August 30, 1958

MANUEL B. PINEDA as one of the heirs of the deceased ATANASIO PINEDA,
Petitioner,

- versus -

C.T.A. CASE NO. 364

THE COLLECTOR OF INTERNAL REVENUE,
Respondent.

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

# DECISION

This is an appeal interposed by the petitioner Manuel B. Pineda, as one of the heirs of the deceased Atanasio Pineda, from a decision (Exhibits 19 and Q, p. 165, BIR rec.) of the respondent Collector (now Commissioner) of Internal Revenue, assessing and demanding from the estate of the deceased the following:

1. Deficiency income taxes for the years 1945, 1946 and 1947 in the amounts of ₱135.83, ₱436.95, and ₱1,206.91 respectively, exclusive of the 5% surcharge and 1% monthly interest thereon from November 30, 1953 to the date of payment, and a compromise penalty for late filing and late payment in the amount of ₱80.00;

2. Basic and additional residence tax for 1945, surcharge and interest, in the sum of ₱14.50; and

3. Real estate dealer's fixed tax for the 4th quarter of 1946 and for the whole year of 1947 in the sum of ₱207.50.

The records show that Atanasio Pineda died on May 23, 1944, leaving as heirs, his wife Felicisima



426

Bagtas Pineda, and his fifteen (15) children, including the petitioner herein.

On August 30, 1945, court proceedings for the settlement of Atanasio Pineda's estate were instituted before the Court of First Instance of Manila (Case No. 71129) (Exhibit 1, p. 2, BIR rec.) wherein his wife, Felicisima Bagtas Pineda, was appointed judicial administratrix of the estate. On June 8, 1948, after the corresponding estate and inheritance taxes were paid, the administration of the estate of Atanasio Pineda was closed by order of the Court and the administratrix relieved of her trust. (Exhibit G, p. 83, CTA rec.; p. 2, BIR rec.)

After more than three years from the termination of the judicial administration of the estate, or more specifically, sometime in January, 1951, BIR Examiner Elisa Z. Espinosa conducted an investigation of the 1948 income tax liability of certain heirs of the deceased Atanasio Pineda, and in the course of her investigation, she discovered that the surviving spouse of the deceased filed only one consolidated income tax return for both herself and the estate of her late husband, Atanasio Pineda, for the years 1945, 1946 and 1947. From the records of the case, it cannot be ascertained as to the precise date when the 1945 income tax return was filed, although the petitioner herein claims in his memorandum that the same was filed on February 28, 1946 (p. 1, Memorandum for the

Petitioner). As regards the 1946 and 1947 income tax returns, the same were admittedly filed with the respondent on February 27, 1947, (Exhibit E, p. 80 CTA rec.) and February 28, 1948 (Exhibit C, p. 77 CTA rec.) respectively.

From the data gathered from the records of the City Auditor's Office of Manila, the Court of First Instance of Manila and other sources, Examiner Espinosa filed on January 29, 1951, separate income tax returns for the estate of the late Atanasio Pineda, for each of the taxable years 1945, 1946 and 1947, (Exhibit 2, p. 4 BIR rec.; Exhibit 4, p. 30 BIR rec.; Exhibit 6, p. 44 BIR rec.) and at the same time, the estate of the late Atanasio Pineda was also required to file independent and separate income tax returns for the years in question. On August 1, 1951, income tax assessment notices (Exhibits 3-A and 5-A, pp. 6, 32, BIR rec.) for the years 1945 and 1946 were sent to the "Estate of the late Atanasio Pineda, c/o Manuel B. Pineda, 171 Solis, Manila". These assessments were based on the returns filed by Examiner Espinosa, and were received by the petitioner herein on September 8, 1951. (Exhibits 2 and 3, Motion, p. 18 CTA rec.)

In a letter, Exhibit 9-A (p. 76 BIR rec.) dated October 12, 1951, respondent assessed against and demanded from the Estate of the deceased Atanasio Pineda through the petitioner herein Manuel B. Pineda, the payment of the sum of ₱687.50 representing real estate dealer's fixed tax, together with the compromise penalty of ₱50.00 for the period from the fourth quarter of 1946 to 1950. This letter of demand which was addressed solely to the petitioner Manuel B. Pineda was admittedly received by him on October 22, 1951 as appearing in his letter, Exhibit K (p. 87 CTA rec.) dated October 31, 1951 to the respondent Collector of Internal Revenue.

Likewise, on October 20, 1952, an income tax assessment notice, Exhibit M (p. 92 CTA rec.; Exhibit 7-A, p. 49 BIR rec.) for the year 1947 was also sent to the Estate of the deceased Atanasio Pineda through petitioner which was admittedly received by him on November 12, 1952. (Exhibit 7-B, p. 118 BIR rec.) However, this income tax assessment dated October 20, 1952, which called for the payment of the amount of ₱2,223.51 as the basic tax, was later on cancelled, withdrawn and superseded by another assessment, Exhibit 16-C (p. 61 BIR rec.) dated October 19, 1953 in the sum of ₱1,206.91 as the tax proper.

In view of the various protests filed by the petitioner against the assessments issued against the estate of his father, the respondent conducted a reinvestigation, and in a letter, Exhibit 13 (pp. 107, 108 BIR rec.) dated August 12, 1954, the respondent informed the latter that "inasmuch as the estate had a separate personality from the widow, Mrs. Felicisima B. Pineda, pursuant to Section 61 of the Tax Code, a separate return should be filed for said estate, covering its gross income for each of the taxable years." In addition, the respondent assessed and demanded for the first time in said letter of demand of August 12, 1954, the payment of the basic and additional residence tax, including surcharge, for the year 1945 in the total amount of ₱14.50, and also reiterated the request for the payment of the real estate dealer's fixed tax as previously assessed in his letter of October 12, 1951, but this time covering only the fourth quarter of 1946 and the whole year of 1947, in the total sum of ₱207.50.

The petitioner appealed to the Conference Staff of the Bureau of Internal Revenue, (C.S. Case No. 426) which, after due hearing, recommended that the assessments issued against the Estate of the deceased Atanasio Pineda be reiterated. Accordingly, the respondent, in a letter, Exhibits 19 and Q (p. 165, BIR rec.), dated March 14, 1957 and received by the petitioner on March 21, 1957, informed the latter that "the Conference Staff of this Bureau has still found no ground upon which to modify our deficiency income tax assessments against the Estate of Atanasio Pineda for the years 1945, 1946 and 1947", and "requested that the amounts of ₱135.83, ₱436.95 and ₱1,206.91" as deficiency income tax for the years under review, plus the statutory delinquency penalties, be caused to be paid. The respondent further requested that "the additional residence tax and surcharge of ₱14.50 and the real estate dealer's fixed tax and compromise for the 4th quarter of 1946 and the whole year 1947 in the amount of ₱207.50, as previously demanded," be also paid. Hence, the petitioner appealed to this Court.

The issues raised in this appeal could be narrowed down to the following:

1. Whether or not the right of the Collector (now Commissioner) of Internal Revenue to assess against and collect from the Estate of the deceased Atanasio Pineda the taxes in question has already prescribed?;

2. Whether or not the series of assessments made by the respondent against the Estate of the deceased Atanasio Pineda, served on the petitioner Manuel B. Pineda in his personal capacity, are valid, considering the fact that the judicial administration of the estate was closed by order of the Court on June 8, 1948, long before the disputed assessments were made and served?;

3. Whether or not the assessments under review are supported by the facts of the case and the law applicable thereto?; and,

4. Whether or not the petitioner herein, Manuel B. Pineda, may be held liable for all the taxes assessed against the estate of his deceased father Atanasio Pineda?

As will be noted, there are several issues raised in this appeal, some involving purely technical or jurisdictional grounds while others go into the merits of the case. But, firstly, we shall decide for the sake of expediency the preliminary question of prescription raised by petitioner.

The pertinent provisions of the National Internal Revenue Code on the question of prescription read as follows:

> "Sec. 331. Period of limitation upon assessment and collection.- Except as provided in the succeeding section, internal-revenue taxes shall be assessed within five years after the return was filed, and no proceeding in court without assessment for the collection of such taxes shall be begun after the expiration of such period. For the purposes of this section a return filed before the last day prescribed by law for the filing thereof shall be considered as filed on such last day: Provided, That this limitation shall not apply to cases already investigated prior to the approval of this Code."

> "Sec. 332. Exceptions as to period of limitation of assessment and collection of taxes.-
>
> x x x
>
> "(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, x x x"

In the instant case, the 1945 and 1946 income tax assessment notices issued against the Estate of the deceased Atanasio Pineda are all dated August 1, 1951 as will be noted on Exhibit 3-A (p. 6, BIR rec.) and Exhibit 5-A (p. 32, BIR rec.), and were both addressed to and received by the petitioner herein on September 8, 1951 as shown on Exhibits 2 and 3 (pp. 18, 19 C.T.A. rec.). From the latter date to August 7, 1957, when the respondent filed his answer to the petition for review and which may be considered as the date when the respondent filed his action in court to collect from the petitioner the income taxes now in question for the years 1945 and 1946 (Collector of Internal Revenue vs. Florencio Solano & Court of Tax Appeals, G. R. No. L-11475, July 31, 1958) nearly six (6) years had elapsed. Consequently, we are of the opinion and so hold that the right of the Collector (now Commissioner) of Internal Revenue to collect the contested income tax assessments for the said years 1945 and 1946 has already prescribed because under Section 332 (c) of our Tax Code, any duly assessed "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."

The disputed income tax assessment issued against the estate of Atanasio Pineda for the year 1947 assumes a different picture but with the same result. For this year - 1947 - the original assessment was made on November 12, 1952, or within the period of limitation upon assessment as prescribed in Section 331 of the Tax Code. However, as stated above, this assessment of November 12, 1952, was cancelled and a second and new assessment was issued on October 19, 1953. Considering that "an assessment that has been set aside

See p.4

or cancelled is no assessment at all" and therefore "where an assessment is made within the five-year period but such assessment is set aside and modified by another, the five-year period within which to assess as provided in Section 331 of the Revenue Code is to be counted from the date of filing the return to the date the new assessment was made" (Carlos Moran Sison & Priscila F. Sison vs. Collector of Internal Revenue, C.T.A. Case No. 337, February 28, 1958), we believe and so hold that the right of the Collector of Internal Revenue to assess the 1947 income tax under review has already prescribed, inasmuch as more than five years had expired from March 1, 1948 which may be considered as the date of filing of the 1947 income tax return to October 19, 1953 when the new assessment was made.

The same is true with regard to respondent's demand for the residence tax for the year 1945 and the real estate dealer's fixed tax for the fourth quarter of 1946 and for the whole year of 1947. The 1945 residence tax was assessed only on September 22, 1954, long after the expiration of the five-year period of limitation upon assessment as prescribed in Section 331 of the Tax Code. As regards the real estate dealer's fixed tax for the fourth quarter of 1946 and for the whole year of 1947, the same might have been timely assessed since the demand for its payment was received by the petitioner herein on October 31, 1951. However, it cannot be doubted that the Collector (now Commissioner) of Internal Revenue is now barred from collecting the same. More than five years has expired from the date the assessment was made on October 31, 1951 to the filing of respondent's answer to the petition for review on August 7, 1957, and applying Section 332 (c) of the Tax Code, the right of the government to collect in any manner the questioned real estate dealer's tax has already prescribed.

Suspension of Prescriptive Period

With regard to respondent's argument that because of petitioner's several requests for reconsideration and reinvestigation, the running of the period of prescription was suspended during the reinvestigation and reconsideration, it shall suffice to state that the only agreement that could have suspended the running of the prescriptive period is a written agreement between the taxpayer himself and the Collector, entered into before the expiration of the five-year prescriptive period, extending the period of limitation prescribed by law. (Sec. 332 (c), N.I.R.C.; Collector of Internal Revenue vs. Florencio Solano & The Court of Tax Appeals, G. R. No. L-11475, July 31, 1958). And lastly, the ten-year period of limitation of assessment and collection of taxes cannot be applied to the case at bar, as alleged by the respondent, considering that fraud was not proven at the trial, and as a matter of fact, the fraud penalty was not imposed by the respondent in his assessments against the petitioner which are now under review.

Having thus held as we do hold that the right of the Collector of Internal Revenue to assess against and collect from the Estate of the deceased Atanasio Pineda the taxes in question has already prescribed, we deem it therefore unnecessary to decide the other issues raised in this appeal.

WHEREFORE, in view of the foregoing considerations, the decision appealed from is hereby reversed and the respondent Collector (now Commissioner) of Internal Revenue is hereby enjoined from collecting from the estate of the late Atanasio Pineda the deficiency income taxes for the years 1945, 1946 and 1947, the 1945 residence tax, and the real estate dealer's fixed tax for the fourth quarter of 1946 and for the whole year of 1947.without pronouncement as to costs.

SO ORDERED.

Manila, August 30, 1958.

AUGUSTO M. LUCIANO
Associate Judge

I CONCUR:

MARIANO NABLE
Presiding Judge

Reversed - remanded for further proceedings in GR No. L-14522, May 31, 1961. (See CTA decision of Nov. 29, 1963, modified by S.C. in GR L-22734, Sept. 15, 1967.)

I abstain:

ROMAN M. UMALI
Associate Judge