

FILED

JUL 3 11 32 AM '02

CLERK OF
SUPERIOR COURT OF THE
DISTRICT OF COLUMBIA
TAX DIVISION

**SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
TAX DIVISION**

TIGER NATUARAL GAS, INC.,

*

*

Petitioner,

*

Tax No. 7995-02

*

v.

*

*

DISTRICT OF COLUMBIA,

*

*

Respondent.

*

*

ORDER

This matter comes before the Court for consideration of the Petitioner's Complaint filed on August 31, 2001 appealing two (2) tax liens imposed for unpaid gross receipts taxes for the months of March and April 2001. On November 11, 2001 the Respondent filed a Motion to Dismiss the Complaint or in the Alternative, To Certify this Case to the Tax Division. On January 4, 2002, the Civil Division of this Court granted the Respondent's Motion to Certify this Case to the Tax Division. Having considered the evidence, arguments and the pertinent legal authority, the Court concludes that pursuant to D.C. Code § 47-3303 (2001) and D.C. Code § 47-3307 (2001), the Petitioner has not satisfied the jurisdictional requirements to appeal the tax liens. Accordingly, the Court concludes the Respondent's Motion to Dismiss is granted.

BACKGROUND

The Petitioner seeks Declaratory Judgment to revoke two (2) tax liens filed by the Government of the District of Columbia (“D.C. Government”). The tax that is in dispute is a business tax for utility companies that provide services to the D.C. Government. The Petitioner supplied natural gas to the D.C. Government in exchange for payment, under contract. The D.C. Government did not make payment for the Petitioner’s services for the months of March and April 2001. Subsequently, the Petitioner did not pay the gross receipts taxes for those two months. The D.C. Government filed the tax liens against the Petitioner for not paying the gross receipts taxes for those months.

The Petitioner argues that since the Respondent did not send a notice regarding the unpaid taxes before issuing the tax liens, the Respondent violated the procedural requirements of the Tax Clarity Act of 2000. *See* Tax Clarity Act of 2000 D.C. Law 13-305 48 D.C. Reg. 334 (effective June 9, 2001). The Petitioner also claims that the Court has jurisdiction over this matter pursuant to D.C. Code § 11-921 (2001), which grants civil jurisdiction over any civil action.

The Respondent argues that the Tax Clarity Act of 2000 is not applicable because the Respondent sent proper notice of the impending tax liens. The Respondent further argues that the Court does not have jurisdiction over this matter pursuant to D.C. Code § 47-3303 (the Anti-Injunction Act) and D.C. Code § 47-3307. The Respondent asserts that the Anti-Injunction Act, commonly known as the “pay and sue” rule is applicable in this case and therefore, the Court has no jurisdiction to settle this matter since the Petitioner did not pay the tax before appealing it.

BACKGROUND

The Petitioner seeks Declaratory Judgment to revoke two (2) tax liens filed by the Government of the District of Columbia (“D.C. Government”). The tax that is in dispute is a business tax for utility companies that provide services to the D.C. Government. The Petitioner supplied natural gas to the D.C. Government in exchange for payment, under contract. The D.C. Government did not make payment for the Petitioner’s services for the months of March and April 2001. Subsequently, the Petitioner did not pay the gross receipts taxes for those two months. The D.C. Government filed the tax liens against the Petitioner for not paying the gross receipts taxes for those months.

The Petitioner argues that since the Respondent did not send a notice regarding the unpaid taxes before issuing the tax liens, the Respondent violated the procedural requirements of the Tax Clarity Act of 2000. *See* Tax Clarity Act of 2000 D.C. Law 13-305 48 D.C. Reg. 334 (effective June 9, 2001). The Petitioner also claims that the Court has jurisdiction over this matter pursuant to D.C. Code § 11-921 (2001), which grants civil jurisdiction over any civil action.

The Respondent argues that the Tax Clarity Act of 2000 is not applicable because the Respondent sent proper notice of the impending tax liens. The Respondent further argues that the Court does not have jurisdiction over this matter pursuant to D.C. Code § 47-3303 (the Anti-Injunction Act) and D.C. Code § 47-3307. The Respondent asserts that the Anti-Injunction Act, commonly known as the “pay and sue” rule is applicable in this case and therefore, the Court has no jurisdiction to settle this matter since the Petitioner did not pay the tax before appealing it.

The parties appeared for a scheduled motions hearing on May 6, 2002. During the hearing, the Court heard oral representations from Counsel for both parties on the Motion to Dismiss. Based on the representations at the hearing and the entire record, the Court makes the following findings:

FINDINGS OF FACT

1. The Petitioner, Tiger Natural Gas Inc., is a corporation incorporated under the laws of the State of Oklahoma having its principal place of business in the State of Oklahoma. The Petitioner is a supplier and seller of natural gas.
2. The Respondent is the Government of the District of Columbia, a municipality.
3. On March 27, 2000, the Petitioner and the D.C. Government contracted for the supply of natural gas through the General Services Administration (“GSA”). Under the contract, the Petitioner supplied natural gas to the D.C. Government in exchange for monthly payments. GSA administered the contract; however, payment was made directly from the D.C. Government to the Petitioner.
4. The Petitioner delivered the required quantities of natural gas to the D.C. Government through the end of the contract, which was on April 30, 2001. The D.C. Government has not paid the Petitioner for natural gas that the D.C. Government consumed in the months of March and April 2001.

5. The Petitioner filed returns for taxes due March and April 2001, paid the taxes due by check and then stopped payment on those checks. The two (2) cancelled checks were in the amount of \$574, 253.25 and \$23,293.00.
6. In total, the Respondent sent the Petitioner five (5) letters concerning the outstanding taxes for the months of March and April 2001. By letters dated June 19 and June 26, 2001, the Respondent indicated that taxes were due. By letter dated July 13, 2001, the Respondent requested a cashier check or certified funds in the amount of \$ 714,019.07 and \$28, 960.19 for gross receipts, defective check fees, penalties and interest. This letter indicated that an impending tax lien would be imposed if payment were not received by July 25, 2001.
7. The Petitioner did not pay the tax, interest and penalties by the date of July 25, 2001.
8. On or about July 26, 2001, the Respondent filed a tax lien in the amount of \$721, 355.70 *against the Petitioner, naming the corporate officers personally.* This lien was filed against Lori Johnson, President of Tiger Natural Gas, Inc., and Deborah Smith, Corporate Secretary.
9. On August 20, 2001, the Respondent sent another Notice of District Tax Lien stating that the D.C. Government had filed a tax lien against the Petitioner. The second tax lien was not filed against the Petitioner's officers. The second tax lien was for the amount of \$742, 929.26 for gross receipts, defective check fee, penalty and interest.

10. The Court credits the Petitioner's representation that its correct mailing address is P.O. Box 702437, Tulsa, OK 74170.
11. The Court finds that the letters dated June 19 and June 26, 2001 which indicated the amount of the taxes due, were sent to the correct post office box number, state and city; however, the zip code was listed as 79170 instead of 74170.
12. The Court finds that the Respondent sent the letter dated July 13, 2001 that notified the Petitioner of an impending lien if payment were not received, to the Petitioner's former address, which is 1 G.W. 41st Street, Sand Springs, OK 74063. The Petitioner does not deny receiving this mailing.
13. The Court finds that letters dated July 26 and August 20, 2001, the Notices of District Tax Liens, were also mailed to the Petitioner's former address. The Petitioner does not deny receiving the mailings that were sent to its former address.
14. On August 31, 2001 the Petitioner filed a Complaint against the D.C. Government in the Civil Division of this Court and this case was certified to the Tax Division on January 4, 2002.

CONCLUSIONS OF LAW

The Gross Receipts tax is a self-assessing business tax. *See* D.C. Code § 47-2501 (2001). The law requires taxpayers to file tax returns. *See* D.C. Code § 47-2501 (a) (1) (2001). The law provides that a non-public utility that sells gas that is delivered to any user in the District shall pay 10% of their gross receipts to the Mayor of the municipality. *See* D.C. Code § 47-2501 (a) (1) (4) (2001). In considering the Respondent's Motion to Dismiss, the Court concludes that the tax liens placed by the Respondent for the months of March and April 2001 are justly imposed.

The legal question presented is whether the Court has jurisdiction over this case in which the Petitioner seeks to appeal taxes imposed for the months of March and April 2001. The Court finds that this question must be answered in the negative; it does not have jurisdiction over this matter.

I.

The Petitioner's Appeal of the Tax Without Prior Payment of it Violates the Anti-Injunction Act.

In accordance with the D.C. Code § 47-3303 (the Anti-Injunction Act) and D.C. Code § 47-3307, the Court does not have jurisdiction over this matter. The first jurisdictional requirement of the Anti-Injunction Act is that one must file an appeal within six (6) months of the assessment. Payment of the entire tax, plus penalties and interest due, is the second jurisdictional requirement of any challenge or appeal of a tax

assessment according to the Anti-Injunction Act. The Petitioner satisfied the first jurisdictional requirement of the Anti-Injunction Act through its Complaint against the Respondent on August 31, 2001. However the Petitioner has not satisfied the second jurisdictional requirement of the Anti-Injunction Act because it has not paid the tax before appealing it. Since, the Petitioner has not paid the tax as required by the Anti-Injunction Act, the Petitioner's Complaint must be dismissed for lack of jurisdiction over subject matter. *See Barry v. American Tel. & Tel. Co.*, 563 A.2d 1069,1072 (D.C. 1989) (Petitioner's complaint was dismissed for failure to follow the statutory requirement that full payment of the tax must precede challenge to tax); *see also First Interstate Credit Alliance, Inc. v. District of Columbia*, 604 A.2d 10 (D.C. 1992).

This case is analogous to *District of Columbia v. Berenter*, 466 F.2d 367 (D.C. 1972). The tax at issue in each case was not paid. *See Berenter*, 466 F.2d 367, 369. An appeal of the tax was filed in each case. *See id.* In *Berenter*, the lower court, held that since the tax imposed on the Appellant was based on an over-valued assessment, the Appellant was owed a refund by the D.C. Government despite the fact that the Appellant had not paid all the taxes due. The D.C. Court of Appeals in *Berenter* found that the lower court was in error because the lower court lacked jurisdiction, considering that the Appellant did not pay all the taxes in question prior to appealing the tax. *See id.* at 370. The D.C. Court of Appeals stated that if a taxpayer were permitted to appeal a tax before paying all of it, any decision concerning it would involve the cancellation of the unpaid portion of the tax. *See id.* at 370. Consistent with the holding in the *Berenter* case, the Court concludes that the Petitioner's appeal of the tax liens without prior payment of the tax is a violation of the Anti-Injunction Act.

II.

The Petitioner Had Notice of the Tax.

The Petitioner alleges that the Court should revoke the tax liens because they are procedurally flawed. Specifically, the Petitioner insists that the Respondent failed to send a proper notice of demand for the delinquent taxes as required by the Tax Clarity Act of 2000. Under the Tax Clarity Act of 2000, the Respondent must make a demand for delinquent taxes thirty (30) days prior to the issuance of a tax lien assessing penalties and interest. *See* Tax Clarity Act of 2000. Regarding the issue of notice, the Anti-Injunction Act states, “[t]he mailing to the taxpayer of a statement of taxes due shall be considered notice of assessment with respect to the taxes.” *See Linder v. District of Columbia*, 32 A.2d 540 (D.C. 1943).

Contrary to the Petitioner’s allegations, the Respondent made several demands. By letters dated June 19 and June 26, 2001, the Respondent notified the Petitioner of the amount of outstanding taxes due. By letter dated July 13, 2001, the Respondent indicated that without payment by July 25, 2001, a lien would be imposed on the Petitioner. Not until July 26, 2001, was the actual lien imposed on the Petitioner. The Court concludes that the Respondent complied with the Tax Clarity Act of 2000.

The Court further concludes that the Petitioner received the letters dated July 26 and August 20, 2001 concerning the tax liens. Said letters were sent to the Petitioner’s former address. The letter of July 13, 2001, which was a notice of impending tax liens was also sent to the Petitioner’s former address. The Court concludes that the Petitioner

acknowledged receipt of these letters in its response letter. In said response letter, corporate officers, by counsel, noted the alleged procedural defects of the tax liens. The Court concludes that the Petitioner received the letter of July 13, 2001 just as it received the other letters that were sent to its former address. Since there was proper notice of the tax liens, the tax liens are valid.

Even assuming that there were procedural defects in the Respondent's imposition of tax liens on the Petitioner, the Court has no jurisdiction where the tax in dispute has not been paid. *See District of Columbia v. United Jewish Appeal Federation of Greater Washington, Inc.*, 672 A.2d 1075, 1079 (D.C. 1996). In *District of Columbia v. United Jewish Appeal Federation of Greater Washington, Inc.*, the Appellee, a corporation, owned real property by deed and was taxed on that property by the Appellant, the D.C. Government. *See id.* at 1076. The Appellee alleged that it did not receive proper notice of the tax. *See id.* at 1076. The lower court declared the tax deed void for lack of proper notice. *See id.* The Appellant challenged that ruling and the D.C. Court of Appeals held that the lower court did not have jurisdiction to enjoin the collection of taxes. *See id.* at 1082. Despite a lack of the notice, the D.C. Court of Appeals affirmed the requirements of the Anti-Injunction Act, finding that the statutory bar precludes declaratory as well as injunctive relief. *See id.* The Petitioner in the instant case, alleges that the tax imposed on it by the Respondent lacked proper procedure and therefore violated the Tax Clarity Act of 2000. Specifically, the Petitioner argues that the tax was issued without notice, since the Respondent failed to mail the letters regarding the tax to the Petitioner's current address. Assuming no notice was issued by the Respondent as in *District of Columbia v.*

United Jewish Appeal Federation of Greater Washington, Inc., the Court still lacks jurisdiction to enjoin the collection of the tax.

The Court concludes that allowing the appeal to go forward would be inconsistent with the statutory intent of the Anti-Injunction Act. D.C. Code § 47-3303 or the “pay and sue” rule states that a taxpayer must “pay first and litigate later.” *See* D.C. Code § 47-3303. The policy rationale of this law allows the D.C. Government to collect the revenue that is essential to the running of the government. *See American Tel. & Tel. Co.*, 563 A.2d at 1074. Any departure from the rule threatens a necessary safeguard to the orderly functioning of the government. *See id.* Any delay in the collection of taxes may cause serious detriment to the Government and the public. *See id.* The Supreme Court has held that the purpose of acts such as the Anti-Injunction Act is to protect the Government’s need to collect taxes expeditiously. *See Enochs v. Williams Packing & Navigation Co.*, 370 U.S. 1, 7-8 (1962). The Court concludes that the statutory intent underlying the Anti-Injunction Act clearly bars the Court from considering the merits of the Petitioner’s Complaint.

The Court is without jurisdiction to grant the relief requested by the Petitioner because the Petitioner’s appeal of the tax liens without payment of the tax is a violation of the Anti-Injunction Act. Based upon its review of the five (5) letters sent by the Respondent to the Petitioner concerning collection of these taxes, the Court finds that there was proper notice. The letter dated July 13, 2001, which notified the Petitioner of the impending liens constituted notice. The August 15, 2001 letter from the Petitioner to

the Respondent demonstrates that the Petitioner was aware of the impending liens. Even assuming that there were procedural flaws in the manner the Respondent issued the tax liens, the Court is without jurisdiction to enjoin the collection of taxes without prior payment of the tax by the Petitioner. The Anti-Injunction Act is designed to prohibit suits to enjoin the collection of taxes where the tax in question has not been paid.

JUDGEMENT OF THE COURT

WHEREFORE, it is by the Court this 3rd day of July 2002, hereby

ORDERED, that said Motion to Dismiss the Petitioner's Complaint is

GRANTED.


JUDGE KAYE K. CHRISTIAN

cc:

David Fisher
Assistant Corporation Counsel, DC
Chief, Tax, Bankruptcy, and Finance Section
441 4th Street, N.W.
Washington DC 20001

Richard G. Amato
Assistant Corporation Counsel, DC
441 4th Street, NW
Washington DC 20001

John McDermott
Sandeep Kathuria
Hall, Estill, Hardwick
Gable, Golden & Nelson, P.C.
1120 20th Street, NW
Suite 700 North Building
Washington, DC 20036