REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
MANILA

JAMES E. NORTON, (Mrs.) RUTH A. HARGIS, WOODSON ALLEN, WALTER S. HARGIS, and THOMAS M. JORDAN, both in his capacity as legatee and Ancillary Executor of the Testate Estate of the deceased Lionel D. Hargis,

Petitioners,

January 18, 1956

- versus -

C.T.A. CASE NO. 73

ACTING COLLECTOR OF INTERNAL REVENUE,

Respondent.

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

D E C I S I O N

This is an appeal from a decision of the respondent Collector of Internal Revenue, dated January 11, 1955, denying petitioners' request for exemption from payment of inheritance taxes and penalties allegedly due from them in the total amount of ₱147,192.19 and the refund of the inheritance taxes already paid by petitioners, Ruth A. Hargis, Woodson Allen, Walter S. Hargis and Thomas M. Jordan in the total sum of ₱25,715.53.

There is no dispute as to the facts of this case, both parties having submitted an agreed stipulation of facts.

It appears that the petitioners herein, with the exception of petitioner Thomas M. Jordan, are the heirs of the deceased Lionel D. Hargis, an American citizen, resident of San Francisco, California, who died on or about April 13, 1952 at Oakland in the same state. The petitioner, Thomas M. Jordan, is not an heir but merely a legatee and the ancillary executor of the testate

estate of the deceased Lionel D. Hargis in the Philippines.

The decedent left personal properties in the Philippines consisting mostly of shares of stocks and equities in Philippine corporations or in other words, intangible personal properties originally assessed at ₱934,752.59. However, upon request of petitioners, due revision of the assessed value of said properties was made by the respondent and the same was reduced to ₱927,835.07.

On the original assessment of ₱934,752.59, the respondent demanded from the petitioners the sum of ₱88,270.46 as estate tax and the amount of ₱165,861.23 as inheritance tax. All the petitioners paid in full the estate tax in the amount of ₱88,270.46 on January 11, 1954. With the exception of James E. Horton, all the other petitioners paid their respective share of the inheritance tax on April 8, 1954 which amounts to ₱25,715.53.

On May 21, 1954, the respondent, pursuant to a written request of petitioners' attorney, dated March 23, 1954, revised and issued an amended notice of assessment reducing the total value of the gross estate of the deceased Lionel D. Hargis in the Philippines from ₱934,752.59 to ₱927,835.07. According to said amended notice of assessment, the estate tax due was recomputed to ₱87,397.54 instead of the original assessment of ₱88,270.46. Since the petitioners paid in full the original assessment on the estate tax, there was therefore an overpayment of ₱872.92 which they now seek to be refunded. As to the balance of the amount paid by way of estate tax amounting to ₱87,397.54 the petitioners have not questioned the same in this appeal.

According to the revised assessment, there was, however, a deficiency inheritance tax, surcharge, interests and penalty due from the heirs and legatee of the deceased Lionel D. Hargis, amounting to ₱147,192.19, after crediting the previous partial payment of ₱25,715.53 made by the four petitioners on the original inheritance tax assessment.

On June 11, 1954, counsel for the petitioners contested the assessment made on May 21, 1954 by the respondent on the ground that his clients were exempt from the payment of inheritance tax on the transmission of the intangible personal properties in the Philippines of the deceased Lionel D. Hargis, by virtue of the reciprocity provisions of section 122 of the National Internal Revenue Code. At the same time, counsel for petitioners also requested the refund of the sum of ₱25,715.53 already paid as inheritance tax by four of his clients. This claim was denied by the respondent in a letter decision dated January 11, 1955, wherein the latter reiterated his demand for the payment of the sum of ₱147,192.19 as deficiency inheritance tax, surcharge, interest and penalty.

On February 5, 1955, petitioners brought on appeal to this Court said decision of the respondent praying among other things that:

(1) The decision of the respondent appealed from be reversed;
(2) That all the petitioners be declared exempt from the payment of the inheritance taxes and penalties assessed against them by the respondent; and
(3) That a decision be rendered requiring the respondent to refund to the petitioners the (a) overpayment of ₱872.92 which had been credited to the inheritance tax, and, (b) the total sum of ₱25,715.53 paid as inheritance tax by the four petitioners concerned.

The main question to be resolved in this appeal, therefore, is whether or not the reciprocity provision of section 122 of the National Internal Revenue Code is applicable to the case at bar. A minor issue sought to be answered in the present case is whether or not this Court has jurisdiction to act on the refund of the sum of ₱872.92, admittedly an overpayment on the estate tax, in view of the condition precedents regarding refund of taxes improperly collected or erroneously paid as provided for in sections 306 and 309 of the National Internal Revenue Code.

On the main issue, respondent contends that section 122 of the National Internal Revenue Code is not applicable to the instant case, because: (1) the term "foreign country", as used therein, when applied to the instant case, refers to the United States of America and not to any particular State thereof; and (2) the provisions of section 13851 of the Revenue and Taxation Code of the State of California are not reciprocal to the provisions of section 122 of our Tax Code.

Section 122 of our National Internal Revenue Code reads in part as follows:

"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 properties 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 properties owned by citizens of the Philippines not residing in that foreign country."

On the other hand, section 13851 of the Revenue and Taxation Code of the State of California being invoked by petitioners in support of their stand to the effect that the reciprocity provision of section 122 of our Tax Code is applicable to the case at bar, reads 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 resident, 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 nonresident 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 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."

A casual reading of the two provisions above-cited would readily show that both Philippine and California tax laws contain the so-called reciprocity clauses with respect to exemptions from inheritance taxes. There seems to be no argument between the parties on this particular point. The bone of contention revolves on the argument of the respondent that the reciprocity provisions of the California Law are limited and confined only to the states and territories of the United States, and that California is not a 'foreign country' within the purview of that term as used by section 122 of our Tax Code.

The defunct Board of Tax Appeals in B.T.A. Case No. 71, entitled "Nathan S. Housman vs. The Collector of Internal Revenue," resolved a similar issue in the following manner:

> "The Board does not agree with the theory of respondent. Each State of the Union is supreme and independent. It has its own government with full powers of taxation and to appropriate the revenue derived therefrom (Cincinnati Soap Co. v. U.S.A. No. 659; Hoskins Bros. v. O'Malley No. 687, U.S. May 3, 1937, V.L.J. 1949). 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 impositionof 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."

This Court has adopted with approval, the above-quoted ruling of the defunct Board of Tax Appeals in the recent B.T.A. Case No. 181 entitled "Domingo de Lara, as Ancillary Administrator of the Estate of Hugo H. Miller vs. Collector of Internal Revenue," promulgated by this Court of Tax Appeals on June 25, 1955, wherein we held:

"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. vs. U.S.A. (1936), 301 U.S. 308, L. ed. 1122). On this basis, the California Inheritance Tax Act may be considered as one enforced 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 B.T.A. Case No. 71) affording a similar exemption from inheritance taxes to citizens of the Philippines, who are nonresidents of California, U.S.A. at the time of their death."

We find nothing new in the arguments of the respondent in the instant case, that could convince us to reverse the above-quoted ruling. Thus, we repeat, the transmission of intangible personal properties in the Philippines belonging to a decedent citizen and resident of the State of California is exempt from the payment of inheritance tax by virtue of the reciprocity provisions of section 122 of our Tax Code.]

In the light of the foregoing doctrine, we now test whether the facts of the case at bar warrant the applicability of the reciprocity provisions of section 122 of our Tax Code. There are two requirements that must be met in order that the reciprocity provision of section 122 of our Tax Code be given effectivity, and these are:- first, that the decedent at the time of his death was a resident of a foreign country; and second, that the laws of the foreign country allow a similar exemption from transfer taxes or death taxes in respect of intangible property owned by citizens of the Philippines not residing in that foreign country. From the facts submitted and the evidence presented we find these two requisites fully satisfied.

We are therefore of the opinion and so hold that the petitioners herein are exempt from the payment of inheritance tax on the transmission of the intangible personal properties in the Philippines of the deceased Lionel D. Hargis.

As to the minor issue, respondent contends that this Court has no jurisdiction to act on the refund of the sum of ₱872.92 representing the overpayment of the estate tax for the reason that the petitioner did not file with the respondent Collector of Internal Revenue a request for the refund thereof as required by sections 306 and 309 of our Tax Code. The Court agrees with the respondent on this point. A claim for refund duly filed with the Collector of Internal Revenue is jurisdictional and failure to file such claim is fatal and bars recovery thereof. (Wee Poco v. Posadas 64 Phil. 640; Bermejo v. Collector of Internal Revenue, G.R. L-3029, July 26, 1950.) The mere fact that the respondent Collector of Internal Revenue admitted that there was an overpayment on the estate tax does not ipso facto entitle the taxpayer to a refund of said overpayment. Following the provisions of our Tax Code on refunds, the taxpayer must file with the Collector of Internal Revenue a categorical request in writing for the refund of whatever specific amount he has allegedly overpaid in order that he might be entitled to a refund. The petitioners herein have utterly failed to take such a step with regards to the overpayment on the estate tax in the amount of ₱872.92 and therefore this Court is without jurisdiction to order the refund of the aforesaid sum.

IN VIEW OF THE FOREGOING, we hold that all of the petitioners herein are exempt from the payment of inheritance taxes, surcharges and penalties assessed against them by the respondent. The decision of the respondent appealed from in this respect is therefore reversed.

The petitioners' claim for refund of the amount of ₱872.92 is hereby dismissed for lack of jurisdiction.

The respondent Collector of Internal Revenue is hereby ordered to refund to the petitioners Ruth A. Hargis, Woodson Allen, Walter S. Hargis and Thomas M. Jordan the amount of ₱25,715.53 which they paid as inheritance tax on the transmission of intangible personal properties in the Philippines of the deceased Lionel D. Hargis.

No pronouncement as to costs.

SO ORDERED.

Manila, Philippines, January 12, 1956.

AUGUSTO M. LUCIANO
Associate Judge

I CONCUR:

MARIANO NABLE
Presiding Judge

I RESERVE MY VOTE:

ROMAN M. UMALI
Associate Judge