REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

TAX SERVICE OF THE PHIL., INC.
Assignee and representative of
the ESTATE OF THE LATE GEN.
COURTNEY WHITNEY,
Petitioner,

- versus - C.T.A. CASE NO. 2326

THE COMMISSIONER OF INTERNAL
REVENUE,
Respondent.

X - - - - - - - - - - - - - - - X

D E C I S I O N

On November 4, 1969, the Estate of the late Gen. Courtney Whitney (hereinafter to be known as the Estate) filed with respondent a claim for refund of the sum of ₱7,293.47, representing excess estate tax. On July 7, 1971, respondent advised counsel for the Estate that the claim for refund had been approved, but final action had to be withheld because of an alleged outstanding liability of said Estate for deficiency income tax in the amount of ₱124,946.00. In the meantime, the claim of the Estate in the sum of ₱7,293.47 was assigned to herein petitioner, and upon failure of respondent to grant the refund, petitioner has filed the instant petition for review to compel respondent to make the refund.

In answer to the petition for review, respondent admits the right of the Estate to the refund of the amount in question, but alleges:

> "4. That this Honorable has no jurisdiction to entertain the instant petition for review there being nothing more left to be reviewed by this Honorable Court for the respondent has, as admitted by the petitioner, already resolved and approved the petitioner's claim for refund in the amount of ₱7,293.47;

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"5. That the filing by the petitioner of the instant petition for review is unwarranted for it is not adversely affected by the respondent's decision as required by Section 11 of Republic Act No. 1125. . .

"6. That the decision of the respondent in favor of the petitioner cannot as yet be implemented due to an outstanding tax liability of the late Gen. Courtney Whitney in the total amount of ₱124,946.00 as deficiency income tax for the year 1955;

"7. That the aforesaid deficiency income tax for 1955 was ascertained after the late Gen. Courtney Whitney and his wife, Evelyn J. Whitney, filed their income tax return for 1955 when the amounts of ₱10,000.00 and ₱166,933.58 considered by the taxpayer worthless shares of the Lyric Music House, Inc. and bad debts respectively, were disallowed as deductions;

"8. That the said deficiency income tax for 1955 is different and is in addition to the income tax allegedly paid by the spouses surnamed Whitneys mentioned in paragraph 6 subparagraph b, of the Petition for Review;

"9. That accordingly, respondent issued on November 17, 1956, a deficiency income tax assessment notice No. AR-414-56/55 in the sum of ₱124,946.00 and a corresponding demand letter dated November 10, 1956 which deficiency tax liability could not be collected in spite of diligent efforts exerted by the respondent because of the positive acts of the taxpayers and their representatives in the Philippines by leaving the Philippines without first settling their tax liabilities or by gross misrepresentation that said taxpayers left no property in the Philippines to answer to the said tax liability;

"10. That granting, without admitting, that the right to collect the aforesaid tax liability due from the estate of the late Gen. Courtney Whitney has prescribed, said incident is not due to the negligence or fault of the respondent but due to the following reasons:

(a) The taxpayer's representatives in the Philippines absconded all his properties or holdings in the Philippines thru misrepresentation;

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> (b) The respondent was never notified of the settlement proceddings involving the estate of late Gen. Courtney Whitney, thus depriving the respondent the opportunity to file a proof of claim in said proceedings, if any;
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> "11. That any disposition or distribution of the estate of the late Gen. Courtney Whitney located within the Philippine, is void 'ab initio' being in patent violation of Sections 103 and 104 of the Tax Code and Section 1, Rule 90 of the Rules of Court;
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> "12. That justice and equity demand that the government be allowed to recoup or set-off the aforesaid tax liability against whatever refund or tax credit the estate of the late Gen. Courtney Whitney has against the government; . . ." (Pp. 1-3, Answer of Respondent.)

The issue in regard to the jurisdiction of this Court raised by respondent is without merit. The refusal of respondent to make an actual refund, although admitting the right of the Estate to the refund, constitutes a sufficient ground for this appeal. The fact that respondent has not denied the right of the Estate to the refund does not affect the jurisdiction of this Court since respondent has refused to make the refund on the ground of a supposed pending tax liability of the Estate. In these circumstances, this Court is called upon to decide whether or not to compel respondent to refund the sum of ₱7,293.47 to herein petitioner notwithstanding the alleged outstanding tax liability of the Estate.

Section 309 of the National Internal Revenue Code authorizes the Commissioner of Internal Revenue to refund national internal revenue taxes erroneously or illegally collected or to allow a tax credit therefor in favor of the taxpayer. In this case, the Commissioner has allegedly authorized the application of the sum of ₱7,293.47 as partial payment of the alleged pending income tax liability of the Estate, by way of tax credit, in accordance with Section 309 of the Revenue Code. However, petitioner questions the authority of respondent to apply the sum of ₱7,293.47 to the alleged deficiency income tax due from the Estate on the ground that the right of the Government to assess or collect the said deficiency income tax has already prescribed.

Since no appeal has been filed with this Court involving the alleged deficiency income tax assessment against the Estate for the sum of ₱124,946.00, the said assessment cannot be collaterally attacked in this proceeding which involves merely the right of petitioner to the refund of ₱7,293.47. The proper remedy is for the Estate to contest the assessment in an appropriate proceeding pursuant to Sections 7 and 11 of Republic Act No. 1125, in which case it could secure the refund of the sum of ₱7,293.47 if the said assessment is ultimately declared illegal or erroneous.

IN VIEW OF THE FOREGOING CONSIDERATIONS, and it appearing that the sum of ₱7,293.47 has been applied by respondent in partial payment of the alleged deficiency income tax due from the Estate, by way of tax credit, the claim for refund prayed for is hereby denied. As already adverted to above, the remedy of petitioner or of the Estate for the recovery of said amount is to contest the legality of the alleged deficiency income tax assessment against the Estate in an appropriate proceeding.

SO ORDERED.

Quezon City, September 30, 1972.

ROMAN M. UMALI
Presiding Judge

WE CONCUR:

ESTANISLAO R. ALVAREZ
Associate Judge

RAMON L. AVANCEÑA
Associate Judge