

OFFICE OF APPELLATE COURTS

STATE OF MINNESOTA IN SUPREME COURT

MAR 11 2011

FILED

Crossroads Church of Prior Lake MN,

PETITION FOR REHEARING

Appellants,

vs.

Tax Court Case No.: 19HA-CV-09-2780

County of Dakota,

Supreme Court Case No.: A10-859

Respondents.

Decision Filed: 03/02/2011

TO: Clerk of the Appellate Courts Minnesota Judicial Center St. Paul, MN 55155

The above named appellant hereby petitions the Minnesota Supreme Court for a Rehearing under MN App. R. 140 to review their decision to not consider issues of constitutionality because of the court's belief that the issues were not raised before the tax court or addressed by the tax court.

The Relator respectfully requests a rehearing based upon:

- 1. An express judicial finding that the issues of constitutionality were raised before the tax court.
2. The tax court did address the issues of constitutionality.
3. The tax court did not obtain subject matter jurisdiction to hear the matter until the matter and had been submitted to the court and before the final decision.

The judgment of this court was entered on March 02, 2011, affirming the tax court decision dismissing Relator's claims against Respondent.

DATED: March 11, 2011

Valerie R. LeMaster (348119) MACKENZIE & DORNIK, P.A. Attorney for Appellant 150 South Fifth Street, Suite 2500 Minneapolis, MN 55402 Telephone: 612-335-3500

Suzanne W. Schrader (183131) ASSISTANT COUNTY ATTORNEY Attorneys for Respondents Dakota County Judicial Center 1560 Highway 55 Hastings, MN 55033-2392 Telephone: 651-438-4438

Handwritten signature of Valerie R. LeMaster and printed name Valerie R. LeMaster

**STATE OF MINNESOTA  
IN SUPREME COURT**

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Crossroads Church of Prior Lake MN,  
Appellants,

**MEMORANDUM IN SUPPORT OF  
PETITION FOR REHEARING**

vs.

County of Dakota,  
Respondents.

Tax Court Case No.: 19HA-CV-09-2780

Supreme Court Case No.: A10-859

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Decision Filed: 03/02/2011

TO: Clerk of the Appellate Courts  
Minnesota Judicial Center  
St. Paul, MN 55155

Suzanne W. Schrader  
Attorney for Dakota County  
Dakota County Judicial Center  
1560 Highway 55  
Hastings, MN 55033

**INTRODUCTION**

This Court's decision in the above-captioned matter was filed on March 2, 2011. In that decision, the Court refused to consider the issues of constitutionality briefed and argued by the parties on the belief that the issues were not raised before or addressed by the tax court. The Relator now brings this Petition for Rehearing under Rule 140 arguing that the issues of constitutionality *were* raised before the tax court and that the tax court *did* address the issues and that the tax court received subject matter jurisdiction to rule on the issues only *after* briefs were submitted and the arguments complete but *before* the appealed decision was filed.

## FACTS

On October 23, 2009, a Stipulation to Transfer Case to District Court, which was signed by both parties was filed in the Tax Court. (P-1,2) The Stipulation acknowledges “challenges to the constitutionality of a statute and that portion of an appeal presenting such an issue shall be transferred to the District Court...” (Id.) The language of the Stipulation did not limit the scope of issues of constitutionality to be addressed. (Id.) On October 27, 2009, the Honorable Judge Kathleen Sanberg of the tax court signed an Order of Referral and Stay of Proceedings. (P-3, 4) The Order specifies **“WHEREAS, Petitioner has raised issues of constitutionality;”** and **“that the portion of an appeal presenting such an issue must be referred to the District Court for decision or referral back to the Minnesota Tax Court.”** (Id.) Emphasis added. The language of Judge Sanberg’s Order and Referral did not limit the scope of the issues of constitutionality to be referred. (Id.) Judge Sanberg’s Order for Referral and Stay filed in Dakota County District Court on November 2, 2009. (Id.) The Honorable Richard Spicer signed an order on November 2, 2009 and filed the same day in Dakota County District Court only. (P-5) The record does not show that the Tax Court received notice of the filing. (P-6)<sup>1</sup> The Tax Court did not provide notice to the parties that it had received

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<sup>1</sup> A copy of the Order was not sent to Relator’s counsel of record filed with the Tax Court. (P-10).

jurisdiction to address the issues of constitutionality that had been raised previously triggering the need for the *Erie Shuffle*.

Relator's briefing for the cross-summary judgment motions was completed on November 4, 2009 with the filing of Relator's Reply Memorandum. (P-7). The arguments were heard by the tax court on November 10, 2009. (Relator's Addendum p. 1) Following the argument, Judge Sanberg solicited post-hearing briefings from the parties. (P-8) The briefing was limited to the legislative history of a statute. (Id.) The post-hearing briefing was completed and the entire matter was submitted to the Tax Court on January 13, 2010. (Relator's Addendum p. 1). On February 4, 2010, the Honorable Judge Edward Lynch of the Dakota County District Court issued an Order of Transfer - transferring the District Court's jurisdiction of all matters to the tax court. (P-9) The authority to decide issues of constitutionality was not limited by the language of the Order. (Id.) No notice of the transfer of jurisdiction resulting from the *Erie Shuffle* was sent from the tax court to the parties. On April 13, 2010, the tax court issued its decision summarily dismissing Relator's claims in their entirety. Judgment was filed on April 16, 2010. (Relator's Addendum p. 2)

## **ARGUMENT**

### **I. THE ISSUES OF CONSTITUTIONALITY WERE PROPERLY RAISED BEFORE THE TAX COURT.**

This Court held “We will not consider on appeal issues not raised before or addressed by the Tax Court.” To “raise” an issue is to bring it up for discussion or consideration; to introduce or put it forward. *Black’s Law Dictionary* 1266 (Bryan A. Garner ed., 7<sup>th</sup> ed., 1999). Raising an issue does not require briefing or argument before the lower court. A court with subject matter jurisdiction may *sua sponte* rule on issues constitutionality without the issue being raised, briefed or argued by a party.<sup>2</sup>

The tax court’s Order of Referral and Stay of Proceedings includes the tax court’s express judicial finding that **“WHEREAS, Petitioner has raised issues of constitutionality;”** (P-3) This is a prima facie showing that the issues of constitutionality had indeed been raised. In their Stipulation to the tax court, the parties agreed to transfer “challenges to the constitutionality of a statute and that portion of an appeal presenting such an issue...” to the Dakota County District Court. (P-1).

Relator’s raising of the constitutional issues was not untimely. Between the raising of the issues that triggered initiation of the *Erie Shuffle* and presentation before *this* Court, the Relator had no opportunity to brief or argue their constitutional challenges before a court that had subject matter jurisdiction over the issues of constitutionality.

## **II. THE TAX COURT DID ADDRESS THE ISSUES OF CONSTITUTIONALITY RAISED BY THE RELATORS.**

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<sup>2</sup> See *Hawes v. 1997 Jeep Wrangler*, 602 N.W.2d 874, 880 (Minn. App. 1999).

The issues of constitutionality raised by the Relator were no surprise to the tax court at the time the decision dismissing Relator's claims in their entirety was made. The tax court addressed those issues in the following ways: 1) The tax court made an express judicial finding that the issue of constitutionality had been raised. (P-3). The scope of the issues that had been raised was not specified or limited. (Id); 2) The parties stipulated to having those issues of constitutionality of a statute transferred to the district court. (P-1) The tax court made a finding of that Stipulation (P-3); 3) The tax court ordered a stay of of the proceedings is the matter. (P-3); 4) By November 2, 2010, only responsive briefing –specifically a reply brief- was allowed. Relator's briefing of the non-constitutional issues was completed on November 4, 2010. (P-7); 5) The referral of the matter from the tax court case was filed in Dakota County District Court on November 2, 2010. (P-3);<sup>3</sup> 6) The hearing of the other issues of the matter was completed on November 10, 2010. (Relator's Addendum 1); 7) The tax court requested post-hearing briefing on other matters not related to the issues of constitutionality. (P-8); 8) The matter was submitted to the tax court on January 13, 2010. (Relator's Addendum -1); 9) The tax court then had subject matter jurisdiction over all issues of constitutionality but chose not to rule on the issues of constitutionality raised by the Relator when it issued its order dismissing Relator's claims in their entirety on April 13, 2010. (Relator's Addendum-2); 10) The tax

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<sup>3</sup> The Erie Shuffle is a proceeding between the tax court and the district court. The Dakota County District Court appears to have signed an Order of Transfer dated November 2, 2009 (P-5) but it was not sent to the tax court or Relator's counsel of record with the Tax Court at the time of the transfer. (P-10 and P-6) A second Order of Transfer was signed by a different Dakota County District Court judge on February 4, 2010. (P-9) Counsel for the parties was not notified of the February 4, 2010 order.

court's April 13, 2010 order, was a final order and did not preserve the issues of constitutionality for further proceedings. (Id.)

The issues of constitutionality remained "stayed" in the tax court until Dakota County District Court's Order of Transfer dated February 4, 2010. This was after the matter had been submitted to the court and before the court's final decision. There was no notification to the parties by the tax court that it had obtained subject matter jurisdiction on the issues of constitutionality. No additional briefing was requested. The tax court made an affirmative decision to rule on the matter without the benefit of briefs or arguments on the constitutional issues.

### **III. THE TAX COURT HAD JURISDICTION TO RULE ON THE ISSUES OF CONSTITUTIONALITY AT THE TIME THE JUDGMENT WAS ENTERED ON APRIL 16, 2010.**

The Tax Court did not have jurisdiction to decide the constitutionality question until the Dakota County District Court transferred the jurisdiction to the tax court on February 4, 2010 which is after the briefing and hearings were completed but before the tax court issued its decision. Prior to February 4, 2010, the tax court did not have subject matter jurisdiction and the issues of constitutionality were appropriately *stayed* by the tax court.

In *Erie Mining Co.*, this court approved of a process whereby a tax court could gain jurisdiction over constitutional matters even if a case originated in tax court. (Citation omitted) If the tax court stays proceedings and refers the case to the district court for determination of the constitutional issue, and if after declining to make a constitutional determination the district court refers the case back to the tax court, the tax court may then exercise jurisdiction over the constitutional issue. ("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" over the constitutional matters);citing *Erie Mining*, 343 N.W.2d at 264.

*Wilson v. Commissioner of Revenue*, 619 N.W.2d 194, 199 (Minn. 2000).

The tax court has limited jurisdiction and may not hear constitutional claims unless a case originates in district court and is transferred to the tax court, or unless the tax court follows [the Erie Transfer procedure].*Id.* Emphasis Added.

The issues of constitutionality were raised before the tax court and the tax court took multiple actions to address those issues including actively participating in an Erie Shuffle procedure, accepting subject matter jurisdiction from the district court, and dismissing all of Relator's claims in their entirety without preserving the issues of constitutionality for further proceedings.

### **III. IT IS APPROPRIATE FOR THIS COURT TO HEAR AND DECIDE THE ISSUES OF CONSTITUTIONALITY IN THIS MATTER.**

The tax court is an administrative agency established as an extension of the executive branch of government. Even after the district court refers a constitutional issue to the tax court, the tax court can declare a law unconstitutional only as to that particular case. *Byers v. Commissioner of Revenue*, 741 N.W.2d 101, 105 (Minn. 2007). *Citing Erie*, 343 N.W.2d at 264. One of the issues of constitutionality forwarded by Relators is a challenge to the facial constitutionality of a statute. It is not a challenge to

the law “as applied” or a challenge to the constitutionality of the procedure utilized in the administrative process. A challenge to the facial constitutionality of a statute is best considered by the judicial branch of government.

The issues of constitutionality had been raised before the tax court, the tax court acquired subject matter jurisdiction to rule on those issues and affirmatively chose not to rule on the issues properly before it other than to dismiss Relators claims in their entirety. The issues of constitutionality are properly before this court.

**III. IN THE ALTERNATIVE, A REMAND BACK TO THE TAX COURT FOR A TRIAL ON THE ISSUES OF CONSTITUTIONALITY STAYED BY THE TAX COURT IS AN APPROPRIATE REMEDY**

The tax court *stayed* the matter pending acquisition of subject matter jurisdiction from district court. Once it did obtain jurisdiction, it did not notify the parties<sup>4</sup> and chose to decide the entire matter –including the constitutional issues – without the benefit of briefing or arguments by the parties.

Because of the unique timing of the *Erie Shuffle* in this particular matter, the briefing and argument of the issues of constitutionality before the Supreme Court was Relator’s only opportunity to brief and argue the issues. Other than “raising” the issue and triggering the *Erie Shuffle*, the

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<sup>4</sup> See *Byers* where the tax court ordered a new trial when “the tax court discovered that ‘none was sent due to a clerical oversight’ and granted a new trial solely on the issue of constitutionality of Minn. Stat. 39A.37, noting that it had jurisdiction over all other issues at the time of trial.” *Byers v. Commissioner of Revenue*, 741 N.W.2d 101, 105 (Minn. 2007).

Relator had no opportunity to have its arguments considered by a lower court with jurisdiction to consider the constitutional issues.

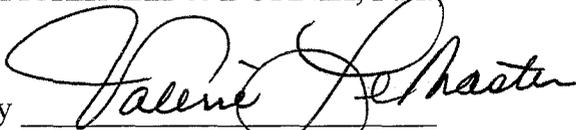
Relators are entitled to have this matter heard before a court that has subject matter jurisdiction to hear it. If briefing and arguments before a lower court with subject matter jurisdiction are required before the Supreme Court considers issues of constitutionality, justice mandates that this matter be remanded to the tax court for trial on the issues of constitutionality preserved by the *Erie Shuffle* procedure.

### CONCLUSION

For all these reasons, the Relator respectfully requests that this court find that the issues of constitutionality were raised before the tax court, that the tax court did address the issues of constitutionality, and accordingly the issues of constitutionality are properly before this court. In the alternative, the Relators respectfully request that the issues of constitutionality be remanded to the tax court for trial on those issues only.

Respectfully submitted,

MACKENZIE & DORNIK, P.A.

By 

Valerie R. LeMaster (ID 348119)

Attorney for Relator

150 South Fifth Street, Suite 2500

Minneapolis, MN 55402

Telephone: 612-335-3500

Facsimile: 612-335-3504



5. That attached hereto as P-6 , is a true and correct copy of the Notice of Filing of Order sent to Suzanne Schrader and Lynn Basich on 11/2/09 and filed in Dakota County District Court on 11/2/09.

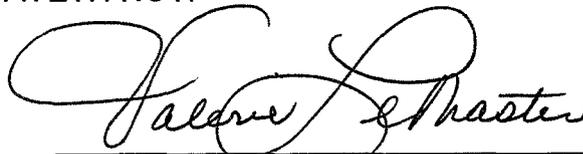
6. That attached hereto as P-7, is a true and correct copy of the Cover letter for filing of Relator's Reply Brief dated 11/4/09 and filed by the Tax Court on 11/4/09.

7. That attached hereto as P-8, is a true and correct copy of correspondence from tax court on 11/10/09 soliciting post-hearing briefs from parties.

8. That attached hereto as P-9, is a true and correct copy of Order of Transfer dated 2-4-10 and signed by Judge Edward Lynch of Dakota County District Court.

9. That attached hereto as P-10, is a true and correct copy of the Notice of Association of Attorneys sent to the Tax Court on July 27, 2009 and filed by the Tax Court on July 28, 2009.

FURTHER YOUR AFFIANT SAYETH NOT.



VALERIE R. LeMASTER

Subscribed and sworn to before me  
this 11th day of March, 2011.



  
Notary Public

STATE OF MINNESOTA  
COUNTY OF DAKOTA

**COPY**

DISTRICT COURT  
FIRST JUDICIAL DISTRICT  
COURT FILE NUMBER: 19HA-CV-09-2780  
CASE TYPE: TAX COURT  
REGULAR DIVISION  
JUDGE SANBERG

OCT 23 2009  
MINNESOTA TAX COURT

Crossroads Church of Prior Lake, MN

Petitioner,  
vs.

**STIPULATION TO TRANSFER  
CASE TO DISTRICT COURT**

County of Dakota,

Respondent.

IT IS HEREBY STIPULATED AND AGREED by and between the parties hereto, through their respective undersigned attorneys, that the above-entitled action, including challenges to the constitutionality of a statute and that portion of an appeal presenting such an issue shall be transferred to the District Court and subsequently referred back to the Minnesota Tax Court consistent with the transfer procedure outlined in Erie Mining Company v. Commissioner of Revenue, 343 N.W.2d 261 (Minn. 1984), and In re McCannel, 301 N.W.2d 910 (Minn. 1980) and Gonzales v. Commissioner of Revenue, 706 N.W.2d 909 (Minn. 2005).

DATED: 10-21-09

DATED: 10-20-09

By: Suzanne W. Schrader  
SUZANNE W. SCHRADER (183131)  
ATTY FOR DAKOTA COUNTY  
Assistant County Attorney  
Dakota County Judicial Center  
1560 Highway 55  
Hastings, MN 55033  
Telephone: 651-438-4438

By: Valerie Lemaster  
VALERIE LEMASTER (348119)  
MACKENZIE & DORNIK, P.A.  
150 South Fifth Street, Suite 2500  
Minneapolis, MN 55402  
Telephone: 612-335-3500  
Fax: 612-335-3504

FILED DAKOTA COUNTY  
CAROLYN M. RENN, Court Administrator

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NOV 02 2009

LYNN E. BASICH (#149226)  
Attorney at Law  
1026 Woodlyn Ave.  
St. Paul, MN 55113-1940  
(651) 482-1533 Office  
(612) 325-2204 Mobile  
(612) 313-7472

Attorneys for Petitioner  
Crossroads Church of Prior Lake MN

STATE OF MINNESOTA  
COUNTY OF DAKOTA

*19/09/09*  
DISTRICT COURT  
FIRST JUDICIAL DISTRICT  
COURT FILE NUMBER: 19HA-CV-09-2780  
CASE TYPE: TAX COURT  
REGULAR DIVISION  
JUDGE SANBERG

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Crossroads Church of Prior Lake, MN,

Petitioner,

**ORDER OF  
REFERRAL AND STAY OF  
PROCEEDINGS**

vs.

FILED DAKOTA COUNTY  
CAROLYN M. RENN, Court Administrator

County of Dakota,

Respondent.

NOV 02 2009

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WHEREAS, the above-entitled appeal was properly filed in this Court pursuant to Minn. Stat. ch. 278.

WHEREAS, Petitioner has raised issues of constitutionality; and

WHEREAS, three Minnesota Supreme Court decisions, Erie Mining Company v. Commissioner of Revenue, 343 N.W.2d 261 (Minn. 1984), In re McCannel, 301 N.W.2d 910 (Minn. 1980), and Gonzales v. Commissioner of Revenue, 706 N.W.2d 909 (Minn. 2005), have held that this Court does not have jurisdiction to hear the portion of an appeal which challenges the constitutionality of a statute, and that the portion of an appeal presenting such an issue must be referred to the District Court for decision or referral back to the Minnesota Tax Court;

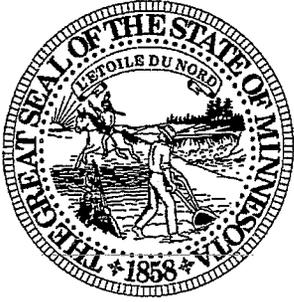
WHEREAS, Petitioner and Respondent have stipulated to transfer of the case to the District Court and subsequent referral back to the Minnesota Tax Court.

NOW THEREFORE, it is hereby ordered that the proceedings in this matter are stayed in this Court, and the proceedings are hereby referred to the Dakota County

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District Court for decision or transfer back to the Minnesota Tax Court.

IT IS SO ORDERED.



BY THE COURT,

A handwritten signature in black ink, appearing to read "L. J. ...", written over a horizontal line.

Judge  
MINNESOTA TAX COURT

DATED: 04 27, 2009

ORIGINAL

STATE OF MINNESOTA  
COUNTY OF DAKOTA

DISTRICT COURT  
FIRST JUDICIAL DISTRICT  
COURT FILE NUMBER: 19HA-CV-09-2780  
CASE TYPE: TAX COURT  
REGULAR DIVISION  
JUDGE SANBERG

Crossroads Church of Prior Lake, MN,

Petitioner,

ORDER OF  
TRANSFER

vs.

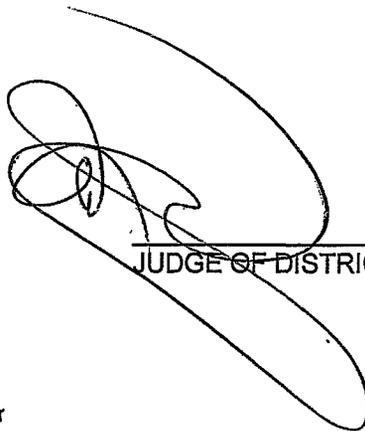
County of Dakota,

Respondent.

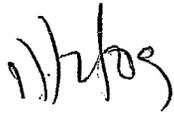
Pursuant to Minn. Stat. § 271.01, and the opinions in the cases of Erie Mining Company v. Commissioner of Revenue, 343 N.W.2d 261 (Minn. 1984), In re McCannel, 301 N.W.2d 910 (Minn. 1980) and Gonzales v. Commissioner of Revenue, 706 N.W.2d 909 (Minn. 2005), the proceedings in this matter are hereby transferred to the Tax Court with the District Court's full legal and equitable powers for determination of all matters that might come before it and placing sole, exclusive, and final authority over this action with the Tax Court.

IT IS SO ORDERED.

BY THE COURT,

  
\_\_\_\_\_  
JUDGE OF DISTRICT COURT

DATED:



FILED DAKOTA COUNTY  
CAROLYN M. RENN, Court Administrator

NOV 02 2009

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State of Minnesota  
Dakota County

District Court  
First Judicial District

Court File Number: **19HA-CV-09-2780**

Case Type: Tax Court

**Notice of Filing of Order**

FILE COPY

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**Crossroads Church of Prior Lake MN vs County of Dakota [02-72700-020-01]**

You are notified that an order was filed on this date.

Dated: November 2, 2009

Carolyn M. Renn  
Court Administrator  
Dakota County District Court  
1560 Highway 55  
Hastings MN 55033  
651-438-8100

cc: LYNN E BASICH  
SUZANNE WITHERS SCHRADER

A true and correct copy of this notice has been served by mail upon the parties herein at the last known address of each, pursuant to Minnesota Rules of Civil Procedure, Rule 77.04.

FILED DAKOTA COUNTY  
CAROLYN M. RENN, Court Administrator

NOV 02 2009

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# MACKENZIE & DORNIK

*Professional Association*

TRIAL LAWYERS

REED K. MACKENZIE\*

JOHN M. DORNIK

VALERIE LEMASTER

*Nurse Legal Consultant*

ADELLA GETSCH, R.N.

*Paralegals*

DIANE EVENSON

SARAH ZACHER

*Legal Assistant*

RACHEL SUNDBERG

*Office Manager*

LAUREN MOWERS

November 4, 2009

Court Administrator  
Minnesota Tax Court  
Minnesota Judicial Center  
Suite 245  
25 Rev. Dr. Martin Luther King Jr. Blvd.  
St. Paul, MN 55155

Re: Crossroads Church of Prior Lake MN v County of Dakota  
Court File No:19HA-CV-09-2780

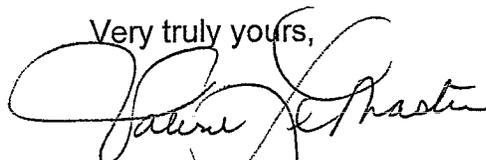
Dear Court Administrator:

Enclosed herewith please find for filing the following:

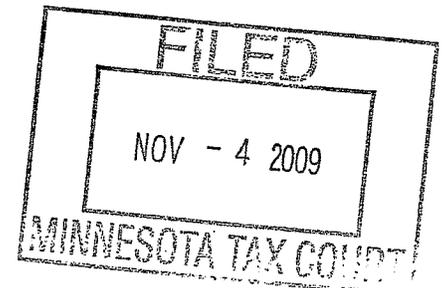
1. Petitioner's Reply Brief
2. Affidavit of Service by Fax and Mail

Thank you.

Very truly yours,



Valerie LeMaster



**P-7**

[www.mackenziedornik.com](http://www.mackenziedornik.com)

150 SOUTH FIFTH STREET / SUITE 2500 / MINNEAPOLIS, MN 55402 / 612/335/3500 phone / 612/335/3504 fax

*\*Civil Trial Specialist, Certified by the Minnesota State Bar Association and the National Board of Trial Advocacy*



**Minnesota Tax Court**

245 Minnesota Judicial Center  
25 Rev. Dr. Martin Luther King Jr. Blvd.  
St. Paul, MN 55155

November 10, 2009

Valerie LeMaster  
Attorney at Law  
McKenzie & Dornik  
150 South Fifth Street, Suite 2500  
Mpls. MN 55402

Suzanne Schrader  
Assistant Dakota County Attorney  
Judicial Center  
1560 Highway 55  
Hastings MN 55033-2343

Re: Crossroads Church of Prior Lake MN v. County of Dakota  
File No. 19HA-CV-09-2780

Dear Counsel:

After the Summary Judgment Motion hearing this morning and further consideration, Judge Sanberg has asked me to write this letter confirming the briefing schedule established for this case as follows:

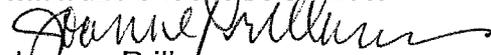
Counsel is to submit legal research regarding legislative history on Minn. Stat. § 272.02, subd. 38, focusing on the word "acquire."

- Briefs are due filed with the Court on or before December 18, 2009, at noon.
- Reply briefs are due filed with the Court on or before December 31, 2009, also at noon.

Please file an original and **provide one copy of each submission** for the court.

Sincerely,

MINNESOTA TAX COURT

  
Joanne Prillaman  
Paralegal

Cc: Judge Kathleen H. Sanberg

STATE OF MINNESOTA

TAX COURT

COUNTY OF DAKOTA

REGULAR DIVISION

Crossroads Church of Prior Lake Mn,

Petitioner,

v.

COUNTY OF DAKOTA,

Respondent.

ORDER OF TRANSFER

File No. 19HA-CV-09-2780

Pursuant to Minn. Stat. § 271.01, and the opinions in the cases of Erie Mining Company v. Commissioner of Revenue, 343 N.W.2d 261 (Minn. 1984), In re McCannel, 301 N.W.2d 910 (Minn. 1980) and Gonzales v. Commissioner of Revenue, 706 N.W.2d 909 (Minn. 2005), the proceedings in this matter are hereby transferred to the Tax Court with the District Court's full legal and equitable powers for determination of all matters that might come before it and placing sole, exclusive, and final authority over this action with the Tax Court.

IT IS SO ORDERED.

BY THE COURT,

DATED: 2-4-2010

  
\_\_\_\_\_  
JUDGE OF DISTRICT COURT

FILED DAKOTA COUNTY  
CAROLYN M. RENN, Court Administrator

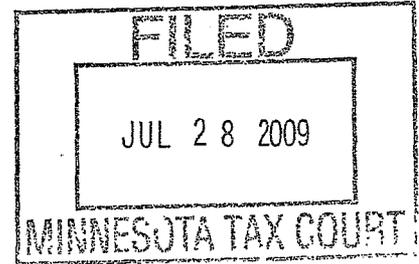
APR 16 2010

17

ENT

**Lynn E. Basich**  
Attorney at Law

1026 Woodlynn Avenue  
Saint Paul, MN 55113-1940  
(651) 482-1533



July 27, 2009

Minnesota Tax Court  
Attention: Court Administrator  
245 Minnesota Judicial Center  
25 Rev. Dr. Martin Luther King, Jr. Boulevard  
Saint Paul, MN 55155

**Re: Crossroad Church of Prior Lake MN v. County of Dakota**  
**Minnesota Tax Court File Number: 19HA-CV-09-2780**

**Notice of Association of Attorneys**

Dear Court Administrator:

Please find enclosed the original and one copy of a "Notice of Association of Attorneys," dated July 27, 2009, for the above-referenced matter. Minnesota attorney Valerie R. LeMaster (#349118) is joining Petitioner's current counsel as an attorney for Petitioner Crossroads Church of Prior Lake MN.

A copy of the Notice of Association of Attorneys, dated July 27, 2009, has today also been mailed to County of Dakota's legal counsel, Ms. Suzanne W. Schrader, Assistant Dakota County Attorney, Dakota County Judicial Center, 1560 Highway 55, Hastings, MN 55033-2392.

Very truly yours,

Lynn E. Basich  
Attorney for Petitioner Crossroads Church of Prior Lake MN

Enclosures

**P-10**

REC'D JUL 31 2009

8-21-09



(Minn. 1984). Standard forms are used to prepare the documents for this process, and Relator has attached these standard documents as pages P-1 through P-5 of its memorandum in support of its petition for rehearing. Although Relator's counsel may have indicated early on in Tax Court that it intended to raise constitutional issues in its summary judgment motion, Relator never actually raised such constitutional issues in its summary judgment briefs, other than on pages 13-14 of its memorandum opposing Respondent's summary judgment motion, where it cited to the Constitution and to one case that provided a general interpretation of the constitutional provision. However, Relator raised this issue only in the context of the hardship requirement under its motion for waiver of taxes, which had already been denied by the Tax Court, and which was not relevant for the parties' summary judgment motions.

3. It was my understanding in the Tax Court proceeding that if either party had chosen to raise any constitutional issues in its summary judgment motion in Tax Court, those issues should have been raised in the parties original summary judgment briefs, with the understanding the Tax Court could not rule on such issues until it received the official transfer of jurisdiction from the District Court.

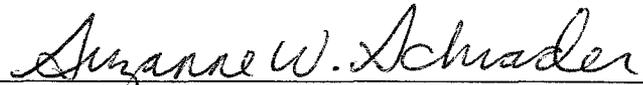
4. Petitioner was represented by two attorneys throughout the summary judgment proceedings in Tax Court: Ms. Lynn Basich and Ms. Valerie LeMaster.

5. The Honorable Judge Kathleen H. Sanberg of the Minnesota Tax Court issued her Order Denying Petitioner's Motion for Summary Judgment and Granting Respondent's Motion for Summary Judgment in the above entitled matter on April 13, 2010. By this date, the Tax Court had received jurisdiction to rule on constitutional

issues, and presumably would have ruled on such issues had they been raised by the parties.

6. To the best of my recollection, Relator's counsel, Ms. LeMaster, never asked the Tax Court Judge for the ability to do any additional briefing of constitutional issues, nor did I ever hear Relator's counsel claim either to me or to the Tax Court judge that she was somehow prevented from raising constitutional issues in Tax Court. Further, she never made this claim in Relator's Supreme Court brief or reply brief. To the best of my knowledge this claim relating to the *Erie transfer* is being made for the first time in this petition for rehearing, although all of the facts concerning such transfer were known prior to filing of Relator's appeal in the Supreme Court.

FURTHER AFFIANT SAYETH NOT.



Suzanne W. Schrader  
Assistant Dakota County Attorney

Subscribed and sworn to before me  
this 15<sup>th</sup> day of March, 2011.

  
Notary Public

