THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

TAX DIVISION

THEO. N. & L.E. LERNER, Trustees Petitioners, v. DISTRICT OF COLUMBIA Respondent.	Tax Docket No. 5990-94
FRANK A. LEON, et al. & L STREET ASSOCIATES LIMITED PARTNERSHIP Petitioners, v. DISTRICT OF COLUMBIA Respondent.	Tax Docket No. 5992-94

MEMORANDUM OPINION AND ORDER

The above-captioned cases are separate matters but have come before this Court in tandem for determination of an identical issue: Whether the Court is without subject matter jurisdiction where petitioners have filed appeals of tax assessments prior to full payment of taxes for tax year 1994.

Respondent has filed identical Motions to Dismiss in the above-captioned cases on the basis of lack of subject matter jurisdiction. The Government asserts that petitioners failed to invoke the jurisdiction of this Court by neglecting to pay the entire amount of the tax assessment for the tax year being

challenged.

In each case, petitioners have filed an Opposition to Respondent's Motion to Dismiss, as well as a Motion for Leave to File Amended Petition.

Upon review of the relevant pleadings, and applicable authorities, this Court finds the respondent's motion to be persuasive. No leave will be granted to file amended petitions.

Background

On March 31, 1994, petitioners, by and through counsel, filed separate petitions to appeal the real property tax assessments for tax year 1994.

Petitioners allege further that the appeals of the real property assessment for tax year 1994 were timely filed with the Board of Real Property Assessments and Appeals in April, 1993.

On July 24, 1995, petitioners filed separate Motions for Leave to File Amended Petitions. In these motions, petitioners acknowledge that the petitions to appeal tax assessments were filed prematurely, i.e. before the taxes had been paid for the second half of tax year 1994.

On August 1, 1995, respondent filed separate Motions to Dismiss indicating that petitioners failed to properly invoke the jurisdiction of this Court by not paying the entire amount of the tax assessment for tax year 1994 (due in September, 1994) as of the dates of filing the petitions in Superior Court.

Respondent contends that pursuant to Section 3303 of Title 47 of the Code, a taxpayer who desires to appeal a real property tax

assessment must first pay the entire amount of taxes, both first and second half for the particular tax year being challenged. Section 3303 states in pertinent part:

> Provided, that such person shall first pay such tax together with penalties and interest due thereon to the D.C. Treasurer.

47 D.C. § 3303.

The applicable window within which a court appeal may be filed is as follows:

> . . . within 6 months after March 30th following the calendar year in which a real property assessment, equalization, or valuation was made, any taxpayer aggrieved by a real property assessment, equalization or valuation may appeal the real property assessment, equalization or valuation in the same manner and to the same extent as provided in . . . §47-3303. . ., provided that the taxpayer shall have first appealed the assessment, equalization or valuation to the Board [of Equalization and Review]. . . .

Because the petitions herein were filed prematurely, the District argues that the Court is without subject matter jurisdiction. The District declines to waive any jurisdictional defense and indeed argues that there is no legal basis upon which the lack of jurisdiction can be waived or ignored.

On August 10, 1995 petitioners filed separate oppositions to Respondent's Motions to Dismiss. Petitioners argue that the change of the District of Columbia's 1994 fiscal year from July 1, 1993 through June 30, 1994 to October 1, 1993 through September 30, 1994 made the tax payment due in September, 1993 apply to tax year 1993 rather than to tax year 1994. Petitioners contend that this change

caused petitioners to inadvertently challenge the tax year 1994 assessment before they had paid the September 1994 payment.

Petitioners also allege that they were led to believe by officials at the Office of Corporation Counsel that the District had formulated a "policy" whereby it would send notices about the change in the definition of a tax year to petitioners who had filed premature petitions for tax year 1994. Such petitioners would then be allowed to file and serve amended petitions which would be accepted by respondent.

It is evident, by the Government's acknowledgment, that some filers of tax appeals did receive such notice but that the particular petitioners in the instant cases did not. Petitioners argue that they were deprived of due process and equal protection of the law. They assert that they are victims of unlawful "discrimination."[1]

Analysis

After reviewing the relevant pleadings, as well as applicable authorities, this Court has concluded that these cases must be dismissed for lack of subject matter jurisdiction pursuant to Superior Court Civil Rule 12(b)(1) and Section 3303 of Title 47 of the Code. Certain key concepts are important to emphasize.

First, only the legislative branch of government can determine the exact definition or parameters of what constitutes a "tax year."

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[1]They do not name any individuals within the Government who were assertedly implementing the alleged "policy."

Second, an appeal of a tax year's assessment can only be maintained based upon the requirements of the law at the time of the filing of the court appeal.

Third, the salient issue in this case is that petitioners did not comply with applicable law and that they blame the Government itself for their failure to do so.

The change in the definition of "tax year" **became effective as of August 6, 1993. This is not disputed.** Consequently, as of August 6, 1993 all taxpayers were obligated to comply with the new law in any appeal that they might contemplate. In any case, the courts became bound by that new law. Neither the parties nor the Court can waive or confer subject matter jurisdiction, where jurisdiction otherwise does not lie. Customers Parking, Inc. v. District of Columbia, 562 A.2d 651, 654 (D.C. 1989).

Fourth, on each date of payment of the disputed tax bills the petitioner was operating under whatever the law required as of September 1993 and March 1994 respectively. As of both of those dates, the tax year of 1994 was defined by law as the period of **October 1, 1993 through September 30, 1994.**

Since the most recent payment that is asserted to be the basis of jurisdiction is the payment that was made in **September 1994**, it is clear that all tax payments for tax year 1994 had not been made as of the filing of the instant petitions (March 31, 1994). The Court cannot ignore this basic fact.

Payment of the tax in its entirety is a prerequisite to invoke the jurisdiction of the Superior Court. George Hyman Construction

Co. v. District of Columbia, 315 A.2d 175, 177 (D.C. 1974). Petitioners' arguments supporting the failure to pay the entire amount of the assessment for tax year 1994 are legally insufficient.

Petitioners or their counsel should have been aware of the tax year changes. Ignorance of the law is not a viable excuse for the failure to abide by its provisions. Petitioner's appeal of the assessment for tax year 1994 was filed on March 31, 1994 -- substantially prior to the end of the official tax year itself.

The instant petitions were filed almost **eight months** after section 802(7) (1994 Supp.) and section 811(b) (1994 Supp.) became effective.[2] By the time that the September, 1994 payments were due, the change in the law had been effective for over one year. If any taxpayer had desired to challenge the September, 1994 tax assessment, the legal obligations for doing so had changed many months beforehand.

The mere fact that petitioners failed to heed the newly enacted, functional definition of a tax tax year does not mean that this Court can provide a remedy for their failure to do so.

This Court has examined closely the allegation of discrimination.

There is no evidence of "discrimination" as such from the mere fact that the Government gratuitously provided warnings about the change in the law to pro se parties and to lawyers who were pursuing only one case.

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[2] The amendments went into effect on August 6, 1993.

It is clear that the Government presumed that experienced practitioners or repetitive filers (such as present counsel) would keep abreast of major changes in the law. This was a rational assumption. The Government, states:

> As a courtesy, respondent mailed letters to some pro se [sic] petitioners or one-case counsel, informing them of the change in the tax year. There was, however, no policy to systematically mail notice to all March filers. This letter was not mailed to petitioners' counsel, who had specifically alleged payment in full of Tax Year 1994 taxes. Respondent reasonably concluded that the taxes had, in fact, been paid.

Memorandum of Points and Authorities in Support of Motion to Dismiss and Opposition to Motion for Leave to File Amended Petition, at page 4.

The Government has provided an acceptable explanation about the occurrence of the gratuitous warnings to certain petitioners. Moreover, the timing of the filing of the Motions for Leave to File Amended Petitions suggests that the Government itself was not even alerted to the jurisdictional problem until these particular cases had evolved through months of litigation. It appears that the motions filed by the petitioners awakened the jurisdictional issue. There is no suggestion that the Government peevishly lay in wait in order to obtain a dismissal of these cases.[3]

There is nothing untoward or discriminatory about what the

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[3]The Government has utterly no incentive to do so. The Office of the Corporation Counsel and relevant agency officials are inundated with tax appeals and there is no advantage to wasting time in the litigation of any unnecessary case, especially where discovery has commenced.

Government did, particularly to the extent that the warnings were given during a window of time within which an amended petition still would have been timely under the new law. There is no problem in the instant cases of the petitioners being denied "equal protection" under the law.

Ironically, it was not actually in the Government's interest to warn anyone about the change in the law because the filing of any court petition might result in a refund being awarded. A refund is a diminution of the Government's treasury, albeit one that is warranted.

If the Government had been acting in a vengeful manner, it would have knowingly and purposely allowed parties who were in unwitting positions to doom their cases by remaining silent while defective petitions were being litigated beyond a point at which lawfully amended petitions could have been filed. From the Government's standpoint, there is no foolproof way to react to this very unique change-of-law situation and, although the Court itself does not advocate any particular approach, what the Government did was not irrational or improper.

In the instant cases the Motions for Leave to File Amended Petition were not filed until **July 25, 1995**. By that date, regardless of the Government's earlier approach to the change-of-year situation, the Superior Court's jurisdiction had totally lapsed as to the initiation of appeals for tax year 1994. This Court could not have lawfully granted such motions, even if the District of Columbia had remained mute on the subject and even if

the Court was sympathetic to the petitioners' plight.

For the reasons stated herein, this Court has concluded that Respondent's Motions to Dismiss must be granted.[4] WHEREFORE, it is by the Court this 25th day of October, 1995

ORDERED that respondent's Motions to Dismiss are hereby GRANTED in both cases; and it is

FURTHER ORDERED that the Motions for Leave to File Amended Petition are denied in both cases;

FURTHER ORDERED that petitioners' appeals in the instant cases are dismissed with prejudice.

Cheryl M. Long
Judge

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[4]The Government has brought to the Court's attention another case in which a similar Motion to Dismiss was denied and where a Motion for Leave to File Amended Petition was granted. This case was Washington Automotive Co., et al. v. District of Columbia, Tax Docket No. 5993-94 (March 29, 1995(Mencher, J.). This Court cannot be bound by that opinion, because the Government's position is convincing and also because there was no detailed reasoning memorialized in the final order in Washington Automotive, so as to disclose the other court's particular rationale for that decision.