SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
TAX DIVISION

MIDAN LIMITED PARTNERSHIP,	)	
	)	
Petitioner,	)	
	)	
vs.	)	**DOCKET NO. 5991-94**
	)	
DISTRICT OF COLUMBIA,	)	
	)	
Respondent.	)	

ORDER

On September 18, 1995, this Court granted without prejudice Respondent's Motion to Dismiss the petition in this case. The case was dismissed subject to reconsideration upon the Petitioner providing the Court with authority for the proposition that respondent's gratuitous act of singling out certain tax payers for notice of a change in the tax year, and of their right to file an amended tax appeal after payment of all taxes due where they filed their appeal petitions prematurely is a violation of Equal Protection.

On October 4, 1995, Petitioner filed a Post Argument Brief in Opposition to Respondent's Motion to Dismiss. Petitioner contends that once the Respondent voluntarily undertook a notice policy, the Respondent was bound to implement that policy in a nondiscriminatory manner in conformance with constitutional requirements. However, the Petitioner has found "no case authority directly on point." Pet'r Post Argument Brief at 3. Rather, the Petitioner relies on an equal protection argument noting that "the Supreme Court has recognized that voluntary affirmative action programs must comply with the requirements of the Equal Protection

Petitioner argues that it was denied equal protection of the law when the Respondent undertook a policy of notifying tax payers who were pro se petitioners and one-case counsel of the change in the tax year and their right to file an amended petition. Petitioner was not notified by the Respondent of either the change in the tax year or that respondent could amend its petition.

Petitioner's analogy of the aforesaid facts to voluntary affirmative action programs is misplaced. For the Petitioner to prove discrimination in violation of the Fourteenth Amendment, Petitioner must prove that the classification was based upon some unjustifiable standard. A classification must be "based upon some reasonable ground- some difference which bears a just and proper relation to the attempted classification-and is not a mere arbitrary selection." Gulf, C. & S.F. Ry. v. Ellis, 165 U.S. 150 (1897). Further, "the classification must be reasonable, not arbitrary, and must rest upon some ground of difference having a fair and substantial relation to the object of the legislation, so that all persons similarly circumstanced shall be treated alike." Royster Guano Co. v. Virginia, 253 U.S. 412 (1920). It can hardly be said that Respondent's gratuitous act of notifying some pro se petitioners and one-case counsel of the change in the tax law constituted an unreasonable and arbitrary classification.

Respondent's classification had a rational basis that was reasonably related to its purpose of notifying pro se petitioners and one-case counsel who had not paid taxes in full for the Tax Year 1994, before filing their tax assessment appeal. These

petitioner's and counsel were not presumed to have the same level of expertise in relationship to the tax code as counsel who regularly appear in tax court and who earn a substantial amount of revenue from their clients based upon their presumed knowledge of the tax code and experience with its intricacies. Respondent's actions did not violate the Equal Protection Clause of the Fourteenth Amendment.

Upon consideration of the Petitioner's Post Argument Brief and Request for Oral Argument, it is this 18th day of October, 1995,

ORDERED, that Midan Limited Partnership's petition is now **DISMISSED** with prejudice and its request for a hearing is **DENIED**.

W. P. Gardner, Jr.

JUDGE WENDELL P. GARDNER, JR.
Signed in Chambers

cc:

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