REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
MANILA

BISAYA LAND TRANSPORTATION
CO., INC.,
Petitioner,

- versus -

C.T.A.
CASE NO. 60

COLLECTOR OF INTERNAL REVENUE,
Respondent.

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

Oct. 27, 1956

DECISION

This is a case involving disputed assessments of (1) compensating tax; (2) common carrier's percentage tax (3) documentary stamp tax; and (4) additional residence tax, together with corresponding surcharges amounting to a total of ₱4,949.91. During the pendency of this suit, the aforesaid amount was paid on February 9, 1955, and petitioner accordingly filed with respondent a claim for refund thereof. The same having been denied, petitioner filed with this Court a supplemental petition for review seeking the recovery of the amount in question.

The facts ~~of the case~~ as gathered from the records of the case and evidence adduced by the parties, may be briefly stated as follows: Petitioner, Bisaya Land Transportation Co., Inc., a corporation duly organized and existing under the laws of the Philippines with offices in Cebu City, is engaged in the transportation business by land and sea. After liberation, between June 1945 and January 15, 1947, petitioner acquired from the United States Commercial Company (USCC), trucks, jeeps, tires, and one generator and from the Petroleum Distribution Administration in the Philippines (PDAP) 119,361.86 liters of gasoline and some lubricating oil. The corresponding compensating and specific taxes were not paid on these articles which petitioner subsequently used in connection with the operation of its buses.

On investigation of the books of the said corporation by revenue agents the latter determined that the amount of ₱51,503.67 was not declared for taxation as gross receipts of the transportation business of petitioner for the period from 1946-1951 (Exhibit 1, pp. 20-22; Exhibit 1-B, p. 15 BIR rec.). These receipts were derived from services performed for the Armed Forces of the Philippines. It was also found that from August 18, 1945 to February 29, 1952, the petitioner carried cargoes and freight for which it issued freight receipts but the corresponding documentary stamps were not affixed thereto (Exhibit 1, pp. 20-22, BIR rec.). As there were undeclared gross receipts, a deficiency additional residence tax was also determined.

In view of these findings, Revenue Agent Isaac Darcera of the Bureau of Internal Revenue recommended in his report dated April 5, 1952, the assessment and collection of specific tax, compensating tax, common carriers percentage tax, documentary stamp tax and additional residence tax from the petitioner (pp. 20-22, BIR rec.). On the basis of this report, the Collector of Internal Revenue on May 16, 1952 assessed the petitioner and demanded (Exhibit A, Exhibit 2, pp. 28-30, BIR rec.) from it the total sum of ₱25,301.12, consisting of the following:

Specific tax	₱ 6,053.82
Compensating tax and surcharge	2,111.79
Documentary Stamp tax	15,058.69
Common Carrier's percentage tax and surcharge	1,287.57
Graduated Fixed tax	138.00
Additional Residence tax and surcharge	651.25
TOTAL	₱25,301.12

After several extensions of time, petitioner on November 11, 1952, filed its memorandum contesting the assessment (Exhibit B, pp. 40-53, BIR rec.). After review of the case, respondent Collector of March 3, 1953 modified the assessment (Exhibits C and 5, pp. 54-56, BIR rec.) to only ₱11,350.48, computed as follows:

Specific tax	₱ 6,053.82
Compensating tax	2,111.79
Documentary Stamp tax	1,108.05
Common Carrier's percentage tax and surcharge ...	1,287.57
Graduated Fixed tax	138.00
Additional Residence tax and surcharge	651.25
TOTAL	₱11,350.48

The change in the assessment was made with respect to the documentary stamp tax liability which was reduced from ₱15,058.69 to ₱1,108.05. The latter amount represents the documentary stamp tax at the rate of ₱0.15 per instrument due on 7,387 freight receipts issued by the petitioner during the years 1947-1951 (Exhibit 1-B, p. 15 BIR rec.). In his letter, the Collector required the petitioner to pay the above stated assessment within ten (10) days from receipt thereof. After an exchange of communication between petitioner and respondent, and due to certain errors commited in previous computations of the total amount due, the latter in his letter dated July 27, 1953 further reduced the assessment to ₱11,003.73, and in addition demanded that petitioner pay a compromise penalty of ₱100.00 (Exhibit G, Exhibit 6, pp. 107-112, BIR rec.). After another exchange of communication between the parties, the Collector of Internal Revenue in his letter of October 8, 1954 informed the former that the assessment covering specific taxes due in the amount of ₱6,053.82 was being held in abeyance pending investigation thereof (Exhibit H and 3, pp. 194-200, BIR rec.). However the Collector reiterated his demand for ₱4,949.91 detailed as follows:

1. Compensating Tax -		
(a) 13 trucks valued ₱34,203.39 @ 3-1/2%	₱ 1,197.12	
(b) 8 jeeps and 4 trucks ₱8,430.00 @ 5%	421.50	
(c) 1 generator and 2 carts ₱841.02 @5%	42.05	
(d) tires and empty drums ₱821.60 @3-1/2%	28.76	
	₱ 1,689.43	
(e) 25% surcharge	422.36	
		₱2,111.79
2. Documentary Stamp Tax - 7,387 bills of lading @ ₱0.15		1,108.05
3. Common Carrier's percentage tax -		
(a) miscellaneous income, 1946-1951.	₱ 5,703.97	

(b) Shipping department, 1947-1951.		₱45,799.70		
		₱51,503.67		
2% on ₱51,503.67..		₱ 1,030.06		
25% surcharge		257.51		₱1,287.57
4. Additional Residence Tax -				
1946				
₱222,081.04 -	₱ 44.00			
10,000.00	2.00	₱ 46.00		
1947				
₱806,176.04 -	₱161.00			
23,353.19	4.00			
less amount	₱165.00			
paid	145.00	20.00		
1948				
₱2,126,787.85 -	₱425.00			
38,380.43	7.00			
	₱432.00			
less amount paid	430.00	2.00		
1949				
₱2,563,030.02 -	₱512.00			
73,825.80	14.00			
	₱526.00			
less amount paid	259.00	267.00		
1950				
₱2,697,812.81	₱539.00			
183,648.40	36.00			
	₱575.00			
less amount paid	556.00	19.00		
1951 - no deficiency additional residence tax -				
Total		354.00		
25% surcharge		88.50		442.50
Grand Total of Assessment				₱4,949.91

(see Exhibits A, H and G, pp. 28-30, 107-112 and 194-200, BIR rec.)

On November 13, 1954, petitioner by telegram requested that the assessment on documentary stamp tax be withheld pending the decision of the Supreme Court in the case of Interprovincial Autobus vs. Collector, cited infra which involved a similar question. Respondent denied this request on November 18, 1954, and on the same day issued a warrant of distraint and levy against petitioner's properties to enforce collection of the tax liability (pp. 203-204, BIR rec.). Petitioner again took exception to its tax liability but in a letter dated December 14, 1954, the Collector reiterated the demand for payment of ₱4,949.91 with the advertence that the warrant of distraint and levy would be executed in the event petitioner fails to pay the sum demanded (Exhibit J and 4, pp. 212-213, BIR rec.).

On January 11, 1955, the herein petition for review was filed with this Court. In order to prevent levy, distraint and/or sale of its properties even while the case is pending before us, petitioner paid under protest on February 9, 1955 the amount of ₱4,949.91 as demanded. The claim for refund thereof (Exhibit K) having been denied by the Collector on December 21, 1955, a supplementary petition for review was filed with this Court by petitioner praying for the refund of the sum paid under the herein disputed assessment.

The issues presented by the parties may thus be briefly stated:

(1) Whether or not the petitioner is liable for: (a) compensating tax on the equipment purchased from

the United States Commercial Company; (b) 2% common carrier's tax on the gross receipts derived from services performed for the Armed Forces of the Philippines; (c) documentary stamp tax on freight tickets issued for cargoes shipped on its trucks; and (d) additional residence tax on its alleged undeclared gross receipts; and

(2) Whether or not the collection of the aforementioned taxes has already prescribed. We shall discuss the question of prescription jointly with each of taxes involved.

Compensating Tax - The issue on the liability for compensating tax upon the equipment purchased by petitioner from the United States Commercial Company is governed by section 190 of the National Internal Revenue Code, the pertinent portion of which reads:

> "Sec. 190. Compensating tax.- All persons residing or doing business in the Philippines, who purchase or receive from without the Philippines any commodities, goods, wares, or merchandise, excepting those subject to specific taxes under Title IV of this Code, shall pay on the total value thereof at the time they are received by such persons, including freight, postage, insurance, commission and all similar charges, a compensating tax equivalent to the percentage tax imposed under this Title on original transactions effected by merchants, importers, or manufacturers, such tax to be paid upon the withdrawal or removal of said commodities, goods, wares, or merchandise from the customhouse or the post office. x x x "

The question raised is not new and in fact the Supreme Court has established a uniform ruling that purchases of goods from the United States Armed Forces or any other instrumentality of the United States Government in the Philippines, such as the Foreign Liquidation

Commission and the United States Commercial Company, are deemed to be "purchases from without the Philippines" within the purview of sections 123 and 190 of the National Internal Revenue Code. (Go Cheng Tee v. Bibiano Meer, G.R. No. L-2825, July 17, 1950; Saura Import & Export Co., Inc. v. Bibiano Meer, G.R. No. L-2927, February 26, 1951; and PMP Navigation Company v. Bibiano Meer, et al., G.R. No. L-4621, March 24, 1953) Thus it has been stated:

> "x x x No estaba obligado el ejercito americano a pagar ningun impuesto por ellos porque los habia traido como municiones de guerra y boca, y no para fines de comercio. Mientras estaban baho el control del ejercito y para uso militar, los efectos no debian pagar ningun impuesto al Gobierno de Filipinas. Pero immediatamente despues de transferidos al demandante para gines comerciales, desde ese momento nacio el derecho del gobierno de gravar sobre ellos el impuesto correspondiente, y mientras no lo pague el demandante no termina la importacion. Por eso el demandante que negocio con ellos es el importador bajo los terminos precisos de la ley." (Go Cheng Tee v. Meer, supra)

> "x x x. By political relationship between the two countries and by reason of war - which was at least technically still in progress - the United States Government on that date enjoyed jurisdictional rights over certain areas of the Philippine territory and over military goods brought here and intended for the United States Army. While on army bases or installations within the Philippines those goods were, in contemplation of law, on foreign soil. The result was that when plaintiff, after acquiring title to such goods, brought them outside of those bases or depots, there was importation in the ordinary sense, let alone in the sense envisaged in section 1248 of the Revised Administrative Code." (Saura Import & Export v. Meer, supra; PMP Navigation v. Meer, supra.)

This Court has applied the same doctrine and further added:

> "In this connection we should not lose sight of the purpose for which the compensating tax has been instituted. As explained by the Tax Commission, 'the purpose is to serve as an equalizer, to place casual importers, who are not merchants on equal footing with established merchants who pay sales tax on articles imported by them.' (p. 75, Vol. I, Report of the Tax Commission of the Philippines). The fact, therefore, that plaintiff company did not resell the articles which it had purchased from the United States Army in the Philippines but instead utilized them in its electric light plants in Cebu will not exempt it from the payment of compensating and specific taxes collectible on the authority of sections 123 and 190 of the National Internal Revenue Code." (Visayan Electric Co. v. Meer, Cebu Civil Case No. R-898, August 22, 1955.)

Petitioner contends that the aforecited cases may be distinguished from the present one in that the equipment here involved had been taken and carried from the U.S. Army depots by the U. S. Agency itself and delivered to petitioner's compound and not done by petitioner. We find this view without any merit. The compensating tax is imposed upon the person who purchases or receives goods from "without the Philippines" irrespective of the party who undertakes the transfer or carriage thereof.

Neither do we find any merit to the contention that petitioner acquired the equipment in question upon the insistence of the U. S. Army and in order to help the U. S. Army in the prosecution of the war. While service to the nation especially during times of stress maybe commended, that fact by itself is no basis for exemption from taxes. In any event, it cannot be successfuly contended that petitioner had thereby become a part of the

Armed Forces of the United States or of the Philippines and enjoy or claim exemption from taxes as an instrumentality thereof.

The petitioner further contends that the period of assessment of the compensating tax had already prescribed in that the assessment must be made within the five year period following the filing of a return, invoking in this instance section 331 of the Tax Code, which we quote:

> "Sec. 331. Period of limitation upon assessment and collection.- Except as provided in the succeeding section, internal revenue taxes shall be assessed within five years after the return was filed, and no proceeding in court without assessment for the collection of such taxes shall be begun after the expiration of such period. For the purpose of this section a return filed before the last day prescribed by law for the filing thereof shall be considered as filed on such last day: Provided, That this limitation shall not apply to cases already investigated prior to the approval of this Code."

To justify this claim, petitioner argues that its income tax returns for the years 1945 and 1946 were equivalent to the required return for purposes of the compensating tax. Hence, it is contended that the right of the Collector of Internal Revenue had already prescribed as the Collector failed to make a timely assessment, within the five-year period from the filing of said income tax returns, that is from March 1, of 1946 and 1947 respectively.

We find this view without merit. The copies of income tax returns for 1945 and 1946 were not presented in evidence. Moreover, these returns were filed by petitioner solely for income tax purposes and such returns cannot be legally filed in lieu of the report or return necessary for the proper determination of the compensating tax (see McDonnel v. U. S. 59 F 2d 295, cert. den. 287 U.S. 648, 77 L. Ed 560; Atterbury v. U.S. 59 F 2d 300). And even more, in order that the prescriptive period of five (5) years under section 331 of the Tax Code may apply, it must be shown that the taxpayer rendered a report or provided information giving necessary and sufficient data to enable the Collector of Internal Revenue to make an assessment of the particular tax in question (see Florsheim Dry Goods v. U.S. 280 U.S. 453, 74 L. Ed, 542). As the income tax returns referred to are not before us, we would be conjecturing on its contents now. Nevertheless we could not conceive of the possibility that the said return would meet the requirements of a report or return for compensating tax purposes. The case of G. Manlapit, Inc. v. Collector (B.T.A. Case No. 119, decided by the defunct Board of Tax Appeals, April 23, 1953), cited by petitioner proceeds from substantially different premises as the case under consideration because in the former, the Collector had the necessary data on which to base his assessment.

There being no return filed by petitioner in the instant case, the prescriptive period provided in section 331 of the Tax Code does not apply, rather and if at all, section 332 of the same Code, the pertinent portion of which states:

> "Sec. 332. Exceptions as to period of limitation of assessment and collection of taxes.- (a) In the case of a false or fraudulent return with intent to evade tax or of a failure to file a return, the tax may be assessed, or a proceeding in court for the collection of such tax may be begun without assessment, at any time within ten years after the discovery of the falsity, fraud, or omission. x x x"

Pursuant to said section 332, the Collector of Internal Revenue has the power to assess the tax within ten (10) years from the date of discovery of the omission to file a return. In this case, the prescriptive period would have to begin from April 5, 1952, the date of the report of revenue agent Darcera when the Collector was apprised for the first time of the non-payment of the compensating tax, so that the herein assessment of compensating tax was seasonably made.

Finding that petitioner herein is liable for the compensating tax on its purchase of goods from the U.S. Commercial Co., the assessment and collection thereof was not erroneous, much less, illegal. Consequently, we are of the opinion and so hold that petitioner is not entitled to the refund of the amount paid by it as compensating tax.

Common Carrier's Percentage Tax - The facts show that petitioner undertook to carry freight or cargoes for the Armed Forces of the Philippines from 1947 to 1951 but the common carrier's percentage tax on the gross receipts derived therefrom were not paid, hence the herein deficiency assessment. The petitioner contends that it is not liable for the common carrier's tax of 2% on such

Club, Inc., G.R. No. L-8755, March 23, 1956 citing Asiatic Petroleum Co. vs. Llanes, 49 Phil. 467; House vs. Posadas, 53 Phil. 338)

Moreover, we have repeatedly held, in conformity with established jurisprudence that tax exemptions are not favored, and in order to be entitled thereto, it must be shown indubitably to exist -- the presumption being against any surrender of the taxing power. (La Orden de Padres Benedictinos vs. Collector, C.T.A. No. 76, July 16, 1955, 52 O.G. No. 6, p. 3176).

We find no basis to sustain the contention that the selling of services should also be tax free, in the same way as sales of goods or merchandise to the Armed Forces of the Philippines are tax exempt. The latter exemption proceeds from a direct statutory grant (Sec. 3, Rep. Act No. 594, amending section 190 of the Tax Code; see also Rep. Act Nos. 969 and 1612). The cases cited by petitioner (Standard Oil vs. Posadas, 55 Phil. 715; Thirty First Infantry Post Exchange & First Lt. David L. Hardee Thirty First Infantry U.S. Army vs. Posadas, 54 Phil. 866) are not applicable to the case at bar. The tax exemption recognized in these cases was on the premise that during the American regime the Philippine government could not validly tax an instrumentality of the United States Federal government, directly or indirectly. Be that as it may, the exemption therein recognized was with respect to the sale of goods or merchandise and not the sale of services and this Court cannot by judicial action extend tax exemptions beyond their import -- as that power is solely within the bounds of legislative authority.

However, we agree with petitioner that the right of the Collector of Internal Revenue to assess the deficiency common carrier's percentage tax for the year 1946 and the first quarter 1947 had already prescribed. Pursuant to section 183-a of the Revenue Code, persons subject to the percentage tax on business (and petitioner is one) must file the corresponding return therefor within 20 days after the end of each calendar quarter. That the returns covering the gross receipts of petitioner as a common carrier were filed is admitted, but petitioner failed to include the revenues derived from services performed for the Armed Forces of the Philippines which is the subject of the deficiency in question.

Under section 331 of the Tax Code, cited above the Collector has, within five (5) years from the date of the filing of a return, the power to make the corresponding assessment otherwise the same shall be barred. There is no pretension that the said returns for 1946 and 1947 were filed fraudulently with intent to evade taxes as to take it out of said section 331 and bring it within the exception provided by section 332 of the Revenue Code. Hence, as the assessment in the present case was made only on May 16, 1952, the Collector was already barred from making any assessment of taxes the corresponding return for which had been filed beyond the five-year period, that is, those returns made prior to May 16, 1947. In other words, no further assessment of taxes may be made with respect to the gross receipts for the period from the first quarter of 1946 to the first quarter of 1947, the return for the last quarter thereof having been filed on or before April 20, 1947. Therefore, on the basis of the information provided by Exhibit 1-B, we find that the following deficiency assessment was already barred by prescription.

<u>Miscellaneous Income</u>

For a/c of Bohol Branch -	
1946	₱237.73
1947 (1st Quarter - 1/4 of ₱889.81 gross receipt for the year)	222.45
For a/c of shipping department -	
1947 (1st Quarter - 1/4 of ₱1,112.50 gross receipts for the year)	278.12
Total Gross Receipts	₱738.30
2% tax on the above	₱ 14.77
25% surcharge	3.68
Total assessment barred	₱ 18.45

The assessment in the amount of ₱18.45, as common carrier's percentage tax for 1946 and the first quarter of 1947 and surcharge thereon, having been barred by prescription, the corresponding amount was illegally assessed and collected from the petitioner and should therefore be refunded.

<u>Documentary stamp tax</u> - The third issue relates to the liability of petitioner for the documentary stamp tax due on the freight tickets it issued or should have issued on the 31,865.538 tons of coal hauled by and shipped on its trucks belonging to the Velez Coal Mines during the period from 1947 to 1951 (Exhibit 1-B, p. 15, BIR rec.). Respondent determined that for the foregoing cargoes, petitioner issued 7,387 freight receipts or

bill of lading covering an equal number of truck trips. An average load of 4.2 tons of coal was found to have been carried by each truck trip with a gross value of ₱363.72, hence the amount of ₱0.15 documentary stamps were due and should have been affixed on each freight receipt or a total of ₱1,108.05 in documentary stamps which petitioner failed to pay.

The petitioner contends that: (1) the freight truck tickets in question are not "bills of lading" or "receipts" as contemplated by section 227 of the Tax Code; (2) the Internal Revenue Regulations relied upon by the respondent in the collection of the documentary stamp tax is null and void; and (3) the assessment of the documentary stamp tax has prescribed.

These contentions have been already discussed by the Supreme Court in the case of Interprovincial Autobus Co., Inc. vs. Collector of Internal Revenue (1956, 52 O.G. No. 2, p. 791) and the ruling there is stare decisis here. In brushing aside the claim that the freight tickets do not come within the purview of the documentary stamp tax provisions, the Supreme Court said:

> "But the claim that freight tickets of bus companies are not 'bills of lading or receipts' within the meaning of the Documentary Stamp Tax Law is without merit. Bills of Lading, in modern jurisprudence, are not those issued by masters of vessels alone; they now comprehend all forms of transportation, whether by sea or land, and includes bus receipts for cargo transported.
>
> "The term 'bill of lading' is frequently defined, especially by the older authorities, as a writing signed by the master of a vessel acknowledging the receipt of goods on board to be transported

to a certain port and there delivered to a designated person or on his order. This definition was formulated at a time when goods were principally transported by sea and, while adequate in view of the conditions existing at that early day, is too narrow to suit present conditions. As comprehending all methods of transportation, a bill of lading may be defined as a written acknowledgment of the receipt of goods and an agreement to transport and to deliver them at a specified place to a person named or on his order. Such instruments are sometimes called 'shipping receipts', 'forwarders', 'receipts and 'receipts for transportation'. The designation, however, is not material, and neither is the form of the instrument. If it contains an acknowledgment by the carrier of the receipt of goods for transportation, it is, in legal effect, a bill of lading." (9 Am. Jur. 662, Underscoring supplied.)

"Section 227 of the National Internal Revenue Code imposes the tax on receipts for goods or effects shipped from one port or place to another port or place in the Philippines. The use of the word place after port and of the word 'receipts' shows that the receipts for goods shipped on land are included." (Interprovincial Autobus vs. Collector of Internal Revenue, G.R. No. L-6741, January 31, 1956.)

On the question of the validity of the regulations regarding the stamp tax, the legality thereof has been sustained by the Supreme Court this wise:

"x x x We find that the regulation is not only useful, practical and necessary for the enforcement of the law on the tax on bills of lading and receipts, but also reasonable in its provisions.

"The regulation above quoted falls within the scope of the administrative power of the Secretary of Finance as authorized in Section 79 (b) of the Revised Administrative Code, because it is essential to the strict enforcement and proper execution of the law which it seeks to implement. Said regulations have the force and effect of law.

x x x x

"Another reason for sustaining the validity of the regulation may be found in the principle of legislative approval by reenactment. The regulations were approved on September 16, 1924. When the National Internal Revenue Code was approved on February 19, 1939, the same provisions on stamp tax, bills of lading and receipts were reenacted. There is a presumption that the Legislature reenacted the law on the tax with full knowledge of the contents of the regulations then in force regarding bills of lading and receipts, and that it approved or confirmed them because they carry out the legislative purpose."

With regards to the point of prescription, we find no merit in petitioner's view. Petitioner made no allegation nor presented evidence to the effect that the corresponding returns for purposes of the documentary stamp tax had been filed, as the Documentary Stamp Tax Law does not contemplate any such return. It may be stated in this connection therefore that section 331 of the Tax Code cited above, is not applicable as the prescriptive period therein provided apparently refers to cases where tax returns are required to be filed. Without necessarily deciding the point, the only period therefore which may be invoked favorably for the taxpayer as limiting the time within which an assessment for documentary stamp tax may be made would be the ten-year period provided by section 332 of the Revenue Code counting from the date of the discovery of the omission to pay the documentary stamp tax. Since the discovery thereof was made only on April 5, 1952, and the corresponding tax accordingly assessed on May 16, 1952, it is apparent that the period within which the herein documentary stamp tax was assessed had not as yet expired. We are therefore of the opinion and so hold that the assessment and collection of the documentary stamp tax was in accord with the Tax Code, and that no refund thereof may be made.

Additional Residence Tax - The last item in issue refers to petitioner's liability for the deficiency additional residence tax for 1946 and 1947. Petitioner interposes the defense of prescription only against the tax for 1946 and 1947 and in the absence of any other reasonable objection, we conclude that petitioner concedes the correctness and legality of the deficiencies for the years 1948, 1949, 1950 and 1951.

It appearing that the deficiency in the amount of ₱55.00 including surcharge for the year 1946 covers petitioner's total liability for additional residence tax for that year, we find that the petitioner did not file the corresponding return covering its additional residence tax for that year. However, for the year 1947, petitioner paid as additional residence tax the sum of ₱145.00 for which it was issued additional Residence Certificate Class C-1, number 6765, dated March 17, 1947 (seeE Exh. 1-3, p. 14, BIR rec.) and there is every reason to make a finding that petitioner filed the required return which is a condition precedent to the issuance of such certificate.

In view of the circumstances given above, we agree with petitioner that having filed a return for its additional residence tax for 1947 on March 17, 1947, in the absence of any claim that such return was fraudulent, with intent to evade the tax, the Collector of Internal Revenue may validly assess any deficiency tax in relation thereto only within the five-year period thereafter, in accordance with section 331 of the Tax Code. The assessment of May 6, 1952 insofar as it determines a deficiency additional residence tax liability of ₱25.00 including surcharge for 1947 appears therefore to be without lawful basis and the amount so paid accordingly refundable to petitioner. However, in regard to the additional residence tax for 1946, for which no return was filed by petitioner, the assessment thereof was validly made, pursuant to section 332 of the Revenue Code as the same was effected within the ten-year period following the date of its discovery. The collection of 1946 additional residence tax was therefore in accordance with law.

In resumé, we find the petitioner liable, except insofar as the same is barred by prescription, for the payment of the compensating tax, the documentary stamp tax, the common carrier's tax and the additional residence tax in question and therefore, the amounts paid by petitioner cannot be refunded. However, in view of the finding that the assessment of common carrier's percentage tax and surcharge for the year 1946 and the first quarter of 1947 as well as the additional residence tax and surcharge for the year 1947 has been barred by prescription, the petitioner is therefore entitled to the refund of the payment made thereon respectively in the sum ₱18.45 and ₱25.00.

IN VIEW OF THE FOREGOING, appealed decision is hereby modified in the sense that the respondent Collector of Internal Revenue is hereby ordered to refund the amount of ₱18.45 corresponding to the common carrier's percentage tax and surcharge paid by petitioner for the year 1946 and the first quarter of 1947 and the amount of ₱25.00 corresponding to the additional residence tax and surcharge paid by petitioner for the year 1947 or a total amount of ₱43.45. In all other respects the decision of the Collector of Internal Revenue is hereby affirmed.

SO ORDERED.

Manila, October 27, 1956.

MARIANO NABLE
Presiding Judge

I CONCUR:

In the Result.

ROMAN M. UMALI
Associate Judge

AUGUSTO M. LUCIANO
Associate Judge
(On Leave)