

**SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
TAX DIVISION**

**DISTRICT HOSPITAL PARTNERS,
L.P.**

Petitioner,

v.

DISTRICT OF COLUMBIA,

Respondent

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2021 CVT 000013

**ORDER GRANTING RESPONDENT’S MOTION FOR SUMMARY JUDGMENT AND
DENYING PETITIONER’S MOTION FOR PARTIAL SUMMARY JUDGMENT**

Petitioner filed a Petition in this matter on June 2, 2021, seeking to appeal the District of Columbia Office of Tax and Revenue’s denial of Petitioner’s request for a refund of \$951,117.87 in sales tax previously paid by Plaintiff. This matter was before the Court for a Motion Hearing on Friday, January 7, 2021 to address the following filings: Respondent District of Columbia’s “Motion for Summary Judgment,” filed on November 4, 2021; Petitioner District Hospital Partners’ “Motion in Opposition to Respondent’s Motion for Summary Judgment” and “Motion for Partial Summary Judgment,” both filed on November 18, 2021; and Respondent’s “Opposition to Petitioner’s Motion for Partial Summary Judgment,” filed on November 29, 2021. For the following reasons, the Court will grant Respondent’s Motion for Summary Judgment and deny Petitioner’s Motion for Partial Summary Judgment.

FACTS

The following facts are not in dispute. Petitioner, which assists in the management and some of the operations of George Washington University Hospital, paid the sum of \$951,117.87 in sales taxes covering purchases made by Petitioner from Sodexo between April 1, 2016 and

July 31, 2019.¹ At the time of said purchases, Petitioner had not obtained a registration certificate of the type referenced in DC Code § 47-2010, and had not provided such a certificate to the vendor.

ANALYSIS AND CONCLUSIONS OF LAW

The Court can grant summary judgment if “there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.” DC Superior Court Rule of Civil Procedure 56(a). It is clear from the language of DC Code § 47-2010 that the Petitioner’s failure to obtain a registration certificate is fatal to its claim for a refund of the sales taxes paid. DC Code § 47-2010 states in full:

“It shall be presumed that all receipts from the sale of tangible personal property and services mentioned in this chapter are subject to tax until the contrary is established, and the burden of proving that a receipt is not taxable hereunder shall be upon the vendor or the purchaser as the case may be. Except as provided in § 47-2005(3), unless the vendor shall have taken from the purchaser a certificate signed by and bearing the name and address of the purchaser and the number of his registration certificate to the effect that the property or service was purchased for resale or the property or service is exempt under § 47-2005,² the receipts from all sales shall be deemed taxable. The certificate herein required shall be in such form as the Mayor shall prescribe and, in case no certificate is furnished or obtained prior to the time the sale is consummated, the tax shall apply to the gross receipts therefrom as if the sale were made at retail.” DC Code § 47-2010.

¹ At the January 7, 2022 hearing, counsel for Petitioner stated that the items purchased from Sodexo were food products that were then resold at the hospital (e.g. at the hospital cafeteria).

² Petitioner does not claim that it is exempt from sales taxes pursuant to DC Code § 47-2005(3).

Petitioner argues that § 47-2010 creates an impermissible “irrebuttable presumption.” On the contrary, § 47-2010 allows a purchaser to rebut the presumption that purchases are subject to sales tax by obtaining a registration certificate, and presenting such certificate to the vendor prior to the purchases in question.

Pursuant to DC Code § 47-2002(a), sales taxes are imposed on vendors for sale of personal property when the sales transaction is a “retail sale” or “sale at retail.” DC Code § 47-2001(n)(1) defines “retail sales” or “sales at retail” as sales “other than those for which the purpose of the purchaser is to resell the property.” Petitioner argues that there is a material fact in dispute in this case: whether or not its purchases from Sodexo were made for the purpose of reselling those items. It is not clear whether Respondent disputes Petitioner’s proffer that the items were actually resold. However, Respondent argues and the Court agrees, that such fact is not material. Even if Petitioner in fact resold the items it purchased from Sodexo, those purchases were taxable pursuant to DC Code § 47-2010 because Petitioner did not obtain a registration certificate, nor present such certificate to Sodexo, prior to the purchases. In other words, there are three requirements for the sales to be non-taxable: (1) obtaining a registration certificate from local tax authorities,³ (2) presenting that certificate to the vendor prior to the transaction, and then (3) actually engaging in qualified sales for resale (as per DC Code § 47-2001(n)(1)).

Because it is undisputed that Petitioner did not obtain a registration certificate or provide one to Sodexo prior to the sales in question, those sales were taxable pursuant to DC Code § 47-2002 and § 47-2010, and the Respondent is entitled to summary judgment in this matter.

³ The parties proffered at the hearing that such a certificate is obtained by signing an affidavit that the purchases to be made will be for resale.

ORDERED

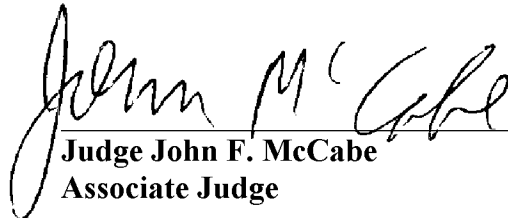
Wherefore, it is by the Court this 18th day of January, 2022,

ORDERED, that Respondent's Motion for Summary Judgment is **GRANTED**; and it is further

ORDERED, that Petitioner's Motion for Partial Summary Judgment is **DENIED**; and it is further

ORDERED, that the Petition to appeal the denial of the refund request is **DENIED**, and this matter is **DISMISSED**.

SO ORDERED.



Judge John F. McCabe
Associate Judge

Service List:

Stephanie A. Lipinski Galland (eServe)
Counsel for Petitioner

Ranae Strong (eServe)
Eli D. Wood (eServe)
Counsel for Respondent