Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

EDW. A. BELLIS,
Petitioner,

- versus - C.T.A. CASE NO. 2045

COMMISSIONER OF
INTERNAL REVENUE,
Respondent.

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D E C I S I O N

Petitioner has appealed from the decision of respondent holding him liable for the sum of ₱3,504.34, as deficiency income tax for the year 1962, including surcharge, interest and compromise penalty. This deficiency assessment was brought about by the disallowance of petitioner's claim for deduction of certain taxes paid by him in the United States, as follows:

1. Town and country tax - Village of Lake Success, N.Y. - - - - -	₱1,028.95
2. Real property tax - Village of Lake Success, N.Y. - - - - -	906.30
3. School tax - Nassau County, N.Y. (Second half, 1961-1962) - - -	1,122.83
4. School tax - Nassau County, N.Y. (1962-1963) - - - - - - - - - - -	2,429.39
T o t a l - -	₱5,487.47

Petitioner is an American citizen and a resident of the Philippines in 1962. In that year, he derived incomes both from the Philippines and U. S. sources, all of which he reported for purposes of the Philippine income tax. The sole issue raised in this appeal is whether or not the aforesaid taxes which he paid in the U. S. are deductible from his gross income.

The pertinent provisions of Section 30 of the National

Internal Revenue Code relating to deductibility of taxes read as follows:

> Sec. 30. <u>Deductions from gross income</u>.- In computing net income there shall be allowed as deduction - -
>
> x x x
>
> (c) <u>Taxes</u>:
>
> (1) <u>In general</u>.- Taxes paid or accrued within the taxable yea r, except -
>
> (A) The income tax provided for under this Title;
>
> (B) Income, war-profits, and excess-profits taxes imposed by the authority of any foreign country; but this deduction shall be allowed in the case of a taxpayer who does not signify in his return his desire to have to any extent the benefits of paragraph (3) of this subsection (relating to credit for taxes of foreign countries);
>
> (C) Estate, inheritance and gift taxes; and
>
> (D) Taxes assessed against local benefits of a kind tending to increase the value of the property assessed.
>
> (2) <u>Limitations on deductions</u>.-
>
> (A) In the case of a nonresident alien individual and a foreign corporation, the deductions for taxes provided in paragraph (1) of this subsection (c) shall be allowed only if and to the extent that they are connected with income from sources within the Philippines; and
>
> (B) In the case of a citizen of a foreign country residing in the Philippines whose income from sources within such foreign country is not taxable under this Title, only that portion of the taxes paid to such foreign country which corresponds to his net income taxable under this Title shall be allowed as deduction.

Section 30(c) of the Revenue Code permits deduction of taxes in general without qualification, except (1) the Philippine income tax; (2) income, war profits and excess-profits taxes paid in foreign countries if they are claimed as a tax credit; (3) estate, inheritance and gift taxes; and

(4) taxes assessed against local benefits of a kind tending to increase the value of the property assessed (referring to special assessments). There are two limitations on deductibility of taxes, but they are not here relevant, as the only basis relied upon by respondent in disallowing the deduction of the taxes mentioned above which were paid by petitioner to the U.S. Government is that the term "taxes" under Section 30(c) of the Revenue Code does not include taxes paid in foreign countries because of the provisions of Section 80 of Revenue Regulations No. 2, reading as follows:

> Sec. 80. Taxes in general.- As a general rule, taxes are deductible with the exception of those with respect to which the law does not permit deduction. However, in the case of a nonresident alien individual and a foreign corporation, deduction is allowed only if and to the extent that the taxes for which deduction is claimed are connected with income from sources within the Philippines.
>
> Import duties paid to the proper customs officers, and business, occupation, license, privilege, excise and stamp taxes and any other taxes of every name or nature paid directly to the Government of the Philippines or to any political subdivision thereof, are deductible. The word "taxes" means taxes proper and no deduction should be allowed for amounts representing interest, surcharges, or penalties incident to delinquency. Postage is not a tax. Automobile registration fees are considered taxes. Taxes are deductible as such only by the person upon whom they are imposed. Thus, the merchants' sales tax imposed by law upon sales is not deductible by the individual purchaser even though the tax may be billed to him as a separate item.

x x x x

Respondent claims that "only taxes paid to the Government or any of its political subdivision are deductible," to the exclusion of taxes paid in foreign countries. (Page 2, Memorandum for Respondent, Feb. 14, 1972.) Respondent has obviously misread the provisions of Section 80 of Revenue Regulations No.

2, or the Income Tax Regulations. There is nothing in the Regulations which says that <u>only</u> taxes paid to the Government of the Philippines or to any of its political subdivisions are deductible. The word "only" before the term "taxes" in the opinion of respondent has been merely supplied by him.

A careful reading of Section 80 of the said Regulations would show that the portion thereof referring to "any other taxes of every name and nature paid directly to the Government of the Philippines or to any political subdivision thereof" is intended merely as a part of the enumeration of some taxes which are allowed as deduction from gross income. The enumeration was not meant to be all inclusive. It is to be noted that the first paragraph of Section 80 of the said Regulations states that <u>taxes in general</u> are deductible, which is merely a restatement of the statutory provision (Sec. 30(c), Rev. Code). Since all taxes, meaning taxes in general, are deductible, the enmmeration in paragraph 2 of said Regulations of the taxes which are deductible could not have been intended to exclude other taxes. Examples of taxes which are deductible but are not included in the enumeration are residence taxes, amusement taxes, sugar adjustment taxes, etc. To construe the Regulations as limiting deduction to taxes paid to the Government of the Philippines would run counter to the express provision of the law which permits deduction of all taxes, without distinction between taxes paid in the Philippines and taxes paid in foreign countries.

To show the weakness of respondent's theory, let us take the example of a Filipino who goes abroad on a tour. If he pays a travel tax in a foreign country while abroad, may not such tax be deducted by him when he files his income tax return in the Philippines? It is believed that he is entitled to the deduction of the travel tax even if he has no income in the foreign country where he paid such tax. Let us consider a more striking example, that of a Philippine citizen permanently residing in the United States, may he not deduct taxes paid by him in the United States when he files his income tax return in the Philippines? We do not think respondent can or is disallowing deduction of taxes paid in foreign countries in these two cases. In fact, respondent has gone to the extent of allowing Philippine citizens residing abroad to claim deduction for items which are not allowable under our present Income Tax Law.[1] (See Revenue Memorandum Circular No. 40-71, dated December 20, 1971, approved by the Secretary of Finance.) Since the law allowing deduction of taxes in general (not including foreign income tax) applies equally to Philippine citizens and resident aliens, both being subject to income tax on all their incomes wherever derived, it follows that resident aliens, like petitioner herein, are entitled to deduction of the said taxes paid by them in the United States. This has been the opinion of this Court since 1962. (See Robert L. Janda v. Araneta, C.T.A. No. 87, July 16, 1962,[2] citing

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[1] Under Rev. Memo. Cir. No. 40-71, all items of deduction allowed by a foreign government to Philippine citizens residing in such foreign country are allowed to be deducted here, and these items of deduction obviously include taxes paid in such foreign country. The circular goes further by providing that rentals of apartments, or in case a Filipino citizen abroad owns his house, the fair rental value of such house, is deductible, in effect amending the Income Tax Law. We are at a loss to determine where the Commissioner of Internal Revenue got his authority for such action.

[2] This case was not appealed by the Government.

Mertens, Law of Fed. Income Taxation, Vol. 5, Chap. 27, p. 55, 1956 ed.) If the claim of petitioner is to be denied, the same rule should apply to Philippine citizens, whether residing in the Philippines or permanently residing abroad. A contrary rule would constitute unfair discrimination.

Respondent alleges that -

> . . . To give due course to petitioner's argument, that is, to allow the deduction of taxes paid abroad, will amount to a grant of exemption by the state, which is frowned upon (by) the Courts. In fact, the Supreme Court ruled in the case of "Collector of Internal Revenue vs. Manila Jockey Club, Inc." (G.R. No. L-8755, March 24, 1956) that "Exemptions from taxation are highly disfavored in law and he who claims an exemption must be able to justify his claim by the clearest grant of organic or statute law. An exemption from the common burden cannot be permitted to exist upon vague implication." (Page 2, Memorandum for Respondent, Feb. 14, 1972.)

There can be no question as to the soundness of the principle that tax exemption laws, like those on deductions, must be strictly construed against the person claiming the exemption or deduction, and that an exemption or deduction cannot be permitted to exist upon vague implication. However, if this principle has any application to the instant case, it should be applied to respondent's decision. Petitioner is not claiming deduction "upon vague implication." There is no claim or pretense that Section 30(c) of the Revenue Code, which allows deduction of all taxes, is vague. What is vague is the provision of Section 80 of the Income Tax Regulations which allows deduction, among others, of "any other taxes of every name and nature paid directly to the Government of the Philippines or to any political subdivision thereof," which has been rendered more vague by respondent when he seeks to insert in said provision the word "only" so as to limit deduction only to taxes paid directly to the Government of the Philippines or to any of its political subdivision, which is not justified, because it would render the regulations invalid as it would run counter to the express provision of law. To be valid, regulations must not be contrary to the law which they seek to interpret or implement. (Sy Man v. Jacinto, 93 Phil. 1093; People v. Que Po Lay, 94 Phil. 640; Lim Hoa Ting v. Central Bank, 104 Phil. 573.) To repeat, this is not a case where petitioner is seeking deduction "upon vague implication," his claim being based on a plain and explicit statutory provision; rather, it is a case where respondent seeks to deny petitioner's claim upon a stilted interpretation of the Income Tax Regulations.

WHEREFORE, the decision appealed from is hereby reversed.

SO ORDERED.

Quezon City, April 29, 1972.

ROMAN M. UMALI
Presiding Judge

I CONCUR:

RAMON L. AVANCEÑA
Associate Judge

Associate Judge ESTANISLAO R. ALVAREZ dissents in a separate opinion.

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

DISSENTING OPINION

I find myself unable to concur in the decision of this Court that foreign taxes paid by petitioner, an American citizen, in the United States are necessarily deductible from his Philippine gross income.

The facts of the case are embodied in the Stipulation of Facts submitted by the parties to this Court which reads as follows:

> 1. The petitioner Edw. A. Bellis is an American citizen residing in the Philippines.
>
> 2. On April 3, 1963, the petitioner filed with the Bureau of Internal Revenue his income tax return for the calendar year 1962; and he paid thereon a tax of ₱35,908.00. A copy each of the return, of the receipt of payment, and of the two withholding statements are attached hereto marked Annexes "A", "B", "B-1" and "B-2", respectively, and made parts hereof.
>
> 3. Among the deductions claimed by the petitioner in his 1962 income tax return is the amount of ₱5,487.47, the total taxes paid abroad, to wit:

a. Town and county tax - Village of Lake Success, N.Y. ----------₱1,028.95
b. Real property tax - Village of Lake Success, N.Y. ----------₱ 906.30
c. School tax - Nassau County, N.Y. (Second half, 1961-1962) ----₱1,122.83
d. School tax - Nassau County, N.Y. (1962-1963) --------------₱2,429.39
TOTAL ----------₱5,487.47

Attached hereto as Annexes "C", "C-1", "C-2" a nd "C-3" are copies of the receipts for the payment of the said taxes.

4. The petitioner reported in his 1962 income tax return dividends received from the corporations in the United States, to wit: Crown Williamette and American Telephone and Telegraph Company (See Schedule F, Rider 5 of Income Tax Return, Annex "A").

5. On April 14, 1967 the petitioner received from the Bureau of Internal Revenue an income tax assessment notice requesting that he pay on April 15, 1967 ₱2,898.90 as tax, plus ₱521.64 as interest, or a total amount of ₱3,419.64 on his 1962 income. A copy of the assessment notice is attached hereto, marked Annex "D", and made part hereof.

6. On the same day, April 14, 1967, the petitioner asked the Bureau of Internal Revenue that he be given time to determine the correctness of his deficiency income tax assessment; a copy of the letter dated April 14, 1967 is attached hereto marked Annex "E" and made part hereof.

7. On March 9, 1968 the petitioner received a letter from the Bureau of Internal Revenue dated February 23, 1968 informing him that the deficiency assessment was arrived at due to the disallowance of the amount of ₱5,487.47 represent-

ing the amount of taxes on properties abroad, and requesting that the petitioner pay the sum of ₱3,504.34 as deficiency income tax, interest, surcharge, and compromise penalty. A copy of the letter dated February 23, 1968 is attached hereto, marked Annex "F", and made part hereof.

8. On March 14, 1968 the petitioner wrote the Commissioner of Internal Revenue a letter requesting that the deficiency income tax assessment be cancelled. A copy of the letter is attached hereto marked Annex "G" and made part hereof.

9. On September 12, 1969 the petitioner received a letter from the Bureau of Internal Revenue denying his request for the cancellation of the deficiency income tax assessment. A copy of said letter dated July 14, 1969 is attached hereto, marked Annex "H" and made part hereof.

10. On October 3, 1969 the petitioner filed with the Court of Tax Appeals the above-entitled petition to review the final decision of respondent holding petitioner liable for delinquency income tax for the year 1962.

Petitioner is an American citizen and a resident of the Philippines in 1962. During the same year, he derived from this country and the United States a total gross income of ₱106,811.92 broken down as follows:

Total Philippine gross income ...	₱103,090.14
Total U.S. dividend income	3,721.78
Total income from all sources ...	₱106,811.92

Among the deductions claimed by petitioner in his 1962 income tax return are the taxes paid in the United

States amounting to ₱5,487.97 described and computed as follows:

Town and county tax	₱1,028.95
Real property tax	906.30
School tax	1,122.83
School tax	2,429.39
TOTAL TAXES PAID IN U.S. ..	₱5,487.97

On the basis of the foregoing facts, the sole issue presented to this Court for resolution is whether or not an American citizen, residing in the Philippines, who derived substantial income of ₱103,090.14 from Philippine sources and a minor dividend income of ₱3,721.78 from the United States, may deduct from his gross income of ₱106,811.92 the foreign taxes amounting to ₱5,487.97 under the provisions of Section 30(c)(1) of the National Internal Revenue Code, in relation to Section 30(2)(B) and (3)(B) of the same Code.

The law cited above reads as follows:

> SEC. 30. <u>Deductions from gross income</u>.- In computing net income there shall be allowed as deductions -
>
> xx xx xx xx
>
> (c) <u>Taxes</u>:
>
> (1) <u>In general</u>.- Taxes paid or accrued within the taxable year, except -
>
> (A) The income tax provided for under this Title;
>
> (B) Income, war-profits, and excess-profits taxes imposed by the authority of any foreign country; but this deduction shall be allowed in the case of a taxpayer who does not signify in his return his desire to have to any extent the benefits of

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paragraph (3) of this subsection (relating to credit for taxes of foreign countries); (As amended by section 7, Republic Act No. 82.)

(C) Estate, inheritance and gift taxes; and

(D) Taxes assessed against local benefits of a kind tending to increase the value of the property assessed.

(2) Limitations on deductions.-

xx xx xx xx

(B) In the case of a citizen of a foreign country residing in the Philippines whose income from sources within such foreign country is not taxable under this Title, only that portion of the taxes paid to such foreign country which corresponds to his net income taxable under this Title shall be allowed as deduction.

(3) Credits against tax for taxes of foreign countries.-

xx xx xx xx

(B) Alien resident of the Philippines.- In the case of an alien resident of the Philippines, the amount of any such taxes paid or accrued during the taxable year to any foreign country, if the foreign country of which such alien resident is a citizen or subject, in imposing such taxes, allows a similar credit to citizens of the Philippines residing in such country; xx xx

Section 30(c)(1) of the Tax Code, supra, allows the deduction of "taxes" from the gross income of a taxpayer in computing the net income. The law is silent as to whether or not the word "taxes" includes the taxes paid in a foreign country. Likewise, the same provisions of law is silent as to whether or not the deduction of taxes from gross income may be availed of by resident or non-resident alien deriving income from Philippine sources. The general statutory rule, therefore, is that taxes are deductible from a taxpayer's gross income and the exceptions are those enumerated in (A), (B), (C), and (D) of Section 30(c)(1) of the Revenue Code, supra, which provides, among others, that income taxes paid are not deductible from gross income.

Petitioner claims that the foreign taxes of ₱5,487.47 paid by him in the United States are necessarily deductible from his gross income because said taxes are not among those specified in Section 30(c)(1) of the Tax Code, supra, as not deductible in computing net income. Respondent contends, however, that petitioner's claim is baseless and without merit because only those taxes paid to the Government of the Philippines or its political subdivisions are deductible from petitioner's gross income. In support of his stand, respondent cited Section 80 of the Income Tax Regulations (Revenue Regulations No. 2) which provides as follows:

> Sec. 80. Taxes in general.- As a general rule, taxes are deductible, with the exception of those with respect to which the law does not permit deduction. However, in the case of a nonresident alien individual and a foreign corporation,

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> deduction is allowed only if and to the extent that the taxes for which deduction is claimed are connected with income from sources within the Philippines.
>
> Import duties paid to proper customs officers, and business, occupation, license, privilege, excise and stamp taxes and any other taxes of every name or nature paid direct to the Government of the Philippines or to any political subdivisions thereof, are deductible. xx xx. (Underscoring supplied.)

On the stregth of the foregoing provisions of the Income Tax Regulations, which were promulgated under Section 338 of the Tax Code for the effective enforcement thereof, respondent insisted that only those taxes which were paid directly to the Government of the Philippines or to any of its political subdivisions are deductible from petitioner's gross income. I am in accord with the stand of the respondent Commissioner of Internal Revenue.

It is a cardinal rule in taxation that the provisions on tax-exemption, like tax-deduction, are acts of legislative grace. They are construed strictly because tax-exemption and tax-deduction provisions are in derogation of the sovereign and inherent power of the State to tax. To be entitled to a tax-deduction which has the effect of a tax-exemption, a taxpayer must establish his legal right thereto and he should not rely solely on the implication arising from the unexplained wording of the tax-deduction provision.

The deduction and credit of foreign taxes were intended by law to cushion the impact of taxing the same income twice - one by the State of the taxpayer's residence and the other by the country where he resides. Consequently, the tax-deduction and tax-credit provisions in our Tax Code must be interpreted with a view to avoid the evils and burden of international double taxation. That is precisely the reason why, despite the express prohibition against the deduction of income tax found in Section 30(c)(A), supra, our Income Tax Law allows the deduction or credit, under certain specified conditions, of foreign income taxes.

I am constrained to discuss the application of the tax-credit and tax-deduction provisions of our Tax Code in order to show that the word "taxes" refers to foreign income taxes as a means to avoid the evils and burden of international double taxation of income.

The net income of petitioner from Philippine sources is taxable in full in this country and yet the same is taxable in the United States because petitioner is a citizen of that country. Since petitioner derived dividend income from the United States which was declared in his Philippine income tax return, he is entitled to tax credit of foreign income tax paid and the applicable formula is as follows:

$$\frac{\text{Net income in U.S. taxable in the Philippines}}{\text{Total net income from U.S. and Philippine sources}} \times \text{Philippine income tax}$$

Aside from tax credit of foreign income tax paid or the deduction thereof from gross income, petitioner is not entitled to a deduction or credit of foreign taxes other than income tax because the "other taxes" sought to be deducted from gross income have no relevance in the solution of the international double taxation of the same income.

The same principle applies where a Filipino citizen, residing in the United States, receives income from United States sources. The said income is taxable in full in the United States and yet the same income is taxable in the Philippines because the Filipino taxpayer is a citizen of this country. In the same manner, the Filipino taxpayer is entitled to credit or deduction of the foreign income tax paid in the United States upon declaring the same income in this country.

I shall illustrate by figures and examples the mechanics of credit or deduction of foreign income tax. Let us say, for example, that petitioner's net income from Philippine sources is ₱100,000.00 and that the income tax due and paid to the Philippine Government was ₱37,000.00. As a citizen of the United States, petitioner is likewise subject to U.S. income tax on the said Philippine income of ₱100,000.00. Let us assume that the U.S. income tax on the Philippine income of ₱100,000.00 is ₱50,000.00. Without the reciprocal benefit of tax credit, petitioner will have to pay the Philippine Government and the U.S. Government the income taxes of ₱37,000.00 and ₱50,000.00, respectively, or a total of ₱87,000.00.

With the application of the reciprocity provisions, petitioner who is an American citizen is entitled to a tax credit of ₱37,000.00, representing the income tax paid to the Philippine Government, in paying his income tax liability of ₱50,000.00 due to the U. S. Government. Consequently, petitioner has to pay only ₱13,000.00 to the U.S. Government.

Under the same figures given above, if the taxpayer is a Filipino citizen residing in the United States and that the income of ₱100,000.00 was received therein, the Filipino taxpayer residing abroad is not liable to pay the Philippine Government any amount of income tax because he had already paid ₱50,000.00 as U.S. income tax which is in excess of ₱37,000.00 due from him as Philippine income tax. In both instances, the evils and burden of international double taxation of the same income are avoided and the laudable purpose and intent of the reciprocity provisions of the law are attained.

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The deduction of foreign income tax from gross income is also motivated by the same purpose. The only difference is that in the case of tax deduction, the deduction of the foreign income tax is from gross income instead of from the tax due as in the case of tax credit. The reciprocity provisions, therefore, embodied in our Income Tax Law refers to payment of foreign income tax and not to "other taxes" as a means of avoiding international double taxation of the same income.

Double taxation does not exist in this case because the U.S. dividend income of ₱3,721.78 is very much less than the "other taxes" of ₱5,487.97 paid in the United States. In order that foreign taxes may be deducted by a resident alien from Philippine gross income, "he must be entitled to a tax credit, or the option to deduct from gross income disappears altogether." (Commissioner of Internal Revenue v. Lednicky, G. R. Nos. L-18169, L-18286 and L-21434, July 31, 1964.)

Elaborating on its decision on the Lednicky case, our Supreme Court, thru Justice Jose B. L. Reyes, held that double taxation does not exist and ruled that whatever taxes were paid to a foreign government are not deductible from Philippine gross income because our tax collection will be at the mercy of a foreign power which is incompatible with the status of the Philippines as an independent and sovereign state.

The Supreme Court therefore said:

> Much stress is laid on the thesis that if the respondent taxpayers are not allowed to deduct the income taxes they are required to pay to the government of the United States, in their return for Philippine income tax, they would be subjected to double taxation. What respondents fail to observe is that double taxation becomes obnoxious only where the taxpayer is taxed twice for the benefit of the <u>same governmental</u> entity. In the present case, while the taxpayers would have to pay two taxes on the same income, the Philippine government only receives the proceeds of <u>one</u> tax. As between the Philippines, where the income was earned and where the taxpayer is domiciled, and the United States, where the income was <u>not</u> earned and where the taxpayer did <u>not</u> reside, it is indisputable that justice and equity demand that the tax on the income should accrue to the benefit of the Philippines. Any relief from the alleged double taxation should come from the United States, and not from the Philippines, since the former's right to burden the taxpayer is solely predicated on his citizenship, without contributing to the production of the wealth that is being taxed.
>
> Aside from not conforming to the fundamental doctrine of income taxation that the right of a government to tax income emanates from its partnership in the production of income, by providing the protection, resources, incentive, and proper climate for such production, the interpretation given by the respondents to the revenue law provision in question operates, in its application, to place a resident alien with only domestic sources of income in an equal, if not in a better, position than one who has both domestic and foreign sources of income, a situation which is manifestly unfair and short of logic.
>
> Finally, <u>to allow an alien resident</u>

> <u>to deduct from his gross income whatever taxes he pays to his own government amounts to conferring on the latter the power to reduce the tax income of the Philippine government simply by increasing the tax rates on the alien resident.</u> Everytime the rate of taxation imposed upon an alien resident is increased by his own government, his deduction from Philippine taxes would correspondingly increase, and the proceeds from the Philippines diminished, thereby subordinating our own taxes to those levied by a foreign government. Such a result is incompatible with the status of the Philippines as an independent and sovereign state. (Underscoring supplied.) (G.R. NosL-18169, L-18286, L-21434, July 31, 1964.)

In an earlier case decided by the Tax Court, but which was not appealed to the Supreme Court, it was held that the word "taxes" under Section 30(c)(1) of the Tax Code does not make any distinction as to whether they refer to domestic and foreign taxes and, therefore, there is no justification to make a distinction. In allowing the deduction of foreign taxes from Philippine gross income of an alien resident taxpayer, the said Court in the case of Janda v. Araneta, CTA Case No. 87, decided on July 10, 1962, held as follows:

> Note what the law says: "In computing net income, there shall be allowed as deductions," among others, "Taxes paid or accrued within the taxable year." As correctly pointed out by the petitioner herein, the law does not make any distinction as to whether the taxes mentioned therein are domestic

> or foreign taxes, and we are satisfied that no distinction was intended and that none is warranted. (Castro vs. Collector of Internal Revenue, G.R. No. L-12174, April 26, 1962.) Ubi lex non distinguit, nec nos distinguere debemus. When the law does not distinguish, there is no justification to make any distinction. Therefore, foreign taxes, like domestic taxes, paid or accrued within the taxable year are deductible from the gross income of Philippine citizens and resident aliens. (See Mertens, Law of Federal Income Taxation, Vol. 5, Chap. 27, p. 55, 1956 Edition.)

In justifying the deduction of foreign taxes, other than income tax, from the gross income of a resident alien, the Tax Court relied on Mertens, Federal Income Taxation, Vol. 5, p. 55, 1956 edition, wherein it was stated:

> Where alien residents of the United States were not entitled to the credit for taxes paid to foreign countries because the country of their citizenship did not satisfy the similar credit requirement, they were entitled to deductions for taxes paid to the foreign governments.

The footnote to the foregoing syllabus shows that Mr. Mertens was referring to the cases of Max Freudmann v. Commissioner of Internal Revenue and Henri Freudmann v. Commissioner of Internal Revenue, 10 TC 775. By reading carefully the decision of the U.S. Tax Court, I am convinced that the said syllabus is erroneous and misleading because they were decided on a set of facts entirely different from that which exists in the Janda case

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or in the instant case.

The Freudmann brothers were citizens of Belgium and their country does not satisfy the credit requirement of Section 131(a)(3) of the U.S. Revenue Code of 1928 because Belgium does not allow any credit to citizens of the United States residing in Belgium for the amount of income tax paid to the United States. Consequently, the U.S. Tax Court disallowed a foreign tax credit for income taxes paid by the Freudmann brothers in connection with their business in Canada. The U.S. Tax Court, however, allowed them to deduct from their U.S. gross income the income taxes paid to the Canadian Government because Art. XV of the "Tax Convention" and protocol between the United States and Canada allows as a deduction from income taxes imposed by the United States the appropriate amount of such taxes paid to Canada. In short, in the Freudmann cases, the allowance for deduction of taxes paid to a foreign government was predicated on a tax treaty involving "income taxes" and not the kind of taxes here at issue. Accordingly, we hold that the town and county tax, real property tax, and school taxes amounting to ₱5,487.97, which were paid by petitioner to the United States, are not deductible from his 1962 gross income in the Philippines.

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For the foregoing considerations, I am constrained to dissent from the majority opinion. I sustain, therefore, the decision of respondent appealed from except the compromise penalty.

Quezon City, May 17, 1972.

Estanislao R. Alvarez
ESTANISLAO R. ALVAREZ
Associate Judge

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