SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
TAX DIVISION

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TAX DIVISION

TILDEN GARDENS, INC.,

v. Tax Docket No. 7852-99

DISTRICT OF COLUMBIA

MEMORANDUM OPINION AND JUDGMENT

The instant litigation involves a civil action that was certified to the Tax Division for adjudication. This was done only because, preliminarily, the case appeared to involve a tax assessment appeal. Upon examining the entire record, it is now clear to this Court that the particular issue herein is an extremely unique matter under the tax assessment scheme. Yet, upon the further reflection, this case could have been adjudicated on the Civil

Division calendar because it involves solely a demand for declaratory relief. This case clearly does not entail a demand for a trial *de novo* as to fair market value. Indeed, no such trial is needed. Because of the passage of time, there is no sound reason to quibble about the divisional calendaring of this case. The Superior Court's jurisdiction over this case is not limited to either the Tax Division or the Civil Division. *See Clay v. Faison*, 583 A.2d 1388, 1390 (D.C. 1990); *Andrade v. Jackson*, 401 A.2d 990, 993 (D.C. 1979).[1] This Court will not churn the case any further by deflecting it back to the Civil Division, but will decide this case on the merits.

The special circumstances involving the Petitioner and the relevant historical era make it highly unlikely that the pivotal issue herein affects any other pending Superior Court case. Nonetheless, the Court must parse the issues carefully.

The District has filed a Motion to Dismiss that should be treated as a Motion for Summary Judgment. This is the correct approach, given the

[1] The Court of Appeals "has long held that there is no jurisdictional bar to one division of the Superior Court entertaining an action more appropriately considered in another division, so long as doing so does not violate the statute or rules of the court and the claim has a rational nexus to a subject matter within the responsibility of that division." *Clay v. Faison, supra*, at 1390. Here, the taxpayer's claim obviously has a rational nexus to assessment appeals. However, no party should be overly impressed by the Code's use of the term "jurisdiction" to describe the assignment of assessment appeals to the Tax Division. See D.C. Code §11-1201. Such language is merely a throwback to the historical origins of the Tax Division, *i.e.* the old one-judge Tax Court that existed prior to the creation of the Superior Court. The reference to the "jurisdiction" of the Tax Division signals nothing more than a familiar organization of labor that mimics the caseload that poured over from old Tax Court. The same type of "jurisdictional" language appears in

nature of the jurisdictional issue and given the District's apparent recognition that relief is warranted if the Court has jurisdiction at all.

The taxpayer herein seeks declaratory relief which, if granted by the Court, will result in a refund for Tax Year 1998. Unlike a conventional assessment appeal, this taxpayer does not ask for a trial *de novo* as to fair market value. Instead, the taxpayer demands only an order directing the District to use the negotiated assessment for Tax Year 1997 as the assessment for Tax Year 1998. That negotiated valuation was the result of an earlier Superior Court assessment appeal that was settled.

As a practical matter, the taxpayer seeks to enforce a statute that was enacted to fill the breach during the conversion from one assessment system to another. The law that governs the conversion period is commonly known as the "rollover" provision of D.C. Code §47-480 (1996).

The District seeks a dismissal of this case, contending that the taxpayer is strictly precluded from operation of the rollover provision only because the taxpayer elected to file a Superior Court assessment appeal for Tax Year 1998, instead of just waiting for the 1997 rollover to take effect.

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the Code with respect to the Family Division. See D.C. Code §11-1101. However, such verbiage has no legal significance. *Clay v. Faison, supra.*

The taxpayer voluntarily dismissed the Tax Year 1998 Superior Court appeal, and argues that such appeal had been merely "protective" in nature. In other words, the taxpayer argues that the filing of the appeal did not extinguish any of its rights to so-called "rollover" relief.

Significantly, the District concedes that if the taxpayer had never filed the 1998 Superior Court appeal at all, the taxpayer would have been entitled to the rollover benefits of the lower 1997 assessment that it had negotiated.

The District basically argues that denial of rollover relief is the statutorily intended consequence for attempting to appeal the assessment for the rollover year itself.

The taxpayer's whole reason for filing the Petition for Declaratory Judgment was to insure the very same relief to which the taxpayer was already entitled under the Code.

The facts of what occurred, procedurally, are not in dispute. Rather, the focus of this case is upon the purpose of the rollover statute and the taxpayer's rights thereunder. The Court must closely examine the statute.

Based upon the analysis set forth herein, the Court is constrained to agree with the taxpayer that this lawsuit is properly before the Superior

Court based on subject matter jurisdiction and the lack of any timeliness problem. The Superior Court generally has jurisdiction over demands for declaratory relief, and there is no statute that erects a deadline for filing such actions. On the merits, based upon the intent of the statute, there is no sound basis for denying the declaratory relief that is requested.

THE ROLLOVER PROVISION

The law that is the subject of the dispute herein created a new system for the taxation of real property. The old law required the District to assess each and every piece of real property once each year. The taxation date had been January 1 of each year. Under the new law, assessments are to be performed every three years. The concept is that assessments should remain stable for three years. Obviously, the legislature had to create a system for handling tax appeals during the period of conversion from one system to the other. The Council of the District of Columbia focused on Tax Years 1997 and 1998.

The Tax Year 1998 came to be known as the so-called "rollover year." Specifically, the new language in the Code states in pertinent part,

> the real property tax year 1998 assessed value of all real property, subject to appeal pursuant to 47-825.1, shall be the real property tax year 1997 assessed value; provided, that for the purposes of

> appeal, the valuation date for real property tax year 1998 real property assessments shall be January 1, 1997. For purposes of determining the real property tax year 1998 assessment, the 1997 assessment with the latest date shall be the final 1997 assessment by the Mayor unless the assessment was otherwise revised by the Board of Real Property Assessments and Appeals or the Superior Court of the District of Columbia. In the case of a revision, the 1997 assessment shall be the assessment as determined by the Board of Real Property Assessments and Appeals or the Superior Court.

D.C. Code §47-820(a-1) (1996) [emphasis added].

PERTINENT PROCEDURAL AND HISTORICAL FACTS

The taxpayer herein is Tilden Gardens, Inc., the owner of Lots 005, 006, 007, and 801 in Square 2059, and the improvements thereon. As a practical matter, this property is a residential cooperative in the northwest quadrant of the city. The Petitioner is obligated to pay real property taxes that are assessed against these lots.

The Tax Year 1997 assessment was subject to an appeal before the District of Columbia Board of Real Property Assessments and Appeals. In addition, the taxpayer filed an appeal in the Superior Court. The parties settled the appeal, and the District agreed to provide a refund to the

taxpayer. This settlement was approved by the Court in an order filed on June 29, 1998, in Tax Appeal No. 7269-97. The revised 1997 assessment for each lot was set forth in that court order. In the court order, the total amount of refund due was stated as $14,765.60 with interest at 6% per annum.

Before the Tax Year 1997 appeal was finally settled, the taxpayer was confronted with a stark dilemma. The taxpayer's quandary was to decide how best to preserve its rights in light of the impending statutory deadline for appealing the Tax Year 1998 assessment. That deadline for initiating the Board appeal was April 30, 1997. It was impossible to obtain any extension of this deadline. Furthermore, the taxpayer did not have control over the manner and time in which the 1997 Tax Year appeal would be decided or settled in the Superior Court. Thus, the taxpayer filed the Board appeal and eventually filed the appeal Petition in the Superior Court, relating to Tax Year 1998. The Superior Court appeal was voluntarily withdrawn.

The taxpayer had created a clear trail as to precisely why it was pursuing the formal appeal process for Tax Year 1998. Explicitly, the Petitioner stated in its Board appeal that relief was justified because, "[t]his

is a carryover of the previous year's tax appeal on this property." It is also a fact that the Petitioner attached a supplemental page on which it specified, "This appeal is being filed, *inter alia,* to preserve Petitioner's rights to a carry-over adjustment of the real property assessment for Tax Year 1998."

On June 4, 1999, Tilden Gardens, Inc. filed a Petition for Declaratory Relief, in Civil Action 3860-99, in the Superior Court. The Hon. Judith Bartnoff (the assigned calendar judge) preliminarily reviewed the civil action and certified the case to the Tax Division.[2]

Another argument raised by the District, even assuming the timeliness of this appeal, is that the appeal lacks merit for substantive reasons. The taxpayer's premise for seeking a reduction of taxes is its reliance upon a so-called "rollover provision," relating to 1997 assessments for which certain taxes were not raised for Tax Year 1998. The District contends that the "rollover" law literally does not apply in situations where the taxpayer chooses to pursue an appeal of the assessment rather than accepting the immediate benefits of the rollover itself.

In the instant Petition, the taxpayer seeks a judgment of the Superior Court granting one, discrete item of relief: a declaration as a matter of law

[2] This Court would have made the same decision, given the dearth of information about the true origins of the case and without helpful briefing at the early stage of the case.

that the taxpayer is entitled to a reduction of its assessment for Tax Year 1998 that is based upon an assessment that is identical to the one negotiated as to Tax Year 1997. The taxpayer explicitly seeks an order requiring the District to pay out a refund that is consistent with this valuation for Tax Year 1998. Interest will be due as well.

Having reviewed the entire record herein, this Court finds that the taxpayer should prevail on all issues.

The Court relies upon the following analysis as to the issues of the character of the action, its timeliness, and the applicability of the rollover provision to this particular taxpayer.

TIMELINESS AND CHARACTERIZATION OF THE PETITION

The parties have engaged in substantial jousting over the characterization or labeling of this action. Both parties suggest that the nature of the action will drive the choice of any filing deadline that might apply. The District's objective is to convince the Court that the character of the case places it within the ambit of an action that is now deemed untimely. The taxpayer's objective is the opposite.

On one hand, the District argues that the Court should treat the Petition as an "appeal" from the assessment for Tax Year 1998. The Petitioner argues that the action is one for declaratory relief only and that this case has nothing to do with a debate about fair market value. The Court cannot indulge in gamesmanship. The Court must determine independently what constitutes the true core of this case.

On one hand, the Court cannot treat this case as a classic "assessment appeal." The taxpayer filed a formal assessment appeal, and then withdrew it. There is no right to seek a proverbial "second bit at the apple," so as to obtain a tax reduction that was previously spurned. However, the taxpayer has no interest in litigating the fair market value of the property, as in a *de novo* trial. Rather, the taxpayer only seeks complete relief that it would have received as a result of the settlement of the 1997 Tax Year appeal.

On the other hand, the District correctly argues that this case is not properly an appeal from the denial of a "request for refund." On this particular point, the District is correct. Such requests are formally made only pursuant to D.C. Code §47-2412. Under the "request for refund" process, the taxpayer is required to file an application under oath within one year after the date of the payment of such tax. The Code deems such an

application to be a "request for revision or abatement of an assessment." It is anticipated that a hearing will be convened if the application is not granted out of hand. This case is simply not in that category at all. No abatement is demanded and no "hearing" necessary at all. If anything, the petitioner's basic gripe is that this entire matter should have been resolved as a purely administrative matter without any fanfare or formal court filings of any kind.

This Court cannot safely presume that this case can fall only in one of the two categories described above. Rather than being arbitrarily limited in analysis, this Court must be guided by the practical teachings of the Court of Appeals. The appellate court has observed that "[t]he nature of a motion is determined by the relief sought, not by the label or caption." *Wallace v. Warehouse Employees Union No. 730*, 482 A.2d 801, 804 (D.C. 1984). The superficial label that is attached to a request for relief is not determinative. *Farmer v. Farmer*, 526 A.2d 1365, 1369 (D.C. 1987). It is the substance of the pleaded claim that is controlling. *See, e.g., Flocco v. State Farm Mut. Auto. Ins. Co.*, 752 A.2d 147, 160 (D.C. 2000)(courts look beyond pleading "craftsmanship to get at the substance of the claim"). Herein, the relief

requested is declaratory in nature, even though it carries significant economic impact for the taxpayer.

The District's assessment for Tax Year 1998 was $17,701,800.00. The taxes have been paid. Thus, the Court pauses to note that this case does not run afoul of the basic prohibition on lawsuits to enjoin the collection of a tax. *See Barry v. A.T.&T.*, 563 A.2d 1069, 1073 (D.C. 1989).

The Court must look carefully at the functional setting in which the Petition was filed. The Petitioner has candidly and thoroughly explained exactly how and why the Petition for Declaratory Relief came to be filed. Reduced to its essence, the law simply did not provide a firm rule, statute or guideline as to how the taxpayer should preserve its rights when the 1997 appeal is still pending when the deadline arrives for the next appeal to be filed. The Legislative Branch failed to anticipate this problem and failed to include in the new statute a clear method for reconciling filing deadlines. The Code is totally silent on the subject. This was a unique situation in which a new law had emerged. The new law provided that triennial assessments would "roll over" for three consecutive tax years. This new law crated an expectation for all taxpayers that new assessments would

remain the same for three years and would not be subject to changes on an annual basis. This law was codified as D.C. Code §47-820 (1997).

The Legislative Branch built into this new law the goal of stability of assessments. For example, in the event that the appeal of the 1997 assessment results in an increase of value, the increased tax liability must be phased in over three years. D.C.Code §47-820(b-1)(1).

The problem that vexed Tilden Gardens, Inc. is that it was litigating the underlying merits of the 1997 assessment at the very same time when any ordinary appeal from the 1998 assessment would have been due for filing. Not knowing what else to do, the taxpayer acted appropriately in filing whatever type of Petition for appeal might conceivably cover its rights. Such a Petition would not have a convenient label (or legal term of art), to set it apart from any other assessment appeal.

Having negotiated a refund for Tax Year 1997, the taxpayer merely wanted to obtain the benefit of having its Tax year 1998 assessment reflect the same, revised figures. This is truly all that this case entails. This case should not be inflated to embrace anything more.

Upon careful reflection, this Court is convinced that this case is exactly what the Petitioner originally said it was in the Petition itself. It is a

simple request for declaratory relief and an order to implement the declaratory judgment. There is no timetable or deadline for filing an action seeking declaratory relief. No case involving declaratory relief has a twin. The instant case is entirely *sui generis*. The underlying situation is a one-time only episode that does not involve any examination of the merits of the original 1998 assessment itself.[3] For this reason, there is no factual or conceptual basis for the Court to dismiss the action as time-barred.

THE DISTRICT'S PRECLUSION ARGUMENT

The District contends that the rollover provision, by its own terms precludes the taxpayer from seeking any automatic relief from the 1998 Tax Year assessment if that taxpayer chooses to file a Superior Court appeal for Tax Year 1998. In its Motion to Dismiss, the District states:

> Once a property owner submits its tax year 1998 assessment to BRPAA, and/or following that, to the Superior Court, the automatic roll-over provision is disabled. Section 47-820(a-1) provides alternative, but mutually exclusive, remedies; the taxpayer may choose either to roll-over the 1997 value, as revised by any administrative or court determination as to that tax

[3] This case has no value as a precedent, unless of course the District legislates yet another change to the tax assessment system. In that event, the whole matter of regulating a logical transition may cause the same type of problem to resurface. Major changes in a tax assessment scheme always require some reconciliation of filing deadlines. For this reason, the decision herein may be helpful for the future.

> year, or challenge the 1998 assessment independently before BRPAA and the court. Petitioner here chose to seek administrative and judicial review of its 1998 assessment. BRPAA sustained the subject property's assessment, and then petitioner dismissed its suit before the Tax Division of the Superior Court. Petitioner chose its avenue of redress and then voluntarily abandoned the process. The statute does not permit, now, pursuit of a rollover assessment.

Memorandum of Points and Authorities in Support of Motion to Dismiss at 4-5.

In effect, the District argues that the updated triennial assessment scheme created two distinct choices, or two entirely different avenues for obtaining relief from Tax Year 1998 assessments. The District contends that the statute itself provides that a taxpayer can obtain relief (1) by doing nothing after receiving the 1997 assessment and allowing the rollover to occur, or (2) by pursuing individual appeals for both Tax Year 1997 and Tax Year 1998.

The District cites no legislative history or any other authority to support its novel theory and interpretation of the rollover provision.

The Court must examine the statute to determine if it mandates what the District claims. It does not.

First, at oral argument on the Motion to Dismiss, the taxpayer provided the Court with the relevant legislative history, and such material is lodged in the court file jacket for preservation. This particular material consists of the Report of the Committee of the Whole, dated September 17, 1996 (hereinafter, the "Report"). In this document, the Council recapitulates the discrete purpose of this statute, *i.e.* "[t]o place a moratorium on the 1997 real property assessments for real property tax year 1998 and with respect to changing the date on which the proposed 1997 real property tax rates are required to be published in the District of Columbia Register from the third Friday in August to the third Friday following the date the real property assessment roll is certified."

In essence, the Committee explained in the Report that the underlying reason for creating the rollover over provision was to minimize appeals for Tax Year 1998 because the sheer numbers of such appeals was too unwieldy for the Chief Financial Officer and staff to handle. The Committee Report contains the specific observation that the workload for each individual assessor for the 1997 tax year would be approximately 6,000 properties per assessor. Furthermore, the Report recognized that assessors were required to appear before the Board for hearings. In addition, the Real Property Tax

Administration was involved with a backlog of 900 court cases that required participation of assessors. Report at 2. The need to minimize the workload for assessors was closely tied to the overall goal of integrating new technology into the assessment process and to support the Mayor's "Vision for America's First City," as a policy matter. Report at 2. In this context, it would have been completely illogical for the Council to enact a system that would have invited further chaos – and no mechanism for minimizing the workload of assessors.

The Report contains no reference to a dual system or alternative system for seeking relief from Tax Year 1998 assessments. If anything, the factual elaboration in the Report is totally at odds with the idea of giving taxpayers various choices for filing 1998 appeals.

If the new assessment scheme had provided for alternative appeal processes, the taxpayers (not the District) would have had control over the workload of assessors. Deployment of assessors would have been totally reactive to the behavior of taxpayers. Surely, this would have compromised the very specific objective articulated by the Council as set forth in the Report.

In making observations on the statute's impact on existing laws, the Report firmly states, "The new sub-section (a-1) amends sec. 421 (D.C. Code #74-820) by providing that the real property tax year 1998 assessed value of all real property shall be the real property tax year 1997 assessed value." Furthermore, in describing the anticipated "fiscal impact" of the new law, the Report referred to the implementation of a "freeze" of FY 1997 real property tax assessments for FY 1998. The Report indicated that the "freeze" would effectively mean that there would be no fiscal impact at all. Moreover, the "freeze" was described as being consistent with "the current state of the economy of the District in which very few properties are increasing in value." Report at 2-3.

In light of what is plainly stated in the Report of the Committee of the Whole, this Court must interpret the phrase "subject to appeal" to be a reference that modifies the phrase "the real property tax year 1997 value." In other words, the only logical interpretation of the rollover provision is that the 1998 value is to be the valuation for Tax Year 1997, even if this valuation results ultimately from an appeal rather than the original assessment for 1997.

The Superior Court has no authority to re-write the statute in order to inject into it a menu of choices that the District finds more favorable to its strategy in this case.

The question before this Court is whether the taxpayer has forfeited its right to the benefits of "rollover" provision merely by trying to preserve its ability to enforce it. The Code does not impose such a forfeiture of rights.

There is no doubt that the taxpayer herein intended to take advantage of the rollover system, and that the taxpayer wanted the negotiated new assessment for 1997 to be used as the new assessment value for Tax Year 1998. The District contends, albeit in retrospect, that the taxpayer would have been entitled to this relief – if the taxpayer simply had remained silent and not filed the 1998 appeal at all. The taxpayer could not afford to be so sanguine or complacent as to make this assumption while the events were still transpiring.

In hindsight, there is no basis for presuming that the taxpayer would have prevailed at to Tax Year 1998 by doing nothing. The District's present contentions would have yielded no comfort to the taxpayer at the time when the taxpayer was faced with a statutory deadline that had never been

repealed. There is no evidence that any official of the District of Columbia gave assurances to the taxpayer that it would receive a reduction of its 1998 taxes if it prevailed in, or settled, the 1997 case. Furthermore, as long as the Tax Year 1997 assessment was still in litigation (in the Superior Court or possibly the Court of Appeals), the assessment for Tax Year 1998 would have been billed at the level of the original assessment for Tax Year 1997. This would have had an immediate negative economic impact on the taxpayer, as long as a question remained about the outcome of the 1997 appeal.[4]

Finally, there is a curious twist to the District's argument, and it weighs in favor of the taxpayer. On one hand, the District concedes that if the taxpayer had not bothered to file the 1998 appeal at all, the taxpayer eventually would have received exactly what it seeks today. If this is true, then there is no significance to the fact that an unnecessary Superior Court appeal was later withdrawn. The District has not been harmed by it, nor has the District been harmed by the instant demand for declaratory judgment. The District has never explained why the withdrawal of a superfluous appeal should make any difference in the statutory right to rollover relief.

[4] As to the 1997 appeal, anything could have happened. If the case had not settled, a trial and possible appellate litigation could have stretched for several years into the future. Meanwhile, successive tax bills

This statute is not ambiguous. Thus, the Court need not struggle to juxtapose or reconcile any provisions that allegedly clash with each other. The Code simply does not contain the restrictive language that the District asks the Court to interpose.

The underlying legal issue in this case, effectively, has been briefed already. There is no practical reason why the Court should not treat the Motion to Dismiss and other responsive pleadings as Cross-Motions for Summary Judgment.[5] This is the most practical and speedy way to fashion the declaratory relief and the order to implement the simple declaration of law.

The ultimate result in this case is self-evident. This Court concludes as a matter of law that the statute, on its face, clearly required the District to bill the taxpayer for Tax Year 1998 based upon the negotiated valuation of the subject property for Tax Year 1997. Such valuation is reflected in the court order of June 29, 1998 in Tax Docket No. 7269-97. The only matter that remains is the calculation of the refund and the imposition of interest.

The Court will direct the taxpayer to submit a proposed order for implementation of the declaratory judgment set forth herein below. The

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for each new Tax Year would not have been reduced while the litigation was still pending.

Court will also require the taxpayer to file simultaneously a proposal as to the date from which interest should be calculated. The parties may or may not be able to agree, for example, that interest should be calculated from the date of the judicially approved settlement of the appeal of Tax Year 1997's assessment. This was the date on which all parties learned, with finality, what the assessment for 1998 also should have been. This approach would appear to be consistent with the concept of "rollover." The parties also might offer some other joint proposal.[6]

WHEREFORE, it is by the Court this 13th day of March, 2001

ORDERED that the Respondent's Motion to Dismiss is denied; and it is

FURTHER ORDERED that the Motion to Dismiss and Opposition are treated as Cross-Motions for Summary Judgment; and it is

FURTHER ORDERED that judgment is hereby entered in favor of the Petitioner and against the Respondent; and it is

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[5] There is no need for the Court to take testimony or to make any credibility findings. Here, relief is a matter of arithmetic.

[6] The Court may or may not schedule oral argument on this point, if there is no agreement between the parties.

FURTHER ORDERED, ADJUDGED, AND DECREED that the correct assessment for Tax Year 1998 is the same assessment to which the District agreed as set forth in this Court's order filed on June 29, 1998, as follows for each Lot:

LOT	LAND	BUILIDNG	TOTAL ASMENT
0005	$ 717,230	$1,063,157	$1,780,387
0006	$1,583,498	$3,595,809	$5,179,307
0007	$1,495,935	$3,845,226	$5,341,161
801	$1,363,752	$2,520,729	$3,884,481

and it is

FURTHER ORDERED that the District of Columbia shall correct its assessment card for the subject realty to reflect the assessments recited herein above for Tax Year 1998; and it is

FURTHER ORDERED that the Petitioner, within 30 days hereof, shall file and serve upon the Respondent a proposed order for entry of judgment, setting forth the exact amount of the refund that is due to the Petitioner as a result of the correction of its Tax Year 1998 assessment. Such proposed order shall be attached to a Memorandum to the Court,

setting forth the proposed date from which the interest should be calculated, giving the legal and conceptual basis for such computation date. The District may file any Opposition on this issue within 20 days of the filing date of such Memorandum; and it is

FURTHER ORDERED that in order to implement the declaratory relief, the Court will enter a specific supplemental judgment for a refund after reviewing any pleadings filed on the subject of the refund interest computation date. If the parties can agree to such computation date, the taxpayer shall so state in its Memorandum and shall incorporate such information in the proposed order.

Cheryl M. Long
Judge

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