REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SURIGAO ELECTRIC CO., INC.,
Petitioner,

- versus -

C.T.A. CASE NO. 1438

THE COMMISSIONER OF INTERNAL REVENUE,
Respondent.

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D E C I S I O N

This is an appeal from a decision of the respondent, dated April 29, 1963, holding the petitioner liable for the sum of ₱11,533.53, representing 5% franchise tax, including the 25% surcharge, for the period from April 1, 1956, to June 30, 1959.

Petitioner is a grantee of a legislative franchise under Act No. 3419 (Exhibits "N" and "19", p. 47, CTA Records) to install, operate, and maintain an electric light, heat, and power system in the Municipality of Surigao, Province of Surigao (Now Surigao del Norte). Section 7 of this franchise provides that the grantee "shall pay quarterly into the municipal treasury above-named, one per centum of the gross earnings of its electric business during the first thirty years, and two per centum during the remaining twenty years of the life of this franchise". (Exhibit "19-A", p. 48, CTA Records) Section 11 thereof provides that said franchise "is granted with the understanding that upon the condition that it shall be subject to amendment, alteration, or repeal by the Congress of the United States as provided in Section twenty-eight of the Act of Congress approved August twenty-ninth, nineteen hundred and sixteen

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x x x x or by the Philippine Legislature, and that it shall be subject, in all respects to the limitations upon corporations, x x x x" (Exhibit "19-B", p. 50, CTA Records).

On November 29, 1961, petitioner received a copy of a warrant of distraint and levy, dated October 6, 1961, to enforce collection of an alleged deficiency franchise tax and surcharge of "Mainit Electric" in the sum of ₱718.00. (Annex "A", Petition, p. 7, CTA Records; Exhibit "4", p. 49, BIR Records) This warrant of distraint and levy was contested in a strongly worded letter of petitioner, dated December 4, 1961 (Exhibit "4", p. 49, BIR Records), wherein it was contended, among others, that petitioner was not a grantee of an electric franchise in Mainit, Surigao. This controversy culminated in a revised assessment, dated April 29, 1963 (Exhibits "K" and "15", pp. 81 and 82, BIR Records), in the sum of ₱11,533.53, representing deficiency franchise tax and surcharge for the period from April 1, 1956 to June 30, 1959, computed as follows:

Gross receipts as per recomputation ---------------	₱ 260,238.42
3% tax due thereon -----------	13,011.92
Less Amount paid -------------	3,785.10
Balance ----------------------	9,226.82
Add: 25% surcharge ----------	2,306.71
Total amount due -------------	₱ 11,533.53

(Exhibits "14", "15", "16" and "K", pp. 80-84, BIR Records)

The above revised assessment, which reduced the previous assessment of ₱26,445.08 to ₱11,533.53 (Ex-

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hibits "K", "14" and "15", pp. 80-82, BIR Records), was received by petitioner on May 8, 1963 (See bottom Exhibits "K" and "15", p. 81, BIR Records). In a letter, dated June 6, 1963, sent by registered mail on June 7, 1963, and received by respondent on June 13, 1963 (Exhibits "L" and "17", also Registry Envelope No. 54150, pp. 85 and 86, BIR Records), petitioner requested further recomputation of the said revised assessment, contending that the total amount actually due was only ₱1,774.57 instead of ₱11,533.53. This request was denied by respondent in a letter, dated June 28, 1963 (Exhibits "M" and "18", p. 87, BIR Records) and received by petitioner on July 16, 1963 (Par. 17, Petition.). On August 1st, 1963, the present petition for review was filed.

The issues raised are: (1) whether or not the present appeal was filed within the 30-day period provided for in Section 11 of Republic Act No. 1125; and (2) whether petitioner is liable for the 5% franchise tax prescribed in Section 259 of the Tax Code, as amended, or for the lower rate of franchise tax provided in its charter.

The issue of jurisdiction was raised as a special defense in respondent's answer, but the parties failed to discuss it in their respective memorandums. On this issue, it appears in evidence that the revised assessment, dated April 29, 1963, reducing the tax liability from ₱26,445.08 to ₱11,533.53, was received by petitioner on May 8, 1963. Following the accepted and established procedure of computing time known as "exclude the first and include the last" method, it is clear that from May 8, 1963, the date when petitioner received the revised assessment, to June 7, 1963, when petitioner's letter of June 6, 1963 requesting recomputation was sent by registered mail to respondent, 30 days had elapsed. Considering the said request for recomputation to be, in effect, a motion for reconsideration, it suspended the running of the 30-day period to appeal from the date of its mailing on June 7, 1963. The prescriptive period commenced to run again on July 16, 1963, when petitioner received respondent's letter of June 28, 1963 denying said request. From July 16, 1963 to August 1st, 1963, when the present petition for review was filed, additional sixteen days had elapsed. The appeal is therefore late by sixteen(16) days.

The failure of a taxpayer to appeal from an assessment on time renders the assessment final, executory and demandable. (Commissioner of Int. Rev. vs. Western Pacific, See p. 5, Rep. of the Phil., v. Del Rosario, G. R. No. L-10460, March 11, 1959; Uy Ham v. Rep. of the Phil., G. R. No. L-13809, October 20, 1959; Comm. of Int. Rev. v. Western Pacific Corporation, G.R. No. L-18804, May 27, 1965.) And the period to appeal being jurisdictional and non-extendible, the failure to seasonably file the petition for review is fatal.

(Pangasinan Transportation Co., Inc. v. Blaquera, G. R. No. L-13101, April 29, 1960; Chan Kian v. Court of Tax Appeals, G. R. No. L-12184, May 29, 1959). Accordingly, this Court has no jurisdiction over this case.

The foregoing conclusion renders academic and unnecessary further discussion on the issue relative to the legality and correctness of the assessment in question.

PREMISES CONSIDERED, the petition for review is hereby dismissed, with costs against petitioner.

SO ORDERED.

Quezon City, October 1, 1965.

TEOFILO D. REYES, SR.
Presiding Judge

I CONCUR:

ROMAN M. UMALI
Associate Judge

Associate Judge ALEJANDRO B. AFURONG
did not take part.

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