

*Opinion
No. 1246*

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Tax Division

APR 8 1936

1055 THOMAS JEFFERSON ASSOCIATES, :
Petitioner, :
v. :
DISTRICT OF COLUMBIA, :
Respondent. :

FILED

Tax Docket No. 3683-85

O R D E R

This matter came before the Court for hearing on Cross-motions for Summary Judgment filed by petitioner and respondent.

I.

The material facts of the case are not in dispute and may be summarized as follows:

1. The petitioner, 1055 Thomas Jefferson Associates is a limited partnership whose sole general partner, 1055 Thomas Jefferson Corporation, is duly authorized to conduct business in the District of Columbia.
2. Petitioner is the owner of the office building located at 1055 Thomas Jefferson Street, N.W.
3. In August, 1933, the petitioner assigned a staff accountant to prepare all financial documents including an Income and Expense Form, the subject of this litigation.^{1/}
4. The Income and Expense Form was signed by petitioner on April 6, 1934, mailed by petitioner on April 9, 1934, and received by the District of Columbia government on April 13, 1934.

^{1/} 9 DCMR §§30.4 and 330.6 require all owners of income producing property to file an Income and Expense Form with the District of Columbia government by April 1 of each year.

5. As a result of the petitioner's tardiness, the District assessed a late filing fee of \$43,245.09.^{2/}

6. On September 5, 1984, the petitioner, by letter, requested administrative review of the penalty.

7. The petitioner's request was denied. The District asserted there was no legal disability at the time the filing was due, nor was there "reasonable cause for late filing."

8. The petitioner paid the assessed penalty on July 1, 1985.

9. On July 11, 1985, the petitioner filed for a Refund of Personal Property Surcharge.

10. On January 15, 1985, the respondent filed for Summary Judgment.

11. The petitioner then filed a Cross-motion for Summary Judgment on February 24, 1986.

II.

The issue before this Court is whether either party has demonstrated that no genuine issues of fact remain in dispute thus entitling one of the parties to a judgment as a matter of law.

Upon consideration of the pleadings filed and arguments of counsel at the hearing, the Court is satisfied that petitioner's request for summary judgment should be denied and respondent's motion should be granted. The parties have shown that no material facts remain in dispute. The respondent has sufficiently demonstrated that resolution of the controversy relates primarily to the proper interpretation of D.C. Code §47-821(d)(1) (1981 ed.).

^{2/} 9 DCMR 5330.6 authorizes a penalty in the amount of 100% of the total taxes for that year as a late filing fee.

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^{2/} 9 DCMR §330.6 authorizes a penalty in the amount of 100% of the total taxes for that year as a late filing fee.

Section 47-821(d)(1) provides:

The Mayor may require an owner of real property to submit such information relating to the income or economic benefits derived from such property as in the Mayor's judgment will assist in the determination of the estimated market value required under this title. If an owner of real property in the District of Columbia fails to submit such information within the time and in the form prescribed, there shall be added to the real property tax levied upon the property in question for the next ensuing tax year the amount of 10 per centum of said tax: Provided, that when such information is provided after said time and it is shown that the failure to provide it was due to reasonable cause, no such addition shall be made to the tax.

In furtherance of this statute, 9 DCMR 330.6 states ten per cent shall be added to the real property tax levied for the next ensuing tax year if:

a. An income expense form is not delivered to the Department of Finance and Revenue on or before April 1 of the year the forms are mailed to the taxpayer;

b. If income and expense statements are timely delivered on or before April 1 but are not accurate or complete; or

c. If an income and expense statement is delivered after the time extended by the director.

The petitioner contends the City Council did not intend that the statute should apply where the form was submitted late but nevertheless complete and accurate (petitioner's circumstance). The petitioner has misconstrued the statute, the rules thereto, and the legislature's intent. Penal statutes are to be clearly and strictly construed. One cannot be subject to a penalty unless the words of a statute plainly impose it. Section 47-821(d)(1) imposes a 10 per cent penalty when the property owner fails to submit the Income and Expense Form without reasonable cause. Moreover, 9 DCMR 330.6 triggers the penalty if the Income and Expense Form is not delivered to the Department of Finance and Revenue by April 1 absent reasonable cause. The record reflects

Petitioner sent the form on April 9, 1984, and the Department did not receive it until April 13, 1984. No extension was requested; no reasonable cause was shown.

The Council's intent is illustrated in the legislative history. Under Title VI of the Real Property Division the Council states:

Under current District law owners of real property must file an annual income and expense statement on the property with the Department of Finance and Revenue. This income and expense statement is used to determine the assessed value of the property.

This provision involves two different standards of proof which make it difficult to enforce the penalty. Under the "reasonable cause" standard the District Government simply needs to prove that the taxpayer has not acted with ordinary business care and prudence. Under the "willful neglect" standard, the District has to prove that the failure to file was intentional, knowing and voluntary.

This title resolves the problem by deleting the "not due to willful neglect" standard. Therefore, the burden of proof is less since the only standard is "reasonable cause" thereby making it easier to impose the penalty. The additional revenue will be used as a funding source for the 1984 budget. Report of the Committee on Finance and Revenue on Bill 5-74, District of Columbia Revenue Act of 1983 (March 3, 1983).

The Court concurs with the District's analysis of the statute pursuant to its legislative history. The Committee Report specifically demonstrates that late filing is to be penalized. Paragraph two of the report states: This failure to file is excused if the information is later provided and if it can be shown that failure to file was due to "reasonable cause." The Court concludes that the facts surrounding the petitioner's tardiness demonstrate no reasonable cause.

The Court is further persuaded by the District's assertion that there has been no equal protection or due process violation. In cases involving equal protection of state tax statutes, the Supreme Court generally has deferred to state legislative bodies. Schweiker v. Wilson, 450 U.S. 221 (1981). Here the rational basis test is imposed and requires that the statute affect classes to which it applies "in a manner rationally related to legitimate government objective." Id. In the present case the penalty is imposed on both large and small property owners in absence of "reasonable cause." As the legislative history reflects, the statute is meant to cause owners to file the forms in a timely manner enabling the District to assess the value of the property. Moreover, the added funding source from these penalties became a part of the District's budget.

As indicated, §47-821(d)(1) provides a waiver of penalty if the Department of Finance and Revenue finds "reasonable cause." The petitioner avers that its failure to submit the form in a timely manner was due to other pressing matters of the responsible accountant. Reliance on an accountant is common but such reliance cannot function as a substitute for compliance with an unambiguous statute. It requires no special training or effort to ascertain a deadline and ensure it is met. In U.S. v. Boyle, 105 S.Ct. 687 (1985) where the executor of the decedent's estate sued for refund of a penalty imposed for late filing of the estate tax by his attorney, the Court said "the taxpayer in the exercise of ordinary business care and prudence must ascertain relevant filing deadlines and ensure those deadlines are met." Therefore, the petitioner in the present case cannot avoid the reach of this statute by merely delegating his duty to the accountant and then claiming "other pressing matters" contribute to "reasonable cause."

Regarding petitioner's due process claim, the Court finds no basis for this argument. The statute clearly gives notice of a penalty imposed for failure to submit the Income and Expense Form without reasonable cause. It further provides redress through the right to petition for a waiver of penalty. The petitioner exercised his right and was denied based on lack of reasonable cause. The Court finds no abuse of discretion in the Department's denial of petitioner's claim. The Department's determination as to what is reasonable cause must be given considerable weight. Therefore the Court concludes that petitioner's due process rights have been fully protected by this statute.

For all the foregoing reasons, the Court finds the District is entitled to the claim against the petitioner for \$43,245.09.

Wherefore it is this 7th day of April, 1986,

ORDERED that respondent's Motion for Summary Judgment is hereby granted; and it is

FURTHER ORDERED that petitioner's Motion for Summary Judgment is hereby denied.


JUDGE THOMAS G. BARNES

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