

DISTRICT OF COLUMBIA TAX COURT

FILED

MAR 12 1969

JACK M. GOLDKLANG,)
)
 Petitioner,)
)
 vs.)
)
 DISTRICT OF COLUMBIA,)
)
 Respondent.)

District of Columbia
 Tax Court

DOCKET NO. 2065

Findings of Fact

Petitioner, a salaried employee of the Department of Justice working in the District of Columbia, physically resided in the District for several years until he moved to Adelphi, Maryland on April 15, 1967. He paid D. C. income taxes on a cash receipts-calendar year basis through December 31, 1966. He paid Maryland income taxes on income received from April 15, 1967 through December 31, 1967. The issue is, his liability for D. C. income taxes on income earned during the period January 1 through April 15th, 1967, while he was still living in D. C.

Petitioner's employer had withheld \$266.75 from his salary on account of D. C. income taxes for 1967. Petitioner claimed refund thereof; "having lived in the District for less than seven months and not having lived there at the end of the taxable year", he says that he is not subject to D. C. income tax for 1967. His claim was denied by Finance Office ruling of March 15, 1968, and he then filed a D. C. income tax return under protest for the fractional part of the year January 1 through April 15, 1967, showing \$82.00 due, which was retained by the District; the remainder was refunded. The petition herein was filed on July 19, 1968, and hearing on the merits was held January 15, 1969.

Conclusions of Law

The case depends entirely upon the due and proper construction of the D. C. Income Tax Law, which in pertinent part defines "resident" as-

every individual domiciled within the District on the last day of the taxable year, and every other individual who maintains a place of abode within the District for more than seven months of the taxable year, whether domiciled in the District or not. * * * (Sec. 47-1551c(s), D. C. Code, 1967 Ed.)

There is no question but that petitioner was domiciled in the District during the first three and one-half months of the calendar year 1967, the issue is, whether such abbreviated period is, within the intent of the statute, a "taxable year". Section 47-1551c(k) of the Code, supra, provides-

The words "taxable year" mean the calendar year or the fiscal year, upon the basis of which the net income of the taxpayer is computed under this subchapter; if no fiscal year has been established by the taxpayer, they mean the calendar year. The phrase "taxable year" includes, in the case of a return made for a fractional part of a calendar or fiscal year under the provisions of this subchapter or under regulations prescribed by the Commissioners, the period for which such return is made * * *.

The "Congressional illumination of a very faint order indeed"*/ is derived from the second sentence quoted above: paraphrased, "taxable year" means in pertinent part, in the case of a return covering a fractional part of a calendar year, the period, i.e. that fractional part of such year, for which such return is made, i.e., for which taxpayer was subject to D. C. income tax.

Petitioner points out that up to 1967, the administrative practice of the District taxing authorities was to impose income tax upon (a) those living in D. C. for more than seven months, and (b) those domiciled in D. C. on the last day of the calendar

*/ Oppenheimer v. D. C., 124 U.S. App. D.C. 221, 222; 363 F.2d 708, 709.

year (for calendar year taxpayers). Respondent admits this to have been the "long-standing administrative practice", which was, however, "radically altered" by D. C. v. Davis, 125 U.S. App. D.C. 311, 371 F.2d 964, decided January 5, 1967.

In Davis, taxpayer was domiciled in Detroit, Michigan from January 1 - April 1, 1963, and in the District for the rest of the year. He reported and paid taxes in Michigan on income earned while there, and in D. C. on income earned here, with prorated exemptions and credits. The District assessed tax on the basis of his income for the entire year 1963, crediting tax paid in Michigan. Held: the D. C. statute does not tax income received by a taxpayer prior to his becoming a resident of the District. The Court followed taxpayer's reasoning, paraphrased as follows:

1. The D. C. income tax reaches taxable income for the "taxable year".
2. The "taxable year" specifically includes a "fractional part of a calendar or fiscal year". Code Sec. 47-1551c(k), supra.
3. In the case of change of residence, the taxable year is that portion of the year during which taxpayer resided in the District, and his taxable income is the "income received from the 'resident' after he becomes such". 125 U.S. App. D.C. at 314, emphasis in original.

The U. S. Court of Appeals found this result to be in conformity with (1) rather slight legislative history, indicating that the D. C. income tax law substantially follows Federal law, which in turn, under the decisions, does not tax income earned by a non-resident alien prior to his residence in the United States, and (2) state statutes and state decisional law, concluding that income earned in a given state prior to the establishing of domicile in the taxing state is not subject to tax in the

latter state.

Petitioner attempts to distinguish Davis on the basis that the Court there did not consider the situation of a taxpayer who was not domiciled in D. C. "on the last day of the taxable year", D. C. Code Sec. 47-1551c(k), supra, since taxpayer Davis was domiciled in D. C. at the end of the calendar year. However, Davis is not to be read so restrictively. The case at bar is the exact converse of the Davis situation (taxpayer resides here for a fractional part of the calendar year, then moves elsewhere; in Davis, resides elsewhere and moves here); in either case, absent some viable distinction, the taxable year is the given fractional part of the calendar year. Thus read, Davis adds symmetry and balance to the D. C. income tax law, as well as conformity to the Federal law -- in keeping with probable legislative intent -- rather than anomaly and local-tax loophole, the result of petitioner's reading.

Decision will be entered for the respondent.


Robert M. Weston
Judge

DISTRICT OF COLUMBIA TAX COURT

FILED

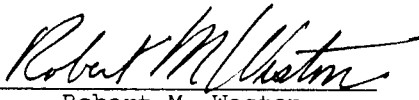
MAR 12 1969

District of Columbia
Tax Court

JACK M. GOLDKLANG,)
)
Petitioner,)
)
vs.) DOCKET NO. 2065
)
DISTRICT OF COLUMBIA,)
)
Respondent.)

DECISION

This proceeding having been heard on the pleadings,
evidence and arguments, it is, this 12th day of March, 1969,
ADJUDGED AND DETERMINED, that the assessment and payment
of income tax against petitioner for the period January 1,
1967 - April 15, 1967, in accordance with the ruling of the
District of Columbia Finance Office is correct, and is
hereby affirmed, with judgment hereby rendered for respondent.



Robert M. Weston
Judge

Findings of Fact and
Conclusions of Law and Decision
Served as follows:

Mr. Jack M. Goldklang
1816 Metzerott Road
Adelphi, Maryland 20783 (Mailed 3/12/69)

Finance Officer, D. C. (Mailed 3/12/69)

Corporation Counsel, D. C. (Mailed 3/12/69)


Phyllis R. Liberti, Clerk