REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
MANILA

HERMENEGILDO ROSALES, ALFREDO M. SANTOS, MAXIMINO SALANGUIT, MANUEL SOLANO, ERNESTO MEDRANO, RODOLFO SANTOS, PABLO SANTOS, ANTONIO PERTIERRA, WENCESLAO PANGAN, JOSE PIMENTAL, GODOFREDO F. TRAJANO, JOSE CARANDANG, POLICARPO MEDRANO, CRISOGONO ERMITA, VICENTE DE LAS ALAS, VICENTE ORDINARIO, NICANOR TOLENTINO and BRAULA ORDINARIO,
Petitioners,

- versus -

C.T.A. CASE NO. 614

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

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

D E C I S I O N

Petitioners seek to recover the total amount of ₱500.00 assessed against and paid by them as deficiency occupation taxes for the tax year 1956. They also ask that respondent be ordered to pay them the sum of ₱200.00 as expenses of litigation and attorney's fees.

The uncontroverted facts appear in the stipulation of facts and pleadings submitted by the parties. Petitioners are professionals employed as mechanical engineers, civil engineers, physicians and registered nurses in the Central Azucarera de Don Pedro, Nasugbu, Batangas. On January 15, 1957, respondent, thru the Municipal Treasurer of Nasugbu, Batangas, collected from petitioners Hermenegildo Rosales, Alfredo M. Santos, Maximino Salanguit, Manuel Solano, Ernesto Medrano, Rodolfo Santos, Pablo Santos, Antonio Pertierra, Wenceslao Pangan, Jose Pimentel, Godofredo F. Trajano, Jose Carandang, Policarpo Medrano, Crisogono Ermita, Vicente de las Alas and Vicente Ordinario, who are either engineers, lawyers, or physicians, the respective sums of ₱75.00 each, as occupation tax allegedly due in 1957, and ₱25.00 each, as deficiency occupation tax allegedly due in 1956; and from petitioners Nicanor Tolentino and Braulia Ordinario, who are registered nurses, the respective sums of ₱50.00 each, as occupation tax allegedly due in 1957, and ₱25.00 each, as deficiency occupation tax for 1956. By virtue of Republic Act No. 1856 (amending Sec. 182 (B) of the Tax Code), which provides "x x x that any amount collected in excess of the rates in effect prior to January one, nineteen hundred and fifty-seven, shall be refunded or credited to the taxpayer concerned subject to the provisions of section three hundred and nine of this Code", petitioners, on November 7, 1957, filed with respondent claims for refund of the deficiency occupation taxes collected from and paid by them for the calendar year 1956. Without waiting for respondent's action on their claims for refund, petitioners, on January 9, 1959, collectively filed the instant petition for refund in pursuance of Section 306 of the Tax Code. However, in the stipulation of facts, respondent agreed to refund the full amount claimed by each petitioner, except Nicanor Tolentino and Braulia Ordinario, to whom he agreed to refund ₱26.00 each.

Inasmuch as respondent agreed to refund to petitioners Hermenegildo Rosales, Alfredo Santos, Maximino Salanguit, Manuel Solano, Ernesto Medrano, Rodolfo Santos, Pablo Santos, Antonio Pertierra, Wenceslao Pañgan, Jose Pimentel, Godofredo F. Trajano, Jose Carandang, Policarpo Medrano, Crisogono Ermita, Vicente de las Alas and Vicente Ordinario, the full amount individually claimed by each, and to petitioners Nicanor Tolentino and Braulia Ordinario only ₱26.00 each, the remaining issues for our consideration are as follows:

> 1. Whether or not registered nurses were liable for the payment of occupation tax in the amount of ₱24.00 during the taxable year 1956;
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> 2. Whether or not petitioners are entitled to an award of actual expenses of litigation and attorney's fees.

The law involved in the resolution of the first issue is found in Sections 201, as amended by Republic Act Nos. 42 (which took effect on October 1, 1946) and 438 (which took effect on June 7, 1950) and 182 (B) [formerly Section 201, as amended], which is an insertion of Republic Act No. 1612 to Section 182, (which took effect on August 24, 1956) and which was later amended by Republic Act No. 1856 (which took effect on June 22, 1957), all of the Tax Code, the pertinent provisions of which read as follows:

> "SEC. 201. Amount of privilege tax on occupation. - Privilege taxes on occupation shall be collected as follows, the amount stated being the sum due for the whole year which may be paid annually or semi-annually:
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> (a) Lawyers, medical practitioners, land surveyors, architects, certified public accountants, civil, electrical chemical, mechanical or mining engineers, insurance agents and sub-agents, veterinarians, dental surgeons, opticians, professional appraisers or connoisseurs of tobacco and other domestic or foreign products, licensed ship masters, and marine chief engineers, fifty pesos. (As amended by Republic Act No. 438.)
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> x x x x x
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> (b) Chief, mates, marine, second engineers, pharmacists, chiropodists, tattooers, and masseurs, twenty-four pesos. (As amended by Sec. 4, Republic Act No. 42.)"

"SEC. 182. Fixed taxes - x x x

(b) On occupation. - Taxes on occupation shall be collected as follows, the amount stated being the sum due for the whole year:

(1) Lawyers, medical practitioners, architects, interior decorators, certified public accountants, civil, electrical, chemical, mechanical or mining engineers, insurance agents and subagents, veterinarians, dental surgeons, opticians, commercial aviators, professional appraisers or connoisseurs, of tobacco and other domestic or foreign products, licensed ship masters and marine chief engineers, seventy-five pesos.

x x x x x

(2) Land surveyors, chief mates, marine second engineers, pharmacists, registered nurses, chiropodists, tattooers, masseurs, peolotaris, jockeys, professional actors or actresses, stage performers and hostesses, fifty pesos." (As amended by Sec. 4, Republic Act No. 1612.) (Underscoring supplied.)

"SEC. 182. Fixed taxes - x x x

(B) On occupation - Taxes on occupation shall be collected as follows, effective January one, nineteen hundred and fifty-seven, the amount stated being the sum due for the whole year:

(1) Lawyers, medical practitioners, architects, interior decorators, certified public accountants, civil, electrical, chemical, mechanical or mining engineers, insurance agents and subagents, veterinarians, dental surgeons, opticians, commercial aviators, professional appraisers or connoisseurs of tobacco and other domestic or foreign products, licensed ship masters and marine chief engineers, seventy-five pesos.

x x x x x

(2) Land surveyors, chief mates, marine, second engineers, pharmacists, registered nurses, chiropodists, tattooers, masseurs, pelotaris, jockeys, professional actors or actresses, stage performers and hostesses, fifty pesos.

> x x x: <u>Provided, further, That any amount collected in excess of the rates in effect prior to January one, nineteen hundred and fifty-seven shall be refunded or credited to the taxpayer concerned subject to the provisions of section three hundred and nine of this Code</u>. x x x" (As amended by Sec. 1, Republic Act No. 1856.) (Italics supplied.)

Petitioners contend that registered nurses were not subject to occupation tax in 1956, for the reason that the profession of registered nurse is not among those enumerated and made subject to occupation tax under Section 201 of the Tax Code. Accordingly, it is only under Republic Act No. 1612 and 1856, which repealed said Section 201, that registered nurses were made liable for the payment of occupation tax. Respondent, however, maintains that Republic Act No. 1856, merely modified Republic Act No. 1612 by making the increases in the rates of tax effective on January 1, 1957 instead of August 24, 1956. It is urged that this modification did not postpone the taxability of occupations newly included (registered nursing being one) among the taxable occupations by Republic Act No. 1612. Consequently, it is pretended that registered nurses were liable for the occupation tax for the year 1956 in the amount of ₱24.00.

It must be noted that before its repeal by Republic Act No. 1612, which took effect on August 24, 1956, Section 201 of the Tax Code did not provide for the imposition of privilege taxes on registered nurses. Republic Act No. 1612 added the occupation of registered nurses to the taxable occupations, and imposed a privilege tax thereon in the amount of ₱50.00. The latter statute did not expressly enjoin its retrospective operation. However, Republic Act No. 1856 modified Republic Act No. 1612 by providing that the rates of taxes indicated therein, which are the same as those imposed by Republic Act No. 1856, were effective January 1, 1957, and by authorizing the refund or credit to the taxpayer of any amount collected in excess of the rates in effect prior to January 1, 1957. Obviously, there was no law imposing privilege taxes on registered nurses in the year 1956. To uphold that, by virtue of Republic Act Nos. 1612 and 1856, registered nurses were liable to the payment of privilege taxes in 1956 would be applying these congressional acts retroactively. Nowhere in the said statutes can we find that the taxes therein provided were imposable in 1956.

It is well settled in this jurisdiction that "laws have no retroactive effect unless the contrary is provided therein" (Filipinas Compañia de Seguros v. Collector, C.T.A. Case No. 447, Nov. 22, 1958, citing Art. 4, Civil Code of the Phil.; Manila Trading & Supply Co. vs. Santos & Saez, 66 Phil. 237; La Previsora Filipina vs. Ledda, 66 Phil. 573), and "a statute should be considered as prospective in its operation whether it enacts, amends or repeals an (excise or privilege) tax, unless the language of the statute demands or expresses that it shall have a retroactive effect (Lorenzo v. Posadas, 64 Phil. 353 at 366-367)." /Filipinas Compañia de Seguros v. Collector, ibid./

There being no legal basis for the imposition of occupation taxes on registered nurses in the year 1956, we find and so hold that petitioners Nicanor Tolentino and Braulia

Ordinario were not liable for occupation tax during the said year.

We will now determine the second issue of whether or not petitioners are entitled to an award of actual expenses of litigation and attorney's fees. Petitioners also contend that, by virtue of Article 2208 of the Civil Code of the Philippines, they are entitled to recover from respondent actual expenses and reasonable attorney's fees. This contention is based upon the charge that respondent failed to act upon their claims for refund within a reasonable time, thus compelling them to litigate and incur expenses. On the other hand, respondent urges upon us that his inability to act on the claims for refund was due to petitioners' failure to submit the original receipts of their payment of occupation tax for 1956; that attorney's fees cannot be recovered against the government unless there is a constitutional or statutory provision providing for such award; that there was no clear and convincing proof of the extent of the actual expenses of litigation and attorney's fees incurred by petitioners; and granting arguendo that respondent acted arbitrarily in refusing to credit or refund the amounts claimed, the government is not liable for such refund.

Mere omission of respondent to act on petitioners' claims for refund within a reasonable time from receipt by the former of said claims does not entitle petitioners to an award of actual expenses of litigation and attorney's fees. While Section 306 of the Tax Code authorizes a taxpayer to claim for the refund of any internal revenue tax alleged to have been erroneously or illegally collected, "Nowhere and in no wise does the law (Section 306, Revenue Code) imply that the Collector of Internal Revenue must act upon the claim x x x." (P. J. Kiener Co., Ltd. vs. David, G. R. No. L-5163, April 22, 1953, 49 O. G. No. 5, p. 1852.)

Moreover, even conceding arguendo that respondent acted arbitrarily in refusing to act on the claims for refund within a reasonable time, the government is not liable for the neglect or omissions of its officers or agents in the performance of their duties (Lung Chea Kung Kee & Co. v. Wright, 46 Phil. 44).

Finally, even conceding further that the government is liable for actual expenses of litigation and attorney's fees, petitioners failed to prove the alleged expenses and fees. These expenses and fees are in the nature of damages, and "one is entitled to an adequate compensation only for such pecuniary loss suffered by him as he has proved." (See Art. 2199, Civil Code of the Philippines.)

FOR THE FOREGOING CONSIDERATIONS, the respondent is hereby ordered to refund to each of the petitioners Hermenegildo Rosales, Alfredo M. Santos, Maximino Salanguit, Manuel Solano, Ernesto Medrano, Rodolfo Santos, Pablo Santos, Antonio Pertierra, Wenceslao Pañgan, Jose Pimentel, Godofredo F. Trajano, Jose Carandang, Policarpo Medrano, Crisogono Ermita, Vicente de las Alas, Vicente Ordinario, the sum of ₱25.00, and to each of the petitioners Nicanor Tolentino and Braulia Ordinario the sum of ₱50.00, illegally collected from them as deficiency occupation taxes for the taxable year 1956. Without special pronouncement as to costs.

SO ORDERED.

Manila, March 16, 1960.

MARIANO NABLE
Presiding Judge

I concur:

AUGUSTO M. LUCIANO
Associate Judge

I abstain:

ROMAN M. UMALI
Associate Judge