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THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

TAX DIVISION

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ESTATE OF MORRIS WOLF )  
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 Petitioner, )  
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 v. )  
 )  
 DISTRICT OF COLUMBIA )  
 )  
 Respondent. )  
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SUPERIOR COURT  
DISTRICT OF COLUMBIA  
TAX DIVISION

Tax Docket No. 6351-95

**MEMORANDUM OPINION AND ORDER**

In this assessment appeal, the Government has filed a Motion to Dismiss for lack of subject matter jurisdiction. Respondent asserts that petitioner failed to invoke the jurisdiction of this Court by neglecting to pay the entire amount of the tax assessment for the tax year being challenged and by failing to file a timely appeal before the Board of Real Property Assessments and Appeal. Upon review of the relevant pleadings, and applicable authorities, this Court finds the respondent's motion to be persuasive.

**Background**

On April 3, 1995, the Estate of Morris Wolf, by and through counsel, filed a petition to appeal the real property tax assessment for tax year 1995. Petitioner alleges that the real property tax for the first half of tax year 1995 was paid on or before September 15, 1994 and the tax for the second half of 1995 was paid on March 27, 1995. Petitioner alleges further that the appeal of the real property assessment for tax year 1995 was timely

filed with the Board of Real Property Assessments and Appeals on April 28, 1994.

On May 16, 1995, Respondent filed a Motion to Dismiss indicating that petitioner failed to invoke the jurisdiction of this Court. Respondent alleges that petitioner has not paid the entire amount of the tax assessment for tax year 1995. Respondent alleges further that the first payment made by petitioner in September, 1994, was actually in satisfaction of the tax obligation for the second half of tax year 1994, and that the second payment made in March, 1995 was for the first half of tax year 1995.

Respondent contends that pursuant to Section 3303 of Title 47 of the Code, a taxpayer who desires to appeal a real property tax assessment must first pay the entire amount of taxes, both first and second half for the particular tax year being challenged. Section 3303 states in pertinent part that:

[a]ny person aggrieved by an assessment by the District. . . . may within 6 months after the date of such assessment appeal from the assessment to the Superior Court of the District of Columbia: Provided, that such person shall first pay such tax together with penalties and interest due thereon to the D.C. Treasurer.

47 D.C. § 3303.

On June 5, 1995 petitioner filed an opposition to Respondent's Motion to Dismiss. Petitioner alleges that dismissal of the Petition would deprive petitioner of a right to challenge the real estate tax assessment upon which the September 1994 assessment was based. Petitioner argues that the change of the District of Columbia's 1994 fiscal year from July 1, 1993 through June 30, 1994 to October 1, 1993 through September 30, 1994 made the tax payment

due in September, 1994 apply to fiscal year 1994 rather than to fiscal year 1995. Petitioner contends that this change deprived petitioner of the right to appeal the payment due in September 1994 since they had not previously appealed the 1994 tax assessment.

On June 9, 1995, respondent filed a reply to Petitioner's Opposition to Motion to Dismiss which reiterates petitioner's failure to invoke the jurisdiction of this court for nonpayment of the full amount of the assessment for tax year 1995. Respondent argues further that a party or the court, sua sponte, may raise the issue of subject matter jurisdiction at any time.

#### **Analysis**

After reviewing the relevant pleadings, as well as applicable authorities, this Court has concluded that this case must be dismissed for lack of subject matter jurisdiction pursuant to Superior Court Civil Rule 12(b)(1) and Section 3303 of Title 47 of the Code. Certain key concepts are important to emphasize.

First, only the legislative branch of government can determine the exact definition or parameters of what constitutes a "tax year."

Second, an appeal of a tax year's assessment can only be maintained based upon the requirements of the law at the time of the filing of the court appeal.

Third, the salient issue in this case is the importance of the timing of the change in the law. The change in the definition of "tax year" became effective as of August 6, 1993. This is not

disputed. Consequently, as of August 6, 1993 all taxpayers were obligated to comply with the new law in any appeal that they might contemplate. In any case, the courts became bound by that new law.

Fourth, on each date of payment of the disputed tax bills the petitioner was operating under whatever the law required as of September 15, 1994 and March 27, 1995 respectively. As of both of those dates, the tax year of 1995 was defined by law as the period of **October 1, 1994 through September 30, 1995.**

Since the most recent payment that is asserted to be the basis of jurisdiction is the payment that was made on **March 27, 1995**, it is clear that all tax payments for tax year 1995 had not been made as of the filing of the instant petition. The Court cannot ignore this basic fact.

Payment of the tax in its entirety is a prerequisite to invoke the jurisdiction of the Superior Court. George Hyman Construction Co. v. District of Columbia, 315 A.2d 175, 177 (D.C. 1974). Petitioner's arguments supporting his failure to pay the entire amount of the assessment for tax year 1995 are legally insufficient.

Petitioner should have been aware of the fiscal year changes. Ignorance of the law is not a viable excuse for the failure to abide by its provisions. Petitioner's appeal of the assessment for tax year 1995 was filed on April 3, 1995 -- ironically, prior to the end of the official tax year itself. The instant petition was filed almost **two years** after section 802(7) (1994 Supp.) and

section 811(b) (1994 Supp.) became effective.<sup>1</sup>

Second, petitioner argues that by changing the District of Columbia's 1994 fiscal year to begin October 1, 1993, the respondent "deprived" taxpayers who did not appeal the 1994 assessment, such as Petitioner, of the right to appeal the payment due in September 1994. Memorandum of Points and Authorities in Support of Petitioner's Opposition to Motion to Dismiss, p. 2. This argument is also erroneous. The executive branch did not "deprive" any taxpayer of any right.

By the time that the September, 1994 payments were due, the change in the law had been effective for over one year. If any taxpayer had desired to challenge the September, 1994 tax assessment, the legal obligations for doing so had become a matter of law.

Petitioner does not appear to offer an excuse as to why no appeal of the tax year 1994 or why petitioner's duty to proceed according to existing law should be ignored. Instead, petitioner simply complains that no appeal was filed. The mere fact that petitioner failed to heed the newly enacted, functional definition of a fiscal tax year does not mean that this Court can provide a remedy for the failure to do so.

The change in the District's fiscal year did not effect the basic requirement of appealing the assessment to the Board in order to invoke the jurisdiction of this Court. A timely appeal of the assessment to the Board of Real Property Assessments and Appeals is

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<sup>1</sup> The amendments went into effect on August 6, 1993.

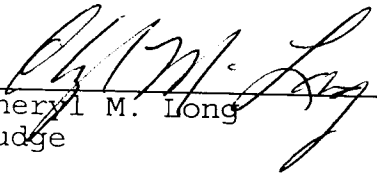
a jurisdictional prerequisite for judicial review of tax assessments and payments. District of Columbia v. Keyes, 362 A.2d 729, 733 (D.C. 1976). Since an appeal to the Superior Court is entirely de novo, it is not pivotal that the Board accepted petitioner's appeal insofar as it was characterized as an appeal of the assessment for tax year 1995.

Finally, petitioner argues that respondent failed to file its Motion to Dismiss within thirty days of service of the Complaint pursuant to Tax Rule 9(a). This argument is also insufficient to support petitioner's complaint. This Court has held previously that a party or the court, sua sponte, may raise the issue of subject matter jurisdiction at any time during the proceedings. Neither the parties nor the Court can waive or confer subject matter jurisdiction. Customers Parking Inc. v. District of Columbia, 562 A.2d 651, 654 (D.C. 1989).

For the reasons stated herein, this Court has concluded that Respondent's Motion to Dismiss must be granted. Petitioner has failed to pay the total tax due for tax year 1995. Furthermore, this Court finds that the change in the District's fiscal year did not prevent petitioner from appealing the assessment for tax year 1994. To the extent that petitioner failed to appeal the 1994 assessment in accordance with the law, he did so at his own peril.

WHEREFORE, it is by the Court this 28<sup>th</sup> day of August, 1995  
ORDERED that respondent's Motion to Dismiss is hereby GRANTED;  
and it is

FURTHER ORDERED that petitioner's appeal in the instant matter is dismissed with prejudice.

  
Cheryl M. Long  
Judge

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