REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

JOSE TABAMO,
Petitioner,

- versus - C.T.A. CASE NO. 1789

THE COMMISSIONER OF
INTERNAL REVENUE,
Respondent.

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

May 18, 1967

RESOLUTION

This is in connection with the motion filed by respondent on February 9, 1967 seeking the dismissal of petitioner's appeal on the ground that it was filed beyond the 30-day period prescribed in Section 11 of Republic Act No. 1125.

Sometime in July, 1961 and October, 1961, the BIR Regional Director of San Fernando, Pampanga, assessed against petitioner the sums of ₱6,549.05 and ₱3,208.85, as deficiency franchise tax and 25% surcharge for the periods covering August 1, 1953 to June 30, 1959 and July 1, 1959 to August 15, 1961, respectively.[1] In a letter dated February 16, 1963, petitioner requested cancellation of these assessments,[2] but the said request was denied by the Regional Director in his letter dated July 2, 1963.[3]

(1) Annexes "A" & "B", Petition, pp. 17 & 18, CTA rec.
(2) Annex "D", Petition, pp. 19-20, CTA rec.
(3) Annex "E", Petition, pp. 21-22, CTA rec.

On August 27, 1963, petitioner appealed the decision of the Regional Director to the respondent Commissioner of Internal Revenue[4] who, on July 16, 1965, rendered a decision the pertinent portions of which state as follows:

> "xx xx xx
>
> "At the outset, please be informed that, <u>except for your defense of prescription, which we considered partly meritorious</u>, the rest of your allegations in your petition to us dated August 26, 1965 are found to be untenable.
>
> " Our records disclosed that the deficiency franchise tax assessment for the period from August 1, 1953 to June 30, 2959, involving ₱6,549.05 was issued only on July 28, 1961. Since ordinarily the government can assess and collect taxes within five years from the filing of returns, under Section 331 of the Tax Code, as amended, <u>we believe that our right to assess the deficiency franchise tax from August 1, 1953 to July 28, 1956 has prescribed. Consequently, we hereby recommend the modification of our deficiency franchise tax assessment in the aforesaid amount so as to cover only those years that have not presribed</u>.
>
> "xx xx xx
>
> "In view of the foregoing facts and circumstances, and the court decision aforecited, your appeal is hereby denied. You are requested to urge your client to pay the deficiency tax of ₱3,208.85 for July 1, 1959 to August 15, 1961 within twenty (20) days from receipt hereof, and the amended deficiency franchise tax for July 29, 1956 to June 30, 1959 within fifteen

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(4) Annex "F", Petition, pp. 23-29, CTA rec.
Par. 7, Petition, p. 2, CTA rec.

> (15) days from receipt of the demand. <u>No further request for reconsideration on this case will be entertained by this office.</u>[5] (Underlining supplied.)

On October 12, 1965, respondent issued another letter addressed to petitioner's counsel reducing the original deficiency assessment for the period covering August 1, 1953 to June 30, 1959 from <u>₱6,549.05</u> to <u>₱3,993.38</u>, inclusive of 25% surcharge.[6]

Petitioner received this letter of October 12, 1965 on November 4, 1965,[7] and on December 7, 1965, he filed a further request for reconsideration with the respondent.[8] In a letter dated June 6, 1966,[9] which was received by the petitioner on July 30, 1966,[10] respondent denied this last request for reconsideration. The instant petition for review was filed on August 26, 1966.[11]

The only issue to be resolved in this incident is whether or not the appeal of petitioner was filed within the 30-day period prescribed in Section 11 of Republic Act No. 1125.

Respondent maintains that the instant appeal was filed out of time because the decision that is appealable to this Court is his letter dated July 16,

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(5) Annex "G", Petition, pp. 30-31, CTA rec.
(6) Annex "H", Petition, pp. 32-33, CTA rec.
(7) p. 6, Opposition to Motion to Dismiss, p. 69, CTA rec.
(8) Par. 10, petition, p. 3, CTA rec. & Annex "I",
pp. 34-35, CTA rec.
(9) Annex "J", Petition, pp. 34-35, CTA rec.
(10) Par. 11, Petition for Review, p. 3, CTA rec.
(11) p. 1, CTA rec.

1965, receipt of which is acknowledged in the letter of petitioner dated December 7, 1965.

On the other hand, petitioner contends that the decision of June 6, 1966 which was received by him on July 30, 1966, is the one appealable. The reason advanced by petitioner in support of his contention is that the letter of July 16, 1965 was revised and modified by the respondent in his letter of October 12, 1965, and that the letter of October 12, 1965 had imposed an additional 25% surcharge.

To our mind, the letter of October 12, 1965, being the last unrevised and unmodified decision rendered by the respondent after previous requests for reconsideration, is the decision that is appealable to this Court. (See Pangasinan Transportation Co. v. Blaquera, G.R. No. L13101, April 29, 1960; Tomas Villamin v. Coll., G.R. No. L11536, Oct. 31, 1960; Ker & Co. v. Coll., G.R. No. L-12396, Jan. 31, 1962; Tuason & Legarda Ltd., v. Com. of Int. Rev., et al., G.R. No. L-18552, Sept. 30, 1965; Phil. Manufacturing Co. v. Com. of Int. Rev., CTA No. 1159, April 15, 1966.) Consequently, the period for appeal should be counted from receipt thereof by petitioner on November 4, 1965.[12] The request

(12) Note that while the petition for review does not allege that the letter of October 12, 1965 was received by petitioner on November 4, 1965, petitioner admits having received the said letter on said date in his opposition to the motion to dismiss.

for reconsideration filed by petitioner on December 7, 1965 did not have the effect of suspending the running of the 30-day period for appeal because it was filed after the decision had become final and executory.

IN VIEW OF THE FOREGOING, the herein appeal is hereby dismissed for lack of jurisdiction, without pronouncement as to costs.

SO ORDERED.

Quezon City, May 18, 1967.

(SGD.) ROMAN M. UMALI
Presiding Judge

I CONCUR:

SGD. ESTANISLAO R. ALVAREZ
Associate Judge

Associate Judge Ramon L. Avanceña did not take part.