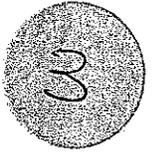


A09-414



---

---

STATE OF MINNESOTA  
SUPREME COURT

-----  
Henry J. Langer, Relator  
Patricia K. Langer, Appellant Below,

Vs.

Commissioner of Revenue  
Respondent.  
-----

---

APPELLANT'S BRIEF AND APPENDIX

---

Henry J. Langer, Relator  
Patricia K. Langer, Appellant Below

7101 Antrim Court  
Edina, Minnesota 55439  
(952) 941-6434

Kyle R. Gustafson  
Assistant Attorney General

445 Minnesota Street, Suite 900  
St. Paul, Minnesota 55101

**TABLE OF CONTENTS**

Page No.

TABLE OF AUTHORITIES

Wiebesick v. Commissioner of Revenue, No. 7864, 2007 WL 329151 (Minn. T.C. Jan. 31, 2007).....	5
Reiss v. Commissioner of Revenue, Dckt. No. 7552 (Minn. Tax Ct. May 28, 2003).....	5
Morse v. Commissioner of Revenue, Dckt. No. 7544 (Minn. Tax Ct. Jan. 7, 2004).....	5
Montagne v. Commissioner of Revenue, Dckt. No. 7529 (Minn. Tax Ct. March 31, 2003).....	5
Byers v. Commissioner of Revenue, Dckt. No. 7562 (Minn. Tax Ct. July 8, 2003).....	6
LEGAL ISSUES.....	2
STATEMENT OF FACTS.....	3
ARGUMENT:	
I. The Tax Court erred in issuing a final order against the Appellant because the final order is unwarranted by the evidence.	5
CONCLUSION.....	7

## **LEGAL ISSUES**

- I. The Tax Court erred in issuing a final order against the Appellant because the final order is unwarranted by the evidence.

## STATEMENT OF FACTS

1. On the 2<sup>nd</sup> day of July, 2008, appellant (Henry J. Langer) mailed the original Minnesota Tax Court Form 1, the Affidavit of Service by Mail, and the filing fee to the Minnesota Tax Court in St. Paul, MN 55155.
2. The Sales Receipt dated July 2, 2008, validates that at 9:55 AM a large envelope (1.7 oz.) addressed to the Minnesota Tax Court in St. Paul, MN 55155 was deposited with postage prepaid in the United States mail.
3. The Sales receipt dated July 2, 2008, validates that at 9:55 AM a large envelope (1.5oz.) addressed to the Commissioner of Revenue in St. Paul, MN 55146 was deposited with postage prepaid in the United States mail.
4. The Affidavit of Service by Mail was notarized on July 2, 2008 and states that Henry Langer placed a true and correct copy in an envelope and mailed it to the Commissioner of Revenue in St. Paul, MN 55146.
5. The Affidavit of Service by Mail states that service by mail is completed on mailing.
6. On the 19<sup>th</sup> day of September, 2008, respondent filed a Motion to Dismiss for Lack of Subject Matter Jurisdiction. Appendix: page 1
7. On the 27<sup>th</sup> day of October, 2008, appellant filed a Response to Motion to Dismiss for Lack of Subject Matter Jurisdiction. Appendix: page 2
8. On the 5<sup>th</sup> day of November, 2008, the Motion Hearing was held before Judge Kathleen H. Sanberg.
9. On the 7<sup>th</sup> day of January, 2009, the Tax Court granted appellee's Motion to Dismiss. Appendix: page 4

10. On the 15<sup>th</sup> day of January, 2009, appellant requested permission from the Court to file a motion to reconsider pursuant to Rule 115.11. Appendix: page 5
11. On the 21<sup>st</sup> day of January, 2009, the Tax Court denied appellant's request to file a Motion for Reconsideration. Appendix: page 7
12. On the 21<sup>st</sup> day of January, 2009, the Tax Court filed and entered the Order Granting Motion to Dismiss for Lack of Subject Matter Jurisdiction. Appendix: page 8
13. On the 6<sup>th</sup> day of March, 2009, appellant petitioned the Supreme Court for a Writ of Certiorari. Appendix: page 9

## ARGUMENT

**I. The Tax Court erred in issuing a final order against the Appellant because the final order is unwarranted by the evidence.**

1. During the hearing on a motion to dismiss, the attorney appearing on behalf of the respondent stated: "The central issue today though is that appellants failed to properly file that notice of appeal with this court."

a. The appeal deadline was July 7, 2008.

b. The clerk of court never received the appeal, affidavit of service by mail and filing fee that appellant mailed on July 2, 2008. **The appeal, affidavit of service by mail and filing fee were "lost" either in the mail or at the Minnesota Tax Court.**

c. The Commissioner of Revenue received a true and correct copy of the appeal on July 3, 2008 that appellant mailed on July 2, 2008.

2. During the hearing on a motion to dismiss, the attorney appearing on behalf of the respondent highlighted the *Wiebesick* decision for the Court. *Wiebesick v. Commissioner of Revenue, No. 7864, 2007 WL 329151 (Minn. T.C. Jan. 31, 2007)*

a. The respondent's citation is simply **not germane**.

3. The Court's order cites: "*Reiss v. Commissioner of Revenue, Dckt. No. 7552 (Minn. Tax Ct. May 28, 2003)*" The Court's cite used the Affidavit of Service to determine the date mailed.

4. The Court's order cites: "*Morse v. Commissioner of Revenue, Dckt. No. 7544 (Minn. Tax Ct. Jan. 7, 2004)*"; *Montagne v. Commissioner of Revenue, Dckt. No. 7529*

*(Minn. Tax Ct. March 31, 2003)*; and *"Byers v. Commissioner of Revenue, Dckt. No. 7562 (Minn. Tax Ct. July 8, 2003)*. The citations are simply **not germane**.

5. The **Tax Court does have the jurisdiction** to consider the underlying merits of this matter **because there was proper timely filing** with the Tax Court before the July 7, 2008 deadline.

a. The Commissioner of Revenue received a true and correct copy on July 3, 2008 and the clerk of court **would have received the original** Minnesota Tax Court Form 1, the Affidavit of Service by Mail, and the filing fee **on July 3, 2008**, if the envelope had not been "lost".

6. Appellant, **in good faith and diligence**, mailed the properly addressed envelopes with postage prepaid to the Minnesota Tax Court and The Commissioner of Revenue. The envelope sent to the Commissioner of Revenue was received and the envelope sent to the Minnesota Tax Court was "lost".

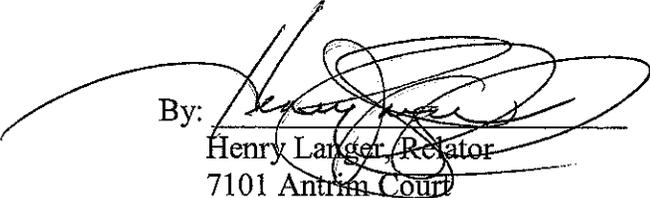
7. Mailing the notice of appeal by regular mail was sufficient and "certified or registered" was only an optional manner, not an absolute requirement.

## CONCLUSION

WHEREFORE, Appellant prays:

1. The Order is reversed and the Commissioner's Motion not be granted and the Appeal not be dismissed.
2. For such other and further relief as this Court deems just and equitable under the circumstances.

Respectfully submitted this 30<sup>th</sup> day of April, 2009.

By: 

Henry Langer, Realtor  
7101 Antrim Court  
Edina, MN 55439  
(952) 941-6434