DISTRICT OF COLUMBIA TAX COURT

FILED

APR 13 1970

District of Columbia
Tax Court

JOHN CLAY SMITH, JR., Petitioner,	)	
vs.	)	DOCKET NO. 2082
DISTRICT OF COLUMBIA, Respondent.	)	

FINDINGS, CONCLUSION and OPINION

The question is, whether the D. C. excise tax for the issuance of an original certificate of title for a motor vehicle applies to a non-resident serviceman who is stationed here on military duty.

It is clear and uncontested that petitioner, a Captain in the Army Judge Advocate General Corps, is a legal resident of Nebraska, assigned to Headquarters, Military District of Washington. He and his family live in the District, and it was here that he bought a Dodge motorcar in December, 1967 and was assessed and paid under protest $96.60 motor vehicle excise tax in order to obtain registration of the vehicle.

The governing statute, found in Code section 40-603(j), is the Act of May 27, 1949, 63 Stat. 128, ch. 782, title III, sec. 301, "Excise Tax Upon Issuance of Titles to Motor Vehicles", amending the District of Columbia Traffic Act. It now provides for "an excise tax for the issuance of every original certificate of title" and "every subsequent certificate of title" at the rate of 3% of fair market value. However, "The issuance of certificates of title for the following motor vehicles and trailers shall be exempt from the tax imposed by this subsection:"

* * *

(2) Motor vehicles and trailers purchased or acquired by nonresidents prior to coming into the District of Columbia and establishing or maintaining residences in the District.

Respondent argues that for exemption from tax, "two facts must be present". These "facts", or conditions precedent, are (1) that the purchaser, at the date of purchase, be a non-resident, and (2) that the purchaser, thereafter and "at some time prior to the issuance of the certificate of title" establish and maintain his residence here. Memorandum of February 2, 1970, pp. 1 - 2. Petitioner, of course, as a continuous resident of Nebraska temporarily living in the District, does not meet the second condition. Respondent does not set forth the logic, practical effect, or "reason why" the exemption should be so construed, and the construction is, to say the least, strained and artificial. The whole end of the sentence, beginning with "prior to coming into the District", prima facie modifies and explains the term "nonresidents" as used in section 40-603(j)(2). And "nonresidents" are people who have not theretofore come into the District and set up their home here -- at least prima facie, on the literal words of the statute inartisticly expressed. If the class intended for exemption the less broad, then who is included in the class, and why? The issuance of the certificate of title to a motor vehicle is usually contemporaneous with or only some days or weeks after the purchase. Does it make sense that for exemption, the purchaser, during that time period, first be a non-resident, and then become a resident?

Exhaustive research fails to disclose any legislative history bearing on the legislative intent of the exemption. It first appeared in Title III of H.R. 3704, 81st Cong., 1st Sess. It is not mentioned in the Committee Print of the Hearings on H.R. 3704, held February 8 and 16, 1949, before the Joint Subcommittee on Fiscal Affairs of the Committees on the District of Columbia. It is reproduced, without comment, at page 11 of H.Rep. No. 260, 81st Cong., 1st Sess., concerning H.R. 3704.

Two opinions of the Acting Corporation Counsel bear directly on the case at bar. The first, dated May 26, 1969, considers the question "Whether nonresident military personnel are liable for the payment of District of Columbia motor vehicle excise tax as a condition to obtaining District registration of their automobile, where such personnel are here solely in compliance with military orders." Extensively reviewing the facts of the present case in the light of District of Columbia v. Fleming, 95 U.S. App. D.C. 4, 217 F.2d 13, opinion finds it "clear that Captain Smith had not established a residence in the District" before "acquiring the automobile in question." Therefore Captain Smith, and "other nonresident military personnel in like circumstances" are not liable for the excise tax, and Captain Smith "is thus entitled to its refund". Opinion of May 26, 1969, pp. 4 - 5.

On September 5, 1969, Captain Smith filed his petition for refund in this Court. On September 29, 1969, the Acting Corporation Counsel issued a second opinion, "to clarify" the very clear and straightforward views set forth May 26, 1969 as to an exemption --

> if the individual, at the time of his application for a certificate of title, has not, in fact, established or is not maintaining a residence in the District. Although it was not so intended, to the extent that the May 26 opinion may be deemed to suggest that for exemption purposes a person need not be "a resident" of the District at the time of the issuance of a certificate of title, the opinion is not to be so construed.

The second opinion in no way changes the specific finding made in the first opinion that Captain Smith "is not liable for District motor vehicle excise tax thereon, and is thus entitled to its refund." The record confirms this finding, and refund will be ordered.

Quoting from Fleming, respondent in effect asks that the Court refrain from laying down a general rule concerning the construction of section 40-603(j)(2). The record indicates that facts other than those considered in the Corporation Counsel's opinions may be of importance in determining the Congressional intent back of the exemption. For instance, in the States, exemption usually or always depends on payment elsewhere of a similar motor vehicle excise tax. And see Sullivan v. United States, 395 U.S. 169 (decided the same day that the Corporation Counsel's first opinion was issued), in which the Court relied on several criteria to find legislative intent. The principle of abstention from undue generalization in setting out rules for administrative action (here, by the Department of Motor Vehicles) is applicable and is followed herein.

Decision will be entered for petitioner.

Robert M. Weston
Judge