Opinion No. 1240

CLERK OF
SUPERIOR COURT OF THE
DISTRICT OF COLUMBIA
TAX DIVISION

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Tax Division

July 16, 1985

FILED

GEORGETOWN UNIVERSITY EMPLOYEES FEDERAL CREDIT UNION, et al.,	:	
Petitioner,	:	
v.	:	Tax Docket No. 3493-84
DISTRICT OF COLUMBIA,	:	
Respondent.	:	

O R D E R

This matter came before the Court on cross-motions for summary judgment. Petitioner Georgetown University Employees Federal Credit Union challenges the validity of the imposition of personal property taxes for Tax Years 1982 through 1985.[1] The total amount assessed is $1,297.97, plus interest and penalties.

This Court has jurisdiction to hear this appeal pursuant to D.C. Code §§11-1201 and 47-3303 (1981 ed.).

I.

The following material facts are not in dispute and may be briefly summarized:

1. Petitioner, Georgetown University Employees Federal Credit Union, is a federal credit union chartered since 1964 under the provisions of the Federal Credit Union Act. 12 U.S.C. 1971 et seq. Its principal office is located at 3700 Reservoir Road, N.W.

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[1] Respondent claims that petitioner has failed to meet the jurisdictional requirements necessary to file this suit in that no notice of disallowance of petitioner's claim for refund has been sent to petitioner. Respondent, however, states that the Department of Finance and Revenue will deny the claim. In light of respondent's statement that it will deny the claim for refund, this Court, in the interest of judicial economy, has taken jurisdiction of this matter.

2. Congress provided for the establishment of locally chartered credit unions in the District with passage of the D.C. Credit Union Act, 47 Stat. 326 (June 23, 1932).

3. Federally chartered credit unions were authorized by the Federal Credit Union Act of 1934, 12 U.S.C. §1751 et seq. In 1937, Congress amended the Act by exempting federal credit unions from federal, state, territorial, and local taxation, but permitting "local taxation of real property and tangible personal property to the same extent as other similar property is taxed." 51 STAT. 4, 75th Cong., 2d Sess. (1937). The Federal Credit Union Act was again amended in 1959. The relevant tax provisions, however, contained identical language to its 1937 predecessor. These provisions continue today and are codified at 12 U.S.C. §1760.

4. Before 1954, respondent District of Columbia imposed its personal property tax in a manner that favored locally chartered credit unions as compared to those federally chartered. That taxing scheme was declared to be discriminatory and was struck down in Washington Telephone Federal Credit Union v. District of Columbia, Tax Docket No. 1234 (D.C. Board of Tax Appeals, April 12, 1951).

5. In 1964, Congress repealed the D.C. Credit Union Act, Pub. L. 88-395, §4 (August 7, 1964), 78 Stat. 377, and thereafter, only federally chartered credit unions have operated within the District.

6. In 1982, notices to calculate and pay personal property tax were sent by respondent to 63,000 businesses, including credit unions, thought to own property subject to the tax. Petitioner was one of the parties so notified.

7. By letter dated November 8, 1984, respondent requested petitioner and all other federal credit unions in the

District to file returns and remit taxes on their personal property plus interest and penalties for Tax Years 1982 through 1985.

8. On December 7, 1984, petitioner paid the personal property tax plus interest and penalties, and thereafter brought this appeal.

9. Bill 6-100, entitled "District of Columbia Personal Property Tax Amendment Act of 1985," currently pending before the D.C. Council, contains language that specifically names credit unions as parties subject to the personal property tax.

II.

Petitioner contends that while the Federal Credit Union Act subjects federal credit unions to taxation, the tax liability must be specifically created by the legislative body of each state and territory. Petitioner argues that existing statutory provisions in the District of Columbia, namely, D.C. Code 1981 Sections 47-1503 and 2510, do not create a tax liability for payment of a tax by federal credit unions on their personal property and therefore the instant assessment is invalid.

The District, on the other hand, contends that pursuant to the Federal Credit Union Act, 51 STAT. 4, 75th Cong., 2d Sess. (1937), it is authorized to tax the personal property of federal credit unions. The District argues that given the congressional mandate in 1964 which required District chartered credit unions to become federally chartered, all credit unions became subject to personal property taxes to the same extent as other similar property is taxed. Respondent asserts that the local authority to impose such a tax is found in D.C. Code 1981 Sections 47-1503 and 2510, and that the instant assessment is therefore proper.

Thus, the sole issue before the Court is whether the existing, relevant statutory provisions for this jurisdiction create a tax liability on the personal property of a federal credit union such as petitioner.

III.

In order to address the contentions raised by the parties in the instant matter, it is necessary to examine the history of credit unions in the District of Columbia and their changing tax treatment.

In 1932, Congress first provided for the incorporation of credit unions in the District of Columbia. D.C. Credit Union Act, 47 STAT. 326, 72nd Cong. 1st Sess. (1932). The Act, applicable exclusively to the District of Columbia, specifically exempted credit unions from federal and District of Columbia taxation except upon real property. The Federal Credit Union Act of 1934 continues to define and regulate the chartering and operation of federal credit unions such as petitioner. 12 U.S.C. 1751 et seq. The relevant language of that statute, codified today at 12 U.S.C. §1760, permits "local taxation of real property and tangible personal property to the same extent as other similar property is taxed."

The issue of taxation upon personal property of federal credit unions was first addressed in the District of Columbia in 1950. In Washington Telephone Federal Credit Union v. District of Columbia, Tax Docket No. 1234 (D.C. Board of Tax Appeals, 1951), a case upon which petitioner relies, the District assessed a personal property tax on a federal credit union of telephone workers. The credit union paid the tax and subsequently appealed to the Board of Tax Appeals. The credit union contended that because Congress had prohibited the taxation of personal property held by locally chartered

credit unions, the language in the federal statute allowing local taxation of federal credit unions "to the same extent as other similar property is taxed" had the effect of disallowing an assessment of personal property tax on a federal credit union. Upon concluding that because locally chartered credit unions were free from personal property taxation, the District could not assess a personal property tax on a federal credit union, Board member Koenigsburger stated:

> [I]t seems clear that what Congress intended was to avoid discrimination against Federal credit unions, as compared with credit unions other than Federal.

Washington Telephone, Memorandum at 3.

In its argument, petitioner emphasizes the fact that the ruling in Washington Telephone was never appealed and has never been reversed. The Court concludes that while this contention is factually correct, petitioner's reliance on that case is misplaced. The harm addressed in that case is no longer present in light of congressional actions taken in 1964. It was the dual system of taxation which the Washington Telephone court found objectionable and which Congress eliminated in 1964 with repeal of the District of Columbia Credit Union Act, which had provided for the incorporation of locally chartered credit unions. Washington Telephone does not stand for the proposition that any property tax is prohibited, nor does it prohibit the imposition of a property tax on credit unions which is not discriminatory. The rationale for the prohibition against the dual system of taxation -- protecting federal institutions -- is not undermined by the tax here at issue when, since 1964, Congress required District-chartered credit unions to become federally chartered. Indeed peti-

tioner concedes that in the absence of locally chartered credit unions, the provisions of limitation in the federal statute requiring that federal credit unions shall be subject to personal property taxes "to the same extent as other similar property is taxed," continues to be controlling.

However, petitioner argues that in order for a federal credit union to be subject to taxation, tax liability on its personal property, like tax liability on any property, must be created and implemented through a statute. Petitioner contends that there has not been in the past nor is there now, legislative authority to tax federal credit unions. Petitioner argues that pending Bill 6-100 constitutes an admission by the District that without specific legislation petitioner is not subject to the personal property tax. The Court does not find this argument persuasive, for introduction of legislation to avoid future litigation is not evidence pro no of prior mistake or lack of authority. Petitioner relies on D.C. Code (1981) Section 47-2510. That section provides:

> Notwithstanding any other provision of law, financial institutions, as defined in Section 47-1001.4, shall be subject to the applicable personal property tax provisions of Chapter 15 and Chapter 16 of this title and of Chapter 17 of this title and shall be liable for the payment of taxes on such personal property.

In the definitional provisions of Section 47-1001.4 (25), financial institutions are defined as:

> any bank or trust company incorporated or required to be incorporated and doing business under the laws of the United States, the District of Columbia, or any state, a substantial part of the business of which consists of receiving deposits and making loans and discounts, or of exercising fiduciary powers similar to those permitted to national banks under authority of the Comptroller of the Currency, and which is subject by law to supervision and examination by the District or by any state, territorial, or federal authority having supervision over financial institutions.

The provision defining financial institutions was first enacted in 1947 and last amended in 1982. Petitioner suggests that because the tax is not specifically imposed on it by the terms of D.C. Code (1981) Sections 47-2520 and 1801.4, petitioner is exempt from payment of the tax.

Petitioner's argument appears to be one of semantics rather than substance. As defined in D.C. Code (1981) Section 47-1801.4, financial institutions are banks or trust companies substantially involved in the business of receiving deposits and making loans. While petitioner is deemed a federal credit union, it does, by its own admissions, receive savings in the forms of shares purchased by its members and makes loans to those members. More importantly, however, the record indicates that respondent has been assessing financial institutions since 1981, pursuant to D.C. Code (1981) Section 47-2510. The assessment imposed on petitioner's personal property is therefore proper, as the mandate in the Federal Credit Union Act that similar properties are being taxed is satisfied and the legislative intent that federal entities are treated in a non-discriminating fashion as compared to similar institutions is realized.

In addition to the taxing authority stated in D.C. Section (1981) 47-2510, respondent relies on D.C. Code (1981) Section 47-1507. That section provides the following:

> On all tangible personal property, assessed at a fair cost value, . . . there shall be paid to the Collector of Taxes of the District of Columbia the rate of tax provided by law.

Petitioner asserts that at the time this provision was enacted, in 1902, neither District of Columbia credit unions nor federal credit unions were in existence. When the provision was amended in 1954, District of Columbia credit unions had been created and were afforded an exemption from personal

property taxes, and federal credit unions were treated similarly.

The provision in its current form was amended in 1983. Petitioner argues that because federal credit unions were not specifically referred to in the taxing provision, tax liability for federal credit unions cannot be imposed.

Although the tax treatment of credit unions has undergone several changes since 1902, it is clear to this Court that the current statute provides for the imposition of a tax on all personal property held by corporations, trades, businesses or persons in the District. While federal credit unions are not specifically delineated, this Court is of the view that within this broad grant of authority to tax personal property, the property held by petitioner was intended to be included. D.C. Code (1981) Section 47-1500 lists personal property which shall be exempt from taxation. It is clear that federal credit unions are not accorded an exemption in this provision. Petitioner has not cited any authority which would justify non-payment of the tax. More importantly, petitioner has not demonstrated that the imposition of taxation on its personal property is discriminating as relates to taxation upon other similarly financial institutions.

Accordingly, it is this 16th day of July, 1985,

ORDERED, that respondent's Motion for Summary Judgment be and hereby is granted; and it is

FURTHER ORDERED, that petitioner's Motion for Summary Judgment be, and hereby is denied.

JUDGE TRAUTH G. LAMBS

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