

A12-0378

STATE OF MINNESOTA
IN SUPREME COURT

William D. Larson,

Relator,

v.

Commissioner of Revenue,

Respondent.

REPLY BRIEF
OF
RELATOR WILLIAM D. LARSON

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I. MR. LARSON'S INTENT IN 1998 IS THE RELEVANT INQUIRY IN DETERMINING HIS DOMICILE CHANGE TO NEVADA, NOT HIS FINANCIAL STATUS AND RETAINED TIES TO MINNESOTA DURING 2002-2006.

The issue before this Court is whether the tax court erred by failing to apply the relevant law and properly analyze the relevant facts in determining Mr. Larson's domicile status. Relator contends that the tax court erred as a matter of law by failing to ascertain Mr. Larson's intent at the time of his move to Nevada in 1998. The record in this case (much of which was stipulated) provides substantial evidence of Mr. Larson's intent—our frame of mind—at the time of his 1998 domicile change and the actions and circumstances surrounding his decision to return to Nevada and make Las Vegas his home. (Brief of Relator William D. Larson (“Relator’s Brief” or “Larson Br.”) at 4, 6–12, 16–17.) The tax court, however, ignored this evidence and instead focused on Mr. Larson's financial means and his so-called “connections” to or “presence” in Minnesota during the years 2002–2006 in determining his domicile status. (Add-23 to Add-25.)¹

Throughout his Brief, the Commissioner endeavors to explain away the foregoing deficiencies in the tax court's analysis of the law and facts by either presupposing purposeful “credibility” determinations by the tax court where none exist (Respondent's Brief (“Comm'r Br.”) 25–26, 28, 31–34, 36–37) or fashioning findings not found anywhere in the tax court's Opinion or in the record (Comm'r Br. 26, 28–29, 31–32). For

¹ All terms and citations not otherwise defined herein have the same meaning as set forth in Relator's Brief.

the reasons set forth herein and in Relator's Brief, the Commissioner's arguments for sustaining the tax court's determination of Mr. Larson's domicile status should be rejected.

II. THE "PRESUMED CORRECTNESS" OF A COMMISSIONER ORDER IS IRRELEVANT TO APPELLATE REVIEW OF THE TAX COURT'S DECISION.

In his standard of review discussion, the Commissioner appears to invoke the presumption of correctness of Commissioner orders set forth in Minnesota Statutes § 270C.33, subdivision 6,² as relevant to this Court's review of the tax court's decision in this case. (Comm'r Br. 23.) Any reference to this "presumption of correctness" on appeal is entirely misplaced.

The presumption under Section 270C.33, subdivision 6, is merely one of a taxpayer's burden of going forward with the evidence and does not apply where the taxpayer appears for trial and presents evidence. *See* Minn. Stat. § 271.06, subd. 6; *Stronge & Lightner Co. v. Comm'r of Taxation*, 36 N.W.2d 800, 806-07 (Minn. 1949); (App-47 at note 2; App-128 at note 1). In the present case, Relator presented evidence at trial through stipulated facts and the testimony of five witnesses to establish Mr. Larson's change of domicile to Nevada in 1998. Whatever the presumption may be, it was rebutted at or before trial in this case and has no relevance on appeal.³

² It is assumed that the Commissioner meant to cite this statute since the two statutes cited at page 23 of his Brief were repealed in 2005.

³ The Commissioner's cited case of *F-D Oil Co. v. Comm'r of Revenue*, 560 N.W.2d 701, 707 (Minn. 1997) (a case in which the Commissioner's estimate of the taxpayer's unreported income was presumed valid after the taxpayer failed to produce adequate records) confirms the limited scope and purpose of the presumption.

III. THE TAX COURT ERRED AS A MATTER OF LAW IN FAILING TO ANALYZE OR MAKE ANY FINDINGS REGARDING MR. LARSON'S INTENT IN 1998.

In an attempt to remedy the tax court's errors of law in failing to analyze Mr. Larson's intent *in 1998* and examine the record as a whole, the Commissioner postulates (i) that the tax court analyzed the 26 factors of Minnesota Rule 8001.0300, subpart 3, and purposely disregarded many of Mr. Larson's actions in 1998 as "declarations" and (ii) that the tax court perhaps was influenced by Mr. Larson having filed his tax returns in 1998 as a physical presence resident under Minnesota Statutes § 290.01, subdivision 7(b). (Comm'r Br. 31–36.) The tax court's Opinion, however, is devoid of any such analysis or "purposeful disregard" in reaching its three-pronged rationale for determining Mr. Larson's domicile status for 2002–2006. (See Add-23 to Add-25.) That the Commissioner resorts to such machinations only further supports Relator's position that the tax court's decision should be reversed.

A. The Commissioner's Assertion that the Tax Court Analyzed the Facts in Accordance with the Law Is Contradicted by the Tax Court's Limited Analysis and Application of a New "Domiciliary Presence" Test.

At pages 33–34 of his Brief, the Commissioner asserts that the tax court did not create a "new test," but instead properly applied the 26 factors of Minnesota Rule 8001.0300, subpart 3. Relator's response to this assertion is two-fold. First, the tax court never ultimately analyzed the factors in arriving at its domicile determination. (See Add-20 to Add-25; Larson Br. 26.) Second, the tax court erred as a matter of law by solely emphasizing Mr. Larson's Minnesota connections—and ignoring his Nevada

connections—in fashioning and applying its newly-created “domiciliary presence” test. (See Add-23 to Add-25; Larson Br. 22–26.)

The proper focus of a domicile inquiry is whether a taxpayer intended to establish domicile in another jurisdiction—not whether a taxpayer abandoned his Minnesota connections. *Sanchez v. Commissioner of Revenue*, 770 N.W.2d 523, 526 (Minn. 2009). The 26 factors assist in ascertaining the taxpayer’s intent through circumstantial evidence. Here, the tax court failed to take into consideration *all* of the factors as part of the requisite examination of Mr. Larson’s intent in 1998. (See Add-23 to Add-25.)

The Commissioner attempts to justify the tax court’s singular focus on Minnesota connections and selective review of the 26 factors by citing this Court’s opinions in *Dreyling v. Commissioner of Revenue*, 753 N.W.2d 698, 704 (Minn. 2008), *Commissioner of Revenue v. Stamp*, 296 N.W.2d 867, 868–69 (Minn. 1980), and *Sandberg v. Commissioner of Revenue*, 383 N.W.2d 277, 283 (Minn. 1986). (Comm’r Br. 34–35.) None of these cases provides support for the tax court’s narrow and incomplete review of the evidence in this case. In *Dreyling*, *Stamp*, and *Sandberg*, the taxpayers’ Minnesota connections were discussed within the broader context of evaluating *all* of the facts relating to each taxpayer’s intent and as an integral part of an in-depth analysis of whether each of the 26 factors was relevant to or provided evidence of that intent. See *Dreyling*, 753 N.W.2d at 699–701, 703 (evaluating the taxpayer’s intent to change his domicile in the context of the taxpayer continuing to live with his wife (who remained a Minnesota domiciliary) and the determination that 13 of the 26 factors favored a finding that the taxpayer had not changed his domicile to Florida);

Stamp, 296 N.W.2d at 868–70 (ascertaining an airline pilot’s intent to change his domicile in light of the facts that he spent more than half the year in Minnesota, remained a full resident member of the Minneapolis Golf Club, and testified that his primary purpose in purchasing a condominium in Florida was to avoid the payment of Minnesota taxes); *Sandberg*, 383 N.W.2d at 279–80 (affirming the tax court’s decision based on its detailed analysis of the 26 factors and finding that the taxpayer’s claimed domicile change to Texas was not credible given the taxpayer’s lack of connections to Texas—he neither owned nor rented property there).

In contrast to *Dreyling*, *Stamp*, and *Sandberg*, the record in this case contains ample evidence regarding Mr. Larson’s intent and frame of mind in 1998 in moving to Las Vegas and the circumstances surrounding his move. This evidence, consisting of stipulated facts and the supplemental trial testimony of five witnesses, established the stresses in Mr. Larson’s business and personal life leading up to his 1998 domicile change and his decision to return to Las Vegas, a city he knew well and had previously resided in during the early 1980’s. (Larson Br. 6–7, 9–12, 16.) The tax court largely (if not entirely) ignored this evidence in determining Mr. Larson’s domicile status (*see* Add-23 to Add-25) and, as such, erred as a matter of law (Larson Br. 18–22).

B. Actions Taken By Mr. Larson in 1998 and Consistent with His Intent to Make Nevada His Home Are Not “Self-Serving Declarations” as Asserted by the Commissioner.

At pages 31–33 of his Brief, the Commissioner states that the “Tax Court correctly evaluated the weight and credibility of the evidence as to the factors concerning Mr. Larson’s driver’s license, voting registration, motor vehicle registration, and

homestead declaration” and disregarded them as “self-serving (or empty) declarations.” The Commissioner’s assertions find no support in the tax court’s decision or any legal authorities. The tax court never analyzed these factors (or any of the 26 factors under Minnesota Rule 8001.0300, subpart 3) in arriving at its domicile determination, and certainly never made any affirmative findings regarding the substance and character of such factors. (See Add-23 to Add-25; Larson Br. 26.) Given the tax court’s failure to conduct *any* review of Mr. Larson’s intent at the time of his 1998 domicile change and the actions taken contemporaneously with his move to Nevada in July 1998 (see Larson Br. 6–10), the Commissioner’s attempt to explain away the court’s errors and omissions by inferring that the court purposefully weighed the “credibility” of Mr. Larson’s actions under Factors J (driver’s license), B (voter registration), M (motor vehicle registration), and H (homestead status) and dismissed them as “empty declarations” is baseless—the tax court made no such “credibility” findings. (See discussion *infra* pp. 19–21.)

The Commissioner’s reliance on the case of *Sarek v. Commissioner of Revenue*, Docket No. 2524, 1979 WL 1107 (Minn. Tax Ct. Apr. 19, 1979), as support for disregarding Mr. Larson’s actions in 1998 at the time of his move to Nevada is equally without merit. (Comm’r Br. 33.) The “actions” referred to by the tax court in *Sarek* included the fact that Mr. Sarek (i) continued living and working full-time in Minnesota, (ii) didn’t purchase a home in Florida, (iii) didn’t get a Florida driver’s license or register to vote in Florida, and (iv) didn’t spend any time in Florida at all except 58 minutes (and even that was only by coincidence). *Sarek*, 1979 WL 1107. Unlike *Sarek*, the stipulated facts and trial testimony regarding Mr. Larson’s actions clearly establish his intent in

1998 to make Nevada, and not any other place, his home. (Larson Br. 10–12; App-55 to App-58; App-63 to App-66.) In essence, the Commissioner seems to want it both ways—on the one hand, if a taxpayer’s actions coincide with the 26 factors and demonstrate the taxpayer’s change of domicile (as Mr. Larson’s actions did), the Commissioner deems such actions to be nothing more than “empty declarations” and disregards them; on the other hand, if a taxpayer doesn’t take those same actions (as in *Sarek*), the Commissioner will argue that he or she cannot prove a change in domicile.

Importantly, and apart from his misplaced reliance on *Sarek*, the Commissioner cites no authority for his assertion that Factors J, B, M, and H may be disregarded in a domicile analysis as mere “empty declaratory statements”—nor could he.⁴ Indeed, doing so would render such factors meaningless and would violate the presumption that a Minnesota Rule is to be construed to give effect to all of its provisions. *See* Minn. Stat. § 645.17(2); § 645.001 (stating that Chapter 645 applies to Minnesota Rules).

⁴ The Commissioner may be trying to base his “empty declarations” argument on this Court’s opinions in *Dreyling*, *Stamp*, and *Nagaraja*. (*See* Comm’r Br. 29–30.) These opinions have no relevance to Mr. Larson’s case and fail to even remotely support the Commissioner’s argument. *See Dreyling*, 753 N.W.2d at 703 (rejecting the taxpayer’s testimony of time spent in Florida as “uncorroborated and self-serving” because the taxpayer failed to produce the requisite records); *Stamp*, 296 N.W.2d at 868–70 (rejecting the taxpayers’ statements that Florida was their home in the context of the taxpayers’ physical presence in Minnesota for over half the year and their testimony that they declared Florida as their home to avoid Minnesota taxes); *Nagaraja v. Comm’r of Revenue*, 352 N.W.2d 373, 377 (Minn. 1984) (rejecting the Commissioner’s reliance on a statement made by the taxpayers on student visa applications to the exclusion of all other acts and declarations).

C. The Commissioner's Assertion Regarding Mr. Larson's 1998 Minnesota Resident Income Tax Return Filing Is Both Perplexing and Meritless.

At pages 35–36 of his Brief, the Commissioner raises for the first time an argument regarding Mr. Larson's 1998 Minnesota resident return filing. As stipulated by the parties, Mr. Larson filed a Minnesota resident return for 1998 under the "physical presence" resident provisions of Minnesota Statutes § 290.01, subd. 7(b) (Mr. Larson was in Minnesota for more than one-half of the year and had an abode in Minnesota before moving his belongings to Las Vegas in July 1998). (Stip. ¶ 3 at App-2 to App-3.) The Commissioner argues that this somehow represents "sufficient evidence for the tax court to conclude that Mr. Larson did not change his domicile in 1998." (Comm'r Br. 36.) Apart from the fact that the tax court made no such finding, the Commissioner's argument is simply contrary to Minnesota law. Minnesota Statutes § 290.01, subdivision 7(b), defines a "physical presence" resident as follows:

[A]ny individual domiciled outside the state who maintains a place of abode in the state and spends in the aggregate more than one-half of the tax year in Minnesota.

Minn. Stat. § 290.01, subdivision 7(b) (emphasis added); *see also* Minn. R. 8001.0300, subp. 1(B). Given that a physical presence resident is, by definition, a person domiciled outside the state (as was Mr. Larson), the Commissioner's proposed argument is both perplexing and meritless, not to mention that it would render Section 290.01, subdivision 7(b), meaningless.

IV. THE COMMISSIONER—AS DID THE TAX COURT—ERRONEOUSLY FOCUSES ON MR. LARSON’S “CONNECTIONS” TO OR “PRESENCE” IN MINNESOTA DURING 2002–2006 TO THE EXCLUSION OF MR. LARSON’S INTENT AT THE TIME OF HIS MOVE TO NEVADA IN 1998.

At pages 24–25 of his Brief, the Commissioner cites various statutes, rules and case law addressing domiciliary residency under Minnesota law. These cited authorities recognize the importance of the taxpayer’s intent in determining a change in domicile; however, the Commissioner immediately ignores the significance of Mr. Larson’s intent in moving to Nevada in 1998 and proceeds to focus on Mr. Larson’s financial means and his Minnesota “connections” or “presence” during 2002–2006. (Comm’r Br. 25–33.)

In continuing his focus on the 2002–2006 time period to the exclusion of the evidence presented regarding Mr. Larson’s intent and frame of mind in 1998, the Commissioner then presents an incomplete, and in many respects inaccurate, review of the factors he believes the tax court correctly focused on in reaching its decision, including Mr. Larson’s family in Minnesota (Comm’r Br. 26–27), time spent in Minnesota and elsewhere (Comm’r Br. 27–28), Mr. Larson’s “control over his physical presence” (Comm’r Br. 29–30), and Mr. Larson’s failure to limit or sever ties to Minnesota, including Mr. Larson’s use of a personal financial assistant and various professionals in Minnesota (Comm’r Br. 30–31).

A. As Candidly Described at Trial, Mr. Larson’s Stressful Family Situation Further Explained His Frame of Mind in Choosing to Move Back to Nevada in 1998 and Make Nevada His Home.

At pages 26–27 of his Brief, the Commissioner recites various facts regarding Mr. Larson’s family in Minnesota, his generosity in providing financially for certain

family members (homes for his sister and her daughter, his adult son Tracy and his family, and his son and mother⁵), and his fondness for his daughter and enjoyment in returning to Minnesota on occasion to see her son, his grandson, participate in sports. These facts are not in dispute. (Larson Br. 14, 16.) There also is no dispute that Mr. Larson's hoped-for refuge from certain members of his family by moving to Nevada in 1998 did not prove as successful as he had originally hoped due to unexpected family issues and problems that required his return visits to Minnesota more often than he had originally anticipated (*see* Comm'r Br. 27; Larson Br. 16–17); however, such return travel during the tax years at issue is irrelevant to Mr. Larson's *frame of mind in 1998* in changing his domicile to Nevada (Larson Br. 18–22). The Commissioner then asserts that “the Tax Court had sufficient basis to conclude that Mr. Larson's family relations was a factor in its decision that he was domiciled in Minnesota and not Nevada.”⁶ (Comm'r Br. 27.) Once again, the Commissioner is simply wrong and fails to address the issue presented on appeal.

⁵ Not one “to let the facts get in the way of a good story,” the Commissioner incorrectly states that Mr. Larson stayed with his ex-girlfriend and his son during his recovery from surgery in “1999.” (Comm'r Br. 26–27.) Mr. Larson's kidney cancer surgery was in the Fall of 1997, as was his two-week recovery period in Minnesota. (Stip. ¶ 21 at App-9 to App-10; Tr. 39–41; Larson Br. 9.)

⁶ Omitted from the quote is the Commissioner's comment about Nevada not having an income tax, which is repeated several times in Respondent's Brief as a not-so-subtle inference that Mr. Larson chose Nevada for tax reasons (*e.g.* Comm'r Br. 8, 25, 27)—nothing in the record even suggests that Mr. Larson's domicile change was tax motivated. In fact, Mr. Larson paid over \$1,000,000 in taxes to Minnesota during the years at issue as a non-resident. (Stip. ¶ 30 at App-14.) It is also noted that the Commissioner stipulated to the fact that Mr. Larson previously resided in Nevada in the early 1980's, but never alludes to any alleged tax motivation for that move from Minnesota. (*See* Stip. ¶ 16 at App-7.)

Nowhere does the Commissioner address Relator's challenge to the tax court's reliance on the continued presence of Mr. Larson's family in Minnesota as part of its "totality of acts and circumstances" in determining Mr. Larson's domicile status during 2002–2006 (*see* Add-24), while omitting any reference to Mr. Larson's stressful family situation in 1998 as one of the reasons he moved to Nevada (Larson Br. 16–17).⁷ This is just one of many errors by the tax court as it focused on the tax years at issue rather than the year of Mr. Larson's domicile change. (*See* Larson Br. 16–22.)

In addition, by focusing on the mere presence of Mr. Larson's family in Minnesota, the tax court erred in failing to recognize that the courts have consistently held that a taxpayer need not sever ties with family members to effect a change in domicile. *See Marcotte v. Comm'r of Revenue*, Docket No. 4541, 1987 WL 10252 (Minn. Tax Ct. Mar. 13, 1987) (holding taxpayer was a domiciliary of Florida even though his children and parents continued to reside in Minnesota and the taxpayers frequently returned to visit them); *Truex v. Comm'r of Revenue*, Docket No. 3246, 1982 WL 1509 (Minn. Tax Ct. Nov. 5, 1982) (holding taxpayers were domiciliaries of Florida, and noting that it was understandable that the taxpayers spent "substantial time" in Minnesota because they had family ties to the state, including their college-age son who resided at their Minnesota home); *In re Miller's Estate v. Comm'r of Taxation*, Docket No. 323 (Minn. Bd. Tax App. May 7, 1952), *aff'd*, *Miller v. Comm'r of Taxation*, 59

⁷ The court never questioned the sincerity of Mr. Larson's testimony in this regard and any inferences to the contrary by the Commissioner are meritless. (*See* Comm'r Br. 26, 36–37.)

N.W.2d 925 (Minn. 1953) (holding taxpayer was a domiciliary of Florida even though his elderly brother, with whom he was quite close, lived in Minnesota). (App-131 to App-132 (note 3).)

B. Once a Taxpayer Changes His Domicile to Another State, Presence in Minnesota is Only Relevant in Determining Whether the Taxpayer is a “Physical Presence” Resident for Income Tax Purposes.

At page 27 of his Brief, the Commissioner states that the “Tax Court determined that Mr. Larson spent most of his time in Minnesota and correctly used that as a factor to determine his domicile was Minnesota.” We disagree.

First, as the stipulated facts show, following his change in domicile to Nevada in 1998, Mr. Larson spent most of his time *outside* the State of Minnesota and was not a “physical presence” resident for any of the years 1999–2006. (Stip. ¶ 3 at App-1 to App-2.) Second, Minnesota Rule 8001.0300, subpart 3(W) (“Factor W”) mentions the percentage of time present in Minnesota and the percentage of time in each jurisdiction other than Minnesota; however, this factor does not require that a taxpayer spend less time in Minnesota than any other jurisdiction. Finally, the tax court made statements with regard to the factors under Minnesota Rule 8001.0300, subpart 3 (Add-18 to Add-23), including Factor W (Add-23), but never referenced it in its three-pronged rationale for determining Mr. Larson’s domicile status in 2002–2006 (*see* Add-23 to Add-25).

As the Commissioner concedes at page 25 of his Brief, there is no “magic formula” in determining a change in domicile and, as stated by this Court in *Sanchez*, to establish one’s domicile change “[o]ne must actually reside in the new state at the time the intent is formed to make the new state one’s permanent home.” *Sanchez v. Comm’r*

of Revenue, 770 N.W.2d 523, 527 (Minn. 2009) (quoting *Wolf v. Comm’r of Revenue*, Docket No. 7068, 1999 WL 640030, at *2 (Minn. Tax Ct. Aug. 17, 1999)). Once domicile is established, there is no magic number of days one must reside in one’s new home state. See *Luther v. Comm’r of Revenue*, 588 N.W.2d 502, 504 (Minn. 1999) (finding that Ms. Luther was a domiciliary of Florida even though she spent more than half the year in Minnesota); *Marcotte*, 1987 WL 10252, at *1–2 (finding that the taxpayers were Florida domiciliaries even though they spent only a few months in Florida and spent a considerable amount of time in Minnesota); *In re Miller’s Estate*, Docket No. 323, *aff’d*, *Miller*, 59 N.W.2d 925 (finding that the taxpayer was a domiciliary of Florida even though he “unquestionably spent more actual time each of the years enumerated in Minnesota than he did in Florida”). (See also App-135.) As stipulated by the parties, Mr. Larson resided in Nevada in 1998 at the time he formed his intent to make Las Vegas his new home (Stip. ¶ 21 at App-9 to App-10; Stip. ¶¶ 23–24 at App-10 to App-11; Ex. 3 at App-17) and resided in Nevada every year thereafter (Stip. ¶ 29 at App-13).

C. The Fact that Mr. Larson Has the Financial Means and Ability to Travel Where and When He Chooses Is Not Relevant to Where He Considers Home.

At pages 29–30 of his Brief, the Commissioner embraces the tax court’s third-prong of its stated rationale for determining that Mr. Larson was domiciled in Minnesota during 2002–2006, namely, since Mr. Larson was “a person of great means, ability and mobility and [can reside, spend his days, and hire professionals anywhere], he time and again [chose] Minnesota.” (Add-24 to Add-25.) The Commissioner then reiterates the same “travel pattern” allegations that were included in his post-trial brief (App-99,

App-103 to App-106, App-112 (¶¶ 40–43)) to bolster his assertion that the tax court’s above determination was “well supported by the facts in the record.” (Comm’r Br. 29. *But see* App-135 (note 9), App-154 to App-156 (¶¶ 40–43), App-178.) Again, Relator disagrees.

Even if the number of flights in and out of Minnesota versus Nevada in 2005 and 2006 were relevant to the determination of Mr. Larson’s change in domicile in 1998 (which Relator submits it is not), it should at least be based on complete and accurate records. As set forth in Relator’s Brief at page 29, the “travel pattern” promoted by the Commissioner, and adopted by the tax court almost verbatim in its findings of fact (Add-9), is based on incomplete flight data and then only for the years 2005 and 2006. (*See* App-135 (note 9), App-154 to App-156 (¶¶ 40–43), App-178.) For these reasons, the Commissioner’s argument (and the tax court’s reliance on it) lacks any evidentiary support.⁸ (*See* Larson Br. 10–12, 29.)

D. Mr. Larson’s “Ties” to Minnesota Must Be Viewed in the Context of His 1998 Change in Domicile and the Record as a Whole.

The Commissioner next argues that the tax court “properly found that Mr. Larson continued his ties with Minnesota” and lists those ties as his Minnesota bank accounts,

⁸ Additionally, if Mr. Larson’s presence in Minnesota for less than one-half of every year after 1998 is relevant (*see supra* pp. 12–13), the tax court incorrectly concludes that Mr. Larson chose to return to Minnesota for all of the days he was present in the state during 2002–2006 (Add-24). As Mr. Larson testified, he would travel to Minnesota when his real estate broker would call with the prospects of an investment property that he wanted Mr. Larson to immediately inspect and consider for purchase. (Tr. 49–50, 69–70.) Mr. Larson also testified that apart from spending holidays with his family, he felt obligated to return to Minnesota more often than originally anticipated to assist in addressing family problems and issues, largely involving his two sons. (Tr. 51, 80–86.)

his ownership of Minnesota businesses and income from those businesses, his ownership of Minnesota property, his registered vehicles in Minnesota, and his personal financial assistant who lives in Minnesota. (Comm'r Br. 30–31.) Relator does not deny that Mr. Larson retained “ties” to Minnesota, but maintains that the tax court erred in failing to take into consideration the stipulated facts and trial testimony that showed the true nature of those ties and that they were of the very type the courts have held are not required to be severed in establishing a new domicile.⁹ (Larson Br. 12–15, 26–29; App-132.)

For instance, Mr. Larson continued to have bank accounts, professional advisors, and mail delivery in Minnesota for the convenience of his trusted personal financial assistant, Ms. B , who handled all of these matters for Mr. Larson. (See Larson Br. 14.) In an apparent reference to this fact, the Commissioner states at page 31 of his Brief that “Mr. Larson’s connections to Minnesota were so strong that Mr. Larson utilizes a personal Minnesota accountant to handle all of his banking, bill-paying, and his ‘hobby’ of buying and selling Nevada properties.” Putting aside the Commissioner’s unwarranted and factually untrue “hobby” comment,¹⁰ the fact that Mr. Larson continued to retain

⁹ See, e.g., *Marcotte*, 1987 WL 10252, at * 2 (“Because of long-term business and social relationships and the ownership of property in Minnesota, many ties were not broken and probably never will be broken. This is not necessary.”); *In re: Miller’s Estate*, Docket No. 323, *aff’d*, *Miller*, 59 N.W.2d 925 (finding taxpayer was a Florida domiciliary despite significant retained Minnesota ties—he owned businesses in Minnesota, had financial and familial ties to the state, and kept a home in the state).

¹⁰ The stipulated facts clearly refute any characterization of Mr. Larson’s investment property interests as a mere “hobby.” As stipulated by the parties, “[f]ollowing the purchase of his Las Vegas residence, Mr. Larson decided that his new business life would

Ms. B to manage his personal financial affairs is irrelevant to Mr. Larson's domicile status and is nothing more than an attempt by the Commissioner to argue for some form of "domicile by proxy." (See Larson Br. 14; App-137.) In essence, the Commissioner and the tax court incorrectly suggest that to establish a change in domicile, Mr. Larson was required to fire a trusted personal financial assistant and replace her with a new one outside the state. (See Comm'r Br. 31; Add-24.) The law does not require such actions¹¹ (and it may come as some surprise to other wealthy individuals, who have left the state and have retained their financial managers or home offices in Minnesota to manage their finances, that they risk having their domicile change challenged by the Commissioner if they don't fire their in-state advisors and remove their investments from the state.)

As to Mr. Larson's business interests in Minnesota, the stipulated facts establish that (i) following the stressful period of 1989–1996, Mr. Larson pulled back from the day-to-day operations of his businesses and turned over all day-to-day management to others, most notably Al O and Glenn E (Stip. ¶¶ 17–18 at App-7 to App-8), (ii) following his cancer diagnosis in 1997, Mr. Larson's decision to remove himself from

principally consist of pursuing his interest and enjoyment in buying and selling real estate" (Stip. ¶ 25 at App-11) and after "[h]aving become familiar with the condominium complex where he purchased his Las Vegas residence in June 1998, Mr. Larson purchased five additional units in the same complex for investment and rental purposes (Stip. ¶ 27.b. at App-11; see also Ex. 3 at App-17).

¹¹ See, e.g., *Morrissey*, Docket No. 4866, 1988 WL 91653, at *9 (Minn. Tax Ct. Aug. 15, 1988) (finding it understandable that the taxpayer would continue to see doctors in Minnesota because of their expertise); *Page v. Comm'r of Revenue*, Docket No. 4011, 1986 WL 15695, at *9 (Minn. Tax Ct. Mar. 12, 1986) (rejecting the Commissioner's "great emphasis" on the dollar amounts of checks written in Minnesota versus those written in Illinois and holding that to "require such posturing" of closing Minnesota bank accounts "would be absurd").

the stresses of the day-to-day operations of his businesses was further solidified and accelerated (Stip. ¶ 21 at App-9 to App-10), and (iii) after purchasing and moving to his Las Vegas residence in 1998, Mr. Larson, as owner and chairman of the companies, communicated with Mr. O and Mr. E on various business matters primarily by telephone and fax (Stip. ¶¶ 19, 24–25 at App-9, App-11).

At trial, Mr. O and Mr. E described their significant responsibilities and duties in managing all aspects of the day-to-day operations of the companies (Tr. 163–64, 172–75) and stated that, after Mr. Larson moved to Nevada in 1998, they rarely ever saw him at the offices (and when they did it was for 15 or 20 minutes at most) and typically communicated with him by telephone or fax to pass along information to him as the owner or discuss major acquisitions requiring his approval (Tr. 165–67, 178–81). Both described the incredible stress Mr. Larson experienced during the period 1989–1996 in saving his companies and the incredible toll it had on him (Tr. 164–65; 175–77) and both stated that Mr. Larson felt very comfortable in moving to Las Vegas in 1998 knowing that his businesses were in good hands (Tr. 167, 181). Mr. Larson also described turning over his businesses to Mr. O and Mr. E after the very stressful period of 1989–1996 as follows:

Well, then I decided I would move back to Las Vegas. I had strong manager[s] at both Citi-Cargo and Larson Companies, which is essentially the dealerships. And so I told them that they were in complete control, [in] charge of every aspect of the business. If they decided they wanted to expand something or if there was a major sale involved or something that was significant, we would talk about it. Otherwise they were in complete control of everything and I wanted out.

(Tr. 34.) The fact that Mr. Larson continued to own businesses in Minnesota, particularly

within the context of the above evidence in the record, is not relevant to a determination of his domicile status. *See In re Miller's Estate*, Docket No. 323, *aff'd*, *Miller*, 59 N.W.2d 925 (finding the taxpayer, who sold some of his Minnesota business interests, transferred control of his other Minnesota businesses to trusted managers, and spent far more than half the year in Minnesota running his businesses, a Florida domiciliary).

Finally, the Commissioner's reference to Mr. Larson's continued ownership of property in Minnesota after moving to Nevada in 1998 (and its irrelevance to Mr. Larson's domicile status) has been addressed at pages 13–14 of Relator's Brief.¹² As such, and contrary to the tax court's insinuation that Mr. Larson "resides" in Minnesota (Add-24) and the Commissioner's assertions that Mr. Larson maintained a "residence" in Minnesota in 2002–2006 (Comm'r Br. 10–11, 12), the parties stipulated that Mr. Larson has not had a residence in Minnesota since 1998 and that all of his Minnesota properties are held for investment and sale¹³ (Stip. ¶ 27.a. at App-12; Ex. 3 at App-17). The parties

¹² Similarly irrelevant to Mr. Larson's domicile status is the Commissioner's discussion of where Mr. Larson's vehicles were registered in 2005 and 2006, but largely located elsewhere or used by others. (*See* Relator Br. 15; Tr. 94–98.) It is also noted that the Commissioner's statement at page 13 of his Brief that Mr. Larson had 22 recreational vehicles registered in Minnesota and Wisconsin is misleading—16 of the 22 were registered in Wisconsin, 19 of the 22 were located in Wisconsin, Mr. Larson never personally used any of them, and the one that was used in Minnesota was used by his grandson. (Tr. 99–100.)

¹³ The Commissioner's description of the 532 Harrington Road and 1580 Bohn's Point Road properties as Mr. Larson's "home" and "residence" is particularly disingenuous. For instance, the 532 Harrington Road property was the former home of record producer Terry Lewis and, at 40,000 square feet, was more like a hotel with a recording studio and beauty shop for the use of Mr. Lewis's recording artists. (Tr. 65–66.) Mr. Larson's renovations to the property (such as the removal of the recording studio) were solely to make it more marketable for sale. (Tr. 66.)

also stipulated that the only residence Mr. Larson had following his move to Nevada was his Las Vegas residence. (Stip. ¶¶ 24, 27.a., 27.b. at App-11 to App-12; Ex. 3 at App-17.) The testimony of Mr. Larson and Ms. B at trial further established that none of Mr. Larson's Minnesota investment properties was his home and none was homesteaded by Mr. Larson. (Exs. 47-48, 51; Tr. 62-74, 195-202.)

V. CONTRARY TO THE COMMISSIONER'S ARGUMENTS, THE TAX COURT'S ERRORS OF LAW AND OMISSIONS OF FACT CANNOT BE EXPLAINED AWAY BY MERE INFERENCES THAT THE TAX COURT DID SO PURPOSELY IN WEIGHING THE CREDIBILITY OF THE EVIDENCE.

As noted herein (*supra* pp. 1, 3, 5-7), the Commissioner time and again summons the mantra that the tax court, as trier of fact, is in the best position to judge the credibility of evidence, but only when it appears to be expedient for him to do so in explaining away the tax court's errors of law and incomplete findings of fact. (*See* Comm'r Br. 25-26, 28, 32, 33-34, 36-37.) The tax court, however, did not make (or even allude to) any findings of "credibility" (which would have been difficult since many of the facts omitted by the court in its decision were stipulated). (*See* Add-1 to Add-25.)

In addition to the myriad of inferred "credibility" findings set forth in the Commissioner's Brief and discussed herein (*supra* pp. 1, 3, 5-7), the Commissioner attempts to characterize the tax court's erroneous reliance on Mr. Larson's 2002 and 2003 federal return rental schedules in its domicile determination as a "credibility" judgment in balancing the "unamended" tax returns against Mr. Larson's testimony. (*See* Comm'r Br. 36.) The tax court, however, made no such credibility finding. Instead, it simply ignored

the explanations for the typographical errors on the tax returns¹⁴ (*see* Larson Br. 5 at note 4, 26–27) as well as the stipulated facts establishing that the condominium purchased by Mr. Larson in June 1998 (Unit 401) was his “residence” (as opposed to an “investment and rental property”) and that Mr. Larson subsequently purchased five additional investment and rental properties in the same building.¹⁵ (Stip. ¶¶ 24–25, 27.b. at App-11 to App-12; Ex. 3 at App-17.)

While Relator does not dispute the trial court’s role in evaluating the credibility of witness testimony, the errors and omissions in the tax court’s decision raised on appeal center squarely on the court’s failure to apply the correct legal analysis to the relevant time period (Mr. Larson’s intent in 1998 in changing his domicile to Nevada) and failure to evaluate the relevant stipulated facts and undisputed testimony regarding that domicile change (the facts and circumstances surrounding Mr. Larson’s domicile change in 1998) (Larson Br. 18–22)—the tax court never questions (or even alludes to) the credibility of any of the five witnesses who testified at trial in rendering its decision in this case. This Court has held that, while it ordinarily defers to the trial court on matters of credibility, it will not do so where the trial court has made no such credibility findings. *See Dreyling v. Comm’r of Revenue*, 711 N.W.2d 491, 497 (Minn. 2006).

¹⁴ It is worth noting that the 2002 and 2003 rental schedules referenced by the tax court and the Commissioner represent only one to two pages of complex returns totaling 100 to 150 pages. (*See* Exs. 40–41 at TX1217 to TX1485.)

¹⁵ As clearly reflected in Exhibit 3 (App-17), under the heading “Nevada Investment Property, are Units 1005, 311, 1008, 124 and 402 and, under the heading “Nevada Residences,” is Unit 401 (as well as Mr. Larson’s Nevada residences purchased after selling and moving from Unit 401 in 2006).

CONCLUSION

The tax court's failure to apply the relevant legal inquiry regarding Mr. Larson's intent at the time of his domicile change in 1998—and the court's erroneous focus on Mr. Larson's Minnesota "ties" during 2002–2006 to the exclusion of the stipulated facts and trial testimony relevant to the 1998 domicile change—are errors as a matter of law. The Commissioner attempts to explain away the tax court's errors of law and omissions of fact by presupposing purported "credibility" determinations by the court where none exist or conjuring up factual findings neither found in the tax court's decision nor supported by the record. These attempts should be rejected and, for the reasons set forth herein and in Relator's Brief, the tax court's determination that Mr. Larson was a Minnesota domiciliary resident during 2002–2006 should be reversed.

Respectfully submitted,



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5134623

STATE OF MINNESOTA
IN SUPREME COURT

William D. Larson,

Relator,

**CERTIFICATION OF BRIEF
LENGTH**

vs.

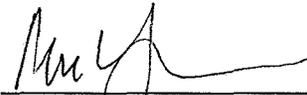
Commissioner of Revenue,

SUPREME COURT CASE NUMBER: A12-0378

Respondent.

I hereby certify that this brief conforms to the requirements of Minn. R. Civ. App. P. 132.01, subs. 1 and 3, for a brief produced with a proportional font. The length of this brief is 6,487 words. This brief was prepared using Microsoft Office Word 2010.

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