

HODGSON RUSS LLP V. MINNESOTA DEPARTMENT OF REVENUE

During the spring of 2014, Hodgson Russ LLP (“Hodgson”) received a letter from the Minnesota Department of Revenue (“Minnesota Revenue”) that attempted to establish a new low in the states’ “race to the bottom” to establish the most minimal constitutional standard required to satisfy substantial nexus with an out-of-state taxpayer. Minnesota Revenue asserted that under suspect provisions of the Minnesota tax code, Hodgson had nexus with the state of Minnesota based upon a single, un-audited fact: between the 2004 and 2012 tax years, Hodgson received federal Forms 1099 from payors using a Minnesota mailing address. On account of this single fact – with no revenue floor or other safeguards – Minnesota Revenue asserted that Hodgson had nexus with Minnesota, and was therefore required to file Minnesota franchise tax returns and apportion its business income to the state.

Like other entities who received similar letters from Minnesota Revenue, Hodgson was forced to make a difficult decision. Should we take the admittedly lousy deal Minnesota Revenue was offering (four-year lookback, no penalties) and avoid costly litigation, or should we fight, because we know we’re right and we should win? We are tired of seeing clients and others bend to the enormous pressure of state taxing authorities, especially when a business decision cost-benefit analysis is the only basis for settlement. With this in mind, we sued Minnesota Revenue in New York State Supreme Court, seeking different types of relief.

Hodgson and Minnesota Revenue eventually settled, and like many litigated cases neither side admitted the other was right in the closing paperwork. But given Minnesota Revenue’s agreement that Hodgson need not file for any one of the tax years in issue, and further that it would not pursue any avenue against Hodgson for those tax years, educated people cannot really disagree about who the victor was. Moreover, Minnesota Revenue stated on the record in New York Supreme Court that it would change its policies in regard to establishing nexus with foreign entities, hopefully saving others from the same fate as Hodgson. We’re not sure this policy change has happened yet, but to the extent you or your business receives an inquiry or demand from Minnesota or any other jurisdiction with a summary conclusion that nexus exists, you should consider challenging it before rolling over. Sometimes it makes financial sense, and sometimes it’s just the right thing to do.

While additional filings and briefs are available as part of the public record, a sample of relevant filings, transcripts, and briefs from this matter, along with the final settlement agreement, are included below.

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- Pleadings Index
- Hodgson Russ's Verified Petition and Complaint with Exhibits
- Hodgson Russ's Memorandum in Support of Motion for Partial Summary Judgment and in Opposition to Minnesota Revenue's Motion to Dismiss
- Hodgson v. Minnesota Hearing Transcript
- Hodgson v. Minnesota Settlement Transcript
- Hodgson v. Minnesota Settlement Agreement and Discharge