REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
MANILA

DOUGLAS FISHER and
BETTINA FISHER,
Plaintiffs,

- versus -

MANILA CIVIL
CASE NO. 23029

THE COLLECTOR OF INTERNAL
REVENUE,
Defendant.

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

Sept. 19, 1956 Reversed in G.R. Nos. L-11622 & L-11668, Jan. 28, 1961.

D E C I S I O N

This is an action originally brought before the Court of First Instance of Manila by plaintiffs Douglas Fisher and Bettina Fisher, assignees of Beatrice Mauricia Stevenson, for the purpose of recovering the sums of ₱4,622.54 and ₱10,875.25 respectively representing estate and inheritance taxes alleged to have been illegally collected by defendant Collector of Internal Revenue from the assignor in her capacity as sole heiress of the deceased Walter G. Stevenson. Pursuant to Section 22 of Republic Act No. 1125, this case was remanded to this Court for final disposition thereof.

Walter G. Stevenson, born in the Philippines on August 9, 1874 of British parentage, was married in the City of Manila in 1909 to Beatrice Mauricia Stevenson, another British subject. During their marriage and while residing in the Philippines, the spouses acquired real and personal properties which are described hereunder and with corresponding values thereof as claimed by plaintiffs:-

A. REAL ESTATE

Description	Value
Two parcels of land situated in Bagùio covered by Transfer Certificate of Title No. 378 and Transfer Certificate of Title No. 379 of the Registry of Deeds for Baguio	₱43,500.00

B. PERSONAL PROPERTY

Description	Value
210,000 shares of stock in Mindanao Mother Lode Mines, Inc. @ $0.10 (₱0.20)	₱42,000.00
177 shares of stock of the Canacao Estates, Inc., @ ₱10.00	1,770.00
Cash credit with Canacao Estates, Inc.	4,870.88
Cash with the Chartered Bank of India, Australia & China ..	851.97
TOTAL OF "A" and "B"	₱92,992.85

On May 10, 1945 the spouses left the Philippines and established their permanent residence in San Francisco, California, U.S.A.

On March 22, 1947 Walter G. Stevenson executed his last will and testament at San Francisco, California, wherein he instituted his wife as his sole heiress. The spouses did not execute any ante-nuptial agreement covering their property relations although on May 18, 1949, in California, they drew up a deed of joint tenancy.

On February 22, 1951 Walter G. Stevenson died in San Francisco, California, survived by his wife Beatrice Mauricia Stevenson. In due time, his will was duly probated in the Superior Court of the State of California in and for the City and County of San Francisco. On May 22, 1951, ancillary administration proceedings for the settlement of the decedent's estate in the Philippines were instituted in the Court of First Instance of Manila. The will of Stevenson was then duly admitted to probate here on June 26, 1951, and Ian Murray Scott was appointed as ancillary administrator.

On July 11, 1951 a preliminary estate and inheritance tax return (Exhibit "E", Exhibit "2", p. 22, BIR rec.) was filed on behalf of Stevenson's estate and the property therein described were appraised at values allegedly obtaining six months after death (Exhibit "B", p. 7, BIR rec.). It appears that the reason for filing the preliminary return was to secure defendant's waiver of the Philippine estate and inheritance taxes correspondingly due and payable on the 210,000 shares of Mindanao Mother Lode Mines, Inc. the stock certificates of which were then held in the United States and transfer of the same sought to be made therein. From the information contained in this "preliminary" return, the defendant assessed the estate and inheritance taxes due from decedent's estate accepting the valuation of the personal properties as declared but appraising the real estate situated in Baguio and fixing its fair market value at ₱52,200.00. The defendant also allowed in full the deductions claimed by the estate consisting of funeral expenses in the amount of ₱2,000.00 and judicial expenses in the amount of ₱5,500.00. The estate and inheritance taxes as assessed by defendant were the amounts of ₱5,167.98 and ₱10,875.25 respectively, (Exhibit "3", p. 26, BIR rec.) which were paid by the administrator on June 6, 1952.

On September 27, 1952 an "amended" estate and inheritance tax return (Exhibit "F", pp. 98-106, BIR rec.) was filed with the Bureau of Internal Revenue pursuant to the reservation made at the time of the filing of the "preliminary" return. In the amended return, the value of the 210,000 shares of stocks of the Mindanao Mother Lode, Inc., originally declared at ₱0.38 per share or ₱79,800.00 was fixed by the ancillary administrator at ₱0.20 each or ₱42,000.00. The latter value was the prevailing market quotation of Mindanao Mother Lode shares at the San Francisco (California) Stock Exchange as of six months after the death of Stevenson. Hence, on the premise that the stock certificates were then physically situated in San Francisco, the administrator contended that the values thereat were controlling. In addition, the administrater claimed the following deductions in the "amended" return:

1. Funeral Expenses		₱ 2,086.52
2. Judicial Expenses:		
(a) Administrator's fees	₱1,204.34	
(b) Attorney's fees ..	6,000.00	
(c) Judicial and Administrative expenses as at August 9, 1952..	1,400.00	8,604.39
3. Real Estate Tax for 1951 on Baguio Real properties		682.50
4. Claims against the Estate of debtor including interest		10,022.47

The Probate Court approved and allowed Items 2-a and 2-b given above in full and as regards Item 2-c allowed a much greater amount of ₱2,052.55 (see Exhibit "AA") although only ₱1,400.05 is now claimed by plaintiffs. There being an alleged reduction in the value of the taxable estate due to the changes in valuation of the properties as well as additional deductions claimed, request for the refund (see Exhibit "G", pp. 107-111, BIR rec.) of the excess payment of estate and inheritance taxes previously paid was therefore made by the administrator.

In the meantime, on December 1, 1952 to be exact, Beatrice Mauricia Stevenson, widow and sole heiress of the deceased Walter G. Stevenson, assigned all her rights, interests and properties to the spouses Douglas and Bettina Fisher. On September 7, 1953, a "second amended" estate and inheritance tax return

(Exhibits "M" and "N", pp. 149-152, BIR rec.) was filed for decedent's estate incorporating most of the items covered in the "Amended" return. In connection with this "second amended" return, the administrator claimed additional exemptions and deductions to wit: (1) a deduction in the amount of ₱4,000.00 to which the estate of a non-resident with California domicile is entitled citing the case of Housman v. Collector of Internal Revenue, (BTA Case No. 71, August 14,1952); and (2) exemption of non-intangible properties from the estate and inheritance taxes pursuant to the reciprocity provision contained in Section 122 of the National Internal Revenue Code. In this last return the administrator claimed that the estate of the late Walter G. Stevenson is liable for the payment only of ₱525.34 and ₱230.06 as estate and inheritance taxes, respectively, and therefore requested for the refund of the overall sum of ₱15,259.83 allegedly overpaid the government. This claim for refund having been denied by defendant, action was therefore commenced in the Court of First Instance of Manila by the herein plaintiffs, as the assignees of Beatrice Mauricia Stevenson, for the recovery of the said amount.

The issues in this case may be summarized as follows:

(1) Whether the estate of Stevenson should be taxed for estate and inheritance taxation in accordance with the law of Eng-

land of which the decedent was a subject, upon the theory that the entire conjugal property belonged exclusively to the husband or whether one-half (1/2) thereof should be deducted as share of the surviving wife in accordance with either Philippine or California laws;

(2) Whether or not the estate can avail itself of the reciprocity provision embodied in Section 122 of the Tax Code for the purpose of claiming exemption of the intangible properties from the taxable estate;

(3) Whether or not for purposes of estate and inheritance taxes the Baguio properties and the 210,000 shares of stock of the Mindanao Mother Lode Mines, Inc. were correctly appraised by the Collector of Internal Revenue; and

(4) Whether the "amended" or "second amended" estate and inheritance tax return may be allowed for the purpose of claiming the deductions not previously considered by defendant.

On the first issue, we take note that four square with the instant question is the case of Estate of So Gua Hing and Chua Chai Ngo v. Collector of Internal Revenue (BTA Case No. 191) decided by this Court on January 15, 1955. In that case, respondent Collector of Internal Revenue assessed the estate and inheritance tax liabilities of the estate of the decedent So Gua Hing on the whole conjugal partnership property based on the theory that under the provisions of the Chinese Civil Code, the husband is the owner of the entire matrimonial property. The spouses, So Gua Hing and Chua Chai Ngo, who were both Chinese citizens, were married in Manila on April 30, 1944 according to the laws of the Philippines and established their matrimonial domicile in Manila until February 11, 1952 when the husband died. No pre-marital agreement in writing was executed by them regarding the conditions affecting their conjugal property. All the personal properties of the spouses were acquired during the marriage as residents in this country with the exception of the proceeds of insurance which were paid to the surviving wife, as beneficiary, after the death of the husband. In holding that only one-half of the estate of So Gua Hing should be taxed for estate and inheritance purposes, this Court ruled that the property relations of the alien spouses should be governed by the Philippine Law on conjugal partnership of gains. Because of its decisive effect on the case at bar, we will quote lengthily from the decision:

> "Considering that So Gua Hing and Chua Chai Ngo were married in the Philippines where they were domiciled at the time, and considering further that there was no stipulation between them regarding their system of ownership, the property relations of the spouses are therefore governed by our local laws on conjugal partnership. All properties acquired during the marriage are presumed to be conjugal unless the contrary is proved. It is hardly necessary to add that, in the case of Harden v. Peña, G.R. No. L-1499, November 21, 1950, wherein one of the questions

involved was whether or not the laws of New Jersey according to whose statutes the properties acquired by Fred M. Harden and his wife belong exclusively to him will prevail over the laws of the Philippines where the spouses reside, our Supreme Court ruled that -

'As the marriage of the Hardens was contracted in Manila where Harden was domiciled and as the parties made no stipulation regarding their system of ownership the spouses should be deemed to have adopted the legal partnership. All property acquired during the marriage is presumed to be conjugal unless the contrary is proved.'

"According to our law, old as well as New Civil Code, the husband and wife, without entering into an ante-nuptial contract in writing by the mere fact of the marriage stand in the same position as if previous to the marriage they had executed a written contract and therein adopted the provisions of the Civil Code relating to the system of legal ganancial partnership. They are entirely free to stipulate the matrimonial regime under which they want their present and future property to be governed, and if they fail to do so, our laws expressly provide that it shall be understood that the marriage has been contracted under the system of legal ganancial partnership. After all a written contract is just the evidence of what the parties have agreed to, and it would seem to be of no superior force as evidencing the agreement of the spouses than the knowledge of entering into the married status. And if the law creates the property relations of the spouses by the mere performance of the marriage, we see no difference regarding the force and effect of the same, if the parties had themselves executed a contract stipulating the conditions for the conjugal partnership with respect to their properties.

"It follows that had So Gua Hing and Chua Chai Ngo agreed validly before their marriage into the system of relative community or conjugal partnership of gains regarding their property relations, it can never be said that upon the death of the former, the whole conjugal partnership pro-

> perty, on the theory that under the law of China, the husband is the owner of the whole conjugal partnership property, should belong exclusively to So Gua Hing. And indeed, the respondent cannot step in and apply the Chinese law on the matter under the provisions of Article 124 of the New Civil Code, specially so when our New Civil Code became effective only on June 30, 1950. For the spouses had themselves, by the very celebration of the marriage and their failure to enter into a marriage settlement regarding their property relations, agreed on the very contract which the local laws had made for them."

The record of the present case shows that the Stevensons were married in the Philippines, and although there is no showing whether such marriage was performed in accordance with our laws, we would choose to presume the general rule, rather than the exception, that it was solemnized in conformity with the laws of the forum. No matrimonial settlement regarding their property relations was executed by them prior to the marriage and the spouses established their matrimonial domicile in the Philippines until May 10, 1945 when they transferred to and became residents of California. All the properties in question were acquired during their marriage and while the couple were domiciled in the Philippines. Under the circumstances, the rule contained in Article 1315 of the Spanish Civil Code (Cf. arts. 118-119 New Civil Code) applies in that with respect to their present and future property, such marriage is presumed to have been contracted under the system of legal ganancial partnership.

The pretension has heretofore been made that according to Article 1325 of the same Code, when the husband is a foreigner and the wife is a citizen of the Philippines, or when both are foreigners, married in the Philippines, they are presumed, in the absence of any ante-nuptial contract, to have entered into an agreement as regards their property relations in accordance with the national law of the husband. However, in this case no proof of the English law or the national law of Walter G. Stevenson was presented to this effect. Because of the absence of proof on the matter, still we have to apply the presumption that the pertinent English law is the same as ours. (See Yam Ka Lim v. Collector of Customs, 30 Phil. 46; Lim and Lim v. Collector of Customs, 36 Phil. 472; International Harvester Co. v. Hamburg-American Line, 42 Phil. 345; Que Quay v. Collector of Customs, 33 Phil. 128; Miciano v. Brimo, 50 Phil. 867; Beam v. Yatco, 46 Off. Gaz. No. 2, p. 530). At any rate, there is a showing that the British empire follows the domiciliary system and although defendant avers that the "Renvoi doctrine" has lost favor in England, we would rather apply our own laws than indulge in conjectures or suppositions as to the provisions of a foreign law.

The fact that the spouses eventually left the Philippines in 1945 and established their residence in San Francisco, California, will not in any way alter the situation because in accordance with the doctrine of immutability, once the matrimonial regime applicable to a marriage is established by the proper law at the time of the marriage, no change in the nationality of the parties nor of their domicile nor of the laws applicable will change the vested rights of each of the spouses. The reason is to secure conjugal peace and to protect the husband and wife against their respective maneuvers as well as those of their creditors. (See Estate of So Gua Ming and Chua Chai Ngo v. Collector of Internal Revenue, supra). Nevertheless, there is evidence that California recognizes the community property system as governing the property relations of the spouses which is similar if not identical to the conjugal partnership as understood in this jurisdiction. Thus, even if California Law or Philippine Law were to be applied it will ultimately not matter as the effects remain the same.

It is therefore our opinion and we do hold that the one-half share in the conjugal partnership property which belongs to Beatrice Mauricia Stevenson should first be deducted before assessing and levying the estate and inheritance taxes due on the estate of Walter G. Stevenson.

This brings us to the question whether the estate in question can avail itself of the reciprocity proviso contained in Section 122 of the National Internal Revenue Code, the pertinent portion of which reads:

"x x x AND PROVIDED, FURTHER, That no tax shall be collected under this Title in respect of intangible personal property (a) if the decedent at the time of his death was a resident of a foreign country which at the time of his death did not impose a transfer tax or death tax of any character in respect of intangible personal property of citizens of the Philippines not residing in that foreign country, or (b) if the laws of the foreign country of which the decedent was a resident at the time of his death allow a similar exemption from transfer taxes or death taxes of every character in respect of intangible personal property owned by citizens of the Philippines not residing in that foreign country."

On the other hand, the reciprocal provision of the California Inheritance Law provides as follows:

"Sec. 13851. Exemption of Intangible personal property; Conditions; Reciprocal provisions.- Intangible personal property is exempt from the tax imposed by this part if the decedent at the time of his death was a resident of a territory or another State of the United States or of a foreign state or country which then imposed a legacy, succession, or death tax in respect to intangible personal property of its own residents, but either:

(a) Did not impose a legacy, succession, or death tax of any character in respect to intangible personal property of residents of this State; or

(b) Had in its laws a reciprocal provision under which intangible personal property of a non-resident was exempt from legacy, succession, or death taxes of every character if the Territory or other State of the United States or foreign state or country in which the nonresident resided allowed a similar exemption in respect to intangible personal property of residents of the Territory or State of the United States or foreign state or country of residence of the decedent." (California Inheritance Tax Law, Exhibit V-2; underscoring provided.)

The defendant claims that the aforecited provi- visions do not apply in the instant case because there is no showing that the spouses were domiciled in San Francisco, California, and that the provisions of the California Inheritance Tax Law has been declared to be merely an urgency measure intended to operate only among sister states of the American Union to the exclusion of the Philippines or other countries. In our opinion, both arguments must fail.

It has been shown satisfactorily that the Stevensons, upon their departure from the Philippines in 1945, secured a permit for permanent residence in the United States from the Immigration and Naturalization Service, and they resided continuously at San Francisco, California, until the time of the death of the husband on February 22, 1951. When Walter G. Stevenson executed his last will and testament in San Francisco, California, he declared that he was residing therein. Having left the Philippines with the intention to reside permanently in San Francisco, as in fact they resided permanently therein, the Stevensons had therefore complied with the requisites for the acquisition of a new domicile, to wit: (a) intention and (b) actual presence. It is hardly necessary to add that:

> "The elements necessary to the creation of a new domicile of choice are residence and the animus manendi. The term 'residence' as here used, means simply the actual bodily presence of the party, if that presence is coupled with the intention to remain permanently." (Minor "Conflict of Laws", p. 115; see also Velilla v. Posadas, 62 Phil. 624.)

Anent the second argument of defendant that the exemption provision of the California Inheritance Tax Law does not apply in the present case, on the ground that such exemption was intended only to operate among sister states of the American Union and not on the Philippines or other foreign states, suffice it to say that this Court has already recognized reciprocity between California and Philippine Laws on the question of intangible personal property. Thus:

> "Section 6 of the law of California categorically mentions a foreign state or country besides the states and territories of the Union and therefore the application of said law is not only confined to the states and territories of the United States, but also to a foreign country in connection with the imposition of tax on intangible personal property of a decedent residing in a foreign state. The fact that the state of California has no treaty with the Philippines because such powers is limited only to the United States, does not render nugatory the effectivity of the reciprocal provisions of the laws of California and the Philippines in regards to taxation. For the purposes therefore of the application of the reciprocity provision of section 122 of the Tax Code, the State of California does not impose inheritance tax on the intangible personal property of a decedent citizen of the Philippines who leaves properties in California, under the reciprocity provisions of Section 122 of our Tax Code, no inheritance tax should also be imposed upon the intangible property left by the deceased Alma Elizabeth Black." (Nathan Housman vs. Collector of Internal Revenue, BTA No. 71, <u>supra</u>; Norton vs. Acting Collector of Internal Revenue, CTA No. 73, January 12, 1956.)

Further:

> "Under the United States Federal System, every state of the Union, is, in a way, supreme and independent, in that each state,

like California may exercise sovereign powers of taxation which are not expressly granted to the federal government. (Cincinnati Soap Co. v. U.S.A. (1936), 301 U.S. 308, 81 L. Ed. 1122). On this basis, the California Inheritance Tax Act may be considered as one in a foreign country in relation to section 122 of the National Internal Revenue Code. In this regard, we believe and so hold that the petitioner is entitled to an exemption from inheritance taxes with respect to the intangible personal properties in the Philippines owned by Miller at the time of his death, by virtue of the reciprocal provisions contained in Section 6 of the California Inheritance Tax Act of 1935 (cited in BTA 71) affording a similar exemption from inheritance taxes to citizens of the Philippines, who are non-residents of California, U.S.A., at the time of their death." (Domingo de Lara vs. Collector of Internal Revenue, B.T.A. Case No. 181, June 25, 1955.)

And even more:

"Thus we repeat, the transmission of intangible personal properties in the Philippines belonging to a decedent citizen and resident of the State of California as exempt from the payment of inheritance tax by virtue of the reciprocity provisions of section 122 of our Tax Code." (Norton vs. Collector, supra.)

It appearing that for purposes of inheritance taxation, California Law has identical provisions to those contained in Section 122 of the National Internal Revenue Code, supra and further that the said California Law imposes no estate tax on decedent's estate we therefore hold that the intangible property of the estate of Walter G. Stevenson should be, and for this reason, extended an exemption from inheritance tax.

Plaintiffs however claim a deduction of ₱4,000.00 from the estate tax by virtue of the pertinent provisions of the U. S. Federal Estate Tax Law which read:

> "Sec. 861. Net Estate -
>
> (a) Deductions allowed. For the purpose of the tax value of the net estate shall be determined in the case of a non-resident not a citizen of the United States, by deducting from the value of that part of his gross estate (determined as provided in section 811), which at the time of his death is situated in the United States.
>
> x x x x
>
> (4) Exemption - An exemption of $2,000.00" (Section 861, Tit. 26, United States Code).

We believe that plaintiffs cannot claim this exemption of ₱4,000.00 from the estate: firstly, because this ₱4,000.00 is allowed under the U. S. Federal Estate Tax Law in the nature of a deduction and not in the nature of an exemption; secondly, because this exemption is allowed on all gross estates of non-residents of the United States, who are not citizens thereof, irrespective of whether there is a corresponding or similar exemption from transfer or death taxes of non-residents of the Philippines, who are citizens of the United States; and thirdly, because this exemption is allowed on all gross estates of non-residents, irrespective of whether it involves tangible or intangible, real or personal property; so that for these reasons plaintiffs cannot claim a reciprocity. The purpose of the intangible exemptions granted to non-residents under the reciprocity provisions of Section 122 of the National Internal Revenue Code, is evidently to reduce the burdens of multiple taxation, so common to intangible personal properties considering the multiple distinct relationships which may be entered into with respect thereto. (See Wells Fargo Bank v. Collector, 70 Phil. 375; State Tax Commission v. Aldrich, 316 U.S. 174; Domingo E. de Lara vs. Collector of Internal Revenue, BTA 181, supra.)

As to the third issue, this Court is in accord with the valuations made by defendant of the two parcels of land situated in Baguio and the shares of stock of the Mindanao Mother Lode Mines, Inc.

The two parcels of land containing 36,254 square meters were valued by the administrator of the estate in the Estate and Inheritance tax returns filed by him at ₱43,500.00 which is the assessed value of said properties. On the other hand, defendant appraised the same at ₱52,200.00. It is of common knowledge, and this Court can take judicial notice of it, that assessments for real estate taxation purposes are very much lower than the true and fair market value of the properties at a given time and place. In fact one year after decedent's death or in 1952 the said properties were sold for a price of ₱72,000.00 and there is no showing that special or extraordinary circumstances caused the sudden increase from the price of ₱43,500.00, if we were to accept this value as a fair and reasonable one as of 1951. Even more, the counsel for plaintiffs himself admitted in open court that he was willing to purchase the said properties at ₱2.00 per square meter. In the light of these facts we believe and therefore hold that the valuation of ₱52,200.00 of the real estate in Baguio made by defendant is fair, reasonable and justified in the premises.

Relative to the 210,000 shares of stock of the Mindanao Mother Lode Mines, Inc., the administrator himself, in the estate and inheritance tax returns filed by him declared said shares at a fair market price of ₱0.38 per share. Accordingly, defendant assessed the corresponding estate and inheritance taxes. However, after the assessed taxes were paid under protest, the administrator filed an amended estate and inheritance tax returns on September 22, 1952, or one and one half years after the death of the decedent, this time valuing said shares at ₱0.20 per share, on the ground that said shares were quoted at that price in the San Francisco Stock Exchange six months after the death of the testator, and that the shares were physically located at the the domicile of the decedent in San Francisco, California.

This assertion of plaintiffs is untenable. We should not lose sight of the fact that the Mindanao Mother Lode Mines, Inc., is a domestic corporation, organized and existing under the laws of the Philippines. The principal place of business of the corperation is located in the City of Manila, Philippines, and the said company extracts gold and other valuable mineral products from Philippine soil. The shares of stock of the company were also quoted at the Manila Stock Exchange at ₱0.38 per share six months after the date of the death of the decedent. For purposes of taxation the shares of stock have a situs in the Philippines (Wells Fargo Bank v. Collector, supra) and consequently, it is but proper that the market quotation in the Manila Stock Exchange of ₱0.38 should be followed and not the quotation in the San Francisco Stock Exchange.

We now proceed to the last issue. On the basis of preliminary return, defendant allowed as deductions funeral expenses of ₱2,000.00 and judicial and administration expenses of ₱5,500.00. In the amended returns other deduction were alleged. No evidence had been presented so as to fix the funeral expenses at ₱2,086.52 as claimed. In view thereof, we see no reason to alter the deduction for funeral expenses previously allowed by defendant. As regards the judicial expenses in the amount of ₱8,604.39, we note that this had been duly allowed by the probate court and we find no basis for departing from such findings. Moreover, since the increase of obligations were incurred after payment of the estate and inheritance tax and the expenses duly allowed by the Court, the plaintiffs should be entitled to the restitution of the proportional part of the taxes paid as authorized by section 105 of the

National Internal Revenue Code, the filing of the amended return being sufficient for the purpose of this rule. Consequently, we find that the sum of ₱8,604.39 should be allowed as judicial expenses instead of ₱5,500.00. As regards the other deductions consisting of real estate tax and claims against the estate paid, we find nothing in the record to show that these had been allowed by the probate Court in the Philippines for the payment thereof or that they are in fact valid claims. Moreover, we entertain doubt whether the claim against the estate of ₱10,022.47 may be properly allowed as a deduction considering that this was allegedly an indebtedness on the stocks in the Mindanao Mother Lode, Inc. which properties we are not including here for inheritance tax purposes (Descals v. Administrador de Rentas Internas, G.R. L-7253, March 26, 1956.)

In fine, we are of the opinion and so hold that: (a) the one-half (1/2) share of the surviving spouse in the conjugal partnership property as diminished by the obligations properly chargeable to such property should be deducted from the net estate of the deceased Walter G. Stevenson, pursuant to Section 89-C of the National Internal Revenue Code; (b) the intangible personal property belonging to the estate of said Stevenson is exempt from inheritance tax, pursuant to the proviso of section 122 of the National Internal Revenue Code in relation to the California Inheritance Tax Law but decedent's estate is not entitled to an exemption of ₱4,000.00 in the computation of the estate tax; (c) for purposes of estate and inheritance taxation the Baguio real estate of the spouses should be valued at ₱52,200.00, and the 210,000 shares of stock in the Mindanao Mother Lode Mines, Inc. should be appraised at ₱0.38 per share; and (d) the estate shall be entitled to a deduction of ₱2,000.00 for funeral expenses and judicial expenses of ₱8,604.39.

WHEREFORE, the defendant Collector of Internal Revenue is hereby ordered to refund to plaintiffs Douglas Fisher and Bettina Fisher the amount of ₱13,961.71 representing estate and inheritance taxes erroneously collected computed as follows:

Gross Estate

Real Property - 2 parcels of land in Baguio covered by T.C.T. Nos. 378 and 379	₱ 52,200.00
Personal Property	
1) 177 shares of stock of Canacao Estate at ₱10.00 each	1,770.00
2) 210,000 shares of stock of Mindanao Mother Lode Mines, Inc. at ₱0.38 per share	79,800.00
3) Cash credit with Canacao Estate, Inc.	4,870.88
4) Cash with the Chartered Bank of India, Australia & China	851.97
Total Gross Assets --------	₱139,492.85

Less: Deductions Claimed

1) Administrator's fee .... ₱1,204.34

2) Attorney's fee	₱6,000.00	
3) Judicial and administrative expenses	2,052.55	
Total Deductions ---------		9,256.89
Net Estate ----------		₱130,235.96
Share of the deceased spouse subject to estate tax out of ₱130,235.96 .(one-half).........		₱ 65,117.98
Total Estate Tax Due		₱ 1,383.54
Estate tax paid per return		5,147.98
Estate tax refundable -----------		₱ 3,764.44
Net Estate		₱ 65,117.98
Less Estate tax		1,383.54
		₱ 63,734.44
Less: Exemption for value of intangible personal property -		
1) 177 shares of stock of Canacao Estate at ₱10.00 each ..	₱ 1,770.00	
2) 210,000 shares of stock of Mindanao Mother Lode Mines, Inc. ..	79,800.00	
	₱81,570.00	
Deceased spouse's share of intangible personal property (one-half)		40,785.00
Amount subject to inheritance Tax		₱ 22,949.44
Inheritance tax due on above ...		₱ 677.98
Total inheritance tax due		₱ 677.98
Inheritance tax paid per return ..		10,875.25
Inheritance tax refundable -----		₱ 10,197.27

Without pronouncement as to costs.

SO ORDERED.

Manila, Philippines, September 26, 1956.

MARIANO [illegible]
Presiding Judge

I CONCUR:

AUGUSTO M. LUCIANO
Associate Judge

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
MANILA

DOUGLAS FISHER and
BETTINA FISHER,
Plaintiffs,

- versus -

MANILA CIVIL
CASE NO. 23029

THE COLLECTOR OF INTERNAL
REVENUE,
Defendant.

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

CONCURRING AND DISSENTING OPINION

I concur in the foregoing opinion of the majority, except the portion thereof which holds that "the intangible personal property belonging to the estate of said Stevenson is exempt from inheritance tax, pursuant to the proviso of section 122 of the National Internal Revenue Code in relation to the California Inheritance Tax Law." Section 122 of the Revenue Code provides —

> "That no tax shall be collected under this Title in respect of intangible personal property (a) if the decedent at the time of his death was a resident of a foreign country which at the time of his death did not impose a transfer tax or death tax of any character in respect of intangible personal property of citizens of the Philippines not residing in that foreign country, or (b) if the laws of the foreign country of which the decedent was a resident at the time of his death allow a similar exemption from <u>transfer taxes or death taxes of every character</u> in respect of intangible personal property owned by citizens of the Philippines not residing in that foreign country." (Underscoring supplied.)

In order that intangible personal property situated in the Philippines belonging to a deceased who was a non-resident at the time of his death may be exempt from transfer taxes or death taxes, it is essential that the foreign country of which the deceased was a resident at the time of his death (1) did not impose a transfer tax or death tax of any character in respect of intangible personal property of Philippine citizens not residing in that foreign country, or (2) allowed a similar exemption from transfer taxes or death taxes of every character in respect of intangible personal property owned by Philippine citizens not residing in that foreign country. It is admitted that the State of California imposed an inheritance tax at the time of death of the deceased Walter G. Stevenson, who was a resident of said State. Therefore, exemption from any transfer tax or death tax of intangible personal property in the Philippines of the deceased Walter G. Stevenson may not be claimed under the first portion of the proviso quoted above. It remains to be seen whether exemption may be claimed under the second portion of the proviso.

The second portion of the proviso of Section 122 of the Revenue Code, quoted above, requires as a condition for exemption from transfer taxes or death taxes of intangible personal property of a deceased non-resident that the foreign country of which the deceased was a resident allowed a <u>similar exemption from transfer taxes or death taxes of every character</u> in respect of intangible personal property owned by Philippine citizens not residing in that foreign country. In the instant case, the California law grants reciprocal exemption only with respect to the inheritance tax for that is the only transfer tax or death tax that it imposes. The Federal law of the United States imposes estate and gift taxes and said law authorizes no exemption on the basis of reciprocity. The State of California is, therefore, in no position to grant reciprocal exemption with respect to estate and gift taxes. Our law does not recognize partial reciprocity. It grants reciprocal exemption, in clear and specific terms, only if the foreign country whose law is invoked allows a similar exemption from transfer taxes or death taxes of every character, which means the estate, inheritance and gift taxes imposed by Title III (Secs. 85-122) of the Revenue Code. The California law certainly does not grant a similar exemption.

Moreover, the opinion of the majority that reciprocal exemption may be granted only with respect to the inheritance tax does not meet the requirement of the California Inheritance Tax Law, which provides:

> "Sec. 13851. Exemption of intangible personal property; Conditions; Reciprocal provisions.- Intangible personal property is exempt from the tax imposed by this part if the decedent at the time of his death was a resident of a territory or another State of the United States or of a foreign state or country which then imposed a legacy, succession, or death tax in respect to intangible personal property of its own residents, but either:

x x x x

> (b) Had in its laws a reciprocal provision under which intangible personal property of a non-resident was exempt from legacy, succession, or death taxes of every character if the Territory or other State of the United States or foreign state or country in which the non-resident resided allowed a similar exemption in respect to intangible personal property of residents of the Territory or State of the United States or foreign state or country of residence of the decedent." (Underscoring supplied.)

The reciprocal exemption provided in the California Inheritance Tax Law requires as a condition for the allowance of exemption that the foreign law allow a similar exemption from legacy, succession or death taxes of every character. If the opinion of the majority that we may grant exemption from the inheritance tax in respect of intangible personal property in the Philippines owned by residents of California and deny exemption from the estate tax (Sec. 85, Nat. Int. Rev. Code), then California may not grant any exemption in respect of intangible personal property of Philippine citizens not residing therein because its law requires that the Philippine law must allow similar exemption from legacy, succession or death taxes of every character. Like the Philippine law, the California law does not obviously recognize partial reciprocity. The result would be that while we would be exempting residents of California from inheritance tax on their intangible personal property in the Philippines, our citizens not residing in California might not be allowed a similar exemption under the California law.

I do not believe that such a result is in keeping with the spirit and purpose of the reciprocity provisions here involved.

FOR THE FOREGOING CONSIDERATIONS, I am of the opinion that the reciprocal exemption from transfer taxes or gift taxes provided in Section 122 of the Revenue Code does not apply to intangible personal property in the Philippines owned by a resident of the State of California, such as the deceased Walter G.Stevenson.

R M Umali
ROMAN M. UMALI
Associate Judge