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Taxation

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TAXATION

I. JUDICIAL DECISIONS

One of the major decisions of 1980 was the District of Columbia Court of Appeals decision in *Bishop v. District of Columbia*.¹ In this case, the court struck down the District's unincorporated business tax on nonresident unincorporated professionals and on personal service businesses. The court determined that this tax was a personal income tax and thus violated the District of Columbia Self-Government and Governmental Reorganization Act,² which prohibits the District from taxing the personal incomes of nonresidents.³ The *en banc* decision in this case affirmed an earlier decision of a panel of the District of Columbia Court of Appeals.⁴

In *Carter-Lanhardt, Inc. v. District of Columbia*,⁵ the District of Columbia Court of Appeals held that the District's general three-year statute of limitations⁶ applies to an appeal of a tax refund denial. The plaintiffs in this case had filed their appeals between one and three years after filing refund requests. The court rejected the District's contention that section 47-2413(a) of the District of Columbia Code,⁷ which authorizes an appeal of a tax refund denial, incorporates the time deadlines of section 47-2403 of the District of Columbia Code.⁸ Those deadlines authorize a judicial challenge to a property tax assessment up to one year after the assessment is received.

Another case, *Borden v. District of Columbia*,⁹ concluded that a bank's unauthorized sale and subsequent repurchase of stocks held as collateral was not a taxable event subject to capital gains tax.¹⁰ The District had asserted that the bank's action constituted a sale by the taxpayer. The

1. 411 A.2d 997 (D.C.) (en banc), *cert. denied* 446 U.S. 966 (1980). For a detailed discussion of this case see Note, *Bishop v. District of Columbia: Taxation of Unincorporated Professionals' Net Income Violates Home Rule*, 29 CATH. U.L. REV. 1033 (1980).

2. D.C. CODE 1-121 to -171 (Supp. V 1978 & Supp. VII 1980).

3. *Bishop v. District of Columbia*, 411 A.2d at 998-99.

4. See *Bishop v. District of Columbia*, 401 A.2d 955 (D.C. 1979), *aff'd en banc*, 411 A.2d 997 (1980).

5. 413 A.2d 916 (D.C. 1980).

6. See D.C. CODE § 12-301(8) (1973).

7. D.C. CODE § 47-2413(a) (1973).

8. D.C. CODE § 47-2403 (1973).

9. 417 A.2d 402 (D.C. 1980).

10. *Id.* at 405.

court, however, determined that the bank had converted the stocks and, consequently, the taxpayer could not have sold them.¹¹

*District of Columbia v. W. Bell & Co., Inc.*¹² held that a retailer's purchase of catalogues in Georgia and the later mailing of them to District residents was not a taxable event.¹³ Under section 47-2701(6) of the District of Columbia Code,¹⁴ the use, storage, or consumption of tangible personalty and services sold at retail is subject to the use tax. In *W. Bell & Co.*, however, the District of Columbia Court of Appeals determined that the taxpayer's control over the catalogues was insufficient to constitute a use under the statute.¹⁵

Finally, in *Watson v. Scheve*,¹⁶ the District of Columbia Court of Appeals upheld a tax sale and subsequent transfer of realty despite the District's failure to notify the owner, who, unknown to the District, had acquired the property by devise. The court declared that section 47-403 of the District of Columbia Code¹⁷ merely mandates a system of lot description and does not require the District to ascertain the owner of devised realty.¹⁸

II. LEGISLATION

Faced with a mounting budget deficit, the Council of the District of Columbia enacted The Revenue Act of 1980.¹⁹ This Act increased the general sales and use tax rates from 5% to 6%,²⁰ subjected soft drinks, candy, confectionary, and chewing gum to the general sales tax,²¹ increased the sales and use tax rates for transient accommodations from 8% to 10%,²² and imposed a 6% sales tax on motor vehicle fuels.²³ The Act also raised

11. *Id.*

12. 420 A.2d 1208 (D.C. 1980).

13. *Id.* at 1211.

14. D.C. CODE § 47-2701(6) (1973).

15. 420 A.2d at 1210.

16. 424 A.2d 1089 (D.C. 1980).

17. D.C. CODE § 47-403 (1973).

18. 424 A.2d at 1091.

19. D.C. Law No. 3-92, 27 D.C. R. Reg. 3390 (1980) (to be codified in scattered sections of titles 45 & 47 of the D.C. CODE).

20. *Id.* §§ 201(b), 202, 27 D.C. R. Reg. 3396, 3399 (1980) (to be codified in D.C. CODE §§ 47-2602, -2702).

21. *Id.* § 201(a), 27 D.C. R. Reg. 3396 (1980) (to be codified in D.C. CODE § 47-2601).

22. *Id.* §§ 201(b), 202, 27 D.C. R. Reg. 3397, 3400 (1980) (to be codified in D.C. CODE §§ 47-2602, -2702).

23. *Id.* § 201(c), 27 D.C. R. Reg. 3398 (1980). This tax was repealed by Closing of a Portion of a Public Alley in Square 5263; the Police Officers, Firefighters, and Teachers Retirement Amendments, the District of Columbia Depository Act of 1977 Amendments; and the District of Columbia Motor-Vehicle Fuel and Sales Tax Act and the District of

the personal property tax rate from \$2.82 to \$3.10 per \$100 of assessed value,²⁴ and extended the deed recordation tax to construction and permanent loan deeds of trust.²⁵ Finally, the Act imposed a new 1% tax on all transfers of realty,²⁶ increased the charges for late payment of taxes,²⁷ and changed the date for filing estimated income tax payments.²⁸ According to the Council's Committee on Finance and Revenue, these measures were expected to raise an additional \$47,800,000 in fiscal year 1981.²⁹

Within a few months, however, the Council repealed the 6% sales tax on motor vehicle fuels.³⁰ In place of this tax, the Council raised the gasoline tax from ten cents to eleven cents per gallon. In addition, the Council provided for a June, 1981 increase to thirteen cents per gallon and future increases under a formula based on the Consumer Price Index.³¹

Another Council Act, The Real Property Tax Rates for Tax Year 1981 Act of 1980,³² raised the tax rates for nonresidential realty from \$1.83 to \$2.13 per \$100 of assessed value. The rates for residential realty, however, remained the same: \$1.22 per \$100 of assessed value for most owner-occupied residential realty and \$1.54 per \$100 for most other residential realty.³³

In The District of Columbia Financial Institutions Tax Act of 1980,³⁴ the Council repealed the gross earnings tax on financial institutions and

Columbia Sales Tax Act Amendments of 1980 Act of 1980, D.C. Law No. 3-128, § 12, 28 D.C. R. Reg. 261-62 (1981) (to be codified in D.C. CODE § 47-2605). See note 13 and accompanying text *supra*.

24. District of Columbia Revenue Act of 1980 § 302, 27 D.C. R. Reg. 3402-03 (1980) (to be codified in D.C. CODE § 47-1207).

25. *Id.* § 101, 27 D.C. R. Reg. 3390-94 (1980) (to be codified in D.C. CODE § 45-721 to -724).

26. *Id.* §§ 401-419, 27 D.C. R. Reg. 3403-22 (1980) (to be codified in D.C. CODE §§ 47-671 to -689).

27. *Id.* §§ 501-503, 27 D.C. R. Reg. 3422-26 (1980) (to be codified in scattered sections of title 47 of the D.C. CODE).

28. *Id.*

29. COMM. ON FINANCE & REVENUE, COUNCIL OF THE DISTRICT OF COLUMBIA, REPORT ON DISTRICT OF COLUMBIA REVENUE ACT OF 1980, 3d Council, 2d Sess. 8 (1980).

30. Closing of a Portion of a Public Alley in Square 5263; the Police Officers, Firefighters, and Teachers Retirement Amendments; the District of Columbia Depository Act of 1977 Amendments; and the District of Columbia Motor-Vehicle Fuel and Sales Tax Act and the District of Columbia Sales Tax Act Amendments of 1980 Act of 1980, D.C. Law No. 3-128, § 12, 28 D.C. R. Reg. 261-62 (1981) (to be codified in D.C. CODE § 47-2605).

31. *Id.* § 11(a), 27 D.C. R. Reg. 250-53 (1981) (to be codified in D.C. CODE § 47-1901).

32. D.C. Law No. 3-257, 27 D.C. R. Reg. 4530-33 (1980) (to be codified in D.C. CODE 47-635.1).

33. *Id.*

34. D.C. Law No. 3-95, 27 D.C. R. Reg. 3509 (1980) (to be codified in scattered sections of title 47 of the D.C. CODE).

replaced it with a personal property tax and franchise tax on net income. The Act, however, provides for phasing in these changes over three years.³⁵ When this transition is completed, District financial institutions will pay the same taxes as other District corporations.

Finally, the Council imposed a new fee on the District's public utilities in the Public Utilities Reimbursement Fee Act of 1980.³⁶ Under this Act, the public utilities must reimburse the District an amount equal to the budgets for the Public Service Commission and Office of People's Counsel.³⁷

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35. *Id.* § 301, 27 D.C. R. Reg. 3515-17 (1980) (to be codified in D.C. CODE § 47-1709.1).

36. D.C. Law No. 3-88, 27 D.C. R. Reg. 3004 (1980) (to be codified in D.C. CODE § 43-412).

37. *Id.* § 2.