SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

Opinion No. 1112-A

TAX DIVISION

FILED

AUG 6 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

For fullest comprehension and compliance this matter must be considered in context with the Court's detailed Opinion and Order of April 25, 1974 1/ holding the principle of collateral estoppel significantly appropriate to the instant case as a result of Green, et al. v. District of Columbia, et al., D.C. App., 310 A. 2d 848 (1973).

Counsel had requested the opportunity to file written briefs which have since been filed and considered.

There are questions of law or fact common to the members of this class of taxpayers, including equal protection under the Fifth Amendment to the Constitution of the United States and the statutes of the District of Columbia, which predominate over any questions affecting only individual members, and a class action would be superior to other available methods for fair and efficient administration of the controversy. Members of the class on behalf of whom petitioners sue are so numerous that joinder of all members is impracticable. The claims of petitioners are typical of and applicable to the claims of all members of the class and petitioners have fairly and adequately represented and protected the interests of all members of the class. Prosecution of separate actions by members of the class would

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1/ Wash. L. Rep., Vol. 102, No. 99, p. 1029, (1974).

create a risk of inconsistency or varying adjudications with respect to individual members of the class which would, as a practical matter, be dispositive of the interests of the other members of the class not parties to the adjudications.

Nevertheless, Petitioners' action does not require certification as a class action and notice to its members. Separate rules have been adopted by the Board of Judges for civil actions and for tax actions, and the Tax Division has neither adopted nor incorporated by reference the Civil Division class action Rule 23 or any other rule pertaining to class actions.

The facts in this case, as in Green, supra, are so exceptional and extraordinary as to merit extraordinary and exceptional relief that justice compels under the inherent and general equity powers of the Court. Accordingly, this cause is determined as a taxpayers' suit in equity in the nature of an uncertified class action brought on behalf of the individual petitioners and all others similarly situated 2/

Petitioners and the approximate 34,000 other similarly situated owners of single family residential properties in the District of Columbia were taxed, and paid their taxes, for Fiscal Year 1973 at a level of assessment (debasement factor) of 60 percent of estimated market value.

Petitioners seek in the form of refunds the difference between what was actually paid by these taxpayers and what

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2 / Crampton v. Zubrinskie, 101 U.S. 601, 25 L. Ed. 1070 (1880). Yokley, Municipal Corporations:

> "It is an essential element of a taxpayer's suit that the suit be brought in behalf of a plaintiff and other citizens and taxpayers.
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> "A taxpayer's suit is necessarily a class action. It must be brought not by individuals, but by individuals, for themselves and for all of the citizens similarly situated." Vol. 4, Sec. 602, p. 36.

should have been paid had a level of assessment of 55 percent of estimated market value been used, plus interest at 6 percent per annum computed from the date payment was made until the date of refund.

In applicable substance, Green held that the increases in property tax assessment from 55 percent to 60 percent of estimated market value were invalid because they were based on an arbitrary, intentional, and discriminatory change by Respondents in the level of assessment (debasement factor) applied to petitioners and some 34,000 other taxpayers for Fiscal Year 1973 and not applied for the same Fiscal Year 1973 to approximately 62,378 other owners of single family residential real property in the District of Columbia. Green further held that the changes were nullified by their creation in violation and disregard of the District of Columbia Administrative Procedure Act. The taxpayers had ". . .no meaningful ability to challenge his assessment at all" 3/ when the District choose to apply different debasement factors to the same class of property in the same year because the taxpayer was not aware that he was being treated differently from his neighbor and that he was being denied equal protection of the laws. He was therefore effectively denied his administrative remedy and his timely complaint to court.

Put succinctly, as did the Court of Appeals in Green:

> ". . .irrespective of whether the District may constitutionally differentiate in the level of assessment applied to residential real property as opposed to commercial real property, . . .it clearly may not do so within the single class of residential property owners." at p. 857.

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3 / Green, supra, at p. 856.

Accordingly, Green ordered the level of assessment for Fiscal Year 1974 reduced to 55 percent of estimated market value (by enjoining any other percentage level of assessment) until and unless a level of assessment was established after full compliance with the District of Columbia Administrative Procedure Act and further provided that only equal levels of assessment were to be used.

In summary, 4/ the Court finds that the same factors exist here as in Green: the taxpayers were deprived of due process and there has been discrimination among the citizens of the same class of single family residential properties. Some taxpayers have been assessed at 60 percent of estimated market value, and paid their taxes accordingly, while others in the same class were assessed and paid their taxes at 55 percent of estimated market value. This is clearly in violation of the due process clause of the Fifth Amendment to the Constitution of the United States as it applies to the Petitioners individually and to those similarly situated. 5/

It is frequently stated that a taxpayer must pay his just share for the just and orderly functioning of his Government. It is never proclaimed that a taxpayer should pay his unjust, inequitable, disproportionate share. If he does--and errors can occur-- then the (Federal) Government upon review refunds the excess, with interest. It is manifest that the municipal government should do no less. Monies illegally exacted from a citizen taxpayer by its Government must be promptly refunded. To hold otherwise would be unconscionable.

4/ For fuller expostulation, see the Opinion and Order of April 25, 1974, Wash. L. Rep., Vol. 102, No. 99, p. 1029, (1974).

5/ Bolling v. Sharpe. 347 U.S. 497 (1954).

The Court concludes that the Petitioners and the approximate 34,000 others similarly situated are, upon computation of the appropriate sums, entitled to prompt refunds of the amounts overpaid, with corresponding interest, in consideration of the above invalid assessment and then collection of taxes not rightfully due and owing. The Court further concludes that Respondents, by access to the District of Columbia's data sources, tax rolls, finance department, and computers, are in an unique position to exactly ascertain and yield the information necessary from which the full and fair refund can be made.

A decision concerning counsel fees and costs will be rendered upon the final determination of the amounts to be refunded to each citizen.

Having determined the issues in this matter, the Court is withholding entry of the amount of refunds due to each member of the class of single family residential real property owners whose property was incorrectly and illegally assessed at a level of assessment (debasement factor) in excess of 55 percent of estimated market value, to allow the parties, pursuant to Superior Court Tax Rule 15, to submit computations of the amounts due to each person pursuant to the findings and conclusions entered in this case.

It is therefore, this 6th day of August, 1974:

ORDERED:

(1) the the Respondents submit to Petitioners by August 27, 1974 computations of the amounts due, in accordance with the findings entered in this case, to each owner of single family residential real property whose property was assessed in Fiscal Year 1973 at a level of assessment (debasement factor) in excess of 55 percent of

estimated market value. These computations shall include the names and addresses of each person entitled to a refund, each property for which a refund is due, the amount of taxes which were paid, the amount of taxes which should have been paid, and the basis on which this calculation was made (e.g. estimated market value), and the refund due.

(2) That the Petitioners shall examine the computations prepared by the Respondents and notify both the Court and Respondents by no later than September 17, 1974 as to whether they are in agreement with the computations of the Respondent as to the amounts of refunds due.

(3) That the Respondents shall make such information available to Petitioners as will enable them to fully and adequately review the computations made by Respondents;

(4) That if the parties are in agreement as to the amount of the refund due to be entered as the decision pursuant to the findings and conclusions made by the Court, the Respondents shall file, within three (3) days after being notified by Petitioners that they are in agreement, with the Deputy Clerk for the Tax Division an original and 2 copies of a computation showing the amount of the refund due, together with a statement to the effect that there is no disagreement and that the figures shown are in accordance with the findings and conclusions of the Court. A decision will then be entered accordingly.

(5) That if, however, the parties are not in agreement as to the amount of the refund due, they shall notify the Court of the basis of their disagreement by no later than September 20, 1974.

Pursuant to the procedure set forth in Superior Court Tax Rule 15 (b) to be followed in the absence of agreement, either party may file with the Deputy Clerk for the Tax Division a computation of the amounts of refunds believed by such party to be in accordance with the findings and conclusions of the Court and shall serve a copy of those computations on the opposing party. The matter will then be scheduled by the Court for argument. If the opposite party fails to file an objection accompanied by an alternative computation at least 5 days prior to the date of such argument or any continuance thereof, the Court may determine to enter decision in accordance with the computation already submitted.

(6) That if computations are submitted by the parties which differ as to the amount to be entered as the decision, the parties shall be afforded an opportunity to be heard in argument thereon on the date fixed, and the Court shall determine the amount of refund due and enter its decision accordingly. Pursuant to Superior Court Tax Rule 15(c), any argument shall be confined to the consideration of the correct computation of the amount of refunds due resulting from the findings and conclusions theretofore made, and no argument shall be heard upon or consideration given to any new issues or to the issues or matters already disposed of by such findings and conclusions. The hearing shall not be regarded as affording an opportunity for rehearing or reconsideration.

Joyce Hens Green
Judge

Copies to Counsel