Opinion No. 1170

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

TAX DIVISION

MAR 14 1979

FILED

ESTATE OF OSCAR L. MILMORE, DECEASED, THOMAS H. REYNOLDS, EXECUTOR,	)	
Petitioner	)	
v.	)	Docket No. 2608
DISTRICT OF COLUMBIA,	)	
Respondent	)	

MEMORANDUM ORDER

The petitioner filed this appeal from what he contends is an overassessment of the inheritance tax in the amount of $39,190.49. The case is now before the court on respondent's motion to dismiss on the grounds that the petition is untimely and on petitioner's motions to strike and for entry of default judgment.

The facts as set forth in the petition are as follows: An inheritance tax in the Estate of Oscar L. Milmore was assessed on January 10, 1973, in the amount of $100,535.19 plus interest of $502.67. The tax was paid on January 30, 1973, and the petitioner's claim for refund was filed on December 29, 1975, and was subsequently amended by letter dated September 29, 1977. The claim for refund was denied in a letter dated April 19, 1978.[1/] The appeal (petition)

1/ The letter denying the claim, which was addressed to the petitioner, stated that "[i]n view of the fact that the final judgment of the United States District Court in Civil Action 2526-72 was based on an agreement between the parties concerning the issues involved we must deny your claim for refund of a portion of the District of Columbia Inheritance Taxes paid for the above estate".

was thereafter filed in this court on August 9, 1978.

I

Petitioner moves to have the court strike the motion to dismiss and enter a default judgment on the grounds that the response to the petition filed by the respondent was untimely. The petition was filed on August 9, 1978, served on the respondent on August 11, 1978, and the motion to dismiss was not filed until September 28, 1978. The rules of this Division require that any motions "made with respect to the petition" be filed within thirty days, Super. Ct. Tax. R. 9(a), and that an answer to the petition be filed within forty-five days, Super. Ct. Tax. R. 7(a).

The respondent failed to answer within those time limits. However, setting aside for the moment the jurisdictional argument made in support of the motion to dismiss, the petitioner was not otherwise prejudiced by the late response to the petition. Additionally, the respondent's motion which attacks the timeliness of the petition is not based upon a mere statute of limitations which can be waived but is addressed to the very jurisdiction of the court to hear this case. Thus, the respondent's failure to file its response within the time frame required by the rules of this Division did not constitute a waiver of jurisdiction. Cf. National Graduate University v. District of Columbia, 346 A.2d 740, 742 - 43 (D.C. App. 1975). See also Super. Ct. Civ. R. 12(h)(2).

Petitioner's motion to strike and for default judgment is denied.

II

Turning to the merits of the motion to dismiss, the Court notes that petitioner's opposition includes an affidavit signed by the attorney for the Estate of Oscar L. Milmore.[2/] Since the opposition refers to matters outside of the pleadings and since the respondent had an adequate opportunity to address the affidavit and did so during oral arguments, the Court includes that affidavit in its consideration of the motion.

The affidavit and the attachments thereto, set forth additional allegations of fact. On May 27, 1975, after two and one-half years of vigorously contested litigation, the United States District Court for the District of Columbia entered a final judgment in a case entitled American Security and Trust Co. v. Board of Trustees of the National Gallery of Art, Civil Action No. 2526-72, an action which was filed by the Trustees of the trust established under the decedent's will and which sought the reformation of various inter vivos trust instruments executed by the decedent. That decision resulted in significant changes in the size of various charitable remainder "unitrusts" and particularly the way in which trust assets would be distributed. (Affidavit, par. 2.) As a result, it affected the claim for refund to be filed respecting federal estate taxes and District inheritance taxes.

2/ Not counsel in the present case.

The federal audit was completed in March 197 and a refund of $123,523.95 was allowed. The attorney for the estate advised the supervisor of the Inheritance and Estate Tax Section of the District of Columbia Department of Finance and Revenue, asking that the claim for refund now be considered. He followed that letter by additional letters in March and August of 1977 and he called in August 1977 and followed with other calls or meeting in September 1977 and January and March of 1978. He was advised on April 12, 1978, that the claim for refund was being denied.

The attorney also states in the affidavit that since the computation of the estate's inheritance tax refund claim depended upon the size of the refund of federal estate taxes, he was advised by the "officials" of the District's Inheritance Tax Section that no determination would be made until the Internal Revenue Service had completed its audit of the federal refund claim. He contends that he was never advised that by "agreeing to the delay requested by the D.C. officials that the estate may be precluded from later filing an appeal to the court".

III

Respondent argues that this court lacks jurisdiction to hear the case since the petition was not filed within the time limits provided by D. C. Code 1973, §47-2313(a). Section 47-2413(a) allows a taxpayer to file a claim for refund for inheritance tax and the respondent does not dispute the timeliness of that claim. Respondent contends

however, that once the Commissioner failed to act upon the claim within six months, that the petitioner then had only six months within which to file his petition in this court. See Carter-Lanhardt, Inc. v. District of Columbia, Tax Docket 2610 (D.C. Super. Ct. filed March 12, 1979)[3/]

That section provides that:

> If the Commissioner disallows all or any part of the refund claimed, he shall notify the taxpayer by registered or certified mail. After receiving notice of disallowance, if the claim is acted upon within six months of filing or after expiration of six months from the date of filing, if the claim is not acted upon, the taxpayer may appeal as provided in sections 47-2403 and 47-2404 of this title. (Emphasis supplied.)

It is undisputed that the Commissioner did not disallow the claim for refund within six months after it had been filed. The claim was filed on December 29, 1975, and the six months within which the Commissioner had to act upon the claim expired on June 29, 1976. If the claim had not been acted upon by that date, the petitioner would have had until December 29, 1976, to file his appeal to this court. This petition was filed on August 9, 1978.

3/ This Court ruled in Carter-Lanhardt, Inc. v. District of Columbia, that a taxpayer is required to file his appeal to this court within six months from the failure of the Commissioner to act upon a claim within six months of the filing of the claim, i.e., within one year of the filing of the claim for refund.

The petitioner does not dispute the above time limits and concedes that he would have had to file an appeal by December 29, 1976, if the Commissioner had not acted upon his claim on or before June 29, 1976. He contends, however, that the Commissioner did act upon his claim by June 29, 1976, and that therefore, he was not required to file his petition with the court until six months after final action, that is, disallowance of the claim in whole or in part by the Commissioner. The claim was disallowed by a letter dated April 19, 1978, and the petition was filed within six months of that date.

The petitioner contends that the term "acted upon" as used in Section 47-2413(a) does not refer to final action but rather to some action or consideration of the claim by the Commissioner within that time. His argument is that "acted upon" should be interpreted to mean "acting upon" within six months of the date of the claim for refund. This Court cannot agree.

IV

After considering the language of the statute, the Court concludes that "acted upon" as used in Section 47-2413(a) refers to final action disallowing all or part of the claim for refund. It follows, of course, that in the case of final action granting a refund in full, there would be no reason to appeal to this court.

The Court's ruling is based upon several factors. First, the language used in the statute is "acted upon" not "acting upon", and that language refers to an act which has already

been performed, not an act which the Commissioner is then performing. Second, the term "acted upon" as used in the phrase "[a]fter receiving notice of disallowance, if the claim is acted upon" supports the interpretation that "acted upon", refers to a disallowance of a claim in whole or in part. The same words used in the same sentence, namely, "if the claim is not acted upon" presumably has the same meaning; disallowance of the claim in whole or in part, or final action. Third, if the language "acted upon" is interpreted to mean any action on the claim or acting upon the claim, presumably the claim would remain open without a right of the taxpayer to file an appeal until the Commissioner had taken final action. Fourth, the interpretation urged by the petitioner raises more questions than it answers. For example, left unanswered is the question as to what constitutes acting upon so as to toll the period within which the taxpayer must take his appeal. Is it tolled merely because the Commissioner acknowledges receipt of the claim or only if he raises a question with respect to the claim, or only after he requires additional information with respect to the claim, or only after there is a conference with the taxpayer or a request for the submission of a legal argument? In the view of this Court, such an interpretation would be illogical; certainly the Congress in dealing with taxes intended some definite time frame. "Statutes are to be construed in a manner which assumes that Congress acted logically and rationally". Berkley v. United States, 370 A.2d 1331, 1332 (D.C. App.

The Court is satisfied for the above reasons that the phrase "acted upon" refers to final action by the Commissioner. Since it is conceded that the Commissioner did not take final action, that is, that he had not "acted upon" the claim on or before June 29, 1976, the petitioner was required to file his appeal with this court on or before December 29, 1979. Cf. Carter-Lanhardt, Inc. v. District of Columbia, supra. Since he did not do so, the court now lacks jurisdiction to hear this case.[4/]

V

The Court's interpretation of the statute is supported by the legislative history. Where the language is ambiguous, the Court may look to the legislative history to reach a conclusion. United States v. Public Utilities Commission, 345 U.S. 295, 315 (1953); Sanker v. United States, 374 A.2d 304, 307 (D.C. App. 1977).

In discussing the statute under consideration, the Senate Committee on the District of Columbia observed:

> Upon disallowance of a claim in whole or in part, the Assessor [now the Commissioner] is required to notify the taxpayer by registered mail and the taxpayer then has ninety days [now six months] from the date of mailing within which to appeal to the Board of Tax Appeals [now the Tax Division of the Superior Court]. If the Assessor

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4/ The parties cited the court to General American Oil Company of Texas v. Federal Power Commission, 400 F.2d 597 (5th Cir. (1969), and Lorain-Ohio Gas Co. v. Federal Power Commission, 93 U.S. App. D.C. 117, 207 F.2d 615 (1953), however, those cases addressed different statutes not relevant in this case.

> [Commissioner] does not act upon the claim within six months after it is filed, the taxpayer has ninety days [six months] after the expiration of such six months period within which to file an appeal to the Board of Tax Appeals [Tax Division, Superior Court]. If the Assessor [Commissioner] does not act upon the claim within six months, the taxpayer's time for filing an appeal begins to run; he may not then wait until he receives a notice of disallowance and file his appeal within ninety days [six months] after the receiving of such notice. (Emphasis and matter in brackets this Court's.) S. Rep. No. 1471, 82nd Cong. 2d Sess 3 (1952).

The legislative history set forth above, including the amendments made by Congress in the 1970 Court Reform and Criminal Procedure Act, Pub. L. No. 91-385, 84 Stat. 473 (1970) as set forth in the brackets, satisfies the Court beyond any doubt that Congress intended that a taxpayer be required to file an appeal within six months of the disallowance of the claim for refund, if disallowance is made within six months of the date of filing that claim, or within six months after the six months period within which the Commissioner had to act upon the claim for refund, if he does not act upon that claim. Carter-Lanhardt, Inc. v. District of Columbia, supra. The legislative history also satisfies this Court that the words "acted upon" refer to final action by the Commissioner and not merely acting upon a claim for refund as urged by the taxpayer in this case. The legislative history makes quite clear that the taxpayer may not wait until he receives a notice of disallowance and then file his appeal from the date of that notice. That, of course, is exactly what the taxpayer in this case attempted to do.

VI

Since the petitioner did not file his appeal with this court on or before December 29, 1976, the petition is untimely and this court lacks jurisdiction to entertain the appeal. In view of the above, it follows that the appeal in this case must now be dismissed with prejudice.

The taxpayer's remedy in this case was to have filed his appeal on or before December 29, 1976, and, then, if he was still awaiting further action by the Commissioner, to request that the case be placed on the reserve calendar.[5/] Cf. Estate of Forsberg v. District of Columbia, 95 U.S. App. D.C. 90, 200 F.2d 197 (1955).

ORDER

In view of the above, the Court concludes that the appeal in this case is untimely, that the time limitations set forth by the statute is jurisdictional and it is accordingly,

ORDERED that the petitioner's motion to strike and motion for default judgment is denied, and it is further

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5/ The Court reluctantly dismisses this action since such litigation could probably be avoided if the District of Columbia would publish regulations respecting requirements for appeal.

ORDERED that the respondent's motion to dismiss for lack of jurisdiction is granted, and it is further

ORDERED that this case is dismissed with prejudice.

Dated: March 13, 1979

JOHN GARRETT PENN
Judge

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