

DISTRICT OF COLUMBIA TAX COURT

PARWAY MOTOR COMPANY, INC., )

Petitioner, )

vs. )

DISTRICT OF COLUMBIA, )

Respondent. )

FILED

SEP 27 1960

DISTRICT OF COLUMBIA  
Tax Court

LOCKET NO. 1695

FINDINGS OF FACT AND OPINION

The petitioning taxpayer here appeals from the denial of a claim for refund of personal property taxes assessed on its stock in trade, consisting of automobiles held for sale, on the ground that a part of that stock in trade was not in the District of Columbia during the determinative years. The respondent contends that the claim for refund was properly denied for reasons which will hereinafter be discussed.

Findings of Fact

1(a) The petitioner is a Delaware corporation with its principal place of business at 3040 M Street, Northwest, Washington, D. C.

(b) The petitioner is engaged in the business of the sale of automobiles.

2(a) The petitioner is, and was during the determinative and taxable years involved the owner of a substantial commercial building, being premises numbered 3040 M Street, Northwest, in the City of Washington, District of Columbia, wherein it conducts its business. The building occupies a ground area 110 feet long by 90 feet wide. It consists of a basement and three stories. The use to which the building is, and was put was as follows:

There was a ramp which ran from the first floor to the roof. On the first floor was an office, show room holding 3 new cars, a stock room, and a space in the rear holding 3 or 4 new cars. The second floor was devoted to the servicing and repair of customer cars. The third floor was used for painting and repair of cars. The roof was used for parking of customer cars.

(b) The petitioner was during the determinative and taxable years involved, the owner of an unimproved lot of ground located in the 2000 block of Wilson Boulevard in Arlington County, Virginia, which was acquired March, 1956, and during the determinative and taxable years involved was used for the purpose of storing automobiles owned, and held for sale by the petitioner in the ordinary course of its business. The reason for its acquisition and ownership was the lack of storage space in the building in the District of Columbia. The lot had a storage capacity of 50 automobiles.

3(a) During the year ended on June 30, 1957, the petitioner's stock in trade contained a monthly average of 75.4 new automobiles.

(b) The average cost of new automobiles in petitioner's stock in trade during the year ended June 30, 1957, was \$2,191.

4(a) During the year ended June 30, 1958, the petitioner's stock in trade contained a monthly average of 81.7 new automobiles.

(b) The average cost of new automobiles in petitioner's stock in trade during the year ended June 30, 1958, was \$2,200.

5(a) During the year ended June 30, 1959, the petitioner's stock in trade contained a monthly average of 72.4 new automobiles.

(b) The average cost of new automobiles in petitioner's stock in trade during the year ended June 30, 1959, was \$2,457.

6(a) For Taxable Year Ended June 30, 1957, During the preceding year, namely, that ended June 30, 1957, the monthly inventories of the stock in trade of the petitioner were as follows:

	JULY	AUGUST	SEPTEMBER	OCTOBER
New Cars	217,220.83 P	189,297.45 P	185,000.00 P	46,121.71 P
New Trucks	22,571.05 P	12,127.80 P	10,000.00 P	7,869.25 P
Demonstrators	17,000.00 P	15,577.00 P	5,000.00 P	6,644.87 P
Used Cars	22,500.00 P	19,000.00 P	20,000.00 P	34,357.00 P
Used Trucks	3,000.00 P	3,000.00 P	5,000.00 P	2,556.10 P
Parts & Access.	50,000.00 P	63,002.00 P	60,000.00 P	70,550.00 P
Tires & Tubes	1,000.00 P	2,100.00 P	1,000.00 P	1,715.00 P
Gas, Oil & Grease	1,000.00 P	2,000.00 P	2,000.00 P	3,000.00 P
	<u>291,444.73</u>	<u>248,366.68</u>	<u>166,610.00</u>	<u>173,375.67</u>

	NOVEMBER	DECEMBER	JANUARY	FEBRUARY
New Cars	60,600.00 P	201,104.00 P	175,000.00 P	155,072.71 P
New Trucks	14,700.00 P	15,000.00 P	10,000.00 P	27,979.20 P
Demonstrators	12,500.00 P	25,000.00 P	30,000.00 P	31,579.91 P
Used Cars	32,400.00 P	20,469.15 P	30,000.00 P	25,000.00 P
Used Trucks	2,500.00 P	2,450.00 P	1,000.00 P	9,000.00 P
Parts & Access.	60,000.00 P	62,000.00 P	63,000.00 P	74,100.00 P
Tires & Tubes	1,000.00 P	870.22 P	1,000.00 P	1,000.00 P
Gas, Oil & Grease	1,000.00 P	1,000.00 P	1,000.00 P	1,000.00 P
	<u>211,235.97</u>	<u>343,636.17</u>	<u>126,210.00</u>	<u>181,616.05</u>

	MARCH	APRIL	MAY	JUNE
New Cars	101,111.00 P	174,415.14 P	190,070.00 P	241,101.97 P
New Trucks	12,500.00 P	13,426.50 P	20,000.00 P	10,237.24 P
Demonstrators	11,000.00 P	11,000.00 P	11,000.00 P	10,000.00 P
Used Cars	23,000.00 P	22,000.00 P	21,000.00 P	20,000.00 P
Used Trucks	14,000.00 P	12,000.00 P	10,000.00 P	10,000.00 P
Parts & Accessories	71,000.00 P	71,000.00 P	67,000.00 P	66,000.00 P
Tires & Tubes	1,000.00 P	963.55 P	1,000.00 P	1,000.00 P
Gas, Oil & Grease	1,000.00 P	1,000.00 P	1,000.00 P	1,000.00 P
	<u>146,075.98</u>	<u>329,574.34</u>	<u>350,070.00</u>	<u>299,579.13</u>

Total Inventories 3,522,609.00

Average Inventories 291,550.63

(b) Not Variable Year ended June 30, 1933. During the preceding year, namely, that ended June 10, 1933, the monthly inventories of the stock in trade of the petitioner were the following:

	JULY	AUGUST	SEPTEMBER	OCTOBER
New Cars	127,103.00 P	137,155.81 P	171,119.02 P	18,233.00 P
New Trucks	22,724.72 P	15,374.21 P	12,656.81 P	6,257.01 P
Demonstrators	22,154.00 P	22,374.26 P	12,885.53 P	22,000.00 P
Used Cars	22,154.00 P	21,757.00 P	12,119.73 P	27,000.00 P
Used Trucks	13,215.62 P	13,500.00 P	12,007.01 P	8,000.00 P
Parts & Access.	2,211.69 P	60,200.00 P	1,751.40 P	60,000.00 P
Tires & Tubes	600.00 P	200.00 P	121.72 P	271.00 P
Gas, Oil & Grease	2,150.87 P	2,214.00 P	2,111.13 P	2,111.13 P
	<u>305,055.15</u>	<u>346,014.79</u>	<u>344,353.35</u>	<u>151,455.30</u>

	NOVEMBER	DECEMBER	JANUARY	FEBRUARY
New Cars	141,846.06 P	117,141.76 P	102,400.24 P	102,174.00 P
New Trucks	17,341.36 P	21,200.00 P	12,000.00 P	20,000.00 P
Demonstrators	25,424.42 P	52,000.00 P	12,000.00 P	12,000.00 P
Used Cars	21,107.70 P	20,000.00 P	175.50 P	10,000.00 P
Used Trucks	2,101.75 P	2,000.00 P	100.00 P	1,000.00 P
Parts & Access.	13,100.10 P	62,000.00 P	60,000.00 P	60,000.00 P
Tires & Tubes	135.00 P	216.00 P	100.00 P	100.00 P
Gas, Oil & Grease	5,710.78 P	5,710.78 P	5,710.78 P	5,710.78 P
	<u>289,147.10</u>	<u>295,799.03</u>	<u>361,622.15</u>	<u>323,230.32</u>

	MARCH	APRIL	MAY	JUNE
New Cars	169,730.48 P	193,863.14 P	222,000.00 P	150,150.00 P
New Trucks	20,514.49 P	15,541.35 P	12,000.00 P	21,000.00 P
Demonstrators	14,550.51 P	24,869.22 P	12,000.00 P	11,000.00 P
Used Cars	24,542.44 P	29,811.26 P	12,000.00 P	27,500.00 P
Used Trucks	6,000.00 P	3,634.32 P	2,000.00 P	2,000.00 P
Parts & Access.	63,254.25 P	65,712.50 P	60,129.27 P	60,000.00 P
Tires & Tubes	539.00 P	691.97 P	111.00 P	1,000.00 P
Gas, Oil, & Grease	1,253.19 P	2,051.00 P	2,111.13 P	2,111.13 P
	<u>329,898.12</u>	<u>350,659.55</u>	<u>392,991.83</u>	<u>318,923.84</u>

Total Inventories 3,803,809.24

Average Inventories 317,409.77

(c) Net Taxable Year Ended June 30, 1939. During the preceding year, namely, that ended June 30, 1939, the monthly inventories of the stock in trade of the petitioner were the following:

	JULY	AUGUST	SEPTEMBER	OCTOBER
New Cars	132,365.07 P	103,945.00 P	33,756.12 P	53,316.58 P
New Trucks	17,355.31 P	22,573.26 P	5,435.29 P	16,671.05 P
Demonstrators	27,572.18 P	27,643.70 P	27,643.93 P	17,511.25 P
Used Cars	24,749.19 P	22,782.21 P	23,521.02 P	23,429.85 P
Used Trucks	15,122.52 P	14,351.40 P	14,711.67 P	10,445.90 P
Parts & Access.	35,861.89 P	66,580.42 P	66,022.61 P	69,075.01 P
Tires & Tubes	597.72 P	516.70 P	459.94 P	411.51 P
Gas, Oil, Grease	3,511.11 P	3,856.82 P	2,718.73 P	1,721.24 P
	<u>273,962.00</u>	<u>400,497.00</u>	<u>179,539.71</u>	<u>272,280.24</u>
	NOVEMBER	DECEMBER	JANUARY	FEBRUARY
New Cars	64,378.19 P	159,875.00 P	173,132.14 P	105,000.00 P
New Trucks	14,743.01 P	35,140.00 P	14,052.17 P	25,000.00 P
Demonstrators	25,223.65 P	15,000.00 P	43,711.00 P	18,127.00 P
Used Cars	25,223.71 P	35,000.00 P	44,700.75 P	30,700.00 P
Used Trucks	9,621.01 P	10,200.00 P	9,737.91 P	11,700.00 P
Parts & Access.	65,543.15 P	65,491.47 P	61,000.31 P	66,400.00 P
Tires & Tubes	574.00 P	400.00 P	732.33 P	600.00 P
Gas, Oil, Grease	2,650.12 P	2,400.00 P	1,400.00 P	1,400.00 P
	<u>250,518.01</u>	<u>348,406.00</u>	<u>354,590.41</u>	<u>242,827.00</u>
	MARCH	APRIL	MAY	JUNE
New Cars	210,450.10 P	172,073.90 P	201,201.06 P	187,305.00 P
New Trucks	35,977.70 P	27,571.00 P	19,000.00 P	20,000.00 P
Demonstrators	41,446.18 P	41,334.13 P	34,000.00 P	37,000.00 P
Used Cars	45,109.69 P	42,000.00 P	31,575.75 P	41,000.00 P
Used Trucks	10,561.97 P	13,117.00 P	6,500.00 P	8,200.00 P
Parts & Access.	69,110.13 P	72,000.00 P	75,000.00 P	74,000.00 P
Tires & Tubes	789.21 P	800.00 P	700.00 P	600.00 P
Gas, Oil, Grease	3,519.00 P	3,800.00 P	3,000.00 P	2,000.00 P
	<u>407,207.13</u>	<u>364,109.00</u>	<u>379,000.00</u>	<u>374,100.00</u>
Total Inventories		3,756,374.81		
Average Inventories		313,011.23		
Plus omitted invoices		<u>6,924.00</u>		
Corrected Average Inventories		318,025.23		

7. The inventories of petitioner's stock in trade for the above mentioned three years, namely, those ended June 30, 1957, 1958 and 1959, included in the items "New Cars" new cars stored on the aforesaid lot on Wilson Boulevard in Arlington County, Virginia.

8(a) During the year ended June 30, 1957, the approximate monthly average number of new cars stored on the lot on Wilson Boulevard, Arlington County, Virginia was in excess of 30, that is to say, approximately 36 new cars.

(b) The approximate average value of new cars stored on the aforesaid lot during the year ended June 30, 1958, was in excess of \$65,730.00, that is to say, approximately \$78,276.00.

9(a) During the year ended June 30, 1958, the approximate monthly average number of new cars stored on the lot on Wilson Boulevard in Arlington County, Virginia, was in excess of 30, that is to say, approximately 37 new cars.

(b) The approximate monthly average value of new cars stored on the aforesaid lot during the year ended June 30, 1958, was in excess of \$68,400.00, that is to say, approximately \$64,360.00.

10(a) During the year ended June 30, 1959, the approximate monthly average number of new cars stored on the lot on Wilson Boulevard in Arlington County, Virginia, was in excess of 30, that is to say, approximately 34 new cars.

(b) The approximate monthly average value of new cars stored on the aforesaid lot during the year ended June 30, 1959, was in excess of \$73,410, that is to say, approximately \$60,298.00.

11(a) The assessing authority of the District of Columbia assessed the petitioner a personal property tax for the fiscal year ended June 30, 1958, in the amount of \$6,499.52, upon its reported monthly average stock in trade and other tangible personal property. The petitioner paid one-half of the tax in September, 1957, and one-half thereof in March, 1958.

(b) The assessing authority of the District assessed the petitioner an additional personal property tax for the fiscal year ended June 30, 1958, in the amount of \$155.52, plus interest of \$35.77, or a total of \$191.29, which it paid on November 27, 1959.

12(a) The assessing authority of the District of Columbia assessed the petitioner a personal property tax for the fiscal year ended June 30, 1959, in the amount of \$6,933.00, upon its

reported monthly average stock in trade and other tangible personal property. The petitioner paid one-half of the tax in September, 1958, and one-half thereof in March, 1959.

(b) The assessing authority of the District assessed the petitioner an additional personal property tax for the fiscal year ended June 30, 1959, in the amount of \$166.86, plus interest of \$18.29, or a total of \$185.55, which the petitioner paid on November 27, 1959.

13(a) The assessing authority of the District of Columbia assessed the petitioner a personal property tax for the fiscal year ended June 30, 1960, in the amount of \$6,648.66, upon its reported monthly average stock in trade and other tangible personal property. The petitioner paid one-half of the tax in September, 1959.

(b) The assessing authority rejected the return of the petitioner for the year ended June 30, 1960, and increased the tax to the amount of \$6,946.12. On November 27, 1959, they paid one-half of the increase, namely, \$158.73, plus interest of \$3.17, or a total of \$161.90, and on the same day paid one-half of the tax as increased, that is to say, personal property tax in the amount of \$3,483.06.

14(a) On September 30, 1959, the petitioner sent to the addressee therein the letter the following:

"Property Tax Division  
Room 2143, Municipal Center  
300 Indiana Avenue, N. W.,  
Washington 1, D. C.

Gentlemen:

This past week we hired a new accountant and office manager. In the course of an audit made in connection with this change in personnel, we came up with the following information.

We have had a sizable part of our new vehicle inventory stored in Virginia since April, 1956. Our previous accountant has reported these vehicles on our D. C. Personal Property Tax returns. It is our understanding that these vehicles are not taxable as personal property in the District of Columbia because they are stored outside the District of Columbia.

The capacity of the lot in Arlington, Virginia is thirty-six (36) vehicles. It has been company policy to keep this lot as full as possible to permit more operating room on our properties in Washington, D. C. Usually when cars are removed from this lot for sale in D. C., they are immediately replaced by another new one driven over from the District.

Accordingly, we herewith make claim for refund or abatement of taxes as per the following computations.

TAX YEAR 1958

Average Number of Vehicles	July, August	30 x 2 months =	60
Average Number of Vehicles	September	6 x 1 month =	6
Average Number of Vehicles	October	20 x 1 month =	20
Average Number of Vehicles	Nov. - June	35 x 6 months =	210
			<b>306</b>

Average Monthly Inventory of Vehicles  
 $306 \div 12 = 25$

Number of Vehicles x Average Cost = Average Monthly Inventory, Dollars  
 $25 \times \$2,211.00 = \$55,275.00$

Tax Rate x Average Monthly Inventory = Amount Claimed  
 $2.00 \times \$55,275.00 = \$110,550.00$

TAX YEAR 1959

Number of Vehicles x Average Cost = Average Monthly Inventory  
 $30 \times \$2,379.00 = \$71,370.00$

Tax Rate x Average Monthly Inventory = Amount Claimed  
 $2.00 \times \$71,370.00 = \$142,740.00$

TAX YEAR 1960

Number of Vehicles x Average Cost = Average Monthly Inventory  
 $30 \times \$2,491.00 = \$74,730.00$

Tax Rate x Average Monthly Inventory = Amount Claimed  
 $2.00 \times \$74,730.00 = \$149,460.00$

Average Monthly Inventories - New Vehicles  
All Locations

	Dollar Value All Locations *	Dollar Value Virginia Only	Rate in Virginia
Tax Year 1958	163,683.00	64,310.00	40.46%
Tax Year 1959	172,805.00	71,170.00	39.68%
Tax Year 1960	163,409.00	74,730.00	45.73%

\* As reported on D. C. Personal Property Tax Returns

Should you desire any further information, we will be most happy to comply.

Very truly yours,

PAY-AY MOTOR CO., INC.

Walter V. Carter  
 President

(b) On October 22, 1959, there was sent to the petitioner by the subscriber thereto the letter following:

"Parkway Motor Company, Inc.  
Mr. Walter B. Carter  
3040 M Street, W. B.  
Washington 7, D. C.

Gentlemen:

As a result of the audit of your books with relation to your request for refund, the following facts developed:

All inventories reported during the years in question have had a taxable situs in the District of Columbia. We are of the opinion that claim for refund cannot be considered.

Certain items of personal property were omitted from the returns, and depreciation was adjusted to a composite 10% rate.

Corrected bills covering the additional taxes due for the fiscal years 1958, 1959 and 1960 will be submitted to you in the near future.

Very truly yours,

Personal Property Assessment  
Section

Melvin E. Anderson,  
Chief Auditor"

15(a) On November 27, 1959, there was filed with the Finance officer of the District of Columbia, the document following:

"The Assessor, D. C.  
Municipal Center  
Washington 1, D. C.

Dear Sir:

Under date of September 30, 1959, Parkway Motor Co., Inc. filed a claim for refund of Personal Property Taxes for the years 1958, 1959 and 1960 in the amount of \$5,800.00. This claim was addressed to the Property Tax Division, Room 2146, Municipal Center, Washington 1, D. C. Subsequent thereto, the Personal Property Tax Division made an audit of the returns for the years 1958, 1959 and 1960.

On October 22, 1959, the Personal Property Assessment Section replied to our claim of September 30, 1959 and stated that "We are of the opinion that claim for refund cannot be considered." They also indicated that additional taxes would be assessed to regard to items either omitted from the returns, or in connection with items on which different valuations were to be placed. Since that time we have received bills for the additional assessments.

It now comes to our attention, and it is our understanding, that we should have submitted our claim in different form than we did. In particular, the claim should have been addressed to the Assessor, D. C., and submitted under oath in accordance with Title 47-1016 and Title 47-2411, D. C. Code, 1951.

We are now herewith submitting claim for refund for overpayment of personal property taxes for the period half 1958, the year 1959 and the year 1960 as follows:

During the last week in September, 1959, we hired a new accountant and office manager. In the course of an audit made in connection with this change in personnel, we came up with the following information.

We have had a sizable part of our new vehicle inventory stored in Virginia since April, 1956. Our previous accountant had reported these vehicles on our D. C. Personal Property tax returns. It is our understanding that these vehicles are not taxable as personal property in the District of Columbia because they are stored outside the District of Columbia.

The capacity of the lot in Arlington, Virginia is thirty-six (36) vehicles. It has been company policy to keep this lot as full as possible to permit more operating room on our properties in Georgetown, D. C. Usually when cars are removed from this lot for sale in D. C., they are immediately replaced by another new one driven over from the District.

Accordingly, we herewith make claim for refund of Personal Property taxes as per the following computation:

FALL YEAR 1958

Average Number of Vehicles	July, August	17 x 2 months =	60
Average Number of Vehicles	September	6 x 1 month =	6
Average Number of Vehicles	October	20 x 1 month =	20
Average Number of Vehicles	Nov. - June	35 x 8 months =	280
			<u>366</u>

Average Monthly Inventory of Vehicles (366 ÷ 12) 30

Average Monthly Inventory, Dollars (30 x \$2,211.00) \$66,330.00

Amount of Claim for 1958, Full Year (\$66,330.00 x 2%) \$1,326.60

Amount of Claim for Second Half, 1958 (50% x \$1,326.00) \$663.30

(Average Cost of \$2,211.00 per vehicle is the average cost of 61 vehicles sold during the month of June, 1957, a representative month.)

FALL YEAR 1959

Average Monthly Inventory, Dollars (30 x \$2,379.00) \$71,370.00

Amount of Claim for 1959 (\$71,370.00 x 2%) \$1,427.40

(Average Cost of \$2,379.00 per vehicle is the average cost of 72 vehicles sold during the month of June, 1958, a representative month.)

FALL YEAR 1960

Average Monthly Inventory Dollars (30 x \$2,491.00) \$74,730.00

Amount of Claim for 1960 (\$74,730.00 x 2%) \$1,494.60

(Average Cost of \$2,491.00 per vehicle is the average cost of 81 vehicles sold during the month of June, 1959, a representative month.)

We therefore maintain that these vehicles, having been physically located in Virginia, were not subject to D. C.

Personal Income Tax, and that this company is entitled to a refund of \$1,403.10 for 1958, \$1,427.50 for 1959 and \$1,441.60 for 1960, plus interest in accordance with the law for each of these years.

PARKWAY MOTOR CO., INC.

/s/ Walter E. Carter

Walter E. Carter  
President and General Manager

DISTRICT OF COLUMBIA, D.C.

Walter E. Carter, being first duly sworn, on oath deposed and said: That he is the President and General Manager of Parkway Motor Co., Inc., a corporation, and authorized to make the foregoing claim for refund, and this affidavit in its behalf; that he subscribed the foregoing claim for refund in behalf of Parkway Motor Co., Inc., and knows the contents thereof, and verily believes the statements of fact therein made to be true.

/s/ Walter E. Carter

Subscribed and Sworn to before me this 27th day of November, 1959.

( SEAL )

/s/ Jeannette I. Collins  
Notary Public, D. C.

My Commission expires: 3/31/64

(b) On February 1, 1960, there was transmitted to the petitioner the following:

Mr. Walter E. Carter  
President and General Manager  
Parkway Motor Co., Inc.  
3040 N Street, N. W.  
Washington 7, D. C.

Dear Sir:

On November 25, 1959 Parkway Motor Co., Inc., filed with the Finance Officer, D. C., an application, verified by Walter E. Carter, President and General Manager, Parkway Motor Co., Inc., for refund of \$3,250.60 paid by Parkway Motor Co., Inc. to the D. C. Treasury on November 27, 1959.

I have carefully considered the aforementioned application of Parkway Motor Co., Inc. for refund, and have concluded that this application should be, and it is, disallowed in its entirety.

Very truly yours,

/s/ John C. Ahern  
Chief  
Property Tax Division

16. This case was filed on April 27, 1960.

Opinion

This case involves personal property taxes assessed on an automobile dealer's stock in trade under Section 47-1212, District of Columbia Code, 1951 Edition, Supplement VIII,<sup>(1)</sup> the pertinent portion of which reads as follows:

"Dealers in general merchandise of every description shall pay to the collector of taxes of the District of Columbia one and one-half per centum on the average stock in trade."

The assessing authority of the District has always construed the quoted section of the taxing provision to mean that the tax should be assessed upon the monthly average stock in trade, and has required the reporting or returning of stock in trade in accordance with such interpretation. Such interpretation, in the opinion of the Court has now the force of law, and will be followed.

The real dispute in this case is over the locale or situs of a portion of the petitioner's stock in trade consisting of new automobiles, which it claims was not subject to District of Columbia taxation, because, it says, a portion thereof was stored on a rented lot on Wilson Boulevard in Arlington County, Virginia.

In its personal property returns for the fiscal years ended June 30, 1958, 1959 and 1960, it included all of its new automobiles regardless of where situated in the bases for the computation of its monthly average stock in trade, with the exception of a few automobiles in relation to the year ended June 30, 1960, for which additional taxes were assessed and paid by the petitioner. The personal property taxes against the petitioner were assessed upon the monthly average stock in trade, as thus computed, and upon other taxable personal property owned by it. The taxes so assessed, together with interest, were paid by the petitioner. They amounted

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- (1) The quoted portion was erroneously omitted from the Code as originally adopted, but has been imported in Supplement VIII. The omitted portion first appeared in the Act of July 1, 1902, 32 Stat. 618 Sec. 6 par. 2, and later in the Act of April 28, 1904, 33 Stat. 563, Sec. 2.
- (2) Tow the Treasurer.
- (3) Rate now fixed by Commissioners. Greatly increased.

to \$6,690.81 for the fiscal year ended June 30, 1958, \$7,117.59 for the fiscal year ended June 30, 1959, and \$7,128.02 for the fiscal year ended June 30, 1960.

The Court must first dispose of a question of jurisdiction, namely, whether the petitioner filed its appeal within 90 days from the date of the denial of the claim for refund, seeing in mind that the appeal was filed on April 27, 1960.

On September 30, 1959, the petitioner sent a letter addressed to "Property Tax Division, Room 2148, Municipal Center, Washington 1, D. C.", requesting refund of personal property taxes on the ground that a portion of its stock in trade had been located without the District during the determinative years.

On October 22, 1959, the Personal Property Assessment Section of the Finance Office of the District of Columbia advised the petitioner by letter that its "claim for refund cannot be considered". The question arises whether the petitioner should have appealed from such action and whether its failure to do so is fatal to its case. The Court does not think so, because the letter of September 30, 1959, was not a claim for refund within the meaning of Section 47-2411(a), D. C. Code, 1951 Edition, Supplement VIII, <sup>(k)</sup> The assessing authority did not regard it as a claim for refund and for that reason refused to consider it. It was not addressed to the Assessor or to his successor, the Finance Officer, and was not under oath. A paper under oath addressed to "The Assessor, D. C.", and filed in the Finance Office of the District on November 27, 1959, was the first and only claim for refund as contemplated by the above section of the Code, that was filed by the petitioner in relation to the taxes here involved. Since the appeal herein was filed within 90 days from the date of its denial, the Court has jurisdiction to consider and decide the questions presented, the principal one being, whether a portion of the petitioner's stock in trade had a taxable situs without the District

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(k) Section 4, Act of July 10, 1952, 66 Stat. 546, Ch. 649.

of Columbia during the determinative years.

Another question involving the filing of the claim for refund should be disposed of at this point. The payment of the first half of the personal property tax for the fiscal year ended June 30, 1953, was made in September, 1957. The claim for refund was filed on November 27, 1959, - more than two years after payment of that half, which was too late. One-half only of the overpayment is refundable.

The Court has found that during the year ended June 30, 1957, which was determinative in respect of taxable stock in trade for the fiscal year ended June 30, 1958, there was stored on the lot on Wilson Boulevard in Arlington County, Virginia an approximate monthly average of 36 new automobiles included in the petitioner's stock in trade; that during the determinative year ended June 30, 1958, the monthly average number so stored was 37; and that during the determinative year ended June 30, 1959, the monthly average number so stored was 34. While testimony was not as positive as would be desired, and was mainly estimates of the number of automobiles stored on the Virginia lot, the Court believes that the recorded supports a conclusion that the monthly average of new automobiles stored on the lot during the three determinative years was substantially in excess of 30.

The District could legally tax that personal property having a physical situs within the District. It could not tax that located elsewhere, Frick v. Pennsylvania, 268 U.S. 473, 69 L.Ed. 1050, 45 S.Ct. 603; Curry v. McGanless, 307 U.S. 357, 83 L.Ed. 1339, 59 S.Ct. 900. The property being excludatory, it should have been apportioned. District of Columbia v. Scoot Sand & Gravel Corp., 87 U.S. App. D.C., 246, 134 F.2d 987. See also Scandinavian Airlines System v. County of Los Angeles, California District Court of Appeals, Second District, Division Two, decided July 22, 1960.

The cases cited and relied upon by the respondent are not helpful in the solution of the issues in this case. They relate to circumstances quite different from those here under consideration. Counsel for the respondent apparently overlooked the fact that the tax here involved is not an ordinary tangible personal property tax with the usual determinative tax day, or similar provision, but is a tax upon the average stock in trade of the taxpayer, situated in the District of Columbia during the entire taxable year. It is not the purpose of the levying statute to tax a portion of the average stock in trade located outside the District.

The petitioner's claim for refund is based upon a monthly average of 30 new automobiles stored on the Virginia lot during the three determinative years. Its petition filed in this case is to the same effect, and the refunds claimed are based accordingly. For the purposes of the case the Court holds that a monthly average of 30 automobiles was erroneously included in the inventories of its stock in trade for the three determinative years. The Court has found that the average value of new automobiles in the petitioner's stock in trade during the determinative year ended June 30, 1957, was \$2,191.00; for the determinative year ended June 30, 1958, was \$2,280.00; and for the determinative year ended June 30, 1959, was \$2,447.00. The overpayment of personal property tax for the three taxable years involved should be computed as follows:

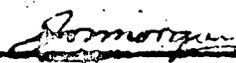
<u>Taxable Year Ended</u>	<u>Monthly Average No. of Cars</u>	<u>Average Value</u>	<u>Total Value</u>	<u>Tax Rate</u>	<u>Overpayment</u>
June 30, 1958	30	\$2,191	\$65,730	2%	\$ 6 657.30
June 30, 1959	30	\$2,280	\$68,400	2%	\$1,368.00
June 30, 1960	30	\$2,447	\$73,410	2%	\$1,468.20

For the reasons stated the Court holds that there was an overpayment of personal property tax by the petitioner for the taxable years set in the schedule following:

Fiscal Year Ended June 30, 1958.....	\$ 657.30
Fiscal Year Ended June 30, 1959.....	\$1,358.00
Fiscal Year Ended June 30, 1960.....	\$1,440.20

The Court further holds that the petitioner is entitled to the refund of the aforesaid overpayments, with interest thereon at the rate of 4 per centum per annum from November 27, 1959, to date of payment of refund.

Decisions will be entered for publication.

  
J. F. Morgan,  
Judge.

DISTRICT OF COLUMBIA TAX COURT

FILED

PARKWAY MOTOR COMPANY, INC.,

SEP 27 1960

Petitioner,

District of Columbia  
Tax Court

vs.

DOCKET NO. 1695

DISTRICT OF COLUMBIA,

Respondent.

DECISION

This proceeding came on to be heard upon the petition filed herein; and upon consideration thereof, and of the evidence adduced at the hearing on said petition, it is by the Court, this 27th day of September, 1960,

ADJUDGED AND DETERMINED, that there was an overpayment of personal property tax by the petitioner for the taxable years and in the amounts following:

Fiscal Year Ended June 30, 1958.....	\$ 657.30
Fiscal Year Ended June 30, 1959.....	01,368.00
Fiscal Year Ended June 30, 1960.....	01,368.20

FURTHER ADJUDGED AND DETERMINED, that the petitioner is entitled to the refund of the aforesaid overpayments, with interest thereon at the rate of 4 per centum per annum from November 27, 1959, to date of payment of refund.

*J. V. Morgan*

Jo. V. Morgan,  
Judge.

Findings of Fact, Opinion &  
Decision served as follows:

H. Clay Espey, Esquire,  
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219 Southern Building,  
Washington 5, D. C. (Mailed 9/27/60)

Corporation Counsel, D. C. (Messenger 9/27/60)

Finance Officer, D. C. (Messenger 9/27/60)

Phyllis R. Liberti,  
Clerk.