REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

JAMES LITTON, in his capacity as Administrator of the estate of the late Rosa Tulod Litton,
Petitioner,

- versus - C.T.A. CASE NO. 2180

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

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D E C I S I O N

Petitioner James Litton, as administrator of the estate of the late Rosa Tulod Litton, is seeking the refund or tax credit of the amount of ₱7,026.82 representing donor's and donee's gift taxes paid to respondent Commissioner of Internal Revenue on the premiums paid upon a life insurance policy taken by the decedent during her lifetime.

It appears that during the lifetime of the deceased Rosa Tulod Vda. de Litton, she took on her life an insurance policy from the Insular Life Assurance Company, designating her children as the irrevocable beneficiaries. Upon her death, respondent caused the investigation of the decedent's estate, and as a result thereof, it was ascertained that for 5 years, from 1957 to 1961, she had paid premiums in the aggregate amount of ₱86,030.00. Although the proceeds of the insurance were considered not to form part of the gross estate, respondent subjected the premiums paid to donor's and donee's gift taxes under Sections 109 and 110 of the Tax Code. Accordingly, respondent assessed petitioner donor's and donee's gift taxes and penalties for the years 1957, 1958, 1959, 1960 and 1961 in the aggregate amount of ₱7,080.57.

In a letter dated October 15, 1965, petitioner pointed out to respondent certain mathematical errors committed in the computation of the taxes, with the request that the amount involved in the assessment be reduced from ₱7,080.50 to ₱7,016.82. And on the same date, petitioner paid the total amount of ₱7,016.82 as computed by him.

On November 4, 1965 respondent advised petitioner that the correct amount of the liability should be ₱7,026.82 instead of ₱7,016.82. The balance of ₱10.00 was then paid on November 29, 1965.

Subsequently, BIR Ruling No. 26 dated October 22, 1968 was promulgated by respondent Commissioner of Internal Revenue wherein it is explicitly declared that premiums paid by the insured on life insurance policy are not subject to donor's and donee's gift taxes. The pertinent portion of said ruling reads as follows:

> "Premiums paid by the insured under his life insurance policy are not gifts to the beneficiary or beneficiaries so designated therein regardless of whether such designation is revocable or irrevocable. x x x "

Based on the above ruling, petitioner filed with respondent on August 31, 1970 a claim for tax credit of the amount of ₱7,026.82 representing alleged erroneous payment of donor's and donee's gift taxes on the premiums paid under the life insurance policy of the late Rosa Tulod Litton. Pending determination of the said claim, petitioner also filed the instant petition for review before this Court on October 20, 1970, praying that respondent be ordered to grant the tax credit in the amount of ₱7,026.82 erroneously collected as donor's and donee's gift taxes.

The only issue to be decided by this Court is whether or not petitioner's claim for refund or tax credit has been seasonably filed with the Bureau of Internal Revenue, and the subsequent appeal to this Court instituted in due time.

Petitioner contends that when an internal revenue tax sought to be refunded was originally collected legally, the running of the prescriptive period of two years provided for in Section 306 of the National Internal Revenue Code, before its amendment by Presidential Decree No. 69, should commence not from the date the tax was paid but from the happening of the supervening cause which entitled the taxpayer to a refund; and the claim for refund with the Commissioner of Internal Revenue and the subsequent action before the Court of Tax Appeals regarding the refund should all be done within the said period of two years. Since in the case at bar, according to petitioner, there is no question that the gift taxes paid by him to the Bureau of Internal Revenue in the sum of ₱7,026.82 was legally collected from the estate of the late Rosa Tulod Litton, it became refundable only upon the happening of the supervening cause which is the promulgation of Bureau of Internal Revenue Ruling No. 26 on October 22, 1968, holding that premiums paid by the insured under life insurance are not gifts subject to donor's and donee's gift taxes. The computation of the two year period provided for in the then Section 306 of the National Internal Revenue Code should therefore start from October 22, 1968 so that the claim for refund filed by petitioner with the Bureau of Internal Revenue as well as the instant petition for review were all instituted within the reglementary period of two years.

Respondent, on the other hand, avers that the original copy of his demand-letter dated August 27, 1965 requesting payment of the herein donor's and donee's gift taxes was received by petitioner on August 28, 1965 and the payments thereon were fully made on October 15, 1965, or, after the lapse of one and one half months from the date of receipt of said demand-letter on August 30, 1965. Consequently, according to respondent, when the payments of the herein taxes were made, his assessments were already final, executory and demandable for failure of petitioner to appeal the same to this Court within the thirty-day period prescribed under Sections 7 and 11 of Republic Act No. 1125.

The implausibility of respondent's stand is at once apparent. This is not an appeal from a decision of the Commissioner of Internal Revenue involving disputed assessment of internal revenue taxes under the provisions of Section 7(1) of Republic Act No. 1125 which should be filed within thirty days from receipt of the decision on the disputed assessment under Section 11 of the same law, otherwise it becomes final and executory, but a suit or proceeding for recovery of taxes erroneously or illegally collected under Sections 306 and 309 of the National Internal Revenue Code. It is not disputed here that the donor's and donee's gift taxes sought to be refunded were collected legally by respondent but because of the happening of a supervening cause, petitioner became entitled to a refund under Sections 306 and 309 of the Revenue Code.

As explicitly stated by the Supreme Court in the case of Commissioner of Internal Revenue vs. Insular Lumber Company and Court of Tax Appeals, L-24221, December 11, 1967, 21 SCRA 1237, and reiterated in the case of Commissioner of Internal Revenue vs. Victorias Milling Co., Inc., L-24108, January 3, 1968, 22 SCRA 12, the intention of the law is clear that refunds of internal revenue taxes are governed by Sections 306 and 309 of the Tax Code. In those cases where the tax sought to be refunded was collected legally, the running of the two-year prescriptive period provided for in the then Section 306 should commence, not from the date the tax was paid, but from the happening of the supervening cause which entitled the taxpayer to a tax refund. And the claim for refund should be filed with the Commissioner of Internal Revenue, <u>and the subsequent appeal to the Court of Tax Appeals must be instituted, with the said two-year period</u>.

In fine, when the tax sought to be refunded is illegally or erroneously collected, the period of prescription starts from the date the tax was paid; but when the tax is legally collected, the prescriptive period commences to run from the date of occurence of the superveming cause which gave rise to the right of refund. (Commissioner of Internal Revenue vs. Victorias Milling Co., Inc., and The Court of Tax Appeals, No. L-24108, January 3, 1968, 22 SCRA 12)

It is true that where a taxpayer who has lost his right to disputd the validity of an assessment, the period for appealing to the Court of Tax Appeals having expired, as found by such Court in a <u>previous case in a decision now final</u>, the taxpayer cannot after the decision of the Court of Tax Appeals has become final and executory, pay the tax and later claim refund and then appeal again to the Court of Tax Appeals if his claim for refund is denied. However, the present action is not instituted for the review of a disputed assessment (under Sections 7 and 11 of Republic Act No. 1125) which has become final and executory, after which petitioner paid the gift taxes and later claimed for refund which was denied by respondent. The demand-letter dated August 27, 1965 requesting payment of donor's and donee's gift taxes was legal and valid at the time it was issued by respondent and later paid by petitioner. There was therefore no assessment, the validity of which petitioner can contest or dispute, and failure of which on his part to appeal seasonably the decision of respondent on the disputed assessment would mean the loss of his right to appeal to the Court of Tax Appeals. It was only upon the happening of a supervening cause-promulgation of Bureau of Internal Revenue Ruling No. 26 on October 22, 1968 by respondent- that the payment of the gift taxes became erroneous and illegal, which entitled petitioner to the refund. And his remedy as expressly prescribed and declared by law, for purpose of enforcing his right, is not to dispute the assessment issued against him under Sections 7 and 11 of Republic Act No. 1125, but as explicitly provided for under Sections 306 and 309 of the National Internal Revenue, to file a claim for refund and, if the claim is denied, appeal to the Court of Tax Appeals. To the extent that the procedure followed by petitioner adhered strictly to the provisions of Section 306 and 309 of the National Internal

Revenue Code, it cannot therefore be assailed as erroneous.

In the case now at bar, it is undisputed that respondent assessed the donor's and donee's gift taxes in question in accordance with a 1956 Ruling of the Bureau of Internal Revenue that premiums paid by the insured upon an insurance policy are subject to donor's and donee's taxes. Petitioner, because of this ruling, paid the amount of ₱7,026.82 assessed against him as gift taxes, which sum was fully paid on November 29, 1965. Because the assessment of respondent was made on the basis of a then existing and operative ruling of the Bureau of Internal Revenue, which was validly and legally promulgated by respondent, the collection and payment of that amount was correct and legal.

Then a supervening circumstance happened. On October 22, 1968, respondent promulgated Bureau of Internal Revenue Ruling No. 26 stating that premiums paid by the insured under life insurance policy are not gifts to the beneficiary, hence, not subject to donor's and donee's gift taxes. Unless respondent is questioning his authority and competence to promulgate Bureau of Internal Ruling No. 26, it can be said, therefore, that as of October 22, 1968, when the Commissioner of Internal Revenue declared that premiums paid by the insured under life insurance policy are not subject to gift taxes, the collection from petitioner of the amount of P7,026.82 representing gift taxes on premiums paid by the deceased Rosa Tulod Litton during her life-time on her life insurance policy became or would be erroneous and illegal.

In other words, the illegal, or the erroneous, collection of the gift taxes took effect on October 22, 1968, and the right of petitioner to a refund or tax credit of the gift taxes occurred as of that date. The taxes were originally collected legally and the question of the illegality of the payment of the gift taxes became known only to petitioner upon the rendition of the ruling of the Commissioner of Internal Revenue on October 22, 1968. Thus by reason of the supervening circumstances (Bureau of Internal Revenue Ruling No. 26 explicitly declaring that premiums paid by the insured under life insurance are not gifts subject to donor's and donee's taxes) petitioner James Litton, in his capacity as Administrator of the estate of the late Rosa Tulod Vda. de Litton, was entitled to the refund or tax credit of the gift taxes previously paid. (See Commissioner of Internal Revenue vs. National Power

Corporation, L-18874, January 30, 1970, 31 SCRA 112) It follows that when petitioner made a claim with respondent for tax credit of the amount paid as gift taxes on August 31, 1970, and had begun suit in this Court with the filing of the instant petition on October 20, 1970, both were all done well within the period of two years provided in the then Section 306 of the National Internal Revenue Code. Hence, the right of petitioner to the grant of tax credit of the gift taxes in question has not yet prescribed.

ACCORDINGLY, the claim of petitioner James Litton, in his capacity as Administrator of the Estate of the late Rosa Tulod Litton for tax credit should be granted. Respondent Commissioner of Internal Revenue is therefore ordered to credit the sum of ₱7,026.82 in favor of petitioner.

SO ORDERED.

Quezon City, April 14, 1977.

AMANTE FILLER
Acting Presiding Judge

I CONCUR:

CONSTANTE C. ROAQUIN
Associate Judge