REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

ULPIANO SARMIENTO, as
Judicial Executor of the
testate estate of the
deceased William Parsons,
Petitioner,

Dec. 28, 1968

versus — CTA CASE NO. 1697

THE COMMISSIONER OF
INTERNAL REVENUE,
Respondent.

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D E C I S I O N

This is in connection with the appeal from the decision of respondent dated August 31, 1965 holding petitioner liable for the payment of the sums of ₱10,542.88 and ₱8,179.22, or a total sum of ₱18,713.10, as deficiency estate and inheritance taxes, inclusive of surcharges and penalties, computed as follows:

Estate tax	₱26,256.80
25% ad valorem penalty on ₱25,673.80	6,418.45
5% surcharge on ₱25,673.80 for late payment	1,283.69
1% monthly interest on ₱25,673.80 from 2/14/62 to 2/13/63	2,081.86
½% deficiency interest on ₱583.00 from 2/14/62 to 4/14/65	110.88
Compromise - no notice of death . .	15.00
Compromise - late payment	50.00
TOTAL	₱ 36,216.68

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Less amount paid	25,673.80
Deficiency Estate Tax & Penalties due	₱ 10,542.88
Inheritance Tax	17,725.95
25% ad valorem penalty on ₱17,162.60	4,290.65
5% surcharge on ₱17,162.60 . .	858.13
1% monthly interest on ₱17,162.60 from 5/14/62 to 4/14/65	2,059.51
½% deficiency interest on ₱563.35 from 5/14/62 to 4/14/65	98.59
Compromise - late filing . . .	200.00
Compromise - late payment . .	100.00
TOTAL	₱25,332.82
Less amount paid.	₱17,162.60
Deficiency Inheritance Tax & Penalties Due. .	₱ 8,170.22

William Parsons, a Filipino citizen, died testate on May 14, 1961. On July 14, 1961, the son of the aforesaid deceased, Denis Parsons, notified respondent of his father's death. On November 10, 1961, respondent received a letter from Mr. A. M. Balangue, attorney-in-fact for Denis and Martha Parsons, Phyllis Cammer and Eileen James, all heirs of the late William Parsons, requesting that he be given an extension of thirty (30) days from November 14, 1961 within which to file the estate and inheritance tax return of the aforesaid estate, for the reasons that all the heirs of the deceased were non-resident aliens and that the inventory of the estate could not be completed on time for filing the said return on

November 14, 1961. Taking into consideration the reasons stated by petitioner in his letter of November 10, 1961, respondent granted an extension of thirty (30) days from November 14, 1961 within which to file, without penalty, the estate and inheritance tax return.

However, on November 25, 1961, or within the extension of thirty (30) days granted to petitioner to file the estate and inheritance tax return, a special proceeding for the settlement of the estate was instituted by petitioner in the Court of First Instance of Manila. In a letter dated December 14, 1961, petitioner requested another extension of time within which to file the estate and inheritance tax return until May 13, 1962. This request for an extension of time was, however, denied by respondent in his letter dated December 15, 1961, on the ground that the testate proceeding was instituted beyond the six-month period after decedent's death. Petitioner sought reconsideration of respondent's denial of December 15, 1961, which was denied by respondent in his letter dated March 7, 1962, at the same time reminding petitioner that the filing of the return in question was long overdue. Subsequently, the estate and inheritance tax return was filed on May 14, 1962.

On the basis of the aforesaid return, respondent issued on June 22, 1962 estate and inheritance tax notices demanding payment of the amounts of ₱33,134.20 and ₱21,724.87, as estate and inheritance taxes, inclusive of surcharges and penalties. On February 13, 1963, petitioner paid the estate tax in the amount of ₱25,673.80 and on May 13, 1963, he paid the inheritance tax in the amount of ₱17,162.60.

In a letter dated March 5, 1965, respondent assessed against and demanded from the petitioner the payment of the sums of ₱10,542.88 and ₱8,170.00, as deficiency estate and inheritance taxes, respectively, inclusive of surcharges and other penalties.

Petitioner, on March 30, 1965, requested reconsideration of the deficiency assessment, more particularly the imposition of surcharges, interests and penalties on the deficiency estate and inheritance taxes. This request for reconsideration was denied by respondent in his letter dated August 31, 1965. Again, petitioner, in his letter to respondent dated September 13, requested reconsideration of the latter's decision of August 31, 1965. However, the records do not show whether or not the aforesaid letter of petitioner of September 13, 1965 was acted upon by respondent. On September 30, 1965, the instant petition for review was filed.

The issues involved are purely legal. They are: (1) whether or not the estate and inheritance tax return in question was seasonably filed, and (2) whether or not the imposition of the surcharges and interests is in accordance with law.

Petitioner contends that since a judicial testamentary proceeding was instituted before the lapse of the period granted by respondent within which to file the return, the filing of the said return on May 14, 1962 is within the time prescribed by Section 93(b); and, similarly, the payment of the estate and inheritance taxes on February 13, 1963 and May 13, 1963, respectively, was made within the statutory period provided by Section 95(2) of the Tax Code. Consequently, it is urged that the imposition of the surcharges and interests on the deficiency estate and inheritance taxes is improper and without legal basis.

Respondent contends that since petitioner failed to file the estate and inheritance tax return within the extension period granted him, and as the judicial testamentary proceeding was not instituted within 6 months after the decedent's death, the filing of the return on May 14, 1962 and the payment of the estate and inheritance taxes were made out of time. It is, therefore, claimed that the imposition of surcharges, interests and penalties on the deficiency estate and inheritance taxes is proper.

The filing of an estate and inheritance tax return is governed by Section 95 of the Revenue Code, the pertinent provisions of which are as follows:

> SEC. 95. Payment of tax.
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> x x x x
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> (b) Extension of time.—When the Commissioner of Internal Revenue finds that the payment on the due date of the estate or inheritance tax or of any part of the said amounts would impose undue hardship upon the estate or any of the heirs, he may extend the time for payment of such taxes or any part thereof not to exceed five years, in case the estate is settled through the court or two years in case the estate is settled extrajudicially. In such case the amount in respect of which the extension is granted shall be paid on or before the date of the expiration of the period of the extension, and the running of the statute of limitation for assessment as provided in section 331 of this Code shall be suspended for the period of any such extension.
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> Where the taxes are assessed by reason of negligence, intentional disregard of rules and regulations, or fraud on the part of the tax-

payer, no extension will be granted by the Commissioner.

If an extension is granted, the Commissioner of Internal Revenue may require the executor, or administrator, or the beneficiary, as the case may be, to furnish a bond in such amount, not exceeding double the amount of the taxes and with such sureties as the Commissioner deems necessary, conditioned upon the payment of the said taxes in accordance with the terms of the extension.

(e) Liability for payment.— The estate tax imposed by section 85 shall be paid by the executor or administrator before delivery to any beneficiary his distributive share of the estate. For the purpose of this Chapter, the term "executor" or "administrator" means the executor or administrator of the decedent, or, if there is no executor or administrator appointed, qualified, and acting within the Philippines, then any person in actual or constructive possession of any property of the decedent.

The inheritance tax imposed by section 86 shall, in the absence of contrary disposition by the predecessor, be charged to the account of each beneficiary, in proportion to the value of the benefit received, and in accordance with the scale fixed for the class or group to which he pertains: Provided, That in cases where the heirs divide extrajudicially the property left to them by their predecessor or otherwise convey, sell, transfer, mortgage, or encumber the same without paying the estate or inheritance taxes within the period prescribed in the preceding subsections (a) and (b), they shall be solidarily liable for the payment of the said taxes to the extent of the estate they have received.

From the above-quoted codal provisions, it is clear that the estate and inheritance tax return must be filed within six (6) months after the decedent's death. However, if a judicial testamentary or intestate proceeding is instituted prior to the expiration of said period of six months, the return must be filed within 12 months after the decedent's death. It is to be noted that the law permits the filing of the estate and inheritance tax return within twelve months after death only if testamentary or intestate proceeding is instituted within six months after death. The granting by respondent of an extension of time to file the return, made by respondent prior to the institution of judicial proceeding, does not have the effect of extending the period for the filing of judicial action for the settlement of the estate. Nowhere in the Revenue Code is the Commissioner authorized to extend the period for instituting judicial proceeding for the settlement of the estate beyond the six-month period. Therefore, the filing of the return on May 14, 1962, twelve months after the death of the decedent on May 14, 1961, is a violation of Section 93(b) which is penalized by a surcharge of 25% of the tax under Section 102 of the Revenue Code.

Petitioner claims that, assuming that the said return was filed out of time, the 25% surcharge provided in Section 102 of the Revenue Code should not be imposed as the return was filed voluntarily, without notice from respondent, and that the failure to file said return was due to a reasonable cause. The records show, however, that on December 14, 1961, petitioner requested another extension of time within which to file the return, which request was denied on the following day, December 15, 1961. And when petitioner sought a reconsideration of said denial, respondent, in his letter dated March 7, 1962, reminded the former that the return was long overdue. (See Exh. 1, pp. 19-24, BIR records.) Consequently, the defense that the return was filed voluntarily without notice from respondent is without merit. Neither can the failure to file said return on time be attributed to a reasonable cause.

Let us now consider the issues in regard to the legality of the imposition of 5% surcharge and monthly interests at the rates of 1% and ½%.

As regards the surcharge of 5%, Section 101(c) of the Revenue Code provides that if any amount of the estate and inheritance taxes is not paid within thirty days after notice and demand made by the Commissioner of Internal Revenue, "there shall be collected in addition to the interest prescribed herein and in sections ninety-nine and one hundred and as part of the taxes a surcharge of five _per centum_ of the unpaid amount." In this case, the assessment notices for the payment of the estate and inheritance taxes were issued by respondent on June 22, 1962. The said taxes were paid only on February 13 and May 13, 1963, that is, more than thirty days from the date of notice and demand. Therefore, the imposition of said surcharge is in accordance with law.

Anent the interest of 1% per month on the estate and inheritance taxes, Section 101(a)(1) provides that in case any amount of the estate or inheritance tax is not paid on the due date of the taxes, "there shall be collected as a part of the taxes, interest upon such unpaid amount at the rate of one _per centum_ a month from the due date until it is paid." In this case, the estate tax which was due on February 14, 1962 was paid on February 13, 1963, and the inheritance tax which was due on May 14, 1962 was paid on May 13, 1963. Petitioner was not entitled to pay the estate and inheritance taxes within 21 and 24 months, respectively, as the judicial proceeding for the settlement of the estate was instituted after 6 months from the death of the decedent. /See Sec.

95(a), Rev. Code.7 Therefore, the decision of respondent holding petitioner liable for said interest from February 15, 1962 (in the case of the estate tax) and from May 15, 1962 (in the case of the inheritance tax) to the dates of payment must be sustained.

In connection with the interest at the rate of ½% per month, which is sought to be imposed on the deficiency estate and inheritance taxes in the sums of ₱583.00 and ₱563.35, respectively, Section 100 provides:

> SEC. 100. Interest on deficiency.—Interest upon the amount determined as a deficiency shall be assessed at the same time as the deficiency shall be paid upon notice and demand from the Commissioner of Internal Revenue, and shall be collected as a part of the tax, at the rate of six per centum per annum from the due date of the tax to the date the deficiency is assessed.

The law imposes an interest at the rate of 6% per annum, or ½% monthly, on any amount of the deficiency estate and inheritance taxes assessed by the Commissioner of Internal Revenue. Liability for said interest commences from the "due date of the tax" and continues up to the date of assessment of the deficiency. Since, as already stated above, the estate tax in this case was due on February 14, 1962, and the inheritance tax, on May 14, 1962, the deficiency estate and inheritance taxes assessed by respondent are subject to said interest from said due dates up to the date of assessment, which appears to have been made on April 14, 1965.[1] And since said deficiency estate and inheritance taxes were not paid within thirty days from notice and demand, they are subject to the interest at the rate of 1% per month from the date of such notice and demand to the date of payment. [See Sec. 101(b)(1), Rev. Code.]

Finding no error in the decision appealed from, the same is hereby affirmed. Accordingly, petitioner is ordered to pay the sums of ₱10,477.88 and ₱7,870.22, as deficiency estate and inheritance taxes, surcharges and interests. Petitioner is likewise ordered to pay the interest of 1% per month on the deficiency estate and inheritance taxes from April 15, 1965 to the date of payment. Costs against petitioner.

SO ORDERED.

Quezon City, December 28, 1968.

ROMAN M. UMALI
Presiding Judge

WE CONCUR:

ESTANISLAO R. ALVAREZ
Associate Judge

RAMON L. AVANCEÑA
Associate Judge

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[1] April 14, 1965 as the date of assessment is not controverted.