REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
MANILA

ROBERTA FLORES VDA. DE CODIÑERA,
WENCESLAO CODIÑERA and PIO CODIÑERA,
the only heirs of RESTITUTO CODIÑERA,
Petitioners,

- versus - C.T.A. CASE NO. 119

HON. SILVERIO BLAQUERA, in his capacity
as Collector of Internal Revenue,
Respondent.

x- -x

D E C I S I O N

This is an action brought by the petitioners asking this Honorable Court to restrain the respondent Collector of Internal Revenue from collecting the amount of ₱2,681.28 assessed against the late Restituto Codiñera as deficiency specific tax and to lift the warrant of distraint and levy which the respondent issued on March 7, 1955, upon the real and personal properties of the deceased, Restituto Codiñera, now held by petitioners.

Except for the testimony of one witness the findings of facts are based on an agreed stipulation of facts presented by the parties, and which is substantially reproduced below:

" x x x x

(3) On December 22, 1947 at Guiwan, Samar, Restituto Codiñera, then living, purchased thirty-eight (38) boxes playing cards (poker) of 144 packs to a box belonging to the Philippine Government, specifically belonging to the Surplus Property Commission, Guiuan Base, per invoice No. 0-1144, paying 10% compensating tax therefore in the amount of ₱54.72;

(4) That the amount of ₱2,681.28, as deficiency specific tax, plus a penalty of ₱50.00, or a total of ₱2,731.28, were assessed and demanded by Bibiano L. Meer, the incumbent Collector of Internal Revenue, from Restituto Codiñera on August 7, 1948, pursuant to the applicable provisions of

the Internal Revenue Code. The said deficiency specific tax is computed as follows:

5,472 packs of playing cards at ₱0.50 per pack - - - - - -	₱2,736.00
Less: Tax paid under O. R. No. A-251477 dated January 6, 1948 - - - - - - - - -	54.72
Amount still due & collectible -	₱2,681.28

(5) On November 23, 1948, the Collector of Internal Revenue sent to the City Treasurer of Cebu, a warrant of distraint and levy against the properties of the late Restituto Codiñera, for Collection of ₱2,681.28, as deficiency specific tax on the 38 boxes of playing cards (poker) of 144 packs to a box, belonging to the Philippine Government, specifically belonging to the Surplus Property Commission, Guiuan Base, Guiuan, Samar;

(6) On January 27, 1949, the City Treasurer reported to the respondent, Collector of Internal Revenue, that the warrant of distraint and levy, dated November 26, 1948, for the collection of a deficiency tax of ₱2681.28 against the properties of the late Restituto Codiñera could not be effected in view of the levy on attachment in Civil Case No. 4862 of the Court of First Instance of Manila, entitled Heraclio Abastado vs. Montano Buaya and Restituto Codiñera;

(7) No third party claim or proof of debt has been filed by the respondent with the Court of First Instance of Manila in said Civil Case No. 4862;

(8) On the 7th day of March, 1955 at the City of Manila, the respondent acting Collector of Internal Revenue, issued a warrant of distraint and levy addressed to the City Treasurer of Cebu City commanding the latter to distrain the goods, chattels or effects, and other personal property of whatever character, and levy upon the real property and interest in or rights to real property of the late Restituta Codiñera, to satisfy the alleged deficiency specific tax on the amount of ₱2,681.28;

(9) The City Treasurer of Cebu on April 22, 1955, pursuant to the said warrant of distraint and levy issued by the respondent on March 7, 1955, issued a notice of levy which was received by the herein petitioners on April 25, 1955, a certified copy of which notice of levy is hereto attached;

x x x x"

The petitioners in the instant case, neither question the correctness of the amount nor the legality of the imposition of deficiency specific tax assessment made against them. However, petitioners contend that (1) the respondent's action of enforcing the collection of the tax in question has been barred by the statute of limitation more particularly under sections 331 and 332 of the National Internal Revenue Code, and (2) granting that the respondent Collector had a valid right to enforce the collection of taxes, the respondent had no right to levy on properties which have never been used in connection with the business of the delinquent taxpayer. If the first contention of the petitioners is sustained, that the right of the government to collect the deficiency specific tax has already been barred by the Statute of Limitation, then it becomes unnecessary for us to decide the 2nd contention raised by the petitioners. On the other hand, respondent maintains that the period of prescription has not expired in view of the fact that the same was suspended under section 333 of the National Internal Revenue Code. The main issue to be answered, therefore, is: HAS THE RIGHT OF THE GOVERNMENT TO COLLECT THE DEFICIENCY SPECIFIC TAX IN THE PRESENT CASE BEEN BARRED BY THE STATUTE OF LIMITATION?

That there is a clear and manifest intention of the law-making body to put a time limit beyond which the government may not sue to recover unpaid taxes is clearly indicated from sections 331 and 332 of the National Internal Revenue Code which is quoted hereunder:

> "Sec. 331. Period of limitation upon assessment and collection. Except as provided in the succeeding section, internal revenue taxes shall be assessed within five years after the return is filed, and no proceeding in court without assessment for the collection of such taxes shall be begun

> after the expiration of such period. For the purposes of this section a return filed before the last day prescribed by law for the filing thereof shall be considered as filed on such last day: Provided, that this limitation shall not apply to cases already investigated prior to the approval of this code."
>
> "Sec. 332. Exceptions as to period of limitation of assessment and collection of taxes: x x x x x x
>
> (c) Where the assessment of any internal revenue tax has been made within the period of limitation above prescribed such tax may be collected by distraint or levy or by a proceeding in court, but only if begun (1) within five years after the assessment of the tax, or (2) x x x x." (underscoring supplied)

The above quoted provisions limit the right of the state to collect the tax herein by the administrative remedies of distraint or levy or by judicial action, "only if begun within five years after the assessment of the tax."

In the case at bar, respondent Collector made an assessment and demand for payment from the then living Restituto Codiñera on August 7, 1948. Only a feeble attempt to collect payment was made on November 23, 1948, when the respondent Collector sent to the Treasurer of Cebu City a warrant of distraint and levy against the properties of Codiñera. However, the distraint and levy could not be effected as the properties of Codiñera were then under attachment in Civil Case No. 4862 of the Court of First Instance of Manila. We note that the respondent Collector took no positive step whatsoever to protect the claims of the government even after the Treasurer of Cebu City notified the former that the warrant of distraint and levy could not be effected. Respondent could have made his intervention or filed his proof of debt with the Court of First Instance of Manila, in Civil Case No. 4862 in order to charge said properties with a tax lien, but respondent did no such thing. It appears that the Collector chose to sleep on his rights.

It was only on April 25, 1955 that respondent thought of serving on petitioner the second order of warrant of distraint and levy. From August 7, 1948 (date of assessment and demand) to April 25, 1955 (date when the second warrant of distraint and levy were received by petitioners) more than six years and six months have elapsed. We agree with petitioners that this period of time was well beyond the five-year limitation prescribed by sections 331 and 332 of our Tax Code, within which the respondent Collector must enforce the payment of the deficiency specific tax assessment.

The respondent Collector admits that standing by itself, the collection of the tax is barred by the provisions of sections 331 and 332, National Internal Revenue Code. However, the respondent cites as defense the exceptions contained in section 333 of the Tax Code that the right of the government to collect the deficiency tax due from the petitioners could still be enforced because of an alleged suspension of the running of the period of prescription. To determine the validity of respondent's view we quote the rule below:

> "Section 333. Suspension of running of statute. The running of the statute of limitation provided in section 331 or 332 on the making of assessment and the beginning of distraint and levy or a proceeding in court for collection, in respect of any deficiency shall be suspended for the period during which the Collector of Internal Revenue is prohibited from the making of assessment, or beginning distraint or levy or a proceeding in court, and for sixty days thereafter."

According to this provision, in order that the period prescribed in section 332 to collect the tax covered by an assessment shall be suspended, the Collector of Internal Revenue must be prohibited from exercising two alternatives, namely, (1) the beginning of distraint or levy, or (2) the beginning of a proceeding in court for the collection thereof.

Respondent argues that when the properties subject matter of the warrant of distraint and levy issued on November 23, 1948, were about to be levied upon, the said properties were already in custodia legis because they were under a prior attachment in Civil Case No. 4862 of the Court of First Instance of Manila. Under such circumstance, it is contended that it was a situation contemplated by section 333 of our Tax Code, wherein the Collector of Internal Revenue was "legally prohibited from the making of assessment or the beginning of distraint or levy or a proceeding in court for collection." According to the respondent therefor, the period of limitation was suspended and did not begin to run again until sixty days after the said attachment was dissolved, or to be exact on December 3, 1951. So that as he reasons, respondent has within five years thereafter or December 3, 1956, within which to bring an action for the collection of the deficiency specific tax. There is no issue that the respondent was prohibited from making the assessment, hence the deficiency specific tax assessment of August 8, 1948 was properly made. The only issue therefore is, was the respondent prohibited from "beginning the distraint or levy or a proceeding in court for the collection" of the tax?"

In order that the running of the statute of limitation shall be suspended in so far as it affects a party (respondent Collector) he must be legally prohibited to exercise the remedy or remedies against the other (the taxpayer).

"It is well settled that the running of the statute of limitation against a course of action is interrupted by the commencement of a suit in that course of action, and it is frequently held, sometimes by virtue of express statutory provisions, that during the period of the restraint incident to the legal proceedings which are of such character that the law forbids the parties to exercise a legal remedy against another, the running of the statute of limitation is postponed, or, if it has commenced to run, is suspended. The broad principle that the time during which a person is prevented from exercising his legal remedy by some paramount authority is not to be counted against him in determining whether his right is barred by the statute of limitation is applicable." (34 Am. Jur. sec. 237 p. 194)

"Where one is prevented from suing by some paramount authority, limitations are tolled and the time during which he is thus precluded from exercising his legal remedy is not to be counted against him in determining whether limitations have barred his rights". (54 C.J.S. 285)

"However, the contention that one was prevented from suing by some paramount authority so as to toll or interrupt the running of limitations will not be sustained where the courts remained opened to him and under such circumstances he may not successfully claim that limitations were tolled." (Verslius v. Town of Haskell, C.C. . OKL. 15 Fed. 2d 935 as cited in 54 C.J.S. 285)

From the above-cited authorities, we can readily see that the suspension of the running of the statute of limitations due to a legal prohibition on the part of one of the parties to exercise a legal remedy against another must have the following concurring qualifications:- first, that there must be some paramount authority precluding him from the exercise of his legal remedy; and second, that no other remedy is opened for him to pursue his course of action legally.

Under section 316 of the National Internal Revenue Code, the Collector of Internal Revenue has two civil remedies for the collection of internal revenue taxes, namely (1) by the <u>administrative remedy</u> of <u>distraint</u> of goods, chattels or other personal property, and by levy upon real property; and (2) by judicial or court action. It is further provided that "either of these remedies or both simultaneously may be pursued in the discretion of the authorities charged with the collection" of the unpaid taxes. Since the Collector is empowered to exercise these remedies jointly or in the alternative, in order that he shall be deemed to have been prohibited from exercising the same, so as to toll the statute of limitations, it is necessary to show that he is barred from exercising ALL remedies available to him, and not only one which he chooses to avail of.

> "In order that the pendency of other proceedings shall have the effect of tolling the statute of limitations on a cause of action, however, the proceedings must be such as to prevent enforcement of remedy by action. But where one has a choice of remedies, the fact that he selects one remedy does not toll limitations as against an action based on another remedy." (54 C.J.S. sec. 279-280, underlining supplied)

In the case at bar, we find that the respondent was not prohibited to exercise all the remedies to enforce collection of the tax so as to suspend the statute of limitation. While it is true that an order of attachment places the property attached in custodia legis, yet respondent loses sight of the fact that under Rule 59, of the Rules of Court, the purpose of putting said properties in the custody of the law is "in order that the defendant may not dispose of the properties so attached to the prejudice of his creditors." (Calo et al., v. Roladan, 76 Phil. 445). It is not the purpose of attachment to preclude preferred creditors from exercising their legal remedies in order to charge said attached properties with their preferred liens. Besides, in the case at bar, the attachment, issued in said Civil Case No. 4862, Court of First Instance of Manila, was merely a preliminary attachment, a mesne process, liable to be dissolved at any time and the judgment upon which may or may not affect the property seized. In this connection, it is well to note that the tax lien is superior to all other charges on property and in fact, respondent himself cited section 315 of the National Internal Revenue Code to bolster his view. Moreover, our laws relative to preference of credits give priority to the satisfaction of a tax liability over the payment of other credits (see Arts. 2241 and 2242, Civil Code of the Philippines). The tax, being a preferred claim, we believe that there was no prohibition upon the respondent, then, from enforcing the collection of the unpaid taxes by establishing such preferential right.

However, granting arguendo that the attachment in Civil Case No. 4862 of the Manila, Court of First Instance was of "paramount authority" as to preclude respondent from exercising the administrative remedy, by a distraint and levy upon the petitioners' properties to enforce the collection of the unpaid taxes, yet that was not the only remedy open to him. The law (sections 316 and 333, National Internal Revenue Code) clearly gives the respondent a choice of remedies either to "begin distraint or levy" or a "proceeding in court for the collection of the unpaid taxes". Hence, although as respondent argues that the attachment prevented him from carrying into effect the warrant of distraint and levy, yet he was not precluded from beginning a proceeding in court for the collection of the unpaid taxes from the petitioners.

In conclusion, we find and so hold, that the respondent could not claim the benefit of the suspension of the running of the statute of limitations under section 333, National Internal

Revenue Code, as the circumstances did not meet the test of paramount legal authority which precluded a party from exercising both his administrative and/or judicial remedies. We further find that the Collector of Internal Revenue has no longer any legal basis in collecting the unpaid specific taxes, the same having been barred by the statute of limitations, prescribed in sections 331 and 332 of the National Internal Revenue Code.

FOR ALL THE FOREGOING, we are of the opinion and so hold that the government is barred by the statute of limitations from collecting from petitioners the alleged deficiency specific tax in the amount of ₱2,681.28, and pursuant to section 14, Republic Act 1125, let the same be considered that there is no deficiency and the corresponding tax assessment revoked. Furthermore, the warrant of distraint and levy of March 7, 1955, issued by the respondent Collector upon the properties of the petitioners, should be as it is hereby ordered lifted and withdrawn.

SO ORDERED.

Manila, Philippines, August 20, 1955.

MARIANO NABLE
Presiding Judge

I concur:

AUGUSTO M. LUCIANO
Associate Judge

ROMAN M. UMALI
Associate Judge
Did not take part in the
proceedings.

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