

2. Mr. Felder testified he financed the purchase of the house so that Ms. Harper would no longer have to live in the public housing project where she was living at the time.

3. On or about January 24, 1963, title to the property was placed, by deed, in the names of Betty S. Harper and Merrill Branson, as joint tenants with rights of survivorship.

4. Mr. Felder testified, Merrill Branson, a trusted and long-time employee of his, was named in the deed in order to enable Ms. Harper to obtain a mortgage while, at the same time, prevent her from alienating the property or encumbering it.

5. Although Mr. Felder presented no receipts or cancelled checks at trial, the Court nevertheless credits his testimony and Mr. Branson's testimony that he made all payments for the purchase of the property and its upkeep, including payment of all utility bills.

6. On or about July 20, 1980, Betty S. Harper died, and on March 25, 1982, Merrill Branson, as the surviving joint tenant, conveyed the property to Leo and Mollie Felder, petitioners herein, without consideration.

7. The deed recording the transfer in paragraph six (6) was executed on March 25, 1982, and was recorded on April 2, 1982, together with the filing of a Combined Real Estate Deed Recordation Tax and Real Property Transfer Tax Return. The deficiency assessment petitioners herein appeal was made August 31, 1983.

8. Petitioners maintain that the transfer to them of the property, without consideration, is exempt from District transfer and deed recordation taxes pursuant to D.C. Code §§45-922(6)(1981) and 47-902(8)(1986 Supp.). Moreover, they allege the deficiency assessment was imposed in an untimely manner and thus is unlawful.

CONCLUSIONS OF LAW

D.C. Code §47-903(a) imposes on each transferor for each transfer at the time the deed is submitted for recordation, a tax at the rate of one (1) percent of the consideration for such transfer. D.C. Code §47-903 (1981 edition). For purposes of computing such transfer tax and where no consideration is paid, or if paid, is nominal, D.C. Code §47-904 establishes the fair market value of the real property as the basis for taxation. In addition, D.C. Code §47-903(a) imposes joint and several liability on both the transferor and transferee if the transferor fails to make payment.

Petitioners maintain they are exempt from the transfer tax imposed by D.C. Code §45-902, entitled "Enumeration of transfers exempt from tax." Specifically, petitioners cites D.C. Code §47-902(8) as applicable in the instant case. D.C. Code §47-902(8) states: "Transfers which, without additional consideration, confirm, correct, modify, or supplement a transfer previously recorded" are exempt from the tax. In addition, petitioners rely on the INSTRUCTIONS on Form FP-5 of the Department of Finance and Revenue (exemption form claim) which states on the reverse side that the following deed, among others, are exempt from the deed recordation tax:

"4. Deeds which, without additional consideration, confirm, correct, modify or supplement a deed previously recorded.

Where the grantee named in a recorded deed upon which the applicable tax has been paid acted as a nominal grantee for the sole purpose of holding, on behalf of another purpose, naked title to the property described in the deed, a deed to such property subsequently executed by the nominee without consideration, naming as grantee the person on whose behalf the nominee acted, shall be exempt from tax."

At trial, petitioner, Leo Felder, testified title was taken in the joint names of Betty S. Harper and Merrill Branson, solely for the convenience of petitioner, who for personal reasons, wanted secrecy maintained with respect to true ownership. Thus asserts petitioners, Harper and Branson held bare legal title to said property as nominal grantees.

Petitioner further testified that when Ms. Harper died, it was no longer necessary for him to provide her with a place to live, and thus Merrill Branson, Mr. Felder's long-time employee and surviving joint tenant, conveyed legal title to petitioner and his wife, Mollie Felder. Petitioner testified the conveyance was made without consideration and for the purpose of reflecting true ownership of the parties on March 25, 1982.¹

The evidence at trial further revealed Mr. Felder paid for the maintenance of the property, including the mortgage note, taxes and utilities. In addition, petitioner's testimony also reflected Ms. Harper lived on the property from January 1963 until her death on July 20, 1980.

Respondent argues that in order for the 1982 transfer tax here in dispute to be exempt, the grantees in the recorded deed must have acted as nominal grantees (or trustees). Because no trust agreement concerning the subject property was executed by the parties, respondent assert Harper and Branson were not acting as trustees for petitioner and thus the transfer is not exempt from taxation.

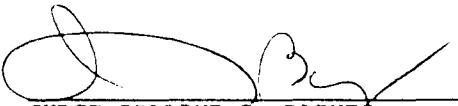
1. Although respondent's pleadings reflect the deed transferring said property was executed March 25, 1981, a copy of said deed and on file, reflects it was executed March 25, 1982. The date of execution is particularly relevant in this case because D.C. Code §47-902(8) was enacted as Section 2 of D.C. Law 4-72, 28 D.C. Reg. 5273, which became effective March 10, 1982. Thus, because the copy of said deed bears the execution date as March 25, 1982, the Court finds petitioners can justifiably argue D.C. Code §47-902(8) is applicable.

Based upon the evidence adduced at trial and the record herein, the Court finds petitioners have met their burden of proof and have established by a preponderance of the evidence that the transfer here in question is exempt from taxation pursuant to D.C. Code §47-902(8). The Court credits the testimony of petitioner that he purchased the property and has maintained it throughout the years and thus was the equitable owner of the same since the time of purchase in January 1963. The evidence fully supports petitioner's assertion that both Harper and Bronson were made nominal grantees for the convenience of petitioner.

Accordingly, it is on this 3rd day of August, 1987,

Ordered that petitioners, Leo and Mollie Felder are entitled to a refund of Transfer and Recordation Taxes assessed against by respondent in the amount of \$2,143.37, and it is,

Further Ordered that respondent, the District of Columbia, refund to petitioners, Transfer and Recordation Taxes paid by them in the amount of \$2,143.37 with interest from date of payment, May 13, 1986.



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