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ANNA HARRIET CLEMENT
and DAVID HOOKER,
Petitioners,

- versus -

C.T.A.
CASE NO. 231

Feb. 7, 1957

THE COLLECTOR OF INTERNAL
REVENUE,
Respondent.

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D E C I S I O N

Anna Harriet Clement, one of the petitioners in the present case, is the only daughter of A. Clinton Clement and Harriet K. Clement, residents of the State of New Jersey, U. S. A. After the death of her mother on February 14, 1930, the petitioner came to live in the Philippines with her uncle and aunt, Mr. and Mrs. Herbert C. Heald, who were then residing in Baguio City. Guardianship proceedings were instituted in Baguio City on December 27, 1937, by Mrs. Florence C. Heald. On March 5, 1938, Mrs. Heald was appointed guardian of the property of the minor. The guardian filed an inventory as of December 31, 1938, showing that the properties of the ward, Anna Harriet Clement, consisting of cash, shares of stock, and U. S. A. Savings Bonds had a total value of ₱39,000.12.

Upon investigation by the Bureau of Internal Revenue, the then Acting Provincial Revenue Agent of Baguio City recommended the assessment and collection of the inheritance tax, interest and "compromise" penalty, itemized as follows:

Inheritance tax on ₱39,000.12	₱ 770.00
Interest from Aug. 14, 1930 to Aug. 22, 1941	1,016.40
Compromise for late filing (of inheritance tax return).	20.00
Total	₱1,806.40

The assessment of ₱1,806.40 was recommended on the ground that Anna Harriet Clement inherited the property valued at ₱39,000.12 from her mother who died on Feb. 14, 1930. The notice of assessment dated July 12, 1941 was sent to the City Treasurer of Baguio for delivery to Mr. H. C. Heald. Counsel for petitioners wrote to the Collector of Internal Revenue on August 5, 1941 disputing the assessment, a copy of which letter was referred to the Provincial Revenue Agent of Baguio for reinvestigation, comment and recommendation. Investigation of the case could not be undertaken in view of the outbreak of the war on December 8, 1941.

The records show that after the war the first attempt to collect the inheritance tax and penalties assessed against Anna Harriet Clement was made sometime in February, 1954. (See page 61, B. I. R. records.) Counsel for petitioners contested the assessment on the ground that the properties upon which the assessment was based were not inherited by Anna Harriet Clement from her mother. At the same time, it was alleged that the right of the Government to collect the tax, assuming that it was validly assessed, has prescribed. Upon refusal of respondent to cancel the assessment, petitioners appealed to this Court.

It is not disputed that the inheritance tax here involved was assessed on July 12, 1941. Petitioners claim that since more than five years have elapsed and respondent had not, up to the filing of the present appeal, taken any action to collect the tax by summary remedies or by judicial action, the right to collect the same has prescribed, pursuant to Section 332 (c) of the National Internal Revenue Code. On the other hand, respondent insists that the properties in question were inherited by Anna Harriet Clement from her mother, and that since the tax was assessed on property left by the deceased Harriet K. Clement upon her death on February 14, 1930, the right to collect the tax is governed by the law in force on that date. Prior to the effectivity of the National Internal Revenue Code on July 1, 1939, there was no law prescribing any limitation on the period for the assessment and collection of the inheritance tax.

We can not accept the theory of respondent that the right of the Government to collect inheritance tax which accrued before the effectivity of the Revenue Code of 1939 but assessed thereafter is imprescriptible. The rule is well established that -

> "The rights and liabilities of the parties in the matter of an inheritance tax are, in case of a change in the statutes, governed by the law in force at the time of the decedent's death, but the procedure for the ascertainment and enforcement of the tax is controlled by the statute in force at the time of the institution of the proceedings. Ross on Inheritance Taxation, p. 310." (II Formilleza, Commentaries on the Nat. Int. Rev. Code, pp. 516-517; see also Lorenzo v. Posadas, 64 Phil. 353.)

Moreover, the proviso contained in Section 331 which reads "*Provided*, That this limitation shall not apply to cases already investigated prior to the approval of this Code" argues strongly against the position taken by respondent. If Congress intended that the collection of internal revenue taxes which accrued prior to July 1, 1939, the date of effectivity of the National Internal Revenue Code, shall be governed by the law in force prior to that date, there is absolutely no reason or justification for the proviso. We are, therefore, of the opinion that the remedies for the collection of the inheritance tax in this case, which was assessed on July 12, 1941, are governed by the National Internal Revenue Code. Under this Code, the collection of internal revenue taxes by distraint or levy or by judicial action may be resorted to only within five years after assessment, except in the cases provided therein. (Servando de los Angeles v. Collector of Internal Revenue, C. T. A. No. 110, Oct. 7, 1955.)

Section 332 (c) of the Revenue Code provides -

> "SEC. 332. Exceptions as to period of limitation of assessment and collection of taxes.— 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 or levy or by a proceeding in court, but only if begun (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."

The law provides that where the assessment of any internal revenue tax has been made within the period of limitation prescribed in Sections 331 and 332, the tax may be collected by distraint or levy or by a proceeding in court, if such proceeding for the collection is begun within 5 years after assessment. The period may be extended by agreement in writing between the taxpayer and the Collector of Internal Revenue made before the expiration of such period. (See 332 /c7 /27.) The running of the five-year period may also be suspended during the period in which the Collector of Internal Revenue is prohibited from instituting distraint or levy proceedings or judicial action, and for sixty days thereafter. (Section 333.)

In this case, the assessment was made on July 12, 1941. The five-year period within which the tax may be collected commenced from that date. The running of the period for collection was not suspended by any agreement entered into by and between the parties. And there is no allegation that the Collector of Internal Revenue was at any time prohibited from collecting the tax by distraint or levy or by the institution of a proper judicial proceeding. However, Commonwealth Act No. 722 suspended the running of the period from December 8, 1941 to February 28, 1945. (B. I. R. General Circular No. V-6, Nov. 14, 1945; Servando de los Angeles v. Collector of Int. Rev., supra.) The period commenced to run again from March 1, 1945 and continued up to January 25, 1956 when the herein petition for review was filed. More than eleven years elapsed from July 12, 1941 to January 25, 1956, after excluding the period from December 8, 1941 to February 28, 1945. Consequently, the right of the Government to collect the tax has prescribed.

Having arrived at the conclusion that the right of the Government to collect the tax has prescribed, we find it unnecessary to consider the question whether or not the properties on which the tax was assessed were inherited by Anna Harriet Clement from her mother or were received by her as gifts from her aunt, Mrs. H. C. Heald.

WHEREFORE, the decision appealed from is reversed, without pronouncement as to costs.

SO ORDERED.

Manila, February 7, 1957.

ROMAN M. UMALI
Associate Judge

WE CONCUR:

MARIANO NABLE
Presiding Judge

AUGUSTO M. LUCIANO
Associate Judge

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