

FILED

JAN 24 1975

Supreme Court of the District of Columbia Tax Division

OPINION NO. 1116

TAX DIVISION

NATIONAL GRADUATE UNIVERSITY,	:	
	:	
Petitioner	:	
	:	
v.	:	Docket No. 2251
	:	
DISTRICT OF COLUMBIA,	:	
	:	
Respondent	:	

MEMORANDUM ORDER

This matter comes before the Court on the District of Columbia's motion to dismiss the petition in the above-entitled case on the ground that the Court lacks jurisdiction in that the petition was not filed within six months after the date of the assessment.

The facts as set forth in the petition are simple and undisputed. Petitioner contests respondent's assessment of real property taxes in the amount of \$1,796.66 for fiscal year 1974 on Lot 31 in Square 1436, improved by premises known as 5011 Lowell Street, N. W., in the District of Columbia on the grounds that the property is exempt from taxation under D. C. Code §47-801a(j). Petitioner, a §501(c)(3) institution of higher learning, purchased the property on November 30, 1972, as a residence for its president and for other uses related to its education mission. On November 12, 1973, respondent mailed to petitioner a statement of real estate taxes due for the subject premises for fiscal year 1974. This notice of assessment was received by petitioner on November 14, 1973, and the petition herein was filed with the Tax Division of this Court on May 20, 1974, more than six months after such mailing and receipt.

The appeal procedure relevant to the 1974 fiscal year and applicable to assessments on real property deemed to be exempt from taxation is found in D. C. Code 1973, §47-801e and provides:

Any institution, organization, corporation, or association aggrieved by any assessment of real property deemed to be exempt from taxation under the provisions of sections 47-801a, 47-801b and 47-801c to 47-801f may appeal therefrom to the Superior Court of the District of Columbia in the same manner and to the same extent as provided in sections 47-2403 and 47-2404: Provided, however, That payment of the tax shall not be prerequisite to any such appeal.

D. C. Code 1973, §47-801e requires reference to §47-2403 which, relevant to the fiscal year 1974, provides:

Any person aggrieved by any assessment by the District of any \* \* \* [real estate] tax or taxes, or penalties thereon, may within six months after payment of the tax together with penalties and interest assessed thereon, appeal from the assessment to the Superior Court of the District of Columbia. \* \* \*

It is clear from a reading of §47-801e that appeals from assessments on real property claimed to be exempt may be taken to the Superior Court in the same manner as provided in §47-2403, except that prepayment of the tax in such cases is not required. The sole issue in this case, therefore, is whether the timeliness requirement for filing the petition is six months from the date of the notice of assessment as contended by the respondent, or some other longer period as urged by the petitioner.

The District of Columbia contends that §47-2403, when read in conjunction with the declaration of §47-801e expressly dispensing with prepayment of the tax requirement, mandates the filing of an appeal in the Superior Court within six months from the date the notice of assessment was received. The petitioner, on the other hand, urges that, since the prepayment proviso of §47-2403 is inapplicable to appeals from alleged exempt real property

assessments, resort must be made to the general statute of limitations section of the D. C. Code, where in §12-301(8) a three-year limitations period is provided for actions for which a limitation is not otherwise specially prescribed.

The Court is thus called upon to interpret the timeliness requirement set out in §47-2403, where the prepayment of the tax proviso of that section is to be ignored. The difficulty arises from the manner in which Congress rephrased the statute at the time of its amendment by the Court Reform and Criminal Procedure Act of 1970, P.L. 91-358, 91st Cong. 579. It is quite apparent that §47-2403 is rendered ambiguous when required to be read with the prepayment condition inapplicable, and accordingly resort to the predecessor statute and the decisions thereunder, as well as the legislative history of the amended statute, is required as an aid to proper construction of the statute. Miller v. Udall, 115 U.S. App. D. C. 162 (1963); Chemeheuvi Tribe of Indians v. Federal Power Commission, 160 U.S. App. D. C. 83 (1973).

Prior to the enactment of the Court Reform and Criminal Procedure Act of 1970, D. C. Code 1967, §47-2403 read as follows:

Any person aggrieved by any assessment by the District against him of any \* \* \* tax \* \* \* may, within ninety days after notice of such assessment, appeal from such assessment to the board, provided such person shall first pay such tax, together with penalties and interest due thereon, to the collector of taxes of the District of Columbia. The mailing to the taxpayer of a statement of taxes due shall be considered notice of assessment with respect of such taxes. \* \* \*

The U. S. Court of Appeals and the District of Columbia Tax Court had occasion in the case of Jewish War Veterans v. District of Columbia, 100 U.S. App. D.C. 223 (1957), to interpret the timeliness requirement provided in §47-2403 as it existed prior to the Court Reform and Criminal Procedure Act in a situation identical to the present case involving an alleged

exempt real estate tax assessment where prepayment of the taxes was also not required under the provisions of the then existing §47-801e, which was substantially identical to the same section today. The District of Columbia Tax Court dismissed the appeal from the assessment and the Court of Appeals affirmed, on the ground that the petition had not been filed within ninety days of the notice of assessment of the tax. The Court further held that (p. 224) "The ninety-day requirement [of §47-2403] is jurisdictional to the appeal." See also Congregational Home v. District of Columbia, 92 U.S. App. D. C. 73 (1953). The Court of Appeals has recently held that the prepayment of the tax condition of this section where applicable is also likewise jurisdictional. Perry v. District of Columbia, 314 A. 2d 766 (1974); George Hyman Construction Co. v. District of Columbia, 315 A. 2d 175 (1974); District of Columbia v. Berenter, 151 U.S. App. D. C. 196 (1972).

Turning next to the legislative history of the Court Reform and Criminal Procedure Act of 1970, we find that §161 of the Act of July 29, 1970, P.L. 91-358, 84 Stat. 579, amended various tax statutes of the District of Columbia. One important change involved the enlarging of the timeliness requirement for appeals of tax assessments from ninety days to six months. More specifically, §161(a)(3) of that Act amended D. C. Code §47-2403 to read as follows:

Any person aggrieved \* \* \* may  
within six months after payment of the  
tax \* \* \* appeal \* \* \*. [Emphasis  
supplied.]

Similarly, §161(a)(5) amended D. C. Code 1967, §§47-709 and 47-2405 by striking out "ninety days" and inserting "six months" in lieu thereof. [Effective February 1, 1971.] This timeliness amendment was made because of the abolition of the alternate common-law remedies in the U. S. District Court, which were previously available under D. C. Code 1967, §47-2413(c). H. Rep. No. 91-907, 91st Cong., 2d Sess. 165 (1970). Section 161(a)(7) amended D. C. Code 1967, §47-2413(c), by abolishing the availability of common-law remedies.

These amendments to the tax sections of the D. C. Code were necessary in order to bring about conformity with the provisions of the Court Reform and Criminal Procedure Act placing in the Tax Division of the Superior Court exclusive jurisdiction of all appeals from and petitions for review of assessments of tax made by the District of Columbia. See Section 111 of the Act of July 29, 1970, P.L. 91-358, 84 Stat. 488, amending D. C. Code §11-1201. In designating the Tax Division as the forum for handling tax controversies, the Act at the same time specifically abolished any common-law remedy with respect to assessments of tax in the District of Columbia. D. C. Code §47-1202. The general reasons for the 1970 changes in the tax sections were succinctly set forth in H. Rep. No. 91-907, supra, p. 165:

Section 161 amends various tax statutes of the District to reflect the exclusive jurisdiction of the Tax Division of the new Superior Court, to repeal provisions made obsolete by the transfer, and to allow six months, rather than ninety days, for filing tax cases because of the abolition of the alternate common-law remedies in U. S. District Court. There are no other substantive changes.

From analysis of the present relevant statutory provisions, as amended by the Court Reform and Criminal Procedure Act, in conjunction with the pertinent legislative history, the predecessor sections of the Code and prior court decisions interpreting those

sections, it is apparent that Congress, as part of local court reorganization, intended to provide a single, judicial forum for the appeal of tax assessments. This forum was to be the Tax Division of the Superior Court. It is also clear that Congress intended all tax appeals to be taken to this one Division of the Court, and that all other common-law remedies previously available in the District Court, and which might have been made similarly available in other Divisions of the new Superior Court, were to be abolished. Finally, the type of changes made to the various tax sections of the D. C. Code in §161 of the Court Reform and Criminal Procedure Act leave the clear implication that Congress intended to provide a single scheme of statutory remedies for the disposition of tax disputes in the Tax Division of the new Court, and that the appeal procedures retained were to be substantially identical with those previously available in the District of Columbia Tax Court under the predecessor statutes.

These conclusions supply guidance for the construction of §47-2403. At the outset it seems clear that, since Congress abolished all remedies other than the appeal procedures specifically provided for the disposition of tax disputes, we must look solely to the relevant tax sections for the timeliness requirement for such appeals, rather than to the general statutory provisions of the D. C. Code governing limitations on the bringing of other civil actions. D. C. Code §47-2403, when read in conjunction with §47-801e requiring compliance with §47-2403, outlines appeal procedures to be followed in the present case. The principal change made to §47-2403 by the Court Reform and Criminal Procedure Act was enlargement of the time for filing petitions from ninety days to six months. In amending this section, however, Congress rephrased the language to read that a taxpayer "may within six months after payment \* \* \* appeal from the assessment," whereas

the predecessor section provided that a taxpayer "may within ninety days after notice of such assessment, appeal \* \* \*."

As we have noted, the legislative history suggests that the timeliness period for filing appeals was increased from ninety days to six months to compensate for the changes in the District of Columbia revenue law abolishing the availability of common-law remedies. That no other substantive changes were contemplated in this section, as indicated by the House Report previously referred to, finds further support in the limited nature of the amendments made to the other tax sections of the Code.

Under this rationale, while the language of present §47-2403 now could be read as allowing appeals from assessments "within six months after payment," the clear implication is that Congress in amending §47-2403 was merely seeking to retain the identical requirements for filing petitions in the Superior Court, as were provided in the predecessor section for filing in the District of Columbia Tax Court, other than to enlarge the time for filing such petitions to six months. In any event, Congress, by retaining the interrelationship between §§47-2403 and 47-801e in enacting the amended version of these sections, manifested an intention, at least with respect to appeals from assessments involving alleged exempt real property, to make no substantial change in §47-2403, other than the enlargement of time from ninety days to six months for filing a petition, the time to run from the date of assessment since the prepayment portion of that section is not applicable.<sup>\*/</sup>

<sup>\*/</sup> In arriving at this conclusion, it is unnecessary for the Court to reach the question as to whether the six-month period would run from the date of payment rather than from the date of assessment in the situation governed by §47-2403, where other than exempt property taxes are involved and prepayment of the tax is a jurisdictional prerequisite to filing an appeal. Our analysis, however, would suggest a similar result in that situation with the clause "after payment \* \* \*" to be read as "provided payment has been made."

Further support for this conclusion can be found in the retention in §47-2403 of the identical provisions contained in the predecessor section that "the mailing to the taxpayer of a statement of taxes due shall be considered notice of assessment." This provisions would appear to serve no useful purpose, unless it were to establish the initial date from which the timeliness requirement were to run. Finally, we note that the drafters of the Rules adopted by the Board of Judges for the Tax Division of the Superior Court, effective February 1, 1971, in Comment 1 to Rule 6 specifically state that, in cases seeking review of an assessment of real property alleged to be exempt, "the statute of limitations, which is six months, begins to run from the mailing of the notice of assessment."

Wherefore, the Court finds that the petition herein, having been filed more than six months after petitioner received notice of assessment, is not in compliance with the jurisdictional prerequisites of D. C. Code §47-2403 (made applicable by D. C. Code §47-801e to appeals from assessments against exempt real property). Accordingly, the Court lacks jurisdiction to hear and determine the subject matter of the petition and the petition must be dismissed.

Accordingly, it is this <sup>24<sup>th</sup></sup> day of January, 1975,

ORDERED that the respondent's motion to dismiss be and the same is hereby granted, and the petition is dismissed.

  
FRED B. GGAST

Judge.

Copies to:

William J. Butler, Jr., Esq.  
Ralph N. Albright, Jr., Esq.  
Hanson, O'Brien, Birney, Stickle and Butler  
888 - 17th Street, N. W.  
Washington, D. C.

Richard G. Amato, Esq.  
Assistant Corporation Counsel  
District Building  
Washington, D. C. 20004