OPINION NO. 1094

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
TAX DIVISION

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Superior Court
District of Columbia
Tax Division

LAURENCE P. DALCHER, Petitioner	)	
v.	)	Docket No. 2156
DISTRICT OF COLUMBIA, Respondent	)	

OPINION

The petitioner, Laurence P. Dalcher, appeals from an excise tax assessment made against his automobile on August 2, 1971. The tax, in the amount of $96.00, was levied and imposed pursuant to D. C. Code 1967, §40-603(j) (Supp. IV, 1971). Petitioner has taken this appeal pursuant to D. C. Code 1967, §40-603-1 (Supp. IV, 1971).

I

The essential facts are as follows: The petitioner, who is a resident of the District of Columbia, is employed as a Foreign Service Officer with the United States Information Agency. In 1968, while stationed in another country the petitioner purchased a 1968 Mercedes. The petitioner was then ordered back to the District, and upon his return made application for and obtained a District of Columbia certificate of title and a registration certificate. At that time he paid an excise tax of $112.35. The automobile serial number listed on his 1968 certificate of title was 220-011939 while the 1968 registration certificate listed the serial number as 220-008497. The invoice sheet supplied by the dealer

listed the chassis serial number as 115010-10-011939, and the engine number as 115920 10 008497.[1/] (Resp. Ex. C)

Less than ninety days after his return to the District the petitioner was ordered to duty in Vietnam. Since the petitioner did not desire to take the automobile to Vietnam, he decided to have his brother, who resides in North Carolina, hold the automobile for him until his return. The automobile was delivered to petitioner's brother and petitioner executed the assignment of title on the back of the District of Columbia certificate of title assigning title to his brother. His brother then obtained a North Carolina certificate of title and registration certificate in his own name. The serial number listed on the North Carolina title and registration was 1107172327923 and the car was described as a 1968 Mercedes. (Pet. Ex. 1, Resp. Ex. A.)

In May 1971 the petitioner was ordered back to the District of Columbia. In July 1971 his brother transferred a 1968 Mercedes to the petitioner by executing the assignment of title on the back of the North Carolina certificate of title. Petitioner then took the North Carolina certificate and applied for a new District of Columbia certificate of title. A new

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1/ Apparently, the serial number listed on the 1968 certificate of title represented the model of the automobile (220) plus the last six digits of the chassis number. The serial number listed on the 1968 registration certificate represented the model number (220) plus the last six digits of the engine number. No explanation was given for using the two different numbers.

certificate of title was issued to petitioner on August 4, 1971, but not before the petitioner was required to pay an excise tax on the car in the amount of $96.00. The serial number listed on the 1971 District of Columbia certificate of title and registration certificate is 1107172327923 which number was copied from the serial number listed on the North Carolina certificate. The 1971 District of Columbia certificate describes the automobile as a 1968 Mercedes. (Resp. Ex. A.)

Petitioner is, and at all times pertinent to this case, has been a resident of the District of Columbia, and has maintained the same address in the District. The petitioner has rented out his house during his official absences from the District of Columbia.

II

D. C. Code 1967, §40-603(j) (Supp. IV, 1971), provides in part that:

> (j) In addition to the fees and charges levied under other provisions of this chapter, there is hereby levied and imposed an excise tax for the issuance of every original certificate of title for a motor vehicle or trailer in the District, and for the issuance of every subsequent certificate of title for a motor vehicle or trailer in the District in the case of sale or resale thereof, at the rate of 4 per centum of the fair market value . . . . As used in this section, the term "original certificate of title" shall mean the first certificate of title issued by the District of Columbia for any particular motor vehicle or trailer. * * *

Section 40-603(j) also provides that certain motor vehicles and trailers are exempt from the excise tax, however, those exemptions are not applicable in this case.

There are three issues to be resolved in this case. The first issue is whether the automobile registered by the petitioner in 1968 is the same as the automobile registered by him in 1971. The question arose because his serial number listed on the 1968 certificate of title is 220-011939 while the serial number listed on the 1971 certificate of title is 1108172327923. At the close of trial both parties requested leave to submit additional evidence concerning the correct serial number of the automobile(s). Both parties thereafter submitted evidence that the petitioner registered the same automobile in 1968 and 1971, and that the correct serial numbers are 115010-10-011939 for the chassis and 115620-10-008467 for the engine. The serial number listed as 1107172327923 on the North Carolina certificate of title, which was thereafter copied on to the 1971 District of Columbia certificate of title, represents the month, day and year of petitioner's birth plus his District of Columbia driver's permit number. The District now concedes that the petitioner registered the same automobile in 1968 and 1971.

The second issue is whether there was a sale or resale of petitioner's automobile in 1968 or 1971. It is provided in §40-603(j) that an excise tax is levied and imposed ". . . for the issuance of every subsequent certificate of title for a motor vehicle or trailer in the District in the case of sale or resale thereof . . . ."

Counsel for the District argued that there was a sale and points to the fact that the petitioner executed an assignment of title in 1968 transferring title to his brother and that the brother executed an assignment of title in 1971 transferring title to the petitioner. In each case the form assignment on the back of the respective certificates of title executed by the petitioner and his brother provided that the assignment was for "valuable consideration."

The petitioner testified that title was transferred to his brother in order that his brother could obtain title and operate the automobile in North Carolina during the petitioner's absence from the country. When petitioner returned to the District his brother executed the assignment of title in order to transfer title back to the petitioner. Petitioner further testified that there was no sale, that no consideration passed and that the transfer of title to his brother was merely for convenience. The Court finds that the petitioner's explanation is both reasonable and convincing, and accordingly, finds as a fact that there was no sale or resale of the car within the meaning of the D. C. Code 1967, §40-603(j).

The last issue is whether the petitioner should have been required to pay an excise tax upon obtaining a certificate of title for the automobile in 1971 when he already paid an excise tax on the same automobile in 1968.

Section 40-603(j) provides that an excise tax is levied for the issuance of every original certificate of title or for the issuance of a subsequent certificate of title in the case of sale or resale. The Court has already found that there was no sale or resale of the automobile; accordingly, the issue is whether the certificate of title issued for the automobile in 1971 was an "original" certificate of title as that term is used in the statute.

The statute provides that ". . . the term 'original certificate of title' shall mean the first certificate of title issued by the District of Columbia for any particular motor vehicle or trailer." (Emphasis the Court's.) When §40-603(j) is read in its entirety it is clear that Congress required the payment of an excise tax only when an owner obtained his original certificate of title or when a subsequent certificate of title was obtained after sale or resale of the automobile. To state it differently, Congress has provided for an excise tax only when the "original" or "first" certificate of title was obtained for a particular vehicle except that an excise tax would be levied where a subsequent certificate of title was obtained after a sale or resale of the vehicle.

In the instant case the petitioner obtained his original or first certificate of title in 1968. Thereafter, in the course of his official duties he was ordered overseas and consequently he delivered the automobile to his brother for safekeeping. Although

legal title was transferred to his brother the petitioner retained equitable title and was the actual owner of the automobile. There never was a "sale or resale" of the automobile. Under these facts the Court finds that the petitioner is only required to pay the excise tax upon the issuance of the original or first certificate of title which was obtained by him in 1968, and further, finds that the 1971 excise tax in the amount of $96.00 was improperly assessed.

The petitioner is now entitled to a refund of the excise tax paid on the automobile in 1971 together with interest as provided by law.

February 9, 1972.

JOHN GARRETT PENN
Judge

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