

Opinion No. 1. 20

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
TAX DIVISION

FILED

APR 25 1974

Superior Court of the
District of Columbia
Tax Division

ARTHUR H. KEYES, JR., et al.,	:	
	:	
Petitioners	:	
	:	
v.	:	No. 2214
	:	
THE DISTRICT OF COLUMBIA, et al.,	:	
	:	
Respondents	:	

OPINION AND ORDER

This matter is before the Court pursuant to the action denominated as Taxpayers' Suit for Refund of Tax for Fiscal Year 1973 Illegally Assessed which, in essence, seeks refunds for approximately 34,000 persons owning single-family residential property in the District of Columbia (including residential garages and vacant land zoned for single family residential use).

It is alleged that these 34,000 persons were taxed, and paid their taxes, for Fiscal Year 1973 at a level of assessment (debasement factor) of 60 percent of estimated market value and that these taxpayers should be assessed for taxation at the same level of assessment (debasement factor) of 55 percent of estimated market value as were assessed some 62,378 other owners of single-family residential property in the District of Columbia for the same Fiscal Year 1973.

The Petitioners aver that fixing a level of assessment for real property is rulemaking within the meaning of the District of Columbia Administrative Procedure Act and that failure to give notice to the District of Columbia single-family residential property owners that the level of assessment of their properties was in the process of change, deprived the

taxpayers of the due process afforded by the D.C.A.P.A. and invalidated the increased taxes assessed at 60% of estimated market value.

It is also contended that the intentional and arbitrary actions of Respondents in applying unequal levels of assessment (55% and 60%) to estimated market value within the same class of single-family residential properties is violative of the Fifth Amendment rights under the Constitution of the United States of the Petitioners and others similarly situated to them.

As a result of the above, the Petitioners request refunds which are to be measured by the difference between the tax bill rendered and paid for Fiscal Year 1973 at a level of assessment of 60% of estimated market value and the tax bill as it should have been assessed for Fiscal Year 1973 at a level of assessment (debasement factor) of 55% of estimated market value, plus interest at 6% per annum.

The Respondents have answered that the petition fails to state a claim upon which relief can be granted and that this Court is without jurisdiction to hear and determine this matter; they also deny the tax bills for Fiscal Year 1973 were in any way illegally rendered, deny Petitioners can maintain this action as a class action for themselves and all others claimed to be similarly situated and deny they have violated the D.C.A.P.A. or that the taxpayers have been deprived of the due process required by the D.C.A.P.A. They do:

"...admit that all taxpayers were not assessed at the same level of assessment (debasement factor) for Fiscal Year 1973..." 1/

At the time the taxpayers' suit was filed and Respondents answered, the District of Columbia Court of Appeals had yet to hear argument and render decision, on an expedited basis, in

1/ Answer of Respondents, Par. 6.

Green, et al. v. District of Columbia, et al., D.C.App., 310 A.2d 848 (1973). Accordingly, in a motion to place the instant case upon the reserve calendar pending the Green decision, Respondents referred to Petitioners' contention that the present case involves the same Respondents and similar Petitioners and a claim of res judicata for facts and questions of law decided June 29, 1973 in Green, and said that "[w]hen a decision is rendered by the appellate court, this case may be governed by that decision."

Thereafter, Respondents moved to extend the time in which to file their response to Petitioners' Motion to Submit Case Without Trial until 30 days after final decision was reached in Green, supra.

"...According to Petitioners, the final decision on that appeal would be res judicata of the present case for both facts and questions of law. Thus, in accordance with Petitioners' premise, until that case is finally decided it would be undesirable for this Court to require an answer to Petitioners' Motion..."

After the appellate decision in Green, although specifically stating they had no objection to the Green trial record becoming part of this Keyes trial proceedings, the Respondents formally opposed Petitioners' Motion to Submit Case Without Trial because:

"Respondents herein wish to proffer to this Court the testimony of witnesses to fully present the assessment system used by the District for purpose of real property taxation for Fiscal Year 1973." 2/

"While the District of Columbia presented explanations in a trial before this Court in Clarzell Green, et al. v. District of Columbia, et al., D.C. Tax Court Case 2213, District of Columbia Court of Appeals 7539, it was limited in its amplification of the tax assessment methods because the hearing was conducted as an expedited proceeding." 3/

2/ Par. 2 of Opposition to Petitioners' Motion to Submit Case Without Trial.

3/ Par. 3 of Opposition to Petitioners' Motion to Submit Case Without Trial.

Also, Respondents contended that, absent certain unspecified procedures to be followed by Petitioners in order that the matter be handled as a class action, those procedures entered in a case before another Judge of this Court could be followed in this one.

The Respondents claimed that it did not admit facts averred by the Petitioners nor did they stipulate to any facts.

In consideration of the above on November 21, 1973 this Court denied Petitioners' Motion to Submit Case Without Trial and set the trial date, alterations of which have resulted for several reasons.

Subsequently, for the convenience of the litigants and also in light of the Court's other and continuing judicial obligations,^{4/} it was agreed between counsel and the Court that there would first be a determination of the Petitioners' plea of res judicata or collateral estoppel by judgment, and Respondents' Opposition to same, prior to the commencement of testimony, if any, in this cause. If the Court agreed with Petitioners' contentions, a hearing with accompanying testimony and documentation would become unnecessary. If the Court agreed with Respondents' position, the hearing would be scheduled to completion with temporary suspension of the Court's other responsibilities.

Accordingly, Petitioners filed their Motion for Judgment on the grounds of collateral estoppel by judgment or res judicata and Memorandum of Law in support thereof. The Respondents have filed their Opposition in the nature of a Memorandum and oral argument was heard on the 5th of March 1974.

^{4/} Felony II assignment through January 1974;
Arraignment Court for February 1974;
Misdemeanor Trials for March 1974;
Preliminary Hearings for April 1974.

The Court agrees with the Petitioners, as expressed in their oral argument, that the principle of collateral estoppel, not the principle of res judicata, is applicable here. Lawlor v. National Screen Service Corp., 349 U.S. 322, 75 S.Ct. 865, 99 L.Ed. 1122 (1955), relied on by both parties, well defines the effect of the doctrine of collateral estoppel.

"The basic distinction," said Chief Justice Warren, "between the doctrines of res judicata and collateral estoppel, as those terms are used in this case, has frequently been emphasized. Thus, under the doctrine of res judicata, a judgment 'on the merits' in a prior suit involving the same parties or their privies bars a second suit based on the same cause of action. Under the doctrine of collateral estoppel, on the other hand, such a judgment precludes relitigation of issues actually litigated and determined in the prior suit, regardless of whether it was based on the same cause of action as the second suit."

See, also, Tutt v. Doby, 459 F.2d 1195 (1972), 148 U.S. App. D.C. 171.

In the classic case of Cromwell v. County of Sac,^{5/} illustrating the distinction between the direct effect of a judgment as res judicata and its collateral effect, Justice Field stated:

"...where the second action between the same parties is upon a different claim or demand, the judgment in the prior action operates as an estoppel only as to those matters in issue or points controverted, upon the determination of which the finding or verdict was rendered. In all cases, therefore, where it is sought to apply the estoppel of a judgment rendered upon one cause of action to matters arising in a suit upon a different cause of action, the inquiry must always be as to the point or question actually litigated and determined in the original action, not what might have been thus litigated and determined. Only upon such matters is the judgment conclusive in another action."

The principle of collateral estoppel embraces matters both of fact and law, and it is clear that one must look to the pleadings forming the issues and must examine the record for

^{5/} 94 U.S. 351, 352-353, 24 L.Ed. 195 (1877).

a determination of the questions essential to the decision of the earlier litigation:

1. Whether the issue sought to be concluded is the same as that involved in the prior action?
2. Was the issue litigated in the prior action?
3. Was the issue judicially determined in the prior action?
4. Whether the judgment in the prior action was dependent upon the determination made of the issue? 6/

If the above questions are affirmatively answered, the issue is concluded under the doctrine of collateral estoppel.

Or, to put it another way: the essence of collateral estoppel by judgment is that some fact or question in dispute has been judicially and finally determined by a court of competent jurisdiction between the same parties or their privies. If the second action involved a different claim, different demand or different cause, the judgment in the first suit operates as a collateral estoppel only as to those matters which were in issue or controverted and upon the determination of which the original judgment necessarily depended.

As noted, the doctrine of collateral estoppel is operative where the second action is between the same persons who were parties to the first action.

"A judgment for the plaintiff in the first action may have the effect of enabling him to recover in the second action without proving the facts constituting his cause of action, provided that those facts were litigated and determined in the prior action; but the defendant is not precluded from defending the second action on grounds not litigated and determined in the first action." 7/

6/ Cf. United Shoe Machinery Corp. v. United States, 285 U.S. 451, 459, 42 S.Ct. 363, 66 L.Ed. 708 (1922). If the parties could have reasonably foreseen the conclusive effect of their action, eminent authority holds the principle of collateral estoppel properly applicable. Moore's Fed. Prac. Vol. 1B, §0.444; Tutt v. Doby, supra, at p. 1200.

7/ Restatement of Judgments (1942) §68a, at p.295.

These rules are also applicable

"...to periodic taxes, such as successive income taxes or property taxes. If in an action between the taxing authority and the taxpayer an issue of fact is litigated and determined by a judgment with reference to the tax of one year, the determination is conclusive if the same issue is raised between the taxing authority and the taxpayer with reference to the tax of a subsequent year." 8/

The doctrine of estoppel by judgment has long been applied in the Federal Courts in the tax field. The case of Com'r. v. Sunnen, 9/ (concerning federal income tax consequences of intra-family assignments of income) held that a prior income tax judgment is res judicata only in

"...a subsequent proceeding involving the same claim and the same tax year",

and confined the doctrine of collateral estoppel to

"...situations where the matter raised in the second suit is identical in all respects with that decided in the first proceeding and where the controlling facts and applicable legal rules remain unchanged."10/

With application of the doctrine of res judicata it has been repeatedly held that the parties are concluded in a suit for one year's tax as to the right or question adjudicated by a former judgment respecting the tax of an earlier year.

City of New Orleans v. Citizens' Bank, 167 U.S. 371, 17 S.Ct. 905, 42 L.Ed. 202:

"It follows, then, that the mere fact that the demand in this case is for a tax for one year, and the demands in the adjudged cases were for taxes for other years, does not prevent the operation of the thing adjudged, if, in the prior cases the question of exemption was necessarily presented and determined upon identically the same facts upon which the right of exemption is now claimed." (at p. 398)

8/ Restatement of Judgments (1942) §68c, at p.299.

9/ 333 U.S. 591, 68 S.Ct. 715, 92 L.Ed. 898 (1948).

10/ Com'r. v. Sunnen, supra, 333 U.S. 591, 599-600.

Compare, also, among others, Tait v. Western Maryland Ry. Co., 289 U.S. 620, 53 S.Ct. 706, 77 L.Ed. 1405; Deposit Bank v. Frankfort, 191 U.S. 499, 24 S.Ct. 154, 48 L.Ed. 276.

By application of collateral estoppel both the government and the taxpayer are relieved of "redundant litigation of the identical question of the statute's application to the taxpayer's status."^{11/}

Collateral estoppel attempts to preclude the repeated controversy of matters once judicially determined, aiming for judicial finality. It is considered

"...a reasonable measure calculated to save individuals and courts from the waste and burden of relitigating old issues."^{12/}

Compare the applicability of collateral estoppel to criminal proceedings as an integral part of the protection against double jeopardy guaranteed by the Fifth and Fourteenth Amendments. Once an issue of ultimate fact has been determined by valid and final judgment, that issue cannot again be litigated between the same parties in any future law suit, Ashe v. Swenson, 397 U.S. 436, 90 S.Ct. 1189, 25 L.Ed.2d 469; Harris v. Washington, 404 U.S. 55, 92 S.Ct. 183, 30 L.Ed.2d 212 (1971).

Even when the precise question for determination in a second action (automobile operator-host's negligence versus his passenger) has not been litigated in a technical sense, where the factual and legal issues in the two actions (passenger v. host and motorist; other motorist v. host) are

"...so interrelated that the result in General Sessions [denying recovery to the host against the other motorist on the ground that both parties were negligent] is properly dispositive of the subsequent action for contributions." Brightheart v. McKay, 420 F.2d 242, 136 U.S.App. D.C. 400 (1969):

11/ Tait v. Western Maryland Ry. Co., *supra*, at 624.

12/ Tillman v. National City Bank of New York (CCA 2d, 1941) 118 F.2d 631, 634, cert. den. (1941), 314 U.S. 650, 62 S.Ct. 96, 86 L.Ed. 521.

"...The critical question in the application of collateral estoppel is whether the parties have had a full opportunity to litigate the issue on which they are estopped...Here, estoppel is invoked as against the person who initiated the action in General Sessions as plaintiff. There is every reason to believe he exerted his full energies to obtain recovery, and sought to avoid any determination of negligence on his part..."
(fn. 4)

In its dual function of protecting the public interest in sound judicial administration and protecting litigants against needless, oft-times oppressive, court action, collateral estoppel attains the end result desired: final, but just, determination of every suit.

Respondent's contentions that they now wish to "fully" present the District's assessment system, although they "presented explanations" in the Green trial echoes the refrain sounded by appellant in Tait v. Western Maryland Ry. Co., supra. Tait's appellant argued that the Circuit Court of Appeals:

"...might well have reached a different result on the merits, if the former case had been more fully and accurately presented."

The Supreme Court disagreed, holding:

"...the very right now contested arising out of the same facts appearing in this record, was adjudged in the prior proceeding...The [appellant] may not escape the affect of the earlier judgment as an estoppel by showing an inadvertent or erroneous concession as to the materiality, bearing or significance of the facts, provided, as is the case here, the facts and the questions presented on those facts were before the court when it rendered its judgment..."

It has been held by the Maryland Court of Appeals that where it was determined that the taxpayer (a military preparatory school) was entitled to a tax exemption for the year 1950 for certain land by reason of its use for educational purposes, the doctrine of estoppel by judgment was

applicable to a claim for a tax on the same properties against the same parties for another tax year (1954).

State Tax Commission for Maryland v. Bullis School, Inc., 218 Md. 558, 147 A.2d 849 (1959). In the Bullis case appellee had made a proper showing to establish a tax exemption for the year 1950 which necessitated a finding that the property's use was for educational purposes entitling an exemption under the appropriate Maryland statutes. Since the original case there was

"...no material change in the law, the parties and the property are the same as in the present case, and the only testimony taken...showed that the use of the property for the taxable year 1954 was the same as in 1950."

Since the Maryland appellate court could find no questions to be determined in the second action that were not fully litigated in the original case, it affirmed, with costs, holding that the doctrine of estoppel by judgment was properly applied by the court below.

Determination in the case of Green, et al. v. District of Columbia, et al., D.C.App., 310 A.2d 848 (1973), was made after numerous pretrial motions and rulings, substantial discovery (primarily by depositions and computer runs), a full hearing lasting five days, extending over approximately 1,000 pages of transcript, detailed findings of fact and conclusions of law rendered in a 60 page Opinion and Order,^{13/} and terminating in a comprehensive 16 page Court of Appeals affirmance,^{14/} which, as does the trial court's Opinion and Order, discusses at length the history of real property tax assessment in the District of Columbia. Findings and conclusions are made both in the trial and appellate courts

^{13/} Wash. L. Rep., Vol. 101, No. 172, p. 1737; No. 173, p. 1749; No. 174, p. 1761 (1973).

^{14/} Green, et al. v. District of Columbia, et al., D.C.App. 310 A.2d 848 (1973).

Fiscal Year 1973 but also cover Fiscal Year 1974. The Keyes suit seeks refunds for Fiscal Year 1973 precisely the same substantive matter that occurred in the Green trial.

1. Whether the level of assessment used to determine the assessed value of single-family residential real properties in the District of Columbia was increased from 55 percent of estimated market value to 60 percent of estimated market value in violation of the "rule-making" provisions of the District of Columbia Administrative Procedure Act?
2. Whether failure of the taxpayers to timely avail themselves of, and exhaust, administrative remedies precludes the [refund] relief now sought?
3. Whether the relief sought for petitioners should be granted for the benefit of all owners of single-family residential real property in the District of Columbia?
4. Whether unequal levels of assessment (55 to 60 percent of estimated market value) were used for single-family residential properties in the same tax year in violation of the Fifth Amendment to the Constitution of the United States?

As they originally did in the Green case, Respondents contend in the Keyes case that the petition fails to state a claim upon which relief can be granted; that this Court is without jurisdiction; that the tax bills rendered for Fiscal Year 1973 were in no way illegally rendered; that this matter is not maintainable as a class action. The Respondents further deny that they have violated the District of Columbia Administrative Procedure Act or that the taxpayers have been deprived of the due process required by that Act.

It must be noted that when Respondents' Answer to Keyes was filed the Green decision still pended. Subsequently, three months after the Green decision, Respondents filed their Opposition to Motion for Judgment on the Grounds of Collateral Estoppel by Judgment or Res Judicata and on March 5, 1974

presented oral argument as to this matter. In both their written and oral argument, after the Green decision, Respondents concede that a class action might be appropriate but only if done in some unspecified manner:

"We have a class action. Fine. We're not contesting that this may very properly be. We're saying if we have a class action, let's do it properly. And let's do it, since we're doing it with refunds, let's do it in a way... that that will close the question once and for all." (transcript of proceedings, Mar. 5, 1974, p. 13,14)

It is difficult, however, to comprehend Respondent's position, which slips and slides, dependent on whether it was formulated in pleadings before the Green decision or in written/oral argument after the Green decision. To wit:

Respondents are not objecting to Petitioner's attempt to have this case tried as a class action--

"...[but] failure to have this case properly certified as a class action may work to the detriment of respondents should they prevail..." (p. 6, Respondent's Opposition to Motion for Judgment on the Grounds of Collateral Estoppel by Judgment or Res Judicata).

Yet, in the very same paragraph, Respondents state that "in no way [do they] waive any objections that they may make at such time as a proper motion to certify this case as a class action is filed with the court."

In an incredible position, the Respondents contend, three months after the appellate decision in Green, that:

"Respondents note that they are not certain that all single family residential property represents a class in a refund suit and suggest that certain questions such as whether each single family residential property is in fact solely occupied by the owner, or is rental property, or, although occupied by the owner has income producing units therein, may well have to be addressed by the Court at such time as a proper motion is filed."

Even though the Court of Appeals^{15/} refers over and again to the "single-family residential class" (p. 854), "same class

^{15/} Green, et al. v. District of Columbia, et al., supra.

of property (residential taxpayers)," (p.855), "same class" (p. 855), "one class of real property"; "single family residential property and other classes of real property"; "one class of single-family residential property owners", "single class of residential property owners" (p. 857), Respondents are "not certain that all single family residential property represents a class in a refund suit", and, in effect, would require some 34,000 separate hearings to determine answers to the questions they pose above.

Nowhere now, as to defenses, as to new questions of fact, do Respondents claim that the merits of the matter would entitle them to prevail on the fiscal year assessment and taxes. In effect, all they say is that new sales assessment ratio studies concerning Fiscal Year 1973 have been performed since the Green trial. They say further, through their attorney, that:

"The District of Columbia has no intention of attempting...to have the District rehash the facts that were proven in the previous case...the District was not and did not see fit to put on testimony in depth and detail with regard to a claim for refund ...[the Green case was an injunction suit concerning Fiscal Year 1974]...finding that this was an impermissible...level of assessment, with regard to certain householders,...this does not ipso facto give rise to a refund...there is an entirely different body of law that is involved..."

And, later, continuing the same argument in generalities:

"I will state...that under the facts as already established and under the additional facts that the District of Columbia wishes to put before the court with regard to Fiscal Year 1973 that under the overwhelming majority law in the United States of America, the petitioners are not entitled to a refund of taxes for Fiscal Year 1973, whether they be brought in individual cases or whether they be brought in the form of a class action." (transcript of oral argument, Mar. 5, 1974, at pp. 21-22)

Let us, therefore, look to see what Respondents have conceded by virtue of their prior pleadings or briefs, and what has been decided by the Court in Green, et al. v. District of Columbia, et al., which may permit or preclude the use of the doctrine of collateral estoppel.

Respondent's trial brief, filed in the Green case, on June 28, 1973, is clear:

"In calendar year 1971, the level of assessment was raised from 55% to 60% on approximately one-third of single family residential properties for FY 1973;..." (p. 31)

In the trial court's Opinion and Order in the Green case it stated as follows:

"In fiscal year 1973 there were 37,290 changes of all kinds in the assessments in the District of Columbia of which approximately 34,193 (99.61%) were attributable to changes in single family residential property levels of assessment.

"In fiscal year 1974 there were 45,364 changes of all kinds in the assessments in the District of Columbia, of which approximately 40,056 (88.3%) were attributable to changes in single family residential property levels of assessment." (Trial court's Opinion and Order) Wash. L. Rep., Vol. 101, No. 173, at p. 1749.

The taxpayer received and paid his tax bill on real property in the same manner in Fiscal Year 1973 as he was required to do for Fiscal Year 1974. (See Opinion and Order in Green detailing these steps, Wash. L. Rep., Vol. 101, No. 173, at p. 1749.)

The Court of Appeals expostulated in detail the way an individual real property owner's tax liability was formulated. Upon receipt of a tax bill there were appeal procedures for an unhappy taxpayer, first by complaint to the Board of Equalization and Review and, subsequently, by appeal to the Tax Division of the Superior Court.

"...in a planned cyclical reassessment program, conceived and orally implemented by the Director of Finance and Revenue, the level of assessment for approximately 33,000 single-family residential properties was changed from 55% to 60% for Fiscal Year 1973, and, in preparing the tax rolls for Fiscal Year 1974, an additional 44,485 single-family properties were debased at 60%..."

The Green case further developed that the public disclosure of the heretofore secretive unequal assessment raises came in June 1973, "far too late to afford the customary relief to approximately 77,485 single-family residential real property taxpayers who are being assessed at 60%..."

For example,

"Arthur Keyes, Jr., testified that he did not know the market value of his property (\$77,600 remained the same when he received his notice of increase of assessment from \$42,682 to \$46,560 in calendar year 1971 effective fiscal year 1973). He was also neither aware nor advised that the entire increase came about as the result of a change in the level of assessment from 55% to 60%." (Order and Opinion, Wash. L. Rep., Vol. 101, No. 172, at p. 1741)

It is now settled that the fixing of a level of assessment for real property is rulemaking within the meaning of the District of Columbia Administrative Procedure Act, and it was undisputed in Green that no rules governing the method of assessment of real property have been published. Interpretation or explanation of the words "full and true value" contained in §47-713 of the Code was a rule within the meaning of the District of Columbia Administrative Procedure Act and its formulation was rulemaking. Accordingly, for a number of years the meaning of "full and true value" of single-family residential properties had been 55% of estimated market value (i.e., 55% debasement factor). This was an unpublished rule. The Court of Appeals, in Green, has held that a change in the debasement factor is rulemaking within the meaning of the

District of Columbia Administrative Procedure Act, which must be published with an opportunity for a public hearing.

The District

"...chose to apply different debasement factors to the same class of property in the same year and, in so doing, denied the [taxpayers] equal protection of the laws by discriminating among residential taxpayers."

It is clear that in Keyes, as in Green, even if the taxpayer had known about the disparity of the level of assessment, he would have had no chance to successfully challenge his assessment, since the increased debasement factor (55% to 60%) was arbitrarily determined and inflexible. It was not a subjective art, such as is appraisal.

"The lack of equalization [between taxpayers owning identically valued properties with different assessments] [was] caused by an intentional and arbitrary application of two different debasement factors to identical properties."

"...evidence before the trial court demonstrated the assessments in years where the 'stair steps' were being used caused assessment increase that went above and beyond the increases that would have been caused by property appreciation alone. This should be no surprise, for any raise in the debasement factor must raise the assessment. ... the facts of this case have highlighted the importance to the taxpayer of an accurately stated fair market value; it is the only element in the tax formula to which he can meaningfully object. If real increases in his property assessment are disguised in the form of a higher debasement factor, he is totally remediless within the normal avenues for seeking redress."

"...the District cannot now be heard to say in this appeal that in attempting to cure the one allegedly discriminatory method of assessment between single-family residential property and other classes of other real property it can in the process deliberately discriminate between members within the one class of single-family residential property owners..."^{16/}

The Opinion and Order discussed (Wash. L. Rep., Vol. 101, No. 173, p. 1753) the above oral directive to change the level

^{16/} Green, et al. v. District of Columbia, et al., supra, at pp. 856, 857.

of assessment for single-family residential real properties from 55% to 60% "for all those properties reviewed commencing in calendar year 1971 (for fiscal year 1973) and for calendar year 1972 (for fiscal year 1974)." (emphasis supplied) It was admitted in Green that the Finance Director's "policy goal" of 65% was never put into written form and when he ordered the Fiscal Year 1973 level of assessment (debasement factor) he did not publish this change or give public notice or other written notice to the taxpayers.

"As a result of this, and beginning in calendar year 1971 (notices were mailed out to taxpayers between November 1, 1971 and March 1, 1972, but the assessors' work was accomplished in calendar year 1971 (for fiscal year 1973)) the bills sent out in September 1972 to approximately 34,000 (or to 1/3 of these taxpayers, Respondents contend) of the 96,378 single family residential properties had their level of assessment changed from 55% to 60% of estimated market value.

"In calendar year 1972, for fiscal year 1974, approximately 40,000 more (or to approximately 1/2 of these taxpayers, Respondents contend) single family residential properties had their level of assessment changed from 55% to 60% of estimated market value.

"Presently, 18,893 single family residential properties remain at the 55% level of assessment.

"The assessment increases in both fiscal years 1973 and 1974 for single family residential properties were represented to the public as increases in property value. But, in fact, the changes of assessment in fiscal year 1973 were due, in over 90% of the cases, solely to a rise in the level of assessment. In fiscal year 1974 about 50% of the rise was due to increases in property value and about 50% to rises in the level of assessment from 55% to 60%.

"Using data derived during testimony and, in particular, from the Respondents' own figures and projections 17/ the following information was obtained for fiscal years 1973 and 1974:

17/ Testimony of John E. Rackham, using the records of D.C. Department of Finance and Revenue.

"Total increased assessment
single family residences
fiscal year 1972 - 1974 \$209,794,400

"Increased assessment
single family residences
fiscal year 1972 - 1974
due to increase from 55%
to 60% in the level of
assessment ("debasement factor") \$113,713,800

"Increased assessment
single family residences
fiscal year 1972 - 1974
due to increase in market
value (estimated market value) \$ 96,080,600 18/

"This exhibit demonstrates that, as a result of these acts of the District of Columbia in raising the level of assessment (debasement factor) for two years for part of the single family residential properties from 55% to 60%, the assessment of that class of property was increased by \$113,713,800 out of a total assessment increase in the same two year period of \$209,794,400. The substantial nature of the effect of this change in the level of assessment over this two year period is evident." (emphasis supplied)

During the trial, in the Green case, the Respondents admitted that in calendar year 1971 (for Fiscal Year 1973), as well as for calendar year 1972 (for Fiscal Year 1974) all changes in assessments were computed at a level of assessment at only 60%, except for minor administrative error.

Accordingly,

"[t]he net result of these intentional acts was that in fiscal year 1973 the level of assessment was raised for approximately one-third of the taxpayers of this category-- "class" of 96,378 single family residential properties (excluding garages). (see Wash. L. Rep., Vol. 101, No. 174, p. 1764, for Opinion and Order)

An assessor-witness testified that "poor" neighborhoods were assessed in Fiscal Year 1973, and when the estimated market value was reduced for the Fiscal Year 1973, then the level of assessment was raised from 55% to 60%.

It was pointed out in Green, that in Fiscal Year 1973 whole neighborhoods were assessed from 55% to 60% level of

18/ This was Petitioners' Exhibit 43 in the Green case.

assessment, even those with less than 20% of changes in the estimated market values. Old City and Kalorama were illustrative.

As Assessor Beal testified in the Green trial: He accomplished assessing approximately 2,000 single family residential properties there for the Fiscal Year 1973. There were a "lot of decreases" [in estimated market value] and a "majority of increases". Probably "all" of the 2,000 properties assessed in Fiscal Year 1973 were changed; "I do not think any did not go to 60%. However, some may have kept the same estimated market value." Whether the estimated market value was reduced or increased made no difference: the level of assessment would still be 60%. (Wash. L. Rep., Vol. 101, No. 174, p. 1765)

Therefore, it was found that those taxpayers who bypassed the Board of Equalization and Review could not have known of the changed level of assessment until June 1973 and were, accordingly, denied viable access to the statutory administrative procedure within the permissible time. In any event, under the extraordinary circumstances of the case, there was, in reality, no effective administrative remedy and any appeal thereto would have been useless. "The evidence of record supports the finding of the trial court..."^{19/}

"When the assessment is void, the taxpayer must resort to equity for relief, without following statutory remedies...", citing Tumulty v. District of Columbia, 69 App. D.C. 390, 399-400, 102 F.2d 254, 263-64 (1939).

How could the taxpayers in Keyes complain timely to the Board of Equalization and Review of an increase in their Fiscal Year 1973 real property tax assessment (from 55% to 60%)

^{19/} Green, et al. v. District of Columbia, et al., supra, at p. 853.

when they were clearly unaware of any raise in the level of assessment, and when they were unaware of two levels of assessment existing for the same class of single-family residential properties. Just as in Green, they were effectively denied an adequate administrative and legal remedy.

Respondents contend this Court is without jurisdiction to entertain the present action. The Court completely disagrees and cites Green for authority. It would be unbelievable to have jurisdiction to enjoin an invalid, void, unconstitutional, arbitrary, invidious tax assessment for one fiscal year (1974); yet require detailed, duplicative testimony, at substantial waste of taxpayers' additional monies to pay for the presentation of testimony, covering identical matters, for Respondents' suggested 34,000 individual hearings, to consider whether or not the issues previously presented in Green for Fiscal Year 1974 are the same issues germane to a determination of Keyes for Fiscal Year 1973.

As the trial court said in Green,

"Should the Court adopt Respondents' argument it would, in effect, add yet another dimension of inequity to a situation already surrounded by unfairness, secrecy and lack of candor. It would be tantamount to telling a taxpayer that he must pay thousands of dollars and that he must yield days, weeks and months of his effort to develop testimony and documentation at his individual high expense to reap, in return, a few dollars in the majority of cases (and hundreds or more of dollars in other cases) just to have the right to present constitutional argument and to exhibit that which is already before this Court. Would not this attitude in and of itself be a coercive device on the taxpayers to not pursue their due remedies because of financial and time inability?"

The Court has gone into great detail [and has avoided the temptation to cite substantive and further examples] to illustrate the multiple reasons the Court finds that the

principle of collateral estoppel is significantly appropriate to the Keyes case. Accordingly, there shall be no testimony taken in the Keyes tax case.

Respondents pray the opportunity to plead the law applicable to refunds in general and to this case in particular. Petitioners had earlier requested the Court fix a time for filing briefs and for oral argument. Both requests were made prior to the written and oral argument concerning the applicability of collateral estoppel, which necessarily embraced-- at least in part-- the law pertaining to refunds. Nevertheless, fairness dictates that the parties have the full opportunity, if they still so desire, to develop in writing their respective positions concerning applicable law before a final determination of this case. [There shall be no further oral argument thereon.]

Accordingly, if the parties, or any of them, wish to file written briefs (optional as far as the Court is concerned) they may do so, as follows:

Petitioners to file written brief, if any, on or before May 6, 1974; Respondents to file written brief, if any, on or before May 16, 1974, following which the matter shall stand submitted.

Joyce Hens Green

Joyce Hens Green
Judge

April 25, 1974

Copies to counsel of record.