REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

AURELIO TAYAO, General Manager,
San Pedro Laguna Transportation,
San Pedro, Laguna,
Petitioner,

- versus -   C.T.A. CASE NO. 3568

COMMISSIONER OF INTERNAL
REVENUE,
Respondent.

x - x

D E C I S I O N

Submitted before us is the question of jurisdiction raised by respondent Commissioner of Internal Revenue in his special and affirmative defenses embodied in the answer to the petition for review in the instant case.

It appears that petitioner Aurelio Tayao, general manager and sole proprietor of the San Pedro Laguna Transportation, a bus company with principal offices at San Pedro, Laguna, was assessed the amount of ₱97,303.07 as deficiency percentage tax on gross receipts as a common carrier by land for the year 1974, inclusive of surcharges and interest up to June 18, 1979 under letter of demand No. IT-79-0096 dated May 18, 1979. (Exh. 1, p. 156, BIR rec.)

In a letter dated June 20, 1979, petitioner protested the aforesaid tax assessment. (Exh. 2, p. 160, BIR rec.)

On April 20, 1982, Acting Commissioner of Internal Revenue Tomas C. Toledo denied the said protest and reiterated his demand for payment of the sum of ₱97,303.07, pertinent portion of the letter of denial is hereunder quoted:

> "In view of all the foregoing, your protest has to be, as it is hereby denied, for lack of factual and legal basis. You are, therefore, urged to pay the said sum of ₱97,303.07, exclusive of increments that may still be due thereon, to the nearest Collection Office, or to the Chief, Receivable Accounts Division, BIR National Office Bldg., Quezon City, within fifteen (15) days from receipt hereof, otherwise the collection thereof shall be enforced by means of the remedies prescribed by law. <u>This constitutes the final decision of this Office on the matter</u>." (Underscoring supplied.) (Exh. 3, pp. 174-175, BIR rec.)

Admittedly, said denial was received by petitioner on September 10, 1982. (Par. 2, Petition for Review.)

In a letter dated September 22, 1982 addressed to Acting Commissioner of Internal Revenue Tomas C. Toledo (Annex B, pp. 8-9, CTA rec.) petitioner, through his new counsel, requested for another chance to meet and confer with respondent in order that the matter may be settled once and for all.

On November 3, 1982, Revenue Service Chief (Collection) Abdon M. Mendigorin, in reply to petitioner's request, underscored the finality of respondent's denial of the protest of petitioner on the assessment, the pertinent portion of which reads:

> "In view of the foregoing and inasmuch as we have given you ample time as a matter of equity and fairness within which to resolve this matter with our Office, and considering further that your protest had been denied by the Acting Commissioner in his letter to you dated April 20, 1982 which constitutes his final decision on the matter, we have no other recourse but to enforce collection thereof by means of the remedies prescribed by law."

This letter was received by petitioner on December 13, 1982. (pp. 12-15, CTA rec.) On January 11, 1983, petitioner filed the present petition for review.

The sole question to be resolved is whether or not this Court has jurisdiction to entertain this appeal. And this in turn depends on which letter of respondent Commissioner of Internal Revenue constitutes the final decision or ruling appealable to this Court.

Respondent maintains that this Court has no jurisdiction to entertain the present case for failure of petitioner to appeal to this Court within thirty (30) days from receipt on September 10, 1982 of the final decision of respondent on the disputed assessment dated April 20, 1982. Petitioner, on the other hand, contends that the letter of the Revenue Service Chief (Collection) dated November 3, 1982, which was received by him on December 13, 1982, constituted the final decision appealable to this Court.

We hold that the petition for review was filed out of time. The reviewable decision is that contained in the letter of Acting Commissioner of Internal Revenue Tomas C. Toledo dated April 20, 1982 which was received by petitioner on September 10, 1982 and not the collection letter of Revenue Service Chief (Collection) Abdon M. Mendigorin dated November 3, 1982.

No amount of quibbling or sophistry can blink the fact that said letter, as its tenor shows, embodies respondent's final decision within the meaning of Section 7 of Republic Act No. 1125. The Acting Commissioner of Internal Revenue said so. He indicated in clear and unequivocal language that: "This constitutes the final decision of this Office on the matter." He even urged the taxpayer "to pay the said sum of ₱97,303.07, exclusive of increments that may still be due thereon, to the nearest Collection Office, or to the Chief, Receivable Accounts Division, BIR National Office Bldg., Quezon City, within fifteen (15) days from receipt hereof, otherwise the collection thereof shall be enforced by means of the remedies prescribed by law." This situation was identical to St. Stephen's Association and St. Stephen's Chinese Girl's School vs. Collector of Internal Revenue, 104 Phil. 314, 317-318. (See Advertising Associates, Inc. vs. Court of (Tax) Appeals and Commissioner of Internal Revenue, No. 59758, December 26, 1984, 133 SCRA 765.)

The directive is in consonance with the Supreme Court's dictum that the Commissioner should always indicate to the taxpayer in clear and unequivocal language what constitutes his final determination of the disputed assessment. That procedure is demanded by the pressing need for fair play, regularity and orderliness in administrative action. (Surigao Electric Co., Inc. vs. Court of Tax Appeals, L-25289, June 28, 1974, 57 SCRA 523; Advertising Associates, Inc. vs. Court of (Tax) Appeals and Commissioner of Internal Revenue, <u>supra</u>.)

It is hardly necessary to add that Section 7(1) of Republic Act No. 1125 provides that the Court of

Tax Appeals shall have exclusive appellate jurisdiction to review by appeal decisions of the Commissioner of Internal Revenue involving disputed assessments of internal revenue taxes, charges or fees imposed by the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue. What is appealable to the Court of Tax Appeals is the decision of the Commissioner on a disputed assessment. An assessment becomes a "disputed assessment" where the taxpayer questions the legality thereof and asks that the same be reconsidered. The decision on the request for reconsideration is the decision on the disputed assessment which is appealable. (St. Stephen's Association vs. Collector of Internal Revenue, 104 Phil. 314; Baguio Country Club vs. Collector of Internal Revenue, 105 Phil. 1269; Roman Catholic Archbishop of Cebu vs. Collector of Internal Revenue, L-16683, Jan. 31, 1962, 4 SCRA 279; Commissioner of Internal Revenue vs. Villa, L-23988, Jan. 2, 1968, 22 SCRA 4; Commissioner of Internal Revenue vs. Lilia Jusay Gonzales, L-19495, Nov. 24, 1966, 18 SCRA 757.)

As a matter of fact, the requirement that an assessment must be protested and the decision on the protest is the one that is appealable to the Court of Tax Appeals within thirty (30) days from receipt of the said decision; otherwise, the decision shall become final, executory and demandable, is now expressly provided by law. (See Secs. 16(d), 319-A, 1977 NIRC, amended by PD 1773.)

Consequently, since the final decision dated April 20, 1982 of respondent was received by petitioner on September 10, 1982, and it was only on January 11, 1983 when petitioner filed his petition for review with this Court, which is obviously beyond the thirty-day period of appeal provided under Section 11 of Republic Act No. 1125, the assessment had already become final, executory and demandable. Clearly, this Court no longer has jurisdiction to entertain and determine the correctness of the assessment.

WHEREFORE, the instant petition for review is hereby dismissed for lack of jurisdiction at petitioner's costs.

SO ORDERED.

Quezon City, Metro Manila, October 30, 1985.

Amante Filler

AMANTE FILLER
Presiding Judge

WE CONCUR:

CONSTANTE C. ROAQUIN
Associate Judge

ALEX Z. REYES
Associate Judge