Local attorney argues tax case before high court

West Bloomfield attorney Robert Pierce, a Farmington Hills resident, argued a taxpayer's position before the U.S. Supreme Court Jan. 10.

He represented a Kalamazoo woman as the high court considered whether, under the doctrine of equitable recoupment, less-than-wealthy taxpayers can be denied access to a refund of improperly paid taxes.

At issue was whether a taxpayer can sue for a refund of an improperly paid tax when the suit is filed after the statute of limitations governing tax refund suits has expired.

"It was exciting, challenging and intimidating," Pierce said Friday about his 30-minute oral argument.

In U.S. vs. Dalm, Pierce argued that his client, Frances L. Dalm, should receive a credit against her income tax for a gift tax she paid on the same transaction. "She had to unfairly pay a tax that was unfairly assessed," he said.

IN 1976-77, Dalm received more than $300,000 as gifts from an estate for which she had served as the administrator. She paid a gift tax of $20,000 in 1976.

In 1983, the Internal Revenue Service asserted the gifts to Dalm actually were fees for services rendered to the estate, according to the Jan. 11 issue of the Tax Analysts Daily Tax Highlights & Documents.

After she filed a Tax Court petition, the parties settled the pending case for exactly one-half of the claimed shortfall in December 1984. Dalm paid an income tax of $80,000 plus interest — a total payment of $150,000.

About 10 months later, Dalm sued for a refund of the gift tax paid, asserting a theory of equitable recoupment.

The district court upheld the government's motion to dismiss the case.

BUT THE circuit court reversed the district court's decision. It held that Dalm could win by proving in district court the gift tax paid was not taken into account in the Tax Court settlement.

"The government collected a double tax on a single transaction, applying inconsistent theories and refused to give any credit for it," Pierce said Friday.

"You can't have a gift tax and an income tax on the same transaction — it's one or the other."

The government asserted the theory of equitable recoupment does not eliminate the statute of limitations that govern tax refund suits.

Christine Desan-Husson, assistant to the U.S. solicitor general, told the justices the "IRS would probably haven given credit for the gift tax paid" if Dalm had filed for a refund in a timely manner.

PIERCE ARGUED Dalm missed the filing deadline because she didn't know the tax was wrongly paid until 1983. By the time she realized she had wrongly paid the gift tax, it was too late for her to file a timely brief.

When asked why his client didn't pay the tax and then file suit, Pierce told the justices, "She did not have the money to pay and then file suit in the district court. She had to go to the Tax Court."

Pierce took the case on a contingency because of his outrage about the double tax.

"It could happen to anybody," he said. "If we win, it'll tend to make government operate tax administration on a higher plane rather than take advantage of technicalities and collect two taxes.

"It'll cause the IRS to treat taxpayers more fairly."

Pierce figures the $20,000 gift tax his client paid in 1976 is worth $61,000 today with interest.

Oat bran still recommended to lower cholesterol

gerontology

A. Jolayne Farrell

Dear Jo

Do you recommend oat bran as part of an older person's diet? Does it really lower cholesterol? If so, how much should one eat in a day?

Mrs. J. H. — P.
Health Conscious Senior

Dear Mrs. H. — P.:

As a gerontologist, I do recommend oat bran as part of an older *person's diet.*

Scientists speculate that an ingredient contained in the soluble fiber of oat bran lowers blood cholesterol. In order for this to occur, the diet must also be low in fat.

According to these experts, if you *eat two ounces (which is one cup of* cooked oat bran or oatmeal) you can lower your total blood cholesterol by as much as 9 percent. Other commercial oat bran and oatmeal products such as bread, crackers, cookies and ready-to-eat cereals generally contain much less soluble fiber than plain oat bran cereal or oatmeal.

Two things to remember when including oat bran and any other bran products in your diet:

First, you must drink six to eight glasses of water daily (not just liquids such as coffee or tea — but straight water) to help propel the bran through the intestine. And second, do not overdo your consumption of bran. Eating too much of the fiber can cause gas, abdominal cramps and bloating and in some cases diarrhea. In one extreme case, published in the "New England Journal of Medicine," an elderly man underwent surgery for intestinal blockage caused by a solid 2-foot-long column of oat bran.

It is great to be living in a time when more and more people of all ages are becoming health conscious. Thank you for your letter.

Dear Jo:

What advice would you give to a man who is retiring after working for thirty years in a job he absolutely hated?

Mr. F. D.
Michigan Senior

Dear Mr. D.:

Well, my congratulations to the fellow anyway for at least "making it" to retirement. He has my sympathy for not quitting his job 30 years ago.

The best advice I can give to any retiree is to "smell the roses" every day — particularly for those who have not done so for a long time. By this I mean that one has to make a conscious effort to enjoy life.

This does not come naturally to most, but nevertheless it is essential for a successful retirement.

Since retirement is as individual as the retiree, and interests vary, one has to start by making a list of all the things he or she enjoys doing. Then, use the list as a guide in planning each day.

With a daily plan and a written reminder of the enjoyable things in life — the years of retirement can be superb.

Readers can write to Jolayne Farrell at 11 Cynthia Crescent, Richmond Hill, Ontario L4E 2P8.

Diabetes classes scheduled

A series of six diabetes classes for adult diabetics and their family members will meet 7-9 p.m. starting Thursday, Feb. 22, at the Southfield office of the Oakland County Health Division, 27725 Greenfield Road.

They are taught by a public health nurse and registered dietician. Topics will include the nature of the disease, dietary management, medications and suggestions for coping with everyday problems.

Fee is $10. To register, call 424-7042.