

Opinion No. 1128

TAX DIVISION

APR 22 1976

NEW 5510, INC.,
a body corporate
T/A PICCADILLY RESTAURANT,

Petitioner

v.

Docket No. 2347

DISTRICT OF COLUMBIA,

Respondent

FILED

MEMORANDUM ORDER

This matter comes before the Court upon the District of Columbia's motion to dismiss the petition of New 5510 insofar as it contests an assessment of personal property taxes for fiscal year 1975 on the ground that the petition was not filed within six months after the date of assessment.

The relevant facts as derived from the pleadings and court jacket are simple and undisputed. A statement of personal property taxes due for the fiscal year 1975 was mailed to the petitioner on or about December 4, 1974, reflecting the assessment of these taxes on that date. These taxes were paid in two installments -- the first on December 10, 1974, and the second on May 22, 1975. The instant petition, Docket No. 2347, was filed in the Tax Division of the Superior Court on November 11, 1975, contesting this assessment and the assessment for fiscal year 1976 as well. ^{1/}

^{1/} An earlier petition, Docket No. 2304, was filed on May 2, 1975, contesting the same assessment for 1975. Petitioner, however, requested and was granted a voluntary dismissal of its suit without prejudice, since the full tax for the entire year had not been paid before the petition was filed. D.C. Code §47-2403. See District of Columbia v. Berenter, 151 U.S. App. D.C. 196, 466 F. 2d 367 (1972), and George Hyman Const. Co. v. District of Columbia, 315 A. 2d 175 (D.C. App. 1954). Shortly before that non-suit was taken, the petitioners paid the second half of their 1975 taxes, but the present petition was not filed at that time.

The appeal procedure, relevant to the personal property tax assessment at issue, is contained in D.C. Code §47-2403, which provides in pertinent part as follows:

Any person aggrieved by any assessment by the District of any personal-property * * * taxes, or penalties thereon, may within six months after payment of the tax together with the 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. * * * (Emphasis supplied.)

Since D.C. Code §47-2403 provides that the mailing of a statement of taxes due constitutes notice of that assessment, the six-month period from which an appeal must be taken began to run at least from the date of receipt of the tax bill.

National Graduate University v. District of Columbia, 346

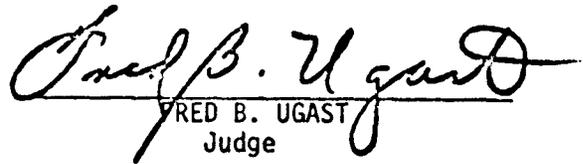
A. 2d 740, 743 (D.C. App., 1975). The language "after payment of the tax together with penalties and interest assessed thereon" has been interpreted by this Court and approved by the Court of Appeals to be read as "provided payment has been made." See National Graduate University v. District of Columbia, *supra*.

Notice of the assessment, as reflected on the tax bill, was received by petitioner on or about December 4, 1974. The instant petition, however, was not filed until November 11, 1975. Wherefore, the Court finds that the petition as it relates to fiscal year 1975 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. For this reason, the Court lacks jurisdiction

that extent the petition must be dismissed.^{2/}

Accordingly, it is this 21st day of April, 1976,

ORDERED that the respondent's motion to dismiss as it relates to the fiscal year 1975 personal property tax be and the same hereby is granted and the petition relating to the fiscal year 1975 personal property tax be and the same hereby is dismissed.


FRED B. UGAST
Judge

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2/ We note that petitioner at oral argument did not view his petition as filed as a suit for refund.

We further note that petitioner paid the first half of the 1975 tax and filed a claim for refund on January 24, 1975. This was followed by the filing of the original petition in Docket No. 2304 on May 2, 1975. Viewed as a suit for refund of taxes paid, that petition (No. 2304) was premature under the provisions of D.C. Code §47-2403 requiring that the District of Columbia be allowed a period of six months within which to act upon a claim for refund before the taxpayer may appeal to the Tax Division of this Court. In addition, a claim for refund of personal property taxes can only be filed with the Department of Finance & Revenue upon full payment of the entire amount of the assessment. Although personal property taxes are payable semi-annually under §47-1209, the assessment is calculated and the taxes levied on an annual basis, §47-1203. Likewise, a taxpayer must pay the full amount of an assessment before he can challenge in Court the correctness of an assessment in a refund suit. D.C. Code §47-2413(a). See Flora v. United States, 357 U.S. 63, 78 S. Ct. 1079, 2 L. Ed. 2d 1165 (1958), affirmed on rehearing, 362 U.S. 145, 80 S. Ct. 630, 4 L. Ed. 2d 623 (1960); Suhr v. United States, 18 F. 2d 81 (3rd Cir. 1927); District of Columbia v. Berenter, 151 U.S. App. D.C. 196, 466 F. 2d 367 (1972); and George Hyman Const. Co. v. District of Columbia, 315 A. 2d 175 (D.C. App. 1954).

We do not here have to decide whether petitioner may now contest the 1975 assessment by filing a claim for refund of the fully paid taxes followed by a suit for refund under the provisions of §47-2413(a) and 2403.