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PHILIPPINE PAPER MILLS, INC.,
Petitioner,

- versus - March 31, 1967 C.T.A. CASE NO. 638

COMMISSIONER OF INTERNAL
REVENUE,
Respondent.

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# D E C I S I O N

This is an appeal from the decision of the Commissioner of Internal Revenue denying the claim of the Philippine Paper Mills, Inc. for the refund of the sum of ₱96,319.00 representing income tax on income earned during the period from December 7, 1956 to September 30, 1957 allegedly paid erroneously.

Petitioner is a domestic corporation engaged in the manufacture of, among others, chip board or cardboard from scrap paper, old newspapers, used paper boxes, rice straw and abaca waste. On December 7, 1950 or shortly after its articles of incorporation was registered in the Securities and Exchange Commission on May 11, 1950, it applied for tax exemption under Republic Act No. 35 as a new and necessary industry in respect to the manufacture of chip board or cardboard. The exemption was granted on May 19, 1951 for a period of four (4) years beginning December 7, 1950. It actually commenced operating its manufacturing business on May 15, 1951. But, by the provisions of Republic

Act No. 901, the exemption of petitioner from the payment of taxes was extended to "December 31, 1958 and thereafter to a diminishing exemption until December 7, 1960, x x x except the exemption from the income tax which will wholly terminate on December 7, 1956."

Prior and up to September 30, 1954, petitioner's annual accounting period was the calendar year. Thereafter, it adapted the fiscal year of October 1 to September 30.

On November 25, 1957 petitioner filed two income tax returns: one corresponding to the period from October 1, 1956 to December 6, 1956, and another for the period from December 7, 1956 to September 30, 1957. In the first return, it declared a taxable income of ₱77,384.78 on which no tax was paid by virtue of its tax exemption under Republic Act No. 901. In the second return, it declared a taxable income of ₱372,569.05 on which it paid a tax of ₱96,319.00.

In a letter dated February 4, 1959, petitioner claimed for the refund of the amount of ₱96,319.00 on the ground that it was exempt from income tax accruing before May 16, 1958, it having began to enjoy exemption from income tax only on May 15, 1952. Accordingly, counting the six-year period provided for in Section 1 of Republic Act No. 901 from May 15, 1952, it would be exempt from income tax accruing before May 16, 1958. This claim was denied by respondent. Hence, the instant appeal (see Stipulation of Facts, CTA rec. pp. 31-34).

The issues involved in this case are:

1. Whether or not petitioner has a cause of action against the Commissioner of Internal Revenue; and

2. Whether or not petitioner is exempt from the payment of income tax on income derived during the fiscal year ending September 30, 1957 from its tax exempt industry.

It is contended by respondent that petitioner has no cause of action against him inasmuch as the real and actual issue in this case relates to the grant of tax exemption by the Secretary of Finance who should be the real party in interest. This contention has no merit. The subject matter in this case is the refund of taxes allegedly collected by respondent erroneously. Therefore, the party to be sued should be, as petitioner has rightly done, the Commissioner of Internal Revenue.

In one case where the jurisdiction of this Court was challenged on the ground that the proceeding is in effect a review of the action of the Secretary of Finance in respect to the granting of the certificate of exemption, the Supreme Court ruled:

> "The question raised by Solicitor-General, in behalf of the Commissioner of Internal Revenue, that the proceeding here is in effect a review of the action of the Secretary of Finance in respect of the granting of the certificate of exemption and, therefore, beyond the jurisdiction of the Court of Tax Appeals, is of no substance, the primordial and immediate question involved being the refund of taxes allegedly collected illegally. x x x" (Commissioner of Internal Revenue vs. Philippine Corn Products, Inc., G.R. No. L-13701, May 31, 1960).

We come now to the issue whether or not petitioner is exempt from the payment of income tax on its income derived from October 1, 1956 to September 30, 1957. The resolution of this issue hinges on the application of Section 1 of Republic Act No. 35 and Section 1 of Republic Act No. 901, both quoted hereunder:

<u>Section 1, Republic Act No. 35</u>

> "SECTION 1. Any person, partnership, company, or corporation who or which shall engage in a new and necessary industry, shall <u>for a period of four years from the date of the organization of such industry</u>, be entitled to exemption from the payment of all internal revenue taxes directly payable by such person, partnership, company, or corporation in respect to the said industry." (Emphasis supplied.)

<u>Section 1, Republic Act No. 901</u>

> "SECTION 1. Any person, partnership, company or corporation who or which, subsequent to the approval of this Act, shall engage in a new and necessary industry shall be entitled to exemption until December thirty-one, nineteen hundred and fifty-eight from payment of all taxes directly payable by such person, partnership, company or corporation in respect to said industry x x x: Provided, however, <u>That a grantee of tax exemption, whether under Republic Act Numbered Thirty-five or this Act, shall be subject to the full income tax after it shall have enjoyed tax exemption for six years</u>: x x x" (Emphasis supplied.)

Section 1 of Republic Act No. 35 fixes the commencement of the tax exemption, while Section 1 of Republic Act No. 901 determines its expiration. But the exemption from the payment of income tax lapses after its enjoyment for six years.

Petitioner urges us to interpret "six years" as six full calendar or fiscal years, one calendar year being one indivisible year counted from January 1 to December 31 of the same year, and one fiscal year being one indivisible fiscal year counted from October 1 to September 30 of the next year (October 1 to September 30 is petitioner's fiscal year). And in determining the period during which it was exempt from the payment of income tax, petitioner advances three propositions, viz:

(1) The period of exemption should begin to run from January 1, 1952 and end on December 31, 1957. The period December 7, 1950 to May 15, 1951 is excluded inasmuch as during this time the industry was in the process of organization and petitioner, having realized no taxable income, enjoyed no exemption. Furthermore, the period from May 15 to December 31, 1951 is also excluded because it is less than a calendar year of 365 days.

(2) The exemption should commence from October 1, 1951 and expire on September 30, 1957. In 1954, petitioner changed its accounting period from calendar year to fiscal year, starting from October 1 and ending September 30. The period from December 7, 1950 to May 15, 1951 being the alleged period of organization and the period from May 15, 1951 to September 30, 1951 being less than one year of 365 days are excluded in counting

the six-year period of exemption, in pursuance of the "exclude the first and include the last" rule.

(3) The period of exemption should begin from the date petitioner actually commenced operation of its manufacturing business on May 15, 1951 and end on May 15, 1957. Prior to May 15, 1951 no income accrued in respect of petitioner's industry on which a tax exemption could have been enjoyed.

The three alternative propositions suggested by petitioner are without merit. Section 1 of Republic Act No. 35 specifically states that a grantee is entitled to exemption from the payment of all internal revenue taxes from the date of the organization of the industry. Therefore, petitioner was entitled to exemption from the date it organized its chip board industry. While there is no positive proof as to when its tax-exempt industry was organized, we have, however, petitioner's admission in its reply and supplemental memorandum that December 7, 1950 to May 15, 1951 was a period of organization. Incidentally, December 7, 1950 was the date of petitioner's letter to the Secretary of Finance applying for the tax exemption under Republic Act No. 35. With petitioner's admission, we have every reason to conclude that its chip board industry was organized on or about December 7, 1950. This conclusion is bolstered by the registration of its articles of incorporation in the Securities and Exchange Commission on May 11, 1950.

Moreover, from the very beginning it never questioned the action of the Secretary of Finance in fixing December 7, 1950 as the beginning of its tax exemption.

We do not agree with petitioner that the phrase "date of organization of such industry" found in Section 1 of Republic Act No. 35 refers to the date of actual operation of the industry. For "organization" means the act of organizing. To "organize" is to

> "x x x arrange or constitute in interdependent parts, each having a special function, act, office or relation with respect to the whole; to systematize; to get into working order; as, to organize an army." (Webster's New International Dictionary, Second Edition; Wellman vs. United States, 227 F 2nd 757, 765.)

> "x x x arrange individual elements interdependently, each individual having a special relationship with respect to the whole." (Weir vs. United States, CCA Ind., 92 F 2d 634, 638, 114 ALR 481, 488.)

"Operation" means more than just organization. Operation of an industry is an event which happens after the industry has been organized. It presupposes that the component parts of the industry have already been constituted.

We note that with respect to internal revenue taxes other than income tax, petitioner does not dispute that its exemption therefrom started on December 7, 1950. It, however, proposes a different date when the exemption from the payment of income tax commenced. To our mind, Republic Act No. 901 provides for uniform date when exemption from the payment of all taxes, including income tax, shall begin and terminate.

Section 1 of Republic Act No. 35 grants exemption from the payment of all internal revenue taxes directly payable by a new and necessary industry for a period of four years from the date such industry is organized. This provision was amended by Republic Act No. 901, Section 1 of which extended full exemption from all taxes, except income tax, up to December 31, 1958 and provided for a diminishing exemption during the following four years. The congressional intention was to give a grantee exemption of ten years, six years of full exemption and four years of diminishing exemption. The original bill (House Bill No. 3151), which later became Republic Act No. 901, did not provide for an exception with respect to exemption from the payment of income tax, but when the bill reached the Senate the proviso:

> "x x x Provided, however, That a grantee of tax exemption, whether under Republic Act numbered Thirty-five or this Act, shall be subject to the full income tax after it shall have enjoyed tax exemption for six years. xxx"

was inserted in Section 1. Presumably, the legislators deemed it taxwise to grant full exemption from the payment of all taxes, including income tax, only for six years, and to withhold the diminishing privilege with respect to income tax.

In the instant case, the exemption from the payment of all taxes, including income tax, commenced from the date petitioner's chip board industry was organized on December 7, 1950. The exemption from income tax expired six years from December 7, 1950, or on December 8, 1956.

But petitioner urges us to apply the "exclude the first and include the last" rule provided for in Section 13 of the Revised Administrative Code, Section 1 of Rule 28 of the Rules of Court and Article 13 of the New Civil Code. We agree that said rule should be applied. However, instead of excluding the first year and including the last year as suggested by petitioner, we can exclude only the first day, that is, December 7, 1950, and include the last day, i.e. December 7, 1956, inasmuch as the three provisions of law abovecited speak of "day" not "year".

Petitioner's exemption from the payment of income tax having expired on December 7, 1956, it is liable for income tax subsequent to said date. Hence, the denial by respondent of its claim for the refund of income tax in the sum of ₱96,319.00 corresponding to the period from December 7, 1956 to September 30, 1957 is sustained.

As regards the claim of respondent for exemplary damages in an amount not exceeding ₱500.00 on the ground that the appeal is frivolous, we find the same without merit. Clearly, the appeal is not completely devoid of merit on its face, neither was it interposed merely for delay.

IN VIEW OF THE FOREGOING CONSIDERATIONS, the decision of the Commissioner of Internal Revenue denying the claim for refund of the Philippine Paper Mills, Inc. in the amount of ₱96,319.00 is hereby affirmed. With costs against petitioner.

SO ORDERED.

Manila, March 31, 1962.

MARIANO NABLE
Presiding Judge

I CONCUR:

ROMAN M. UMALI
Associate Judge

Associate Judge AUGUSTO M. LUCIANO
did not take part.