Opinion No. 1198

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
TAX DIVISION

APR 14 1980

FILED

FLOYD E. DAVIS MORTGAGE CORPORATION, Petitioner,	:	
v.	:	Docket No. 2314
DISTRICT OF COLUMBIA, Respondent.	:	

OPINION

This case came before the Court for argument on respondent's motion to dismiss the petition and petitioner's opposition thereto on December 3, 1979. Upon consideration of the arguments of counsel for the parties in open Court, of the memoranda of points and authorities submitted by such counsel, and of the record presented herein, the Court makes the following findings of fact and conclusions of law.

FINDINGS OF FACT

1. The petitioner is a dissolved corporation which had its principal office at 1629 K Street, N.W., Washington, D.C. The petition was brought in the corporate name on behalf of the sole stockholder-transferee, Floyd E. Davis, Jr., who was the president and a director of petitioner.

2. The tax in controversy is a corporation franchise tax for the fiscal year ended June 30, 1971, which was assessed as a deficiency, in the amount of $18,553.00, plus interest in the amount of [illegible]

3. The Notice of D.C. Tax Due, which was attached as Exhibit A to the petition, shows an assessment date of October 9, 1974. The taxes and interest were paid by petitioner on May 22, 1975.

4. The petition was filed herein on July 2, 1975.

CONCLUSIONS OF LAW

Section 47-1593 of the D.C. Code establishes a taxpayer's right to appeal to Superior Court a corporation franchise tax deficiency assessed by the Director of Finance and Revenue. 1/ Section 47-1593 incorporates by reference D.C. Code 1973, §47-2403 and makes that latter appeals section controlling for purposes of determining the taxpayer's rights in the present case.

Section 47-2403 of the D.C. Code provides as follows:

> Any person aggrieved by any assessment by the District of any personal-property, inheritance, estate, business-privilege, gross-receipts, gross-earnings, insurance premiums, or motor-vehicle-fuel 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. The mailing to the taxpayer of a statement of taxes due shall be considered notice of assessment with respect to the taxes. The court shall hear and determine all questions arising on appeal and shall make separate findings of fact and conclusions of law, and shall render its decision in writing. The court may affirm, cancel, reduce, or increase the assessment.

1/ Section 47-1593 reads as follows:

> Any person aggrieved by any assessment of a deficiency in tax determined and assessed by the assessor under the provisions of section 47-1586d . . . may, within six months from the date of the assessment of the deficiency, . . . appeal to the Superior Court of the District of Columbia, in the same manner and to the same extent as set forth in sections 47-2403, 47-2404, 47-2407 to 47-2411.

Although the plain language of §47-2403 supports the petitioner's argument that it may appeal an assessment within six months of paying the deficiency, in its decision in Donahue v. District of Columbia 2/ and National Graduate University v. District of Columbia, 3/ the District of Columbia Court of Appeals concluded that the six month period established by the section runs from the time the assessment is mailed. In reaching this conclusion, the Court of Appeals held that the clause in §47-2403 beginning with the words "may within six months after payment of the tax" should be read as "may within six months provided payment has been made." Consequently, §47-2403, as interpreted by the Court of Appeals, requires a taxpayer both to pay the assessment and file an appeal within six months of the mailing of the assessment.

Petitioner has argued that an interpretation of §47-2403 that requires a taxpayer to file an appeal within six months after assessment, even if the taxpayer has not made a timely payment of the assessment, impinges upon the taxpayer's due process rights by permitting the exacting of a tax without allowing the opportunity to be heard. This issue was considered and dismissed in District of Columbia v. Berenter. 4/ The Court finds Berenter controlling on this issue.

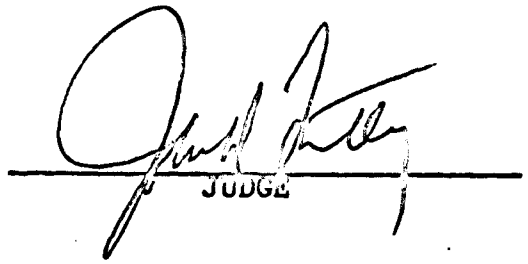
2/ 368 A.2d 1147, 1148 (D.C. App. 1977).

3/ 346 A.2d 740, 743 (D.C. App. 1975).

4/ 466 F.2d 367 (D.C. Cir. 1972).

Wherefore, the Court finds that the petition in the present case, having been filed more than six months after the mailing of the assessment, did not meet the jurisdictional requirements of D.C. Code 1973, §47-2403. Accordingly, the Court lacks jurisdiction to hear and determine the subject matter of the petition and must dismiss the petition with prejudice.

April 14, 1980



JUDGE

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ORDER

Upon consideration of the petition filed herein, the motion of respondent District of Columbia to dismiss the petition for the reason that this Court lacks jurisdiction to hear and determine the subject matter of the petition, and of petitioner's opposition thereto, and it appearing to the Court that it lacks jurisdiction over the petition because it was not filed within the six-month period which is mandated by D.C. Code 1973, §47-2403, it is this 14th day of April, 1980,

ORDERED that the motion of respondent District of Columbia to dismiss the petition be, and the same is hereby, granted; and, it is,

FURTHER ORDERED that the petition be, and it is hereby, dismissed with prejudice.

JUDGE