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SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

FILED

TAX DIVISION

JUL 5 1987

BRUCE J. TERRIS,
Petitioner,

SUPERIOR COURT OF THE
DISTRICT OF COLUMBIA
TAX DIVISION

v.

Tax No. 3874-87

DISTRICT OF COLUMBIA,
Respondent.

**MEMORANDUM OPINION AND ORDER GRANTING PETITIONER'S MOTION
FOR SUMMARY JUDGMENT, DENYING RESPONDENT'S MOTION AND
SCHEDULING STATUS HEARING**

This matter came before the Court on cross-motions for summary judgment. Upon consideration of same, and the points and authorities in support of the party's respective positions, the Court concludes that petitioner's motion must be granted on the only remaining issue, and respondent's motion must be denied.¹

The tax in controversy is petitioner's 1984 individual income tax. During 1984, petitioner was a partner in a law firm located in the District of Columbia. Petitioner resided in the District of Columbia until August 14, 1984, when he moved to Israel. Petitioner remained a member of the partnership until at least 1986. Respondent disallowed petitioner's claimed partnership losses for 1984 because the partnership's accounting year ended December 31, 1984, while petitioner's tax year ended August 15, 1984.² Petitioner's total partnership

¹The parties reported having resolved their disputes on the other issues.

²Losses were originally claimed in the amount of \$111,384 covering the entire tax year. Petitioner has subsequently modified his claim to request only \$69,615. This represents the proportionate share allocable to the time that petitioner resided in the District of Columbia.

losses for tax year 1984 in the amount \$111,384 were determined at the end of the calendar year 1984. The partnership accounting period ended at the end of the calendar year 1984. The Partnership Agreement of the law firm provides in pertinent part as follows:

2. Profits and losses -- cash flow.

(a) For the purposes of this section, "profits" shall mean the excess of the firm's annual revenue over its expenses on a cash basis. Losses shall mean the amount by which the firm's annual revenue is less than its expenses on a cash basis;... .

(d) At the end of each calendar year following 1982, unless otherwise agreed to by the partners, profits and losses shall be distributed between the partners according to the following percentages... .

3. Profit and Losses-Tax Basis. Starting in calendar year 1983, distributable gains and/or losses of the partnership shall be assigned for tax purposes to the partners as follows: 60% to Mr. Terris; 40% to Mr. Sunderland.

The partnership agreement also provides for draws to be allowed during the course of a year from anticipated profits.

Adjustments necessitated by additional profits or losses are made at the end of the year.

Respondent contends that all of the losses from the partnership business during 1984 must be disallowed because they were not distributed until after petitioner moved from the District of Columbia. The District's position is based upon a decision of the Tax Division of this Court. In Ward v. District of Columbia, Tax Docket No. 3104-82, 111 WLR 373 (D.C.

Superior, Tax Division, January 11, 1983), the Court held that a partner could not claim a partnership loss as a deduction on his fractional year income tax return unless the partnership's tax year closed within the individual partner's fractional tax year. In reaching that conclusion, the Court relied upon the language D.C. Code § 47-1808.6 which provides as follows:

Individuals carrying on any trade or business in partnership in the District other than an unincorporated business, shall be liable for income tax only in their individual capacities. The tax on all such income shall be assessed against the individual partners under §§ 47-1806.1 to 47-1806.6. There shall be included in computing the net income of each partner his distributive share, whether distributed or not, of the net income of the partnership for the taxable year; or if his net income for such taxable year is computed upon the basis of a period different from that upon the basis of which the net income of the partnership is computed, then his distributive share of the net income of the partnership for any accounting period of the partnership ending within the taxable year upon the basis of which the partner's net income is computed.

The Court determined that the statutory language precluded allowance of the losses as the taxpayer's taxable year was January through August 1979, while the partnership's taxable year was January through December 1979. Since the taxpayers were residents of Maryland on December 31, 1979, the Court determined that the partner's share of the partnership losses were "attributable to Maryland, not to the District."

In addition to what she viewed as the plain meaning of the language, the prior judge was persuaded by an interpretation followed by the D.C. Department of Finance and Revenue consistent with the holding. The Court in Ward also gave consideration to a memorandum released by the Maryland

Comptroller with respect to the meaning of MD. Code Ann. § 81-315 (1981), which had a similar provision. The Comptroller observed that it was generally established under Maryland and Federal law that income, gain or loss are considered as received or incurred on the last day of the partnership's taxable year. Consequently, he concluded that the gain or loss from a partnership is considered as having been received while a taxpayer is a resident of Maryland if the individual established the residence in Maryland before the close of partnership's tax year. The Court concluded in the Ward case that in order for a partner to include the distributive share of loss or income in the partner's net income for the taxable year, the partnership's accounting period must end within the partner's taxable year. Id. 379.

The language of the statute upon which respondent relies for its position is not extremely clear. In an earlier case, a different judge sitting in the Tax Division reached a different conclusion. In Hunter v. District of Columbia, Tax Docket No. 1212 (D.C. Superior Court, Tax Division, April 9, 1979) the Court held that a partner is permitted to deduct any losses properly attributed to the partner's taxable year when the partner's taxable year is different than the partnership's taxable year. In reaching that conclusion, the Court also relied upon the plain meaning of the statute and considerations of other provisions of the tax laws. The Court observed that the statute, D.C. Code § 47-1574 (e) (1973),³ focuses on the

³D.C. Code § 47-574 (e) (1973) is identical to D.C. Code § 47-1808.6 (1981), except for certain statutory references.

partnership's accounting period ending within the partner's taxable year. Id. at 10. It would be necessary to determine the net income of the partnership for the taxable year and then determine the proportion of the net income due the taxpayer attributable to the accounting period falling within or before the end of the partner's taxable year.

The decision reached by the Court in Hunter is consistent with the decision of the Supreme Court in Guaranty Trust Co. v. Commissioner of Internal Revenue, 303 U.S. 493 (1938). The issue raised in Guaranty Trust centered on the proper interpretation of the Revenue Act of 1932, 47 Stat. 169, relating to the taxation of partnership profits. The provisions of § 182 (a) of the Revenue Act of 1932 are virtually identical to the pertinent statutory provision in this case. The Supreme Court held in interpreting § 182 (a) of the Revenue Act that the individual partner's taxable income includes the share of the partnership's earnings to which he becomes entitled, including the distributive share of the partnership income which accrues to him during the tax year even though earned in an accounting period not wholly within the year. Guaranty Trust Co. v. Commissioner of Internal Revenue, 303 U.S. 493, 498-499 (1938). Contrary to respondent's position, the decision in Guaranty Trust was not based upon its unique facts. Rather, it was decided by a careful interpretation of the relevant provisions of the Revenue Act. Income and deductions of a taxpayer are based upon the receipt of or accrual of the right to receive income, although affected by business transactions of other years. Id. at 498.

This Court is persuaded by the considerations and decision reached in the Guaranty Trust case and by the decision reached in the Hunter case. Accordingly, the Court holds that petitioner may take his proportionate share of the partnership losses incurred during the time he was a resident of the District, but not determined until partnership liabilities were ascertained on December 31, 1984. It is undisputed that the proportionate share of the partnership are \$69,615.

The parties have conceded in the pleadings and at the hearing the remaining issues. Respondent will allow a deduction for additional moving expenses in the amount of \$2,391. Respondent has conceded a net business loss of \$650, and petitioner agrees.

It is therefore by the Court this 5th day of July, 1990

ORDERED as follows:

1. That petitioner's Motion for Summary Judgment is granted, and respondent's Motion for Summary Judgment is denied.
2. That petitioner is entitled to deduct from his fractional year income tax return for tax year 1984 his proportionate share of losses incurred from his law partnership in the amount of \$69,615.
3. That in accordance with the stipulation of the parties, respondent shall be allowed to deduct \$2,391 for moving expenses and \$650 as a net business loss for tax year 1984.

4. That petitioner shall submit to the Court a proposal order setting forth the amount of the refund and any interest according to law on or before the 16th day of July 1990, with a copy provided the Corporation Counsel.

5. The case is set for status hearing on the 19th day of July 1990, at 9:30 a.m., in Courtroom 213 unless the Order required hereunder is submitted and signed before that date.


JUDGE

Signed in Chambers

cc: Bruce Terris, Esquire
Terris, Edgecombe, Hecker, and Wayne
1121 - 12th Street, N.W.
Washington, D.C. 20005

Denise Dengler, Esquire
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*Harold L. Thomas, Director
Dept. Finance & Revenue*

*R. Stanfield
7/6/90*

Ward

SUPERIOR COURT OF THE DISTRICT COLUMBIA
TAX DIVISION

BRUCE J. TERRIS,)
)
) Petitioner,)
)
) v.)
)
) DISTRICT OF COLUMBIA,)
)
) Respondent.)
 _____)

HON. ANNICE WAGNER
Tax No. 3874-87

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SUPERIOR COURT OF THE
DISTRICT OF COLUMBIA
TAX DIVISION

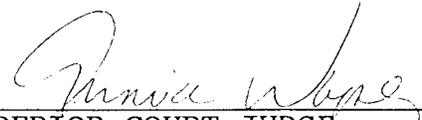
ORDER

Pursuant to the Court's Memorandum Opinion and Order Granting Petitioner's Motion for Summary Judgment, Denying Respondent's Motion and Scheduling Status Hearing, filed on July 3, 1990, the Court finds that petitioner is entitled to deduct from his fractional year income tax return for tax year 1984 his proportionate share of losses incurred from his law partnership in the amount of \$69,615. Moreover, pursuant to the stipulation of the parties, petitioner shall be allowed to deduct \$2,391 for moving expenses and \$650 as a net business loss for tax year 1984.

Accordingly, the Court finds that petitioner made an overpayment on his 1984 taxes in the amount of \$10,593.98. Therefore, it is this 17th day of July, 1990,

ORDERED that respondent refund to petitioner the amount of \$10,593.98 plus interest computed at the rate of 6% per annum from December 16, 1986, which is the date that petitioner paid the deficiency assessment determined by respondent, through the

date of the refund, as provided under D.C. Code 47-3310(c).


SUPERIOR COURT JUDGE