IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. THOMAS AND ST. JOHN

WILLIAM KELLEY, Plaintiff, v. GOVERNMENT OF THE VIRGIN ISLANDS, Office of the Tax Assessor Defendant.	ST-11-CIV-360 ACTION FOR DECLARATORY JUDGMENT; REFUND OF OVERPAID TAXES

MEMORANDUM OPINION

This matter is before the Court on Plaintiff's Motion for Summary Judgment and Defendant's Cross-Motion for Summary Judgment. For the reasons mentioned below, Plaintiff's Motion for Summary Judgment is **DENIED** and Defendant's Cross-Motion for Summary Judgment is **GRANTED.**

FACTUAL AND PROCEDURAL HISTORY

At the center of this dispute is the question of whether the Government of the Virgin Islands is subject to the statute of limitations under Title 5, Section 31 of the Virgin Islands Code. Plaintiff is the current owner of a condominium unit identified as Parcel No. 6CA-1 Estate St. Joseph and Rosendal located in St. Thomas, Virgin Islands. Pursuant to a settlement agreement with the previous owner of the unit, Plaintiff is responsible for paying all taxes with respect to the unit. In 2011, Plaintiff paid taxes and penalties to the Government of the Virgin Islands which were delinquent and stemmed as far back as 1994. However, the Plaintiff now challenges the Government's collection of property taxes which are older than six years old and the collection of penalties which have accrued for more than two years and seeks a refund of taxes paid to the Government, as well as a declaratory judgment from this Court.

In his Motion for Summary Judgment Plaintiff requests that this Court find that the Government of the Virgin Islands is barred under Title 5 V.I.C. § 31 from collecting delinquent real property taxes older than six years old and penalties which have accrued for more than two years. The Government has opposed the motion for summary judgment and filed a cross-motion in which it argues, *inter alia,* that the Government is not subject to the limitations period contained in Title 5 V.I.C. § 31. For the reasons that follow, the Court agrees with the Government.

DISCUSSION

Title 5, Section 31 provides a general set of limitation periods to cover various types of civil actions that a litigant may wish to file in a court situated in the Virgin Islands. Title 5 V.I.C. § 31—entitled "Time for commencement of various"—provides in pertinent part:

> *Civil actions shall only be commenced* within the period prescribed below after the cause of action shall have accrued, except when, in special cases, a different limitation is prescribed by statute[.]

5 V.I.C. § 31 (emphasis added). The statute prescribes a limitations period of six years for an action upon a liability created by statute and two years for an action involving forfeiture or to recover a penalty. It is, respectively, the six year and two year limitation period that Plaintiff

argues should limit the Government's ability to collect past due real property taxes and penalties. This Court finds that the Government is not required to file a civil action to collect delinquent taxes, and therefore, 5 V.I.C. § 31 does not apply.

The collection of real property taxes is not contemplated to occur through initiation of a civil action filed in court, and as a result, the statute of limitation periods contained in 5 V.I.C. § 31 is not controlling. The exclusive scheme for the assessment and collection of property taxes in the Virgin Islands is set forth in a detailed set of procedures contained in Title 33, Chapters 81-89 of the Virgin Islands Code. Under Title 33, Chapter 89, the Office of the Lieutenant Governor uses a formula to compute property taxes and public sewer system user fees based on the assessed valuation of the property for the property of each person recorded in the assessment records. 33 V.I.C. § 2492. The Lieutenant Governor computes the amount of taxes to be paid by property owners and the computation for each property owner is delivered to the Commissioner of Finance. 33 V.I.C. §§ 2492, 2494. The Lieutenant Governor is also responsible for the collection of property taxes. *Id.* Property taxes are delinquent if not paid within sixty (60) days. 33 V.I.C. § 2494. If property taxes are delinquent, Title 33, Chapter 89 of the Code provides three options for the Government to collect the taxes: (1) the Government may send a demand for payment to property owners; (2) the Government may accept real property in lieu of payment of the real property taxes; or (3) the Government may initiate the property tax sale process by publishing a list of the names of all delinquent real property tax owners in a newspaper of general circulation in the District of St. Thomas and St. John and the District of St. Croix. Under the latter option, the Government may attach and sell the property if the past-due taxes are not paid within thirty-days of the delinquency notice. 33 V.I.C. §§ 2496, 2541. Generally, the notice of attachment "shall be enforceable as soon as notice thereof shall have been served by leaving a copy with the debtor himself or any member of his family or attendants of legal age" and the notice "shall have the effect of a *judgment* against all of the real and personal property of the delinquent attached, and every lien herein created shall have the force and effect of an *execution duly levied.* 33 V.I.C. § 2541 (emphasis added).

But regardless of which option the Government chooses to obtain payment, the taxes assessed on the property shall be a lien against the property having priority as against all other liens. 33 V.I.C. § 2331. A person wishing to challenge the valuation or assessment of their property may file an appeal with the Board of Tax Review within ninety days of receiving their property tax bill. 33 V.I.C. § 2451. Any adverse decision of the Board of Tax Review may be appealed to the Superior Court. 33 V.I.C. § 2451. But when the Government is seeking to collect outstanding property taxes, there is no requirement that the Government file an action in court.

The Court also finds unavailing Plaintiff's argument that the Court should treat property taxes similar to franchise taxes, and therefore, apply the statute of limitations under 5 V.I.C. § 31 to property taxes. First, franchise taxes and property taxes are two distinct taxes, subject to separate provisions under the Code—franchise taxes are levied against domestic and foreign corporations doing business in the Virgin Islands while property taxes are collected from individuals or businesses owning real property in the Virgin Islands. Second, unlike property taxes which become an automatic lien upon property when the taxes are past-due and a judgment upon execution of a notice of attachment, franchise taxes can only be reduced to a judgment upon court action.

The collection of corporate franchise taxes is addressed in Title 13, Chapter 5 of the Virgin Islands Code. Under these provisions, domestic and foreign corporations doing business in the Virgin Islands are required to file an annual report and pay franchise taxes to the Lieutenant Governor's Office. 13 V.I.C. § 531. And if the corporation fails to pay taxes, the Commissioner may institute an action to recover the delinquent taxes. Title 13, Section 534 provides that

> [t]he Commissioner of Finance may institute an action in the name of the government of the United States Virgin Islands to enforce the payment of any franchise tax….

13 V.I.C. § 531. However, any action to recover franchise taxes is subject to the statute of limitations contained in 5 V.I.C. § 31. *See* 13 V.I.C. § 533(c)(2) (stating that the "Government is barred from recovering [franchise taxes] by the statute of limitations set out in Title 5, section 31, of this Code") Thus, with respect to franchise taxes, the Legislature of the Virgin Islands has permitted the Government to file an action to recover unpaid franchise taxes and have explicitly prescribed when the action must be filed by the Government by adopting the limitations period contained in 5 V.I.C. § 31. Nowhere in the statute relating to the collection of property taxes does the Legislature require that the Government file an action in court to collect outstanding property taxes and the Court finds no support in law to directly or indirectly impute such a requirement from the provisions of the Code relating to franchise taxes. As stated herein, property taxes are distinct from franchise taxes and collection of such taxes is controlled by separate provisions in the Code.

Accordingly, for the reasons stated herein, the Government is entitled to judgment as a matter of law.

An Order consistent with this Opinion shall follow.

Dated: January 31, 2013

For
HON. [redacted] Kathleen Mackay
JUDGE OF THE SUPERIOR COURT

ATTEST: Venetia H. Valazquez, Esq.
Clerk of the Court

By: Donna D. Donovan
Donna D. Donovan
Court Clerk Supervisor
2/4/13