OPINION NO. 1020

DISTRICT OF COLUMBIA TAX COURT

FILED

MAX Y. GOLDSTEIN and PHILIP GOLDSTEIN, Trustees U/W of SAMUEL GOLDBERG, Deceased, Petitioners, vs. DISTRICT OF COLUMBIA, Respondent.	)	DOCKET NO. 1858

- o -

NED BORD and ANNE R. BORD, Petitioners, vs. DISTRICT OF COLUMBIA, Respondent.	)	DOCKET NO. 1863

- o -

VICTOR BLOCK, Petitioner, vs. DISTRICT OF COLUMBIA, Respondent.	)	DOCKET NO. 1866

FINDINGS OF FACT AND OPINION

The above entitled causes have been consolidated for hearing and disposition. The petitioners in the three cases were stockholders of Sedgwick Gardens, Inc., a corporation. The corporation was dissolved and its assets were distributed to its stockholders. The assessing authority of the District of Columbia determined that the amounts received by the stockholders in the dissolution were dividends within the

meaning of Section 47-1551c(m) of the District of Columbia Code (Section 4(m) of Title I of the District of Columbia Income and Franchise Tax Act of 1947), and assessed income taxes accordingly. The petitioners here appeal from that assessment. There are other and differing issues raised respectively in the petitions, which are secondary to the main issue above stated.

Findings of Fact

I

In General

1.(a) Sedgwick Gardens, Inc. was a Maryland corporation. It was organized several years prior to January 10, 1958.

(b) On January 10, 1958, the entire paid-in capital stock of Sedgwick Gardens, Inc. was $72,000.

(c) On January 10, 1958, the capital stock of Sedgwick Gardens, Inc. was held equally by the stockholders following: Lily Friedland, a non-resident of the District of Columbia, and the following residents of the District of Columbia:

Anne R. Bord

Ellis P. Block, Trustee under
an indenture of trust
dated December 23, 1941

Harry D. Goldstein and Philip Goldstein,
Trustees under the will of
Samuel Goldberg, deceased.

(d) The officers of the corporation were the following: President, Louis Friedland, the husband of Lily Friedland; Vice-President, Ned Bord, the husband of Anne R. Bord; Treasurer, Bernard Kasterson; Secretary, Victor I. Block, son of Ellis P. Block.

2. On January 10, 1958, Sedgwick Gardens, Inc. was the owner of an apartment house, known as "Sedgwick Gardens", being premises numbered 3726 Connecticut Avenue, Washington, D. C., and more particularly described as:

> Lot 31 in Square 2060, in the subdivision made by The Chevy Chase Land Company of Montgomery County, Maryland, as per plat recorded in Liber 93, folio 121 of the Records of the Office of the Surveyor of the District of Columbia, described by metes and bounds in accordance with a survey recorded in Survey book 106, page 130 of the said Surveyor's Office Records.

3. (a) The affairs of Sedgwick Gardens, Inc. and the management of the apartment house owned by it and known as "Sedgwick Gardens" were carried on generally by the Randall H. Hagner & Company, a corporation engaged in the real estate business and particularly by Ned Ford, an employee of that corporation and the husband of the stockholder Anne H. Ford.

(b) The corporation did not have an account in any bank, its banking services being carried on by Randall H. Hagner & Company, which carried an account with the corporation showing, as credits in the latter's favor, the rents collected from the apartment house, and, as debits, the payments by the Hagner Company of expenses in the operation of the apartment house, income and other taxes and corporate dividends.

(c) Most of the corporate documents of Sedgwick Gardens, Inc., including all income tax returns, were signed by Ned Ford as its Vice-President. The office of Randall H. Hagner & Company was given as the business address of the corporation.

4. For some time prior to January 10, 1958, Ned Ford and Levum & Gerber Realty Company, a real estate firm, carried on negotiations for the sale of the apartment house, Sedgwick Gardens, to Darwin Corporation or to its assignee or designee. On or about January 10, 1958, or a short time prior thereto an informal agreement was made by the negotiating parties for

the sale of the apartment house property for $1,085,000. Legum & Gerber Realty Company, acting for the owner of that property, signed a receipt dated January 17, 1958, to the effect that it had received the sum of $50,000 as a deposit on the purchase of the property for $1,085,000, with the terms and conditions of sale therein contained. The contract of purchase represented by the receipt was accepted by Darwin Corporation on January 17, 1958. Ten days later, that is to say on January 27, 1958, there was executed on the reverse side of the receipt the instrument following:

> "We, the undersigned, being liquidating stockholders of Sedgwick Gardens, Inc., do hereby accept the written contract for the sale of Lot 31 in Square 2060, in the District of Columbia, subject, however, to the following changes, namely:
>
> 1. That the price to be paid for said property shall be One Million One Hundred Thousand Dollars ($1,100,000.00) all cash, of which the deposit is to be a part. Said price is to be NET to Sellers, free of brokerage commissions.
>
> 2. That if the deposit is forfeited no commission or compensation is to be paid to the brokers, notwithstanding any other provision to the contrary appearing on the reverse side hereof.
>
> Dated: January 27, 1958 — Harry D. Goldstein, Philip Goldstein — Trustees of Samuel Goldberg, deceased
>
> Lily Friedland
>
> Ellis P. Block Trust by Ellis P. Block, Sole Trustee
>
> Anne R. Bord
>
> SELLERS
>
> The foregoing changes are hereby accepted this 27th day of January, 1958.
>
> The foregoing provisions are approved: DARWIN CORPORATION By Dunbar A. Rosenthal President PURCHASER
>
> LEGUM & GERBER REALTY CO.
>
> By David H. Legum
> Raymond J. Gerber"

5. There was an agreement or understanding between Sedgwick Gardens, Inc. and Legum & Gerber Realty Company that the latter

would be paid the sum of $10,000 for its services in procuring a purchaser for the property. Such compensation was paid by Randall H. Hagner & Company out of the funds in the aforesaid account it maintained with Sedgwick Gardens, and was charged against that corporation.

5.(a) On February 28, 1950, settlement of the transfer of the apartment house property from Sedgwick Gardens, Inc. "acting herein pursuant to Resolutions of its Stockholders and Board of Directors", to 3726 Connecticut Avenue, Inc., a corporation and the assignee or designee of Darwin Corporation, was had at the joint office of The Real Estate Title Insurance Company and the Columbia Title Insurance Company, hereinafter called "the Title Company" in Washington, D. C. There was delivered to the Title Company for recordation a deed from Sedgwick Gardens, Inc. to 3726 Connecticut Avenue, Inc., transferring the apartment house property. None of the stockholders signed the deed or any other instrument of transfer.

(b) At the settlement there was delivered to the Title Company the document following:

Columbia Title Insurance Company

Woodward Building
15th and H Sts., N. W.
Washington, D. C.

Gentlemen:

Reference is made to the settlement being held this day in your office involving the sale of Lot Thirty-one (31) in Square 2060 with improvements thereon known as Sedgwick Garden Apartments, Washington, D. C.

You are hereby instructed to disburse the proceeds of the sale to the following named persons who are liquidating stockholders of Sedgwick Gardens, Inc., in the proportion set opposite their names:

Lily Friedland ..... ¼
Anne W. Bord ..... ¼
Ellis P. Block, Trustee of
Ellis P. Block Trust ..... ½

Harry D. Goldstein and
Philip Goldstein, as
Trustees under the will of
Samuel Goldberg, deceased ... ¼

We hereby certify to you that Sedgwick Gardens, Inc. has no obligations other than the first deed of trust, if any, against the above property and further, except for current operating expenses of said property, funds for the payment of which are currently in the hands of Randall H. Wagner & Company, with instructions to use said funds for the payment of said current operating expenses.

Very truly yours,

SEDGWICK GARDENS, INC.

By Ned Bord
Vice-President."

(c) In the settlement of the above mentioned transfer Sedgwick Gardens, Inc. was the sole grantor and was considered so by the Title Company. Its statement of account of the settlement delivered to, and accepted by the corporation and its stockholders without objection was the following:

"Settlement Case No. 89177 To Sedgwick Gardens, Inc., Dr.

In Re Sale - Lot 31 - Square 2060 - Date February 28, 1958

Price of Property		$1,100,000.00
Insurance Fire, Theft, W.C. on Garage pd to 4-8-58 $25,000.00		7.67
Insurance Lia. pd to 4-8-58		7.64
Taxes pd to 12-31-57 at $13,366.08	$2,227.68	
Deed of Trust	277,500.00	
Interest fr 9-4-57 (acc. $3633.33)	5,550.00	
Release	12.50	
Trustee Fee	10.00	
Service Charges	10.00	
Revenue Stamps	1,210.00	
Balance to: Lily Friedland (¼)	203,373.78	
Balance to: Anne R. Bord (¼)	203,373.78	
Balance to: Ellis P. Block, Trustee of Ellis P. Block Trust (¼)	203,373.78	
Balance to: Harry D. Goldstein and Philip Goldstein Trustees under the Will of Samuel Goldberg, deceased (¼)	203,373.78	
	$1,100,015.31	$1,100,015.31

(d) Each of the stockholders received the amount of $203,373.78 in cash from the Title Company.

7.(a) Randall H. Hagner & Company, as the rental agent for, and manager of Sedgwick Garden apartments sent or delivered to Sedgwick Gardens, Inc. a rental statement for the period from January 1, to February 28, 1958, reporting to the latter corporation, as the owner of the property during that period, the rents collected from the tenants thereof and the expenses incurred by the former on behalf of the latter corporation in the operation of the property. No such statement was sent to any of the stockholders of Sedgwick Gardens, Inc.

(b) Sedgwick Gardens, Inc. in income tax returns for the period from January 1, to February 28, 1958, (the date of the sale of the property) filed with the assessing authority of the District and with the Internal Revenue Service, reported, as gross income, the net rents accruing from the apartment house property, and collected from Randall H. Hagner & Company. The return was signed by Ned Bord, as Vice-President of Sedgwick Gardens, Inc. Attached to the income tax return were a balance sheet and a profit and loss statement, called "STATEMENT OF OPERATIONS", copies of which are appended to these findings of fact as APPENDICES "A" and "B".(1)

(c) Ned Bord, as Vice-President, and Victor Block, as Secretary, were employed and were paid a salary by Sedgwick Gardens, Inc. during the period ending February 28, 1958.

(d) None of the stockholders residing in the District of Columbia reported the receipt of the rents from the apartment house property as gross income accruing to them in income tax returns filed with the Internal Revenue Service and with the assessing authority of the District.

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(1) Inadvertently, or because income tax forms for 1958 were not obtainable, a 1957 form was used, but the period covered therein was clearly stated to be Jan. 1, 1958 and ended Feb. 28, 1958.

8. Sedgwick Gardens, Inc. was dissolved on March 4, 1958, in accordance with Articles of Dissolution filed that day with the State Tax Commission of Maryland.

9. The book deficit of $5,602.04 resulting from a write-off of unexplained "Contract Rights" of $24,000, appearing in the profit and loss statement attached to above mentioned income tax return (See Appendix "E"), and the probable payment of that sum to some person, was partially made up by a contribution of $1,000 from each stockholder. Such contribution was partially returned by a final distribution of $2,467.38, equally divided between the four stockholders, or $616.84 to each stockholder.

Taxpayers
Harry D. Goldstein and Philip Goldstein
Trustees under the Will of Samuel Goldberg

Docket No. 1858

10. The petitioners are residents of the District of Columbia, and are trustees under the will of Samuel Goldberg, deceased. They are here in that capacity.

11. On January 10, 1958, and for some time prior thereto the trust, of which the petitioners were trustees, was the owner of one-fourth of the capital stock issued by Sedgwick Gardens, Inc. The paid-in surplus or capital in respect of that portion of the capital stock was $18,000.

12. The petitioners' decedent, Samuel Goldberg, died on May 15, 1950. His stock in Sedgwick Gardens, Inc. which was transferred by his will to the petitioners as trustees, was valued for Federal estate tax purposes at $129,942.44.

13. The petitioners received upon the liquidation of Sedgwick Gardens, Inc. the sum of $207,730.88 in cash.

14.(a) The petitioners filed with the assessing authority of the District a fiduciary income tax return for the year 1958, showing net income of $10,716.85. The return reported that

the sum of $10,716.85 was distributed to Fannie Goldberg, the beneficiary of the trust, resulting in no income tax due by the petitioning trustees. In computing net income the petitioners did not include the amount of $207,730.88, which they had therefore received from the Title Company, as one-fourth of the net proceeds of the sale of the apartment house property of Sedgwick Gardens, Inc.

(b) The petitioners in their income tax return reported as Non Taxable Income $73,047.95 as "Long term capital gain held in excess of five years" in relation to Sedgwick Gardens, Inc. They omitted from gross income an amount in excess of 25 per centum of gross income stated on the return.

(c) On October 15, 1962, the assessing authority of the District assessed the petitioners a deficiency in income tax in the amount of $9,106.54, plus interest in the amount of $2,068.55, or a total of $11,175.09, which the petitioners paid on November 15, 1962. The deficiency was computed as follows:

Total amount received in liquidation of Sedgwick Gardens, Inc.	$207,730.88	
Less paid in surplus or capital	18,000.00	$189,730.88
Exemption (Trust)		100.00
Taxable Income		$189,630.88
Revised tax liability	$9,106.54	
Less tax shown on return or previously adjusted	- o -	
Deficiency in tax	$9,106.54	

(d) There is no dispute as to the computation of interest if the deficiency was correctly computed.

(e) This case was filed on January 11, 1963.

Taxpayers

Ned Bord and Anne R. Bord

Docket No. 1863

Some of the facts relating to the petitioners have been stipulated by the parties, and as stipulated are found by the Court. The Court makes additional findings of fact as follows:

15. The petitioners are husband and wife. Ned Bord is a petitioning taxpayer because he and his wife, Anne R. Bord, filed with the assessing authority of the District a joint return. The deficiency in income tax was assessed against him jointly with his wife. They are residents of the District of Columbia.

16. The petitioner Anne R. Bord, as a stockholder of Sedgwick Gardens, Inc., received $207,730.88 in cash upon the dissolution of that corporation.

17.(a) In their joint income tax return for the year 1958, the petitioners did not report the receipt by the petitioner Anne R. Bord, of the sum of $207,730.88, less $18,000, or the net sum of $189,730.88, in cash upon the dissolution of Sedgwick Gardens, Inc. In addition, there was claimed as a deduction in computing Ned Bord's business income the item following: "Worthless Business Loan - Sun Corp. - $86,708.99". Such omission and deduction resulted in a showing on the tax return that no income tax was due by the Petitioners for the year, 1958.

(b) The petitioners in their income tax return omitted from gross income an amount properly includible therein which was in excess of 25 per centum of the amount of gross income stated in the return.

18.(a) On March 15, 1962, the petitioners Ned and Anne R. Bord entered into an agreement with the Finance Officer of the District in relation to the income tax liability of the former for the year 1958 whereby any income tax due by them "may be assessed at any time on or before October 15, 1962, except that, if a notice of a deficiency in tax is sent to

said taxpayer (or taxpayers) by registered or certified mail on or before said date, then the time for making any assessment as aforesaid shall be extended beyond the said date by the number of days during which the Finance Officer, D. C., is prohibited from making an assessment and for sixty days thereafter".

(b) On September 12, 1962, there was sent by certified mail to Ned and Anne R. Bord by the Finance Officer a notice of deficiency in which the income tax was computed to be $10,305.86, plus a negligence penalty of $490.76. On November 21, 1962, there was mailed to Ned and Anne R. Bord the following:

"Ned and Anne R. Bord
4501 Connecticut Avenue, N. W., #616
Washington 8, D. C.

Re: 1609558(58)(ENG)

Our proposed deficiency in income tax against you for the taxable year 1958 has been recomputed as follows:

Taxable income per our notice of 9/12/62	$203,801.97
Less: Contributions not claimed on return, allowed	3,816.69
Taxable income, as corrected	$199,985.28
Revised tax liability	$9,623.26
Add: 5% negligence penalty	481.16
Revised deficiency and penalty	$10,104.42

This adjustment in your taxable income is the result of information submitted in a letter dated October 10, 1962, from your accountant, Mr. Oliver Higgs.

A bill for the revised deficiency in tax, penalty and statutory interest is enclosed for prompt payment."

(c) The assessing authority of the District determined that the petitioners had received unreported taxable income computed as follows:

"Liquidating dividend received from Sedgwick Gardens, Inc., computed as follows:

Total amount received at liquidation	$207,730.88
Less: Par Value of stock	18,000.00
Liquidating dividend	$189,730.88

(d) The assessing authority of the District assessed the petitioners a penalty of 5 per centum of the aforesaid dividend, for failure to report its receipt.

(e) The assessing authority of the District disallowed the deduction for bad debt in the amount of $86,708.99.

(f) The assessing authority on November 21, 1962, assessed the petitioners a deficiency in income tax in the amount of $9,623.26, plus a negligence penalty of $481.16, plus interest in the amount of $2,319.20 or a total of $12,423.62.

(g) On February 14, 1963, the petitioners paid the above mentioned deficiency, penalty and interest.

19. This case was filed on February 18, 1963.

Taxpayer

Victor Block

Docket No. 1866

20. The petitioning taxpayer is a resident of the District of Columbia. He was the Secretary of Sedgwick Gardens, Inc.

21. On January 10, 1958, the petitioner was, and at all times since that date has been a beneficiary under a trust, known as "Ellis P. Block Trust", and created by Ellis B. Block by a trust agreement, dated December 23, 1941.

22(a) Ellis P. Block Trust received $207,730.88 in cash upon the dissolution or liquidation of Sedgwick Gardens, Inc. in 1958, and the trustee thereof, Ellis P. Block, distributed one-third of the amount received, to the petitioner, as a beneficiary under the trust agreement.

(b) Ellis P. Block, as the trustee for the Ellis P. Block Trust, filed with the assessing authority of the District a fiduciary income tax return for the year, 1958. In that return the petitioner reported the receipt of $207,730.88 as non-taxable income, that is to say, as gain from the disposition of the capital asset, in the manner following:

SCHEDULE A-1-GAINS AND LOSSES FROM SALES OR EXCHANGE OF CAPITAL ASSETS

Description of Property	Date Acquired	Date Sold or Exchanged	Gross Sales Price	Cost or Other Basis	Gains or Loss
Sedgwick Gardens	1941	2/58	$207,730.88	$18,000	$189,730.88
Total Net Gain or Loss omitted (Under authority of Title III, Sec. 2(b)(11) and Sec. 3(b)(6) of D. C. Income and Franchise Tax Act of 1947, as amended) in the computation of net income ..... State how property was acquired					$189,730.88

(c) The amount of gross income reported by the fiduciary, Ellis P. Block, in the above mentioned return was $3,623.77, and the deduction claimed was $1,928.85, leaving net income reported as $1,694.92, which was reported distributed as follows: $797.46 to the petitioner, Victor Block, and $797.46 to Marilyn B. Meyers.

(d) The petitioner, Victor Block, filed with the assessing authority of the District of Columbia an income tax return for the year 1958. In that return he reported as the amount of taxable income received from the Ellis P. Block Trust the amount of $797.46 only.

(e) The petitioner in his income tax return omitted from gross income an amount properly includible therein which was in excess of 25 per centum of the amount of gross income stated in the return.

23.(a) On March 15, 1962, the Finance Officer sent by certified mail a notice of deficiency in income tax in the amount of $4,575.56. To the notice was an auditor's report computing the deficiency.

(b) On March 28, 1962, the petitioner and the Finance Officer of the District entered into an agreement, whereby it was agreed "That the amount of any income taxes due by Victor Block, may be assessed at any time on or before October 15, 1962, except that, if a notice of a deficiency in tax is sent to said taxpayer (or taxpayers) by registered or certified mail on or before said date, then the time for making any assessment as aforesaid shall be extended beyond the said date by the number of days during which

the Finance Officer, D. C., is prohibited from making an assessment after sixty days thereafter".

(c) On October 12, 1962, Jarod and Jason, certified public accountants, who apparently represented Victor Flock in respect of District of Columbia taxation, by one Leon Gerrowitz, wrote the Finance Office of the District of Columbia the letter following:

> "Pursuant to your letter of March 15, 1962 extended by agreement to October 15, 1962, this is to advise you that the above-named taxpayer is not in agreement with your proposed adjustment for the following reason:
>
> "You propose an additional income in the amount of $[illegible], on the basis of this amount being more or less received from the Illinois Flock Pool. Under the District of Columbia Income Tax Act, a specific order of a partner is taxed on a separate basis to individuals [illegible] the partnership [illegible]. Since Victor Flock, Flock must also not claim a deduction for the amount distributed to the taxpayer in arriving at his net income, the $[illegible] does not constitute taxable income to Mr. Victor Flock.
>
> We respectfully request an opportunity for a hearing in your office prior to a final determination in this matter.

(d) On October 23, 1962, the Finance Office mailed to Jarod and Jason the letter following:

> "In response to your letter of October 12, 1962, we have tentatively set November 14, 1962, at 10 A.M. as a time for a hearing in this office.
>
> "If you are unable to appear on the date specified, please advise that this office is under just as accommodate convenient to you, so we may make arrangements."

(e) On December 17, 1962, there was mailed to the petitioner the letter following:

> "December 17, 1962
>
> Mr. Victor Flock
> [illegible] Connecticut Avenue, N. W.
> Washington, D. C.
>
> Re: 1[illegible]92([illegible])
>
> Dear Mr. Flock:
>
> Your tax liability for 1[illegible] has been computed as follows:

[illegible]

[illegible] ... ll [illegible]

[illegible] ... a

[illegible] ... o

[illegible] ... orporation

[illegible] ... ers.

[illegible] ... the

[illegible] ... in exchange of the [illegible] in [illegible] investor-

[illegible] ... property.

[illegible] ... cited

[illegible] ... District of [illegible],

[illegible] ... District of [illegible] 13 [illegible] 351,

[illegible] ... District of [illegible]

[illegible] ... 3, 351 [illegible] 3, [illegible]

[illegible] ... [illegible] code,

[illegible] ... [illegible]

[illegible] ... dividend [illegible] de [illegible]

[illegible] ... or [illegible] liers

[illegible] ... the

[illegible] ... r

[illegible] ... the

[illegible] ... ice

[illegible] ... ce

[illegible] ... ever,

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

I

Statute of Limitations

The petitioners, Ted and Anna M. Ford (Docket No. 1963) and Victor Black (Docket No. 1969) claim that the deficiencies in tax were invalid, because the taxes were assessed after the expiration of time they legally could be made. They rely upon Section 47-1561(a)(1) of the District of Columbia Code, 1961 Edition, which provides as follows:

> "The amount of income taxes imposed by this subchapter shall be assessed within three years after the return is filed, and no proceeding in court without assessment for the collection of such taxes shall be begun after the expiration of that of such period."

The respondent concedes that the deficiencies were not assessed within the statutory period of three years after the returns were filed, but it claims that the assessments were made in time; and that Section 47-1561(c) of the District of Columbia Code applies. That section reads as follows:

> "Where before the expiration of the time prescribed in section (a) for the assessment of the tax, both the Commissioner(3) and the taxpayer have consented in writing to its assessment after such time, the tax may be assessed at anytime prior to the expiration of the period agreed upon. The period so agreed upon may be extended by subsequent agreements in writing made before the expiration of the period previously agreed upon."

The respondent did not file a plea and set up exception to the [illegible] of the period of limitations described in Section 47-1561(c) and under ordinary circumstances such omission would be fatal. In these cases, however, the petitioners led [illegible] and alleged and proved the facts relating to the agreement claimed by the respondent. The Court, therefore, can consider the question of the exception.

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(3) [illegible] Officer is now the [illegible] authority of the District.

Ned and Anne R. Ford, Docket No. 1863. On March 15, 1962, the petitioners entered into an agreement with the Finance Officer of the District in relation to the income tax liability of the former for the year 1958 whereby any income tax due by them "may be assessed at any time on or before October 15, 1962, except that, if a notice of a deficiency[4] in tax is sent to said taxpayer (or taxpayers) by registered or certified mail on or before said date, then the time for making any assessment as aforesaid shall be extended beyond said date by the number of days during which the Finance Officer, D. C., is prohibited from making an assessment and for sixty days thereafter."

On September 12, 1962, there was sent by certified mail to the petitioners by the Finance Office a notice of deficiency as provided in Section 47-1586d of the District of Columbia Code, to which was attached an auditor's report, wherein the deficiency in income tax was computed to be $10,305.86, plus a negligence penalty of $490.76. On November 21, 1962, there was mailed to Ned and Anne R. Ford the following:

> Ned and Anne R. Ford
> 4501 Connecticut Avenue, N. W., #616
> Washington 8, D. C.
>
> Re: 1/395,58(58)(SAG)
>
> Our proposed deficiency in income tax assessment on for the taxable year 1958 has been recomputed as follows:
>
> | | |
> |---|---|
> | Taxable income per our notice of 9/12/62 | $203,301.97 |
> | Less: Contributions not claimed on return, allowed | 3,416.69 |
> | Taxable income, as corrected | 199,885.28 |
> | Revised tax liability | 19,623.26 |
> | Add: 5% negligence penalty | 981.16 |
> | Revised deficiency and penalty | $20,604.42 |
>
> This adjustment in your taxable income is the result of information[5] submitted in a letter dated October 10, 1962, from your accountant, Mr. Oliver Ross.
>
> A bill for the revised deficiency in tax, penalty and statutory interest is enclosed for prompt payment."

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(4) The notice of deficiency required by Section 47-1586d of the District of Columbia Code is not to be confused with that called for or referred to in Section 6212 of the Internal Revenue Code. They are not the same.

(5) Information concerning contributions not claimed on return.

A deficiency notice was mailed before October 15, 1962, and the deficiency was assessed on November 21, 1962. Both steps were well within the agreed periods. The Court is of the opinion that the deficiency was validly assessed. The fact that the assessing authority, when it learned that the taxpayers had failed in their return to deduct allowable contributions, not only had the right, but it was its duty to correct the computation.

The petitioners say that the paper sent to the petitioners by certified mail on September 12, 1962, was not a notice of deficiency, apparently because it did not conform to the kind of notice of deficiency referred to in Section 6212 of the Internal Revenue Code. The District of Columbia Code, however, in respect of notices of deficiency is different from the Federal law. The notice of deficiency sent to the petitioners was that contemplated in Section 47-1586d of the Code.

For the reasons stated the Court is of the opinion that the assessments against Ned and Anne B. Lord were made within the time prescribed by the statute.

Victor Block, Docket No. 1868. The case of the petitioner, Victor Block is different from that of Ned and Anne B. Lord, in so far as they relate to issue involving the expiration of the period in which an assessment can be made legally. In the opinion of the Court, the pertinent facts in the two cases are essentially different. Those in this case are the following:

On March 15, 1962, the assessing authority of the District of Columbia mailed to the petitioner a notice of deficiency in the language following:

> Mr. Victor Block
> 4545 Connecticut Ave., N. W.
> Washington, D. C.
>
> RE: #1613692 (DFG)
>
> Dear Sir:
>
> The examination by this office of your Individual Income Tax return(s) for the year(s) ended December 31, 1958, indicates that the adjustment of your tax liability, as

shown in the accompanying report(s) of D. C. Individual Income Tax Audit Changes, is warranted.

IF YOU AGREE to the adjustment(s), as shown on the report(s), the enclosed form of waiver should be executed and forwarded to this office promptly. Action will then be taken as indicated on line 13 or 14 of the report(s), whichever is applicable.

IF YOU DO NOT AGREE to the adjustment(s), you may file a protest with this office, within thirty (30) days from the date of this letter, stating the grounds for your exceptions. Careful consideration will be given to such protest and, if you so request, an opportunity for a hearing in this office will be granted to you prior to final determination.

Should you fail to file either the enclosed waiver form or a written protest with this office within the thirty (30) day period, final determination of your tax liability will be made in accordance with the enclosed report(s)."

Attached to the letter or notice of March 15, 1962, was an auditor's report computing a deficiency in income tax due by the petitioner as follows:

Taxable income shown on return		$9,160.23
Unreported income received from the Ellis P. Block Trust		94,865.44
Revised taxable income		104,025.67
Revised tax liability		$4,821.38
Less: Tax shown on return		249.81
Deficiency in tax		$4,576.47
Less: Tax withheld	$50.72	
Payment on estimated tax	200.00	250.72
Balance due		$4,575.58[6]

On March 28, 1962,[7] the petitioner and the Finance Officer of the District entered into an agreement, whereby it was agreed "That the amount of any income taxes due by Victor Block, may be assessed at any time on or before October 15, 1962, except that, if a notice of a deficiency in tax is sent to said taxpayer (or taxpayers) by registered or certified mail on or before said date, then the time for making any assessment as

(6) Should have been $4,325.75.

(7) The agreement was signed by Victor Block on March 22, 1962. It was not signed by the Finance Officer until March 28, 1962.

aforesaid shall be extended beyond the said date by the number of days during which the Finance Officer, D. C., is prohibited from making an assessment and for sixty days thereafter".

On October 12, 1962, Sinrod and Tash, certified public accountants, who apparently represented Victor Block in respect of District of Columbia taxation, by one Leon Meyrowitz, wrote the Finance Office of the District of Columbia the letter following:

> "Pursuant to your letter of March 15, 1962 extended by agreement to October 15, 1962, this is to advise you that the above-named taxpayer is NOT in agreement with your proposed adjustment for the following reason:
>
> "You propose an addition to income in the amount of $94,865.44, on the basis of this amount being unreported income received from the Ellis P. Block Trust. Under the District of Columbia Income Tax Act, beneficiaries of a trust are taxed on any amounts deducted by fiduciaries in computing the net income of the trust. Inasmuch as the Ellis P. Block Trust did not claim a deduction for the amount distributed to this taxpayer in arriving at its net income, the $94,865.44 does not constitute taxable income to Mr. Victor Block.
>
> "We respectfully request an opportunity for a hearing in your office prior to a final determination in this matter."

On October 23, 1962, the Finance Office mailed to Sinrod and Tash the letter following:

> "In response to your letter of October 12, 1962, we have tentatively set November 14, 1962, at 10 A.M. as a time for a hearing in this office.
>
> "If you are unable to appear on the date specified, please contact this office in order that an appointment convenient to you may be arranged."

On December 12, 1962, there was mailed to the petitioner the letter following:

> "December 12, 1962
>
> "Mr. Victor Block
> 4545 Connecticut Avenue, N. W.,
> Washington, D. C.
>
> Re: 1613692(ERG)
>
> "Dear Mr. Block:
>
> Your tax liability for 1958 has been corrected as follows:

Taxable income per return		$9,160.23
Additional income per letter of proposal of March 15, 1962	$94,865.44	
Less: Share of above amount attributable to income of Millie Block	31,621.82	63,243.62
Corrected taxable income		72,403.85
Tax on corrected taxable income		$ 3,245.19
Less: Tax paid per return		249.81
Deficiency in tax		$ 2,995.38
Tax on corrected taxable income		$ 3,245.19
Less: Income tax withheld	$50.72	
Payment on declaration of estimated tax	200.00	250.72
Balance of Tax due		$ 2,994.47

The above is in accordance with distributions as contained in the 1958 Federal Fiduciary Income Tax return of Ellis F. Block Trust as furnished by your accountant, Mr. Meyrowitz."

In considering the assessment of the deficiency against the petitioner, Victor Block, we are met with the fact that between March 28, 1962, the date of the agreement extending the time for assessment, and December 12, 1962, the date of the assessment of the deficiency, no notice of deficiency was mailed or sent by the assessing authority to the petitioner. There was, as appears above, a letter from petitioner's attorney disclaiming liability, and dated October 12, 1962, a reply from the Finance Office, dated October 23, 1962, setting a date for a hearing, and a letter from the Finance Office dated December 12, 1962, relating to " Your tax liability" and to a correction thereof. Even if the letters of October 23, and December 12, 1962, could be said to be notices of deficiency, which, of course, cannot be said, they were too late, since they were not sent "on or before October 15, 1962". True, there was sent to the petitioner by certified mail a notice of deficiency on March 15, 1962, but at that time there was no agreement, so that there was no relation between the subsequent agreement and notice. From the

language of the agreement the taxpayer had a right to assume that the notice of deficiency, to which reference is made in the agreement, was to be sent sometime between the effective date of the agreement and October 15, 1962; and that the assessing authority had abandoned or, in effect, withdrawn the notice of March 15, 1962. The parties could not have had the notice of March 15, in mind, otherwise the agreement would have been a silly and meaningless instrument.

The Court does not believe that the facts justify the application of Section 47-15861(4)c, quoted in that part of this section of the opinion relating to the petitioners, Wed and Anne R. Bord, upon which the respondent relies.

As an alternative proposition in respect of the period of limitations for assessment, the respondent claims that, whether or not Section 47-15861(c) applies, the assessment against Victor Block was valid under the provisions of Section 47-15861(a)(3) of the Code which provides:

> "If the taxpayer omits from gross income an amount properly includible therein which is in excess of 25 per centum of the amount of gross income stated in the return, the tax may be assessed, or a proceeding in court for the collection of such tax may be begun without assessment at any time within five years after the return was filed;"

It is true, as the respondent contends for the first time in its brief, that the petitioner, Victor Block omitted "from gross income an amount properly includible therein which is in excess of 25 per centum of the amount of gross income stated in the return" which he filed for the calendar year 1958. Nevertheless its claim for an exception is not available to it. Such claim is an affirmative defense or matter and the burden of its maintenance is on the respondent. Rule 9 of this Court provides that "Every material allegation of

fact set forth in the petition shall be deemed to be denied by the District of Columbia; and no answer shall be required, except when the District shall rely upon new and affirmative matter or defense,". (Emphasis supplied.) The respondent did not file an answer. It cannot now rely upon the fact that the petitioner did actually omit from his return more than 25 per centum of the gross income stated in the return. It is true that the evidence which was adduced indicated that the petitioner had omitted more than 25 per centum of gross income shown on his return, but the respondent was not only required to prove that fact but to plead it by the filing of an answer. H. G. Stevens, 14 B.T.A. 1120, 1123. See also: C. A. Reis, 1 T.C. 9, 13; American Ideal Cleaning Co., 30 B.T.A. 529, 531; Farmers Feed Co., 10 B. T. A. 1069, 1076. The Court must hold that the assessment of the deficiency was too late, and was void.

II

Dividend

The facts, briefly stated are the following.

Sedgwick Gardens, Inc., hereinafter called "the corporation" was a Maryland Corporation. Its capitalization was $72,000, equally divided between the four stockholders following: Lily Friedland, Anne R. Bord, Harry D. and Philip Goldstein, Trustees under the will of Samuel Goldberg, deceased, and the Ellis F. Block Trust. For several years prior to January 10, 1958, the corporation was the owner and operator of apartment house property in the District, hereinafter called "Sedgwick Gardens" managed by the real estate firm of Randall M. Hagner & Company, hereinafter called "Hagner", and particularly by the petitioner Ned Bord, one of its employees and the husband of the petitioner and stockholder, Anne R. Bord.

For sometime prior to January 10, 1958, negotiations for the sale of Sedgwick Gardens to a customer of the real estate firm of Legum & Gerber Realty Company was carried on between that company and Ned Bord. Apparently from the testimony of Ned Bord an understanding or verbal agreement as to the price was reached about the first part of January, 1958, and the matter was submitted to the stockholders. The exact date of the understanding or verbal agreement as to price is difficult to determine because of the character or nature of Bord's testimony, but at any rate the minutes of the corporation reflect that on January 10, 1958, the Board of Directors of the corporation adopted, and its stockholders approved a resolution to the effect that, "as speedily as practical, but in any event not later than December 31, 1958," the corporation should be dissolved and liquidated and its assets distributed to its stockholders.

There was introduced in evidence a paper purporting to be a contract of sale of Sedgwick Gardens for $1,100,000.00 in the form of a receipt for the part payment of $50,000, between Legum & Gerber Company and its customer Darwin Corporation

dated January 17, 1958, which was accepted on January 27, by the stockholders of the corporation, who were designated as "SELLERS".

The corporation ordered the examination of title to Sedgwick Gardens from The Real Estate Title and Columbia Title Insurance Companies, hereinafter called "the Title Company", with instructions to settle the transfer, which was accomplished on February 28, 1958, by the execution and delivery of a deed signed solely by the corporation to another corporation, known as "3726 Connecticut Ave., Inc.", the assignee of Darwin Corporation; and by the payment by the Title Company of one-fourth of the net proceeds of the sale or $203,373.78 to each of the stockholders, in accordance with the instruction from the corporation, signed by its Vice-President, Ned Bord.

Sedgwick Gardens was operated during the period from January 10, to February 28, 1958, by Hagner for the sole benefit on account of the corporation. The commission due Legum & Gerber Realty Company for the sale of the property was paid from the account which Hagner maintained with the corporation and into which all rents from Sedgwick Gardens were deposited and from which all expenses were paid. The corporation reported rental receipts for the period ending February 28, 1958, in its income tax return filed with the assessing authority of the District. None of the stockholders reported such income in their income tax returns for the year 1958. Ned Bord, as Vice-President, and Victor Block, as Secretary, were employed and were paid a salary by the corporation during that period.

For some unexplained reason the sum of $24,000 was diverted as the "Waiver of Contract Rights", which resulted in a deficit in the corporation's account for the period ending February 28, 1958, and in a corresponding reduction of its surplus. To meet the deficit and pay expenses the stockholders each contributed $1,000, which turned out to be more than necessary

so that $616.84 was returned to each stockholder, making their contribution to the corporation 383.16, which must be added to their respective capital investment of $18,000. In other words, the paid-in capital (called "paid-in surplus" in the law) of each stockholder was $18,383.16.

The corporation was dissolved on March 4, 1958, by the filing of formal articles of dissolution with the Tax Commission of Maryland, under the laws of which it was organized.

In addition to the cash paid by the Title Company to each of the stockholders, there was distributed to each of them as assets of the corporation the sum of $4,357.10, resulting in a total distribution to each of $207,730.88.

The assessing authority of the District determined that there was distributed to each of the stockholders of the corporation as a dividend out of its earned surplus the sum of $189,730.88, which was the amount distributed to each, less $18,000. The assessing authority described the last mentioned amount as "par value of stock" on the apparent assumption that such sum was paid in by each for the stock of the corporation. The assessment of the deficiencies here under attack were based upon that determination, and the determination that the dividends were taxable income under Section 47-1557a, which provides that "The words 'gross income' include * * * income derived from * * * dividends, * * *".

The Court is of the opinion that the assessment of the deficiencies against the petitioners, Ned and Anne R. Bord, and against the petitioners, Harry D. Goldstein and Philip Goldstein, Trustees under the will of Samuel Goldberg, deceased, to the extent that they were based upon the determination that the net amounts received by the stockholders were dividends and taxable income, were valid. In a later part of this opinion relating to the period of limitations in which assessments can be made the assessment against Victor Block is held invalid, otherwise the same ruling would be made in respect of that assessment as is made in respect of the other two.

The Berliner case,[8] which the petitioners claim is not here applicable, involved, as do these cases, the dissolution of a corporation and the distribution of its assets to its stockholders. Instead of the sale of the capital stock by the stockholders, the corporation sold its assets to a purchasing corporation. The proceeds of the sale were distributed to the stockholders. The machinery of dissolution, among other steps, included the surrender of delivery by the stockholders of their certificates of stock. The assessing authority of the District determined that the amounts distributed to the stockholders, less their invested or paid-in capital, were respectively dividends and taxable income, and assessed deficiencies in income tax accordingly. The stockholders contended, as do the stockholders here, that the dissolution and distribution resulted in a sale, exchange or some form of a ~~dissolution~~ distribution of a capital asset; and that the tax treatment thereof should be the same as provided in such instances in the Internal Revenue Code. This Court held otherwise and affirmed the assessment. On appeal to the United States Court of Appeals that decision was affirmed, that court holding:

> "The District statute contains virtually the same definition of a dividend as the Federal statutes have contained since the 1916 Act, with the significant addition that in the District statute Congress included a specific provision that the term 'dividend' includes a distribution of earnings 'during, upon, or after liquidation.' Had Congress intended that such a distribution be treated as an exchange, we think it would have omitted the reference to liquidating distributions in the definition of a dividend and would have included a provision similar to that which has appeared in the Federal statutes uninterruptedly since 1924. We must therefore reject the taxpayers' contention that the transaction should be held to be an exchange, the gain from which is excluded from gross income by Section 47-1557e(b)(11)."

The Oppenheimer case,[9] on which the petitioners rely, and which, they say, fits their cases, is materially different from

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(8) 103 U.S. App. D.C. 351, 258 F.2d. 651, 86 W.L.R. 456.

(9) 112 U.S. App. D.C. 239, 301 F.2d. 563, 90 W.L.R. 559.

the petitioners' cases. There the corporation did not sell the assets and realize the appreciation in assets, as was done in the Berliner and the petitioners' cases. What the corporation did in the Oppenheimer case was to distribute the unrealized appreciation of assets to the stockholders. The assessing authority determined that the stockholders had received a dividend in an amount equal to the value of the assets as of the date of distribution, less the investment of the stockholders. This Court held, in conformity with the well established rule that such a distribution is not a dividend, that the assessment was invalid. On appeal to the United States Court of Appeals the decision was affirmed.

It is apparent that there is no material difference between the facts in these cases and those in the Berliner case.

The petitioners' contention that upon the adoption of the resolution providing for the dissolution of the corporation and the distribution of assets to its stockholders the stockholders ipso facto became the owners of Sedgwick Gardens. Such a contention is unique, to say the least, and is unsupported by any authorities. It is rejected by the Court. The cold fact is that the corporation sold its real property for $1,100,000.00, and distributed the net proceeds of the sale to its stockholders. It was a live corporate entity, and remained so until the laws of Maryland relating to dissolution were complied with by the filing of the articles of dissolution with the State Tax Commission on March 4, 1958. Rex Brough v. Commissioner, 32 B.T.A. 895, Appeal dismissed, 84 F. 2d 922. The gain which the corporation realized was part of its earned surplus, and the net distribution was a dividend. Berliner v. District of Columbia, supra.

It should be observed, in passing, that, even if the contention of the petitioners that they became the owners of Sedgwick Gardens by the mere adoption of the resolution of dissolution and distribution were valid, it would not affect

the tax liability of the petitioners. If they had become the owners, the property would have been a non-capital asset, since they would not have held the property two years. Their basis for determining taxable gain would have been their investment in the corporation, which has been assumed by all concerned to have been $18,000.00 (10) in respect of each stockholder.

It should be observed, moreover, that in light of the fact of negotiations for sale that were carried on by the stockholders, even if the sale had been made in the name of the stockholders, the corporation would have been considered the grantor. James Duggan v. Commissioner, 18 B.T.A. 608; Hellebush v. Commissioner, 24 B.T.A. 660, affirmed 65 F.2d 902; Trafford Oil & Gas Co. v. Commissioner, 78 F.2d 814, Cert. den. 296 U.S. 630, 80 L.ed. 448, 56 S.Ct. 154.

III

Basis

This issue is presented in the case of Harry D. Goldstein and Phillip Goldstein, Trustees under the will of Samuel Goldberg, deceased. Those petitioners claim that, if the distribution upon the dissolution of Sedgwick Gardens, Inc., is a liquidating dividend, the correct basis, or that which must be deducted from the total amount received, was not the paid-in capital of $18,000 (11) pertaining to the trustees, but the basis determined for Federal estate tax purposes at the death of the decedent, Samuel Goldberg, amounting to $129,942.44, which represented the appraised value of the stock at that time.

The Court cannot agree with the petitioner's contention. That which is permitted in the law to be deducted from the amount distributed to stockholders upon the dissolution of a corporation is "paid-in surplus" (12) and that alone. What the

(10) Actually $18,333.19.
(11) Called "paid-in surplus" in Section 47-1551c(a).
(12) Disregarded in the Berliner and Oppenheimer cases to mean "paid-in capital".

petitioners are here asking, in effect, is that the distribution be given the same tax treatment as that provided in the Internal Revenue Code, which is what the taxpayers urged in the Berliner case, and what the United States Court of Appeals said could not be done. The "basis" mentioned in Section 47-1583(b)(3) is that to be used "for determining gain or loss from the sale, exchange or other disposition of property". Under the District of Columbia law the distribution of assets of a dissolved corporation to its stockholders is not a "sale, exchange or other disposition" of their intangible property, namely, the stock in the corporation. While those in charge of the dissolution may require or suggest that the stockholders send in their stock, compliance does not result in an "exchange" of the stock for the amount distributed, as such term is meant in the lexicon of taxation, nor is it a "disposition" within that meaning. The dissolution and distribution could have been legally carried out without the surrender of the stock. True the stock thereafter would have been worthless, but it could have still been held by the stockholders. The Berliner case clearly determined that the dissolution of a corporation and the distribution of its assets to its stockholders was not a "sale, exchange or other disposition" of the stock of the corporation.

IV

Bad Debt Deduction

This issue rises solely in the case of Ned and Anne R. Ford (Docket No. 1863). The petitioners claim that the assessing authority of the District erred in disallowing a deduction from gross income in the amount of $86,708.99 claimed in their income tax return for 1958, and used in computing the taxable net income for that year.

Ned Ford was a stockholder, director and officer of Sun Radio Corporation. He claims that from time to time, due to the exigencies of that corporation's business, he advanced substantial sums of money to keep it a going concern. His efforts in that respect apparently were in vain, because some time in the early part of 1959 the corporation was declared a bankrupt in the United States District Court for the District of Columbia (Bankruptcy No. 21-59).

Ned Ford filed a claim for $99,520.95 in the bankruptcy proceedings. Other officers or directors filed similar claims, and the National Bank of Washington filed a claim for $33,000.00. At the same time the Trustee in Bankruptcy asserted a claim against the officers for misfeasance and nonfeasance in wrongfully diverting money from the corporation before it became bankrupt. The exact amount of the claimed diversion of funds and of the resulting claim by the Trustee in Bankruptcy was not disclosed. It can, however, be inferred from what occurred that it was in excess of the officer's claims and the claim of the National Bank of Washington. At any rate, there was proposed to, and approved by the United States District Court, and carried into effect the compromise or settlement set forth in a petition of the Trustee in Bankruptcy as follows:

> "That your petitioner is informed and believes that WALLAY T. BROWN his counsel in this case, investigated into the books and records and affairs of the corporation, following which he entered into the negotiations for the purpose of attempting to compromise the claim of your trustee against the officers and directors of the corporation for recovery of the preferential payments, and to recover damages for wrongful diversion of funds of the corporation.
>
> "That as a result of the negotiations between your petitioner's attorney and the attorney representing the three principal officers and directors, namely: SAM GILDAR, NED FORD, and OSCAR ERIKER, your petitioner has received, through his counsel, an offer to settle any and all claims of the trustee against the above-named individuals for the following consideration.
>
> "(a) Mr. NED FORD will withdraw and release his claim in this bankruptcy proceeding as filed in the amount of $99,520.95.

"(b) Mr. SAM GILDAR will release his claim in this bankruptcy proceeding as filed in the sum of $34,521.00.

"(c) The aforesaid officers and directors will cause the National Bank of Washington to withdraw and release its claim as filed in this proceeding in the sum of $33,000.00.

"In addition, Messrs. FORD, GILDAR and FORD will pay to your trustee a total sum of $15,000.00 in cash, payable in the following instalments:

$5,000.00 on January 2, 1961
$4,000.00 on February 1, 1961
$3,000.00 on March 1, 1961
$3,000.00 on March 31, 1961

"Your trustee is informed by his attorney and represents to the Court that the offer made by the above-named principals is fair and equitable and in the best interest of this estate."

As indicated above, the assessing authority in assessing the deficiency against the Fords disallowed the deduction represented by a claimed bad debt of the Sun Radio Corporation. The Court is of the opinion that the action of the assessing authority in that respect was proper. Even if it could be said that the advancements made by Ned Ford to the corporation were loans and not capital investments, which is by no means certain, (CF: Eugene M. Bietzke, 40 T.C. 443; George P. Weddle, 39 T.C., 493) whatever claim he might have had was offset by the claim which the corporation had because of the diversion of funds by him. Moreover, his claim was settled for a valid consideration. The weakness of his claim and the validity of the claim by the Trustee in Bankruptcy can be gauged by the fact that he not only relinquished his claim, but paid $5,000 to the Trustee in Bankruptcy, and effected the settlement or withdrawal of the claim of the National Bank of Washington for $33,000, which, it is assumed, was not accomplished for nothing.

It should be observed, as insinuated above, that it is by no means certain that Ned Ford ever had a valid claim against the Sun Radio Corporation; in other words, that the advancements were loans and not capital contributions. No evidence of reasons for the advance nor of any of the circumstances of the advancement, nor any fact, other than the bare statement that the

advances were made, and his concession or admission that he was not in the money lending business, was submitted. The facts were peculiarly in the knowledge of Ned Bord. He not only made the advances, but he was a stockholder, director and president of the corporation. It must be assumed that, if the facts could have supported a finding that a loan was made, his astute counsel would have proved them. The only finding that can be made is that the advances were capital contributions, or at least, no finding that they were loans can be supported.

V

Negligence Penalty

The assessing authority of the District, because of failure to report taxable income, assessed Ned and Anne R. Bord a 5 per centum negligence penalty under Section 47-1589b(a) of the Code, which provides as follows:

> "Additions to the Tax in the Case of Deficiency
>
> "(a) Negligence.--If any part of any deficiency is due to negligence, or intentional disregard of rules and regulations but without intent to defraud, 5 per centum of the total amount of the deficiency (in addition to such deficiency) shall be assessed, collected and paid in the same manner as if it were a deficiency."

The petitioners, Ned and Anne R. Bord seek to excuse the negligence of not reporting taxable income by claiming that such failure was due to the advice of the accountant who prepared their joint return. The excuse is not valid. The imposition of the penalty was required by the above quoted section of the Code. Ned Bord was peculiarly familiar with the negotiations leading to the sale of the apartment property. The maneuvers of the transaction in which he participated indicate quite clearly that he was aware of the law as stated in the Berliner case. He knew that the corporation was the real grantor, and that the proceeds of the sale when distributed were taxable income. Journal Company, 46 B.T.A. 941 (reversed on other grounds 134 F.2d 165).

VI

Conclusion

For the reasons stated the Court holds as follows:

Docket No. 1858

That a deficiency in income tax for the calendar year 1958, in the amount of $18.16, plus interest in the amount of $3.90, or a total of $22.06 was erroneously assessed against, and collected from the petitioners, Harry D. Goldstein and Philip Goldstein, Trustees under the will of Samuel Goldberg, deceased; and that the petitioners are entitled to a refund thereof, with interest thereon at the rate of 4 per centum per annum from November 15, 1962, to the date of the payment of the refund.

Docket No. 1863

That a deficiency in income tax for the calendar year 1958, in the amount of $18.16, plus a penalty of 91 cents, plus interest in the amount of $4.38, or a total of $23.45, was erroneously assessed against, and collected from the petitioners, Ned Bord and Anne R. Bord; and that the petitioners are entitled to a refund thereof, with interest thereon at the rate of 4 per centum per annum from February 14, 1963, to date of the payment of the refund.

Docket No. 1866

That a deficiency in income tax for the calendar year, 1958, in the amount of $2,994.47, plus interest in the amount of $673.75, or a total of $3,668.22, was erroneously assessed against, and collected from the petitioner, Victor Block; and that the petitioner is entitled to a refund thereof, with interest thereon at the rate of 4 per centum per annum from January 9, 1963, to the date of the payment of the refund.

Decisions will be entered
in accordance with this opinion.

Jo. V. Morgan
Judge

VI

Conclusion

For the reasons stated the Court holds as follows:

Docket No. 1858

That a deficiency in income tax for the calendar year 1958, in the amount of $18.16, plus interest in the amount of $3.90, or a total of $22.06 was erroneously assessed against, and collected from the petitioners, Harry D. Goldstein and Philip Goldstein, Trustees under the will of Samuel Goldberg, deceased; and that the petitioners are entitled to a refund thereof, with interest thereon at the rate of 4 per centum per annum from November 15, 1962, to the date of the payment of the refund.

Docket No. 1863

That a deficiency in income tax for the calendar year 1958, in the amount of $18.16, plus a penalty of 91 cents, plus interest in the amount of $4.38, or a total of $23.45, was erroneously assessed against, and collected from the petitioners, Ned Bord and Anne R. Bord; and that the petitioners are entitled to a refund thereof, with interest thereon at the rate of 4 per centum per annum from February 14, 1963, to date of the payment of the refund.

Docket No. 1866

That a deficiency in income tax for the calendar year, 1958, in the amount of $2,994.47, plus interest in the amount of $673.75, or a total of $3,668.22, was erroneously assessed against, and collected from the petitioner, Victor Block; and that the petitioner is entitled to a refund thereof, with interest thereon at the rate of 4 per centum per annum from January 9, 1963, to the date of the payment of the refund.

Decisions will be entered
in accordance with this opinion.

Jo. V. Morgan
Judge

DISTRICT OF COLUMBIA TAX COURT

FILED

NOV 15 1963

District of Columbia
Tax Court

NED BORD and ANNE R. BORD, Petitioners,	)	
vs.	)	DOCKET NO. 1863
DISTRICT OF COLUMBIA, Respondent.	)	

D E C I S I O N

This proceeding came on to be heard upon the petition filed herein; and upon consideration thereof, and of the evidence adduced at the hearings on said petition, it is, by the Court this 15th. day of November, 1963,

ADJUDGED AND DETERMINED, That a deficiency in income tax for the calendar year 1958, in the amount of $18.16, plus a penalty of 91 cents, plus interest in the amount of $4.38, or a total of $23.45, was erroneously assessed against, and collected from the petitioners, Ned Bord and Anne R. Bord; and that the petitioners are entitled to a refund thereof, with interest thereon at the rate of 4 per centum per annum from February 14, 1963, to date of the payment of the refund.

Jo. V. Morgan
Judge

Findings of Fact, Opinion and Decision
Served as follows:

Nathan Sinrod, Esquire
Werner Strupp, Esquire
Attorneys for Petitioners
1735 DeSales Street, N. W.
Washington, 6, D. C. (Mailed 11/15/63)

Finance Office, D. C. (Mailed 11/15/63)

Corporation Counsel, D. C. (Mailed 11/15/63)

Phyllis R. Liberti,
Clerk