SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
TAX DIVISION

FRIENDSHIP HOSPITAL FOR ANIMALS, INC., (FHA),	)	
Petitioner,	)	
v.	)	Tax Docket No. 6367-95
	)	Judge Wendell P. Gardner, Jr.
DISTRICT OF COLUMBIA,	)	
Respondent.	)	

MEMORANDUM OPINION & ORDER

Facts

The basic facts in this matter are not in dispute. On June 2, 1995, Friendship Hospital for Animals, Inc. ("FHA") filed the instant petition in Superior Court pursuant to D.C. Code 47-§1815.1 (Repl. 1990) appealing the District of Columbia's denial of its claim for a refund of overpayment of taxes. The District filed, and Petitioner was served, a Motion to Dismiss for Lack of Subject Matter Jurisdiction on July 17, 1995. Petitioner filed its opposition thereto on August 1, 1995. A status hearing was held on August 21, 1995.

It is undisputed that the Petitioner has paid the taxes in question through estimated tax payments prior to filing the instant petition. See Pet'r Pet. at 2. The dispute arises as a result of the fact that on February 24, 1994, the District of Columbia Department of Finance and Revenue issued FHA a Notice of Tax Deficiency for Tax Year 1992 disallowing a portion of FHA's net operating loss carryback. Subsequent to this notification, on March 8, 1994, FHA availed itself of protest procedures available to it according to D.C. Code 47-§1812.5 (Repl. 1990) which allows

taxpayers to challenge a deficiency assessment and request a hearing. A hearing was held on May 4, 1994.

On June 14, 1994, the District notified FHA of its final decision regarding the disallowance and maintained the original assessment. On January 31, 1995, FHA submitted to the District the claim for refund which is the subject of the instant petition. The refund claimed is exactly the same money sought by the taxpayer in its challenge to the deficiency assessment. On April 19, 1995, the District notified FHA by letter that as a final determination had already been made no further action would be taken on FHA's claim. (See Pet'r Pet. at Exhib. B).

The issue raised is whether the instant petition is properly before the court. Petitioner argues that its petition was properly filed within the statutory six-month period. Respondent, however, has filed its motion to dismiss on the grounds that Petitioner's appeal comes after the six-month period allowed by statute. Petitioner argues that its claim for a refund on January 31, 1995, restarts the time period allowed under the statute in which to file an appeal from a denial of a refund. This court follows the established rule in this jurisdiction that when a petitioner fails to file its petition within the statutory period the court lacks jurisdiction in the matter. First Interstate Credit Alliance, Inc. v. District of Columbia, 604 A.2d 10, 11 (D.C. 1992).

Analysis

At issue in this matter is confusion generated by D.C. Code

47-§1815.1 (Repl. 1990) which provides for the right of an aggrieved person to appeal an assessment made by the District. Section 1815.1 clearly states:

> Any person aggrieved by any assessment of a deficiency in tax determined and assessed by the Mayor under the provisions of §47-1812.5 and any person aggrieved by the denial of any claim for refund made under the provision of §47-1812.11, may, ***within 6 months from the date of the assessment of the deficiency or from the date of the denial of a claim for refund, as the case may be, appeal to the Superior Court of the District of Columbia, in the same manner and to the same extent as set forth in §§47-3303, 47-3304, 47-3306 to 47-3308.*** D.C. Code §47-1815.1 (Repl. 1990) [emphasis added].

The question arises whether this provision provides a petitioner with separate and exclusive routes of relief. Petitioner argues that D.C. Code 47-§1815.1 (Repl. 1990) provides two methods of relief that are **not** mutually exclusive. Petitioner contends that the hearing process provided by D.C. Code 47-§1812.5 (Repl. 1990) and the opportunity to request a refund of an overpayment via D.C. Code 47-§1812.11 (Repl. 1990) may be sought separately and successively. In the instant case, the District argues that the provision provides mutually exclusive means of relief.

It may appear anomalous that a taxpayer could be assessed for a deficiency in tax payments and also claim a refund for an overpayment. However, D.C. Code §47-1801.4 (1990 Repl.) defines deficiency as the difference between the tax imposed by the government and the amount shown as the tax by the taxpayer. Hypothetically, if the taxpayer pays $500,000 in taxes and the tax imposed by the government is $400,000 but the taxpayer shows

$300,000 as the tax due, the tax imposed exceeds the tax as shown by $100,000, thereby creating an assessment deficiency of $100,000 although the government has in effect determined that the taxpayer is entitled to a $100,000 refund while the taxpayer claims he is entitled to a $200,000 refund.

Petitioner argues that D.C. Code 47-§1815.1 (Repl. 1990) allows him to pursue successive avenues of appeal. Petitioner concedes that he sought and was denied administrative relief on June 14, 1994, through the hearing afforded him under D.C. Code 47-§1812.5 (Repl. 1990). However, Petitioner contends that he is also allowed to appeal the denial of his claim for a refund under D.C. Code 47-§1812.11 (Repl. 1990). This Court does not quarrel with Petitioner's contention that the Code provides him an administrative remedy as well as an avenue of appeal to this Court. However, under Petitioner's reading of D.C. Code 47-§1815.1 his "claim" for a refund in January 1995 operates to restart the statutorily allowable time period for filing appeals for refunds. See Pet'r Pet. at 2. In essence, Petitioner reads D.C. Code 47-§1815.1 (Repl. 1990) to afford him two separately timed routes of relief. But, even if the court accepts Petitioner's argument that the provision affords two avenues of appeal, Petitioner's efforts to pursue the denial of its claim for a refund comes too late. Petitioner's appeal to this court on his claim for a refund for overpayment should have been filed by December 14, 1994. The provision provides that an appeal to this court must come within six months of the date of the final assessment or date of the

denial of claim for refund. See D.C. Code 47-§1815.1 (Repl. 1990). In this case, the final assessment was determined on June 14, 1994, thus Petitioner's appeal to this court for a refund of an overpayment of taxes should have come at the latest by December 14, 1994. Petitioner contends that the fact that he made his claim for a refund in January 1995 which was denied in April 1995 and then filed the instant petition in June 1995 all serve to bring him within the contemplation of D.C. Code 47-§1815.1 because the claim for a refund operates to restart the allowable time period for filing his appeal to this court.

But, as Respondent points out, if the provision were to be read to allow that Petitioner's claim for a refund to restart the allowable time period, this would make ineffective the provision's six-month time period with respect to appealing deficiency assessments. Under Petitioner's reading, a taxpayer could have an indefinite period in which to bring a refund claim. As Respondent notes, it is an established principle of statutory construction in this jurisdiction that, "[A] statute should not be construed in such a way as to render its provision superfluous or insignificant." Floyd E. Davis Mortgage Corp. v. District of Columbia, 455 A.2d 910, 912 (D.C. 1983).

The Code clearly states that a taxpayer may appeal within six months of the final assessment or denial of a claim for a refund in accord with D.C. Code 47-§3303. D.C. Code 47-§3303 provides that appeal must be made within six months of the assessment and after payment in full of the disputed taxes, penalties and interest. See

D.C. Code 47-§3303 (Supp. 1995). The key date here then is the date on which the deficiency assessment becomes final. It is undisputed that this determination was made on June 14, 1994. Thus Petitioner's choice to pursue the appeal of claim for refund outside the allowable six month time period deprives this court of subject matter jurisdiction. First Interstate Credit Alliance, Inc. v. District of Columbia, 604 A.2d 10, 11 (D.C. 1992). Based on the aforesaid undisputed facts and the applicable law, it is by the Court, this 1st day of November, 1995,

ORDERED that the motion to dismiss is hereby **GRANTED**; and it is **FURTHER ORDERED** that the petition be and is hereby dismissed with prejudice.

W. P. Gardner

JUDGE WENDELL P. GARDNER, JR.
Signed in Chambers

Copies mailed to:

Barry S. Friedman
Thompson, Hine and Flory
1920 N Street, N.W.
Suite 700
Washington, D.C. 20036

Garland Pinkston
James Randall
Nancy Smith
Corporation Counsel
441 4th Street, N.W., #6 North
Washington, D.C. 20001

L:\TAX\ORDERS\FHA.OPN