that she believed that her husband took over the business when his parents' health began to fail, but insisted that she could not remember when that occurred or even the time of year (T. 51-52). She also claimed that she could not recall when she started working at the bakery but stated that she thought it was maybe in 1990 (T. 44).

Upon further cross-examination, Relator claimed that she did not know whether her husband purchased the bakery over a period for time or made a single payment (T. 45). She further admitted that she believed that there was a time when her husband and her parents worked there together, but stated that that did not continue after her husband purchased the bakery (*Id.*).

Relator also testified that she did not know who kept the books for the bakery (T. 47-48). She stated, however, that she assumed her husband did after he purchased it (*Id.*).

#### **Glen Lake Bakery Subpoena.**

The Commissioner subpoenaed Ronald Byers to appear at trial and to produce “all records and information relating to Glen Lake Bakery’s state and federal tax returns, W-2 and W-3 returns, Minnesota Unemployment Insurance returns and report, and all payment records relating to the years 1994 through 1999” (T. 85; R.W. # 22 (Subpoena attached to Ronald E. Byer’s Motion to Quash Subpoena Duces Tecum)). No one appeared in response to the subpoena (T. 85). When asked by the tax court at the end of the trial, Relator stated that she was aware that a subpoena had been served on her husband (T. 118). When asked if she knew why he did not appear, Relator produced Ronald E. Byers’ Motion to Quash Subpoena Duces Tecum (T. 118, R.W. # 22). In the motion, Byers objected to the subpoena on the grounds that it was unreasonable because it had been served fewer than four full days before trial and because it directed him to produce records for years not at issue in this case (R.W. # 22). The tax court asked Relator whether she knew if her husband had records for the Glen Lake Bakery (T. 118). Relator said that she did not know (T. 118, 120). She also said that she did not know if her husband’s parents still had any records from the bakery (T. 119).

The tax court noted that Mr. Byers should have presented his motion before trial (T. 118). She also asked Relator why he did not appear himself (T. 119). Relator said that she did not know (*Id.*). She also claimed that she did not talk about the business records

with him (T. 120). She admitted, however, that she had discussed her case with him (*Id.*). She insisted, however, that they had not discussed the actual documents themselves (T. 120). The tax court observed that she found “that not to be very credible that you would discuss this case and you would bring in a motion but not have discussed whether or not he has any documents or that-- with regard to the bakery or with regard to himself” (T. 121). The court continued:

But the books and records of the bakery [covered by the Commissioner’s subpoena of the Glen Lake Bakery and Mr. Byers, its president] would show what had been paid out or not paid out [to Relator]. If there is no payment to you, the records are going to show that there is no payment, and so I’m—as I said, I’m not terribly sympathetic because you and your husband have the means to prove your case, and you’ve chosen and Mr. Byers has chosen not to appear.

(*Id.*).

The tax court then *sua sponte* considered whether to continue the trial and ask that the sheriff bring Mr. Byers to trial (*Id.*). She decided not to do so, however, concluding that she thought the Commissioner had proved through the government records received from the Glen Lake Bakery that Relator had received income (*Id.*).

## ARGUMENT

### I. STANDARD OF REVIEW

Review of tax court decisions is limited to whether that court had jurisdiction, whether its decision was justified by the evidence and in conformity with the law, or whether it committed any other error of law. *See* Minn. Stat. § 271.10, subd. 1 (2006). This Court should uphold the tax court’s decision “where sufficient evidence exists for the tax court to reasonably reach the conclusion it did.” *Hutchinson Tech., Inc. v. Comm’r of*

*Revenue*, 698 N.W.2d 1, 6 (Minn. 2005) (quoting *Green Giant Co. v. Comm'r of Revenue*, 534 N.W.2d 710, 711 (Minn. 1995)).

The tax court's conclusions of law and interpretation of statutes are reviewed *de novo*. *Id.*; see also *A&H Vending Co. v. Commissioner of Revenue*, 608 N.W.2d 544, 546-47 (Minn. 2000). This Court reviews the tax court's findings of fact to determine whether sufficient evidence supports the tax court's decision. *Dreyling v. Comm'r of Revenue*, 711 N.W.2d 491, 494 (Minn. 2006). In doing so, the Court is cognizant of the fact that the tax court is in the best position to evaluate the credibility of witnesses. *Id.* (citing *Manthey v. Comm'r of Revenue*, 468 N.W.2d 548, 550 (Minn. 1991), (holding that where issues of credibility are involved, "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"). This Court will overrule the tax court only if it concludes that "the court's decision 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, 836 (Minn. 2005) (citing *Lewis v. County of Hennepin*, 632 N.W.2d 258, 261 (Minn. 2001)).

Based upon these standards, Relator correctly observes that this Court should review *de novo* the tax court's conclusions that: (1) it had subject matter jurisdiction over Relator's claims; (2) Relator's constitutional claim has no merit; and (3) the failure to provide Relator with notice of her right to file a refund claim did not invalidate the Commissioner's assessment. At the same time, this Court should review the tax court's findings that Relator had taxable income during the years in dispute only for clear error.

## II. THE TAX COURT HAD SUBJECT MATTER JURISDICTION OVER RELATOR'S APPEAL.

It is well-established that the tax court does not have original jurisdiction to decide constitutional issues. *Erie Mining Company v. Comm'r of Revenue*, 343 N.W.2d 261, 264 (Minn. 1984), (citing *Matter of McCannel*, 301 N.W.2d 910 (Minn. 1980)). It is equally well-established, however, that through a process colloquially referred to as the “*Erie* shuffle,” the tax court may obtain such jurisdiction by “transferring the constitutional issues to the district court and having the district court transfer them back to the tax court.” *Gonzales v. Comm'r of Revenue*, 706 N.W.2d 909, 911 (Minn. 2005) (citing *Erie*, 343 N.W.2d at 264). Here, it is not disputed that by its Order dated October 9, 2003, the tax court transferred the constitutional issues raised in Relator’s original Notice of Appeal to the district court, and that the district court transferred those issues back to the tax court for decision by order dated December 9, 2004. Accordingly, Relator concedes that the *Erie* shuffle was properly completed at that time and that the tax court initially had jurisdiction to consider the constitutional claims raised in her original Notice of Appeal.

Relator argues, however, that the tax court did not have jurisdiction to decide the constitutional issue raised in her Amended Notice of Appeal because, she claims, the court did not effect a proper *Erie* transfer of that claim. She argues further that, accordingly, all proceedings conducted after the tax court allowed her amendment are “void ab initio,” as are the orders the tax court issued on the merits of all issues--both constitutional and otherwise. Rel. Br. at 23. The tax court properly rejected these claims.

**A. The First Erie Transfer Gave the Tax Court Jurisdiction Over Relator's New Constitutional Claim**

Initially, although “[o]ut of an abundance of caution,” the tax court completed a second *Erie* transfer after Relator amended her Notice of Appeal to raise a constitutional issue not expressly pled in her initial Notice of Appeal, that action was not necessary for the tax court to have subject matter jurisdiction over that issue. *See* Tax Court’s Order dated April 4, 2006 at p. 5 (C.A. 72). The tax court’s October 9, 2003 Order transferred to the district court “those portions of the appeal challenging the constitutionality of a statute or governmental action” (C.A. 59). In turn, the district court’s December 9, 2004 Order transferred to the tax court for decision “the portions of this appeal involving the constitutionality of the Minnesota Income Tax Code referred to the District Court for the Fourth Judicial District by Order of the Tax Court dated October 9, 2003.” (C.A. 62). These orders were broad enough to transfer to the tax court subject matter jurisdiction over Relator’s claim, specifically pled for the first time in her Amended Notice of Appeal, that Minn. Stat. § 289A.37, as applied in her case, was unconstitutional. Relator has cited no apposite authority to the contrary.<sup>3</sup>

---

<sup>3</sup> *Cf. Kuiters v. County of Freeborn*, 430 N.W.2d 461, 464 (Minn. 1988), where this Court held that the tax court did not have jurisdiction to consider a constitutional issue raised by the Commissioner in tax court which he had not raised in district court. The Court commented that “plenary jurisdiction exists in the tax court only when ‘the constitutional issue is raised in the district court *before the case is transferred to the tax court.*’” *Kuiters, Id.* (quoting *McCannel*, 301 N.W.2d at 920) (emphasis added by *Kuiters*). It appears that in *Kuiters*, the Commissioner had raised no constitutional issues in the district court before the transfer to the tax court. That is not the case here, however. There is no question that the district court had transferred the jurisdiction to decide constitutional issues before Relator raised her “new” constitutional claim.

**B. The Second Erie Transfer was Valid Even Though the Tax Court Did Not Immediately Stay Proceedings on the Non-Constitutional Issues.**

Nevertheless, observing that the district court's December 9, 2004 Order did not explicitly transfer "all prior and future constitutional issues" to the tax court, the tax court effected a second *Erie* transfer after conducting trial on the non-constitutional issues. Specifically, in its Order dated November 2, 2005, the tax court "ordered the portion of the appeal dealing with the constitutional issues raised in [Relator's] amended pleadings are hereby referred to the Hennepin County District Court for decision or for transfer back to the Minnesota Tax Court." (C.A. 64). In turn, the district court in its Order of Transfer dated November 7, 2005, ordered that "the portion of [the appeal] involving issues of constitutionality referred to the Hennepin County District Court by Order of the Minnesota Tax Court dated November 2, 2005 is hereby referred to the Minnesota Tax Court for decision." (C.A. 66). After the district court transferred the case back to tax court, the tax court issued a briefing schedule (C.A. 67). Then, after briefing was completed, the tax court issued its Order dated April 4, 2006, deciding all issues--including the constitutional issues raised in both the original and amended notice of appeal (C.A. 68-80). By virtue of the two *Erie* transfers there can be no question that at that time, the tax court had subject matter jurisdiction over all of the constitutional issues raised by Relator as part of her original and amended notice of appeal.

Relator first questions whether this second *Erie* transfer even occurred. The claim is unsupported. The tax court refers to the transfer in its order of April 4, 2006, and the Orders themselves are in the tax court's file. *See* November 2, 2005 Tax Court Order of

Referral and Stay of Proceedings and November 7, 2005 District Court Order of Transfer (R.W. # 21); C.A. 63-66).

Relator next argues that even if this second *Erie* transfer did occur, it was not effective to confer jurisdiction in the tax court because the court did not immediately stay all proceedings after granting her motion to amend the notice of appeal to raise a new constitutional claim, but instead conducted a trial with respect to the non-constitutional issues before transferring the constitutional issues to the district court. Relator relies solely on *Erie* to support this argument. *Erie*, however, provides only that:

If any party raises a constitutional issue, the tax court should stay the proceedings and refer the constitutional question to the district court. The district court may either decide the constitutional issue or refer the matter back to the tax court which will then have subject matter jurisdiction to rule initially on the constitutional issue.

*Erie*, 343 N.W.2d at 264. Relator creates a requirement of an immediate stay by inserting the word “first” in the first sentence quoted above. The quoted language, however, contains no requirement that any time a constitutional issue is raised there must be an immediate stay of *all* proceedings--including proceedings concerning issues over which the tax court clearly has jurisdiction. *Erie* certainly does not provide that the tax court is deprived of jurisdiction over non-constitutional issues until the constitutional issues are properly before it. It simply provides that the tax court does not have jurisdiction over constitutional issues until they are referred by the district court. Here, consistent with *Erie*, the tax court made no ruling on any constitutional issues until the district court transferred jurisdiction.

Moreover, requiring an immediate stay in all cases would be inconsistent with the tax court's power to control its docket. *See generally, Landis v. North American Co.*, 299 U.S. 248, 254-55, 57 S.Ct. 163, 167 (1936) (stating that "the power to stay proceedings is incidental to the power inherent in every court to control the disposition of the cases on its docket with economy of time and effort for itself, for counsel and for litigation. How this can best be done calls for the exercise of judgment, which must weigh competing interests and maintain an even balance." (citation omitted)). Here, in denying Relator's motion for an immediate stay after granting Relator's motion to amend her Notice of Appeal at the start of trial, the tax court observed that the case had been continued many times, that witnesses were present and the Commissioner was ready for trial, and that, despite specific instructions, the Relator had not followed the proper procedure for presenting her amendment. In addition, because there were no disputed facts with respect to the new constitutional issue, there was no need to delay the trial on the other disputed facts.<sup>4</sup> For all of these reasons, the tax court's decision to conduct a trial on the non-constitutional issues before staying the proceedings to refer the constitutional issues to the district court was a prudent, reasonable exercise of its discretion. The Tax Court weighed Relator's desire for an immediate stay against the interest of the Commissioner and the court in proceeding, and after having determined that Relator would

---

<sup>4</sup> Relator insists that there was a fact question as to whether the Commissioner sent Relator notice of her right to claim a refund under Minn. Stat. § 270.0603. The Commissioner, however, never disputed that he did not do so. Moreover, any factual dispute on this point was not relevant to Relator's constitutional claim concerning the burden of proof.

not be prejudiced, reasonably proceeded to trial on the issues over which the tax court had exclusive jurisdiction. *See* Minn. Stat. § 271.01, subd. 5 (2006).

Relator finally suggests that the second *Erie* transfer was not effective to give the tax court jurisdiction over her appeal because she did not receive notice that it had occurred. Relator certainly knew that the trial court intended to initiate the process. Further, Relator cites no authority to support a claim that lack of notice to the parties deprives the tax court of jurisdiction granted by district court order.

**C. The Third Erie Transfer Cured any Jurisdictional Defect.**

In any event, any defect as a result of lack of notice was cured when, again in an abundance of caution, the tax court effected a third *Erie* transfer upon learning that the transfer orders had not been served on the parties, and granted Relator's motion for a new trial on the new constitutional issue. *See* Order of June 27, 2006 (C.A. 81-85). The tax court then reconsidered its decision on that issue only after the district court again explicitly transferred jurisdiction over that claim, and Relator had waived a hearing and submitted additional written argument.

The tax court clearly had jurisdiction to consider the constitutional claims Relator raised in her original Notice of Appeal as well as the non-constitutional claims at the time of trial on October 26, 2005. Further, the tax court clearly obtained jurisdiction over the second constitutional claim by virtue of the subsequent *Erie* transfers. There simply is no

support for Relator's argument that all proceedings conducted after the court granted her motion to amend her notice of appeal to add that claim are void ab initio.

**D. This Court Has Jurisdiction to Consider All of Relator's Claims.**

Even if the tax court lacked jurisdiction to hear Relator's second constitutional claim, this Court need not "remand the case for a new trial and for a proper *Erie* transfer" as Relator requests. Rel. Br. at 36. This Court unquestionably has jurisdiction to consider all of Relator's claims, including the single constitutional claim Relator presents to this Court: whether the application of Minn. Stat. § 289A.37 in this case deprived her of substantive or procedural due process. *See Gonzales v. Comm'r of Revenue*, 706 N.W.2d 909, 911 (Minn. 2005) (considering constitutional issues on appeal despite the tax court's lack of jurisdiction), citing *Kuiters v. County of Freeborn*, 430 N.W.2d 461, 464 (Minn. 1988) (same) and Minn. Const. art. VI, § 2 (conferring upon Supreme Court "appellate jurisdiction in all cases"). As discussed in Argument III below, this claim easily fails.

**III. THE STATUTE PLACING THE BURDEN OF ESTABLISHING THE INCORRECTNESS OR INVALIDITY OF A COMMISSIONER'S ASSESSMENT ON THE TAXPAYER IS CONSTITUTIONAL.**

Relator next challenges the constitutionality of the statute placing the burden of establishing the incorrectness or invalidity of an assessment made by the commissioner, Now codified at Minn. Stat. § 270C.33, subd. 6 (2006), the relevant provision states:

A return or assessment of tax made by the commissioner is prima facie correct and valid. The taxpayer has the burden of establishing its incorrectness or invalidity in any related action or proceeding.<sup>5</sup>

In reviewing this challenge, the Court is guided by the principle that statutes are presumed constitutional, and a court's power to declare a statute unconstitutional must be exercised "with extreme caution." *Walker v. Zuehlke*, 642 N.W.2d 745, 750 (Minn. 2002); *see also Council of Indep't Tobacco Mfrs. of America v. State of Minnesota*, 713 N.W.2d 300, 305 (Minn. 2006) (courts make every presumption in favor of statute's constitutionality). Accordingly, to invalidate Minn. Stat. § 270C.33, subd. 6 (2006), Relator must establish its unconstitutionality "beyond a reasonable doubt." *Walker*, 642 N.W.2d at 751. She cannot do so.

Relator argues that by placing the burden of proof on the taxpayer, rather than the commissioner, Minn. Stat. § 270C.33, subd. 6 (2006), violates due process under the state and federal constitutions. This Court rejected this very argument in *Larson v. Comm'r of Revenue*, 581 N.W.2d 25 (Minn. 1998) where it interpreted the predecessor statute then in effect--Minn. Stat. § 289A.37, subd. 3. Repeating its earlier holding in *F-D Oil Co. v. Comm'r of Revenue*, 560 N.W.2d 701, 707 (Minn. 1997), the Court reasoned: "Placing the burden of proof on the taxpayer in civil tax cases is in accordance with the common-law principle of placing the burden on the party who has particular knowledge of the relevant

---

<sup>5</sup> As did the parties and the court below, Relator cites to Minn. Stat. § 289A.37, subd. 3. That provision was repealed by Laws 2005, c. 151, art. 1, § 117, eff. Aug. 1, 2005, and recodified, with no amendments, at Minn. Stat. § 270C.33, subd. 6. Accordingly, Minn. Stat. § 289A.37, subd. 3 had been repealed at the time of trial on October 26, 2005.

facts.” *Larson*, 581 N.W.2d at 30; accord *Wybierala v. Comm’r of Revenue*, 587 N.W.2d 832, 836 (Minn. 1998) (holding that the burden of proving the accuracy of a jeopardy assessment is properly placed on the taxpayer, while the burden of proving that assessment or collection was in jeopardy is on the Commissioner). As the Court also stated “The Legislature is free to determine the burden of proof if it chooses.” *F-D Oil Co.*, 260 N.W.2d at 707-08.

The federal courts have similarly rejected due process challenges to 26 U.S.C. § 7453 and U.S. Tax Court Rule 142(a), which likewise provide that an I.R.S. assessment is generally presumed valid, and that the taxpayer has the burden of demonstrating the assessment’s invalidity. See, e.g., *Wilcox v. Commissioner*, 848 F.2d 1007 (9th Cir. 1988). Indeed, in *Rockwell v. Commissioner*, 512 F. 2d 882, 887 (9th Cir. 1975), the court commented that the taxpayer’s argument that imposing the burden of persuasion on him denied him due process of law “borders on the frivolous.” The court reasoned that the taxpayer “knows the facts” and therefore, “[i]t is not at all unfair ... to place on the taxpayer the burden of persuading the trier of fact, in this case the Tax Court.” *Id.* The court also observed that “[i]n tax matters, the Congress can condition the taxpayer’s right to contest the validity of a tax assessment pretty much as it sees fit.” *Id. citing Cheatham v. United States*, 92 U.S. 85, 88-9 (1875); *Graham v. Du Pont*, 262 U.S. 234, 254-5, 43 S.Ct. 567 (1923); *Phillips v. Commissioner*, 283 U.S. 589, 595, 51 S.Ct. 608 (1931); *Helvering v. Taylor*, 293 U.S. 507, 515, 55 S.Ct. 287 (1935); *Lucas v. Structural Steel Co.*, 281 U.S. 264, 271, 50 S.Ct. 263 (1930). The court concluded: “One would have thought that, if there were a constitutional defect in Rule 32 (now Rule 142(a)), the Supreme Court

would long since have found it.” *Id.* The same can be said about Minn. Stat. § 289A.37, subd. 3 and Minn. Stat. § 270C.33, subd. 6. If there were a constitutional defect in placing the burden of proof on taxpayers, which has been part of Minnesota law since the income tax was established in 1933, the Supreme Court would long since have found it.

Relator argues, however, that the presumption of correctness should not be applied to the Commissioner’s assessment in this case because it involves an allegation that she received unreported income. To support her argument, she cites to a number of federal decisions that comment that the presumption does not apply to a “naked assessment” of the IRS Commissioner. *See generally, Day v. Commissioner*, 975 F.2d 534, 537 (8th Cir. 1992). A “naked assessment,” however, is one made “without any foundation whatsoever, or without some predicate supporting evidence.” *Ferguson v. United States*, \_\_\_F.3d \_\_\_, 2007 WL 1225379 (8th Cir. 2007) (citing *Dodge v. Commissioner*, 981 F.2d 350, 353 (8th Cir. 1992). *see also, United States v. Janis*, 428 U.S. 433, 441, 96 S.Ct. 3021, 3026 (1976) (finding “naked assessment” where records supporting it were excluded from evidence or non-existent). Here, the Commissioner’s assessment was supported by ample foundation.

Initially, the assessment was supported by the W-2 information the Glen Lake Bakery provided to the Social Security Administration under penalty of perjury (subsequently referred to the IRS), which documented that Relator had received wages from the bakery during the tax years in dispute. In addition, the assessment was supported by the quarterly wage detail the Glen Lake Bakery submitted to the DES for unemployment insurance purposes, which similarly documented that Relator had received

wages from the bakery during the years in dispute. Further, the IRS and the DES reported the same amount of wages for Relator, thereby corroborating the accuracy of each other's information. There is no reason then for the presumption not to apply.

Further, contrary to Relator's claim, the Commissioner did demonstrate a link between Relator and the income in dispute. Specifically, through her own admission, the Commissioner established that Relator had indeed worked for the Glen Lake Bakery at one time. Moreover, the Bakery was first owned by her husband's parents and then by her husband. In addition, in 1996, the first year in dispute, Relator completed a certificate of withholding exemption which her husband, as President of Glen Lake Bakery, submitted to the IRS identifying Relator as "our employee."

Finally, as the tax court stated, the court did not apply the presumption in this case. Instead, the court weighed the evidence submitted by the Commissioner, which it found credible, against the evidence Relator offered, which it considered vague and evasive. The tax court then found that the preponderance of the evidence showed that Relator earned the taxable income reported on the assessment. As discussed in Argument V below, this finding is reasonably supported by the evidence.

**IV. THE COMMISSIONER'S ASSESSMENT WAS VALID EVEN THOUGH IT DID NOT EXPLAIN THE PROCEDURES FOR FILING REFUND CLAIMS OR TAXPAYER COMPLAINTS AS PROVIDED BY THE MINNESOTA TAXPAYERS' BILL OF RIGHTS.**

Relying on Minn. Stat. § 270.0603, subd. 3 and this Court's decision in *MBNA American Bank v. Comm'r of Revenue*, 694 N.W.2d 778 (Minn. 2005), Relator argues that the commissioner's assessment was invalid because it did not explain the procedures for

filing refund claims or taxpayer complaints as required by the Minnesota Taxpayers' Bill of Rights. Neither the statute nor *MBNA* supports this argument.

Because Relator did not file tax returns for the years in dispute, the assessment was issued under Minn. Stat. § 289A.37, subd. 1(a)(2004), which at the time of the assessment provided in relevant part:

When no return has been filed, the commissioner... may send an order of assessment under this subdivision. The order must explain the basis for the assessment and must explain the taxpayer's appeal rights.<sup>6</sup>

Relator does not dispute that both the Commissioner's June 15, 2001 and August 9, 2001 assessments properly explained her appeal rights. Specifically, the June 15, 2001 Notice of Change in Tax informed Relator that she had 60 days to appeal either informally with the Department of Revenue or formally with the Minnesota Tax Court (C.A. 40-42). *See* Minn. Stat. § 289A.65, subds. 1 and 4 (2004)<sup>7</sup> (setting forth taxpayer's right to obtain reconsideration by the commissioner of an order assessing tax) and Minn. Stat. § 271.06, subds. 1 and 2 (setting forth right to appeal to the tax court from an order of the commissioner). The August 9, 2001 Notice of Determination on Appeal likewise informed Relator of her right to appeal to tax court within 60 days from the notice date (C.A. 53-55). *See* Minn. Stat. § 289A.65, subd. 8 (2004)<sup>8</sup> (setting forth right to appeal administrative determination to the Minnesota tax court under section 271.06.) Relator, of course, first

---

<sup>6</sup> Minn. Stat. § 289A.37, subd. 1 (2004) was repealed by Laws 2005, C.151, art. 1, § 117. The various requirements set forth therein have been recodified in Minn. Stat. § 270C.33, subds. 2, 3 & 4 (2006).

<sup>7</sup> Minn. Stat. § 289A.65 has been recodified at Minn. Stat. § 270C.35 (2006).

<sup>8</sup> Minn. Stat. § 289A.65 has been recodified at Minn. Stat. § 270C.35 (2006).

exercised her right to obtain administrative review of the June 15, 2001 assessment (C.A. 43-52), and then exercised her right to appeal to tax court from the commissioner's denial of her administrative appeal. (R.A. 1-2).

Relator asserts, however, that the assessments did not inform her of the procedures for filing refund claims and filing of taxpayers complaints under Minn. Stat. § 270.0603 — the Minnesota Taxpayers' Bill of Rights, which was enacted in 1990.<sup>9</sup> Minn. Stat. § 270.0603, subd. 1 provided that the Commissioner shall "prepare statements that set forth in simple and non-technical terms" certain rights and obligation of the department of revenue and the taxpayer during an audit including, inter alia, "the procedures for filing refund claims and filing of taxpayer complaints." *See* Minn. Stat. § 270.0603, subd. 1(3). Minn. Stat. § 270.0603, subd. 3 provided that such statements "must be distributed by the commissioner to all taxpayers contacted with respect to the determination or collection of a tax, other than the providing of tax forms."

The procedures for filing claims are set forth in Minn. Stat. §§ 289A.40 and 289A.50. Minn. Stat. § 289A.40, subd. 1 (2006) provides inter alia that a claim for refund of an overpayment of state tax:

[m]ust be filed within 3 and 1/2 years from the date prescribed for filing the turn, \*\*\* or one year from the date of an order assessing tax \*\*\* , upon payment in full of the tax, penalties, and interest shown on the order or return made by the commissioner, whichever period expires later.

Under Minn. Stat. § 289A.50, subd. 7(a), if a taxpayer is notified that the commissioner has denied a refund claim in whole or in part, the taxpayer may (1) file an administrative

---

<sup>9</sup> Minn. Stat. § 270.0603 has been recodified at Minn. Stat. § 270C.28 (2006).

appeal or an appeal with the tax court within 60 days after issuance of the commissioner's notice of denial; or (2) may file an action in the district court to recover the refund within 18 months of the date of the denial of the claim by the commissioner. See Minn. Stat. § 289A.50, subd. 7 (a) (1) & (2) & (b) (2006).<sup>10</sup>

The Commissioner does not dispute that the assessments did not set forth the option provided by these statutes of paying a disputed assessment, filing a claim for refund and upon denial, bringing a claim for a refund in tax court or district court. Relator argues that this failure invalidates the assessment. The plain language of the statute, however, expressly precludes such a claim. Minn. Stat. § 270.0603, subd. 3 (2004) provided that "Failure to receive the statement [of procedures for filing refund claims and filing of taxpayer complaints] does not invalidate the determination or collection action." Further, the taxpayer in *MBNA* conceded that this statute "makes clear that the actual determination of the tax in the order of the assessment remains valid" despite the absence of the statements required by the Taxpayers' Bill of Rights. *MBNA*, 694 N.W.2d at 782. The taxpayer in *MBNA* simply argued, and this Court agreed, that because Minn. Stat. § 270.0603 did not provide notice of the procedures for filing refund claims, it did not trigger the one-year period for filing those claims provided under Minn. Stat. § 289A.40, subd. 1. Therefore, the Court concluded that *MBNA's* refund claim, which was filed more than one year after the assessment in dispute, was not time-barred. This case of course,

---

<sup>10</sup> Minn. Stat. § 289A.50, subd. 7 (d) goes on to provide that if the commissioner has not issued a denial of a refund claim within six months of filing, the taxpayer may bring a refund action in district court or tax court upon expiration of that period.

does not involve a refund claim, nor does it involve any claim by the Commissioner that Relator's claim is untimely. Therefore, *MBNA* has no bearing on its resolution.

Relator argues that the statute does not preclude her claim because it addresses only a situation where a taxpayer does not "receive" the required notice and not a situation where the commissioner does not even send a notice. Rel. Br. at 30-31. That argument fails. Minn. Stat. § 270.0603, subd. 3 unambiguously provides that a taxpayer's "failure to receive" the notice does not invalidate the assessment. The statute does not distinguish between situations where the notice was sent and not received and where the notice was not sent at all. Here, the assessments themselves do not include the notice and the Commissioner does not dispute that Relator did not otherwise receive such notice. Under the statute, the assessment is nevertheless valid.

Further, Relator's suggestion that *MBNA* could be distinguished to invalidate the assessment in this case fails. As in this case, *MBNA* did not receive the notice at issue. In addition, as in this case, the disputed assessments in *MBNA* did not set forth the procedures for filing a refund claim. Further, it can be implied from the decision in *MBNA* that the notice was not otherwise sent to *MBNA* by the Commissioner. If it had, the Commissioner undoubtedly would have presented that fact to the court. Under both *MBNA* and the statute, the determining fact is whether the taxpayer received the notice.

In sum, none of Relator's arguments has any merit. Relying on the plain language of the statute and this Court's decision in *MBNA*, the tax court properly concluded that the

commissioner's assessment was valid even though it did not set forth the procedures for filing refund claims or making taxpayer complaints.<sup>11</sup>

**V. SUFFICIENT EVIDENCE SUPPORTS THE TAX COURT'S FINDINGS THAT RELATOR RECEIVED TAXABLE INCOME DURING THE YEARS IN DISPUTE.**

Relator finally challenges the tax court's factual findings that she received taxable income during the years in dispute. As stated above, when reviewing the tax court's findings of fact, this Court's review is limited to determining whether sufficient evidence exists to support the tax court's decision. *Dreyling v. Comm'r of Revenue*, 711 N.W.2d 491, 494 (Minn. 2006). This Court does not substitute its judgment for that of the tax court and will leave 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). Before overruling the tax court's findings of fact, this Court "must conclude that the court's decision 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).

Based upon these standards, the tax court's findings of fact must be affirmed.

Evidence as a whole supports the tax court's findings that Relator received wages from the

---

<sup>11</sup> Relator suggests that had she been informed of the right to file a refund claim, she may have chosen that option to contest the Commissioner's assessment. She exercised her right to direct appeal, however, and would not be entitled to bring two separate claims. Further, any such claim would now be time barred. The Minnesota Taxpayers' Bill of Rights, which has now been recodified at Minn. Stat. § 270C.28, has been amended to provide that not only does failure to receive the notice not invalidate the determination or collection action, it also does not "affect, modify, or alter any statutory time limits applicable to the determination or collection action, including the time limit for filing a claim for refund." See Minn. Stat. § 270C.28, subd. 2 (2006). This amendment was effective for claims for refund filed after October 31, 2005. See Minn. Sess. Laws 2005, Special Session, Ch. 3, Art. 11, Sec 3, modifying Minnesota Statutes 2004, section 270C.28, subd, 2, Laws 2005, chapter 151, article 1, section 26.

Glen Lake Bakery during the years in dispute in the amounts reported on the Commissioner's assessment. The Commissioner presented evidence from two independent sources--the IRS and the DES--which documented that the Glen Lake Bakery reported to those two entities that it paid Relator the disputed wages. Moreover, contrary to Relator's explicit denial that she worked at the Glen Lake Bakery after her husband bought it, and implicit denial that she worked there at all during the periods in dispute, Relator's husband submitted a document to the IRS in 1996, the first year in dispute, referring to Relator as "our employee."

In response to the Commissioner's evidence, Relator offered only what the tax court found were "vague and evasive" statements to the effect that while she had once worked at the Glen Lake Bakery, she did not do so during the periods in dispute. She could not, however, offer any specific dates of employment or unemployment, nor did she provide any documentary evidence of such dates. The tax court, who was in the best position to evaluate the credibility of witnesses, was free to discredit this testimony and credit the documentary evidence submitted by the Commissioner. *See Manthey*, 468 N.W.2d at 550 (concluding that credibility determinations are for the tax court).

The fact that Relator never asserted in any of her submissions to the IRS or the Commissioner that she was unemployed as she claimed at trial, casts further doubt on the credibility of her claim not to have earned wages during the years in dispute. In opposing the assessments before trial, Relator asserted a litany of arguments to the effect that she was not subject to income tax because wages, salaries and compensation for services did not constitute taxable income. She also questioned the authority of the IRS and the

Commissioner to impose income tax in the first instance. She did not, however, ever explicitly assert that she earned no wages at the Glen Lake Bakery. In light of these frivolous arguments, coupled with her failure to provide documentary evidence or candid answers to simple questions, Relator's belated claim at trial to have been unemployed can be viewed as another attempt to avoid paying income tax.

Relator also argues that the tax court should not have admitted the Commissioner's evidence upon which the tax court's decision is based. The decision whether to admit or exclude evidence, of course, rests with the sound discretion of the court. *See, e.g., T.M.G. Life Insurance v. County of Goodhue*, 540 N.W.2d 848, 851 (Minn. 1995). The tax court did not abuse its discretion in admitting any of the Commissioner's evidence over Relator's objections of lack of foundation and hearsay. The documents from the IRS and the DES were business records clearly admissible under Minn. R. Evid. 803(6).

It is also relevant that as the tax court observed, Relator herself had the ability to produce documents from the Glen Lake Bakery to prove that she did not work there during the years in dispute. Her failure to do so can be construed against her. *See Dreyling*, 711 N.W.2d at 497 (citation omitted) (holding that failure to produce evidence within the control of a party permits the inference that the evidence, if produced, would be unfavorable to the party.).

In sum, sufficient evidence in light of the record as a whole support the tax court's findings that the Relator earned taxable income in the amounts reported on the Commissioner's assessment. Those findings must be affirmed.

**CONCLUSION**

For all of the foregoing reasons, Respondent respectfully requests that this Court affirm the decision of the tax court in all respects.

Dated: May 29, 2007.

Respectfully submitted,

LORI SWANSON  
Attorney General  
State of Minnesota



---

CATHERINE M. KEANE  
Assistant Attorney General  
Atty. Reg. No. 015006X  
445 Minnesota Street, Suite 900  
St. Paul, MN 55101-2127  
(651) 296-0982  
ATTORNEYS FOR RESPONDENT  
COMMISSIONER OF REVENUE

AG: #1805080-v1