REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
MANILA

FILIPINAS INVESTMENT &
FINANCE CORPORATION,
Petitioner,

- versus - C.T.A. CASE NO. 1450

COMMISSIONER OF INTERNAL
REVENUE,
Respondent.

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R E S O L U T I O N

This is a motion to dismiss the petition for review on the ground that the same was filed beyond the 30-day period prescribed in Section 11 of Republic Act No. 1125.

In a letter dated April 18, 1961 (Exhs. 1, A, CTA rec. p. 62), respondent Commissioner of Internal Revenue, through the Director of Regional District No. 3, assessed against petitioner the sum of ₱5,007.00 as advance sales tax on an automobile allegedly purchased by it from a tax-exempt person. Believing itself not liable for the said assessment, petitioner contested the same in its letter dated May 15, 1961 (Exhs. 3, B, CTA rec. pp. 64-65). On June 12, 1961, BIR Regional Director Toledo followed up the assessment with a demand letter (Exhs. 2, C, CTA rec. p. 66), in reply to which petitioner called the attention of the former to the letter of its counsel dated May 15, 1961 requesting cancellation of the assessment (Exhs. D, 3-A, p. 68).

On August 17, 1962, respondent denied petitioner's letter of May 15, 1961 (Exhs. 4, E, pp. 71-72), with

10

a warning that:

> "x x x you urge your client, the Filipinas Investment Corporation, to pay the amount of ₱5,307.00 as sales tax and compromise penalty to the City Treasurer, Manila, or to this Office, Canonigo, Paco, Manila, within ten (10) days after receipt hereof in order that this case may be closed; otherwise, steps will be taken to effect collection thereof thru the summary remedies provided for by law."

On September 24, 1962, the records of the case was transmitted to the collection branch of the Bureau of Internal Revenue for collection by summary remedies (Exh. 5, CTA rec. p. 73). In his letter dated September 25, 1962, respondent demanded payment of the tax assessed within 10 days from receipt thereof (Exhs. 6, F-1, CTA rec. p. 74).

By a letter dated September 28, 1962, received by respondent on October 1, 1962, petitioner reiterated its request for the cancellation of the assessment
79 (Exhs. 8, F, CTA rec. p. 79). This last request of petitioner was denied by respondent in his letter dated July 22, 1963 (Exhs. 9, H, CTA rec. pp. 82-83) again urging the former:

> "x x x to pay its tax liability aforementioned within ten (10) days from your receipt hereof in order that this case may be closed, otherwise, we will be constrained, much to our regret, to enforce collection of the tax due from your client by means of the remedies provided for by law."

The petition for review in this case was filed on September 11, 1963.

We are asked to resolved whether or not the petition for review in this case was seasonably filed.

The resolution of this issue hinges upon a determination of which letter of respondent is appealable to this Court. Is it the letter dated August 17, 1962, or that dated July 22, 1963?

Petitioner contends that the appealable decision should be respondent's letter dated July 22, 1963. It is insisted that the failure of respondent to take the necessary remedies to collect the tax is a strong indication that his letter of August 17, 1962 was not considered by him as his final decision. On the other hand, respondent maintains that his letter dated August 17, 1962 was his final decision.

To our mind, the decision appealable to this Court is the letter of respondent dated August 17, 1962.

Paragraph (1) of Section 7 of Republic Act No. 1125 confers upon this Court exclusive appellate jurisdiction over decisions of the Commissioner of Internal Revenue in cases involving disputed assessments. Pursuant to Section 11 of the same law, a person adversely affected by a decision of the Commissioner of Internal Revenue may file an appeal in this Court within 30 days after receipt of such decision.

> "x x x Where a taxpayer questions an assessment and asks the Collector to reconsider or cancel the same because he (the taxpayer) believes he is not liable therefor, the assessment becomes a 'disputed assessment' that the Collector must decide, and the taxpayer can appeal to the Court of Tax Appeals only upon receipt of the decision of the Collector on the disputed assessment, x x.
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> "The period for appeal to the respondent court in this case must, therefore, be computed from the time petitioners received the decision of the respondent Collector of Internal Revenue on the disputed assessment, x x ."

104

(St. Stephen's Association vs. The Collector of Internal Revenue, G. R. No. L-11238, Aug. 21, 1958; Vol. 3, 1958, Philippine Tax Journal 573, 575)

Respondent issued the assessment in question on April 18, 1961. This assessment became a "disputed assessment" when petitioner asked for its cancellation in its letter dated May 15, 1961. Respondent rendered his decision on petitioner's request in his letter of August 17, 1962, the date of receipt of which by petitioner is not shown. This letter of respondent, being the decision on the "disputed assessment" is the decision appealable to this Court as contemplated by Sections 7 and 11 of Republic Act No. 1125. Its finality could be gleaned from the actuation of respondent when, immediately after making his letter dated August 17, 1962, he forwarded the records of the case to the collection branch (see Exh. 5, supra.), for no other purpose than to collect the tax by summary remedies. But before actually collecting the tax by summary methods, perhaps to save the taxpayer from the humiliating and painful experience that accompanies summary collection, respondent caused to be made a demand for payment upon petitioner in a letter dated September 25, 1962 to which petitioner replied and furnished respondent a copy of the letter of its counsel dated September 28, 1962.

Petitioner's letter, dated September 28, 1962, apparently received by respondent on October 1, 1962, makes reference to respondent's letter of August 17, 1962 and reiterates its request for the cancellation or withdrawal of the assessment. This letter was answered by respondent on July 22, 1963. Note that this letter of respondent dated July 22, 1963, which petitioner erroneously maintains to be the appealable decision, is a decision on petitioner's letter of September 28, 1962 which is a motion for reconsideration.

The period to appeal continued to run upon receipt of respondent's decision (dated July 22, 1963) on petitioner's motion for reconsideration (dated September 28, 1962) up to the date when the petition for review was filed.

All in all, petitioner consumed thirty-three days. From September 28, 1962, deemed the date of receipt of respondent's letter dated August 17, 1962, to October 1, 1962, three (3) days elapsed. From August 12, 1963, date of receipt of respondent's letter of July 22, 1963, to the filing of the petition for review on September 11, 1963, thirty (30) days passed. Clearly, the petition for review was filed three (3) days beyond the 30-day period prescribed in Section 11 of Republic Act No. 1125.

IN VIEW OF THE FOREGOING, the instant "Motion to Dismiss" is hereby GRANTED. The petition for review in this case is hereby dismissed for lack of jurisdiction.

SO ORDERED.

Manila, August 8, 1964.

MARIANO NABLE
Presiding Judge

ROMAN M. UMALI
Associate Judge

AUGUSTO M. LUCIANO
Associate Judge