



return, are prohibited from subsequently filing an amended separate return and thereby become entitled to receive a refund of the difference between the tax liability paid in accordance with their joint return and the total tax liability as computed on their amended separate returns. The case appears to be one of first impression in the District of Columbia.

Title 47, §47-1515(b) of the District of Columbia Code permits either the joint or separate filing of tax returns by a husband and wife. It states,

If a husband and wife living together have an aggregate net income for the taxable year of \$2,500 or over, or an aggregate gross income for such year of \$5,000 or over —

- (1) Each shall make a return, or
- (2) The income of each shall be included in a single joint return, in which case the tax shall be computed on the aggregate income.

Section 47-1586(j) of the Code in substance provides that there is, in effect, a three year statute of limitations on refund claims. It states in part,

Except as to any deficiency taxes assessed under the provisions of Section 47-1586(d), where there has been an over payment of any tax imposed by this subchapter, the amount of such over payment may be credited against any liability in respect of any income

1 As indicated in a letter sent to the taxing authorities by the petitioners (Stip. ¶6), "These amended income tax returns, upon which the taxpayers' signatures are notarized, constitute a claim for refund in the amount of \$190.01 plus interest as provided by law, and any further relief to which the taxpayers may be entitled.

The foregoing amount is computed as follows:

	<u>Elliott C. Lichtman</u>	<u>Judith C. Lichtman</u>
1969 Tax as previously paid	\$663.01	\$663.01
1969 Tax Per Amended Return	\$586.06	\$449.95
	<u>(\$ 23.05)</u>	<u>\$213.06</u>
	TOTAL REFUND	\$190.01

or franchise tax or installment thereof (whether such tax was assessed as a deficiency or otherwise), on the part of the payment and the balance shall be refunded to such person. No such credit or refund shall be allowed after three years from the time the tax was paid unless before the expiration of such period a claim therefor is filed by the taxpayer, and no tax or part thereof which the Assessor may determine to be an overpayment shall be refunded after the period prescribed therefor in the Act appropriating the funds from which such refund would otherwise be made. . . . Every claim for credit or refund must be in writing, under oath; must state the specific grounds upon which the claim is founded, and must be filed with the Assessor.

Neither the petitioners nor the respondent have been able to demonstrate that either the Code or a regulation permits or prohibits the ability to amend a tax return from a joint return to a separate return subsequent to April 15th, the date the tax return is due. The instructions accompanying the tax return forms contained the caveat, "Election to file joint or separate returns cannot be changed after April 15, 1970." (See respondent's exhibit #1). Perhaps the best that can be said is that this is an administrative policy.

The petitioners assert that absence of language either in the Code or a regulation prohibiting the taxpayer from subsequently amending the nature of his return gives credence to the petitioner's belief that he should be permitted to do so as long as §47-1586j requirements are met. Essentially, the petitioners feel that §47-1586j is applicable to this situation. Moreover, it is argued that where irrevocable election in computation of his tax liability is provided, the same is unambiguously stated in the code.<sup>2</sup> The petitioners also assert that the policy of irrevocable election is inconsistent with the taxing statute and under the authority of Manhattan General Equipment Company

<sup>2</sup> E.g., §§47-1567(b)(b) as it pertains to the computation of tax rates and 47-1557(b)( ) as it relates to the optional standard deduction.

v. Cornias Wers, 207 U.S. 129, it must thereby fail. Finally, the court's attention is directed to 6012(D) (1) of the Internal Revenue Code 1954 wherein an amended return can be filed on the basis of a change from a joint to a separate tax liability. The court is asked to note that Congress has given their approval to this type of amended return and is thereby aware of potential administrative accounting problems inherent in this form of amendment.

As previously indicated, 547-1536j allows a taxpayer a three-year period of time in which to recover an overpayment of his taxes. It cannot be said herein that the petitioners overpaid their taxes, viz. the manner in which they were computed. In other words, once the taxpayers had elected to file a joint return, the taxes computed on that basis were correct; they were not overcharged. The fact that they would have had to pay a smaller tax amount if they elected to have their tax liability computed on a separate return does not in fact amount to an overpayment of the taxes as they were originally filed.

Inherent in the petitioners' argument is the belief that the present administrative decision to prohibit the amendment of tax returns inhibits the ability of the taxpayer to benefit from the concept of income-splitting which is authorized in the D. C. Code. The court faces a dilemma in this regard. Since the court is of the opinion that 547-1586j is not applicable because no overpayment was in fact made, it is left with the problem of examining the equities presented in this case. There is little authority in this area that the court can rely upon for guidance. Werner v. U.S., 264 F.2d 489 (1959), though not controlling, is of some help. The case is distinguishable in some ways from the situation presented herein. In Werner the taxpayer originally filed a separate return and attempted to file an amended joint return. A regulation which was passed by the Internal Revenue Commission prohibited this amended return.<sup>3</sup> While it was disputed that the taxpayer filed his return in haste and was without knowledge of the benefit of income splitting, for purposes of appeal the court concluded that the first return was intentionally filed. In comparing the regulation to the statute, the court concluded that the regulation

was inconsistent with the Internal Revenue Code. The court held on the basis of Manhattan General Equipment Corporation v. Commissioner, supra, that an administrative regulation which is promulgated out of harmony with a statute is a nullity. The court went on to note that,

" . . . [T]he taxpayer in the instant case is not attempting to change the basis on which his income must be reported for subsequent years. Nothing is involved except a computation of tax liability for the year in question. No administrative difficulty, so far as we are aware, is involved in making such calculation. In filing the amended return, taxpayer and his wife did not attempt to take advantage of any developments subsequent to the filing of the original return. The only discernible purpose served by the regulation was to prevent the equitable computation of taxes intended by the Congress by its split-income tax provision for a husband and wife filing a joint return." (At 493).

Herein the petitioner is trying to change the computation of his tax liability from a joint to a separate basis. Unlike the taxpayer in Warner, he is confronted with an administrative policy something less than a promulgated regulation. The D. C. Code expressly provides for income splitting. Nowhere is it limited by requiring that this choice be made irrevocable on April 15th. Upon balancing the equities, i.e., the benefit of income-splitting to the taxpayer and the burden this amended return will have on the government, the court concludes that limited to the facts of this case, the taxpayer should prevail. In interpreting revenue statutes, the courts have favored liberal

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3 The regulation in question stated,

"A joint return may not be made by a husband and wife for a taxable year if a separate return has been filed by one of the spouses and the time for filing the return of such spouse has expired. Similarly, if a joint return is filed, separate returns may not be made by the spouses after the time for filing the return of either has expired."

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA  
TAX DIVISION

ELLIOTT C. and JUDITH L. LIGHTMAN, )  
 )  
 Petitioners )  
 )  
 v. )  
 )  
 DISTRICT OF COLUMBIA, )  
 )  
 Respondent )

Docket No. 2193

FILED

JAN 19 1973

ORDER

Superior Court of the  
District of Columbia  
Tax Division

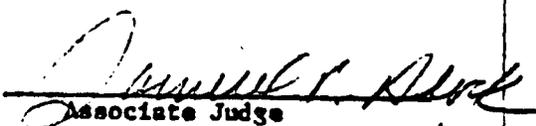
This cause coming on for hearing on its merits, arguments  
were heard and briefs were submitted, read and considered. It is,  
therefore, this 19th day of January 1973, by the Superior Court of  
the District of Columbia,

ORDERED that judgment be, and is hereby, entered for the  
petitioners, Elliott C. and Judith L. Lichtman, against the respondent,  
the District of Columbia, in the amount of \$190.01 plus interest at 6%  
per annum from November 5, 1971 to date and the costs of this suit.

BY THE COURT:

January 19, 1973

Date

  
Associate Judge

cc:  
Henry E. Wilson, Esq.  
Assistant Corp. Counsel, D.C.  
Kenneth R. West  
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Attorney for petitioners

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA  
TAX DIVISION

ELLIOTT C. and JUDITH L. LIGHTMAN, )  
 )  
 Petitioners )  
 )  
 v. )  
 )  
 DISTRICT OF COLUMBIA, )  
 )  
 Respondent )

DOCKET NO. 2183

**FILED**

JAN 29 1973

AMENDED ORDER

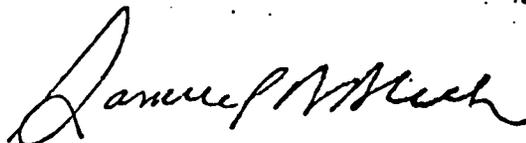
Superior Court of the  
District of Columbia  
Tax Division

On January 19, 1973 this court issued an opinion and order in the present case. Therein it was ordered that judgment be entered in favor of the petitioners in the amount of \$190.01 plus interest at 6% per annum from November 5, 1971 to date and costs of this suit.

The court amends its order to read that judgment be entered in favor of the petitioners in the amount of \$190.01 without costs or interest.

BY THE COURT:

1/29/73  
Date

  
Associate Judge

cc:  
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Kenneth R. West, Esq.  
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