

Opinion
No. 1161

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

TAX DIVISION

JUN 9 1978

CARTER-LANHARDT, INC.,

Petitioner

v.

DISTRICT OF COLUMBIA,

Respondent

Tax Division No. 2367

FILED

MEMORANDUM OPINION

This matter came before the Court for trial on petitioner's claim for a refund of personal property taxes paid by it for fiscal year 1976, on the grounds that the District of Columbia erroneously imposed a personal property tax on the food and beverages used in its restaurant business. The parties have submitted a written stipulation of facts and have filed proposed findings of fact and conclusions of law, as well as memoranda of law on the legal issues involved. This Court also heard oral arguments on the issues involved on June 30, 1977.

The ultimate question to be determined by the Court is whether the items of food and beverages purchased by petitioner for service to its diner-clientele constitute the "average stock in trade of dealers in general merchandise" and, as such, could no longer be taxed as personal property by the District of Columbia after July 1, 1974, under D.C. Code 1973, §47-1207, as petitioner contends, or whether they should be considered "supplies" and therefore taxable, as respondent maintains,

The facts, most of which have been stipulated, may be briefly summarized as follows:

Petitioner, prior to fiscal year 1976 and during the relevant period here, operated the Flagship Restaurant at 900 Water Street, Southwest, Washington, D.C. Petitioner maintains in the operation of its restaurant numerous items of food and beverages, which undergo varying degrees of preparation prior to being served to customers. All meals sold at petitioner's restaurant are prepared, served, and consumed on the premises. The meals are served at tables by individuals employed by petitioner.

On petitioner's personal property tax return for fiscal year 1976, it did not report any items of food and beverages. The Department of Finance and Revenue, prior to sending petitioner its personal property tax bill for 1976, added the items of food and beverages which had been deleted by petitioner. The Department adjusted the 1976 return to include the value of food and beverages based upon the value used in the 1975 personal property tax return. However, on its 1975 personal property tax return petitioner had also excluded items of food and beverages and on the return for that particular year, the Department of Finance and Revenue adjusted the total value of supplies reported in schedule "B" to include the value of food and beverages reported on schedule "A" of petitioner's 1974 return. Therefore, the value of the supplies arrived at by the Department upon which the

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original assessment for 1976 was based included the value of food and beverages as of June 30, 1973, plus the other supplies, such as china, glass and silver, which petitioner had reported as supplies under schedule "B" of its 1976 return. The value of the food and beverages was adjusted by the Department after petitioner was sent its first bill for 1976, after an audit and based upon conversations with petitioner, to take into account the inflationary trends. Petitioner's food and beverages were finally valued for purposes of fiscal year 1976 at \$151,302.00, upon which a tax in the amount of \$3,631.25 was paid. It is this amount for which petitioner is seeking a refund.

For all fiscal years prior to 1975 in which petitioner was in existence, it included items of food and beverages on schedule "A" of its personal property tax returns. Other taxpayers engaged in the restaurant business also reported their items of food and beverages on schedule "A" of their returns for fiscal years prior to 1975. However, some other restaurant owners reported their food and beverages for these years in schedule "B" of their returns as supplies and these returns were accepted by respondent. Until fiscal year 1974, the District of Columbia accepted the returns of restaurant taxpayers regardless of whether they reported items of food and beverages as stock in trade on schedule "A" or as supplies on schedule "B." In fiscal year 1974, respondent adjusted the return of petitioner, as well as the returns of other restaurants which listed food and beverages on schedule "A," to include these items under schedule "B" and taxed them as supplies. In its returns for fiscal years 1975 and 1976, petitioner reported no items of food and beverages.

The only explanation offered for the District of Columbia's accepting, prior to fiscal year 1974, the value of items of food and beverages reported under either schedule "A" or schedule "B" of the personal property tax returns of taxpayers engaged in the restaurant business was that, since the tax rate was the same under both schedules, the District assumed it was of no significance.^{1/} Prior to July 1, 1974, if respondent rejected a personal property tax return of a restaurant, it did so without regard to whether items of food and beverages were reported on schedule "A" or schedule "B." Schedule "A" of the personal property tax return is entitled "Merchandise or Stock in Trade." Schedule "B" of the return is entitled "Office Supplies, Other Supplies, Raw Materials and Work in Process as of July, 197__ (Not Average)."

Prior to fiscal year 1974, the District of Columbia levied a personal property tax on petitioner's average monthly inventory of merchandise, including food and beverages, for the twelve-month period ending June 30th of any particular year. For the inventories of dealers in general merchandise, the items listed on schedule "A" of the personal property tax return are reported and taxed based upon an average monthly figure. The District of Columbia, however, taxes supplies listed on schedule "B"

^{1/} See the testimony of Thomas Kinney, Transcript at 35, 40, in Old Europe, Inc. v. District of Columbia, Tax Division Nos. 2303, 2346 and New 5510, Inc. v. District of Columbia, Tax Division Nos. 2347, 2391, decided this same day, which testimony was incorporated by reference into Carter-Lanhardt, Inc. v. District of Columbia.

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of the return based upon their value as of July 1st, at the beginning of any particular fiscal year. Due to the different manner in which personal property was taxed, depending upon under which schedule it was listed, the potential tax liability was less for supplies, being valued as of the beginning of the fiscal year, than for inventories or stock in trade, which value was computed by using the average monthly inventory over a twelve-month period.

Congress in §201 of the District of Columbia Revenue Act of 1971^{2/} phased out the tax on the average stock in trade of dealers in general merchandise over a three-year period beginning July 1, 1972. The tax on such stock in trade was repealed in its entirety as of July 1, 1974, or fiscal year 1975.

On May 6, 1974, the Department of Finance and Revenue published in the D.C. Register notice of its intent to promulgate a "rule" to define the term "stock in trade," and to clarify "methods of reporting the value of certain property for purposes of personal property taxation."^{3/} Notice of the adoption of such rule was published on June 24, 1974.^{4/} The District of Columbia sent petitioner a copy of the rule as adopted, together with blank personal property tax return forms

^{2/} Pub. L. No. 92-196, §201, 85 Stat. 653 (codified at D.C. Code §47-1207 (1973)).

^{3/} 20 D.C. Reg. 1069 (May 6, 1974).

^{4/} 20 D.C. Reg. 1316 (June 24, 1974). The complete text of the rule was quoted in Old Europe, Inc. v. District of Columbia, Tax Division No. 2303, 2346, decided this same day.

for fiscal year 1975. Beginning with this fiscal year, petitioner was required, pursuant to the "rule," to list food and beverages as supplies on schedule "B" of its return. On the personal property tax return forms for the year 1976, "food and beverages dispensed in restaurants" were listed as "other supplies" to be reported under schedule "B."

Prior to the rule adopted by respondent on June 24, 1974, for fiscal year 1975, the Department of Finance and Revenue issued no instructions, regulations, or policy statement as to where or under which schedule food and beverages of restaurants should be reported on the personal property tax return.

Any other factual evidence relevant to this case was fully set forth in this Court's Memorandum Opinion in Old Europe, Inc. v. District of Columbia, Tax Division Nos. 2303, 2346, and New 5510, Inc. v. District of Columbia, Tax Division Nos. 2347, 2391, issued this same day, and we therefore incorporate by reference and adopt those facts in this Opinion.

The arguments presented by the District of Columbia are the same as those presented in the companion cases referred to above, so there is no need to repeat them here. Petitioner's arguments here are basically the same as those presented by petitioners Old Europe, Inc., and New 5510, Inc., and again, we find it unnecessary to be repetitious. However, the position of petitioner Carter-Lanhardt, Inc., differs in minor respects from that of petitioners in the companion cases. First of all, petitioner in this case argues that §201 of the

Revenue Act of 1971, codified at D.C. Code 1973, §47-1207, completely repealed §47-1212, leaving no items of personal property on which taxes may be imposed under that section. Secondly, petitioner Carter-Lanhardt contended that the rule promulgated on June 24, 1974, by the Department of Finance and Revenue defining "stock in trade" was a totally unauthorized exercise of any rulemaking power which it may possess. For the reasons stated in our Memorandum Opinion in Old Europe, Inc., v. District of Columbia, we found it unnecessary to decide either of these issues in rendering a decision in those cases, and similarly, do not reach them here.

Having set forth the pertinent facts in this case, and having further incorporated by reference other relevant facts which we discussed in the companion cases, we find that our resolution of the issues and our conclusions of law in that decision are likewise controlling in this case. We therefore find that petitioner's inventory, consisting of food and beverages, was the "stock in trade of a dealer in general merchandise of every description" within the meaning of §47-1212, and that the tax on such personal property was repealed pursuant to §47-1207 as of July 1, 1974.

Accordingly, we find that petitioner is entitled to a refund of personal property taxes in the amount of \$3,631.25 for fiscal year 1976, plus interest.

Petitioner is to submit an appropriate order within 10 days of receipt of this Opinion.

DATED: June 8, 1978


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