REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
MANILA

MANILA ELECTRIC COMPANY,
Petitioner,

- versus - C.T.A. CASE NO. 83

COLLECTOR OF INTERNAL REVENUE,
Respondent.

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RESOLUTION

This is in connection with the "Motion to Dismiss" filed by counsel for the respondent, dated March 5, 1955, praying that the Petition for Review filed by the petitioner on February 18, 1955 be dismissed on the ground that the petitioner failed to file a claim or request for the refund of the tax in question as required by section 306 of the National Internal Revenue Code.

In his opposition to the motion to dismiss, the petitioner contends that section 306 of the National Internal Revenue Code is no longer applicable it having been impliedly repealed by section 11 of the law (Republic Act No. 1125) creating this Court.

Section 306 of the National Internal Revenue Code requires that a claim for refund of the tax alleged to have been erroneously or illegally collected be filed with the Collector of Internal Revenue before any suit is commenced. True indeed, no such requirement is provided for under section 11 of Republic Act No. 1125 before any appeal from a decision or ruling of the Collector of Internal Revenue may be taken to this Court. Likewise, whereas section 306 makes it imperative the bringing of the action in court within two years from the payment of the

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tax, section 11 of Republic Act No. 1125, provides that an appeal from a ruling or decision of the Collector must be filed within thirty days after the receipt of such decision or ruling.

At first blush, it would seem that section 306 of the National Internal Revenue Code is in conflict with the provision of section 11 of Republic Act No. 1125. The conflict, however, is more apparent than real. These two provisions could easily be reconciled, which is the function of statutory construction to give effect to both enactments.

The Supreme Court, in the cases of Wee Poco vs. Posadas, 64 Phil. 640, and Bermejo vs. The Collector of Internal Revenue, G. R. No. L-3029, July 25, 1950, interpreted section 306 of the National Internal Revenue Code thus:

> "The law clearly stipulates that after paying the tax, the citizen must submit a claim for refund before resorting to the courts. The idea probably is, first, to afford the Collector an opportunity to correct the action of subordinate officers; and second, to notify the Government that such taxes have been questioned, and the notice should then be borne in mind in estimating the revenue available for expenditure. Previous objections to the tax may not take the place of that claim for refund, because there may be some reason to believe that, in paying, the taxpayer has finally come to realize the validity of the assessment. Anyway, strict compliance with the conditions imposed for the return of revenue collected is a doctrine consistently applied here and in the United States."

Mindful that Congress is presumed to have understood the language it used and to have acted with full knowledge of what it wanted to accomplish, it is fair and reasonable to say without doing violence to the context of either of the two enactments, that by section 306 the Collector of Internal Revenue shall be given first an opportunity to consider his mistake, if mistake has been committed, before he is sued. (See Kiener vs. David, G. R. No. L-5163, April 22, 1953.) However, should the Collector of Internal Revenue finally decide that the claim for refund is not meritorious and denies the same, the taxpayer is given thirty (30) days from receipt of said decision within which to file his appeal with the Court of Tax Appeals under section 11 of Republic Act No. 1125. On the other hand, having filed his claim and the Collector of Internal Revenue having had ample time to study it, the claimant may, indeed should, within the statutory period of two years proceed with his suit without waiting for the Collector's decision. We understand the filing of the claim with the Collector of Internal Revenue to be intended primarily as a notice or warning that unless the tax or penalty alleged to have been collected erroneously or illegally is refunded, court action will follow. Previous and timely notice is, in other cases and for diverse salutary reasons, made a prerequisite to the prosecution of contemplated proceedings without imposing on the party to whom the notice was sent any obligation to make any more. (See Kiener vs. David, supra).

It is insinuated that it would be superfluous and unnecessary to file a claim or request for refund with the Collector of Internal Revenue pursuant to section 306 of the Tax Code, as under Republic Act No. 1125 any decision of the Collector may be appealed to this Court for review of the matter treated therein. But the law prescribes, among others, that before an action can be maintained in court for the refund of internal revenue taxes the person bringing the action must have previously filed with the Collector of Internal Revenue a claim or request for the refund of the tax. Strict compliance of this condition precedent is necessary in order that the court will have jurisdiction to pass upon an action for recovery of internal revenue taxes. And the reason is obvious: as stated by the Supreme Court, the idea is to afford the Collector an opportunity to correct the action of subordinate officers and to notify the Government that such taxes have been questioned, and the notice should then be borne in mind in estimating the revenue available for expenditure. (Wee Poco vs. Posadas, supra, Bermejo vs. Collector, supra.)

Before the passage of Republic Act No. 1125, the remedy provided by section 306 that the taxpayer should pay the tax first before he can sue the Collector of Internal Revenue was exclusive, and no other remedy could be substituted for it. (Sarasola vs. Trinidad, 40 Phil. 257). With the approval of said Republic Act No. 1125, a new remedy was given to the taxpayer, in addition to that already provided for by section 306, in the sense that he can question the assessment of the Collector before paying the tax by appealing to the Court of Tax Appeals within thirty (30) days from receipt thereof. However, in case he should pay the tax first and later on bring an action for its refund, section 306 still applies and the taxpayer must comply with the requirements therein provided. Having filed his request for refund and the Collector of Internal Revenue having had ample time to study it, the taxpayer should, within the statutory period of two years proceed with his suit without waiting for the Collector's decision. However, should the Collector, within the statutory period of two years, deny the claim, the

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taxpayer is given thirty (30) days from receipt of the decision within which to file his appeal under section 11 of Republic Act No. 1125. In order to confer jurisdiction upon the court, it is necessary, however, that in all cases the suit must be brought within the statutory period of two years and the requirements provided for in section 306 must have been duly complied with.

No claim or request for refund of the tax in question having been filed with the respondent Collector of Internal Revenue, it follows that this Court lacks jurisdiction to hear the case.

WHEREFORE, the Petition for Review of the petitioner Manila Electric Company filed on February 18, 1955, must be, and the same is, hereby dismissed for lack of jurisdiction, with costs against the petitioner.

SO ORDERED.

Manila, March 30, 1955.

AUGUSTO M. LUCIANO
Associate Judge

MARIANO NABLE
Presiding Judge