REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
MANILA

JOSE MOSSESGEILD SANTIAGO,
Petitioner,

versus

C. T. A. CASE NO. 246

THE COLLECTOR OF INTERNAL REVENUE,
Respondent.

x - - - - - - - - - - - - - x

March 25, 1957

D E C I S I O N

Petitioner has appealed from the decision of the Collector of Internal Revenue denying the former's claim for refund of ₱1,053.99, which was paid as amusement tax and surcharge.

The facts are not disputed. It appears that on December 11, 1951, petitioner, a music teacher, presented the opera "Tosca" at the Far Eastern University Auditorium. Not having filed a return nor paid the amusement tax on the admission prices to the said opera presentation at the time and in the manner prescribed by law, respondent, in a letter dated November 24, 1952, made a demand upon petitioner for the payment of said tax amounting to ₱843.19, plus 25% surcharge in the sum of ₱210.80, or a total of ₱1,053.99. This amount was paid in four installments. The last installment was paid on December 28, 1955.

Petitioner filed his written claim for refund of ₱1,053.99 with respondent on February 1, 1956, claiming that the said amount was erroneously and illegally assessed and collected from him. The claim for refund is predicated solely on the ground that Republic Act No. 722, which took effect on June 6, 1952, exempts from the amusement tax the "holding of operas, concerts, recitals, dramas, painting and art exhibitions, flower shows, and literary, oratorical or musical programs." The claim for refund was denied by respondent in his letter dated February 19, 1956; hence this appeal.

The only issue raised in this appeal is whether or not petitioner is exempt from the amusement tax in connection with the holding of the opera "Tosca" on December 11, 1951.

The amusement tax in question was assessed and collected pursuant to Section 260 of the National Internal Revenue Code, as amended, pertinent portions of which read as follows:

> "SEC. 260. Amusement taxes. - There shall be collected from the proprietor, lessee, or operator of theaters, cinematographs, concert halls, circuses, and other places of amusement the following taxes:
>
> x x x x
>
> (1) When the amount paid for admission exceeds ninety-nine centavos, the tax will be thirty per centum.
>
> x x x x
>
> "The taxes imposed herein shall be payable at the end of each month and it shall be the duty of the proprietor, lessee, or operator concerned, within ten days after the end of each month, to make a true and complete return of the amount of gross receipts derived during the preceding month and pay the tax due thereon. If the tax is not paid within the time prescribed above

the amount of the tax shall be increased by twenty-five per centum, the increment to be a part of the tax."

It is admitted that petitioner is liable under Section 260 of the Revenue Code, to the amusement tax on the admission prices collected for admission to the Far Eastern University Auditorium when the opera "Tosca" was presented on December 11, 1951. It is alleged, however, that petitioner has become exempt from said tax because it was assessed after the effectivity of Republic Act No. 722, on June 6, 1952, which exempts the holding of operas from the amusement tax. We quote from the memorandum of counsel for petitioner:

"As corollary to the defense of non-retroactivity of the law exempting petitioner, the question arose during the trial as to when a tax accrues. Is it at the time of the performance of the act subject to tax or at the time of assessment? Petitioner claims that a tax accrues at the time of assessment for it is a rule that a liability accrues when the event occurs which fixes the amount to be paid and determines the liability to pay it. (United States vs. Anderson, Ct. Cl. 46 Supreme Court 131.) It is beyond doubt that in cases of taxation the event which fixes amount to be paid and determines the liability to pay it is the assessment. Since in the case under consideration no assessment was made before the passage of R. A. No. 722 no action accrued in favor of the respondent and if there was no accrual of a tax there can be no right to collect. And therefore the assessment and collection made after the passage of the law, R. A. No. 722, was illegal as there is no longer a law authorizing respondent to make assessment and collect taxes on operas." (Pp. 3-4, Memorandum for Petitioner, Jan. 27, 1957.)

We disagree with petitioner that under Section 260 of the Revenue Code, "the event which fixes amount to be paid and determines the liability to pay it is the assessment." The tax on admission to a place of amusement accrues upon the sale of an admission ticket and the entry to the amusement place by the person buying the ticket. This is evident from the wording of the law that the tax shall be collected on the amount paid for admission, although the tax is payable at a later date.

The liability for the payment of the tax on admission to an amusement place attaches on the date of admission to the amusement place of the person paying for such admission, and not on the date the tax is assessed by the Collector of Internal Revenue, as alleged by petitioner. The law requires the proprietor, lessee, or operator of an amusement place to file a return and to pay the tax within ten days after the end of the month when the taxable performance was held. The law does not require an assessment to be made before liability for the tax may be fixed or determined as the said tax is self-assessing, unlike the real property tax which requires an assessment in order to fix or determine the amount of the tax liability of the property owner. (See Commonwealth Act No. 470.)

In this case, the opera performance was held on December 11, 1951. Petitioner became liable to the amusement tax on that date without the necessity of an assessment, the tax having been fixed by law at certain rates per admission price, and he was bound to file a return and to pay the tax on or before January 10, 1952. Neither was a return filed nor the tax paid as required by law. He cannot now claim that because beginning June 6, 1952 Republic Act No. 722 exempts from taxation opera performances, he is entitled to such exemption, after having failed to perform the obligation imposed upon him by law. The alleged assessment made by respondent on November 24, 1952 is more in the nature of a demand for payment by petitioner of a tax obligation long overdue. It did not fix or determine petitioner's liability to the tax, as his liability had been previously fixed or determined. Consequently, Republic Act No. 722 cannot have the effect of relieving petitioner from his tax obligation, unless that Act expressly provides for its retroactive application. We find nothing in said Act which indicates an intention of Congress to have the exemption provided therein applicable to transactions prior to its approval. The exemption statute must perforce operate prospectively.

> "Regarding the effects of repealing statutes, the argument has been advanced, that taxes assessed (but not collected) under the law before its repeal, may not be collected after such repeal - except, always,

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provisions to the contrary. But the courts permit such collection.

> 'The rule favoring a prospective construction of statutes is applicable to statutes which repeal tax laws. Accordingly, it is held that where such statute is not made retroactive a tax assessed before the repeal is collectible afterwards; and where taxes are levied under a law which is repealed by a subsequent act, unless it appears clearly that the legislature intended the repeal to work retrospectively, it will be assumed that it intended the taxes to be collected according to the law in force when they were levied.' (Cooley, Taxation Sec. 538, Vol. 2.)

"So, if taxes assessed may still be demanded after the repeal of the law, it follows that taxes already collected <u>may be</u> and <u>should be</u> retained after the repeal. Unless of course the repealing statute provides otherwise." (Intestate Estate of Jovito Co. v. Collector of Internal Revenue, G. R. No. L-9352, Nov. 29, 1956.)

For the foregoing considerations, the decision appealed from is affirmed, with costs against petitioner.

SO ORDERED.

Manila, March 25, 1957.

ROMAN M. UMALI
Associate Judge

WE CONCUR:

DECISION -
C. T. A. CASE NO. 246

CUR:

MARIANO NABLE
Presiding Judge

AUGUSTO M. LUCIANO
Associate Judge