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SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

TAX DIVISION

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| APARTMENT AND OFFICE BUILDING ASSOCIATION OF METROPOLITAN WASHINGTON, ET AL | : | Docket No. 2467 |
| Petitioner | : | |
| v. | : | |
| DISTRICT OF COLUMBIA | : | |
| Respondent | : | |



Introduction

D. C. Law 1-124 was enacted by the Council of the District of Columbia on December 17, 1976, and was signed and approved by the Mayor of the District of Columbia on January 25, 1977. It was supposed to become effective on April 19, 1977. Section 301(a) of the D. C. Law 1-124 provides:

> "Real estate taxes are due and payable in full on or before September 15, annually except that where the real estate tax is less than $100,000, such tax shall be due and payable semiannually in two equal installments, the first installment to be paid on or before September 15, and the second installment to be paid on or before March 31. . ."

That is, property owners who pay less than $100,000 per year in real estate taxes may pay this amount in two equal payments while those who pay more than $100,000 per year in real estate taxes must pay in one lump sum.

D. C. Law 2-73 entitled "Third Amendment to the Revenue Act for Fiscal Year 1978 and Other Purposes" was enacted by the Council of the District of Columbia on January 10, 1978, effective April 18, 1978. This law delayed the effect of the single payment provision until June 30, 1979. Petitioners

are property owners in the District of Columbia who must pay over $100,000 in real estate taxes in the tax year 1979. Pursuant to D. C. Law 1-124, §301(a), and D. C. Law 2-73, these individuals will have to pay their annual real estate taxes in one installment no later than September 15, 1979. Petitioners now seek injunctive relief from these provisions.

MEMORANDUM OPINION AND ORDER

In D. C. Redevelopment Land Agency, et. al. v. District of Columbia, Tax Docket No. 2290, April 14, 1976, 102 Washington Law Reporter 749 (May 4, 1976), The Honorable Judge Penn reviewed the series of United States Supreme Court cases which determine when a taxpayer may enjoin the collection of a tax. These cases discuss the effect of the Federal Anti-Injunction Statute, 26 U.S.C. §7421, which is similar to D. C. Code §47-2410.[1/] After reviewing Miller v. Standard Nut Margarine Co., 284 U.S. 498 (1932); Enochs v. Williams Packing Co., 370 U. S. 1 (1962); and Bob Jones University v. Simon, 416 U. S. 725 (1974), Judge Penn concluded that in order for taxpayers to obtain injunctive relief they must demonstrate:

> ". . .first, that they are entitled to equitable relief and that they are without an adequate legal remedy, and second, that based upon the record before the Court, under no circumstances can the District ultimately prevail."

As Mr. Justice Powell announced for the Supreme Court in Bob Jones University, supra, at p. 737:

> "Only upon proof of the presence of two factors could the literal terms of §7421(a)

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1/ "No suit shall be filed to enjoin the assessment or collection by the District of Columbia or any of its officers, agents, or employees of any tax." D. C. Code §47-2410.

> [The Federal Anti-Injunction Act] be avoided: first, irreparable injury, the essential prerequisite for injunctive relief in any case; and second, certainty of success on the merits."

Based upon the foregoing, the Court holds that in order for a taxpayer to prevail upon a request for injunctive relief he must prove:

> 1) that he has suffered irreparable harm,
> 2) that he has no adequate remedy at law; and
> 3) that he is certain of success on the merits.

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D. C. Code §47-2413 (1973) states in pertinent part:

> "(b) In any proceeding under this title the Superior Court has jurisdiction to determine whether there has been any overpayment of tax and to order that any overpayment be credited or returned to the taxpayer, if a timely refund claim has been filed.
>
> "(c) Any other provision of law to the contrary notwithstanding, if it is determined by the Commissioner or by the Superior Court that there has been an overpayment of any tax . . . interest shall be allowed and paid on the overpayment at the rate of four per centum per annum . . ."

If the petitioners' single payment of real estate tax on September 15, 1979 can be characterized as an overpayment, then the petitioners' prayer for injunctive relief must be denied because the petitioners would have an adequate remedy at law pursuant to D. C. Code §47-2413 (1973). Petitioners' remedy would be to pay the tax and contest it pursuant to D. C. Code §47-2413 (1973)

Petitioners contend that the lump sum payment of real estate tax would not be an overpayment because the amount of the tax levied is correct. According to the petitioners, the thrust of their argument is that the payment date unduly discriminates against them. The Court is not persuaded by

this argument. The crux of the petitioners' argument is that on September 15, 1979 they will be forced to pay twice the taxes they should have to pay on that day. The amount above which they contend is due on that date clearly falls within the definition of overpayment as defined by the United States Supreme Court.

Words of a statute are to be interpreted in the ordinary definitions and meanings commonly attributed to them. Jones v. Liberty Glass Co., 333 U. S. 850 (1947); State of Utah v. Kleppe., 586 F. 2d 756 (1978). Even though common usage would support the Court's conclusion that the payment in this case should be characterized as an overpayment, the United States Supreme Court in Jones, supra, specifically defines the term and so the Court does not have to rely solely on its interpretation. The United States Supreme Court gives the following definition of overpayment.

> ". . .We read the word 'overpayment' in its usual sense, as meaning any payment in excess of that which is properly due. Such an excess payment may be traced to an error in mathematics or in judgment or in interpretation of facts or law. And the error may be committed by the taxpayer or by the revenue agents. Whatever the reason, the payment of more than is rightfully due is what characterizes an overpayment."
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> Id. at 531.

The Court in Boyd v. United States, 439 F. Supp. 907 at 909 (E.D. PA 1977), had occasion to interpret and apply the Jones definition of overpayment and it stated:

> "In holding that overpayments can arise from erroneous interpretations of fact or law on the part of taxpayers or revenue officers, the Court explicitly rejected the argument that payments made pursuant to erroneous or illegal assessments cannot be overpayments."

Therefore, the Court holds that the petitioners' claim that they will suffer because they will have to pay their real estate taxes in one payment instead of two payments is an overpayment under D. C. Code §2413 (1973). The petitioners have an adequate remedy at law pursuant to that provision and injunctive relief must be denied. Bob Jones University v. Simon, supra, and D. C. Redevelopment Land Agency, et al v. District of Columbia, supra.

The Court declines to address itself to the constitutionality and legality of D. C. Law 1-124, §301(a)(1977) because these issues should be disposed of at a later date.

WHEREFORE, it is hereby ORDERED that the peitioners' claim for injunctive relief is hereby denied.

WILLIAM C. PRYOR
Judge

June 11, 1979

Copies to: Bernard I. Nordlinger, Esq.
Suite 311
1000 Connecticut Avenue, N.W.
Washington, D.C. 20036
(Attorney for Petitioners)

Richard L. Aguglia, Esq.
Assistant Corporation Counsel, D.C.
District Building
Washington, D.C. 20004
(Attorney for Respondent)

Mr. Kenneth Back
Finance Officer, D.C.