

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

TAX DIVISION

FILED

CHARLES O. PERRY, Sr. &)
CARDELLE L. PERRY,)

Petitioners)

v.)

DISTRICT OF COLUMBIA,)

Respondents)

APR 10 1976

Superior Court of the
District of Columbia
Tax Division

Docket No. 2282

MEMORANDUM ORDER

This matter comes before the Court on respondents' Motion to Dismiss the Petition.

This is the second case involving the same tax liability filed by these petitioners. In the first case, they asked for a "redetermination of tax liability" for taxable years 1969, 1970 and 1971. See Perry v. District of Columbia, Tax Docket No. 2198. There, they alleged that a Notice of Deficiency had been mailed to them "on or about January 18, 1973". They thereafter filed their petition on February 21, 1973, without paying the deficiency. The respondents moved to dismiss that case on the grounds that petitioners were required to pay the assessed deficiencies prior to the filing of the petition. The trial court granted the motion to dismiss and the Court of Appeals affirmed. Perry v. District of Columbia, 314 A.2d 766 (D. C. App. 1974).

Petitioners bring this action for the same tax years and the same liabilities but now allege that they have paid all assessments and penalties for the years 1969, 1970 and 1971.

The payment was allegedly made "on or about October, 1974".
Pet. Par. 6. They also seek to enjoin the respondents from auditing their taxes.

Respondents move to dismiss this action on the grounds that the petition was not filed within six months of the deficiency assessment. Petitioners have filed an opposition to the motion but have waived their appearance at the hearing on the motion. Super. Ct. Tax R. 9(e). The motion was heard on April 10, 1975, at which time the Court ruled that the motion would be granted and that the Court would file a written Memorandum Order.

I

The respondents argue that this case must be dismissed since the petitioners did not file the petition within six months of the deficiency assessment. D. C. Code 1973, §47-1593. Respondents also correctly contend that the petitioners are required to pay the tax as provided in D. C. Code 1973, §47-2403, before maintaining this action; an issue already resolved by the prior opinion involving petitioners. Perry v. District of Columbia, supra. Section 47-2403 provides in part that a taxpayer may:

* * * within six months after payment of the tax together with penalties and interest assessed thereon, appeal from the assessment to the Superior Court of the District of Columbia. The mailing to the taxpayer of a statement of taxes due shall be considered notice of assessment with respect to the taxes.

Thus, the respondents contend on one hand that Section 47-2403 requires payment of the tax as a prerequisite to filing a petition but on the other hand that that portion of Section 47-2403 which appears to permit an appeal within six months of that payment is inapplicable.

The petitioners seem to argue that the action is timely as long as it is filed within six months of payment. To accept petitioners' argument would mean that a taxpayer could effectively extend the period within which he could appeal by merely delaying payment of the tax. This Court cannot agree.

Assuming arguendo, that an appeal may be taken within six months of the date of payment, the Court concludes that the only reasonable interpretation is to read Sections 47-1593 and 47-2403 together to require that a taxpayer must make payment within six months of the notice of deficiency assessment and must thereafter appeal within six months of payment. In the opinion of the court, the above is the latest date on which an appeal may be filed. Accordingly, where, as in the instant case, the notice of deficiency assessment was given in January, 1973, and payment not made until October, 1974, the suit must be dismissed as being untimely. The Court is not required to decide whether an appeal runs six months after notice or six months after payment because under either requirement this petition is untimely.

Some comment is required concerning the position that respondents take in this case. It is asserted that the time

for appeal runs within six months of the date of notice and yet, in this very case, the Department of Finance and Revenue has advised these petitioners by letter that they could appeal to the court "within six months of payment". See Perry v.

District of Columbia, Tax Docket No. 2198, Petitioners' Opposition to Respondents' Motion to Dismiss, Exhibit 7.^{1/}

Such written advice only serves to further confuse and mislead a taxpayer who may seek relief in this court.

II

The petitioners also attempt to have this Court enjoin the respondents from auditing their tax returns. Since such an injunction is forbidden by D. C. Code 1973, §47-2410, that portion of the case must also be dismissed.

^{1/} The petitioners received notice of the deficiency assessment on January 18, 1973. On January 21, 1973, they wrote to the Department of Finance and Revenue proposing to make certain payments and advising that they wished to exhaust their administrative and judicial remedies. On February 2, 1973, John R. Kissinger, Supervisor, Income and Sales Audit Section advised the petitioners as follows:

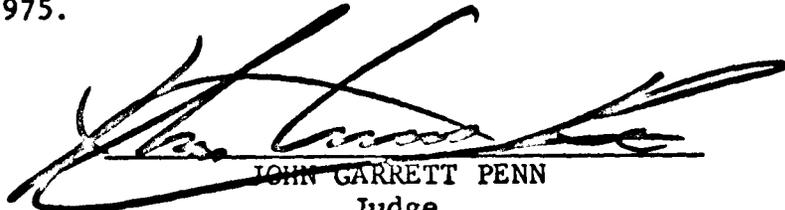
Dear Mr. and Mrs. Perry:

In response to your letter dated January 21, 1973, concerning your 1969, 1970 and 1971 District of Columbia Individual Income Tax Deficiency Assessment, you may pay the full amounts due, including accrued interest, and file a petition within six months thereafter with the District of Columbia Superior Court. (Emphasis this Court's.)

This Court has seen at least one other case in which taxpayers were given the same advice by the Department of Finance and Revenue.

In view of the above this case is dismissed with
prejudice.

Dated: April 15, 1975.



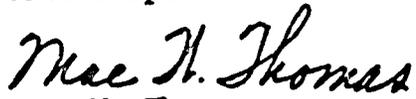
JOHN GARRETT PENN
Judge

Memorandum Order Served:

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Mae W. Thomas
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