SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
TAX DIVISION

AMERICAN PHILOSOPHICAL ASSOCIATION ET AL.,	:	
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	:	
	:	Case No. 2019 CVT 000003
v.	:	Judge Kimberley S. Knowles
	:	
DISTRICT OF COLUMBIA	:	

ORDER

On February 3, 2025, the Court held a hearing and heard arguments on Defendant's Motion to Dismiss, filed January 16, 2025 ("MTD"), and Defendant's Motion to Decertify the Class, filed January 16, 2025 ("MTDC"). Present at the hearing were Jeffrey Klafter and Silvia Strikis, counsel for Petitioner, and Brendan Heath, counsel for Respondent ("the District").

At the hearing, the Court set two dates: a February 24th deadline for parties to confer and, if possible, submit a joint motion on appropriate procedure moving forward; and hearings July 29-30, 2025 to determine class membership, damages, and any other appropriate concerns. Parties were advised that this Court's findings on the Motion to Dismiss and Motion to Decertify the Class could impact those dates.

I. Background

This matter was initiated in the Civil Division of the Superior Court of the District of Columbia in Case No. 2017-CA-004057-B. On August 29, 2017, the District filed Defendant District of Columbia's Motion to Dismiss Complaint, arguing that the Court lacks jurisdiction over petitioner's claims for failure to exhaust the statutory process for obtaining a tax refund. On January 29, 2019, the Honorable Anthony C. Epstein issued an Order finding that exhaustion is not warranted in this matter because the D.C. Office of Tax and Revenue ("OTR") lacks the

institutional competence to resolve matters concerning the Commerce Clause of the U.S. Constitution, and any application to OTR would be futile. The Court found that this matter is distinguishable from the common taxpayer case and denied the District's Motion to Dismiss on this subject.[1]

On February 1, 2019, this matter was transferred to the Tax Division of the Superior Court of the District of Columbia. On March 8, 2019, the District filed Defendant's Motion for Reconsideration of the Court's January 29, 2019 Order ("MTR"), arguing that the Court erred in finding that the relevant tax refund provisions, D.C. Code Sections 47-2021(a) and 47-3303, do not mandate exhaustion of the administrative process. On May 30, 2019, the Honorable Jonathan H. Pittman issued an Order affirming Judge Epstein's conclusions. Judge Pittman affirmed that in the "unique circumstances of this case" the Court need not require administrative exhaustion.

On April 30, 2021, Judge Pittman issued an Order certifying the class as all "semipublic institutions that do not have offices within the District that paid a sales or hotel tax to any of the hotels listed below…." after finding that class action is a superior method of resolution in this matter as the inverse would permit re-litigation of this issue on cases brought by similarly situation plaintiffs.

On April 8, 2022, Petitioner filed Plaintiff's Motion for Summary Judgment as to Defendant District of Columbia's Liability. On March 29, 2023, the District filed Defendant's Combined Opposition to Plaintiffs' Motion for Summary Judgment as to Defendant's Liability and Cross-Motion for Summary Judgment. In their cross-motion, the District argued that only semi-public institutions that are tax exempt under Section 501(c)(3) of the Internal Revenue Code are entitled to exemption.

[1] The Order granted the District's Motion to Dismiss in part on the subject of Petitioners seeking relief other than a refund of taxes paid.

On February 13, 2024, the Honorable John F. McCabe issued Order Granting Plaintiffs' Motion for Summary Judgment and Denying Defendant's Cross-Motion for Summary Judgment. Judge McCabe found that D.C. Code Section 47-2005(3) facially discriminates against interstate commerce and granted summary judgment on the subject of liability in favor of Petitioners. Judge McCabe also found there was no need for the Court to clarify the scope of the class. On November 4, 2024, this Court issued an Order and recognized that, pursuant to Civil Rule 23(c)(1)(C), the certification order could be revisited if the District had a valid basis to challenge the certified class.

II. Motion to Dismiss

a. Pleadings

The MTD argues that "the Court previously rejected certain exhaustion arguments, it did not consider" D.C. Code Section 27-3310(b) which the District "recently recognized" was not raised in their previous filings, and therefore not addressed in prior Court orders. The MTD argues that this Court only has jurisdiction "if a timely refund claim has been filed" and that the Court of Appeals has recognized taxpayers who challenged the U.S. Constitution had first claimed a refund at the administrative level. *See Bishop v. District of Columbia*, 401 A.2d 955, 956 (D.C. 1979). The District also stated dismissal was appropriate for non-501(c)(3) entities for lack of standing.

On January 23, 2025, Petitioners filed Plaintiffs' Opposition to Defendant's Renewed Motion to Dismiss. Petitioners argue that the Court's jurisdiction over this matter is the settled law of the case, as the District's argument for dismissal has been denied twice. Petitioners argue that D.C. Code Section 47-3310(b) is a non-jurisdictional claims-processing rule because it "does not speak to a court's authority, but only to a party's procedural obligations." *See EPA v. EME*

Homer City Generation, L.P., 572 U.S. 489, 512 (2014). Petitioner argues, in footnote, that the effect of the "if" in 47-3310(b) provides authorization to those who have sought refunds to provide suit without opining on the Court's jurisdiction to hear the suits of those who have not sought refunds. Petitioners also argue it's impossible for Plaintiffs or Class Members to comply with OTR's refund requirements as class members neither directly paid sales and hotel taxes to the District nor paid sales and use taxes for a particular tax period.

b. February 3, 2025, Hearing

At the hearing, the District argued that it is appropriate for the Court to consider a second motion to dismiss as their argument concerns jurisdiction and jurisdiction cannot be waived. The District recognized that this argument could have been raised in their initial motion to dismiss, but it was overlooked.

Petitioners reiterated their argument that the District's MTD was an improper re-litigation of settled matters. Additionally, Petitioners argued that the D.C. Council uses language intentionally in the D.C. Code and the decision to use "if" instead of "only if," as it does in other sections, cannot be read to mean "must."

c. Analysis

i. On the Propriety of the Motion

While this Court does not encourage re-litigation of settled law, the D.C. Court of Appeals ("DCCA") has affirmed a procedurally similar matter and thus this Court will address the MTD on its merits. *See Charlton v. Mond*, 987 A.2d 436 (D.C. 2010) (affirming grant of motion to dismiss for lack of personal jurisdiction where movant's previous motion to dismiss and motion for reconsideration were denied). This Court does not intend this finding to be an invitation to re-litigate other matters of settled law.

However, the Court does find that the MTD is so substantively similar to the District's previous motion to dismiss, and related motion for reconsideration, that Judge Epstein and Judge Pittman's orders denying are both relevant and instructive.

ii. On the Merits

As the Court has not found any cases on point, and parties have not offered any, the Court will consider the plain text of the statute. The text of D.C. Code Section 47-3310(b) states: 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 refunded to the taxpayer, *if* a timely refund claim has been filed (emphasis added).

In *Peoples Drug Stores, Inc. v. District of Columbia*, DCCA held that a court should "look beyond the ordinary meaning of the words of a statute only where there are "persuasive reasons" for doing so. *See Peoples Drug Stores, Inc. v. District of Columbia*, 470 A.2d 751 (D.C. 1983) (citing *Tuten v. United States*, 440 A.2d 1008, 1013 (D.C. 1982), *aff'd* 460 U.S. 660, 103 S. Ct. 1412, 75 L. Ed. 2d 359 (1983)). DCCA recognized four exceptions to the plain meaning rule: (1) where legislative history or consideration of alternative constructions reveals ambiguities; (2) where the literal meaning produces absurd results; (3) to avoid obvious injustice; and (4) to effectuate the legislative purpose. *See id.*

A plain reading of 47-3310(b) indicates that the Superior Court has jurisdiction over claims where a timely refund has been filed, but the statute lacks a qualifier to indicate the Superior Court *only* has jurisdiction where a timely refund has been filed. A plain reading of the statute indicates to this Court that where a timely refund claim has been filed, jurisdictional challenges are moot. Considering the listed exceptions above, the Court finds the only relevant exception to consider is if "legislative history or consideration of alternative constructions reveals

ambiguities" as the District's reading of the statute is that "In any proceeding under this title... if" creates a jurisdictional requirement. *See id.* at 754.

On legislative history, parties have not offered, nor has the Court found, anything specific to 47-3310(b). However, Petitioners argued that D.C. Council's amendment of D.C. Code Section 47-2413, the relevant statute in case *American Security & Trust Co. v. District of Columbia* cited by both parties, from stating "provided, that" to the weaker "if" indicates an intentional use of the word if to not create a subject-matter jurisdiction bar to bringing suit in Superior Court. Additionally, the Court, in looking at Title 47 Chapter 33 of the D.C. Code, found multiple uses of the words "must," "only," and one use of "provided, that" in D.C. Code Section 3303, the meaning of which was analyzed by Judge Epstein in his order denying. Judge Epstein found that the "plain language" of 47-3303 "does not require OTR review before the taxpayer files suit in Superior Court."

Additionally, on considerations of alternative constructions, this appears distinct from *Sanker v. United States*, cited in *Peoples Drug Stores*, which found ambiguity in the phrase "any court having jurisdiction to try offenses against the United States" as overly broad and encompassing three proper categories of courts. *See Sanker v. United States*, 374 A.2d 304, 307-08 (D.C. 1977). Here, the statute does not contain any words or phrases with multiple meanings.

Therefore, the Court does not find that there is an appropriate exception requiring the Court to look beyond the plain meaning of the statute. The Court finds that the plain meaning of the statute decrees that while the Court has jurisdiction if a timely refund claim has been denied, it does not state that that is required for jurisdiction. The Court finds that it does have jurisdiction over this matter.

III. Motion to Decertify the Class

a. Pleadings

The MTDC argues that common questions of law and face do not predominate in this action, and therefore, a class action proceeding is not the superior way of adjudicating this matter. The MTDC also argues that the Order Denying Summary Judgment, issued February 13, 2024, included organizations that have designations other than IRC Section 501(c)(3), which vitiates the class's commonality, predominance, and typicality. The MTDC requests the Court decertify the class.

The Opposition, filed January 23, 2025, argues that the District's first argument is identical to the argument they made previously to Judge Pittman, and accuses the District of "Judge shopping." The Opposition also argues that the District's second argument is identical to the argument they made previously to Judge McCabe, and again accuses the District of "Judge shopping."

b. February 3, 2025, Hearing

At the hearing, Petitioners stated that they examined the non-501(c)(3) entities in their class list and have concluded that they are not class members. Petitioners stated that they, without conceding any of the District's arguments would agree to modify the class definition. Petitioners provided a hard copy to the Court and the District. The District stated that they could not agree to the modified class definition, as they had not been given time to review the proposal.

c. Analysis

In his Order certifying the class action, Judge Pittman considered whether Petitioners met all the requirements of Civil Rule 23(a) and at least one subdivision of Civil Rule 23(b), which would make class certification appropriate. Judge Pittman concluded that due to the numerosity,

commonality, typicality, adequacy, and predominate issues, a class action is superior to any other method of resolution.

This Court, in its Order issued November 4, 2024, stated that the District could challenge the certification order if the District had a valid basis to challenge the certified class. The Court does not find any basis to challenge Judge Pittman's order has been presented. Additionally, the Court finds that the District's argument in favor of excluding non-501(c)(3) members from the class list is moot following the Petitioner's statements that their current class list only includes 501(c)(3) entities.

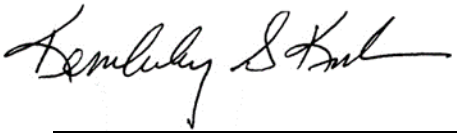
Accordingly, it is this 19th day of February, 2024,

ORDERED that the Motion to Dismiss, filed January 16, 2025, is **DENIED WITH PREJUDICE**. It is further

ORDERED that the Motion to Decertify the Class, filed January 16, 2025, is **DENIED.** It is further

ORDERED that the parties shall confer and submit to the Court a joint motion addressing future procedure of this matter and submit that motion, or, if parties do not agree, individual motions, to the Court on or before February 24, 2025. It is further

ORDERED that if parties agree to amend the class definition, they shall file a consent motion with proposed language on or before February 24, 2025.



Kimberley S. Knowles
Associate Judge

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