**SUPERIOR COURT OF THE DISTRICT OF COLUMBIA**
**TAX DIVISION**



| | | |
|---|---|---|
| SIMON & MARSHA OSNOS | ) | |
| | ) | |
| Petitioner(s), | ) | |
| | ) | Tax Docket No.:6342-94 |
| v. | ) | |
| | ) | |
| DISTRICT OF COLUMBIA, | ) | |
| | ) | |
| Respondent(s). | ) | |
| | ) | |

**MEMORANDUM OPINION AND ORDER**

**1.** The taxpayers, Simon M. and Marsha M. Osnos own real property in the District of Columbia at 915 5th Street, N.W., Lot 824, Block 516 ("the property").

**2.** Under the former version of D.C. Code §47-802(7) (1989), the tax year for purposes of payment of real estate taxes began each year on July 1, and ended each year on June 30 of the next year.

**3.** Under the former version of D.C. Code §47-811(1989), owners of real property in the District of Columbia were required to make semi-annual tax payments each year: the first installment on September 15, corresponding to the first half of the tax year (July 1 - December 31), and the second installment on March 31, corresponding to the second half of the tax year (January 1 - June 30).

**4.** The taxpayers' property was assessed at $385,000.00 during the 1993 tax year. The taxpayers paid their first half taxes to the District in the amount of $4,138.75 for the tax period July 1, 1992 - December 31,

1992, and paid their second half taxes to the District in the amount of $4,138.75 for the tax period January 1, 1993 - June 30, 1993.

**5.** The taxpayers also sued the District to obtain reduction of the 1993 tax year assessment. As a result of the suit, a compromise was reached to reduce the assessed value to $290,000.00. The taxpayers received a refund of $2,042.50 from the District.

**6.** In February 1993 the District sent the taxpayers a notice of proposed assessment for the tax year 1994. The proposed value was $385,000.00. The taxpayers did not contest the assessment.

**7.** On September 15, 1993, taxpayers paid the District $4,138.75 in real estate taxes. However, pursuant to the Omnibus Budget Support Act of 1993 effective September 30, 1993, the District designated this payment as "the September 15 payment" and did not credit the payment toward any specific tax year.

**8.** The Omnibus Budget Support of 1993 amended D.C. Code §47-802(7) to provide that future tax years would begin on October 1 and end September 30. The Act also amended D.C. Code §47-811 to provide for semi-annual tax payments, with the first installment on March 31 of each year and the second installment on September 15 of each year. In essence, the Act left the semi-annual tax due dates the same but reversed the order of the payments making March 31, the first semi-annual payment instead of the second one and

September 15, the second semi-annual payment date instead of the first one.

**9.** In February 1994, the District sent taxpayers a notice of proposed assessment with a value of $385,000.00 for the property. The taxpayers contested the assessment and obtained from the Board of Equalization and Review, a reduction in the assessed value to $200,000.00.

**10.** The tax rate for the property was 2.15%. The annual tax at the new reduced assessment was $4,300.00, or $2,150.00 for each semi-annual payment.

**11.** The District sent the taxpayers a tax bill for $4,138.75 for the first half of tax year 1994 because of their failure to challenge the February 1993 assessment which went into effect for the 1994 tax year, as redesignated by the Omnibus Budget Support Act of 1993.

**12.** The taxpayers argue that they are entitled to a correction of the tax bill to reflect the reduction in assessed value as determined by the Board of Equalization and Review to a tax payment of $2,150.00 for the September 15, 1994 or second half tax payment for tax year 1994.

**13.** The Petitioners further argue that failure to allocate the September 15, 1993 tax payment of $4,138.75 as payment of taxes for the first half of 1994 is a taking of the taxpayers' property without compensation and is prohibited under the United States Constitution.

**14.** Finally they argue that the Government should be permanently enjoined from collecting any tax for the second half of the 1994 tax year in excess of $2,150.00.

## Analysis

In the case at bar, Petitioners request that the District enjoin the collection of real property tax due for the second half of the new 1994 tax year. The District opposes the request for an injunction on the ground that the anti-injunction statute prohibits the Court from enjoining the assessment or collection of any taxes absent a showing (by Petitioners) of exceptional and exigent circumstance. Further, Petitioners contend that the statutory "pay first then sue" provision is inapplicable because there is no adequate remedy at law. Consequently, Petitioners' challenge is subject to D.C. Code §47-3303 requiring that the assessment be paid prior to the initiation of a suit and that such a challenge must be brought within six months of the date of the assessment in question. In addition to the statutory language of the pay and sue requirement, the Court relies upon D.C. Code §47-3307, which bars suits restraining the collection of taxes.

### I. Petitioners' Suit is Barred by Anti-Injunction Statute

Petitioners' seeks to enjoin the District of Columbia on constitutional grounds, contending that the Omnibus Budget Support Act of 1993 is unconstitutional because the act allows the District to tax their property for three

half-year periods at the 1994 assessed value of $385,000.00 instead of two half-year periods.

The law is well settled in this area. D.C. Code §47-3307 provides that "no suit shall be filed to enjoin the assessment or collection by the District of Columbia or any of its officers, agents, or employees of any tax." If a taxpayer has an adequate remedy at law, no injunction will be permissible. While this law is clear on its face, Barry v. American Telephone & Telegraph Co., 563 A. 2d 1069 (D.C. 1989), outlined a two part test for determining whether an injunction would be granted. Barry held that the taxpayer must prove 1) that under the most liberal view the government can not establish its claim, and 2) that the taxpayer would suffer irreparable harm if forced to pay his taxes first and then sue. Id. at 1075. The Court noted that an injunction would be granted only in "exceptional and stringent" circumstances. Id. at 1076.

Petitioners rely on District of Columbia v. Green, 310 A.2d 848 (D.C. 1973) in seeking a preliminary injunction to restrain the District from collecting more than $2,150.00 in tax on their property for the tax payment due March 31, 1994. In Green, the government was enjoined on constitutional grounds from altering the debasement factor, thus raising the percentage on which residential properties would be taxed. However, Green is distinguished from the present case. In Green, the government was enjoined on constitutional grounds because of the discriminatory and

unequal treatment by the government to a certain class of taxpayers--it raised the debasement factor in some but not all single family residences. Id. at 849. It was this arbitrary action of the government and not the tax itself that was considered unconstitutional. In this case, the Omnibus Budget Support Act of 1993 affects all taxpayers the same and there is no arbitrary action on the part of the government. Petitioners also argued that the taxpayers in Green whose properties were to be taxed at the higher debasement factor had no meaningful opportunity to challenge their assessments. However, this argument is specific to the facts in Green, because the Court in Green stated that no judgment would be made for those taxpayers because the new debasement factor was arbitrarily determined as was its applicability to certain real property. Id at 856. Intentional and arbitrary discrimination was declared unconstitutional. See also Weissinger v. Boswell, 330 F. Supp. 615 (M.D. Ala. 1971) (the Court declared unconstitutional Alabama's ad valorem tax system, which applied two different levels of assessment to the same class of property, because of its inequality of treatment to its taxpayers).

Under D.C. Code §47-3307, Petitioner's suit is barred as it would have the effect of restraining the collection of taxes in contravention of the statute. In Barry v. American Tel. & Tel. Co., 563 A. 2d 1069 (D.C. 1989), the District of Columbia Court of Appeals has stated "[t]he generally

recognized purpose of an anti-injunction statute is to prevent disruptions in the flow of tax dollars to the state treasury for government operations and the provision of essential public services." Id. at 1073.

Federal courts interpreting 26 U.S.C.A. §7421 (1986 & Supp. 1996), which is the federal equivalent of D.C.'s Anti-Injunction statute, have also found that the statute's purpose is to protect the government's need to assess and collect taxes as expeditiously as possible with minimum preenforcement judicial interference. Thus disruptions in the flow of government revenue is prevented. See Enochs v. Williams Packing & Nav. Co., 370 U.S. 1,7, (1962), and Allen v. Regents, 304 U.S. 439, 456 (1938) (holding "[t]he prompt collection of revenue is essential to good government...Any departure from the principle 'pay first and litigate later' threatens an essential safeguard to the orderly functioning of government"). Moreover, unless it appears that under no circumstance could the government prevail, the collection can not be restrained. Leves v. Internal Revenue Serv. Comm'r., 796 F. 2d 1433, 1434 (11th Cir. 1986).

Therefore, the goal of facilitating the collection of taxes which underlies the pay and sue provision and the prohibition on suits that restrain the collection of taxes weigh in favor of bringing Petitioner's challenge within the pay and sue provision.

## II. The Court Has No Jurisdiction Absent Payment

This Court has long followed the established rule that judicial review of a disputed tax assessment is improper until the disputed tax, penalties and interest are paid. First Interstate Credit Alliance, Inc. v. District of Columbia, 604 A. 2d 10, 11 (D.C. 1992); Perry v. D.C., 314 A.2d 766, 767 (D.C. 1974), cert. denied 419 U.S. 836 (1974). See also George Hyman Constr. Co. v. District of Columbia, 315 A.2d at 175; Wagshal v. Dist. of Columbia, 430 A. 2d 524, 527 (D.C. 1981).

Petitioners contend that they have no remedy at law and should not be required to "pay first then sue" because there is no statute authorizing a refund once the March 31, 1994 payment is made in full. They based their argument on District of Columbia v. Keyes, 563 A. 2d 1069 (D.C. App. 1989) which states that taxes which are illegally or erroneously assessed can not be refunded absent an authorizing statute. Like Green, Keyes is bound by its facts, and the case at bar does not have the same or a similar fact pattern, therefore Keyes is distinguishable. The taxpayers here could have challenged the February, 1993 assessment notice and if successful could have received a tax refund. Their failure to do so put them in the predicament they now find untenable, not any action on part of the Respondent.

Respondent contends that Petitioners failed to exhaust their administrative remedies, thus precluding themselves

from a review by the Court. Petitioners admittedly did not contest their assessment. Petitioners maintain that there were three payments under the 1994 tax year (old and new), and that the assessment did not cover three periods. Because the Omnibus Budget Support Act of 1993 did not change the right of a citizen to challenge the assessment issued by the District of Columbia, Petitioners had a six month time frame to challenge the assessment.

The law prescribes a certain statutory framework that all taxpayers must follow when challenging their taxes. See D.C. Code §47-3303. It requires that the taxpayer first appeal to the Board and prepay all taxes, penalties and interest before appealing to the Superior Court. These statutory provisions have been interpreted as jurisdictional requirements. The failure to pay all taxes, penalties and interest will deprive the court of subject matter jurisdiction to consider the taxpayer's appeal. See District of Columbia v. Berenter, 406 F. 2d 367, 375 (D.C. App. 1972); First Interstate v. District of Columbia, 604 A. 2d 10, 11 (D.C. App. 1992); George Hyman Constr. Co. District of Columbia, 315 A. 2d 175, 175 (D.C. App. 1974); Wagshal v. District of Columbia, 430 A. 2d 524, 527 (D.C. 1981).

The Court has traditionally required that the aggrieved tax payer pay all taxes before filing an appeal in the Superior Court. Petitioners have not paid all of their 1994

taxes. Therefore, this Court lacks subject matter jurisdiction.

Based upon D.C. Code and relevant case law, this Court finds that Petitioners' claim is subject to the pay and sue jurisdictional requirement of D.C. Code §47-3303 (1997 Rpl.) Further, the Petitioner's suit is barred by the Anti-Injunction Act, which prohibits any suits which restrain the collection of taxes.

**III. Statute of Limitations Has Expired**

The Court is aware that even if the Petitioners were to satisfy the jurisdictional requirement, the applicable time period for the appeal procedures has long since expired. The Court is also mindful, however, that Petitioners may bring themselves within the recognized exceptions to the pay and sue requirement by demonstrating that the government could not possibly prevail and that irreparable harm would result from barring suit. Barry v. Am. Te. & Tel. Co., 563 A. 2d at 1076. Petitioners, however, have not satisfied these requirements. Thus as has been stated previously, "[A]lthough the [pay and sue] provision appears to be harsh we do not see how we can avoid giving it effect." D.C. v. McFall, 188 F. 2d 991, 993 (D.C. Cir. 1951).

**Conclusion**

What the Petitioners are seeking here is to obtain, in effect, the Court's endorsement of them skipping the September 15, 1993 payment altogether by arguing for converting this payment to the one due on March 31, 1994.

Further, Petitioners would have the Court endorse the concept of an illegal twice annual assessment by allowing the February 1993 unchallenged $385,000.00 assessment notice to serve as the basis for paying $4,138.75 for the first half payment due by March 31, 1994 for new tax year 1994 taxes and allowing the February 1994 successfully challenged $385,000.00 (down to $200,000.00) assessment notice to serve as the basis for paying $2,150.00 for the second half tax payment due by September 15, 1994, for new tax year 1994 taxes. At the same time Petitioners argue that the Respondent has failed to make the legally required annual assessment, they are trying to skip altogether one semi-annual tax payment date.

The entire basis for Petitioners argument is their failure to challenge the February 1993 tax assessment notice.

Based on the statutory language and the relevant case law, it is clear that this Court lacks jurisdiction over this matter. Therefore, it is on this 11th day of June, 1999

**ORDERED** that the Respondent's Motion to Dismiss for lack of Subject Matter Jurisdiction is **GRANTED**.

W. P. Gardner

JUDGE WENDELL P. GARDNER, JR.
Signed in Chambers

**copies to:**

Simon M. Osnos, Esquire
1000 16th Street, N.W.
#805
Washington, D.C. 20036

Simon M. Osnos and
Marsha Mino Osnos
8013 Cypress Grove Lane
Cabin John, Maryland 20818

Office of the Corporation Counsel
441 Fourth Street, N.W.
6-N
Washington, D.C. 20001

L:\intern.wk\osnosfinal.2