

Spencer
No. 1172

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

TAX DIVISION

JOSEPH M. BURTON
CLERK OF
SUPERIOR COURT OF THE
DISTRICT OF COLUMBIA
TAX DIVISION

CARY H. and JANE T. COPELAND,)
)
 Petitioners)
)
 v.)
)
 DISTRICT OF COLUMBIA,)
)
 Respondent)

APR 4 1979

Docket No. **FILED** 2404

MEMORANDUM ORDER

The petitioners filed this appeal from a denial of the claim for refund for District of Columbia income taxes paid for taxable years 1968 through 1975 in the total amount of \$7,835.89.^{1/} This case now comes before the Court on cross motions for summary judgment. This Court has jurisdiction pursuant to D. C. Code 1973, §§11-1201 and 47-2403.

The question presented is whether the petitioners were "residents" for tax purposes as that term is defined in D. C. Code 1973, §47-1551c(s) for the taxable years in question.

I

There is no dispute as to the essential facts in this case. Petitioner^{2/} was born in Texas in 1942, and lived there

1/ The amount of the disputed taxes for each year is as follows: 1968 - \$319.20; 1969 - \$640.58, 1970 - \$895.84, 1971 - \$872.00, 1972 - \$1,320, 1973 - \$1,398, 1974 - \$1,408, and 1975 - \$982.92 for a total of \$7,835.89.

2/ References throughout this Memorandum Order to a single petitioner refer to the petitioner, Cary H. Copeland.

until he came to the District of Columbia. After graduation from high school he entered Steven F. Austin State College and received a bachelor's degree in 1963 and a master's degree in 1965. He came to the District of Columbia in 1968 solely for the purpose of working for Congressman Wright Patman who was the representative from the First Congressional District in Texas, and Chairman of the Joint Committee on Defense. He was personally hired by Congressman Patman and was subject to his dismissal with or without cause and he worked directly under the supervision and control of Mr. Patman's Administrative Assistant. Throughout the term of his employment he always worked in the Congressman's personal offices, at a desk and with a typewriter and other equipment and supplies allotted to Mr. Patman in his capacity as a Congressman from Texas. He was assisted by clerical employees working on Mr. Patman's personal congressional payroll. His position could best be described as Mr. Patman's personal legislative assistant, handling legislation and legislative correspondence from constituents of Mr. Patman.

Mr. Patman treated the petitioner as being a member of his personal staff. Petitioner was carried on the payroll of the Joint Committee on Defense but had no other relationship to that committee and was not subject to the supervision of any member of the committee or its staff and never worked in space allotted for the use of the committee. Petitioner was regarded as being a member of Mr. Patman's personal staff.

Petitioners were registered to vote in Texas. They maintained an abode in the District of Columbia from May 1, 1968 through June 30, 1976, but always maintained their ties with Texas. Upon the death of Mr. Patman, petitioner returned to Texas to accept the position of a law clerk to a judge assigned to the United States District Court for the Northern District of Texas.

II

Petitioners are liable for the subject income taxes only if they were "residents" of the District of Columbia during the taxable years in question. Section 47-1551c(s) defines a "resident" as:

[E]very individual domiciled within the District on the last day of the taxable year, and every other individual who maintains a place of abode within the District for more than seven months of the taxable year, whether domiciled in the District or not. The word 'resident' shall not include any elective officer of the Government of the United States or any employee on the staff of an elected officer in the legislative branch of the Government of the United States if such employee is a bona fide resident of the State of residence of such elected officer, or any officer of the executive branch of such Government whose appointment of the office held by him was by the President of the United States and subject to confirmation by the Senate of the United States and whose tenure of office is at the pleasure of the President of the United States, unless such officers are domiciled within the District on the last day of the taxable year.

The record is clear that the petitioners always intended to return to Texas and never intended to permanently reside in the District of Columbia thus they were not domiciled in the District of Columbia for any of the taxable years in question; a fact which is conceded by the respondent. Cf. District of Columbia v. Murphy, 314 U.S. 441 (1941). Shilkrot v. Helvering, 78 U.S. App. D.C. 173, 138 F.2d 925 (1943), Alexander v. District of Columbia, 370 A.2d 1327 (D.C. App. 1977); Adams v. Adams, 136 A.2d 866 (D.C. Mun. App. 1957); Jones v. Jones, 136 A.2d 580 (D.C. Mun. App. 1957); Waterstrat v. District of Columbia, 107 Wash. L. Rptr. 417 (D.C. Super. Ct. 1979).

Petitioners admit that they maintained an abode in the District of Columbia for more than seven months of each year from 1968 through 1975, and that being the case, they would have been residents of the District of Columbia for tax purposes unless petitioner was an "employee on the staff of an elected officer in the Legislative Branch of the Government of the United States". See Section 47-1551c(s). Petitioner contends that he falls within the above category in that he was employed by Congressman Patman and was in the District solely for that purpose. The respondent argues, on the other hand, that petitioner was not an employee of Mr. Patman, but rather was an employee of the Joint Committee on Defense and therefore, not being an employee of an elected official, he was a "resident" as that term is defined in Section 47-1551c(s) and subject to the tax. The respondent relies solely on the

fact that the petitioner was paid out of committee funds and not from funds allotted for the Congressman's personal staff to support its argument that he was not an employee of the Congressman. Respondent also argues that both houses of congress had clearly expressed "the intent of Congress that such employee [of a standing committee] cannot work for individual Senators or Members of the House of Representatives". Respondent Memorandum of Law, p. 2.

III

The Court in deciding this question must look at substance over form. As the Supreme Court stated in Helvering v. F. & R. Lararus & Co., 308 U.S. 252, 255 (1939) "in the field of taxation, administrators of the laws, and the courts are concerned with substance and realities". See also, Landa v. Commissioner of Internal Revenue, 92 U.S. App. D.C. 196, 197, 206 F.2d 431, 432 (1953).

The determination as to whether petitioner was an employee of the Congressman should not rest merely on one of a number of relevant factors, but must be based upon a realistic consideration of all of those factors. This Court rejects respondent's argument that it need only look to the source of petitioner's salary. Thus, the Court need not determine whether the petitioner was properly paid out of funds allotted to the committee since the source of the funds is but one factor necessary in determining whether the petitioner was or was not an employee of Congressman Patman. While the source of his salary tends to support the argument

that the petitioner was an employee of the committee, every other factor in this case weighs against such a finding. The petitioner was personally hired by the Congressman and served solely at his will and pleasure. He consistently used the space, office, supplies, and services reserved for the personal staff of the Congressman. No member of the committee or its staff had any control over his activities and he had no responsibility to report to the committee. Unlike a committee employee, petitioner's employment was terminated as a result of the death of the Congressman. The Congressman and his staff always treated petitioner as a member of the Congressman's personal staff. The petitioner acted as the Congressman's personal legislative assistant and his work and assignments were directly related to the Congressman's activities as a representative of his congressional district and not related to any activities of the committee. Although the petitioner was paid out of committee funds, those payments were made at the direction of the Congressman.

Based upon all of these factors the Court is satisfied that the petitioner was an employee of the Congressman notwithstanding the source of his salary. Since he was employed by an elected official of the Legislative Branch of the Government of the United States, he was not a "resident" as that term is defined in Section 47-1551c(s) and was not subject to the tax.

III

Petitioner also argues that the Legislative History of Section 47-1551c(s) clearly shows that there is no distinction to be made between "committee" and "personal" staff. See Petitioner's Memorandum of Law, p. 6. This Court need not address that question, however, since the findings and conclusions in Parts I and II, supra, are dispositive of this case.

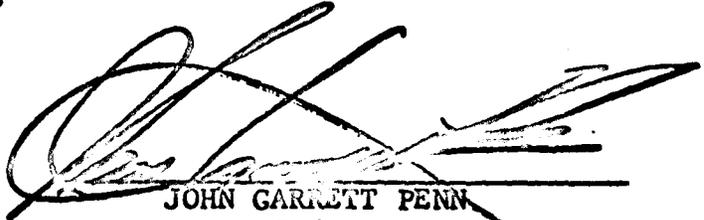
ORDER

The Court, having concluded as a matter of law that petitioners were not "residents" of the District of Columbia for the years 1968 through 1975, it is hereby

ORDERED that petitioners are entitled to a refund for income taxes paid for 1968 through 1975 in the total amount of \$7,835.89 and it is further

ORDERED that the respondent shall refund to the petitioners the amount of \$7,835.89 plus interest as provided by law from April 7, 1977.

Dated: April 2, 1979



JOHN GARRETT PENN
Judge

Stephen Daniel Keoffe, Esq.
Counsel for Petitioners

Richard Amato, Esq.
Assistant Corporation Counsel
Counsel for Respondent

Copies mailed to parties pursuant
to parties' request of 4-4-79, 1979.