

Opinion No. 1146

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

TAX DIVISION

JOSEPH M. DUTTON
CLERK OF
SUPERIOR COURT OF
DISTRICT OF COLUMBIA
TAX DIVISION

JOHN P. SENSENIG,)
)
 Petitioner)
)
 v.)
)
 DISTRICT OF COLUMBIA,)
)
 Respondent)

JAN 4 1977

Docket No. 2278

FILED

OPINION AND ORDER

Petitioner appeals from District of Columbia income tax assessments made against him for calendar years 1971, 1972, 1973 and 1974.^{1/} He paid the tax and now seeks a refund in the amount of \$6,125.61 plus interest as provided by law. The parties have submitted the case without trial, the record consisting of a Stipulation, Depositions and Briefs. Super. Ct. Tax. R. 10(d).

The facts appear to be undisputed. The petitioner is domiciled in the State of Pennsylvania and lived in Trevoise, Pennsylvania, until August 1, 1975, when he moved to Carlisle, Pennsylvania. He has voted in federal and state elections in Pennsylvania. The only real estate he owns is located in that state. He owns no property in the District of Columbia except for clothing and personal property of a transient nature.^{2/} His Federal Income Tax Returns listed his residence

1/ The petitioner had submitted "D.C. Nonresident Request for Refund or Ruling", however, he was denied a favorable ruling and was taxed as a resident of the District of Columbia.

2/ Referring to the years 1970 - 1974.

as his Pennsylvania address. He filed and paid a Pennsylvania income tax. He has consistently listed his Pennsylvania address on all official documents.

The petitioner came to the District of Columbia in 1971 after he was appointed as Co-ordinator of Federal Offices by the Governor of Pennsylvania, and he has been continually employed in that capacity up to the present time. It is his job to represent Pennsylvania before Congress and various federal agencies, and to assist in developing and promoting legislation favorable to his State and its residents. He serves at the pleasure of the Governor and is considered a part of the Governor's executive staff. He is paid by the State and Pennsylvania tax is withheld from his salary. No one but a Pennsylvania resident has ever held the job he now holds.

Since the petitioner began his job here, his duties have required that more time be spent physically in the District of Columbia. The State of Pennsylvania has maintained an office in the District of Columbia since 1963. That office is located at 1629 K Street, N.W. in the District of Columbia. When he was first appointed to his job in 1971, the petitioner attempted to commute from Pennsylvania, however, he soon found that this was impossible and he has rented furnished apartments in the District since February, 1971. He often works from his apartment when his office is not open.

Petitioner's employment requires him to spend about five nights a week in the District of Columbia. He also spends a

substantial amount of time in Pennsylvania and spends his free time in that State by choice. There seems to be no question that the petitioner is here for the sole purpose of performing his job and that he does intend to return to Pennsylvania at the termination of his present employment.

I

The District of Columbia concedes that the petitioner is domiciled in the State of Pennsylvania. However, it argues that he is a "resident" as that term is defined in D. C. Code 1973, §47-1551c(s), which provides:

(s) The word 'resident' means every individual domiciled within the District on the last day of the taxable year, and every other individual who maintains a place of abode within the District for more than seven months of the taxable year, whether domiciled in the District or not. The word 'resident' shall not include any elective officer of the Government of the United States or any employee on the staff of an elected officer in the legislative branch of the Government of the United States if such employee is a bona fide resident of the State of residence of such elected officer, or any officer of the executive branch of such Government whose appointment to the office held by him was by the President of the United States and subject to confirmation by the Senate of the United States and whose tenure of office is at the pleasure of the President of the United States, unless such officers are domiciled within the District on the last day of the taxable year.

In order to determine whether the petitioner is a resident, it is necessary to determine whether he "[M]aintains a place of abode within the District of Columbia for more than seven months of the taxable year".

It is beyond question that the petitioner lives within the District for more than seven months of the taxable year.

He has testified and concedes that he maintains an apartment in the District year-round and that he occupies that apartment at least five nights a week. Petitioner argues however that that apartment does not constitute his "abode".

The term "abode" appears to have no fixed or definite meaning; it may be defined as a temporary place of residence or a permanent place of residence depending upon the circumstances and the context in which it is used. Thus, abode as used in "last place of abode" for the purpose of service of legal papers, may have a quite different meaning than abode used for the purposes of taxation. This Court has found that the many cases, arising across the country which seek to define the term "abode", lend little or no assistance in arriving at a correct interpretation of that word in the context of the present litigation.

The only case cited to the Court or which the Court has found, where a local court attempted to define "abode" as used in Section 47-1551c(s) is District of Columbia v. Jeffery, No. GS 3156-65 (D.C. Ct. Gen. Sess. filed May 24, 1966). There the taxpayer was domiciled in Pennsylvania but worked in the General Accounting Office. He, not unlike our petitioner, only maintained a room in the District for the sake of his employment and would return to Pennsylvania every weekend, weather permitting. His living arrangements were much more transient than the petitioner's. For example, Jeffery lived in several hotels where he obtained a monthly rate, however, when he went away for each weekend, he would take all of his

belongings. Although, as is the case of human nature, he gained a certain fondness for particular rooms so much so that the hotel staff would make an effort to return him to the same room at the beginning of each new week, he would sometimes be compelled to take another room whenever his old room was occupied by other guests of the hotel. He averaged slightly over 200 days a year living in the District.

The court (Judge Fickling, now of the District of Columbia Court of Appeals), held that Jeffery maintained an abode in the District. In reaching that conclusion, the court noted, among other things, that: "'Abode' is defined in Webster's New International Dictionary (2nd Ed., Unabridged, 1960) as the ' . . . place where one continues, abides, or dwells, an abiding place, a dwelling place, a habitation'". District of Columbia v. Jeffery, supra, Slip. Op. at 5. The above definition is consistent with those given in Black's Law Dictionary 20 (4th ed. 1951) and the Oxford English Dictionary 25 (Compact ed. 7, 1971).

While the above definitions are helpful, it is important to note that the statute makes clear that, as used within Section 47-1551c(s), the term "abode" is not synonymous with "domicile". That section refers to persons who are domiciled and also refers to those who maintain an abode within the District of Columbia for more than seven months.

That the term "abode" refers to a temporary resident and would include the petitioner, is clear from a reading of the Legislative History. Some members of the House of Representatives

and the Senate expressed concern that members of Congress would exempt themselves from the District's income tax while requiring members of their staff, presumably residents who are not domiciled in their home state, to pay the local income tax. 80 Cong. Rec. 8001-8006 (1947). One Congressman, in expressing his concern over that portion of the proposed law which would tax persons not domiciled in the District noted "We are legislating with reference to many temporary residents of the District of Columbia who are employed here". Id. at 8002. See also S. Rep. No. 280, 80th Cong., 1st Sess. 2 (1947); H. R. Rep. No. 699, 80th Cong., 1st Sess. 2 (1947); H. R. Rep. No. 801, 80th Cong., 1st Sess 3 (1947). It is clear from the Legislative History that Congress felt "[I]t would be imperative, in the interest of fairness and equity, to make a readjustment of the income tax system in the District of Columbia so that people who get the benefit of the municipal services here would make a contribution to that end". 80 Cong. Rec. 8002.

Assuming that the petitioner works 48 weeks out of a year, he would be living within the District for approximately 240 days a year, based upon a five-day work week. He would receive services from the District including police, fire, health, roads and so forth. Under all the facts of this case, and this Court's reading of the statute and its Legislative History, the Court holds that the petitioner has maintained a place of abode, for at least seven months in taxable years 1971, 1972, 1973 and 1974.

II

There remains a final issue which has only been briefly mentioned by the parties in their respective arguments but which was raised during the deposition of Thomas E. Kerwin who is a Tax Auditor with the Department of Finance and Revenue, that is, does the petitioner pay his Pennsylvania tax subject to a credit for District of Columbia taxes or does he pay his District of Columbia tax subject to a credit for Pennsylvania taxes. No matter which way he pays the tax, the actual tax impact upon him would probably be the same. There would be a difference however to the respective taxing authorities. For example, in 1972, he computed his Pennsylvania income tax as \$469.70 (Sensenig Dep., Resp. Ex. 8) and computed his District of Columbia income tax as \$1,175.72 less a tax credit for Pennsylvania income tax paid for that year in the amount of \$469.70 for a total District of Columbia income tax of \$706.02. The Tax Auditor disallowed the credit for Pennsylvania taxes and took the position that the petitioner should take a credit in Pennsylvania for taxes paid to the District. (Kerwin Dep. 6, 9.) Thus, under one theory, the State of Pennsylvania would recover \$469.70 and the District of Columbia \$706.02; under the other theory, the District would recover the entire \$1,175.72 and the State of Pennsylvania, nothing.

The law provides that the District income tax paid by a "resident" who is domiciled in another state or territory of the United States, shall be reduced by the amount of any income or intangible personal property tax, that the taxpayer was

required to pay to a State of domicile. D. C. Code 1973, §47-1567d. Respondent argues that the petitioner would be entitled to a tax credit on his Pennsylvania tax return for any tax paid to the District of Columbia. The dilemma facing the petitioner is obvious and he appears to be in a position where either state may deny the credit resulting in his paying full income taxes in both states. The dilemma is caused by the fact that Section 47-1567d does not appear to address those cases where both states may allow credits.

Once again it is helpful to refer to the Legislative History of the statute. That history indicates that where a taxpayer is required to pay a tax to his state of domicile, he is to pay that tax. The difference between the tax of a state of domicile and the tax imposed by the District, may be paid to the District. When the proposed legislation was debated, it was concluded that, where a taxpayer paid a tax in his state of domicile, if that tax was greater than the tax imposed by the District of Columbia, the taxpayer would be required to pay no tax in the District of Columbia. 80 Cong. Rec. 8002 (remarks of Rep. Bates), 803 (remarks of Rep. Smith) 1947. See also S. Rep. No. 280, 80th Cong. 1st Sess. 2 (1947). Based upon the above, it is logical to conclude that Congress contemplated that a taxpayer residing in the District of Columbia but domiciled in another state, would first pay the tax in his state of domicile and would thereafter pay the tax in the District of Columbia. In other words, if the tax in the state of domicile was greater than the tax in the District of Columbia,

the taxpayer would pay this tax in the state of domicile and file a tax return in the District of Columbia claiming a credit for tax paid in his state of domicile. The result would be that he would owe no tax to the District of Columbia. In those cases where the tax in the state of domicile is less than the tax in the District of Columbia, the taxpayer would pay his tax in the state of his domicile, prepare a tax return in the District of Columbia, and deduct from that tax as a credit, the tax paid in his state of domicile. In short, the taxpayer would never pay a tax greater than the higher of the two taxes.

Turning to the instant case, this Court concludes based upon Section 47-1567d and its Legislative History, that Mr. Sensenig's tax is properly computed as follows: The District of Columbia income tax is computed and the petitioner receives a credit, pursuant to Section 47-1567d, for any income tax or intangible personal property tax that he paid to the State of Pennsylvania. This is true for each of the tax years in question.

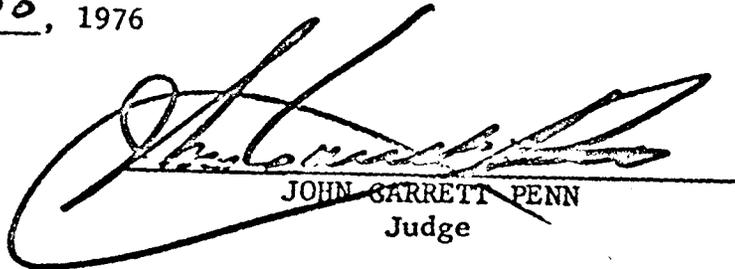
ORDER

It is hereby

ORDERED that the petitioner shall submit a proposed order, consistent with this Opinion and Order, within five days of receipt thereof, and shall contemporaneously submit a copy of his proposed order to counsel for the respondent for his review and comment, and it is further

ORDERED that counsel for the respondent shall, within ten days, file with the Court, his consent to the form and substance of the order, or his objections thereto, and in the case of any objections set forth his objections in detail and furnish a copy of same to counsel for the petitioners. Where objections are made, counsel for the petitioner will have five days thereafter to forward any comments or memoranda to the Court. Where counsel for the respondent does not file either his consent or objections within ten days, the Court will deem it that the respondent consents to the form and substance of the proposed order submitted by the petitioner.

Dated: December 30, 1976



JOHN GARRETT PENN
Judge

Byron K. Welch, Esq.
Attorney for Petitioner

Melvin Washington, Esq.
Attorney for Respondent

Copies mailed postage prepaid
to parties indicated above on
Jan 3, 1977.

Jean Senerius
and Finance Officer, D.C.

1/5/77 R. Starfield