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SOR ROSARIO ARROYO (deceased)
represented by REV. FR. WILLIAM
MAIERHOFER, Administrator of her
Testate Estate,

Petitioner,

- versus -

C.T.A.
CASE NO. 382

December 24, 1958

THE COLLECTOR OF INTERNAL
REVENUE and THE CITY TREASURER
OF ILOILO,

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RESOLUTION

This is a petition for review originally filed by the petitioner, Sor Rosario Arroyo, through counsel, disputing the assessment of the sum of ₱30,655.33 as inheritance tax plus 1% monthly interest from November 1953 up to date of payment, allegedly due on the share of the inheritance received by her from her father, the late Don Ignacio Arroyo. Before proceeding to the hearing on the merits, the petitioner raised the question of prescription in that the right of the respondent Collector (now Commissioner) of Internal Revenue to enforce the collection of said assessment has been barred by the statute of limitations. As the resolution of this question in favor of the petitioner would obviate the need for receiving evidence on the merits, the Court allowed the petitioner to present evidence on this incident.

The records of the case show that Don Ignacio Arroyo died on January 8, 1935. Since no inheritance tax returns were filed by the administrator of his estate, an examiner of the BIR filed one on March 29, 1939. On April 15, 1939, the Collector of Internal Revenue assessed, through Atty. Lucas Lacson, executor of the will of the deceased, the amount of ₱49,199.94 as inheritance tax due from the heirs of the deceased, Don Ignacio Arroyo (Exhibit 1, p. 64, BIR records). Of this amount, ₱12,789.76 was assessed against the petitioner, as her corresponding share thereof. On September 2, 1939, the counsel for the executor of the estate, requested for the deferment of any action on the assessment because of certain claims against the estate filed by 3rd parties (Exhibit 2, p. 68, BIR records). In the testate proceedings for the settlement of the decedent's estate before the Court of First Instance of Iloilo, the respondent filed a claim and proof of debt, dated November 4, 1939 (Exhibits 5, 5-A, p. 78, 80, BIR records) for the taxes due. However, the records of the testamentary proceedings were lost during World War II (see Exhibit 8, p. 85, BIR records). It appears that neither of the parties concerned has instituted action for the reconstitution of the records thereof (see Exhibits 11, 14, pp. 88, 105, BIR records). Nevertheless, the Collector of Internal Revenue issued a re-assessment dated September 21, 1948, demanding from the administrator of the estate the sum of ₱82,056.71 as inheritance tax, inclusive of surcharge and interest computed as of July 21, 1936 to December 8, 1941 and from March 1, 1946 to October 31, 1948 (p. 94, BIR records). It appears however, that this re-assessment was not received by the administrator because he died on May 17, 1948 (Exhibit 14, p. 105, BIR records). Thus, on August 18, 1949, the respondent issued another assessment for ₱82,612.40, inclusive of surcharge and interest up to December 16, 1948 (Exhibit 15-A, p. 107-108, BIR records).

On November 19, 1951, the respondent Collector of Internal Revenue issued a warrant of distraint and levy against the estate for the sum of ₱96,134.16 (Exhibit 16-A, p. 116, BIR records). Although there is no record as to when this warrant had been effected, however it appears that the heirs requested at least on February 6, 1952 and June 13, 1952 that they be informed of their respective liabilities (Exhibits 18, 21, p. 122, 132, BIR records). In response to such request, the Collector of Internal Revenue on June 27, 1952, apportioned the tax due from the estate among the heirs, assessing the amount of ₱33,008.67 against the petitioner herein, inclusive of surcharge and interest from July 21, 1936 to December 8, 1941 and from March 1, 1946 to July 30, 1952 (pp. 139-140, BIR records). Counsel for the petitioner on August 25, 1953 requested for a reconsideration of the assessment against his client (Exhibit 25, pp. 162-163, BIR records). On September 22, 1953, the respondent issued a recomputation of the tax liability of the heirs of the decedent, reducing the amount due from the petitioner to ₱30,655.33 (Exhibit 24, pp. 151-152, BIR records).

In a letter dated October 19, 1953 (Exhibit 27-A, pp. 166-167, BIR records), the counsel for petitioner requested the assessment to be revised and the penalties and interests condondd. The respondent, on February 19, 1954, informed the counsel that a re-computation has already been made and has been found to be correct, at the same time denying the condonation asked for by the

petitioner (Exhibit 28, pp. 175-176 BIR records).
On April 14, 1955, counsel for taxpayer asked the Collector to cancel the assessment against the former on the ground that whatever right or rights the government has in this connection, the same has already prescribed (Exhibit 3, p. 178 BIR records). This request was denied by the respondent on May 18, 1955 (pp. 179-180, BIR records).

On June 2, 1955, the lawyer of the petitioner requested that the interest charges be scaled down and at the same time proposed that the petitioner be permitted to pay her tax liability in 3 equal yearly installments. (Exhibit 29, p. 191, BIR records). The Collector, in a letter dated December 8, 1955, informed petitioner's counsel to the effect that he was willing to give a two-year extension of time for the payment of the petitioner's tax liability provided that she files a surety bond sufficient to cover the amount due within 15 days from the receipt of the instant communication (Exhibit 30, p. 201, BIR records). On April 23, 1956, the director of the 7th Regional District, wrote the counsel of the petitioner calling his attention to the fact that the condition imposed by the Collector upon the petitioner (filing of bond) has not been complied with up to that date (p. 202, BIR records). The petitioner having failed to comply with the condition precedent regarding the payment by installments, the Collector of Internal Revenue, on November 19, 1956, issued a warrant of distraint and levy against her properties for the sum of ₱30,655.33 (Exhibit 31-A, p. 204, BIR records).

On December 21, 1956, petitioner requested that the execution of the warrant of distraint and levy be suspended and that the case be re-investigated (Exhibit 32, p. 216-217, BIR records). In compliance with the above request, the Collector on December 27, 1956 ordered a re-investigation (p. 219, BIR records) and wired the City Treasurer of Iloilo to suspend the sale at public auction of petitioner's properties which were distrained and levied upon (p. 218, BIR records). On January 17, 1957, petitioner's counsel wrote the Collector advancing arguments on questions of law and fact pertinent to the case (Exhibit E, p. 240-245, BIR records). The Collector of Internal Revenue, in a letter dated April 16, 1957, answered all the arguments propounded by the petitioner's counsel in his letter of January 17, 1957 (Exhibit A, pp. 248-250, BIR records), standing firm on his original decision. On May 25, 1956, the petitioner filed the instant petition for review.

On June 18, 1958 counsel for the petitioner filed a motion to be allowed to substitute parties because of the death of the petitioner, Sor Rosario Arroyo, on June 14, 1957. This Court granted said motion on October 2, 1958, substituting Rev. Fr. William Maierhofer, administrator of the deceased testate estate, for the original petitioner.

As already stated earlier, the issue before the Court is limited to the incident as to the prescription of government's right to assess and/or collect the tax herein involved. However, the parties seem to be at variance in their statement of the issues in their memoranda. According to the respondent, the only issue is whether or not the right of the government to collect by summary method has prescribed; while the petitioner claims that she is questioning both rights of the government to collect either by summary proceedings or by judicial action. The records however show that the statement of the issue by the petitioner is correctly made, and we shall proceed to consider the issue of prescription in its entirety.

The petitioner claims that the respondent's right to collect the alleged tax delinquency has already prescribed, in view of Section 332 (c) of the National Internal Revenue Code, which we quote hereunder:

> "(a) x x x x
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> "(c) Where the assessment of any internal revenue tax has been made within the period of limitation above prescribed such tax may be collected by distraint and levy or by a proceeding in court, but only if began (1) within five years after the assessment of the tax, or (2) prior to the expiration of any period for collection agreed upon in writing by the Collector of Internal Revenue and the taxpayer before the expiration of such five-year period. The period so agreed upon may be extended by subsequent agreements in writing made before the expiration of the period previously agreed upon."

On the other hand, the respondent contends that his right to collect the tax has not yet prescribed because the filing of the Proof of Debt dated November 4, 1939 in Civil Case No. 2144 before the Court of First Instance of Iloilo, interrupted the prescriptive period. Moreover, it is argued that the instant case was investigated prior to the effectivity of the National Internal Revenue Code and is therefore not covered by the prescriptive period relied upon by the petitioner. It is also argued that in any case, the acts of the petitioner show that she had waived the benefits of prescription.

We agree with respondent that the filing of a claim against the estate by the government in the probate case would constitute a judicial proceeding for the collection of the tax and thereby suspend the operation of the statute of limitations in respect thereto. However, since the records of the probate case involved herein were not reconstituted after they had been lost and/or destroyed, the claim is ineffective with the result analogous to the situation as though <u>no claim</u> was ever prosecuted. Incidentally, it is to be noted that the re-assessments made by the Collector in 1948 and 1949 were mere reiterations of the original assessment in 1939. Since the present tax sought to be collected was assessed way back in 1939 and the respondent initiated the collection of the same by the issuance of a warrant of distraint and levy only on November 19, 1951 and by a later judicial action in this case, it becomes apparent that the collection of the tax has been commenced far beyond the five-year period after assessment provided for by section 332 of the Tax Code, even after deducting the period from December 8, 1941 to February 28, 1945 (period suspended during World War II).

The argument of the respondent that the prescriptive period provided for by sections 331 and 332 do not apply to cases that have been investigated before the effectivity of the National Internal Revenue

Code on July 1, 1939, is not meritorious. On a similar contention, our Supreme Court held:

> "x x x"We find the contention untenable. As the Court of Tax Appeals says, the 'limitation' mentioned in the proviso to section 331 can refer only to the limitation established in that section, and not the limitation of period prescribed in section 332 (c). This must be so because the natural and appropriate office of a proviso to a statute or to a section thereof is to restrict or qualify the provisions immediately preceding it. Hence, it has been made a rule of construction that a proviso shall be confined to that which directly precedes it, or to that section to which it has been appended, unless it clearly appears that the legislature intended it to have wider scope. (Black on Interpretation of Laws, p. 432) Had Congress, therefore, intended the proviso in section 331 to restrict or qualify section 332, the same would have been inserted therein to make the intention clear. Taxing acts, including provisions as to limitations on assessment and collection of taxes, should be construed liberally in favor of the taxpayer. (Bowers vs. N.Y. & Albany Co. 273, U.S. 346, 1 USTC, Par. 218 cited in Vol. 4, CCH (1954), par. 1443, 119)"
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> /Collector of Internal Revenue vs. Servando de los Angeles, G.R. No. L-9899, August 13, 1957; see also Coll. of Internal Revenue vs. Florendio Solano, G.R. No. L-11475, July 31, 1958/

Referring to the last contention of the respondent, he claims that the petitioner has waived the period of prescription. In support of this argument, the respondent refers to the proposal of the petitioner dated June 2, 1955 to pay her alleged tax liability in three (3) equal yearly installments (see p. 191, BIR records). It is a rule that a mere offer to pay does not by itself constitute waiver, for such offer may have been made to terminate possibilities of litigation. And there would be doubts that a waiver made by counsel could be validly sustained. In any case, the offer is ineffective without an acceptance. It must be noted that the respondent did not accept the offer as made, but rather made a counter-offer in the sense that his acceptance of the proposal was made on condition that the petitioner files a bond within fifteen (15) days sufficient to cover the amount due (Exhibit 30, p. 201, BIR records). The fact that the petitioner did not file a bond lead us to the conclusion that no agreement was reached between the parties in respect thereto (p. 202, BIR records). Under the circumstances, we find no basis to hold that the acts of the petitioner herein constituted a waiver of her rights under the statute of limitation.

In conclusion, we therefore find that the right of the respondent to collect from the petitioner the sum of ₱30,655.33 as inheritance tax plus 1% monthly interest on her share of the inheritance received from her father's estate in 1939 has prescribed and we so hold accordingly. It follows that it would no longer be necessary to proceed to hear the case on the merits as to the correctness or legality of the tax assessment in question.

IN VIEW OF THE FOREGOING CONSIDERATIONS, and pursuant to section 14, Republic Act No. 1125, we hereby declare that the collection of the inheritance tax involved from the petitioner in the sum of ₱30,655.33, plus interest is barred by the statute of limitation, and accordingly, hereby order the respondent to desist from any act or acts of collecting the same. Without pronouncement as to costs.

SO ORDERED.

Manila, December 26, 1958.

MARIANO NABLE
Presiding Judge

WE CONCUR:

AUGUSTO M. LUCIANO
Associate Judge

ROMAN M. UMALI
Associate Judge

Not Appealed.