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SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
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SUPERIOR COURT OF THE
DISTRICT OF COLUMBIA
TAX DIVISION

TAX DIVISION

JOHN AND MARGARET WALKER and
JOSEPH ALSOP,

MAY 11 1979

Petitioner

FILED

v.

Docket No. 2545

DISTRICT OF COLUMBIA.

Respondent

MEMORANDUM ORDER

This case comes before the Court on respondent's motion to dismiss the petition.

I

Petitioners appeal from a real property tax assessment made against their property for Fiscal Year 1978. The property is located at 2806 N Street, N.W., in the District of Columbia, and is legally described as Lot 803 in Square 1213. A notice of assessment was dated February 1977 and was received in that month. The property was assessed at \$168,000 for Fiscal Year 1977, and \$225,000 for Fiscal Year 1978. The tax was paid prior to the filing of the Petition.

The motion to dismiss is based upon the petitioner's failure to file a complaint with the Board of Equalization and Review (Board) before appealing to this court.

II

A prerequisite to an appeal of an annual real property tax assessment to this court is the filing of an appeal to the Board unless the notice of assessment is given on or after March 15. See D. C. Code 1973, §47-646(1)(Supp. V, 1978).

Notwithstanding that requirement, however, it has been held that under certain exceptional circumstances a taxpayer, who is not seeking injunctive relief, may bypass the Board.^{*/}

See District of Columbia v. Burlington Apartment House Co., 375 A.2d 1052 (D.C. App. 1977). The question is whether the petitioners in this case were required to exhaust their administrative remedy before appealing to this court.

The Court has previously observed that a taxpayer is not required to appeal to the Board where it is clear that the Board would not have jurisdiction to entertain the appeal. Thus, in a case where the taxpayer challenges only the legality of the assessment and does not otherwise challenge or appeal the valuation assigned to the property, the Board has no jurisdiction and any appeal to it would amount to a useless act. An example would be a challenge to the legality of an assessment under D. C. Code 1973, §47-711 where the case is decided on whether the assessment purportedly made under that section was legal without any reference to the question of valuation. See District of Columbia Redevelopment Land Agency v. District of Columbia, Docket 2460 (decided April 27, 1979). In other words, the taxpayer in such cases will win or lose solely on the legal question without regard to valuation.

^{*/} Of course, a taxpayer who seeks injunctive relief is not required to file an appeal to the Board.

In those cases, however, where the challenge is based both on the legality and the issue of valuation, an appeal must be filed with the Board and if such an appeal is not filed, this court would lack jurisdiction. This Court concludes that such an appeal to the Board is a prerequisite to jurisdiction in this court because the action of the Board in equalizing or reducing the amount of the assessment may very well moot any appeal. Second, the Board would have jurisdiction over some portion of the case, namely, valuation.

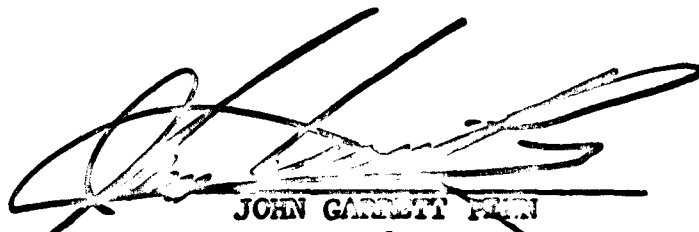
As this Court reads the pleadings filed by the petitioners, these petitioners not only challenge the legality of the assessment but the valuation as well. The key issue in the case appears to be the valuation assigned to the property. That being the case the Court concludes that a prerequisite to an appeal to this court was an appeal to the Board, and since petitioners did not appeal to the Board this court now lacks jurisdiction to hear the case.

ORDER

It is hereby

ORDERED that the motion to dismiss the petition is granted.

Dated: May 11, 1979


JOHN GARRETT FINN
Judge

Gilbert Kahn, Jr., Esq.
Counsel for Petitioners

Richard Aguglia, Esq.
Assistant Corporation Counsel
Counsel for Respondents

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Mr. Kenneth Rock

Finance Officer, Inc. R. Menfies 5/14/79