REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FR. JESUS DIAZ, in his capacity
as executor of the estate of
Fr. Samuel F. Escano S.J.
Petitioner,

- versus - C.T.A. CASE NO. 4722

COMMISSIONER OF INTERNAL REVENUE.
Respondent.
x - - - - - - - - - - - - - - - - x

10/11/93

D E C I S I O N

The petitioner herein seeks for a refund of the 25% surcharge amounting to P218,322.48, inclusive of interest, imposed for the late payment of an estate tax return.

Petitioner is the duly appointed executor of the estate of Fr. Samuel Escano who died on April 14, 1988 leaving properties with a gross value of P1,824,722.11. The corresponding estate tax return was filed with the respondent on April 30, 1990, or beyond the ninety (90) day period then required under Sec. 83(b) of the Tax Code with the following declarations:

Estate Tax Due	P608,582.72
25% Surcharge (for late filing)	152,145.68
Interest	304,291.36
Total Amount Due	P1,065,019.76

The respondent, however, imposed another 25% surcharge, in addition to the penalty for the late filing of the return, this time for the late payment of the tax under Sec. 248 (a)(3) of the Tax Code. Consequently, the petitioner, on July 26, 1991 paid under protest the amount of P218,322.48 constituting the additional surcharge and the corresponding interest thereon and subsequently filed a request for the refund of the said amount. To prevent prescription from setting in, it filed the instant petition without waiting for the final decision of the respondent.

The crux of the disagreement lies in the interpretation of Sec. 248 of the Tax Code, which provides:

> Sec. 248. Civil Penalties - (a) There shall be imposed, in addition to the tax required to be paid, penalty equivalent to twenty five percent (25%) of the amount due, in the following cases:
>
> (1) <u>Failure to file any return required under the provisions of the Code or regulations on the date prescribed</u>; or
>
> (2) Filing a return with an internal revenue officer other than those with whom the return is required to be filed; or
>
> (3) <u>Failure to pay the tax within the time prescribed for its payment</u>; or

> (4) Failure to pay the full amount of tax shown on any return required to be filed under the provisions of this Code or regulations, or thew full amount of tax due for which no return is required to be filed on or before the date prescribed for its payment
>
> (b) In case of willful neglect to file return within the period prescribed by this Code or regulations, or in case a false or fraudulent return is willfully made the penalty to be imposed shall be fifty percent (50%) of the tax or of the deficiency tax, in case any payment has been made on the basis of such return before the discovery of the falsity or fraud
>
> (c) The penalties imposed hereunder shall form part of the tax and the entire amount shall be subject to the interest prescribed in Sec. 249.
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> x x x x x x x x x"

(Underscoring supplied)

It is the petitioner's contention that the 25% surcharge under the above-quoted provision is imposed once, regardless of how many of the enumerated acts therein were committed by the delinquent taxpayer. Accordingly, it argued that the imposition and payment of the 25% surcharge as declared in its estate tax return (Exh. D) precludes the additional imposition of another 25% surcharge for its late payment.

On the other hand, the respondent's rejection of the petitioner's claim for refund is based on its interpretation that Sec. 248 of the Tax Code imposes a 25% penalty or surcharge on each and every act committed by the taxpayer. Thus, the respondent concluded that the petitioner is liable to pay an aggregate surcharge of 50% for its delay (1) in the filing of the return and (2) payment of the estate tax due under (a)(1) and (a)(3), respectively, of the said provision.

We agree with the petitioner.

A surcharge is in the nature of a *surtax*, an *additional tax* that a taxpayer has to pay.

It is a well-established principle in our jurisdiction that if the intent or meaning of the tax statute is not clear, or is doubtful as to whether a taxpayer is covered by the tax obligation, the tax law shall be construed against the government because revenue laws impose special burdens. (Luzon Stevedoring vs. Trinidad 43 Phil 803) In this connection, the Supreme Court has adopted the following related rules:

> " 'A statute will not be construed as imposing a tax unless it does so *clearly, expressly and unambiguously*' (82 CJS 956) (Italics Supplied)
>
> x x x x x x x x x
>
> 'It is an ancient principle that a *tax can not be imposed without clear and express words* for that purpose. Accordingly, the general rule of requiring *adherence to the letter in construing statutes applies with peculiar strictness to tax laws and the provisions of a taxing act are not to be extended* by implication.' (30 Am. Jur. 153; also McQuillin on Municipal Corp. Vol. 16, p. 267; italics ours)" (Marinduque Iron Mines Agents, Inc. vs. Municipal Council of the Municipality of Hinabangan, Samar, 11 SCRA 416)

Nowhere in Sec. 248(a) of the Tax Code can we clearly infer that the 25% surtax or surcharge is imposable on each of the enumerated acts therein. In the absence of an express provision to that effect, We could not give the said law an interpretation which will impose a heavier burden on the taxpayers.

It must be emphasized that the legislative intent in imposing surcharges is to hasten tax payments or to punish evasion or neglect of duty. The imposition of the surcharge provides more teeth to our tax laws which helps attain the purpose for which taxes are imposed (**Aguinaldo Industries Corporation vs. Commissioner of Internal Revenue**, 112 SCRA 136). In other words, the surcharge or penalty is merely incidental to the imposition and collection of taxes. It does not seek to equal the tax sought to be collected since its purpose is not to raise revenues. It should instead be proportional to the possible harmful effects of the act in hampering the proper and efficient enforcement or collection of much needed revenues.

It is not unlikely to have a taxpayer who inadvertently filed a return and paid the corresponding tax beyond the time prescribed by law to an improper revenue officer. If we are to follow the interpretation given by the respondent on Sec. 248 of the Tax Code, he will be charged with an aggregate imposable surcharge of 75% of the amount due. This means that a taxpayer who may have belatedly but unintentionally committed the said act will be made liable to pay a surcharge which is 25% more than the 50% surcharge under Sec. 248(b) imposed on a taxpayer who <u>fraudulently</u> attempted to deprive the government of much needed funds by wilfully neglecting to file a return or filing a false or fraudulent return under (b) of the same provision. Even the mere failure to file a return would consequently be subject to a 50% surcharge similarly imposed on fraudulent returns inasmuch as the late filing of a return normally entails the late payment of the tax due. Such is but a blatant repudiation of the just and equitable nature of our tax laws. Thus, to sustain the respondent's view would give rise to inequitous, if not absurd situations.

Moreover, We believe that a surcharge of 25% of the amount due will serve the purpose for which such penalty is imposed.

WHEREFORE, judgement is hereby rendered ordering the respondent to refund to the petitioner the amount of P218,322.48.

SO ORDERED.

Quezon City, Metro Manila, October 11, 1993

MANUEL K. GRUBA
Associate Judge

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Judge

RAMON O. DE VEYRA
Associate Judge

CERTIFICATION

I hereby certify that this decision was reached after due consultation among the members of the Court of Tax Appeals in accordance with Section 13 Article VII of the **Constitution.**

ERNESTO D. ACOSTA
Presiding Judge
Court of Tax Appeals