REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

ILDEFONSO O. ELEGADO, as
Ancillary Administrator of
the Testate Estate of the
late Warren Taylor Graham,
Petitioner,

- versus -

C.T.A. CASE NO. 3374

4/25/84

COMMISSIONER OF INTERNAL
REVENUE,
Respondent.

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

D E C I S I O N

This refers to respondent's "Motion To Dismiss" dated April 12, 1982 and petitioner's "Motion For Leave To File Supplemental Petition" filed on May 11, 1982.

Respondent's motion to dismiss is anchored on the contention that the subject of petitioner's petition for review in this case, which is the letter-assessment dated July 3, 1980 requiring petitioner to pay an estate tax in the amount of ₱72,948.87, inclusive of penalties, has been cancelled by respondent in his letter of March 31, 1982 (i.e., during the pendency of this case), and thus the said motion has "become moot and academic".

The facts as may be gathered from the petition for review, the annexes thereof, as well as the respective written oppositions of the parties, reveal the following:

On March 14, 1976, Warren Taylor Graham, an American citizen and former resident of the Philippines, died in Oregon, U.S.A., leaving certain properties in the Philippines consisting of shares of stocks in some local corporations.

On August 17, 1978, the administrator of Graham's estate in the Philippines, petitioner Ildefonso Elegado, instituted Special Proceedings No. 8869 in the Court of First Instance of Rizal (Branch IV, Pasig, Metro Manila), for the probate of the will of the decedent.

On June 4, 1980, petitioner, in his capacity as such administrator, filed with the Bureau of Internal Revenue an estate tax return together with an inventory of the deceased's properties and a statement of account.

On the basis of said return, respondent Commissioner of Internal Revenue, in a letter dated July 3, 1980, assessed petitioner the sum of ₱72,948.87 as deficiency estate tax and penalties.

In a letter dated August 12, 1980, and filed with the office of the Commissioner of Internal Revenue on

August 13, 1980, petitioner protested the said assessment and prayed for the abatement of the deficiency estate tax of ₱72,948.87 assessed against him.

On August 24, 1981, respondent Commissioner filed a "Motion for Allowance of Claim and For an Order of Payment" (Annex "D" Petition, p. 21, CTA rec.) together with a "Proof of Claim" (Annex "D-1" Petition, pp. 23-26, CTA rec.) in Special Proceedings No. 8869 before the Court of First Instance of Rizal, copies of which motion and the proof of claim were received by petitioner's counsel on August 28, 1981, seeking to collect against the estate of the deceased an estate tax in the amount of ₱96,509.35 or a total of ₱105,409.95, inclusive of surcharge and interests for late payment, thus:

> COMES NOW the claimant Acting Commissioner of Internal Revenue, through the undersigned counsel, and to this Honorable Court respectfully prays that the claim of the Government of the Republic of the Philippines against the Estate of the deceased Warren Taylor Graham in the amount of ₱96,509.35 as estate tax as shown in the attached Proof of Claim forming part hereof and marked as Annex "A", be allowed and that an Order be issued requiring the Ancillary Administrator c/o Agrava, Velarde, Lucero and Puno Law Office, Merchants Bldg., Makati, Metro Manila, to pay to the Commissioner of Internal Revenue the amount of ₱105,409.95 as estate tax inclusive of 5% surcharge for late payment and interest from April 15, 1978 to October 15, 1978 plus interest at 14%
> to October 15, 1978 plus interest at 14%

> per annum from October 16, 1978 to July 31, 1980 and at 20% per annum from August 1, 1980 up to April 15, 1981, pursuant to Section 113(b)(1) and (c) of the 1977 Tax Code as amended by P.D. No. 1705.

The "Proof of Claim" aforesaid (Annex D-1, petition for review) alleges, among others, that:

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> 2. That upon investigation, it was ascertained that the Estate of the late Warren Taylor Graham is indebted to the Republic of the Philippines in the amount of ₱96,509.35 as estate tax inclusive of interests and delinquency penalties due on the transmission thereof, details of which are shown as follows:

Estate tax - - - - - - - - - - -	₱67,174.33
25% ad valorem penalty - - - -	16,793.58
14% p.a. interest on ₱67,174.33 from 12/14/76 to 4/14/78 - -	12,541.44
TOTAL AMOUNT DUE - - - - - - - -	₱96,509.35

> 3. That in a letter dated February 9, 1978 together with an assessment notice of even date, claimant assessed and demanded from the Estate of Warren Taylor Graham the payment of the above tax liability. A xerox copy of said demand letter together with an assessment notice is hereby attached and marked as Annexes "A" and "A-1" and made as integral parts hereof;
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> 4. That said tax liability was protested in a letter dated March 7, 1978 thru counsels, Bump, Young and Walker of 1930 Council St., Forest Grove, Oregon, 97116, U.S.A. A xerox copy of said protest letter is hereby attached and marked as Annex "B" and made as an integral part hereof;
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> 5. That after due consideration of the grounds of said protest, the same

was finally denied by the claimant in a letter dated July 7, 1978 which reiterated the demand for the payment of the above tax liability plus 5% surcharge and delinquency interest. A xerox copy of said denial letter is hereto attached and marked as Annex "C" and made as an integral part hereof;

6. That in a letter dated January 29, 1980, the Estate of Warren Taylor Graham thru the aforesaid foreign law firm informed claimant that they have paid said tax liability thru the Agrava, Velarde, Lucero and Puno, Philippine law firm of 313 Buendia Avenue Ext., Makati, Metro Manila, that initiated the instant ancillary proceedings; however, to date, herein claimant has not as yet received any payment for the satisfaction of the aforesaid tax liability. A xerox copy of said letter is hereto attached as Annex "D" and made as an integral part hereof;

7. That notwithstanding repeated demands the indebtedness mentioned in paragraph 2 hereof has not been satisfied in whole and in part and as against the claimant or the Republic of the Philippines, the debtor has neither set-off nor counterclaim of any kind whatsoever; that the said indebtedness constitutes a superior lien in favor of the Government of the Republic of the Philippines in accordance with Section 301 of the 1977 Tax Code, as amended;

8. That the aforesaid claim is not barred by the statute of limitations;

9. That the tax claim involved in this case has not been contested before the Court of Tax Appeals pursuant to the provisions of Section 11 of REpublic Act No. 1125 and, therefore, the same has already become final, executory and demandable (Republic vs. Juana B. Vda. de del Rosario, et al., G.R. No. L-10460, March 11, 1957, 57 O.G. [31] p. 5543; Republic vs. Antonio Albert, G.R. No. L-12996, Decision dated December 28, 1961, 3 SCRA 717; Republic vs. the Manila Port Service, G.R. No. L-18208, November 27, 1964, 12 SCRA

> 384; Republic vs. Lim Tian Tong Sons and Co., Inc., G.R. No. L-21731, March 21, 1966, 16 SCRA 584);
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> 10. That this Honorable Court in the exercise of its administrative control over the administrator of the estate, may direct the payment of the aforesaid tax upon showing that the tax has been assessed against the estate (Pineda vs. Court of First Instance of Tayabas, 52 Phil. 803-805; Melecio Domingo, etc. vs. Hon. Judge S.C. Moscoso, etc., et al., G.R. No. L-14674, January 30, 1960);
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> xxx xxx xxx

On September 15, 1981, treating respondent's "Motion for Allowance of Claim and for an Order to Pay Taxes" as a decision denying his protest of August 12, 1980, petitioner filed its petition for review in this Court.

On April 21, 1982, after service of summons to respondent and several extensions granted to him for the filing of his answer, respondent filed a motion to dismiss on the ground that "the assessment issued against the Estate of the late Warren Taylor Graham dated July 3, 1980 in the amount of ₱72,948.87 as estate tax, and subject of this appeal, has been cancelled in a letter dated March 31, 1982" and thus "the herein petition has become moot and academic." Said letter of March 31, 1982 which was attached to respondent's motion to dismiss as Annex "A" reads as follows:

March 31, 1982

Estate of WARREN T. GRAHAM c/o
Mr. ILDEFONSO O. ELEGADO
Ancillary Administration
Philex Building Cor. Brixton &
Fairlane Sts.
Pasig, Metro Manila

S i r :

This is with regard to the estate of the late WARREN TAYLOR GRAHAM, who died a resident of Oregon, U.S.A. on March 14, 1976. It appears that two (2) letters of demand were issued by this Bureau. One is for the amount of ₱96,509.35 based on the first return filed, and the other in the amount of ₱72,948.87, based on the second return filed.

It appears that the first assessment of ₱96,509.35 2as issued on February 9, 1978 on the basis of the estate tax return filed on September 16, 1976. The said assessment was, however, protested in a letter dated March 7, 1978 but was denied on July 7, 1978. Since no appeal was made within the regulatory period, the same has become final.

In view thereof, it is requested that you settle the aforesaid assessment of ₱96,509.35 within fifteen (15) days upon receipt hereof to the Receivable Accounts Division, this Bureau, BIR National Office Building, Diliman, Quezon City. The assessment for ₱72,949.57 dated July 3, 1980, referred to above is hereby cancelled.

Very truly yours,

RUBEN B. ANCHETA
Acting Commissioner

On May 11, 1982, petitioner filed a "Motion for Leave to File Supplemental Petition" in order, allegedly, to set forth "certain occurences and events which took place after the Main Petition was filed on September 15, 1981." The supplemental petition attached to said motion and sought to be admitted alleges, among others, that after his main petition was filed in this Court, petitioner received on April 13, 1982 the letter of respondent Commissioner of March 31, 1982 and that said letter can be treated as an order or decision denying the protest of August 13, 1980 (Annex "C" Petition) and same is appealable to this Court within a period of thirty days or up to May 13, 1982.

After hearing of respondent's "Motion to Dismiss" and petitioner's "Motion for Leave to File Supplemental Petition", respondent filed his opposition to petitioner's motion on July 9, 1982, and petitioner similarly filed, on July 27, 1982, his opposition to motion to dismiss and his reply to respondent's opposition, contending that the subject of his appeal is not only the assessment of July 3, 1980 for ₱72,948.87 but also the motion for allowance of claim seeking to collect against the estate an estate tax of ₱96,509.35 or the total of ₱105,409.95, inclusive of surcharges and interests, and thus his petition for review cannot be dismissed.

We find merit in respondent's motion to dismiss.

The facts indubitably show that the motion for allowance of claim and proof of claim (Annexes D and D-1, petition for review), filed by respondent with the Court of First Instance in Special Proccedings No. 8869 on August 24, 1981, solely refers to a previous assessment dated February 9, 1978, requiring the estate of the deceased to pay a deficiency estate tax of ₱96,509.35, inclusive of interest and surcharge, and which assessment has already become final and executory (par. 9, Proof of Claim, Annex D-1, petition). Said motion for allowance of claim does not at all make any reference, either expressly or impliedly, to the letter-assessment of July 3, 1980 which required the estate, through petitioner, to pay a deficiency estate tax of ₱72,948.87 based on the return filed by him with the Bureau of Internal Revenue on June 4, 1980. Consequently, such action (motion) of respondent, explicitly involving a different subject matter (assessment), cannot, by any logical conclusion or inference, be considered as a denial of petitioner's protest of August 12, 1980 against the assessment of July 3, 1980, and eventually as an appealable decision therefrom.

Needless to say, since there is no decision yet on the written protest or request for reconsideration of petitioner dated August 12, 1980, his petition for review to this Court questioning the legality of the assessment of July 3, 1980 for deficiency estate tax and penalty in the sum of ₱72,948.87, would still be premature and cannot therefore be taken cognizance by the Court for lack of jurisdiction. The law requires that for this Court to acquire jurisdiction over the appeal of the taxpayer, there must be a decision of the Commissioner of Internal Revenue on a disputed assessment or a decision on the protest against the assessment. (See Sec. 7(1), Rep. Act No. 1125; Comm. of Int. Rev. vs. Villa, G.R. No. L-23988, Jan. 2, 1968; 22 SCRA 307.)

In any event, it is clear that the subject matter of petitioner's appeal in this case, the assessment of July 3, 1980, which requires him, as the auxillary administrator of the estate of the deceased Warren Taylor Graham, to pay an estate tax of ₱72,948.87 inclusive of penalty, has been cancelled by the Commissioner of Internal Revenue in his letter dated March 31, 1982. Therefore, as correctly observed by respondent, with the cancellation of the assessment of July 3, 1980, petitioner's petition for review has become moot and academic.

Indeed, petitioner's pretension in its opposition and reply that its petition for review cannot be dismissed because the subject of appeal is not only the assessment of July 3, 1980 for ₱72,948.87 estate tax but also the motion for allowance of claim seeking to collect the amount of ₱96,509.35, is untenable. The petition for review, as carefully examined, does not specify nor indicate that the subject matters therein are the assessment of July 3, 1980 in the amount of ₱72,948.87 and the assessment of February 9, 1978 in sum of ₱96,509.35. What is apparent, as we intimated heretofore, is that the appeal refers only to the assessment of July 3, 1980. Furthermore, it is evident from the "Proof Of Claim", supra, that the assessment of February 9, 1978, subject matter of the motion for allowance of claim, has already become final, executory and unappealable, because after the letter-protest thereon dated March 7, 1978, filed by the American counsel of the estate of the deceased, was denied by respondent Commissioner of Internal Revenue in his letter dated July 7, 1978, and despite repeated demands for payment of the assessed estate tax and increments of ₱96,509.35, no payment has ever been made nor an appeal from said letter of denial has been instituted in this Court.

ACCORDINGLY, the petition for review of petitioner is hereby dismissed for lack of jurisdiction and cause of action, and petitioner's motion for leave to file supplemental pleading is denied for lack of merit and valid basis.

SO ORDERED.

Quezon City, Metro Manila, April 25, 1984.

ALEX Z. REYES
Associate Judge

WE CONCUR:

AMANTE FILLER
Presiding Judge

CONSTANTE C. ROAQUIN
Associate Judge