REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

U. S. T. COOPERATIVE,
Petitioner,

versus

CTA CASE NO. 1770

THE COMMISSIONER OF INTERNAL REVENUE,
Respondent.

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R E S O L U T I O N

Petitioner appealed from the decision of respondent denying petitioner's claim for refund of the sum of ₱6,886.00 allegedly paid erroneously as income taxes. Respondent, among other things, raised a jurisdictional question alleging that the petition for review was filed after the two-year period for actions for refunds provided in section 306 of the Tax Code had elapsed. This resolution refers to this point which the parties submit before proceeding with the trial on the merits.

It appears that petitioner is a cooperative association duly organized and existing under and by virtue of the laws of the Philippines. In a letter of October 14, 1958 petitioner claimed that it is exempt from all taxes and government fees under Republic Act No. 2023, and for this

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reason it requested "permission for non-payment of the second installment of our income tax for the fiscal year ending March 31, 1958 and taxes due and will be due." At the same time, petitioner "reserved the right to claim the refund of all taxes and fees due and paid after the effectivity of said Act - June 22, 1957." On October 20, 1958, the Commissioner of Internal Revenue answered that petitioner's "financial statement which has been certified by Mr. Constantino S. de la Peña, Certified Public Accountant, shows that your total net assets amount to ₱388,561.32," and according to respondent petitioner is tax-exempt under section 66 of Republic Act 2023. In a letter of November 7, 1958 petitioner expressed "intention to apply for refund of all the taxes paid from the effectivity of said Act, June 22, 1957 . . .," and at the same time requested opinion on the feasibility of filing "an amended return for the taxable period April 1st to June 21, 1957."

The aforesaid letter of November 7, 1958 was obviously taken by the Commissioner as a claim for refund for on October 20, 1960 and in answer to same the Commissioner denied the refund of "all fixed, percentage and residence taxes paid by

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petitioner during the period from June 22, 1957 to September 19, 1958 in the total sum of ₱39,390.50 on the following ground:

> Pursuant to the provisions of section 66 of Republic Act No. 2023 under which you claim exemption from the payment of the taxes sought to be refunded, only non-agricultural cooperatives registered under the said act with net assets of not more than ₱500,000.00 are entitled to claim exemption from the payment of all internal revenue taxes.
>
> While it is true that as per certification dated October 7, 1958 of the Administrator, Cooperative Administration Office you are deemed to have been registered under Republic Act No. 2023 pursuant to section 4 thereof, yet, a careful perusal of your financial statements for the years ending March 31, 1958 and March 31, 1959 disclosed that you are disqualified to enjoy the tax-exemption privileges granted therein it appearing that your net assets (gross assets less reserves for depreciation) for the abovestated taxable years amounts to more than ₱500,000.00.
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> In view thereof, your above request for refund has to be, as it is hereby, denied.

And in a letter of April 29, 1966, the Commissioner, also in answer to said letter of November 7, 1958, denied the refund of income taxes paid for the fiscal year ending March 31, 1958 in the sum of ₱6,886.00 in the following language:

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> In connection with your claim for refund of alleged erroneously paid income tax for the fiscal year ended March 31, 1958, in the sum of ₱6,886.00, I have the honor to inform you that after a careful study of the facts of the case and the law involved, your claim for refund cannot be granted by this Office.
>
> As a duly registered co-operative, you claim exemption from income tax under the provisions of Republic Act No. 2023, approved on June 22, 1957, which provides that if the net assets during the taxable year of a cooperative are not in excess of Five Hundred Thousand Pesos, (₱500,000.00) the same is exempt from income tax.
>
> However, the records of this Office show that your other claim for refund of ₱39,390.50 representing alleged erroneously paid fixed, percentage and residence taxes, was denied by this Office in our letter dated November 23, 1965, copy enclosed, on the ground that your net assets as of the fiscal years ended March 31, 1957, March 31, 1958 and March 31, 1959, were more than ₱500,000.00. Consequently, under the provisions of Section 66 (1)(a) of the said law, you are not entitled to exemption from income tax for the fiscal year ended March 31, 1958.
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> In view thereof, your claim for refund of ₱6,886.00 is hereby denied. (p. 9, CTA rec.)

Respondent's letter of April 29, 1966, was received by petitioner on May 25, 1966, whereupon the latter filed the present petition for review on June 16, 1966.

Under the foregoing facts it is clear that the two-year period within which to file an action in court for refund of taxes erroneously or illegally collected provided in section 30 of the Revenue Code had long elapsed when the present petition for review was filed. Petitioner however contends that sections 306 and 309 of the Revenue Code are not applicable to this case because the case at bar is not an "original action" but an "appeal" and as such it should be governed solely by sections 7 and 11 of Republic Act No. 1125 which provides for an appeal to the Court of Tax Appeals within thirty days. In answer to this contention we cannot do any better than quote the following language of the Supreme Court in Gibbs and Gibbs v. Collector of Internal Revenue, et al., G.R. No. L-13453, Feb. 29, 1960, 60 O.G. (2) p. 185:

> Under the above ruling, it is clear that Section 306 of the National Internal Revenue Code should be construed together with Section 11 of Republic Act No. 1125. In fine, a taxpayer who has paid the tax, whether under protest or not, and who is claiming a refund of the same, must comply with the requirements of both sections, that is, he must file a claim for refund with the Collector of Internal Revenue within 2 years from the date of his payment of the tax, as required by said Section 306 of the National Internal

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Revenue Code, and appeal to the Court of Tax Appeals within 30 days from receipt of the Collector's decision or ruling denying his claim for refund, as required by said Section 11 of Republic Act No. 1125. If, however, the Collector takes time in deciding the claim, and the period of two years is about to end, the suit or proceeding must be started in the Court of Tax Appeals before the end of the two-year period without awaiting the decision of the Collector. This is so because of the positive requirement of Section 306 and the doctrine that delay of the Collector in rendering decision does not extend the peremptory period fixed by the statute.

In the case of a taxpayer who has not yet paid the tax and who is protesting the assessment made by the Collector of Internal Revenue, he must file his appeal with the Court of Tax Appeals within 30 days from his receipt of the Collector's assessment, as required by said Section 11 of Republic Act No. 1125. Otherwise, his failure to comply with said statutory requirement would bar his appeal and deprive the Court of Tax Appeals of its jurisdiction to entertain or determine the same.

"WHEREFORE, the petition is hereby dismissed. With costs.

SO ORDERED."

Quezon City, December 7, 1970.

RAMON L. AVANCEÑA
Associate Judge

WE CONCUR:

ROMAN M. UMALI
Presiding Judge

ESTANISLAO R. ALVAREZ
Associate Judge

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