REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

JOSEFINA P. PAJONAR, as administratrix of the Estate of Pedro P. Pajonar,
Petitioner,

- versus - **C.T.A. CASE NO. 4381**

THE HONORABLE COMMISSIONER OF INTERNAL REVENUE,
Respondent.

5/6/93

x - x

DECISION

This case involves petitioner's claim for refund of erroneously paid estate tax in the sum of P1,527,790.98 or in the alternative the amount of P840,202.06.

The following facts are undisputed:

During the second World War, Pedro P. Pajonar, a United States Philippine Scout Soldier, was assigned in Bataan. There he was captured and imprisoned by the Japanese soldiers. During his incarceration, he suffered mental shock and later became insane.

After the war, he received monthly pension from the United States Veteran's Administration (USVA), thru the Philippine National Bank (PNB), as legal guardian. By reason of insanity, the Court appointed his sister, Josefina Pajonar, herein petitioner, as guardian over the person of Pedro P. Pajonar.

On January 10, 1988, Pedro died single [Exh. D], with no descendants and ascendants, leaving as heirs his brothers, Isidro and Gregorio, and sister, Josefina, and nephews and niece, the sons and daughter of Angela, namely: Concordio, Mario and Conchita. He was domiciled at Lagtangon, Bonbonon, Siaton, Negros Oriental at the time of his death.

On April 5, 1988, petitioner filed with the Bureau of Internal Revenue the Estate Tax Return of the decedent, showing an Estate Tax Due of P2,557.00. [p. 24, BIR record.] The following documents were attached to the Estate Tax Return:

1. Audit Report dated March 18, 1988 [Exh. E] ;
2. Schedule I - Real Properties of the deceased; and
3. Schedule II - Personal Properties. [Exh. F]

The amount of P2,557.00 was paid to the Bureau as evidenced by BIR Payment Order No. C 2208857 dated April 5, 1988 [Exh. AA] and CB Confirmation Receipt No. B 14268064 dated April 5, 1988 [Exh. BB].

In order to settle the properties of the decedent, PNB, as trustee of the assets of the deceased, requested herein petitioner to execute an extra-judicial settlement. [Exh. I-1.] The extra-judicial settlement was published as evidenced by the Affidavit of the publisher dated April 14, 1988. [Exh. I.]

Upon submission of the extra-judicial settlement agreement, PNB further requested petitioner to post a surety bond in the sum of P2,731,693.36. On April 5, 1988, PNB paid Stronghold Insurance Co., Inc., the amount of P59,341.40, covering the premium plus other miscellaneous payments, for the surety bond issued in favor of petitioner. [Exhs. J and K.]

On May 19, 1988, a case was filed for the settlement of the intestate estate of the late Pedro P. Pajonar in the Regional Trial Court (Branch XLIII) of Dumaguete City docketed as Special Proceedings No. 2399. [Exh. B.] The corresponding filing fees and legal research fees were paid on the same date. [Exhs. P, Q and R.] The Notificatory Order dated May 20, 1988 issued by the Regional Trial Court of Dumaguete City was published in a newspaper of general circulation in the province of Negros Oriental for three consecutive issues from June 1, 8 and 15, 1988. [Exh. S.] Notice to Creditors were also posted in the Bulletin Board of the Municipal Hall of Siaton. [Exh. W.]

On June 6, 1988, petitioner, after posting a bond of P50,000.00, was appointed Special Administratrix. [Exhs. M and A-1.] Subsequently, the court appointed petitioner as the Regular Administratrix of the Intestate Estate of the late Pedro P. Pajonar. [Exh. A.]

On June 28, 1988, Letter of Authority No. 0019804 NA was issued to respondent's revenue enforcement officer to examine the books of accounts of the Estate of Pedro P. Pajonar for estate tax purposes.

Upon investigation, the Audit Report, dated December 19, 1988, prepared by the revenue examiner showed that the Estate of Pedro P. Pajonar is still liable for Deficiency Estate Tax in the amount of P1,527,790.98, computed as follows: [p. 80, BIR record.]

	Per Return	Per Investigation
Real Properties	P 51,189.59	P 102,966.59
Personal Properties	2,759,403.45	2,876,734.20
Gross Estate	P2,810,593.04	P2,979,700.79
Less: Allowable Deductions		
Funeral Expenses	P 50,000.00	P 50,000.00
Exempt investment in bonds & stocks (gov't.)	2,668,336.05	-
Trustee's fees commissions		18,335.93
Total Deductions	P2,718,336.05	P 68,335.93
Amount subject to estate tax	P 82,256.99 *	P2,911,364.86
Estate Tax Due	P 2,557.00	P1,343,814.32
Estate Tax Paid	2,557.00	2,557.00
Deficiency Estate Tax	NONE	P1,341,257.32
Add: Interest from 4-9-88 to 12-19-88		186,183.66
Compromise Penalty		
No notice of death		50.00
No CPA Certificate		300.00
Estate Tax Due & Collectible		P1,527,790.98

* The amount subject to estate tax per return should total P92,256.99 instead of P82,256.99.

On the same day, petitioner paid the amount of P1,527,790.98 as reflected in BIR Payment Order No. C 4055766 dated December 16, 1988 [Exh. DD] and CB Confirmation Receipt No. B 15517625 dated December 19, 1988 [Exh. EE].

On January 11, 1989, petitioner filed a Protest praying for the refund of the amount of P1,527,790.98 or at the least a portion thereof. [Exh. FF.] The main thrust of petitioner's protest is her claim that the personal properties of the decedent, majority of which are investments in government stocks and bonds, are tax exempt citing as legal basis Republic Act No.360. Pensions received by the legal guardian (PNB) from the USVA for and in behalf of the beneficiary or the decedent is tax exempt. As such investments made by PNB using these funds are likewise exempt from taxation under Republic Act No. 566.

Granting arguendo that the entire estate of the decedent are taxable, petitioner's alternative relief prays for the refund of the amount of P840,202.06, computed as follows: [pp. 5-6, CTA record.]

Schedule I - Real Property -

(1) A parcel of land, covered by Tax Dec. No. 08-2355, situated at Bonbonon, Siaton, Neg. Or.	P 3,180.00	
(2) A parcel of land, covered by Tax Dec. No. 08-1083, situated at Lagtangon, Siaton, Neg. Or.	2,270.00	
(3) House and Lot, situated at Lagtangon, Bonbonon, Siaton, Negros Oriental	45,739.59	P 51,189.59

Schedule II - Personal Property -

(1) Refrigerator	P 7,500.00	
(2) Wall Clock, Esso Gasul, Tables & Chairs	3,090.00	
(3) Beddings, Stereo, TV, Betamax	15,700.00	
(4) Karaoke, Electric Fan, Flat Iron, Transformer & Corner Set	7,400.00	
(5) Toyota Tamaraw Jeep	27,500.00	61,400.00'
ADDITIONAL PERSONAL PROP.		
(6) PNB Time Deposit	P 200,000.00	
(7) Stocks and Bonds (per acctg. up to March 31, 1988 by PNB)	2,450,000.00	
(8) Cash	314,432.50	2,964,432.50
GROSS ESTATE		P3,025,832.50''
Less: Deductions		
(1) Hospitalization, funeral and other expenses	P 50,000.00	
(2) Notarial Fee for the document of Extrajudicial Settlement (incurred not yet paid) [Exh. I-1]	60,753.00	
(3) Publication of Extrajudicial Settlement	600.00	
(4) Insurance premium on Surety required by PNB [Exhs. J and K]	59,341.40	
(5) Premium on Administratrix Bond in Spec. Proc. No. 2399 (incurred but not yet paid for) [Exh. L]	10,000.00	
(6) Notarial fee of Surety's Acknowledgment of Bond	1,000.00	
(7) Attorney's Fees in Spec. Proc. No. 1254 for Guardianship (incurred but not yet paid for) [Exh. N]	50,000.00	
(8) Attorney's Fees in Spec. Proc. No. 2399 for Letters of Administration (incurred		

but not yet paid for) [Exh. O - was not admitted by the Court]	461,760.80	
(9) Filing Fees [Exhs. P, Q and R.]	6,374.88	
(10) Publication of Order, June 1, 8 & 15, 1988 issues of the Dumaguete Informer [Exh. S.]	600.00	
(11) Publication of Notice to Creditors Sept. 7, 14 & 21, 1988 issues of the Dumaguete Informer [Exh. T.]	600.00	
(12) Certification Fee for publication on the bulletin board of the Mun. Bldg. of Siaton [Exh. U.]	2.00	
(13) Certification Fee for publication in the Capitol [Exh. V.]	5.00	
(14) Certification fee for publication of Notice to Creditors [Exh. W.]	5.00	
(15) Attorney's Fees for the Protest to Assessment and Recovery of excess tax (contingent fee, not yet paid) [Exh. X - was not admitted by the Court.]	600,000.00	1,301,042.08
Net Estate		P1,724,790.00
Estate Tax Due		P 687,588.92
Less: Erroneous Interest, Payment Order No. C-4055766	P 186,183.66	
Compromise Charge Payment Order No. C-4055766	350.00	186,533.66
Balance of Tax Collectible		P 501,055.26
Erroneous Basic Tax Collected Payment Order No. 4055766		P1,341,257.32
Less: Balance of Tax Collectible		501,055.26
REFUNDABLE AMOUNT		P 840,202.06

* The correct sum of personal property from #1 to #5 is P61,190.00 and not P61,400.00.

** The gross estate should total P3,076,812.09 instead of P3,025,832.50 which is only the total of personal properties.

Without waiting for respondent's decision on the protest, petitioner instituted the petition for review with this Court on June 27, 1989.

In response, respondent alleged that the personal properties of the decedent are not exempt from the estate tax. In claims for refund, the burden is on the petitioner to show the illegality of the tax or penalty collected or that the determination thereof is erroneous. Claims for refund are construed strictly against the taxpayer.

Presented at issue is the question of whether or not petitioner is entitled to the refund of P1,527,790.98 or in the alternative P840,202.06.

Respondent waived his right to present evidence. He submitted the case based on the pleadings and the BIR records together with his memorandum. Petitioner failed to file her memorandum. Instead, she adopted the petition as her memorandum.

We shall discuss each items as they appear in the Audit Report of the revenue examiner and in the petition as well.

Valuation of Real Properties:

Section 81(b) of the National Internal Revenue Code provides for the valuation of real properties includible in the gross estate. The pertinent provision is hereunder quoted:

"Sec. 81. Determination of value of the estate. - **(a)** *Usufruct.* - x x x x x x x x x.

(b) *Properties.* - The estate shall be appraised at its fair market value as of the time of death. However, the appraised value of real property as of the time of death shall be whichever is the higher of

(1) the fair market value as determined by the Commissioner, or

(2) the fair market value as shown in the schedule of values fixed by the Provincial and City Assessors. (As amended by P.D. 1994)

The examiner correctly valued the four (4) parcels of land owned by the deceased according to their fair market value plus 50% thereof pursuant to Revenue Audit Memorandum Order No. 1-88 dated February 4, 1988, which reads:

"PARAGRAPH 2(d) of RAMO 3-87 is amended to read as follows:

(d) If the property is classified as a fishpond. AND AGRICULTURAL LAND PLANTED TO COCONUT, TOBACCO, SUGAR, RICE, CORN, CITRUS, AND VEGETABLE, THE MARKET VALUE OF LAND INCLUDING IMPROVEMENTS shall be increased by fifty (50%) also regardless of regional location."

The valuation of the real properties transmitted by the deceased are as follows: [BIR Worksheet, p. 66, BIR record.]

Tax Dec. No.	Location	Kind	Area	Assessed Value (p. 63 BIR rec.)	FMV	BIR FMV +50%
08-2355	Bonbonon, Siaton, Negros Oriental	Cocal	2.2207	P2,500.00	P 6,231.00	P 9,347.00
		Coco Trees		680.00	1,692.00	2,538.00
05-466	Etik-Albiga, Siaton, Negros Oriental	Riceland	8.0000	9,020.00	22,560.00	33,840.00
		Bamboo Tree		360.00	900.00	1,350.00
20-901	Bondo Napacao, Siaton, Negros Oriental	Cornland	3.6000	2,710.00	6,768.00	10,152.00
08-073-B73	Bonbonon, Siaton, Negros Oriental	House		2,700.00	18,000.00	45,739.59
Total						P102,966.59

Since the valuation of respondent's examiner was higher than the assessed value of the provincial assessor that which is higher shall prevail.

Petitioner did not present any evidence to prove that the examiner was wrong in implementing Revenue Audit Memorandum Order No. 1-88 on the fair market value of the real properties as certified to by the Municipal Treasurer and the Municipal Assessor of Siaton. [pp. 54-63, BIR record.] We find, therefore, that the total fair market value of the real properties of the late Pedro P. Pajonar is P102,966.59 instead of P51,189.59 as reported and declared by petitioner.

Personal Properties:

Petitioner contends that the personal properties of the decedent majority of which are stocks and bonds invested by PNB out of the pensions received by the decedent from the USVA are exempt from taxation. She alleged that Republic Act No. 360 provided for the exemption from taxation benefits derived from pensions received from the United States Veterans Administration and Republic Act No. 566 provided for the exemption from taxation investment in government bonds issued by the President.

The full text of both Republic Act Nos. 360 and 566 are reproduced hereunder for reference. [Exhs. G and H.]

REPUBLIC ACT NO. 360

AN ACT EXEMPTING FROM ASSIGNMENT, TAXATION, CLAIMS OF CREDITORS, ATTACHMENT, LEVY OR SEIZURE, BENEFITS DERIVED BY BENEFICIARIES RESIDING IN THE PHILIPPINES UNDER LAWS OF THE UNITED STATES ADMINISTERED BY THE UNITED STATES VETERANS ADMINISTRATION.

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled.

SECTION. 1. Payments of benefits due or to become due to any person residing in the Philippines under the laws of the United States administered by the United States Veterans Administration shall not be assignable, and such payments made to, or on account of, a beneficiary under any of the laws of the United States administered by the United States Veterans Administration relating to veterans residing in the Philippines shall be exempt from taxation as well as from claims of creditors, and shall not be liable to attachment, levy, or seizure by or under any legal or equitable process whatsoever, either before or after receipt by the beneficiary. Such provisions shall not attach to claims of the United States arising under such laws nor shall the exemption herein contained as to taxation extend to any property purchased in part or wholly out of such payments: *Provided*, That if the benefits be insurance payable by reason of yearly renewable term or of United States Government or National Service Life (converted) Insurance issued by the United States, the exemption herein provided shall be inapplicable to indebtedness existing against the particular insurance contract upon the maturity of which the claim is based, whether such indebtedness be in the form of liens to secure unpaid premiums, of loans, or interest on such premiums or loans, or indebtedness arising from overpayments of dividends, refunds, loans, or other insurance benefits. [Underscoring supplied.]

SEC. 2. This Act shall take effect upon its approval.

Approved, June 9, 1949.

REPUBLIC ACT NO. 566

AN ACT TO PROVIDE THAT BONDS, CERTIFICATES AND OTHER EVIDENCES OF INDEBTEDNESS ISSUED BY THE PRESIDENT OF THE PHILIPPINES UNDER THE PROVISIONS OF REPUBLIC ACT NUMBERED TWO HUNDRED SIXTY-SIX, SHALL BE EXEMPT FROM TAXATION OR ASSESSMENT.

> *Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:*
>
> SECTION. 1. All bonds, certificates and other evidences of indebtedness to be issued by the President of the Philippines under the provisions of Republic Act Numbered Two Hundred Sixty-Six, entitled "An Act appropriating such sums as may from time to time be released by the Central Bank representing excess monetary reserves, and authorizing the President of the Philippines to issue bonds, certificates or other evidences of indebtedness covering such amounts," for the purpose of economic rehabilitation and development, and the interest payable thereon, shall be exempt from taxation or assessment, whether national, provincial or municipal.
>
> SEC. 2. This Act shall take effect upon its approval.
>
> Approved, August 31, 1950.

Respondent on the other hand contends that the amount of P2,668,336.05 invested in government stocks and bonds are not exempt from taxation for purposes of the estate tax. The phrase 'exempt from taxation' as provided in Section 1 of R.A. 360 refers to U.S. veterans pensions received by the beneficiary considered as property not subject to taxation. It does not extend to the tax on the transfer of property to the heirs by reason of the death of the beneficiary. Thus, the exemption does not cover exemption from the estate tax.

While it is true that Republic Act No. 360 provides for the exemption from taxation benefits derived by beneficiaries residing in the Philippines under laws of the United States administered by the U.S. Veterans Administration the law further provides that "such provisions shall not attach to claims of the United States arising under such laws nor shall the exemption herein contained as to taxation extend to any property purchased in part or wholly out of such payments".

In the case at bar, the pensions received by the deceased from the U.S. Veterans Administration were invested by PNB in stocks and bonds. The nature of the benefits received by the veteran (Pedro) was converted into stocks and bonds. These funds were used to purchase shares of stocks and bonds by the legal guardian of the decedent. In such a situation, the exemption does not extend to the property purchased using as payments therefor proceeds from such pension.

Petitioner's claim that investments in tax-exempt government bonds extended the exemption to the estate tax pursuant to Republic Act No. 566.

We disagree with petitioner.

The value of tax-exempt bonds and other tax-exempt obligations is includible in the gross estate and subject to estate tax regardless of their income tax-exempt status. ***[Nolledo, Bar Reviewer in Taxation, 10th Ed. (1990), p. 447; citing Greiner v. Lewellyn, 23 US 384.]*** The estate tax is an excise tax or a tax on the privilege to transfer property upon one's death. It is, however, based on the net estate of the decedent in accordance with the graduated rates provided by Section 77 of the National Internal Revenue Code.

The tax-exempt status of bonds, certificates of indebtedness issued by the President and the interests payable thereon refers to the tax on the property and not a tax on the privilege or right to transmit said property occasioned by death.

Deductions from Gross Estate:

In the case of a citizen-resident of the Philippines, like the decedent in this case, Section 79 of the National Internal Revenue Code enumerates the items deductible from the gross estate.

In the case at bar, the revenue examiner allowed as a deduction from the gross estate the funeral expense of P50,000.00 and the Commission to Trustee (PNB) in the amount of P18,335.93. Petitioner opposed and alleged that if the refund of P1,527,790.98 cannot be had then at the least the amount of P840,202.06 should be refunded to the heirs of the decedent after taking into consideration the deductible items enumerated in the petition for review.

We shall discuss each item of deduction in the order of preference as itemized by petitioner.

1. <u>Funeral expenses of P50,000.00</u>.

There is no dispute with respect to the funeral expenses of P50,000.00. In fact, respondent's examiner allowed this item as a deduction to the gross estate.

2. Notarial fee for the document of Extra-judicial Settlement <u>[Exh. I-2] of P60,753.00</u>.

Respondent maintains that only judicial expenses of the testamentary or intestate proceedings are allowed as a deduction to the gross estate. The amount of P60,753.00 is quite extraordinary for a mere notarial fee.

This Court adopts the view under American jurisprudence that expenses incurred in the extrajudicial settlement of the estate should be allowed as a deduction from the gross estate. "There is no requirement of formal administration. It is sufficient that the expense be a necessary contribution toward the settlement of the estate." ***[34 Am. Jur. 2d, p. 765; Nolledo, Bar Reviewer in Taxation, 10th Ed. (1990), p. 481.]***

Petitioner presented as evidence the Contract of Legal Services, dated March 28, 1988, signed by both counsel and petitioner for the notarization of the Extra-judicial Settlement Agreement between the heirs of the decedent. [Exh. I-2, p. 36, CTA record.] "It is sufficient for deductions that the expenses be actually and necessarily incurred. Payment is not a precondition but the amount of the expense must be ascertainable." ***[supra.]***

Considering the value of the gross estate of the decedent, We find the attorney's fee of P60,753.00 quite reasonable. This expense was incurred primarily to settle the estate of the decedent. Therefore, the notarial fee of P60,753.00 incurred for the Extra-judicial Settlement Agreement should be allowed as a deduction from the gross estate.

3. Publication cost of Extra-
judicial Settlement of P600.00.

The Court shall be prudent in allowing expenses incurred for the extra-judicial settlement of the intestate estate of the deceased. We shall proceed with caution. While it is true that the Notice of Extra-judicial Settlement Agreement was published in the Dumaguete Star Informer in three (3) consecutive issues on March 30, April 6 and 13, 1988 [Exh. I] We, however, regret to say that the official receipt showing the cost incurred for its publication was never presented in evidence by petitioner. Hence, this amount cannot be allowed as a deduction for failure of petitioner to present proof of payment.

4. Insurance premium on the Surety
required by PNB [Exhs. J and K]
in the amount of P59,314.40; and

5. Premium on Administratrix Bond
on Special Proceeding No. 2399
[Exh. L] in the amount of P10,000.00.

Item No. 4 refers to the amount of premium paid by the petitioner in order to post the required bond for the Extra-judicial Settlement Agreement. Item No. 5 refers to the fees incurred for the legal services of counsel who acted as a surety for the petitioner in the Special Proceedings filed in Court.

The Supreme Court has ruled that "expenses or premiums paid or incurred by an executor or administrator to procure a bond is not a proper charge against the estate." ***[Estate of the deceased Fruto Santos. Macario Sulit v. Fausta Santos et. al., 56 Phil. 626S; and In the matter of the testate estate of the late DA. Margarita David. Carlos Moran Sison v. Narcisa F. Teodoro, 100 Phil. 1055.]*** "Thus, it was there stated that the position of an executor or administrator is one of trust; that it is proper for the law to safeguard the estates of deceased persons by requiring the administrator to give a suitable bond, and that the ability to give this bond is in the nature of a qualification for the office." ***[supra.]***

Therefore, the P59,314.40 premium paid by PNB to Stronghold Insurance Company, Incorporated covered by Surety Bond No. 018217 [Exh. J] is not an allowable deduction to the gross estate of the decedent. In the same manner, the obligation of petitioner to pay the amount of P10,000.00, representing the fees of counsel acting as her surety in the Special Proceeding is unallowable as a deduction.

6. Notarial fee of Surety's
   Acknowledgement of the Bond
   in the amount of P1,000.00.

The notarial fee of P1,000.00 is an incidental expense for the procurement of the bond. The same cannot be allowed as a deduction from the gross estate. If the premiums on the bonds paid by the administrator is not a proper charge against the estate then with more reason the incidental and necessary expense covering notarial fees for the acknowledgement of the surety bond should not also be allowed as a deduction. This expense shall be borne by the administrator in her personal capacity.

7. Attorney's fees in Special
   Proceeding No. 1254 for
   Guardianship [Exh. N] in
   the amount of P50,000.00.

The attorney's fees of P50,000.00, which were already incurred but not yet paid, refers to the guardianship proceeding filed by PNB, as guardian over the ward Pedro Pajonar, docketed as Special Proceeding No. 1254 in the RTC (Branch XXXI) of Dumaguete City. PNB submitted to said court the final statement of accounting from September 1, 1987 to March 31, 1988, with no objections on the part of the U.S. Veterans Administration.

showing a cash balance and total value of the ward's estate, as follows: [pp.45-46, BIR record.]

Cash balance in estate	P 314,432.50
Time deposit	200,000.00
Money market	2,450,000.00
House & Lot	45,739.59
Toyota Tamaraw	27,500.00
Total	P 3,037,672.09

The guardianship proceeding had been terminated upon delivery of the residuary estate to the heirs entitled thereto. Thereafter, PNB was discharged of any further responsibility.

Attorney's fees in order to be deductible from the gross estate must be essential to the collection of assets, payment of debts or the distribution of the property to the persons entitled to it. The services for which the fees are charged must relate to the proper settlement of the estate. ***[34 Am. Jur. 2d 767.]*** In this case, the guardianship proceeding was necessary for the distribution of the property of the late Pedro Pajonar to his rightful heirs.

Guardians for incompetents or minors have no separate taxable entity apart from the ward; accordingly, the minor or incompetent is the taxpayer. Whether a payment by the guardian or committee is deductible depends on whether it is a business expense to the ward. ***[6 Mertens 357, see also Mary D. Moore Holifield, 7 BTA 1302.]***

PNB was appointed as guardian over the assets of the late Pedro Pajonar who, even at the time of his death, was incompetent by reason of insanity. The expenses incurred in the guardianship proceeding was but a necessary expense in the settlement of the decedent's estate. Therefore, the attorney's fee incurred in the guardianship proceedings amounting to P50,000.00 is a reasonable and necessary business expense deductible from the gross estate of the decedent.

8. Attorney's fees in Special Proceeding No. 2399 for Letters of Administration [Exh. O.] in the amount of P461,760.80.

Petitioner presented for marking Exhibit O which is the Contract of Legal Services signed by petitioner and her counsel on May 18, 1988. She, however, failed to offer this exhibit in her written formal offer of evidence. Thus, the Court excluded said exhibit as part of petitioner's evidence even though it forms part of the testimony of petitioner's witness. [CTA Resolution dated July 16, 1991, pp. 90-91, CTA record.]

Section 34 of Rule 132 of the Revised Rules of Court is clear on this matter. We quote:

> "**SEC. 34.** ***Offer of evidence.*** - The court shall consider no evidence which has not been formally offered. The purpose for which the evidence is offered must be specified."

No evidentiary worth can be attached to any evidence not formally offered in Court. ***[Veran v. Court of Appeals, 157 SCRA 438; People v. Villapana, 161 SCRA 72; People v. Carino, 165 SCRA 664.]*** For failure to offer Exhibit O the Court cannot consider the same as part of petitioner's evidence. Hence, the attorney's fee of P461,760.80 cannot be deducted from the gross estate of the decedent.

9. Filing Fees [Exhs. P, Q and R] of P6,374.88.

10. Publication of Order, June 1, 8 & 15, 1988 issues of the Dumaguete Informer [Exh. S] for P600.00.

11. Publication of Notice to Creditors Sept. 7, 14 & 21, 1988 issues of the Dumaguete Informer [Exh. T] for P600.00.

12. Certification fee for publication on the bulletin board of the Municipal Bldg. of Siaton [Exh. U] in the amount of P2.00.

13. Certification fee for publication in the Capitol [Exh. V] in the amount of P5.00.

14. Certification fee for publication of Notice to Creditors [Exh. W] in the amount of P5.00.

All the expenses above-mentioned from Item Nos. 9, 11 to 14 were incurred and paid in connection with the settlement of the estate. Therefore, these expenses should be allowed as a valid deduction. Petitioner presented and offered the official receipts corresponding to such payments except for Item No. 10 [Exh. S].

The Affidavit of the editor [Exh. S] merely stated that the Order of the court in Special Proceeding No. 2399 was published in the Dumaguete Star Informer for three (3) consecutive issues on June 1, 8 and 15, 1988. The cost of publication was not mentioned in said Affidavit. Petitioner did not present the official receipt pertaining to the payment of P600.00, as cost of publication. It would be worthy to point that the same newspaper had issued a receipt dated September 2, 1988 for the publication of the Notice to Creditors for three (3) consecutive issues on September 7, 14 and 21, 1988 [Exh. T] which this Court approved and allowed as a deductible expense from the estate. Thus, the mere affidavit of the editor is not sufficient to show proof of payment since it was never mentioned in said affidavit the sum paid for publication. Therefore, with respect to the above-listed items only Item No. 10 [Exh. S] should be disallowed as an expense for failure of petitioner to substantiate the same.

15. Attorney's fees for the Protest to the Assessment and Recovery of excess tax <u>[Exh. X] in the amount of P600,000.00</u>.

Again thru inadvertence petitioner failed to present and offer Exhibit X, the Contract for Legal Services of petitioner's counsel to institute and prosecute the present petition for review claiming for the refund of erroneously paid estate tax. Said document was never formally offered as evidence in the hearing and therefore cannot be considered as evidence for the petitioner. [see Sec. 34, Rule 132, Revised Rules of Court.] Any evidence which a party desires to submit to the consideration of the Court must be formally offered by him. ***[De Castro v. Court of Appeals, et. al., 75 Phil. 824.]*** Exhibit X not having been formally offered cannot, therefore, be considered by the Court it appearing that the same documentary exhibit has already been rejected in Our Resolution dated July 16, 1991. Thus, the attorney's fees of P600,000.00 cannot be deducted from the gross estate of the decedent.

To recapitulate, the Court made its own computation of the taxable net estate of the late Pedro P. Pajonar, as follows:

Estate of Pedro P. Pajonar
Lagtangon, Siaton, Negros Oriental
Died January 10, 1988

I. Real Properties			P 102,966.59
II. Personal Properties:			
a. Refrigerator	P	7,500.00	
b. Wall Clock, Esso Gasul, Tables and Chairs		3,090.00	
c. Beddings, Stereo Cassette, TV, Betamax		15,700.00	
d. Karaoke, Electric Iron, Fan, Transformer and Corner Set		7,400.00	
e. Toyota Tamaraw		27,500.00	61,190.00

Additional Personal Properties:

f. Time Deposit - PNB	P 200,000.00	
g. Stocks and Bonds - PNB	201,232.37	
h. Money Market	2,300,000.00	
i. Cash Deposit	114,101.83	2,815,334.20

GROSS ESTATE	P2,979,490.79

Less: Deductions:

a. Funeral expenses	P 50,000.00	
b. Commission to Trustee (PNB)	18,335.93	
c. Notarial Fee for the Extra-judicial Settlement	60,753.00	
d. Attorney's Fees in Special Proceeding No. 1254 for Guardianship	50,000.00	
e. Filing Fees in Special Proceeding No. 2399	6,374.88	
f. Publication of Notice to Creditors September 7, 14 and 21, 1988 issues of the Dumaguete Star Informer	600.00	
g. Certification fee for publication on the Bulletin Board of the Municipal Building of Siaton, Negros Oriental	2.00	
h. Certification fee for publication in the Capitol	5.00	
i. Certification fee for publication of Notice to Creditors	5.00	186,075.81

NET ESTATE	P2,793,414.98

Estate Tax Due		P1,277,762.39
Less: Estate Tax Paid:		
CB Confirmation Receipt Nos.		
B 14268064	P 2,557.00	
B 15517625	1,527,790.98	1,530,347.98

AMOUNT REFUNDABLE P 252,585.59

WHEREFORE, respondent Commissioner of Internal Revenue is hereby ordered to refund in favor of petitioner Josefina P. Pajonar, as Administratrix of the Estate of Pedro P. Pajonar, the amount of P 252,585.59, representing erroneously paid estate tax for the year 1988. No costs of suit.

SO ORDERED.

Quezon City, Metro Manila, May 6, 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 between the members of the Court of Tax Appeals in accordance with Section 13, Article VIII of the **Constitution**.

ERNESTO D. ACOSTA
Presiding Judge
Court of Tax Appeals