

Tax Section News

A Publication of the Minnesota State Bar Association Tax Section

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Editor's Note:

This year will mark the 75th Anniversary of the Tax Institute. To commemorate this Anniversary, we will be publishing articles and other items in the newsletter that take a look back into the history of the Tax Institute, the history of the MSBA Tax Section, and honor some of the many individuals who have contributed their time and efforts to the Tax Institute and MSBA Tax Section. We hope that you will find these items to be fun and interesting.

In this edition, you will find an article by Jerry Geis of Briggs and Morgan recalling the history of the Judges Conference and Tax Seminar, followed by a list of all past Distinguished Service Award winners. Thank you, Jerry, for all of your work pulling these items together so we can make this Anniversary special.

Sincerely,

Mike O'Brien, Editor

2014-2015 Tax Law Section Officers

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Chair's Report

By Caroline Balfour, Grant Thornton LLP

Congratulations on completing another tax busy season for those of you involved with tax filings! In addition to the filing season, it has been a busy spring for the Tax Section with the legislative session well underway. There are a number of updates and events that happened over the last few months.

CLES

The annual Tax Law Town Hall meeting was held in February at the Minnesota Department of Revenue. This was a good opportunity for attendees to hear from the new Commissioner of the Minnesota Department of Revenue, Cynthia Bauerly, the Assistant Commissioner, Terri Steenblock and the Senior Manager for Tax Policy, Paul Cumings. The Department provided their views and predictions for the legislative outlook in 2015 as well as providing an update on the Minnesota residency study group. We also heard updates from Tamar Gronvall with the Attorney General's office. Thank you to the Minnesota Department of Revenue for hosting this event.

The Tax Section had a Careers in Tax Law panel discussion in February at the University of Minnesota Law School with Professor Kathryn Sedo moderating the session. We had a diverse panel that discussed their individual career paths, including how they chose tax law, whether they have a tax background or CPA, what law school classes or experiences have been most helpful in their careers, pro bono opportunities in tax law, and the differences between practicing in-house, at a law firm, at an accounting firm, in wealth management, and in government. A special thanks to our panelists: Angie Veldhuizen (SilverOak Wealth Management), Sara Bruggeman (Minnesota Attorney General's Office), Stacy Lindstedt (3M) and Mash Yevzelmen (Fredrickson & Byron).

In March, we took an international tax polar plunge and hosted a moderated panel examining recent developments in the international tax topics of corporate inversions, FATCA and expatriations. Our speakers included Ken Levinson (Faegre Baker Daniels), Kevin Kaiser (Lindquist and Vennum), Masha Yevzelman (Fredrickson and Byron), and David Martin (PWC) moderated. Thank you Ken, Kevin, Masha and David!

75th Annual Tax Institute

The Tax Institute planning committee had a working group session to kick off the planning for the 75th annual tax institute. The 75th annual institute will likely be celebrated with a special reception, newsletter and historical memorabilia mini museum available for attendees to view. Stay tuned for more details as the date gets closer...

Update on Legislative Initiatives

The Tax Section Legislative Co-Chairs Benjamin Wagner (Regan Tax Law), Andrew Howard (Brigg and Morgan) and Kevin Kaiser (Lindquist and Vennum) were busy working with Bryan Lake, the MSBA lobbyist in pushing forward the residency initiative. The bill language being moved through the legislature will remove the location of an individual's attorneys, CPAs, or financial advisors as a factor for determining residency.

This spring we also supported three amendments that were being proposed by the Minnesota Tax Court. A summary of these items is provided below:

- The Minnesota Tax Court seeks to amend Minnesota Statute Section 271 to conform to the deadline for filing post-trial motions in the tax court (currently 15 days under Minn. Stat. § 271.08, subd. 1) to the deadline permitted under civil provisions (Minn. R. Civ. P. 59 and 60 for filing post-trial motions in the district court. The civil deadline was once also 15 days, but it was increased to 30 days in the 1990s. The tax court deadline was never extended. The shorter deadline is difficult for parties to meet, and the difference in filing deadlines poses a trap for taxpayers and their counsel.
- The second amendment increases the jurisdictional limit for seeking relief in the tax court's small claims division (currently \$5,000 under Minn. Stat. § 271.21, subd. 2) to the jurisdictional limit for conciliation court (also once \$5,000 but currently \$15,000). The jurisdictional limit for the tax court's small claims division has not been increased since the mid-1980s.

- Finally, the tax court seeks flexibility in using the additional funds appropriated by the Legislature in the current biennium (currently restricted to paying for two law clerks, Westlaw, and continuing education) to meet the court's general operating expenses, to the extent available.

Call for Authors!

We are always looking for tax related articles to publish in the newsletter. Whether you're a law student, new lawyer or experienced professional, we are interested in submissions from you. If you are interested in submitting an article, please contact our editor Mike O'Brien (KPMG).

Membership Outreach

We are always looking to increase membership and participation. I encourage each person reading this newsletter to help us meet these goals by reaching out to a colleague, lawyer or law student that is interested in tax or practices in tax, but does not participate or have a membership. Also, if there are any suggestions or comments on how we can better provide value to your membership, please let us know.

REFLECTION ON ANNUAL JUDGES CONFERENCE AND TAX SEMINAR

As we approach the 31st Annual Judges Conference and Tax Seminar, we should reflect on how it got started and its development. Outside of the Tax Institute, the Annual Judges Conference and Tax Seminar is the best attended event sponsored by the Tax Section.

Jim Littlefield, a former Department of Justice attorney and ex-member of the District of Columbia Tax Bar, and an officer of the Minnesota Tax Section, felt that there was a need to have a tax conference that would be focused on litigation and the tax courts. So, the Judge's Conference was conceived and the first event took place in May 1984 under his mantle.

The Minnesota State Bar Association Tax Section News, Volume 84, No. 2, June 1984, on page 7, describes the first Annual Judges Conference.

"For the first time, at least in recent memory, the Tax Section sponsored a reception for United States and Minnesota Tax Court Judges, tax attorneys from the IRS District Counsel's staff, and the Minnesota Attorney General's staff and private attorneys. The reception, set to coincide with the U.S. Tax Court's St. Paul sessions, was held from 4:30 – 6:30 on May 16 at the Granada Royale Hotel in St. Paul. Brief presentations were made by U.S. Tax Court Judge Wilbur and Minnesota Tax Court Judge Gustafson. The reception was attended by approximately 17 people."

The Chair that year, Jack Carlson, wrote in the same issue of Tax Section News at page 11:

"The meeting was successful in giving members of the Section the opportunity to become familiar with the Tax Court Judges and the workings of the Federal and Minnesota Tax Courts."

The Conference was held again in 1985 and in 1986, but with the illness of Jim Littlefield, Dick Brennan and Jerry Geis co-chaired the Conference in 1986. There was also a slight change in focus to include important officials and administrators from the IRS and from the Department of Revenue, the Attorney General's Office, and District Counsel of the IRS into the Conference. The 2½ hour program was split into the various segments described above and that format has remained the same until today.

In addition to expanding the focus to also include tax administration and the attorneys of the IRS and the Department of Revenue, the seminar was premised on the idea that when the Conference ended, the attendee would have an overview of what is happening at the IRS, State, and the courts.

The name of the Judges Conference was also changed in 1986 to the Annual Judges Conference and Tax Seminar to reflect the expansion in its focus.

The Conference is unique since its focus is not on one subject exhaustively explained, but on big picture summaries on audit trends and cutting-edge tax issues presented by the top tax administrators, whether from the IRS or the State, the Judges themselves, and the attorneys of the Revenue Departments.

Another change involved a networking or social aspect of the Conference. From at least 1986, there has been a reception where any member of the Tax Section could talk to any of the Judges, tax administrators, and their colleagues about tax issues. Further, after the hors d'oeuvres reception, which normally lasts an hour to an hour and a half, there is a banquet for all the speakers, whether judges or tax administrators, past Distinguished Service Award winners, former chairs of the Tax Section, and other distinguished guests.

In 1991, a further change was implemented with the Conference with the awarding of the Tax Section's Distinguished Service Award. The Award was designed to honor those lawyers, whether judges or lawyers for the Revenue Departments, or attorneys of the Tax Section, who exemplify extraordinary tax competence, professionalism, and contributions to the tax community. There were three years where no awards were given (1996, 2002, and 2005).

REFLECTION ON ANNUAL JUDGES CONFERENCE AND TAX SEMINAR

The first class of awardees, in 1991, included two Revenue Commissioners (Dorothy A. McClung, and John P. James), a Tax Court Judge (Jean Stepan), and Tom Muck, from the Attorney General's Office, and Jerry Geis.

Since 1991, there have been thirty-one award winners composed of six Judges (Jean Stepan, Art Roemer, Earl Gustafson, Diane Kroupa, Ray Krause, and Kathleen Doar), two Attorney Generals (Barry Greller and Tom Muck), two Commissioners of Revenue (Dorothy McClung and John James), three lawyers from the office of Chief Counsel (Bob Cunningham, Jerry Leland, and John Schmittiel), Joel Michael from Minnesota House Research, and sixteen members from the Tax Section.

The location of the Conference changed over the years. It was held for many years at the Minnesota Club, and after 10-15 years, shifted to the Downtown University Club, and this year will be held at the Doubletree Hotel in downtown St. Paul.

Attendance has varied over the years from a high of almost 125 attendees to an average of about 75-100 attendees each year.

When Dick Brennan retired in 1999, Walter Pickhardt became the co-chair in 2000 and has remained the co-chair since that time.

The success of the Conference can only be attributed to the participation of the Judges (whether U.S. Tax Court or Minnesota Tax Court), the Revenue Commissioner, and the IRS officials plus their legal representatives, all who have willingly given up their time to present and discuss. Indeed, all of the Minnesota Tax Court Judges have attended the Conference each year since 1984. The Conference has retained its freshness and vitality because of them. The willingness of the speakers and attendees to participate, though their names may change, has generated the momentum and longevity of the Conference.

We owe a debt of gratitude to Jim Littlefield for his efforts in creating, planning and organizing the first Conference and making it into what it stands for today. As this year's Conference happens in June, we will once again be participating in a wonderful event he fostered. Mark your calendars for June 17, 2015 and we look forward to seeing you there.

MSBA – TAX LAW SECTION RECIPIENTS OF THE DISTINGUISHED SERVICE AWARD

YEAR	RECIPIENT
1991	The Honorable Judge M. Jean Stepan, Minnesota Tax Court
1991	Jerome Geis
1991	John P. James
1991	Thomas R. Muck
1991	Dorothy A. McClung, Commissioner of Revenue
1992	Dudley Switzer, IRS District Director
1993	Jack W. Carlson
1993	The Honorable Judge Arthur C. Roemer, Minnesota Tax Court
1994	David R. Brennan
1995	The Honorable Judge Earl B. Gustafson, Minnesota Tax Court
1996	No Recipient
1997	Robert F. Cunningham, Office of Chief Counsel
1998	The Honorable Judge Kathleen Doar, Minnesota Tax Court
1999	Professor Denise R. Roy, William Mitchell College of Law
2000	David N. Haynes
2001	The Honorable Judge Diane L. Kroupa, Minnesota Tax Court
2002	No Recipient
2003	The Honorable Judge Raymond R. Krause, Minnesota Tax Court
2003	Gerald W. Leland, IRS Office of Chief Counsel
2004	Barry R. Greller, Minnesota Attorney General Office
2005	No Recipient
2006	Martin A. Culhane, III
2006	Frances H. Holmes
2007	John W. Windhorst, Jr.
2008	Walter A. Pickhardt
2009	Paul J. Linstroth
2009	Dale H. Busacker
2010	William D. Klein
2010	Joel T. Michael, Minnesota House Research
2011	Thomas M. Regan
2012	Bruce A. Ackerman
2013	Gina B. DeConcini
2014	John C. Schmittiel, IRS Office of Chief Counsel
2015	Terence A. Costello

Commissioner's Comments — A steady vision steers department through changing tax code

By Cynthia Bauerly, Minnesota Revenue Commissioner

With this year's legislative session and tax filing season both in full swing, it's an exciting time of year at the Department of Revenue.

Each session brings changes to our tax code. But the department's vision – Everyone reports, pays, and receives the right amount: no more, no less – remains steady. That vision lies at the heart of our ongoing efforts to improve customer service while bringing more innovation and efficiency to our work.

We depend on people throughout the department to achieve these goals, and one of my priorities is to ensure our employees have what they need to grow and excel in their jobs. With that in mind, I want to introduce the newest members of our senior management team.

Ryan Church, Deputy Commissioner – Ryan brings 30 years of administrative leadership experience in state and local government to help us realize our mission. He came to Revenue from the Department of Administration where he served as an assistant, deputy, and acting commissioner. Ryan holds a Master in Public Administration from Harvard University and a Master in Business Administration from Metropolitan State University.

Kimberly Slay Holmes, Assistant Commissioner for Administrative Law and Compliance – Kimberly will work with our Appeals & Legal Services and Criminal Investigation divisions, and other units, to provide additional legal resources throughout the agency. She has practiced law for 27 years and started her own law firm, with a focus on tax litigation, complex business litigation, and employment and insurance law. She previously led the legal division of the Louisiana Department of Revenue, where she implemented a professional development program for attorneys and legal

staff. Kimberly holds a J.D. from Southern University Law Center and a B.A. in Public Administration from Drake University.

Pete Skwira – Assistant Commissioner for Administration/CFO – Pete will help the department operate efficiently in his role overseeing our Financial Management, Business Planning, Human Resources, and Facilities divisions. He has worked with the Minnesota House of Representatives and several state agencies, most recently as Revenue's financial management director. In his 20-year career, he has directed a range of financial and budget activities, grant and volunteer programs, human resources, and labor relations. Pete holds a degree in Biology from St. John's University.

Ryan, Kimberly, and Pete join a talented group that already includes:

- Paul Cumings, Manager for Tax Policy
- Terri Steenblock, Assistant Commissioner for Individual Taxes
- Jenny Starr, Assistant Commissioner for Business Taxes
- Greg Tschida, Chief Information Officer

The department's hard-working, talented employees keep the revenue system running each day. Thanks to them, and to our leadership team, we are well-positioned to build on Revenue's long tradition of service, innovation, and accountability.

Filing Season Update

This year's income tax filing season will be almost over by the time you read this column. At this writing, the department is heading into peak filing time and expects the final two weeks to be as busy as ever.

As of April 2, Minnesotans have filed 1.7 million state returns, with 94 percent of them filed electronically. Many filers submit their returns in the final weeks of the season. For comparison, last year we received nearly 2.8 million state returns in all, with 85 percent filed electronically.

I want to thank the Legislature and Governor Dayton for enacting the 2015 federal conformity bill in January this year. Their quick action saved millions of dollars in taxes for Minnesota families and businesses and resulted in a smooth opening to this year's filing season.

In February, the department had to make some hard decisions, very quickly and right in the middle of tax season, to address potential fraudulent activity encountered by TurboTax software.

Our systems were not affected; we employ sophisticated technology to safeguard private taxpayer data and prevent fraudulent activity, which are top priorities for the department.

We stopped accepting TurboTax returns for two days, until the company (Intuit) implemented new security measures. During this situation, we communicated with taxpayers through our website, email bulletins, social media, and press releases.

Residency Report

Based on feedback during last year's legislative session, we met with over 100 professionals to discuss tax issues related to residency. The result of this work, including the very helpful feedback from many in MSBA, was a Residency Report for the Legislature; it was published last month.

The final report draws heavily from these listening sessions.

As noted in the report, we are working to update our information and processes with respect to residency determinations. You can read or download the Residen-

cy Report on our website at www.revenue.state.mn.us. Type "legislative resources" into the Search box, go the Legislative Resources page, and look under Other Reports.

Tax Town Hall

On February 19, MSBA and the department hosted our annual Tax Town Hall. I enjoyed meeting many of you at the event, which focused on the tax outlook for Minnesota in 2015.

Speakers included Tamar Gronvall from the Minnesota Attorney General's Office and the department's Terri Steenblock and Paul Cumings. They discussed recent tax-related court cases, residency issues, and how this year's legislative session is progressing.

Thank you for your partnership with the department on these efforts and others throughout the year.

Cynthia Bauerly is commissioner of the Minnesota Department of Revenue.

IRS Column—IRS Begins Limited Test of Providing Appointments at 10 Walk-In Locations; Goal to Increase Efficiency, Help Taxpayers

The Internal Revenue Service announced a limited test in 10 of its larger Tax Assistance Centers around the country to determine if an appointment-based service approach can help reduce taxpayer wait times during a time of severe budget cuts.

While the IRS believes this approach will benefit taxpayers by helping them avoid long waits in line that they otherwise might have experienced, the IRS is testing this process during the tax filing season to ensure this is a more efficient approach for taxpayers.

“During a challenging filing season with a very limited budget, we need to find ways to increase our efficiency and still provide the best service possible to taxpayers,” said IRS Commissioner John Koskinen. “My hope is that this test increases the level of customer service that we can provide while minimizing needless burden on taxpayers.”

The IRS believes the appointments could help taxpayers by allowing them to know in advance that they can get the service they need. The process typically in place at most IRS offices cannot guarantee when or if a taxpayer can receive assistance; it is on a first come-first served basis. This situation can force taxpayers to wait in long lines, sometimes with waits lasting over an hour.

The initial test locations available by appointment are: Atlanta, Ga. (Atlanta-Woodcock), Austin, Texas, Birmingham, Ala., Chicago, Ill. (Dearborn), Denver, Colo., Fresno, Calif., Hartford, Conn., Plantation, Fla., San Antonio, Texas, and Seattle, Wash. The appointment-based test begins Feb. 23.

Overall, the IRS has more than 350 walk-in locations across the nation.

Taxpayers should always check IRS.gov for days and hours of service as well as services offered at the [location they plan to visit](#). For information on how to make an appointment, please visit the [contact my local office](#) page on IRS.gov.

At these 10 locations, taxpayer service will continue to be offered without an appointment for those picking up limited forms or making a payment, but the IRS encourages taxpayers to use IRS.gov to get forms and [Direct Pay](#) to make the payment online whenever possible. All other services will require an appointment. Additional test sites may be added in the near future.

IRS Column—IRS Makes it Easier for Small Businesses to Apply Repair Regulations to 2014 and Future Years

The Internal Revenue Service today made it easier for small business owners to comply with the final tangible property regulations.

Requested by many small businesses and tax professionals, the simplified procedure is available beginning with the 2014 return taxpayers are filling out this tax season. The new procedure allows small businesses to change a method of accounting under the final tangible property regulations on a prospective basis for the first taxable year beginning on or after Jan. 1, 2014.

Also, the IRS is waiving the requirement to complete and file a [Form 3115](#) for small business taxpayers that choose to use this simplified procedure for 2014.

"We are pleased to be able to offer this relief to small business owners and their tax preparers in time for them to take advantage of it on their 2014 return," said IRS Commissioner John Koskinen. "We carefully reviewed the comments we received and especially appreciate the valuable feedback provided by the professional tax community on this issue."

The new simplified procedure is generally available to small businesses, including sole proprietors, with assets totaling less than \$10 million or average annual gross receipts totaling \$10 million or less. Details are in [Revenue Procedure 2015-20](#), posted today on IRS.gov.

The revenue procedure also requests comment on whether the \$500 safe-harbor threshold should be raised for businesses that choose to deduct, rather than capitalize, certain capital expenses.

IRS Column—IRS Provides Guidance on Treating Costs for Tangible Property

The Treasury Department had issued regulations ([Treasury Decision 9636](#)) for determining whether expenditures for tangible property are currently deductible business expenses or nondeductible capital expenditures. To help taxpayers understand the regulations and its provisions, the IRS posted [frequently asked questions](#) about it on IRS.gov.

The [frequently asked questions](#) provide a brief summation of the regulations and direction on some key provisions including information on simplified procedures for small business taxpayers ([Revenue Procedure 2015-20](#)).

These regulations affect many small businesses and generally apply to taxable years beginning on or after Jan. 1, 2014, or in certain circumstances, apply to costs paid or incurred in taxable years beginning on or after Jan. 1, 2014.

IRS Column—The Affordable Care Act’s Employer Shared Responsibility Provisions

Employers that are considered “applicable large employers” are subject to the employer shared responsibility provisions of the Affordable Care Act. In general, an applicable large employer is an employer with at least 50 full-time employees or an employer with both full-time and part-time employees whose hours add up to the equivalent of at least 50 full-time employees.

In general, an applicable large employer either must offer affordable health insurance coverage that provides a minimum level of coverage to its full-time employees and their dependents or make a payment to the IRS, if at least one of its full-time employees receives a premium tax credit in connection with purchasing health care coverage through the Health Insurance Marketplace.

The employer shared responsibility provisions apply as of January 1, 2015. Employers should get prepared and make decisions regarding health insurance coverage offered to their employees. No employer shared responsibility payments will be due for 2014.

Full-time employees and full-time-equivalent employees

Under the employer shared responsibility provisions, a full-time employee is an individual employed on average at least 30 hours of service per week, per month, or 130 hours of service per month. The [final regulations under the employer shared responsibility provisions](#) include much more information on the determination of full-time employees.

A full-time equivalent employee is two or more employees who are not full-time employees whose hours combined are the equivalent to a full-time employee. An employer’s number of full-time equivalent employees is only relevant to whether the employer is an applicable large employer, and an employer need not offer coverage to part-time employees who combine to result in full-time equivalent employees in order not to be subject to an employer shared responsibility pay-

ment. For purposes of determining whether an employer is an applicable large employer, two or more part-time employees could equal one full-time equivalent employee. For instance, two part-time employees each with 15 hours of service per week would equal one full-time-equivalent employee.

Employers use information about the number of employees they employ and their hours of service during 2014 to figure if they have enough employees to be considered an applicable large employer for 2015.

Special rules

Because an employer will be calculating its number of full-time employees and full-time equivalent employees for the first time for 2015, there is a transition rule intended to make this first calculation easier.

Rather than being required to use the full twelve months of 2014 to figure out if an employer has at least 50 full-time employees and full-time-equivalent employees, an employer may measure during any consecutive six-month period as chosen by the employer during 2014. This is most helpful to those employers who are near the 50-employee mark.

Additionally, employers with 50 to 99 full-time and full-time-equivalent employees in 2014 will not be subject to an employer shared responsibility payment for 2015, if the employer meets certain conditions described in the preamble to the final regulations under the employer shared responsibility provisions. However, such an employer is still required to complete [information reporting for 2015](#).

There are various other kinds of transition relief available for employers for 2015, described in the preamble to the final regulations under the employer shared responsibility provisions.

More information

[Questions and answers](#) about the employer shared responsibility provisions are available at IRS.gov/ACA.

IRS Column—Tax Payments Top the One Million Mark with New IRS Direct Pay; Free Online System Makes it Easy for People to Pay Their Federal Taxes

With more than one million tax payments already processed this year through IRS [Direct Pay](#), the Internal Revenue Service today encouraged anyone facing upcoming tax payment deadlines to consider choosing this free online system to quickly and easily pay what they owe.

“Direct Pay is the latest addition to our growing array of online tools designed to serve taxpayers better,” said IRS Commissioner John Koskinen. “Direct Pay simplifies the payment process, enabling people to quickly and easily make a secure payment from the convenience of a home computer.”

More than one million tax payments totaling over \$1.7 billion have been received from individual taxpayers since Direct Pay debuted earlier this year. Available through the [Pay Your Tax Bill](#) icon on IRS.gov, Direct Pay allows individuals to e-pay their tax bills or make quarterly estimated tax payments directly from checking or savings accounts without any fees or pre-registration.

With tax correspondence season now in full swing, many taxpayers recently received notices for unpaid taxes from the IRS. Direct Pay offers these taxpayers an easy way to quickly pay these tax bills without having to write a check, buy a stamp or find a mailbox.

Because Direct Pay allows taxpayers to schedule payments up to 30 days in advance, now is also a good time for those who are making estimated tax payments for 2014 to set up their third quarter payment due Sept. 15. In addition, anyone who received an extension until Oct. 15 to file their 2013 federal return and now finds they owe additional tax can also use Direct Pay to e-pay the additional amount due.

Direct Pay is available 24 hours a day, seven days a week. Any taxpayer who uses the system receives instant confirmation that their payment was submitted. More information about Direct Pay can be found on IRS.gov.

Direct Pay cannot be used to pay business taxes. Taxpayers who wish to e-pay their federal business taxes should enroll in the Electronic Federal Tax Payment System ([EFTPS](#)), or click on the Pay Your Tax Bill icon to check out other payment options.

Deadline for Appeal of a Tax Court Decision to the Minnesota Supreme Court: Unnecessary Uncertainty

Submitted By Andrew M. Carlson, Briggs and Morgan, PA

Careful practitioners always make sure they understand the deadline by which an appeal must be filed—such deadlines are usually jurisdictional, so the consequences for missing an appeal deadline can be severe. See *Express Scripts, Inc. v. Comm’r of Rev.*, No. A12-1966, 2013 WL 310642, *1 (Minn. S. Ct., Jan. 18, 2013) (“the parties must strictly comply with the statutory deadlines imposed on tax court proceedings”). For this reason, it is important that appellate deadlines be stated clearly. Yet, there appears to be unnecessary uncertainty about one such deadline: the deadline for the appeal of a decision of the Minnesota Tax Court to the Minnesota Supreme Court.

Two provisions of Minnesota law relate to the appeal deadline. First, Minn. Stat. § 271.10, subd. 2 provides that an appeal from a Tax Court decision to the Minnesota Supreme Court can be taken “within 60 days after notice of the making and filing of the order of the Tax Court...” Second, Minn. R. App. Prac. 116.01 states that the applicable time period is “within 30 days after the date the party applying for the writ was served with written notice of the decision sought to be reviewed, unless an applicable statute prescribes a different period of time.”

Although Section 271.10 provides for a 60-day deadline, and Rule 116.01 provides for a 30-day deadline, it is not difficult to read these provisions in harmony.¹ Section 271.10 should be considered “an applicable statute that prescribes a different period of time” under Rule 116.01, such that the deadline is 60 days. Indeed, this interpretation was endorsed by the Minnesota Supreme Court in *Nagaraja v. Comm’r of Revenue*, 352 N.W.2d 373, 374 n.2 (Minn. 1984).

But, since *Nagaraja*’s issuance thirty years ago, uncertainty seems to have arisen around the interplay of Section 271.10, subd. 2 and Minn. R. App. Prac. 116.01. For example, the Minnesota Practice Series’ commentary on Rule 116.01 states that “to avoid any possible questions” about the inter-relation of 271.10 and Rule 116.01, “the provisions of both the statute and rule should be complied with to the extent possible.” Eric J. Magnuson, David F. Herr, Sam Hanson,

Minn. Prac. App. R. Anno. 116.01, § 116.5, at 547 (2014). The Minnesota Practice Series’ guidance can only be interpreted to mean that a practitioner should conservatively assume that the 30-day deadline might apply. This advice is practical, but it illustrates that there is unnecessary uncertainty surrounding the deadline.

Adding significantly more uncertainty, last year the Minnesota Supreme Court issued an unpublished Order that is unclear on the interplay of Section 271.10 and Rule 116.01. *Inter-Faith Care Center v. County of Carlton*, No. A14-0879 (Minn. S. Ct., July 31, 2014)². In *Inter-Faith*, the County filed and served a Petition for Writ of Certiorari, but apparently failed to serve the Writ on Inter-Faith Care Center. More than 60 days had passed since the Tax Court’s final decision had been issued, so the County’s service of the Writ on the County was overdue and the Supreme Court accordingly dismissed the appeal. Although that outcome was straightforward, the Supreme Court included a description of Section 271.10 and Rule 116.01 that is less so. Confusingly, the Supreme Court seems to have considered the two provisions as alternative vehicles for appeal: it explained that under Rule 116.01, the petitioner has 30 days to appeal, and then stated “review can also be sought under Minn. Stat. § 271.10 (2012), although the petitioner has 60, rather than 30 days to do so.” *Inter-Faith*, p. 2 (emphasis added). In other words, rather than reading the two provisions as an integrated whole, *Inter-Faith* seems not to notice or acknowledge that Section 271.10 is “an applicable statute that prescribes a different period of time”; instead, *Inter-Faith* suggests that either 30 days or 60 days can be right. It would make little sense, though, to have two different, co-existing, deadlines.

The decision in *Inter-Faith* exacerbates unnecessary uncertainty about the actual deadline for appeal of a Tax Court decision. Practitioners need certainty as to this deadline. The Minnesota Supreme Court could clarify the situation by (1) revising Minn. R. App. Prac. 116.01 to change the deadline to 60 days; or (2) perhaps more easily, taking the next available opportunity to issue an opinion repudiating the either/or approach in *Inter-Faith* and adopting the analysis that Section 271.10 is “an applicable statute that prescribes a different period of time,” as originally interpreted in *Nagaraja*. Clarity as to the deadline will make it easier disputes about the timeliness of appeals. In the meantime,

for practitioners to advise their clients and will avoid unnecessary disputes about the timeliness of appeals. In the meantime, the best approach is to ensure that any appeal of a Tax Court decision is filed and served within 30 days of the notice of the making and filing by the Tax Court of a final order.

¹. The deadline period runs from “notice of the making and filing” by the Tax Court of a “final order.” Minn. Stat. § 271.10. Establishing when the appeal period starts, i.e., when a Tax Court decision is final and when notice of its “making and filing” has been received, can present additional issues, outside the scope of this article. See, e.g., *Express Scripts*, 2013 WL 310642 (holding that Tax Court’s order, rather than subsequent

². Inter-Faith is available via a search of the Minnesota Appellate Courts’ online case management system (<http://macsnc.courts.state.mn.us/ctrack/search/publicCaseSearch.do>).

Pending Minnesota State Tax Case Summaries
December 8, 2014 through March 9, 2015

JANICE M. BANITT V. COMMISSIONER OF REVENUE

Minnesota Tax Court Docket No. 8796

Taxpayer's Counsel
Pro Se

Filed: December 8, 2014

DOR's Counsel
Darren T. Braun
Appeals Officer

Issue: Whether taxpayer is entitled to a property tax refund for the year 2010.

Years: Property tax claim for the year 2010.

Amount: Undetermined

Status: **Awaiting Return and Answer of Commissioner.**

PHILLIP ANTHONY NOSAN V. COMMISSIONER OF REVENUE

Minnesota Tax Court Docket No. 8797
2014

Taxpayer's Counsel
Pro Se

Filed: December 8,

DOR's Counsel
Tamar Gronvall

Issue: Whether taxpayer is entitled to a 2010 property tax refund.

Years: Property tax refund for the year 2010.

Amount: Undetermined

Status: **Awaiting Return and Answer of Commissioner.**

FORTITUDE ENTERPRISES, LLC. V. COMMISSIONER OF REVENUE

Minnesota Tax Court Docket No. 8798
2014

Taxpayer's Counsel
Michael P. Kennedy, Jr.

Filed: December 17,

DOR's Counsel
Tamar Gronvall

Issue: 1. Whether the sales and use tax returns of Fortitude Enterprises, LLC for the period beginning December 31, 2010 through and including September 30, 2013 were correctly computed or overstated.

2. Whether late filing penalties should be abated for "reasonable cause".

Years: Sales and use tax returns for the period December 31, 2010 through and including September 30, 2013.

Amount: \$14,543.70

Status: **Awaiting Return and Answer of Commissioner.**

YASIN FATAH AND SUAD HAGI V. COMMISSIONER OF REVENUE

Minnesota Tax Court Docket No. 8799
2014

Filed: December 19,

Taxpayer's Counsel
Pro Se

DOR's Counsel
Tamar Gronvall

Issue: Whether taxpayer could take a 2013 deduction for qualified K-12 education expenses.

Years: Minnesota individual income tax return for 2013.

Amount: Undetermined

Status: **Awaiting Return and Answer of Commissioner.**

DAVID POVOLNY & DEANNA POVOLNY V. COMMISSIONER OF REVENUE

Minnesota Tax Court Docket No. 8800
2014

Filed: December 31,

Taxpayer's Counsel
Berle Law Office, PA

DOR's Counsel
Tamar Gronvall

Issue: Whether the sales tax is properly applied to the actual sale price or the fair market value of similar vehicle for a vehicle transfer in 2014.

Years: Sales and use tax on motor vehicle transfer in 2014.

Amount: Undetermined

Status: **Awaiting Return and Answer of Commissioner.**

WENDI WARD DBA PRACTICAL GOODS V. COMMISSIONER OF REVENUE

Minnesota Tax Court Docket No. 8801

Filed: January 5, 2015

Taxpayer's Counsel
Pro Se

DOR's Counsel
Tamar Gronvall

Issue: 1. Whether the sales and use tax returns for 2013 were properly computed.

2. Whether Equal Protection Clause issues are raised.

Years: Sales and use tax returns for the year 2013.

Amount: \$1,385.54

Status: **Awaiting Return and Answer of Commissioner.**

DENNIS S. DANCIAK V. COMMISSIONER OF REVENUE

Minnesota Tax Court Docket No. 8802

Taxpayer's Counsel

Pro Se

Filed: January 7, 2015

DOR's Counsel

Tamar Gronvall

Issue: Whether taxpayer's 2011 Minnesota income tax return was correctly computed.

Years: Minnesota Individual income tax return for 2011.

Amount: \$614.24

Status: **Awaiting Return and Answer of Commissioner.**

AUTO MOTION SALES LLC V. COMMISSIONER OF REVENUE

Minnesota Tax Court Docket No. 8803
2014

Taxpayer's Counsel

Pro Se

Filed: December 23,

DOR's Counsel

Tamar Gronvall

- Issue:
1. Whether the \$20 per vehicle assessment of the Transit Improvement Vehicle Excise Tax has been correctly computed for sales and use tax purposes for the period March 1, 2009 through and including August 31, 2014.
 2. Whether the Minnesota Tax Court has jurisdiction where there has been a failure to serve the Commissioner with the Appeal.
 3. Whether the Minnesota Tax Court has jurisdiction when the Commissioner did not receive a copy of the Appeal until after the time to respond had expired.

Years: Sales and use taxes for the period March 1, 2009 through and including August 31, 2009.

Amount: \$29,869.68

Status: **Awaiting Order from Court on Motion to Dismiss.**

MINIKAHDA MOBIL LLC V. COMMISSIONER OF REVENUE

Minnesota Tax Court Docket No. 8804
2014

Filed: December 31,

Taxpayer's Counsel
Pro Se

DOR's Counsel
Tamar Gronvall

- Issue: 1. Whether an indirect audit for sales and use tax was properly computed for the time period April 30, 2009 through and including September 30, 2012.
2. Was the Appeal properly filed to give the Tax Court jurisdiction since the Notice Date was October 24, 2014.

Years: Sales and use taxes for the period April 30, 2009 through and including September 30, 2012.

Amount: \$7,896.41

Status: **Awaiting Order from Court on Motion to Dismiss.**

MICHAEL JAMES BROUILLETTE V. COMMISSIONER OF REVENUE

Minnesota Tax Court Docket No. 8805

Filed: January 7, 2015

Taxpayer's Counsel
Pro Se

DOR's Counsel
Tamar Gronvall

Issue: Whether taxpayer's 2010 Minnesota individual income tax return was correctly computed.

Years: Minnesota individual income tax return for 2010.

Amount: \$1,248.58

Status: **Awaiting Return and Answer of Commissioner.**

DANIEL J. MURPHY & LAVONNE D. MURPHY V. COMMISSIONER OF REVENUE

Minnesota Tax Court Docket No. 8806

Filed: January 12, 2015

Taxpayer's Counsel
Pro Se

DOR's Counsel
Tamar Gronvall

Issue: 1. Whether taxpayer's individual income tax return for 2011 was correctly computed.

Years: Minnesota individual income tax return for 2011.

Amount: \$2,086.70

Status: **Awaiting Return and Answer of Commissioner.**

LUVERAL A. BLAHA & VERLE D. BLAHA V. COMMISSIONER OF REVENUE
Minnesota Tax Court Docket No. 8807 Filed: December 17,
2014

Taxpayer's Counsel
Pro se

DOR's Counsel
Tamar Gronvall

Issue: Whether taxpayers are entitled to a property tax refund for the year 2010.

Years: Property tax refund for 2010.

Amount: Undetermined

Status: **Awaiting Return and Answer of Commissioner.**

CHRISTOPHER J. LAW AND KAITLEN I. BRENNEN V. COMMISSIONER OF REVENUE

Minnesota Tax Court Docket No. 8808

Filed: January 16, 2015

Taxpayer's Counsel
Pro Se

DOR's Counsel
Tamar Gronvall

Issue: 1. Whether the taxpayers income tax returns were properly computed for the years 2008, 2009, and 2010.

2. Was the Appeal timely filed since the Notice Date was November 14, 2014.

Years: Minnesota individual income tax returns for the years 2008, 2009 and 2010.

Amount: Undetermined

Status: **Awaiting Order from Court on Motion to Dismiss.**

ALTERA HEALTH OPERATING COMPANY (FORMERLY KNOWN AS CODING SOURCE HOLDINGS, INC.) V. COMMISSIONER OF REVENUE

Minnesota Tax Court Docket No. 8809

Filed: January 21, 2015

Taxpayer's Counsel
Michele I. Haas

DOR's Counsel
Tamar Gronvall

Issue: 1. Whether the Commissioner could reduce the net operating loss carried forward applied to the Altera Group's taxable income by applying the Minnesota percentage to the IRC Code § 382 limitation during 2011.

2. Whether the case of Express Scripts, Inc. v. Commissioner of Revenue, Docket No. A-12-1966 (January 18, 2013) and Express Scripts, Inc. v. Commissioner of Revenue, Docket No. 8272 (Minn. T. Ct. August 20, 2012) should be applied in calculating the IRC Code § 382 limitation for Minnesota income tax purposes.

Years: Minnesota corporate and franchise tax for the year ending December 31, 201

Amount: \$10,317.00

Status: **Awaiting Return and Answer of Commissioner.**

WENDY RENEE BELL V. COMMISSIONER OF REVENUE

Minnesota Tax Court Docket No. 8810

Taxpayer's Counsel

Pro se

Filed: January 22, 2015

DOR's Counsel

Tamar Gronvall

Issue: Whether taxpayer's 2013 Minnesota individual income return was correctly computed.

Years: Minnesota individual income tax return for 2013.

Amount: \$4,413.73

Status: **Awaiting Return and Answer of Commissioner.**

HAMIDUR MIAH D/B/A SHM HOLDINGS, INC. COMPUTERMEGAMALL.COM V. COMMISSIONER OF REVENUE

Minnesota Tax Court Docket No. 8811

Taxpayer's Counsel

Pro Se

Filed: January 27, 2015

DOR's Counsel

Tamar Gronvall

Issue: Whether the sales and use taxes for the period December 31, 2009 through and including March 31, 2013 were correctly computed by the Commissioner.

Years: Sales and use tax returns for the periods January 1, 2009 through and including March 31, 2013.

Amount: \$61,983.81

Status: **Awaiting Return and Answer of Commissioner.**

SHAHID & SHUBNAM ABBAS V. COMMISSIONER OF REVENUE

Minnesota Tax Court Docket No. 8812

Taxpayer's Counsel

Pro Se

Filed: February 19, 2015

DOR's Counsel

Tamar Gronvall

Issue: 1. Whether taxpayer's 2013 income tax return was properly computed.
2. Whether certain deductions taken for education expenses were properly deductible on the 2013 individual income tax return.
3. Whether taxpayer's Notice of Appeal was properly filed since the Notice Date was November 13, 2014.

Years: Minnesota individual income tax return for the year 2013.

Amount: Undetermined

Status: **Awaiting Order from Court on Motion to Dismiss.**

CONNIE SZARKE V. COMMISSIONER OF REVENUE

Minnesota Tax Court Docket No. 8813

Taxpayer's Counsel

Pro Se

Filed: February 24, 2013

DOR's Counsel

Tamar Gronvall

Issue: Whether taxpayer is entitled to a property tax refund for the year 2012.

Years: Minnesota property tax refund for 2012.

Amount: Undetermined

Status: **Awaiting Return and Answer of Commissioner.**

VINA KHERA AND PREM P. KHERA V. COMMISSIONER OF REVENUE

Minnesota Tax Court Docket No. 8814

Taxpayer's Counsel

Pro Se

Filed: March 5, 2015

DOR's Counsel

Tamar Gronvall

- Issue:
1. Whether taxpayer's 2011 income tax return was correctly computed.
 2. Whether Social Security can be deducted when computing the Minnesota Alternative Minimum Tax.

Years: Minnesota individual income tax return 2011.

Amount: \$3,355.03

Status: **Awaiting Return and Answer of Commissioner.**

MORE, INC. D/B/A BLARNEY PUB & GRILL V. COMMISSIONER OF REVENUE

Minnesota Tax Court Docket No. 8815

Taxpayer's Counsel

Mark A. Pridgeon

Filed: March 9, 2015

DOR's Counsel

Tamar Gronvall

- Issue:
1. Whether taxpayer properly computed its sales and use tax returns for the period September 1, 2007 through and including February 28, 2011.
 2. Whether the statute of limitations on assessment had expired for assessing additional sales and use tax against the taxpayer.
 3. Whether taxpayer is properly subject to penalties for any alleged balances of unpaid sales and use taxes for the periods covered by the Commissioner's Order from September 1, 2007 through and including February 28, 2011.

Years: Sales and use taxes for the period September 1, 2007 through and including February 28, 2011.

Amount: \$146,221.67

Status: **Awaiting Return and Answer of Commissioner.**

MINNESOTA TAX CASES ON APPEAL

In the interest of keeping you up-to-date on Minnesota tax cases and to provide you with additional value for your membership in the Tax Section, a new feature is being launched with this issue. Starting with this publication, cases that have been appealed from the Minnesota Tax Court to the Minnesota Supreme Court will be discussed in summary form. This will allow you to follow-up to obtain more detail about a case if you so desire.

Let us know your reactions to the column. Please suggest ways you think it can be improved and enhanced. Just send your suggestions by an email to: jgeis@briggs.com, or a letter to Jerry Geis, c/o Briggs and Morgan, P.A., W2200 First National Bank Building, 332 Minnesota Street, St. Paul, Minnesota, 55101-1396 or contact our editor: michaeleobrien@kpmg.com

<u>Case Name</u>	<u>Filing Date</u>	<u>Issue</u>	<u>Hearing Date</u>
<u>Conga Corporation d/b/a Conga Latin Bistro v. Commissioner,</u> Docket No. A14-1042	06/20/2014	Whether the Commissioner can perform an indirect audit when the taxpayer has books and records supporting its business transactions?	Briefing
<u>Connexus Energy, et al v. Commissioner of Revenue</u> Docket No. A14-1996	11/20/2014	Whether patronage dividends are included in the "sales price"?	3/9/2015
<u>Guardian Energy, LLC v. County of Waseca</u> Docket Nos. A14-2168 and A14-1883	12/23/2014	Whether taxpayer's ethanol plants were properly valued for 2009 through and including 2011?	3/31/2015
<u>KCP Hastings, LLC v. County of Dakota,</u> Docket No. A15-0018	01/05/2015	Whether the value of the properties for taxable years 2010, 2011, and 2012 assessments was properly determined by the Court?	Briefing
<u>Minnesota Energy Resources Corporation v. Commissioner of Revenue</u> Docket Nos. A15-0422 and A15-0438	03/09/2015	What was the proper unit value for a gas pipeline distribution system for the assessment years 2008 through and including 2011?	Briefing

Minnesota Revenue

PUBLIC RULEMAKING DOCKET as of March 31, 2015

Submitted by Jennifer Newlun, Minnesota Department of Revenue

Rulemaking records are stored with the Appeals and Legal Services Division of the Minnesota Department of Revenue, at 600 North Robert Street, St. Paul, Minnesota 55146. Public files may be viewed, by appointment, from 8:00 a.m. to 3:00 p.m., Monday through Friday, by calling Jennifer Newlun, Rulemaking Coordinator, at (651) 556-4077, or by email to:

Jennifer.Newlun@state.mn.us.

Requests for Comment, various rule Notices, and Rules, when published in the State Register, are posted on the department's website, and generally a link to the State Register is also provided. Additionally, a rule's Statement of Need and Reasonableness (SONAR) is posted on the department's website until that rule is promulgated. The following address will link you to the department's rulemaking webpage:

[Department of Revenue Rulemaking Webpage.](#)

Sales and Use Tax

Topic: Sales Tax; Fund-raising Sales by or for Non-profit Groups; Chapter 8130

Governor's Office File #: AR # 221

Contact Person: Michal Garber (651) 556-4067

Current Status: CONTINUES ON HOLD.

History: Published the Request for Comments in the *State Register* on September 19, 2005 (30 S.R. 308). Comment period will remain open until publication of either a Notice of Intent to Adopt or a Notice of Intent to Withdraw Rules.

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Tax Section News

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Statement of Editorial Policy

The *Tax Section News* endeavors to provide current, important developments pertaining to taxation, Tax Section news and other information that it believes to be of professional interest to its members and other readers.

Comments, articles, and reports are those of the editor and contributors and do not necessarily represent the position of the Minnesota State Bar Association, the Tax Section or any governmental body.

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