

*Opinion No. 1174*

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

JOSEPH M. BURTON  
CLERK OF THE  
DISTRICT OF COLUMBIA  
TAX DIVISION

TAX DIVISION

APR 9 1979

WILLIAM and CHRISTINE HUNTER, )  
 )  
 Petitioners )  
 )  
 v. )  
 )  
 DISTRICT OF COLUMBIA, )  
 )  
 Respondent )

FILED

Docket No. 2212

OPINION AND ORDER

The petitioners appeal from an income tax assessment made against them for taxable year 1971 in the amount of \$11,417.16. The tax, together with assessed interest, was paid on January 11, 1973. The assessment results from the denial of deductions for losses claimed on their 1971 District of Columbia Income Tax Return.

This court has jurisdiction to hear this appeal pursuant to D. C. Code 1973, §§11-1201 and 47-2403.

I

The parties offered testimony and entered into stipulations of fact and stipulated the admissibility of a number of documents. The essential facts are undisputed, those facts being as follows:

1. Petitioners, William and Christine Hunter, husband and wife, maintained a place of abode within the District of Columbia, 4612 Brandywine Street, N.W., Washington, D.C. from August 1, 1969 through September 30, 1971.
2. On or about October 1, 1971, petitioners abandoned their place of abode in the District of Columbia and occupied

a residence approximately one mile from the District line in Montgomery County, Maryland.

3. From September 1, 1969 through December 31, 1971 and for a period thereafter, petitioner, William Hunter was a full-time employee of the United States Department of Justice with his office in the District of Columbia.

4. Petitioners timely filed a District of Columbia joint resident individual income tax return for the period commencing January 1, 1971 and ending September 30, 1971, claiming an overpayment and refund of District of Columbia income taxes in the amount of \$1,031.21.

5. On or about December 6, 1972, petitioners, William and Christine Hunter, filed an amended joint resident District of Columbia income tax return for the full calendar year 1971 on which they claimed an overpayment and refund of District of Columbia income taxes in the amount of \$759.39.

6. The District of Columbia assessed additional tax from petitioners for 1971 on or about December 8, 1972 in the amount of \$9,930.71 and interest in the amount of \$397.55 which assessment was paid by petitioners on or about January 12, 1973, and petitioners also paid additional interest in the amount of \$49.69, all payments being under protest.

7. Petitioners have available as a credit against their 1971 District of Columbia income tax liability, \$1,111.69 comprised of District of Columbia income tax withholding of \$680.96 and a 1970 overpayment credit of \$430.93.

8. During 1971 petitioner, William Hunter, was the principal, if not sole, support of his family, petitioner, Christine F. Hunter, not being employed.

9. During the entire calendar year 1971, petitioner, Christine Hunter, was a one-third partner in the Fisher Family Partnership.

10. The Fisher Family Partnership was formed on August 8, 1969 in order to purchase and develop certain unimproved real estate located in Boca Raton, Florida.

11. The arrangements for the real estate purchase and the financing had originally been in the individual partners' names as individuals but, on advice of counsel, the partnership was formed and title to the real estate was taken in the partnership's name.

12. The Fisher Family Partnership conducted no activities and had no income during 1971 other than \$6,000.00 rental income from a related corporation to which it leased a portion of its real estate for development purposes and interest on the note received on the sale of part of its real estate in October 1971.

13. The down payment for the real estate was financed by the individual partners depositing securities with the Northern Trust Company of Chicago, Illinois, and guaranteeing a \$3,600,000 loan from that Bank which had been originally arranged in their names as individuals, the Bank having no security interest in the real property.

14. Throughout 1971, petitioner, Christine F. Hunter, had 31,791 shares of Monsanto Company 2.75 percent cumulative preferred stock pledged as collateral on the partnership loan.

15. The dividends on the Monsanto preferred stock were deposited in an account of petitioner, Christine F. Hunter, at the Merchants National Bank in Cedar Rapids, Iowa, over which her father had signature authority.

16. Petitioner, Christine F. Hunter, made contributions to the Fisher Family Partnership in 1971, including the Monsanto dividends, in the aggregate amount of \$368,298 of which amount \$337,329 was contributed between January 1, 1971 and September 30, 1971.

17. The Fisher Family Partnership had an ordinary loss of \$464,125 and a capital loss of \$317,802, during the calendar year 1971, petitioner, Christine Hunter's share being \$154,533 ordinary loss and \$105,828 capital loss.

18. The net loss of the Fisher Family Partnership for the period January 1, 1971 through September 30, 1971 was \$446,627.10, representing \$450,039.35 cash expenditures for interest, property taxes and accounting fees plus nine months depreciation of \$87.75 less nine months rent of \$4,500, petitioner, Christine Hunter's share of such net loss being \$148,875.70.

19. Petitioner, Christine F. Hunter, included on the joint part year 1971 District return, as originally filed \$85,771.50 in dividends on the Monsanto Company preferred stock owned by her and pledged as collateral for the

partnership bank loan at the Northern Trust Company and included \$114,362.00 of such dividends on the amended District return filed by petitioners.

20. Petitioners filed a combined joint Maryland income tax return for the period October 1, 1971 through December 31, 1971 reflecting total tax due to Maryland of \$1,642.00.

21. On such Maryland tax return, petitioners, relying on the advice of Maryland tax authorities, claimed only one-fourth of the loss from the Fisher Family Partnership for the calendar year 1971.

22. Stipulated as a part of the record in this case were the following: District of Columbia Tax Return for the period January 1, 1971 through September 30, 1971 (Stip. Ex. 1-A ), Amended District of Columbia Income Tax Return for the calendar year 1971 (Stip. Ex. 2-B), Federal Income Tax Return for calendar year 1971 (Stip. Ex. 3), Maryland Income Tax Return for the period October 1, 1971 through December 31, 1971 (Stip. Ex. 4), Fisher Family Partnership Agreement (Stip. Ex. 6), Federal Partnership Return for Fisher Family Partnership for calendar year 1971 (Stip. Ex. 7), Cash Receipts and Disbursement Journal for the calendar year 1971 on the Fisher Family Partnership (Stip. Ex. 8), Closing Journal Entry for the Fisher Family Partnership for calendar year 1971 (Stip. Ex. 9), Audited Financial Statement for calendar year 1971 of the Fisher Family Partnership (Stip. Ex. 10), copies of checks drawn

on the account of Christine Fisher Hunter to the order of the Fisher Family Partnership during 1971 (Stip. Ex. 11).

II

As has already been noted, the petitioners maintained a place of abode in the District of Columbia during the period January 1, 1971 to September 30, 1971. The dispute in this case arises from the petitioners attempt to take a loss on their 1971 District income tax return in an amount representing petitioner Christine Hunter's share of a loss reported by the Fisher Family Partnership for calendar year 1971. The District denied the loss on the grounds that, since the partnership was on a calendar year tax basis, the loss did not occur for tax purposes until the end of the partnership's taxable year, in this case December 31, 1971, at which time the petitioners were no longer residents and no longer subject to the tax. To state it differently, the District argues that the petitioners taxable year ended on September 30, 1971, that they were required to report all income earned up to that date and were permitted any deductions or losses only up to that date, that since the partnership loss could not be determined until December 31, 1971, that that date was also the date for petitioners proportion of the partnership loss and since that date fell without the petitioners taxable year, they could not deduct that loss on their income tax return.

The petitioners counter with three arguments. First they contend that they are entitled to file a tax return for

the entire calendar year 1971, to include all income earned during that year but taking all deductions and losses for that year as well. Although it is unusual to have a taxpayer request to have his taxable period extended so that he is required to report additional income, the obvious advantage in this case is that it would make the petitioners tax year the same as that of the partnership and would avoid the problem now raised in this case. Second, they contend that if they are not permitted to file for the entire year, they are entitled to prorate both their income and losses, on the basis of 9/12ths of the calendar year, those losses to include their proportion of the losses incurred by the Fisher Family Partnership which were determined as of December 31, 1971. Those losses of course would be prorated and the parties have stipulated those figures. Finally, they argue that in the event they can do neither of the above, they should be permitted to exclude from income, dividends on stock pledged as collateral for the partnership loan.

### III

The petitioners first argument must be rejected since they are only required under District of Columbia law to file a return for their taxable year. It is not clear from the record whether the petitioners were or were not domiciliaries of the District of Columbia until September 30, 1971, but in any event, it is clear that they were "residents" as that term is defined in D. C. Code 1973, §47-1551c(s) and therefore would be required to file and pay District of Columbia taxes.

Section 47-1551c(s) defines "resident" as any individual domiciled within the District on the last day of the taxable year and every other individual who maintains a place of abode within the District for more than seven months of the taxable year, whether domiciled in the District or not". If not domiciled here, it has been stipulated that they lived here for over seven months in 1971 and were therefore "residents"<sup>1/</sup>.

Since the record does not suggest that they were domiciliaries for the entire calendar year, their income was taxable only by virtue of their maintaining an abode in the District of Columbia for more than seven months in 1971. However, once they moved from the District, and not being domiciled here, they were no longer liable for the tax. Therefore, they were not required to file and report income earned for the period beginning October 1, 1971 and were not entitled to take deductions for losses arising after that date. Cf. District of Columbia v. Davis, 125 U.S. App. D.C. 311, 371 F.2d 964 (1967) cert. den. 386 U.S. 1034 (1967). Accordingly, this Court holds that the petitioners, not being domiciliaries of the District of Columbia, were not required or entitled to file income tax

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<sup>1/</sup> The petitioners could have prevailed in their argument that they should be permitted to file and pay for the entire calendar year 1971 if they had been domiciled in the District in 1971 and had not acquired a new domicile prior to December 31 of that year. Cf. District of Columbia v. Murphy, 314 U.S. 441 (1941); Shalkrot v. Halvorson, 70 U.S. App. D.C. 173, 133 F.2d 925 (1943); Alexander v. District of Columbia, 370 A.2d 1327 (D.C. App. 1977); Adams v. Adams, 136 A.2d 866 (D.C. Mun. App. 1957); Jones v. Jones, 136 A.2d 580 (D.C. Mun. App. 1957).

returns for the entire calendar year but were only required and entitled to file income tax returns for the period during which they actually maintained an abode in the District of Columbia, that period being January 1, 1971 through September 30, 1971.

IV

Petitioners argue next that if the Court concludes that they may file a return only for the period January 1, 1971 through September 30, 1971, they should nevertheless be allowed to deduct any losses incurred by the partnership for that period. The District opposes the argument on the grounds that since the partnership was on a calendar year basis, its losses could not be determined until the end of the taxable year, December 31, 1971, and that since that date falls without the petitioners taxable year, the deductions should not be allowed.

The pertinent provisions governing the taxation of income earned by partners is found at D. C. Code 1973, §47-1574e, which provides:

Individuals carrying on any trade or business in partnership in the District, other than an unincorporated business, shall be liable for income tax only in their individual capacities. The tax on all such income shall be assessed against the individual partners under sections 47-1567 to 47-1567c. There shall be included in computing the net income of each partner his distributive share, whether distributive or not, of the net income of the partnership for the taxable year; or if his net income for such taxable year is computed upon the basis of a period of time other than that upon the basis of which the net income of the partnership is computed, then his distributive share of the net income of the partnership for any accounting period of the partnership ending within the taxable year upon the basis of which the partner's net income is computed. (Emphasis this Court's.)

The above section provides that a partner shall be liable for a tax only in his individual capacity and that such tax is assessed in the same manner as against any other individual. The computation of the net income of the partner includes his distributive share of the partnership, whether it has actually been distributed or not. This portion of Section 47-1574e assumes that the partner and partnership share the same taxable year. However, the section goes on to provide that in the event the partner and partnership do not share the same taxable year then in computing the partner's net income one must include the partner's distributive share of the net income of the partnership for any accounting period of the partnership "ending within the taxable year upon the basis of which the partner's net income is computed."

The key word in the statute is net income. Net income is defined as "the gross income of a taxpayer less the deductions" he is allowed under the statute. D. C. Code 1973, Section 47-1557. Included as deductions allowed are losses of the nature involved in this case. See D. C. Code 1973, Section 47-1557b. Where the partner and the partnership are on different taxable years, it is necessary to determine the partnership's net income for "any accounting period" ending within the partner's taxable year. Under the facts of this case, in determining the net income of the partnership, it is necessary first to determine the income and deductions of the partnership for its taxable year and then determine what proportion of that net income is attributed to the accounting

period falling on or before the end of the partner's taxable year, in this case September 30, 1971. Thus, net income would take into consideration the partner's share of the losses prorated to his taxable year.

In short, this Court concludes that in computing the petitioners income for the taxable period in question, the partner is permitted to deduct any losses which may be properly attributed to the partner's taxable year where that taxable year is not the same as the taxable year of the partnership. Here, both sides agree that that figure is easily ascertained and have so stipulated. This Court therefore holds that the petitioners were entitled to deduct their proportion of income deductions and losses from the partnership for the period January 1, 1971 through September 30, 1971. The petitioners share of those losses must obviously be prorated to include only 9/12ths of what would have been the partnership's taxable year.

This holding is consistent with other provisions of the District of Columbia taxing statutes which allow for the filing of a tax return for a fractional part of a calendar or fiscal year, D. C. Code 1973, §47-1551c(k), which provide that a taxpayer may prorate exemptions for dependents, D. C. Code 1973, §47-1567a(f), and which make a similar provision for prorating the exemption allowed to unincorporated businesses, D. C. Code 1973, §47-1574c. The cases cited by the parties are not directly on point, do not address the District of Columbia taxing statute, and need not be considered here.

In view of the Court's ruling that the petitioners may deduct their proportionate share of losses to the Fisher Family Partnership, the Court need not go on to consider the third argument made on behalf of the petitioners.

O R D E R

In view of the above, it is hereby

ORDERED that the petitioners are entitled to deduct from their fractional year return filed for the period January 1, 1971 through September 30, 1971, their proportionate share of the losses incurred by the Fisher Family Partnership, which losses could not be determined until December 31, 1971, those losses to be prorated for the petitioners taxable year, that being 9/12ths of calendar year 1971, and it is further

ORDERED that the petitioners shall submit to the Court, a proposed order setting forth the amount of the refund together with any interest to be paid according to law, within ten days of the date of this order and shall simultaneously submit a copy of that order to the office of the Corporation Counsel,<sup>2/</sup> and it is further

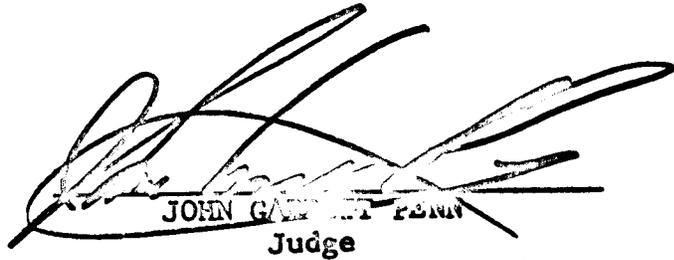
ORDERED that the Corporation Counsel's Office shall have ten days within which to file any objections to the form or computations contained in that order, and that if

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<sup>2/</sup> The proposed order shall set forth the dates of payment of the taxes.

such objections are not filed within that ten-day period,  
the court will deem it that the District accepts the  
computations set forth by the petitioner, and the order  
will be signed as submitted by the petitioners.

Date: April 5, 1979

  
JOHN G. BENNETT  
Judge

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Copies mailed to parties  
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*and Finance Office, D.C.*

*R. Stanfield*  
*4/10/79*