

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

TAX DIVISION

WILFRED L. GOODWYN, III, )  
 )  
 Petitioner )  
 )  
 v. )  
 )  
 DISTRICT OF COLUMBIA, )  
 )  
 Respondent )

Docket No. 2313

FILED  
 SEP 2 1975  
 Superior Court of the  
 District of Columbia  
 Tax Division

ORDER

This case comes before the Court on Respondent's motion to dismiss the petition for lack of jurisdiction.

The Petitioner filed this appeal from a real estate assessment for Fiscal Year 1976 without having first paid the tax. The appeal to this court is made pursuant to D. C. Code 1973, Section 47-646(i) (Supp. II 1975) which provides in part:

- (i) Any person aggrieved by any assessment, equalization, or valuation made, may, by October 15 of the calendar year in which such assessment, equalization, or valuation is made, appeal from such assessment, equalization, or valuation in the same manner and to the same extent as provided in sections 47-2403 and 47-2404, \* \* \*

The sole issue presented on this motion is whether Section 47-646(i) requires the petitioner to pay his total 1976 real estate assessment prior to filing an appeal with this Court.

It has been held that prepayment of the total real estate assessment is required by Section 47-2403 and is a jurisdictional prerequisite to appeal to this court. District of Columbia v. Borenter, 151 U.S.App. D.C. 196, 466 F2d 367 (1972); George Hyman Constr. Co. v. District of Columbia, 315 A2d 175 (D. C. App. 1974).

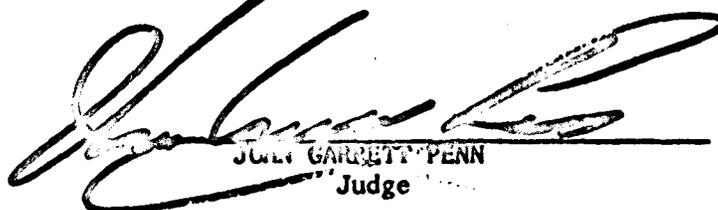
Prior to Fiscal Year 1976, a taxpayer could file an appeal within six months of October 1, of the calendar year in which the assessment was made. D. C. Code 1973, Sections 47-709, 47-2405. Since he had six months in which to appeal, he also had six months within which to pay the tax prior to filing his appeal. Under the new statute, which applies beginning with Fiscal Year 1976, Congress changed the appeal provision by repealing Section 47-709 and the first paragraph of Section 47-2405 and enacting Section 47-646(i) (quoted above) which provides that a taxpayer must file his appeal on or before October 15. While making the above changes, Congress did not amend or modify Section 47-2403 which required prepayment of the tax. Accordingly, this Court must conclude that it was the intent of Congress that, beginning with Fiscal Year 1976, any taxpayer who wishes to appeal his real estate assessment to this court must prepay the tax and file his appeal on or before October 15 of the calendar year in which the assessment is made.

Here, the petitioner has filed a timely appeal but without prepayment of the tax. Since prepayment of the tax is jurisdictional, this court now concludes that the appeal in this case must be dismissed for lack of jurisdiction.

The petitioner has made several arguments alleging that the new statute is unconstitutional, that the motion to dismiss was untimely, that the statute should be construed to allow the taxpayer to file his appeal by October 15 but pay the tax within six months thereafter, and that the statute should be construed to allow the taxpayer to file an appeal on or before September 30, 1976 with a prepayment of the tax. This court has considered the above arguments and finds them all without merit.\*

In view of the above, it is hereby

ORDERED that this case is dismissed for lack of jurisdiction.

  
JOHN GARRETT PENN  
Judge

\* The Court granted an expedited hearing in this case in view of the

issue presented and ) time limit of October 15 since ( parties have indicated that regardless of the decision of this court, an appeal would most likely be taken to the District of Columbia Court of Appeals. The court now files this Order as its final and appealable order in the case. The Court will file a following memorandum outlining in more detail the basis for its decision. It is also noted that several other cases have been filed raising the same issue.

Dated: September 2, 1975

Copies To:

Mr. Gilbert Hahn, Jr., Esq.

Assitant Corporation

I hereby certify that copies of the foregoing Order were this 2nd day of September, 1975, mailed, postage pre-paid to the above-named persons.

*Mona L. Jennings*