ANTONIO CAMPOS RUEDA,
as Administrator of the
Estate of the deceased
Doña Maria de la Estrella
Cerdeira de Inza,
Petitioner,

- versus -   C.T.A. CASE NO. 1964

THE COMMISSIONER OF
INTERNAL REVENUE,
Respondent.

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

11/15/74

D E C I S I O N

Petitioner Antonio Campos Rueda, as administrator of the estate of the deceased Doña Maria de la Estrella Cerdeira de Inza, asks the refund of the amount of ₱75,429.58, representing death taxes due on the transmission of the estate of the deceased.

The records show that Doña Maria de la Estrella Cerdeira de Inza (hereinafter to be referred to as Maria Inza for brevity) was a Spanish national and was a permanent resident of Tangier, Morocco, at the time of her death on September 4, 1962. The deceased left real and personal properties situated in the Philippines, under the administration of herein petitioner.

Petitioner, as administrator of the estate, filed on August 28, 1963, an estate and inheritance tax return relative to the properties left by the late Maria Inza. On September 30, 1963, respondent issued an assessment for estate and inheritance taxes in the amounts of ₱122,333.68 and ₱172,930.54 respectively.

The estate, through counsel, requested reconsideration of the assessment in a letter under date of October 18, 1963, claiming an exemption from the transfer taxes on the intangible personal properties of the deceased in the Philippines. The request was premised on the ground that the intangible personal properties of the deceased are exempt from the payment of death taxes by virtue of the reciprocity clause of Section 122 of the Revenue Code. On December 2, 1963, the estate paid the total amount of ₱272,760.86, not including the transfer taxes due on the amount of ₱212,083.63, which represents the value of the decedent's intangible personal properties in the Philippines. Subsequently, the Commissioner of Internal Revenue, on February 14, 1967, issued a memorandum for the Revenue Operations Head of the Assessment Department directing the latter to recompute the estate and inheritance taxes due and collectible from the estate of the decedent because of the Commissioner's view that the intangible personal properties should be considered part of the gross estate of the deceased in the computation of the estate and inheritance taxes due and collectible from her estate. Accordingly, in a letter dated April 28, 1967, respondent assessed the estate anew, and demanded the payment of the amounts of ₱37,381.50 and ₱38,048.35 as deficiency estate and inheritance taxes, inclusive of one-half percent (½) deficiency monthly interest up to May 4, 1967 computed as follows:

Estate tax	₱190.109.00
½% def. mo. int. on ₱31,814.04 from 6-4-64 to 5-4-67.	5,567.46
Total.	₱195,676.46
Less amount paid	158,291.96
Balance still due and collectible	₱ 37,381.50
Inheritance tax	₱146,966.21
½% def. mo. int. on ₱32,800.31 from 9-4-64 to 5-4-67	5,248.04
Compromise - No CPA certificate.	300.00
Total	₱152,514.25
Less: amount paid.	114,465.90
Balance still due & collectible	₱ 38,048.35

The estate, through counsel, requested cancellation of this assessment on June 26, 1967 but in a letter dated July 12, 1968, received by petitioner on September 13, 1968 respondent denied the request and threatened to enforce the assessment through summary remedies upon failure to pay the assessment. On October 10, 1968 petitioner paid the assessment under protest with a notice that it will file action for recovery. On the same day, October 10, 1968, respondent wrote petitioner a letter acknowledging the payment and at the same time demanding the payment of ₱2,735.37 and ₱2,820.17 as additional ½% deficiency monthly interest from May 4, 1967 to October 10, 1968 when aforesaid payment was made.

On October 11, 1968, petitioner, as administrator of the estate, filed the present petition for review seeking the refund of the amount of ₱75,429.85 paid under protest.

After respondent filed his answer the case was set for hearing on the merits but upon motion of petitioner, the hearing was held in abeyance to await the decision of the Supreme Court in the case of Antonio Campos Rueda v. Collector of Internal Revenue, G.R. No. L-13250 which involves the same issues as the present case. After the Supreme Court had rendered its decision in G.R. No. L-13250 the parties submitted this case on the bases of its pleadings and the records but after the parties had submitted their memoranda the Court re-set it for hearing to receive evidence on the pertinent law of Tangier.

The first issue is whether or not this Court has jurisdiction to take cognizance of this petition. We think it has.

The law pertinent to this issue is Republic Act No. 1125, more particularly, Section 7 and 11 thereof:

> Sec. 7. Jurisdiction. - The Court of Tax Appeals shall exercise exclusive appellate jurisdiction to review by appeal as herein provided -
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> (1) Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges,

> penalties imposed in relation thereto, or other matters arising under the National Internal Revenue Code or other law or part of law administered by the Bureau of Internal Revenue;
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> x x x x x x x x x x x x
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> Sec. 11. Who may appeal; effect of appeal. - Any person, association or corporation adversely affected by a decision or ruling of the Commissioner of Internal Revenue, the Collector of Customs or any provincial or city Board of Assessment Appeals may file an appeal in the Court of Tax Appeals within thirty days after the receipt of such decision or ruling.
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> No appeal taken to the Court of Tax Appeals from the decision of the Commissioner of Internal Revenue or the Collector of Customs shall suspend the payment, levy, distraint, and/or sale of any property of the taxpayer for the satisfaction of his tax liability as provided by existing law: Provided, however, That when in the opinion of the Court the collection by the Bureau of Internal Revenue or the Commissioner of Customs may jeopardize the interest of the Government and/or the taxpayer the Court at any stage of the proceeding may suspend the said collection and require the taxpayer either to deposit the amount claimed or to file a surety bond for not more than double the amount with the Court.

Settled is the rule that all final decisions of the Commissioner of Internal Revenue under Section 11 of Republic Act No. 1125 are appealable to the Court of Tax Appeals and that one that threatens collection through administrative remedies provided by law, as in the present case, is considered a final and appealable decision (St. Stephen's Association v. Collector of Internal Revenue, 104 Phil. 314; Rafael Morales v. Collector of Internal Revenue, G.R. No. L-

16759, August 31, 1966). Respondent, however, urges that since petitioner paid the assessment after a final decision, he must first file a claim for refund before bringing an action for recovery to the Court of Tax Appeals pursuant to Section 306 of the Tax Code which runs thus:

> Sec. 306. Recovery of tax erroneously or illegally collected. - No suit or proceeding shall be maintained in any court for the recovery of any national internal-revenue tax hereafter alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, or of any sum alleged to have been excessive or in any manner wrongfully collected, until a claim for refund or credit has been duly filed with the Commissioner of Internal Revenue; but such suit or proceeding may be maintained, whether or not such tax, penalty, or sum has been paid under protest or duress. In any case, no such suit or proceeding shall be begun after the expiration of two years from the date of payment of the tax or penalty.

Section 306 of the Tax Code should be interpreted with Section 11 of Republic Act No. 1125 which is of later vintage since the two are interrelated laws. It is in this vein that we approach the question of jurisdiction posed by respondent.

Section 11 of Republic Act No. 1125 allows a suit contesting the legality of a tax assessment without first paying the assessment which could not have been done when Section 306 of the Tax Code was the only law that allowed a taxpayer to question the legality of an internal revenue tax. However, the suit can be brought to the Court only after the assessment has been threshed out with the Commissioner of Internal Revenue, that is, after the latter has rendered a final decision.

Section 306 of the Tax Code, on the other hand, requires payment of the tax first before a taxpayer can question in a suit the legality of such payment. It is not necessary that he pays the tax under protest; he can still sue even if he paid the tax without protest. He must, however, file first a claim for refund with the Commissioner before filing the suit. As explained by the Supreme Court in Johnston Lumber Co., Inc. v. Court of Tax Appeals and the Collector of Internal Revenue, G.R. No. L-9292, April 23, 1957, the purpose of requiring a claim for refund before the institution of a suit is to give the Commissioner "an opportunity to render a decision with knowledge of the facts." This is so because the Commissioner ordinarily is not aware of the controversy even when payment is made under protest because the sole purpose of the protest is to preserve the taxpayer's right to question the legality of the tax (Johnston Lumber Co., Inc. v. Coll. if Int. Rev., supra). It is only through the claim for refund that he comes to know of the controversy and the taxpayer's position.

A final decision in a proceeding under Section 11 of Republic Act No. 1125 is an obvious warranty that the Commissioner has been afforded the opportunity to know the facts of the controversy and the position of the taxpayer. After the rendition of a final decision by the Commissioner it is idle to require the taxpayer to seek another decision.

To our mind, after a final decision under Section 11 of Republic Act No. 1125 a taxpayer may appeal to the Court of Tax Appeals even if he pays the tax upon receipt of the decision as long as the period for appeal provided therein has not lapsed. The final decision under said law runs its statutory course, Section 306 of the Tax Code notwithstanding. Under the logic of the provision payment cannot affect the running of its course because appeal does not bar the collection of the tax. Thus, in Commissioner of Internal Revenue v. Concepcion, 22 SCRA 1058, it was held that if a decision of the Commissioner has become final and executory under Section 11 of Republic Act No. 1125, the right to question the legality of a tax involved therein cannot be revived by paying the tax and filing a suit for refund under Section 306 of the Tax Code. And in Wolfson v. Collector, C.T.A. No. 273, July 16, 1958, it was held that no claim for refund need be filed if payment is made pending an appeal to the Court of Tax Appeals from a final decision of the Commissioner; an amendment of the petition for review is enough. With the rendition of a final decision under Section 11 of Republic Act No. 1125 the underlying reason for the requirement ceases to exist. To insist on it is to insist on dragging the proceeding unnecessarily in disregard of the logic of Section 11 of Republic Act No. 1125.

With respect to the merits of this petition, we are of the opinion that the evidence on record does not justify a judgment favorable to the petitioner.

The assessment in question involves intangible personal properties of Doña Maria Inza, a Spanish citizen and resident of Tangier, Morocco who died on September 4, 1962. Petitioner contends that the properties in question are exempt from transfer taxes under Section 122 of the Tax Code which provides as follows:

> x x x x And provided, further, That no tax shall be collected under this Title in respect of intangible personal property (a) if the decedent at the time of his death was a resident of a foreign country which at the time of his death did not impose a transfer tax or death tax of any character in respect of intangible personal property of citizens of the Philippines not residing in that foreign country, or (b) if the laws of the foreign country of which the decedent was a resident at the time of his death allow a similar exemption from transfer taxes or death taxes of every character in respect of intangible personal property owned by citizens of the Philippines not residing in that foreign country.

Citing the case of Collector of Internal Revenue v. Antonio Campos Rueda, G.R. No. L-13250, petitioner urges that the law of Tangier does not impose any death tax on transfers by death of intangible personal properties in said country of non-resident Filipinos.

It appears that in G.R. No. L-13250 the Court held that the law of Tangier on January 2, 1955 did not enforce any death tax on transfers by death of intangible personal properties of non-resident Filipinos. The issue in the present case is, on the other hand, the law of Tangier on September 4, 1962, not on January 2, 1955.

It is elementary that Courts may not take judicial notice of foreign laws (Lim v. Coll. of Customs, 36 Phil. 472; International Harvester Co. v. Humburg-American Line, 42 Phil. 845). The question of what is the law of a foreign land is a question of fact and has to be proven like any other fact in dispute between the parties in any proceeding (Sy Hoc Liong v. Sy Quia, 16 Phil. 137; Ching Huat v. Co Heong, 77 Phil. 988). The evidence introduced in G.R. No. L-13250 proved the law of Tangier on January 2, 1955, not on September 4, 1962; the evidence that we need is one that proves the law of Tangier on the latter date (Fluemer v. Hix, 54 Phil. 610). We cannot hazard a conjecture that the law of Tangier has not been changed or amended before September 4, 1962 (Philippine Commercial and Industrial Bank v. Honorable Venancio Escolin et al., G.R. Nos. L-27936 and L-27937, March 29, 1974). The conjecture is verily hazardous because petitioner failed in this case to produce evidence as obtainable as those used in G.R. No. L-13250 although he has been given more than ample time to do so.

The record shows that upon receipt of the decision of the Supreme Court in G.R. No. L-13250, petitioner filed a "manifestation" praying for a judgment based on the result of said case since allegedly the issues of the two cases are the same. Nevertheless the Court set the case for hearing because respondent contended that G.R. No. L- 13250 is not proof of the law of Tangier on the date of the demise of Maria Inza on September 4, 1962. Petitioner then introduced as evidence copies of the documentary evidence which were presented in G.R. No. L-13250 to prove the law of Tangier on January 2, 1955. This Court not being satisfied with said evidence re-set this case for reception of further evidence on the law of Tangier. In said hearing petitioner did no more than introduce the very documents presented in G.R. No. L-13250.

Petitioner contends that the law accepted by the Supreme Court as the law of Tangier on January 2, 1955 in G.R. No. L-13250 should be considered as the Tangier law on September 4, 1962 by virtue of the presumption of continuity. For this purpose petitioner invokes a comment of this Court in its decision in C.T.A. Case No. 1964 appealed to the Supreme Court as G.R. No. L-13250. The comment runs as follows:

> x x x considering the manner of expression in the Certificates in question, we believe that they express the law of Tangier as of 1955, the time the certificates has been made

> which is the same law thirty (30) years before. Moreover, it is a legal truism that a law, foreign or local, subsists until amended or repealed. From this truism flows the presumption that a thing once proved to exist continues as long as is usual with things of that nature. (See Sec. 69 (dd), Rule 123 of the Rules of Court.) Consequently, we presume that, in the absence of a showing to the contrary, the law of Tangier of January 30, 1932, modifying the Dahir of May 15, 1925, as proved in Exhibits G, G-1, and I are still in force on January 2, 1955. (See in Re Huss, 27 NE 784).

The foregoing comment should be interpreted in the context of the facts in C.T.A. Case No. 1964, G.R. No. L-13250 in the Supreme Court.

The certification by the Central Collector of the Office of Registration and Taxes of Tangier reads as follows:

> 1°/Que el dia 2 de Enero de 1955 regian en la Zona Internactional de Tanger, perteneciente al Imperio Jerifiano de Marruecos, el articulo primero de la Ley de 30 de Enero de 1932 que dice: "Quedan sujetas a los Derechos establecidos para las donaciones entre vivos: las transmisiones de inmuebles por causa de muerte acontecidax a partir de primero de Enero de 1932, comprobadas por documentos y declaraciones sometidos obligatoria o voluntariamente al Registro o a la inscripcion en los Registros de la Propiedad". - - - - - - -
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> x x x x x x x
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> - - - - - 2°/ Que en aplicacion de estos preceptos, las transmisiones por causa de muerte de bienes muebles, tanto corporales como incorporales (es decir tanto mobiliaro y enseres, como valores, titulos, acciones etc. . .) no estaban sujetos en Tanger, en la expresada fecha de 2 de Enero de 1955, al pago de ningun impuesto sucesorio, fuera que fuera la nacionalidad tanto del causante como de los herederos. - - - - - - - - -

The foregoing certification was confirmed in another certification issued by the Regional Assistant Director, Chief of the Service of Registration and Taxes of Morocco. Thus runs the certification:

> I, JUTARD, Gustave, Regional Assistant Director, Chief of the Service of Registration and Taxes, p.i., hereby confirm the terms of the certification issued on July 18, 1962, by the Central Collector of the Office of Registration and Taxes, of Tangier, that, indicating that under the legislation which was applicable to the ex-international zone of Tangier on January 2, 1955, the transfers by reason of death of movable properties, corporeal or incorporeal, including furniture and personal effects, as well as of securities, bonds, shares, etc., were not subject on that date and in said zone, to the payment of any death tax, whatever might have been the nationality of the deceased or his heirs and legatees.

It should be noted that in both certification what is attested to is that the law of Tangier of January 30, 1932 was still effective on January 2, 1955, the date material in G.R. No. L-13250. The comment on the presumption of continuity quoted further above was obviously made only to emphasiz the value of the certification as to the law of Tangier on January 2, 1955. In other words what the Cour. wanted to convey was that the certification, considering the presumption of continuity, must be correct since there was no mention of a change or amendment or repeal in the interim of the law of January 30, 1932 of Tangier. There is nothing in the comment that implies that a certification as to a foreign law in 1955 or a finding of a court based on said certification is satisfactory proof of the foreign law in 1962 by virtue of the presumption of continuity. In effect this is the position of petitioner, a position that practically shifts the burden of proving the foreign law in 1962 on the tax collection agencies of the government. At the very least it gives these agencies the burden of checking if a foreign law of 1955 is still the law in 1962 or in the years to come a burden that pertains to petitioner. (Fluemer v. Hix, supra). It is not good policy to give an added burden to tax collection.

Respondent's counterclaim in the amount of ₱5,555.54 represents additional interest from May 4, 1967 when the contested assessment was issued to October 10, 1968 when said assessment was paid by petitioner. This counterclaim appears to be borne out by the record of this case.

WHEREFORE, the decision appealed from is hereby affirmed; with respect to the counterclaim, petitioner is hereby ordered to pay respondent the sum of ₱5,555.54. With costs against petitioner.

SO ORDERED.

Quezon City, November 15, 1974.

RAMON L. AVANCEÑA
Associate Judge

WE CONCUR:

ROMAN M. UMALI
Presiding Judge

ESTANISLAO R. ALVAREZ
Associate Judge