OPINION NO. 995

FILED

DISTRICT OF COLUMBIA TAX COURT APR 13 1962

District of Columbia Tax Court

CAPITOL COURT CORPORATION, Petitioner,	)	
vs.	)	DOCKET NOS. 1745, 1746, 1747, 1748
DISTRICT OF COLUMBIA Respondent.	)	

FINDINGS OF FACT AND OPINION

The petitioner assessed itself, and paid to the District of Columbia franchise taxes for the calendar years 1957, 1958, 1959 and 1960, measured by net income arising from the leasing of a large office building in Washington, D. C. owned by it. It filed claims for refund of those taxes. The claims for refund were denied, from which action the petitioner here appeals. The petitioner contends that it was exempt as a corporation organized for the exclusive purpose of holding title to property, collecting income therefrom, and turning over the entire amount thereof, less expenses, to an organization which itself is exempt from taxation under the District of Columbia Income and Franchise Tax Act of 1947.(1) The respondent claims that the petitioner is not such a corporation; that it is subject to the franchise tax; and that the claims for refund were properly denied.

Findings of Fact

1.(a) The petitioner is an ordinary stock corporation, organized on November 17, 1947, under the laws of Delaware.

(b) The nature of petitioner's business, and its objects or purposes to be transacted, as disclosed by its charter, are the following:

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(1) Chapter 15 of Title 47, D. C. Code, 1951 Edition.

"To acquire by purchase, gift, lease, exchange or otherwise, real and personal property, or either, or any interest or estate therein, and any rights over or connected therewith, situate either within or without the State of Delaware, and to lease, sell, or otherwise dispose of or encumber the same; to turn the same to account as may seem expedient; and in particular, to prepare building sites, and to construct, re-construct, alter, improve, decorate, furnish, and maintain buildings of all kinds including office buildings, stores, business properties, hotels, apartments, dwellings, houses, warehouses, restaurants, theaters, and other structures; to occupy, manage, conduct and operate buildings of all kinds including apartment buildings, office buildings, stores, business properties, hotels, dwellings, houses, warehouses, restaurants, theaters, and other structures and places for the accommodation of the public and of individuals, whether such buildings or places belong to this corporation or not; and to collect rents, incomes and profits, and to supply to tenants, and others, attendants, messengers, light, heat and power and all other conveniences, services and advantages; and in connection with the objects hereinabove enumerated, to establish, operate and conduct, and permit the establishment and operation of, any business which may be conveniently carried on, and the establishment of which may be directly or indirectly conducive to any of the objects of the corporation; as well as to contribute to, subsidize or otherwise aid or take part in any such operations.

"To develop and turn to account any land acquired by, or in which the Company is interested, by dividing, subdividing, laying out and preparing the same for building purposes, constructing, altering, pulling down, decorating, maintaining, furnishing, fitting up and improving buildings, and by planting, paving, draining, farming, cultivating, letting on building lease or building agreement, and by advancing money to and entering into contracts and arrangements of all kinds with builders, tenants and others.

"To conduct a general real estate business, whether as principal or as agent or in any other capacity whatsoever, in the purchase, sale, lease, exchange, and management of real estate and the negotiation of lease thereon; to act as agent for letting lands or buildings of every kind and character, and for the collection of rents and for the payment of taxes or any other costs or expenses in connection therewith, to purchase and sell personal property, stocks, bonds, and notes, and to negotiate loans thereon

"To act as agent or broker in the business of fire, life, accident, fidelity, plate glass, boiler, elevator, health, hospitalization, burglary, theft, rent, marine, airplane, credit, and all other kinds of insurance whatsoever, and in all its branches, without limitation as to kind, including that of workmen's compensation and

employers' liability, and of fidelity and surety bonds, and with power to collect premiums upon policies therefore, and make the necessary disbursements on account thereof, and to do such other business as may be delegated to agents by insurance companies and by surety companies.

"To buy, sell, deal and trade in mortages or other liens on or interest in real estate, and in selling any mortgages or other liens on or interest in real estate that has been developed or is being developed or is owned by the corporation or by any individual, corporation or association in the securities, business, financing or welfare of which the corporation has any interest of any nature or with which it has business dealings, to guarantee the payment of the principal and/or interest of the debt secured, in whole or in part.

"To manufacture, purchase or otherwise acquire, invest in, own, mortgage, pledge, sell, assign and transfer or otherwise dispose of, trade, deal in and deal with goods, wares and merchandise and personal property of every class and description.

"To acquire, and pay for in cash, stock or bonds of this corporation or otherwise, the good will, rights, assets and property, and to undertake or assume the whole or any part of the obligations or liabilities of any person, firm, association or corporation.

"To acquire, hold, use, sell, assign, lease, grant licenses in respect of, mortgage or otherwise dispose of letters patent of the United States or any foreign country, patent rights, licenses and privileges, inventions, improvements and processes, copyrights, trademarks and trade names, relating to or useful in connection with any business of this corporation.

"To acquire by purchase, subscription or otherwise, and to receive, hold, own, guarantee, sell, assign, exchange, transfer, mortgage, pledge or otherwise dispose of or deal in and with any of the shares of the capital stock, or any voting trust certificates in respect of the shares of capital stock, scrip, warrants, rights, bonds, debentures, notes, trust receipts, and other securities, obligations, choses in action and evidences of indebtedness or interest issued or created by any corporations, joint stock companies, syndicates, associations, firms, trusts or persons, public or private, or by the government of the United States of America, or by any foreign government, or by any state, territory, province, municipality or other political subdivision or by any governmental agency, and as owner thereof to possess and exercise all the rights, powers and privileges of ownership, including the right to execute consents and vote thereon, and to do any and all acts and things necessary or advisable for the preservation, protection, improvement and enhancement in value thereof.

"To enter into, make and perform contracts of every kind and description with any person, firm, association, corporation, municipality, county, state, body politic or government or colony or dependency thereof.

"To borrow or raise moneys for any of the purposes of the corporation and, from time to time, without limit as to amount to draw, make, accept, endorse, execute and issue promissory notes, drafts, bills of exchange, warrants, bonds, debentures and other negotiable or non-negotiable instruments and evidences of indebtedness, and to secure the payment of any thereof and of the interest thereon by mortgage upon or pledge, conveyance or assignment in trust of the whole or any part of the property of the corporation, whether at the time owned or thereafter acquired, and to sell, pledge or otherwise dispose of such bonds or other obligations of the corporation for its corporate purposes.

"To loan to any person, firm or corporation any of its surplus funds, either with or without security.

"To purchase, hold, sell and transfer the shares of its own capital stock; provided it shall not use its funds or property for the purchase of its own shares of capital stock when such use would cause any impairment of its capital except as otherwise permitted by law, and provided further that shares of its own capital stock belonging to it shall not be voted upon directly or indirectly.

"To have one or more offices, to carry on all or any of its operations and business and without restriction or limit as to amount to purchase or otherwise acquire, hold, own, mortgage, sell, convey, or otherwise dispose of real and personal property of every class and description in any of the States, Districts, Territories or Colonies of the United States, and in any and all foreign countries, subject to the laws of such State, District, Territory, Colony or Country.

"In general, to carry on any other business in connection with the foregoing, and to have and exercise all the powers conferred by the laws of Delaware upon corporations formed under the General Corporation Law of the State of Delaware, and to do any or all of the things hereinbefore set forth to the same extent as natural persons might or could do."

(c) The petitioner is not a corporation organized for the exclusive purpose of holding title to property, collecting income therefrom, and turning over the entire amount thereof, less expenses, to an organization which itself is exempt from the tax imposed by Article I of the District of Columbia Revenue Act of 1947, known as the District of Columbia Income and

Franchise Tax Act of 1947 (Chapter 15, Title 47, D. C. Code, 1961 Edition).

2.(a) For some period prior to November 17, 1947, Alexander B. Hagner, a real estate broker, and several persons acquired at the price of $102,000, and then owned an area or tract of ground in the District of Columbia, which was known described as, and which hereafter in these findings and in the opinion of the Court will be referred to as "Lots 11, 12, 13, 800, 801 and 802 in Square S. 572, with the percentage of ownership following: Alexander B. Hagner, 15 per centum; George W. Cutting, 25 per centum; Helen R. Cutting, 25 per centum; Donald Downs, 25 per centum and Benjamin B. Cain, 10 per centum.

(b) The tract, or a part thereof, at least, was operated several years by the owners as a parking lot. Some time prior to November 17, 1947, the owners became engaged in a plan or program to interest some person in the idea of utilizing the property to the end that greater financial returns therefrom would accrue to the owners. To that end the petitioner-corporation was caused to be organized under the laws of Delaware, with the percentage of stock ownership the same as that of the land.

(c) In the ownership of the land and in the organization and operation of the petitioning corporation Alexander B. Hagner was the protagonist. From the beginning he became, and has since remained the President of the petitioner, as well as a director. He acted as trustee for the owners of the land.

3.(a) At a meeting of the Board of Directors of the petitioner held on August 16, 1950, Alexander B. Hagner reported that he had made arrangements with Metropolitan Life

Insurance Company for a loan of $1,400,000, repayable in installments running over a period of 15 years, for the construction of an office building on Lots 800, 801, 802 in Square S. 572. The arrangement was later extended to cover the construction on Lots 11, 12 and 13 in that square.

(b) At the same meeting Alexander B. Hagner reported that as trustee for the owners of Lots 800, 801 and 802 in Square S. 572, he had entered into an agreement with himself, as President of the petitioner, whereby he had leased those lots to the petitioner for a term of 15 years, for a consideration of $300,000, payable at the rate of $20,000 per annum, which lease arrangement was extended to cover Lots 11, 12 and 13 in that square for an additional rental of $4,000 per annum, so that the total annual rent to be payable was $24,000.

(c) The above two leases, among other things provide as follows:

> "2. The Lessee covenants and agrees to pay as additional rent hereunder, within thirty (30) days after they become due and payable, all rates, taxes, assessments, water rents, sewer rentals, levies or other charges, general, special, ordinary, extraordinary and otherwise, of every kind and character which are or may, during the term hereby created, be levied on, or assessed against the land hereby demised and upon any building or improvements that Lessee may place thereon, * * *."
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> "6. * * * * * * * * * * *.
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> "Upon expiration or termination of this lease, title to any buildings and improvements which Lessee may erect upon the demised premises, including any fixtures, equipment and machinery attached to and connected with the operation and maintenance of said buildings and improvements, shall pass to and vest in the Lessor without cost or charge whatsoever to the Lessor, and free and clear of encumbrances."
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> "16. If Lessee shall fail to pay any installment of rent, amounts collectable as rent or other charges herein provided when they shall become due and payable * * *, and provided that any such default shall not have been remedied by Lessee within sixty (60) days after notice by Lessor of such default, the tenancy created hereunder, shall, at the option of the Lessor, cease and terminate at the expiration of such notice and Lessee will then quit and surrender the demised premises to the Lessor, * * *."

4.(a) After several unsuccessful attempts by Alexander B. Hagner to get one of the local large or substantial contractors to enter or participate in the plan or scheme outlined in the preceding findings, Hagner approached John McShain, head of a large or substantial contracting firm operating in the District of Columbia and elsewhere. McShain became interested and sometime before September 11, 1950,[2] he acquired an option to buy, or actual ownership of all of the capital stock in the petitioner. At the same time John McShain acquired an 85 per centum undivided interest in Lots 800, 801, 802, 11, 12 and 13 in Square S. 572. John McShain paid the sum of $252,000 for the 85 per centum interest. That sum was divided among all the owners, including Alexander B. Hagner, who did not own any part of the 85 per centum interest. He received or retained out of the payment of the $252,000 fifteen per cent or $38,000. In addition he retained or still had his original 15 per centum interest in the six lots.

(b) Alexander B. Hagner, John McShain and some of their agents or employees became, and still remain Directors of the petitioner.

5.(a) On March 14, 1951, John McShain Charities, Inc. sent to Alexander B. Hagner, as trustee, the letter following:

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(2) There is a waiver and consent dated October 6, 1950, found in the minute book, which would indicate that on that date the stockholders were Alexander B. Hagner, Donald Downs, George W. Cutting, Helen R. Cutting and Benjamin B. Cain. They acted as directors and officers until October 5, 1950, when all but Hagner resigned. A letter from John McShain Charities, Inc., dated March 14, 1951, and found in the minute book, indicates that John McShain acquired an option to buy the petitioner's stock sometime prior to September 11, 1950, when it was assigned to John McShain Charities, Inc.

"Dear Mr. Hagner:

"Under the terms of one certain option agreement running in favor of John McShain which was assigned to this Corporation on September 11, 1950, we hereby exercise such option and direct that the shares in question be issued by single certificate in the name of this corporation."

(b) John McShain Charities, Inc., is a non-profit, non-stock charitable corporation, organized under the laws of Pennsylvania. During the taxable years it made contributions to hospitals, churches, religious and educational institutions, welfare funds and the like in the amounts following:

FISCAL YEAR ENDED	AMOUNT
March 31, 1957	$58,520.00
March 31, 1958	92,290.20
March 31, 1959	89,456.00
March 31, 1960	100,955.00
March 31, 1961	93,315.00
Five Year Total	$434,536.20

(c) During the taxable years John McShain Charities, Inc. made contributions to educational, religious and charitable institutions in the District of Columbia as follows:

1957:	January 8,	Greater Georgetown Fund	$10,000.00
	16,	Taft Memorial Foundation	100.00
	February 15,	Christian Brothers Schools	200.00
	April 18,	Georgetown Visitation Junior College	500.00
	May 29,	Trinity College	500.00
	June 11,	St. Vincent de Paul Society	25.00
	August 21,	Catholic Archdiocese of Washington, D. C.	515.00
	December 6,	United Giver's Fund, Washington, D. C.	1,000.00
1958:	January 9,	Greater Georgetown Fund	10,000.00
	October 7,	United Giver's Fund, Washington, D. C.	1,000.00
	December 4,	Catholic Archdiocese of Washington, D. C.	200.00
1959:	January 6,	Greater Georgetown Fund	10,000.00
	March 19,	Shrine of Immaculate Conception	5.00
	April 28,	St. Ann's Infant Home	1,000.00
	June 9,	Home Makers Service Fund	2,500.00
	October 28,	United Giver's Fund, Washington, D. C.	1,000.00
	November 10,	St. Ann's Infant Home	15,000.00
1960:	June 30,	Sisters of The Holy Child	12,000.00
	November 9,	United Giver's Fund, Washington, D. C.	1,000.00

(d) John McShain Charities, Inc. was during the taxable years a corporation organized and operated exclusively for charitable purposes, to a substantial extent within the District of Columbia.

6.(a) On March 15, 1951, at a meeting of the Board of Directors of the petitioner Alexander B. Hagner, among other announcements, announced that as President he had entered into an agreement with John McShain, Inc. for the erection of an office building on the aforesaid lots of land, to be known as "Benjamin Franklin Building".

(b) At the same meeting the chairman thereof, Alexander B. Hagner, reported that he, as President of the petitioner, had entered into a contract with himself, as an individual, covering his services for the aforesaid period of 15 years, with compensation based upon per centage of net income of the company. The contract to which he referred was the following:

"March 15, 1951

"Mr. Alexander B. Hagner,
925 Washington Building,
Washington 5, D. C.

Dear Mr. Hagner:

In consideration for your past and future services as President of this Corporation, and to ensure the benefit of your continued responsibility for principally conducting the affairs of the Corporation, we desire to employ you as President of This Corporation for a fixed term beginning as of the date of this letter and extending throughout the full tenure of certain leases running in favor of this Corporation and covering Lots 11, 12, 13, 800, 801, and 802 in Square S. 572, Washington, D. C.

For your services as President and Chief Executive Officer of the Corporation we agree to pay you, in pro rata monthly installments, compensation equal to 15 per cent of the net income of this Corporation as defined under the Internal Revenue Code attributable to the Ben Franklin Building, but before deduction for this compensation.

Your acceptance of this letter, as signified by your signature in the space provided below, shall constitute a binding agreement between us.

Sincerely,

CAPITOL COURT CORPORATION

By /s/ Alexander B. Hagner
President.

WITNESSES:
/s/ John McShain
/s/ George F. Smith, Jr."

ATTEST:
(Seal)
/s/ George F. Smith, Jr.
Assistant Secretary

ACCEPTED:
/s/ Alexander B. Hagner

(c) Alexander B. Hagner, under the aforesaid contract or arrangement, received during the taxable years the amounts following:

1957 - - - - -	$12,757.33
1958 - - - - -	13,343.44
1959 - - - - -	13,770.90
1960 - - - - -	13,856.23

(d) The record does not disclose what amounts of money Alexander B. Hagner received under the aforesaid contract for the years 1951 to 1956, inclusive.

(e) Some time prior to the year 1957 Alexander B. Hagner borrowed approximately $40,000.00 from the petitioner. The loan was paid in the year 1959.

7.(a) On October 30, 1951, the petitioner and the United States entered into a lease whereby the former leased to the latter the Benjamin Franklin Building and the Lots 801, 802, 803, 11, 12 and 13 in Square S. 572, upon which it was constructed at an annual rental of $279,999.96, and for a term ending December 15, 1952, which could be, at the option of the Government, renewed each year until December 15, 1966, (a total of fifteen years). The lease contained, among others, the conditions following:

> "The building and all appurtenances thereto belonging, including all operating and service facilities and equipment existing at the time of occupancy or agreed upon by the Government and the Lessor.
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> "The Lessor shall make all necessary repairs to the exterior walls, roof and structure of the building, including exterior painting, required for the preservation thereof, not caused by the negligence of the Government's agents or employees, and in addition, shall keep the building in a weather-tight condition and shall replace in whole or in part any facilities and/or mechanical installations which through deterioration or faulty construction make it impossible to provide the services available or agreed upon at the time of the Government's occupancy of the leased premises.
>
> "The Lessor agrees to comply with all local ordinances, regulations and statutes relating to buildings and their equipment, to make or have made such changes as required to bring such structure or equipment into conformity therewith, and to pay all taxes, duties or charges levied, or to be levied, on said premises during the term of this lease, except gas, electric

current, water charges and fuel.

"The Government shall, at its expense, furnish all necessary labor and material for the maintenance and custodial services of the building, including interior painting, maintenance of mechanical equipment, alterations or additions to plumbing, heating and electrical facilities, partition work, floor covering, and any other physical improvements required for the specific needs of the Government."

(b) The lease has been renewed from year to year to the present time by the Government of the United States.

(c) The repairs made by the petitioner under the provisions of the lease during the four taxable years involved were made during the year 1959 and amounted to the sum of $2,112.18. The record does not disclose what repairs, if any, were made during the prior years.

8.(a) The books and records of the petitioner were kept by Edward Barnhart, the Treasurer, at the office of John McShain, Inc. 540 Seventeenth Street, Philadelphia.

(b) Any business of the petitioner which had to be, or which was transacted in the District of Columbia was done by Alexander B. Hagner.

9.(a) During the taxable years the gross income, expenses and operating net income, that is to say, without deduction for depreciation and before payment of income taxes, were the following:

GROSS INCOME		EXPENSES		OPERATING NET INCOME
		1957		
Interest on Loan to Hagner	$2,000.00	Salary-Pres. (3)	$12,757.33	
Rents	279,999.96	Ground Rent	24,000.00	
		Interest	44,387.61	
		Taxes	33,837.84	
		Other Deductions	3,094.46	
	$281,999.96		$118,077.24	$163,920.72

(3) Actually was 15 per centum of net operating income, without deduction for such percentage, under the letter set forth in Findings 5(b) herein.

GROSS INCOME		EXPENSES		OPERATING NET INCOME
		1958		
Interest on Loan to Hagner	$2,000.00	Salary-Pres.	$13,343.44	
Rents	279,999.96	Ground Rent	24,000.00	
		Interest	40,401.95	
		Taxes	33,837.84	
		Other Deductions	3,223.58	
	$281,999.96		$114,806.81	$167,193.15
		1959		
Interest on Loan to Hagner	$1,916.66	Salary-Pres.	$13,770.90	
Rents	279,999.96	Ground Rent	24,000.00	
		Repairs	2,112.18	
		Interest	36,254.40	
		Taxes	35,121.36	
		Other Deductions	2,498.22	
	$281,916.62		$113,757.06	$168,159.56
		1960		
Rents	$279,999.96	Salary-Pres.	$13,856.23	
		Ground Rent	24,000.00	
		Interest	31,938.42	
		Taxes	36,403.38	
		Contributions	3,000.00	
		Other Deductions	4,564.55	
	$279,999.96		$113,762.58	$166,237.38

(b) In reporting net income for Federal income tax, and district of Columbia franchise tax purposes the petitioner deducted amounts representing depreciation of the building and equipments as follows:

For the year 1957	$91,631.12
For the year 1958	91,580.30
For the year 1959	90,124.43
For the year 1960	90,124.43

(c) There was no funded reserve set up, that is to say the amounts for depreciation were not set aside in a separate fund, and held for restoration and the like. On the other hand the operating net income shown in subfinding (a) hereof was, during the taxable years, distributed as follows:

YEAR	AMORTIZATION OF MORTGAGE	DIVIDEND TO JOHN McSHAIN CHARITIES	FEDERAL INCOME TAX	D. C.	TOTAL
1957	$98,166.63	$30,000.00	$30,212.05	$3,614.58	$161,993.26
1958	98,166.63	30,000.00	31,852.75	3,780.64	163,800.02
1959	98,166.63	30,000.00	33,049.35	3,901.76	164,168.19
1960	98,166.63	30,000.00	32,099.80	3,925.93	165,141.91

(d) The balance of the operating net income left after the payment of the above amounts were put into a fund which at the present time amounts to approximately $90,000.00, and which is not held for any particular purpose.

(e) The amount claimed as depreciation in computing net income for taxation purposes was used to pay the amount by which the mortgage on the building and land was annually amortized or curtailed.

10. The amount of the loan from Metropolitan Life Insurance Company, secured by the mortgage on the building and land and, namely, $1,400,000.00 was more than sufficient to pay for the construction of the building, partitions and equipment by approximately $250,000.00. Instead of being used to reduce the mortgage, that sum was split up between Hagner and John McShain Charities, Inc. Hagner's share, or the amount which he received was $37,500.00.

11. Docket No. 1745: (a) On March 31, 1958, the petitioner paid to the District a franchise tax for the calendar year 1957 in the amount of $3,614.58.

(b) On March 23, 1961, the petitioner filed with the assessing authority of the District a claim for refund of the aforesaid tax.

(c) On May 15, 1961, the claim for refund was denied.

12. Docket No. 1746: (a) On February 24, 1959, the petitioner paid to the District a franchise tax for the calendar year 1958 in the amount of $3,780.64.

(b) On March 23, 1961, the petitioner filed with the assessing authority of the District claim for refund of the aforesaid tax.

(c) On May 15, 1961, the claim for refund was denied.

13. Docket No. 1747: (a) On February 2, 1960, the petitioner paid to the District a franchise tax for the calendar year 1959 in the amount of $3,901.76.

(b) On March 23, 1961, the petitioner filed with the assessing authority a claim for refund of the aforesaid tax.

(c) On May 15, 1961, the claim for refund was denied.

14. Docket No. 1748: (a) On March 8, 1961, the petitioner paid the District a franchise tax for the calendar year 1960 in the amount of $3,925.93.

(b) On March 23, 1961, the petitioner filed with the assessing authority of the District a claim for refund of the aforesaid tax.

(c) On May 15, 1961, the claim for refund was denied.

15. The grounds for the aforesaid four claims for refund were the following:

> "All of the deponent's stock was and is owned by John McShain Charities, Incorporated, an exempt corporation. Deponent's income consists solely of rentals derived during the taxable year from an office building in the District of Columbia, in furtherance of its purposes, and its chief asset is a ground lease. Deponent was and is organized for the purpose of holding title to property, collecting income therefrom and turning over the entire amount thereof, less expenses, to an organization which itself is exempt from the District of Columbia income and franchise tax. Deponent, therefore, was and is an exempt organization during the taxable year under Section 1, subsection (h) of Title II (of Article I) under the District of Columbia Income and Franchise Tax Act of 1947 (as amended May 3, 1948, May 27, 1949, May 18, 1954, and March 31, 1956, and subsequent applicable amendments thereto.)
>
> "In the alternative, deponent was and is a corporation (fund or foundation) organized and operated exclusively for religious, charitable, scientific, literary or educational purposes or for the prevention of cruelty to children or animals, to a substantial extent within the

District, no part of the net earnings of which inures to the benefit of any private individual or shareholder, and no part of the activities of which is carrying on propaganda, or otherwise attempting to influence legislation. Deponent was, therefore, during the taxable year, and is an exempt organization under Section 1, subsection (d) of Title II, (of Article I) of the District of Columbia Income and Franchise Tax Act of 1947, as amended as above."

16. These cases were filed on August 11, 1961.

Opinion

The petitioner voluntarily paid franchise taxes, measured by net income from an office building which it owns, to the District of Columbia for the calendar years 1957, 1958, 1959 and 1960. Thereafter it filed claims for refund thereof with the Finance Officer, claiming that it did not owe the taxes by virtue of Section 1(h) of Title II of the District of Columbia Income and Franchise Tax Act of 1947, (Section 47-1554 (h), D. C. Code, 1961 Ed.) or in the alternative Section 1(d) of that title. (Section 47-1554 (d), D. C. Code, 1961 Ed.). Those two sections exempt from the effect of the Act the following:

Section 1(h): "Corporations organized for the exclusive purpose of holding title to property, collecting income therefrom, and turning over the entire amount thereof, less expenses, to an organization which itself is exempt from the tax imposed by this title."

Section 1(d): "Corporations, and any community chest, fund or foundation organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, or for the prevention of cruelty to children or animals, to a substantial extent within the District, no part of the net earnings of which inures to the benefit of any private individual or shareholder, and no part of the activities of which is carrying on propaganda, or otherwise attempting to influence legislation."

The petitioner is a Delaware corporation its sole stockholder is John McShain Charities, Inc., a non-profit charitable corporation with its office in Philadelphia, Pennsylvania.

During the taxable years involved John McShain Charities, Inc. made contributions to hospitals, churches, religious and educational institutions, welfare funds throughout the United States, including contributions to such institutions in the District of Columbia as follows:

Year	Total Contributions	District of Columbia Contributions
1957	$58,520.00	$12,840.00
1958	92,290.20	11,200.00
1959	89,456.00	29,505.00
1960	100,955.00	11,000.00
Total	$341,221.20	$64,545.00

The Court believes that John McShain Charities, Inc. was during the taxable years "operated exclusively for * * * charitable * * purposes * * * to a substantial extent within the District within the meaning of Section 1(d) of Title II of the District of Columbia Revenue Act of 1947 (Section 47-1554(d) D. C. Code, 1961 Ed.) CF: Federal Reserve System v. Agnew, 329 U. S. 441, 91 L.Ed. 408, 67 S.Ct. 411. It was, therefore, exempt from taxation under that section. If it can be said that the petitioner was organized for the exclusive purpose of holding title to property, collecting income and turning over the entire amount thereof to John McShain Charities, Inc., the Court would have to hold that the petitioner was exempt from taxation under Section 1(h) of Title II of the Act (Section 47-1554(h), D. C. Code, 1961 Ed.); and that the claims for refund of the franchise taxes here involved should have been granted by the Finance Officer. The Court does not, however, believe that the petitioner is the type of corporation contemplated by Section 1(h); and must hold that the franchise taxes voluntarily paid by the petitioner were legally due by it; and that the denial of the claims for refund was proper. There are several reasons for the ruling:

It is clear from the record that the petitioner was organized by a group of owners of a tract of land for the exclusive purpose of exploiting the property. It is purely a business corporation. The use of the word "organized" was significant in light of the fact in subsections (b) (d) (e) (f) of Section 1 of Title II of the Act Congress has used the phrase "organized and operated" or "organized or operated", and in subsection (c), "owned and operated". At the time the petitioner was organized, the promoters had never heard of John McShain Charities, Inc. It is a cardinal principle of the law of taxation that exempting statutes or provisions must be strictly construed and that all doubts must be resolved against the exemption. Washington Chapter of American Institute of Banking, 92 U.S. App. D.C. 139, 141, 203 F.2d 68, 81 W.L.R. 746.

If, however, the rule just above mentioned could be ignored and the word "organized" be distorted to mean "operated", the petitioner would still have been liable for the franchise taxes, because it cannot be said that the petitioner was during the taxable years operated "for the exclusive purpose of holding title to property, collecting income therefrom and turning over the entire amount thereof" to John McShain Charities, Inc.

The Court cannot escape the conviction that the petitioning corporation was not organized, or even operated (if such terms are synonymous, as its counsel contend) "for the exclusive purpose of holding title to property, collecting income therefrom, and turning over the entire amount thereof, less expenses" to John McShain Charities, Inc., but rather that it was primarily or, at least, to a large extent organized and operated for the benefit of Alexander B. Hagner, and operated to a somewhat lesser extent for the benefit of John McShain, individually.

It is by no means certain from the record that Alexander B. Hagner contributed anything to the original purchase price of the land here involved of $102,000. If he did so, his contribution was not in excess of $16,000. When an 85 per centum interest (no part of which he owned) was sold to John McShain he received or retained out of the purchase price of $252,000, approximately, $38,000, and still retained his original 15 per centum interest in the land.

As trustee for himself and John McShain he entered into a lease of the six lots of ground with himself, as President of the petitioner, at an annual rental of $24,000, whereby the petitioner agreed that at the end of the 15 year term of the lease, or upon failure to pay the rent in the interim, a building thereon to be built, which cost the petitioner approximately $1,400,000, would become the property of Hagner and McShain, free and clear of all encumbrances. The operating net profit, that is to say, without considering the matter of depreciation, if any, was, approximately, $166,000 each year. For income tax purposes the petitioner in its returns claimed annual depreciation allowances of, approximately, $90,000. Actually there was little if any depreciation, since the tenant of the building, the United States, was required to keep the interior in repair; and no fund for depreciation was set up. What happened was that a sum about equal to the claimed annual depreciation allowance was paid to reduce a mortgage on the building, so that it would be fully paid at the end of 15 years. Indeed, Hagner, has in recent years become somewhat impatient and has increased the amortization payment so as to advance the time when the building shall become his and McShain's.

On March 15, 1951, Alexander B. Hagner, as President of the petitioner, wrote a letter to himself, which he accepted, whereby he was to receive as his services as President 15 per centum of the net income as defined for Federal income tax purposes. Under that contract or arrangement Hagner received approximately $13,500 during each of the four years herein involved. With the exception of arranging or supervising repairs to the exterior of the building costing $2,112.18, and arranging the leasing of the building to the United States, Hagner has had little, if anything to do as President of the petitioner. All bookkeeping, income tax accounting, financing and the like has been done in McShain's office in Philadelphia.

Sometime prior to 1947 Hagner, for the purpose of making some investment, borrowed $40,000 from the petitioner, which was repaid in 1959.

During each of the taxable years involved the petitioner paid a dividend of $30,000 to John McShain Charities, Inc., its sole stockholder. The petitioner claims that, notwithstanding the facts detailed above, that payment gives the petitioner the character of a corporation "organized for the exclusive purpose of holding title to property, collecting income therefrom, and turning over the entire amount thereof, less expenses, to an organization which itself is exempt from the tax imposed by" the Income and Franchise Tax Act (Chapter 15 of the Code); that it therefor was exempt from franchise taxation during the years involved; and that the claims for refund thereof should have been allowed or granted. The Court cannot agree with that contention. The Court does not believe that the petitioner was the kind of corporation contemplated in Section 1(h) of Title II of the Income and Franchise Tax Act (Section 47-1554(h), D. C. Code, 1961 Edition).

For the reasons stated the Court holds as follows:

Docket No. 1745: That the action of the assessing authority of the District of Columbia in denying the claim for refund of a franchise tax for the calendar year 1957 in the amount of $3,614.58, filed on March 23, 1961, was proper and must be affirmed.

Docket No. 1746: That the action of the assessing authority of the District of Columbia in denying the claim for refund of a franchise tax for the calendar year 1958 in the amount of $3,780.64, filed on March 23, 1961, was proper and must be affirmed.

Docket No. 1747: That the action of the assessing authority of the District of Columbia in denying the claim for refund of a franchise tax for the calendar year 1959 in the amount of $3,901.76, filed on March 23, 1961, was proper and must be affirmed.

Docket No. 1748: That the action of the assessing authority of the District of Columbia in denying the claim for refund of a franchise tax for the calendar year 1960 in the amount of $3,925.93, filed on March 23, 1961, was proper and must be affirmed.

Decision will be entered for respondent.

Judge

DISTRICT OF COLUMBIA TAX COURT

CAPITOL COURT CORPORATION, Petitioner,	)	
vs.	)	DOCKET NO. 1745
DISTRICT OF COLUMBIA, Respondent.	)	

FILED
APR 13 1962
District of Columbia Tax Court

DECISION

This proceeding came on to be heard upon the petition filed herein; and upon consideration thereof, and of the evidence adduced at the hearing on said petition, it is, by the Court this 13th day of April, 1962,

ADJUDGED AND DETERMINED, that the action of the assessing authority of the District of Columbia in denying the claim for refund of a franchise tax for the calendar year 1957 in the amount of $3,614.58, filed on March 23, 1961, was proper, and be and the same is hereby affirmed.

Jo. V. Morgan
Judge

Findings of Fact, Opinion and Decision
Served as follows:

Roger Robb, Esq.
Kenneth Wells Parkinson, Esq.
Attorneys for Petitioner
1100 Tower Building
Washington 5, D. C. (Mailed 4/13/62)

Finance Officer, D. C. (Mailed 4/13/62)

Corporation Counsel, D. C. (Mailed 4/13/62)

Phyllis R. Liberti
Phyllis R. Liberti,
Clerk

DISTRICT OF COLUMBIA TAX COURT

CAPITOL COURT CORPORATION, Petitioner,	)	
vs.	)	DOCKET NO. 1746
DISTRICT OF COLUMBIA, Respondent.	)	

FILED

APR 13 1962

District of Columbia Tax Court

DECISION

This proceeding came on to be heard upon the petition filed herein; and upon consideration thereof, and of the evidence adduced at the hearing on said petition, it is, by the Court this 13th day of April, 1962,

ADJUDGED AND DETERMINED, that the action of the assessing authority of the District of Columbia in denying the claim for refund of a franchise tax for the calendar year 1958 in the amount of $3,780.64, filed on March 23, 1961, was proper, and be and the same is hereby affirmed.

Jo. V. Morgan
Judge

Findings of Fact, Opinion and Decision
Served as follows:

Roger Robb, Esq.
Kenneth Wells Parkinson, Esq.
Attorneys for Petitioner
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Washington 5, D. C. (Mailed 4/13/62)

Finance Officer, D. C. (Mailed 4/13/62)

Corporation Counsel, D. C. (Mailed 4/13/62)

Phyllis R. Liberti
Phyllis R. Liberti,
Clerk

DISTRICT OF COLUMBIA TAX COURT

CAPITOL COURT CORPORATION, Petitioner,	)	
vs.	)	DOCKET NO. 1747
DISTRICT OF COLUMBIA, Respondent.	)	

FILED
APR 13 1962
District of Columbia Tax Court

DECISION

This proceeding came on to be heard upon the petition filed herein; and upon consideration thereof, and of the evidence adduced at the hearing on said petition, it is, by the Court this 13th day of April, 1962,

ADJUDGED AND DETERMINED, that the action of the assessing authority of the District of Columbia in denying the claim for refund of a franchise tax for the calendar year 1959 in the amount of $3,901.76, filed on March 23, 1961, was proper, and be and the same is hereby affirmed.

Jo. V. Morgan
Judge

Findings of Fact, Opinion and Decision
Served as follows:

Roger Robb, Esq.
Kenneth Wells Parkinson, Esq.
Attorneys for Petitioner
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Washington 5, D. C. (Mailed 4/13/62)

Finance Officer, D. C. (Mailed 4/13/62)

Corporation Counsel, D. C. (Mailed 4/13/62)

Phyllis R. Liberti
Phyllis R. Liberti,
Clerk

DISTRICT OF COLUMBIA TAX COURT

CAPITOL COURT CORPORATION, Petitioner,	)	
vs.	)	DOCKET NO. 1748
DISTRICT OF COLUMBIA, Respondent.	)	

FILED
APR 13 1962
District of Columbia Tax Court

DECISION

This proceeding came on to be heard upon the petition filed herein; and upon consideration thereof, and of the evidence adduced at the hearing on said petition, it is, by the Court this 13th day of April, 1962,

ADJUDGED AND DETERMINED, that the action of the assessing authority of the District of Columbia in denying the claim for refund of a franchise tax for the calendar year 1960 in the amount of $3,925.93, filed on March 23, 1961, was proper, and be and the same is hereby affirmed.

Jo. V. Morgan
Judge

Findings of Fact, Opinion and Decision
Served as follows:

Roger Robb, Esq.
Kenneth Wells Parkinson, Esq.
Attorneys for Petitioner
1100 Tower Building
Washington 5, D. C. (Mailed 4/13/62)

Finance Officer, D. C. (Mailed 4/13/62)

Corporation Counsel, D. C. (Mailed 4/13/62)

Phyllis R. Liberti
Phyllis R. Liberti,
Clerk