

OPINION NO. 966

DISTRICT OF COLUMBIA TAX COURT

FILED

LAWRENCE CAKE and
MRS. MARION S. CAKE,
Petitioners,

OCT 19 1959
District of Columbia
Tax Court

vs.

DOCKET NO. 1674

DISTRICT OF COLUMBIA,
Respondent.

FINDINGS OF FACT AND OPINION

In the year 1956 the petitioner, Lawrence Cake, received substantial compensation for services performed over a period of several years. He and his wife filed a joint income tax return in which they reported the compensation as income taxable for the year 1956, and claimed that one-half of the income tax pertaining thereto was subject to forgiveness or discharge under Section 8(j) of Title XIII of the District of Columbia Income and Franchise Tax Act of 1947, as amended. ⁽¹⁾ The assessing authority, however, determined that a small portion only of the compensation was received and taxable for 1956; and that, therefore, legally a smaller amount of tax was forgiven or discharged than that claimed by the petitioners. As a result the petitioners were assessed an additional income tax for the year 1956, from which they here appeal.

Findings of Fact

The parties have stipulated, and the Court finds the facts following:

"1. Lawrence Cake and Marion S. Cake are husband and wife and reside at 2500 Wisconsin Avenue, N. W., Washington, D. C. Lawrence Cake maintains an office at 1001 Connecticut Avenue, Washington, D. C.

(1) Section 47-1586g(j), D. C. Code, 1951 Edition, Supplement VII.

"2. Lawrence Cake and Marion S. Cake report their income on the cash basis of accounting. They filed a timely joint District of Columbia income tax return for the calendar year 1956 which return showed a tax liability of \$15,967.20. The taxpayers treated one-half of such amount, or \$7,983.60, as discharged by Section 8(j) of Title XII of the District of Columbia Income and Franchise Tax Act of 1947, as amended, and paid the balance, \$7,983.60, on or before March 1, 1957. A copy of the return is attached to this statement as Exhibit D and is incorporated herein by reference.

"3. In their District of Columbia income tax return for 1956 the petitioners reported taxable income of \$576,100.99. In May of 1956 Lawrence Cake received a net fee of \$560,000 for legal services rendered over a period of 171 months from March, 1942 to May, 1956. The petitioners' computation of tax was attached to the Petition as Exhibit B and is incorporated herein by reference.

"4. The respondent examined petitioners' 1956 return and a copy of respondent's letter to the petitioners dated November 13, 1957 was attached to the Petition as Exhibit C and is incorporated herein by reference. When corrected by adjustments agreed to, the petitioners' taxable income for 1956 amounts to \$575,500.71, and petitioners admit that \$224.49 of the deficiency assessed and \$29.12 of the interest thereon were properly collected.

"5. The proposed deficiency of \$7,823.21 was assessed by the respondent on June 9, 1959. A copy of the notice of assessment was attached to the Petition as Exhibit A and is incorporated herein by reference, and a copy of the respondent's bill is attached to this statement as Exhibit E and is incorporated herein by reference.

"6. The deficiency of \$7,823.21 plus interest of \$1,017.02 was paid by the petitioners on July 6, 1959. No part thereof has been refunded.

"7. The petition herein was filed by the petitioners on July 27, 1959."

Opinion

The question which must here be answered is: for what year was certain compensation taxable? The pertinency and importance of the question arises because of Section 8(j) of Title XII of the District of Columbia Income and Franchise Tax Act of 1947, which has been codified as Section 47-1586g(j), District of Columbia Code, 1951 Edition, Supplement VII, and provides as follows:

"(j) RELIEF FROM ONE-HALF OF INCOME TAX LIABILITY FOR THE FIRST TAXABLE YEAR UNDER WITHHOLDING.--One-half of the liability for the income tax imposed by this Act for the calendar year 1956, or the fiscal year of a taxpayer beginning during such calendar year, upon any resident of the District (other than fiduciaries) shall be discharged. The remainder of the total amount of the income tax due as shown on the taxpayer's return shall be paid to the collector on the 15th of April, 1957, or if the return be made on the basis of a fiscal year the remainder of the total amount of such tax shall be paid on the fifteenth day of the fourth month following the close of the fiscal year."

The petitioner, Lawrence Cake, is an attorney at law, and in 1956 received a net fee of \$560,000 for legal services performed over a period from March, 1942 to May, 1956. He and his wife, the petitioner, Marien S. Cake, filed a joint income tax return for the year 1956 with the assessing authority of the District, wherein they reported the entire compensation as taxable for the year 1956, under Section 47-1557a(b)(12) of the Code, which is in the language following:

"(12) Personal services.--If at least 80 per centum of the total compensation for personal services covering a period of thirty-six calendar months or more (from the beginning to the completion of such services) is received or accrued in one taxable year by an individual or a partnership, the tax attributable to any part thereof which is included in the gross income of any individual shall not be greater than the aggregate of the taxes attributable to such part had it been included in the gross income of such individual ratably over that part of the period which precedes the date of such receipt or accrual."

The return filed by the petitioners showed a tax liability for the year 1956 of \$15,967.20, and a net amount equal to one-half thereof or \$7,983.60 due by the petitioners by reason of the above quoted Section 47-1586g(j) of the Code. The net amount thus shown was paid by the petitioners.

The assessing authority determined that all of the compensation was not taxable for the year 1956, but was taxable for all the years during which the services were performed; that taxable income in the amount of \$31,874.96 only pertained to the year 1956; and that the tax liability for that year was \$1,218.75, one-half being subject to forgiveness or discharge under Section 47-1586g(j) of the Code. The assessing authority, therefore, assessed the petitioners a deficiency in income tax in the amount of \$7,823.21 plus interest of \$1,017.02 or a total of \$8,840.23. The validity of such deficiency is here assailed by the petitioners who claim that under the two above quoted sections of the Code their method of reporting and accounting for their net income was correct and that the action of the assessing authority was erroneous. In addition to the above quoted sections, the petitioners rely upon Section 47-1561a of the Code which pertains to taxable periods, and provides as follows:

"§47-1561a. Period in which items of gross income included.
"The amount of all items of gross income shall be included in the gross income for the taxable year in which received by the taxpayer unless, under methods of accounting permitted under section 47-1561, any such amounts are to be properly accounted for as of a different period. ****"

The Court is of the opinion that the position of the petitioners must be sustained. The language of Sections 47-1557a(b)(12) and 47-1561a of the Code is plain and leads to the conclusion that tax on the compensation received by the petitioner, Lawrence Cake, was 1956 income tax, one-half of which being subject to forgiveness or discharge under Section 47-1586g(j) of the Code.

The last mentioned section of the Code is identical with Section 107(a) of the Internal Revenue Code of 1939, which has been judicially interpreted as merely limiting the tax in the year of receipt, and not authorizing the reopening or recomputing the taxes of any prior years. Frederico Stallforth, 6 T.C. 140; Albert G. Redpath, 19 T.C. 470. Moreover, Section 47-1586g(j) is similar in language to, and practically identical in intent with Section 1301 of the Internal Revenue Code of 1954, which has been interpreted by Section 1.1301-1 of the United States Treasury

Regulations (1958), in part, as follows:

"***** In effect, these sections generally treat the income as having been included in gross income ratably over the years **** in which it was earned. However, these sections have no effect on the income tax liability for prior taxable years; they simply provide a special method of computing the amount of tax for the year of receipt or accrual." (Emphasis supplied)

The respondent cites no authorities to sustain its position, but relies simply on what it calls a "common sense interpretation" and a statement that to uphold the position of the petitioners "would indeed 'lead to an absurd and inequitable result'". Such contentions are without merit. As a matter of fact, if "common sense" be used to interpret Section 47-1586g(j) of the Code, it would require that the section be interpreted as the United States Tax Court and the Internal Revenue Service have interpreted Section 107(a) of the Internal Revenue Act of 1939 and Section 1301 of the Internal Revenue Code of 1954, that is to say, that income received by a taxpayer on a cash basis must be considered income for the year in which it is received and taxable for that year, which, incidently, is in line with Section 47-1561a of the Code, which requires that "all items of income shall be included in the gross income for the taxable year in which received."

The respondent seems to feel that to forgive such a large tax for the year 1956 would be absurd and lead to inequitable results. Congress, however, has decreed by legislation that one-half of 1956 income tax liability should be discharged. Whether such discharge is absurd or not is not pertinent here. The assessing authority and this Court are bound by the statute granting the discharge or forgiveness. The result of its application can have no effect on the real meaning of Section 47-1557a(b)(12) of the Code. It must be interpreted correctly regardless of the result of the application of the forgiveness or discharge provision.

The petitioners have conceded that according to certain adjustments, \$224.49 of the deficiency here involved, plus interest of \$29.12 or a total of \$253.61, was lawfully assessed, which reduces the amount of overpayment by the petitioners to the amount

of \$7,598.72, and to interest to the amount of \$987.90, or to a total of \$8,586.62.

For the reasons stated above the Court holds that a deficiency in income tax in the amount of \$7,598.72, together with interest thereon in the amount of \$987.90, or a total of tax and interest in the amount of \$8,586.62, was erroneously assessed and collected from the petitioners; and that the petitioners are entitled to a refund thereof, with interest thereon at the rate of 4 per centum per annum from July 6, 1959 to the date of payment of refund.

Decision will be entered for petitioners.


Jo. V. Mergan,
Judge.

DISTRICT OF COLUMBIA TAX COURT

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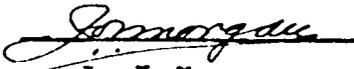
DOCKET NO. 1674

DISTRICT OF COLUMBIA,
Respondent.

DECISION

This proceeding came on to be heard upon the petition filed herein; and upon consideration thereof, and of the evidence adduced at the hearing on said petition, it is by the Court, this 19th day of October, 1959,

ADJUDGED AND DETERMINED, that a deficiency in income tax in the amount of \$7,598.72, together with interest thereon in the amount of \$987.90, or a total of tax and interest in the amount of \$8,586.62, was erroneously assessed and collected from the petitioners; and that the petitioners are entitled to a refund thereof, with interest thereon at the rate of 4 per centum per annum from July 6, 1959 to the date of payment of refund.


Jo. V. Morgan,
Judge.

Findings of Fact, Opinion &
Decision served as follows:

David W. Richmond, Esquire,
Attorney for Petitioners,
1001 Connecticut Avenue,
Washington 6, D. C. (Mailed 10/19/59)

Corporation Counsel, D.C. (Messenger 10/19/59)

Finance Officer, D. C. (Messenger 10/19/59)


Phyllis R. Liberti,
Clerk.

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