SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Tax Division

OMNI SHOREHAM CORP.,	:	
	:	
Petitioner	:	
	:	
v.	:	Tax Docket No. 7879-00
	:	
DISTRICT OF COLUMBIA,	:	
	:	
Respondent	:	

ORDER

On April 23, 2002, the Court entered an Order and Judgment directing that the Tax Year 2000 real property tax assessment of Lot 812 in Square 2138 be reduced to $32,004,000. It appearing that the parties have reached an agreement regarding the amount of the refund of real property taxes paid, as shown by the signatures of their respective counsel, it is, by the Court this 8th day of August, 2002,

ORDERED: That Respondent shall reduce the estimated market value and real property tax assessment of Lot 812 in Square 2138 for Tax Year 2000 (commencing on October 1, 1999, and ending September 30, 2000) to $32,004,000 consisting of the following breakdown:

Land	$18,832,230
Improvements	$13,171,770
Total	$32,004,000; and it is

FURTHER ORDERED: That Petitioner is entitled to, and the District of Columbia shall pay to Petitioner, a partial refund of real property taxes assessed against Lot 812 in Square 2138 in the District of Columbia for Tax Year 2000 , in the amount of $337,538.67, plus interest at the rate of six percent (6%) per year from September 29, 2000, to the date of the making of the refund; and it is

FURTHER ORDERED: That each party is to bear its own fees and costs; and it is

FURTHER ORDERED: That this is a final order.

JUDGE

READ AND APPROVED:

RALPH A. TAYLOR, JR., #225219
Dorsey and Whitney LLP
1001 Pennsylvania Avenue, N.W., #400 South
Washington, D.C. 20004
202.442.3000

Counsel for Petitioner

ROBERT R. RIGSBY
Corporation Counsel, D.C.

CHARLES BARBERA
Deputy Corporation Counsel, D.C.
BRUCE BRENNAN
Assistant Deputy Corporation Counsel, D.C.
Commercial Division

DAVID FISHER #325274
Assistant Corporation Counsel, D.C.
Chief, Tax, Bankruptcy and Finance Section

Nancy Smith

NANCY SMITH #914887
Assistant Corporation Counsel, D.C.
Tax, Bankruptcy and Finance Section
441 4th Street, N.W, #6 North
Washington, D.C. 20001

Counsel for Respondent

SERVE: Copies to above and
HERBERT HUFF
Deputy Chief Financial Officer
941 North Capitol Street, N.E., 8th Floor
Washington, D.C. 20002

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
TAX DIVISION

OMNI SHOREHAM CORP.,	*	
	*	
Petitioner.	*	**Tax No. 7879-00**
	*	
v.	*	
	*	
DISTRICT OF COLUMBIA,	*	
	*	
Respondent.	*	
	*	

ORDER

This matter comes before the Court for consideration of Petitioner's Motion for Summary Judgment filed October 5, 2001, the Respondent's Opposition thereto and the Petitioner's Reply. On January 28, 2002, this Court held a hearing to address said Motion, and all parties presented oral argument on the matter. Having considered the evidence, the arguments and the pertinent legal authority, the Court concludes that the proposed out-of-cycle assessment of $59,372,000 for Tax Year 2000 imposed pursuant to D.C. Code §§ 47-829 and 47-820 (b-1)(1)(G) is illegal and the assessment of $32,044,000 must be reinstated.

BACKGROUND

The Petitioner seeks summary judgment relief from a District of Columbia real property tax that was levied in connection with a major renovation on the property. The tax that is in dispute was imposed as a result of an out-of-cycle assessment that was conducted by the District on May 12, 2000. The Petitioner argues that D.C. Code § 47-820 (b-1)(1)(G), the Code Section under which the Respondent contends the Tax Year 2000 out-of-cycle assessment was made,

does not apply here. Additionally, the Petitioner submits that even if this section of the Code is applicable, the Tax Year 2000 assessment was untimely. The Respondent asserts that D.C. Code §§ 47-831 and 47-820 (b-1)(1)(G) authorized the District to impose the out-of-cycle assessment and nothing in the D.C. Code imposes a mandatory deadline for notice of assessment.

The legal question presented is whether the Respondent is authorized to impose this Tax Year 2000 out-of-cycle assessment, and if so, whether such an assessment may be issued over seven (7) months after the beginning of the tax year and over fourteen (14) months after the due date for any notice of new assessment. The Court finds that this question must be answered in the negative.

FINDINGS OF FACT

The facts are not in dispute. The Petitioner Omni Shoreham Corporation is the owner of real property located in the District of Columbia at 2500 Calvert Street, NW that is known as the Omni Hotel. In 1998, the District, through its Office of Tax and Revenue ("OTR"), made a regular annual assessment of the subject property for the 1999 Tax Year. The assessment was $32,004,000. This assessment is comprised of a valuation of $18,832,230 for the land and $13,171,770 for the building.

Beginning in 1997, the Petitioner obtained construction permits to begin a multi-million dollar renovation of the hotel on the subject property. The renovation continued several years and was substantially completed in December 2000. As a result of the renovation, OTR imposed a second half Tax Year 1999 supplemental assessment on the subject property pursuant to D.C. Code § 47-829. OTR valued the property at $56,522,000. The Petitioner timely appealed the supplemental assessment to the Board of Real Property Assessments and Appeals (the "Board").

Following a hearing and written submissions by both parties, the Board rejected the proposed supplemental assessment and reduced the assessment back to $32,004,000. Specifically, the Board rejected the District's argument that the then-ongoing renovation of the hotel on the subject property justified the supplemental assessment under either D.C. Code § 47-829(d)(1)(B) or (d)(1)(C). The Board reaffirmed its decision in its written Decision and Order of March 8, 2000.

While the appeal to the Board was pending, the Petitioner also appealed the supplemental assessment to the Superior Court. On March 27, 2001, the Court ratified and affirmed the Board's decision in favor of the Petitioner. The Court entered an Order of Judgment in favor of the Petitioner on May 1, 2001.

On May 12, 2000, over four-teen (14) months after the deadline for notice of a new Tax Year 2000 assessment, OTR prepared and noticed an out-of-cycle annual assessment for Tax Year 2000 pursuant to D.C. Code § 47-820(b-1)(1)(G). This notice of assessment was sent after the Board's Decision, affirmed by this Court, rejecting the Tax Year 1999 supplemental assessment. In its out-of-cycle assessment for Tax Year 2000, OTR determined the value of the subject property to be $59,372,000. The Petitioner challenged the Tax Year 2000 out-of-cycle assessment by appeal to OTR on June 23, 2000 and to the Board on July 27, 2000. Both appeals resulted in no change to the assessment. The Petitioner filed the instant action on September 29, 2000 and now seeks summary judgment in its favor.

CONCLUSIONS OF LAW AND ORDER

Summary judgment is appropriate if the record shows that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. *See* Sup.

Ct. R. 56(c); *Celotex Corp. v. Catrett*, 477 U.S. 317, 322-323, 106 S.Ct. 2548, 2552, 91 L.Ed.2d 265 (1986). To make the required showing, the non-moving party must come forward with evidence that meets the evidentiary standards applicable at trial. *See Hendel v. World Plan Executive Council*, 705 A.2d 656, 660 (D.C. 1997). Upon consideration of the arguments and the evidence submitted in this case, the Court finds that no material issue of fact is in dispute and turns to the issue concerning the legality of the assessment imposed for Tax Year 2000.

In accordance with D.C. Code § 47-820 (b-1)(1), a property must be assessed at least once every three (3) years. Once this regular assessment is made, the assessment normally remains effective for a period of three (3) years. An out-of-cycle assessment may be made only under limited circumstances during the period in between regular assessments. Unless the circumstances set forth in D.C. Code § 47-820 are met, the assessment of the property for Tax Year 1999 should remain in effect through Tax Year 2001.

When the Board invalidated the supplemental assessment of $56,522,000 that had been imposed on the property for Tax Years second half 1999 and 2000, the annual assessed value of Tax Year 1999 in the amount of $32,044,000 was reinstated. Under the triennial assessment system, the Board's action also had the effect of invalidating the Tax Year 2000 assessment (which adopted the 1999 supplemental value) and imposing the assessment of $32,004,000 for Tax Year 2000. It is at this point that OTR noticed and imposed an out-of-cycle annual assessment for Tax Year 2000 in the amount of $ 59,372,000. The Court finds that imposition of this assessment is invalid as a matter of law.

I.

According to the Respondent, OTR is authorized to impose the instant out-of-cycle assessment for Tax Year 2000 pursuant to D.C. Code § 47-831. This section of the D.C. Code provides that property liable to taxation that has been omitted from assessment or has been so assessed that the assessment made was void shall be at once assessed.

The Court concludes that the property is not subject to an out-of-cycle assessment because said property has not been omitted from assessment within the meaning of D.C. Code § 47-831. The Court will find that property has been omitted within the meaning of D.C. Code § 47-831 when that property has truly escaped assessment and taxation, as in the case where improvements are not valued at all due to clerical error or oversight. *See 1111 19th Street Assoc. v. District of Columbia*, 521 A.2d 260, 266 (D.C. 1987). Omitted property is property that has not been assessed at all, and not property that is merely undervalued. *See Hunt v. District of Columbia*, 71 App. D.C. 143 (D.C. 1939). Property that has already been assessed may not be revalued. *See 1111 19th Street Assoc. v. District of Columbia*, 521 A.2d 260, 266 (D.C. 1987). The property in this case, including the improvements, has at all times since Tax Year 1999 been assessed at $32,004,000. This assessment includes a valuation of $13,171,770 for the building. Here, the property has not been omitted from assessment because there is no tax that is justly owing and has inadvertently escaped collection.

The Court further concludes that the property is not subject to an out-of-cycle assessment because said property has not been made void within the meaning of D.C. Code § 47-831. The Board's decision to invalidate the supplemental assessment of $56,522,000 that had been imposed for Tax Years second half 1999 and 2000 did not render the assessment void. Instead, the Board's action only reduced the assessment back to the regular annual assessment of

$32,004,000. The Court finds that a Board decision renders an assessment void within the meaning of D.C. Code § 47-831 when that Board decision results in a reduction of the assessed value to zero ($0). *See District of Columbia v. Casino Assoc., Ltd.*, 684 A.2d 322 (D.C. 1996). The decision by the Board in this instance did not leave the property unassessed. Although the Board rejected the supplemental assessment in the amount of $56,522,000, the assessment was reduced back to $32,004,000. The property has not escaped taxation and D.C. Code § 47-831 is inapplicable.

II.

The Respondent asserts that OTR was authorized to impose an out-of-cycle assessment pursuant to D.C. Code § 47-820 (b-1)(1)(G). D.C. Code § 47-820 (b-1)(1)(G) permits out-of-cycle assessments for physical changes to the property. The Respondent argues that this section of the D.C. Code is applicable because a substantial change occurred to the physical make up of the property due to the on-going construction on the property. The Court disagrees. The undisputed facts demonstrate that OTR now seeks to reassess the property, relying on the same information upon which the supplemental assessment for Tax Year second half 1999 was made and rejected. Both the Board and this Court rejected the government's argument that a supplemental assessment was warranted because of the multi-million dollar hotel renovation. Both the land and the improvements were assessed and taxes were imposed accordingly. There is no new independent ground that warrants an out-of-cycle assessment. *See District of Columbia v. Casino Assoc., Ltd.*, 684 A.2d 322 (D.C. 1996). The Court concludes that D.C. Code § 47-820 (b-1)(1)(G) is inapplicable.

III.

Even if the assessment at issue were otherwise permissible under D.C. Code § 47-820 (b-1)(1)(G), the assessment was untimely. The D.C. Code provides a carefully constructed assessment process. Pursuant to D.C. Code §§ 47-820 (a)(3), every regular assessment must be made as of January 1 of the year preceding the beginning of the tax year. D.C. Code § 47-824(b)(1) requires the government to notify the taxpayer of its valuation by March 1 of the year preceding the beginning of the tax year. Here, for Tax Year 2000, the assessment was to be based on a January 1, 1999 valuation date and OTR was required to send the notice of that assessment to the Petitioner by March 1, 1999. Not until May 2000 did OTR issue the new assessment of $59,372,000, increasing the assessed value for the then-current tax year by over $27 million. By explicitly stating in D.C. Code §§ 47-825 and 47-829 the special assessment deadlines and the appeal deadlines that are applicable to those exceptions, the drafters intended that the regular annual deadlines apply to all exceptions other than administrative corrections and supplemental assessments. *See Winters v. Ridley*, 596 A.2d 569, 572-73 (D.C. 1991). Since, by Respondent's own admission, the May 2000 assessment was not a corrective assessment under D.C. Code § 47-825 nor a supplemental assessment under D.C. Code § 47-829, it should have been made pursuant to the schedule for regular assessments for Tax Year 2000. The May 2000 assessment came long after the statutory deadline for filing an appeal with the Board and became payable in full by September 15, 2000. The Court concludes that the assessment was imposed too late to apply to Tax Year 2000.

Allowing the assessment to stand would be inconsistent with statutory intent. Both the nature of the contemplated acts outlined in the statute and the explicit language of the statute demonstrate that the statutory deadlines are mandatory. *See JBG Properties, Inc. v. District of*

Columbia Office of Human Rights, 364 A.2d 1183, 1185 (D.C. 1976). D.C. Code § 47-825.01 provides that before a taxpayer may appeal to this Court, the taxpayer shall first appeal the assessment to the Board. This language provides taxpayers the right to challenge an assessment without resort to litigation. The statutorily outlined procedure also maximizes the likelihood that assessments will be finalized in advance of the tax year to which they apply and it gives certainty to the assessment process. Under D.C. Code § 47-825.01 (f-2)(1)(A), the last date for the Petitioner to appeal the assessment for Tax Year 2000 to the Board was September 30, 1999. Failure to timely file an appeal with the Board would have foreclosed Petitioner's right to appeal to this Court. Although the Petitioner was able to obtain administrative review in this instance, the Board was not obligated to provide such review, and indeed, did not provide such review until after September 30, 2000, the deadline for Omni to appeal to the Court. Accordingly, the Petitioner had to pay the taxes at issue and the costs of the appeal to this Court before the Board had time to act. This is an unnecessary prejudice to the Petitioner and other similarly situated taxpayers since the government could have assessed the property for Tax Year 2000 by March 31, 1999 or could have imposed a supplemental assessment in 2000 if a sufficient basis justifying such assessment existed. In any event, OTR may not impose an excepted assessment arbitrarily at any time is chooses. In this instance, the assessment at issue was imposed too late to apply to Tax Year 2000 and is invalid as a matter of law.

JUDGMENT OF THE COURT

WHEREFORE, it is by the Court this 22nd day of April 2002, hereby

ORDERED, that Petitioner's Motion be, and the same hereby is, **GRANTED**; and it is further

ORDERED, that Summary Judgment is hereby granted in favor of Petitioner and the out-of-cycle assessment made on the property shall be corrected and the tax bill shall be adjusted to reflect an assessment of $32,004,000.00; and it is further

ORDERED, that the District shall refund to Petitioner the real property taxes paid on the property in excess of the taxes payable on the proper assessment of $32,004,000.00, plus interest.

SO ORDERED.

JUDGE KAYE K. CHRISTIAN

Copies to:

Nancy Smith, Esq.
Assistant Corporation Counsel
441 4th Street, N.W.
Washington, D.C. 20001

Ralph A. Taylor, Jr., Esq.
Trystan Phifer O'Leary, Esq.
Dorsey & Whitney LLP
1001 Pennsylvania Avenue, N.W.
Suite 300 South
Washington, D.C. 20004