SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
TAX DIVISION

LASZLO N. TAUBER, M.D.
& ASSOCIATES,

v. Tax Docket No. 6015-94

DISTRICT OF COLUMBIA

MEMORANDUM ORDER

Motions filed by each party in this tax appeal have yielded a significant dispute as to whether this Court actually has subject matter jurisdiction over the instant appeal. The two pending motions are: (1) Respondent's Motion to Dismiss Petition [hereinafter "Motion to Dismiss"]; and (2) Petitioner's Motion to Amend Petition [hereinafter "Motion to Amend]. Given the age of this case, the jurisdictional issue has emerged only in the later stages of this well-developed litigation.

The original Petition sought relief from real property taxes that were based upon what the taxpayer described as "the Tax Year 1994 assessment," covering the discrete period of July 1, 1993 through June 30, 1994. Petition at 1. The taxpayer's Motion to Amend Petition embraces a request to set forth two separate taxable periods for which the petitioner seeks a refund, namely (1) the

period from July 1, 1993 through September 30, 1993 (known as the "Stub Year"); as well as (2) the period from October 1, 1993 through September 30, 1994 (to be known as "Tax Year 1994"). Motion to Amend, at 1, 2. The Petitioner contends that its request is for nothing more than "clarification" of the scope of its appeal. Motion to Amend at 1.

The Motion to Dismiss embraces the contention that the Superior Court lacks subject matter jurisdiction over this case, because the Petitioner failed to prepay all of the Tax Year 1994 real property taxes that were assessed against the subject property prior to the filing of the petition for appeal. Motion to Dismiss at 4.

The District argues that because this Court lacked jurisdiction over the only Petition that was timely filed, a [illegible] amendment itself [illegible] Motion to Dismiss at 4.

As a practical matter, both motions focus upon the same issue, i.e. the legal effect of the sequence and timing of tax payments for all of the tax for which the taxpayer seeks relief.

Based upon the following analysis of the relevant, undisputed facts and the applicable law, this Court concludes that the Motion to Dismiss must be granted and that the Motion to Amend must be denied.

I. UNDISPUTED JURISDICTIONAL FACTS

The subject real property is known as the Columbia Plaza Office Building, located in the District of Columbia at 2301 E

Street, N.W. It is identified officially as Lot 0088, Square 0033.

In the original Petition filed in the Superior Court on March 31, 1994, the taxpayer asserted that it was appealing the real property taxes assessed "for the period of 1 July 1993 - 30 June 1994." Petition at paragraph 3. The taxes in dispute total $854,905.00. Tauber and Associates asserted, "Petitioner timely and fully paid this amount by remitting the appropriate installments prior to September 15, 1993 and March 15, 1994 respectively." Petition at paragraph 3. The taxpayer also stated in the Petition that the administrative appeal had been exhausted before the Board of Equalization and Review. The Board had rendered its decision on May 11, 1993.[1]

Certain facts should be recapitulated, relating to a particular statute that has spurred the instant jurisdictional dispute.

The District of Columbia Council enacted an important change in the tax laws, effective July 1, 1993. The change was essentially a re-configuration of what constitutes a "Tax Year." The definition was changed from the period of July 1st through June 30th to the period of October 1st through September 30th. This change was enacted through the Omnibus Budget Support Act of 1993, effective September 30, 1993 as D.C. Law 10-25. 40 D.C. Reg. 5489 (1993). It was codified at D.C. Code § 47-802 (1994).

The new law also provided that notwithstanding the

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[1]A copy of the Board's decision is appended to the Motion to Amend Petition.

redefinition of "Tax Year," a payment equal to a full six months worth of taxes covering the three month period of July 1, 1993 through September 30, 1993 would be due on September 15, 1993. This unique payment period came to be known as the "Stub Year." This period was intended to be separate and discrete from the newly formulated Tax Year 1994 (which under the new Section 802 ran from October 1, 1993 through September 30, 1994).

A significant quirk was discovered, in the wake of the new law. To wit: the new law did not automatically, by its own terms, reconcile the new definition of "Tax Year" with the corresponding statutory deadline for filing a Superior Court tax appeal. The lack of reconciliation between these two different parts of the Code meant that not all of the taxes that were due for the newly defined Tax Year 1994 were due to be paid prior to the appeal deadline of [illegible].

In the absence of legislative relief, the practical result was that the installment payable for September 15, 1994 would have to be paid many months in advance, i.e. by March 31, 1994, by any taxpayer desiring to appeal the Tax Year 1994 assessment. Under the old law, the last installment payment for each tax year normally fell on a date that was only two weeks prior to the appeal filing deadline.

There were two types of responses to this scenario. One response was legislative in nature on the part of the Council, and the other was palliative in nature on the part of the Executive Branch.

First, on the very same date as the filing of the original Petition herein (March 31, 1994), certain emergency legislation became effective. The Council enacted the "Real Property Statutory and Filing Deadlines Conformity Emergency Act of 1994." It was published in the District of Columbia Register on April 8, 1994. 41 D.C. Reg. 1818 (1994) and later codified as D.C. Code § 47-825.1(j) (1997). In salient part, it provided that

> 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 . . . in the same manner and to the same extent as provided in §§ 47-3303 and 3304 . . . .

Id.

The purpose of this emergency legislation was set forth in its a companion [illegible] necessary to . . . provide real property owners adequate time to pay all real property taxes due for the year in question prior to filing an appeal." 41 D.C. Reg. at 1828.

The Resolution further explained (in paragraph 6) that

> [u]nless the current legislation is changed, a real property owner would have only paid the first installment by the April 1 deadline for filing an appeal to the Superior Court. Consequently, prepayment of the second half installment due September 15 **would be required** to file an appeal to the Superior Court of the District of Columbia.

Id. [emphasis supplied].

Furthermore, the Council wrote, "The September 30 deadline would ensure that real property owners have the opportunity to pay

all real property taxes due for the year prior to the deadline for appealing their real property assessments . . . . to the Superior Court." Id.

The palliative response of the Executive Branch came in the form of an informational letter issued to those taxpayers who were already known to be affected by the new law. The taxpayer herein was certainly one of them.[2] This Petitioner received a letter from the Office of Corporation Counsel notifying the taxpayer of the opportunity to prepay the Second Half Tax Year 1994 installment of taxes prior to September 30, 1994 and to ask the Superior Court to allow it to file a corresponding, amended petition by that deadline.[3]

For whatever reason, the taxpayer herein did not heed the

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[2]The [illegible] of Corporation Counsel were those who, presumably, had filed real property tax appeals with such regularity that the District could presume that they would be affected by the new law. The District's choice to send out these letters was purely gratuitous. There was no legally cognizable duty to warn. In this Court's view, the District's letter did contain an accurate road map as to how a taxpayer would have to preserve its right to appeal the assessment for Tax Year 1994.

[3]Letter of July 20, 1994 from Assistant Corporation Counsel Melbra J. Giles to [Petitioner's prior counsel], at 1. A copy of this letter is attached to the District's Motion to Dismiss. The letter was addressed to then-counsel for the petitioner. It was authored by an Assistant Corporation Counsel. The Government also stated in the letter that if the Superior Court did not grant the relevant motion to amend the petition, the taxpayer could still withdraw a defective Petition and re-file a new Petition by September 30, 1994 upon paying all taxes in full for the newly defined Tax Year 1994. By its wording, it is clear that this particular letter was issued to the taxpayer herein because the original Petition did not clearly state that all taxes had been prepaid. Moreover, the Petition on its face did not reference the correct period of Tax Year 1994.

advice and offer contained in the letter from the Office of Corporation Counsel. The taxpayer did nothing to seek an amendment of the Petition by September 30, 1994, even though it is undisputed that the September 15th tax payment was made. Thus, by the newly-enacted appeal deadline for Tax Year 1994, the Petitioner still had not sought to amend its Petition. The taxpayer likewise never filed any other superseding Petition by September 30, 1994, purporting to seek appeal from the correctly-defined Tax Year 1994 assessment -- and certifying that the payment for September 15th had been made.

In a praecipe filed on August 7, 1995, the taxpayer informed the Court of the withdrawal of its counsel and the entry of appearance by the law firm currently litigating this case. Although the parties commenced discovery in anticipation of trial on the original [illegible] the jurisdictional issue was not highlighted until March 11, 1998, when the Motion to Amend Petition was filed. The District responded to the motion essentially by filing its own dispositive pleading, seeking dismissal of the entire appeal.

II. ISSUES RAISED IN THE MOTION TO AMEND PETITION

The taxpayer now seeks to maintain the instant appeal by relabelling the scope of the Petition. Yet, in order to avoid dismissal, the Petitioner must somehow show that it has met the statutory filing deadline and that it has paid all taxes due prior to such filing deadline.

In its Motion to Amend Petition, the taxpayer asks the Court's leave to separate its appeal into two discrete demands for relief: one as an appeal relating to the so-called "Stub Year" and the other as an appeal relating to the newly-defined Tax Year 1994. Petitioner's Memorandum in Support of Motion to Amend Petition at 1 (hereinafter "Petitioner's Memorandum"). It attributes the need to divide the requests for relief because of the legislation that reconfigured the time parameters of each Tax Year. It is clear that only Tax Year 1994 is affected because it was literally the transition year.

The petitioner stresses that it did indeed pay all of the taxes due for "new" Tax Year 1994 prior to the lengthened statutory deadline for filing an appeal, i.e. September 30, 1994. Furthermore, Petitioner argues that it fully paid all taxes due for the Stub Year.

III. ISSUES RAISED IN THE MOTION TO DISMISS

In its Motion to Dismiss, the District basically argues that since the only Petition that has been timely filed was the original Petition, such Petition cannot be amended to cure a jurisdictional defect. In view of the taxpayer's present assertion that it had always intended to appeal the full and newly-defined Tax Year 1994 assessment,[4] the defect is the Petitioner's failure to prepay all taxes for the "new" Tax Year 1994 by March 31, 1994. Based upon

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the Council's new definition of the Tax Year 1994, such payments would have included the advance payment of the installment due on September 15, 1994.

IV. RELEVANT CASE LAW AND STATUTE

The law is clear that a taxpayer must pay all taxes, penalties and interest that is due as a pre-requisite to filing a Superior Court tax appeal. George Hyman Construction Co. v. District of Columbia, 315 A.2d 175, 177 (D.C. 1974) (hereinafter "Hyman"); Berenter v. District of Columbia, 151 U.S.App.D.C. 196, 203, 466 F.2d 367, 374 (1972).

The facts in Hyman are instructive. There, the taxpayer had only prepaid the installment for the first half of the Tax Year before filing its Petition. The petitioner therein was not attempting to withhold payment of the [illegible] for the second half of the Tax Year in question and, indeed, had filed a Petition before the period for doing so had expired. Hyman, supra, at 176.

The District of Columbia Court of Appeals affirmed the dismissal of the Petition on jurisdictional grounds. In doing so, the Court of Appeals rejected the argument that payment of only one installment was sufficient to support the Petition even though all of the tax was eventually paid before the dismissal had occurred. Id. at 177. In other words, post-filing payments will not cure the failure to fully **prepay** all taxes before the filing date of the Superior Court petition.

In Hyman, the Court of Appeals paused to debunk the notion that the opportunity to make semi-annual installment payments can convert a tax appeal into something less than an attack on the entire annual assessment. As the Government has argued herein before this Court, the matter of permitting partial installment payments is nothing more than an accommodation to the taxpayer (to ease the impact of routinely having to pay all annual taxes in one lump sum). Such a partial payment plan, is a convenience to the taxpayer, but does not affect the need to prepay all taxes for purposes of appeal. Moreover, it does not change the annual character of the assessment. Id. at 178. Thus, post-filing payments are useless and unacceptable, where establishment of jurisdiction is concerned.

In Berenter, the United States Court of Appeals for the District of Columbia [illegible] Court of the District of Columbia. Therein, the taxpayers had only prepaid the installment of real estate taxes for the first half of the 1969 fiscal year before petitioning the District of Columbia Tax court for review of the annual assessment.

In a detailed review of the history of the District of Columbia Code provisions, the Circuit reversed the denial of the District's motion to dismiss.

The appellate court in Berenter concluded that prepayment of all so-called installments of property tax was a condition precedent to any appeal, squarely because "real estate assessments are calculated, and real estate taxes are levied, on an annual

basis." Berenter v. District of Columbia, supra at 203, 466 F.2d at 374. "The entire tax to be paid during the year is levied as a single sum." Id. "Also, the rate of taxation was an annual rate." Id.

As to installments, the Circuit panel concluded that even though the annual obligation "was payable in two equal installments," the Code provision referring to such partial payments "merely established optional grace periods which a taxpayer could utilize without incurring any delinquent liability." Id.

The United States Court of Appeals in Berenter strictly construed the prepayment requirement in tax appeals, stating: "It necessarily follows that this jurisdictional requirement . . . required the prepayment of the entire fiscal year's challenged tax, before an appeal [illegible] properly taken." Id. at 204, 466 F.2d at 375. The Circuit's conceptual analysis was as follows:

> An action to cancel the tax assessed against certain real estate is, in actuality, one effectively seeking the enjoining of the assessment or collection of the tax in contravention of section 47-2410's prohibition. If a taxpayer were permitted to appeal his tax assessment before paying all of the tax levied for the entire year, any decision concerning the unpaid portion would intuitively involve the cancellation of the determined over-assessment with respect to that portion. Any other result would clearly promote multiple litigation concerning each part of the challenged tax as it was paid. Such multifarious litigation involving a non-economical utilization of judicial time could not have been reasonably intended by Congress.

Id. (footnote omitted).[5]

Following the establishment of our present local court system, the courts of the District of Columbia have consistently followed the reasoning in Berenter. "Although Berenter is not binding on us under M.A.P. v. Ryan, 382 A.2d 310, 312 (D.C. 1971), we agree with its reasoning and apply it . . . ." First Interstate v. District of Columbia, 604 A.2d 10, 13 (D.C. 1992).

V. ANALYSIS OF THE ISSUES

The Motion to Dismiss is meritorious and the Motion to Amend is not, for several reasons that tend to blend together. It is impossible to parse one motion without parsing the other.

Beyond any doubt, it is clear that the Superior Court lacked jurisdiction over the instant appeal on the day that the original Petition was filed because the entire real property tax -- as it was by then legally defined -- had not been prepaid in full. Without any further discussion, the holdings in Hyman and Berenter compel this Court to deny relief to the taxpayer herein.

The fact that an appeal of the Tax Year 1994 assesment would require payment of the September 15, 1994 installment was known to the public at large as of the publication of the new law in the District of Columbia Register. This experienced taxpayer cannot claim surprise. Moreover, the law was not (as petitioner implies)

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[5]The reference to Section 2410 of Title 47 was a reference to the basic prohibition against obtaining injunctions to prevent collection of taxes. Our Code has always contained such a provision.

in any state of "flux" as of March 31, 1994. On that date, there should have been no legitimate doubt that full payment of the taxes for Tax Year 1994 would include the installment normally payable on September 15, 1994 for those taxpayers who were not filing any appeal in March.

It is worthwhile to add that the Resolution of the Council, in introducing the purpose of the reconciliation law, only reaffirms the requirement for prepaying all installments of a Tax Year's assessment prior to filing an appeal. Ironically, it appears that the Council made a genuine choice, i.e. to create a new filing deadline -- rather than to eliminate the full prepayment requirement to conform to the old filing deadline.

Realistically, the taxpayer's desire to amend its Petition to specify the period encompassed by the "Stub Year" (as well as an additional period [illegible] the statutory deadline for filing a properly pleaded Petition after total prepayment of the taxes owed. Only by acquiring a new deadline can the September 15, 1994 payment insure that the Superior Court has jurisdiction over this appeal. However, filing deadlines are statutory, and this Court has no power to change them.

The Government of the District of Columbia has consistently operated by "the principle of 'pay first and litigate later' . . . . " First Interstate v. District of Columbia, supra at 13 n.5, quoting Allen v. Regents of the University System of Georgia, 304 U.S. 439, 456 (1938).

The pivotal fact of life that cannot be changed or finessed is that no timely Superior Court petition was filed by Tauber & Associates after the prepayment of all taxes for the newly-defined Tax Year 1994. None of the Petitioner's arguments can change this fact, however sympathetic or creative those arguments might be.

The instant case is not controlled by the particular case cited and relied upon by the taxpayer: 1111 19th Street Associates v. District of Columbia, Tax Docket No. 4251 (August 16, 1993)(Hamilton, C.J.). In that case, the taxpayer filed a Superior Court tax appeal prior to making the final partial payment of that year's taxes. The Court denied the District's Motion to Dismiss, relying upon the fact that "an employee" of the Department of Finance and Revenue somehow had extended the due date for the last partial payment. Because of Kerzner and other appellate rulings, this Court cannot find that an extension of a partial payment date has any effect of eliminating the basic requirement of prepaying all taxes for that Tax Year.

It would appear from this Memorandum Opinion that the original due date was at some point prior to the filing date of March 31, 1989 (for an appeal of the Tax Year 1989 assessment). However, it should not matter that the date for partial payment was moved further into the future. As a mere convenience to the taxpayer, this quirky extension of time by a loan bureaucrat does not eliminate a statutory prepayment requirement. While there may have been some unarticulated, underlying details that would otherwise sway this Court, this Court respectfully cannot endorse the opinion

in that case as it was published.[6]

This Court will pause to examine and elaborate on the arguments of the Petitioner, to demonstrate why the Motion to Dismiss has merit, and why even the granting of the Motion to Amend will not salvage this case.

1. The Petitioner's Motion to Amend does not address the real problem at hand. It focuses upon form of the Petition, rather than substance.

In the Motion to Amend, the taxpayer asserts that it desires to "clarify Petitioner's intent to challenge the District's tax assessment and levy on its property for both the "Stub Year" as well as the Tax Year 1994."[7]

The clarity of the Petitioner's intent is the not genuine problem. Even if the original Petition had been worded correctly, i.e. to define the 1994 Tax Year correctly and to reference the Stub Year, such Petition would have been defective (jurisdictionally) if the September 15, 1994 payment had not be made. Thus, the Motion to Amend focuses upon an editorial issue that cannot really help the taxpayer in this jurisdictional

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[6]The Government reports that 1111 19th Street is still an open case and that no final decision has been rendered. Consequently, the Memorandum Opinion has not been subjected to appellate scrutiny (whatever its underpinnings may have been). Even though the actions of the employee in 1111 19th Street may have been embarrassing to the District or unexplainable by the District, it is not difficult to understand why the District would not consent to the litigation of that tax appeal. Doing so would have opened the floodgates for all types of alleged special exceptions to the prepayment requirement.

[7]Motion to Amend at paragraph 4.

challenge.

The taxpayer's pleadings reveal that the taxpayer sees the Stub Year as an entirely separate basis for maintaining a Superior Court tax appeal. This is wrong, wrong because the tax bill that was issued for the Stub Year could only have been calculated based upon the basic, Tax Year 1994 assessment. The Code specifies the Stub Year levy as follows:

> a payment shall be due on or before September 15, 1993, equal to one-half of the tax year 1993 tax rate for the real property upon which real property tax is levied **multiplied by the assessed value for tax year 1994** of the real property upon which real property tax is levied.

D.C. Code § 47-811(d) (1997) [emphasis supplied]. In other words, no refund could be justified from the Stub Year tax bill in the absence of a successful appeal of the Tax Year 1994 assessment.

Logically, if there is no jurisdiction to hear the appeal from the annual assessment for Tax Year 1994, this Court is not in any position to grant relief to the Petitioner for only the Stub Year. This is exactly why the taxpayer cannot gain partial relief by winning a denial of the District's Motion as to the Stub Year, even if the Court grants the District's Motion as to the full Tax Year 1994.

The Superior Court's jurisdiction only extends to an "assessment." D.C. Code § 47-3303 (1997). Assessments are imposed for an entire Tax Year. While a taxpayer may confine its gripe on appeal to half of a Tax Year, the taxpayer is still required to pay the entire annual assessment in order to have the right to present

its grievance to the Superior Court.[8]

This Court does have the authority to grant the Motion to Amend Petition, because it arguably has merit in a very hyper-technical sense as to the taxpayer's "intent." However, in granting the Motion, the true jurisdictional issue would not be adjudicated. There is more than one way to describe this situation. The Court could deny the Motion to Amend on mootness grounds because of the merit of the Motion to Dismiss. Alternatively, the Court could grant it -- but only as a useless gesture. The Court will exercise its discretion to deny the Motion.

2. This Court has listened carefully to the argument of the taxpayer's counsel, particularly as he contends that the new law created two different classes of aggrieved taxpayers.

In the Opposition to Respondent's Motion to Dismiss, the Petitioner attempts to construct a constitutional attack on the Government's jurisdictional argument. The Petitioner posits that the new law created two "unequal classes: (1) those who desired to appeal the Tax Year 1994 taxes and who must pay all Tax Year 1994 taxes at one time by March 31, 1994, and (2) those who did not wish to appeal, and could thus pay half of the Tax Year 1994 taxes on September 15, 1994."[9] More precisely, the second category appears

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[8]It is not unusual for taxpayers to file appeals that pertain to only one half of a particular Tax Year. This is because tax bills are sometimes increased, mid-year, because of new construction and other issues.

[9]Petitioner's Opposition to Respondent's Motion to Dismiss at 3.

to embrace those taxpayers who did not choose to appeal prior to March 31, 1994, but who belatedly decided to take advantage of the reconciliation law. The Petitioner's approach is not convincing and cannot withstand scrutiny, for the following reasons.

First, to the extent that the second grouping of taxpayers had more time to prepay all taxes for the newly-defined Tax Year 1994, the petitioner herein could have self-selected itself into that category or class -- and there was no legal impediment to doing so. Petitioner could have self-selected itself into this second group very easily, by filing a motion to amend his Petition before September 30, 1994 or by withdrawing the old Petition and filing a new one by September 30, 1994. The Office of Corporation Counsel gave Petitioner the road map for doing do. Even without such free advice, there was no genuine discrimination arising from the new law itself.

Nothing in the new statutory provision purported to eliminate the requirement for total prepayment of all taxes as a condition precedent for initiating a Superior Court appeal. All taxpayers are subject to this requirement. The mere fact that a window was opened for additional appeals to be filed, does not mean that any discrimination was being created.

Secondly, in dollars and cents, the total and correct tax payment for Tax Year 1994 (as a pre-filing requirement) would have been exactly the same for Tauber & Associates regardless of whether it was paid prior to March 31, 1994 or only by September 15, 1994. The whole notion of being able to make partial payments of annual

taxes is a red herring. The ruling in Berenter totally undercuts the taxpayer's novel constitutional theory.

Thirdly, to the extent that the Petitioner sees itself as belonging to one "class" rather than another, this Petitioner propelled itself into a problem, because of its failure to heed the warning letter from the District. More importantly, it failed to heed the Code itself.

There was an ample window of time during which this Petitioner could have solidified its right to appeal by merely filing a Motion to Amend the March 31, 1994 Petition after making the September 15 payment, or by withdrawing the original Petition and filing a totally new one by September 30, 1994 after making such payment. The fact that this was not done is squarely the fault of the taxpayer, not the District and not the legislature.

The concept of discriminatory, disparate classes of taxpayers conjures up the image of unequal taxation that is foisted upon a taxpayer by operation of law. Here, this is not the case. The requirement for full prepayment of all taxes applied to all taxpayers.

If anything, this particular taxpayer belonged to a group that was given a proverbial second bite at the apple. Thus, this taxpayer cannot seriously claim to be a victim of any kind.[10]

The Petitioner in part relies upon a one-judge ruling in another Superior Court tax appeal, on the subject of

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[10]The record does not reveal why total prepayment was not made prior to the filing of the original Petition. This may have been a result of negligence by the Petitioners or their prior counsel.

unconstitutionally disparate treatment of taxpayers. That opinion was issued in AOBA v. District of Columbia, Tax Docket No. 2467 (September 14, 1979), 107 D.W.L.R. 2097 (November 29, 1979) (McArdle, J.). Therein, the trial court found a statute to be unconstitutional because it mandated that only taxpayers who owed over $100,000 in real property taxes were required to pay in one lump sum rather than in installments. To the extent that such legislation created unequal classes of taxpayers, this was an example of legislative fiat over which the taxpayers had no control. This point distinguishes AOBA from the instant case, even assuming that AOBA was correctly decided.

To boot, Judge McArdle also stated in this published decision, "The Council of the District of Columbia cannot treat in different manners taxpayers who are similarly situated, without having a rational basis and reasonable justification for such discrimination." Id. In the instant situation, the rational basis for the legislation was to neutrally redefine "Tax Year." This kind of change, categorically, can never come about without the risk that certain persons will be adversely affected.[11] In any event, in AOBA, nothing in the Code offered any relief or exceptions.

By contrast, in the instant case, there is no evidence that the Council knowingly or purposefully attempted to create different

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[11]This is not unlike what happens when a governmental or corporate body changes its definition of "fiscal year." Someone will always be caught in the middle. The practical question is whether the relevant authority made any provision for transition issues. Herein, the Council eventually did so.

categories or classes of taxpayers when it changed the definition of "Tax Year." Later, the Council recognized an inconvenience that it had not intended to occur and acted specifically to ameliorate the problem.

The taxpayer herein simply did not take advantage of the mode of amelioration. Overall, the scenario in AOBA is not a true analogy to the instant case.

3. The Petitioner complains that it was faced with a so-called "Hobson's Choice" "between advance payment and not appealing at all."[12] The Petitioner's reference to a Hobson's Choice implies that paying the full tax in advance presented a conceptual dilemma that could not be resolved -- not merely that it was annoying or expensive. This analogy to a Hobson's Choice is frivolous.

The term "Hobson's Choice" denotes "[a]n apparently free choice that offers no actual alternative," referring to a 17th century English liveryman (Thomas Hobson) who required "that customers take either the horse nearest the stable door or none."[13]

There is nothing legally intolerable in having to choose between foregoing an appeal and paying all of the installments for Tax Year 1994 even though the installment dates had not yet passed. The District of Columbia Circuit in Berenter long ago put to rest any notion that prepayment tax for appeal purposes is somehow unconstitutional or inherently improper. Consequently,

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[12]Petitioner's Response to Respondent's Opposition to Motion to Amend Petition, at 5-6.

[13]Webster's New Riverside University Dictionary, 585 (1984).

Petitioner's situation was not truly a Hobson's Choice, any more so than the choice faced by any other taxpayer who must prepay all taxes and penalties before launching an appeal.

It is important to note that the Council did not pass any legislation to retroactively legitimize tax appeals that were filed without full prepayment of taxes, even when such taxpayers had satisfied all payments by the new deadline date of September 30, 1994. In weighing various options, such as the reconciliation legislation, the Council easily could have done so. It simply did not choose to do so. Giving **retroactive** relief to taxpayers such as this Petitioner was not the intent of the legislature.

In conclusion, the taxpayer herein may well be the only taxpayer that is by now currently paying the price for failure to scrupulously comply with this particular change in the Code.[14] The Court cannot provide relief, however, for the reasons set forth herein above.

WHEREFORE, it is by the Court this 14th day of January, 1999

ORDERED that the Motion to Dismiss is granted; and it is

FURTHER ORDERED that the Motion to Amend Petition is denied as moot; and it is

FURTHER ORDERED that this action is dismissed.

/s/ M. Long
Cheryl M. Long
Judge

[14]This is the only case of this nature that has come before this Court's for adjudication.

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