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REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
MANILA

June 13, 1960

MARIANO L. DE LA ROSA,
Petitioner,

- versus -

C.T.A. CASE NO. 608

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

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

D E C I S I O N

The respondent assessed against the petitioner the sum of ₱300.00 as real estate dealer's fixed tax for the years 1954 and 1955 at the rate of ₱150.00 per annum. In addition, petitioner was required to pay the sum of ₱10.00 as compromise for "late payment" of the tax.

In compliance with the demand of respondent for the payment of the tax, petitioner applied with the Bureau of the Treasury, with the conformity of respondent, for the issuance of certificates of indebtedness in the amount of ₱300.00 against his backpay rights under Republic Act No. 304 to be applied in payment of the tax. (See Exhs. D and E, pp. 39-40, CTA records.) The compromise of ₱10.00 was paid in cash under Official Receipt No. 1129985, dated February 16, 1955. (Exh. 7, p. 38, CTA records.) Contending that he is not liable for the tax, petitioner requested in his letter of January 26, 1956, "for the cancellation and return to me of the two (2) applications for the issuance of certificate of indebtedness (Back Pay Form No. 3) dated February 26, 1954 and February 16, 1955 in the total amount of ₱300.00, covering the payment, under protest, of my Real Estate Dealer's Fixed Taxes for the years 1954 and 1955, and the refund of Ten (₱10.00) Pesos paid by me in cash under O. R. No. 1129985 dated February 16, 1955 as compromise for late payment thereof, photostat copy of which applications and official receipt are herewith attached for ready reference." (Exh. F, p. 4, B.I.R. records.) This was denied in the decision of respondent dated October 24, 1958. Not satisfied with the decision of respondent, petitioner has appealed to this Court.

There are two items involved in this case, i.e., the sum of ₱300.00 as real estate dealer's fixed tax and the sum of ₱10.00 as compromise. Since the legal questions involved in these two items are different, they will be considered separately.

Two issues have been raised by the parties in regard to the fixed tax of ₱300.00: (1) whether or not the filing by petitioner of applications for the issuance of certificates of indebtedness and the acceptance thereof by respondent, without the certificates of indebtedness having been actually issued, constitute payment of the tax, and (2) whether or not petitioner was, during the period in question, a real estate dealer within the meaning of paragraph (s) of Section 194 of the National Internal Revenue Code, subject to the fixed annual tax prescribed in Section 193(q)[1] of the

[1] Now Sec. 182 (A) (3) (s), as amended by Rep. Act No. 1612, effective Aug. 24, 1956.

same Code.

It is contended on behalf of respondent that the filing by petitioner of the two applications for the issuance of certificates of indebtedness to be applied in the payment of the tax and the acceptance thereof by respondent constitute payment of the tax. If so, it is necessary, according to respondent, that the claim for refund of the tax so paid must have been filed within two years from the date of payment and that the court's action for its recovery must have been filed within the same period, that is, within two years from the date of payment, in accordance with Section 306 of the Revenue Code. In this case, the two applications for the issuance of certificates of indebtedness were filed by petitioner and accepted by the City Treasurer of Manila, as deputy of respondent, on February 26, 1954 and February 16, 1955. Although the claim for refund was filed within two years from the date of payment, the petition for review was filed with this Court only on December 17, 1958, after more than three years from the date of payment. Consequently, it is alleged that the action of petitioner is barred under Section 306 of the Revenue Code. On the other hand, petitioner contends that since the certificates of indebtedness applied for have not yet been issued, no payment has as yet been made. Therefore, Section 306 does not apply.

We agree with petitioner that this case does not involve a tax that has been paid. The mere filing by a backpay holder of an application for a certificate of indebtedness to be applied in payment of his tax obligation and the acceptance thereof by the tax collecting officer, without the certificate of indebtedness having been issued, do not constitute payment of the tax. Under the law, when a backpay holder applies for the issuance of a certificate of indebtedness, the certificate of indebtedness is issued, in proper cases, in the name of the backpay holder. The backpay holder is then required to indorse the certificate of indebtedness to the proper collecting officer. Under the circumstances, it is our opinion that payment of the tax takes place only when the certificate of indebtedness is issued, indorsed and delivered to the tax collecting officer, and not from the moment of the filing by the backpay holder of the application for the issuance thereof and its acceptance by the tax collector.

But it is argued by respondent that -

> " . . . to sustain the theory of the petitioner that such application has no effect of payment would subject taxpayers to further penalty such as interests in case the tax due is income or estate or inheritance tax or whatever tax as a result of late payment. Such a consequence could not have been the intention of the law for it would subject taxpayers to additional burden which is not attributable to their fault but due to causes attendant to the government's action in the approval of such application. Moreover, the respondent has relied not only upon the evident good faith of the petitioner in trying to settle his obligation within the period provided for by law but also upon the strength of his application . ." (Page 6, Memorandum for Respondent.)

That it has been the consistent practice to consider payment of a tax by means of a certificate of indebtedness issued pursuant to Republic Act No. 304 as if paid from the time of acceptance by the collecting officer of the application for the issuance of such certificate is perfectly understandable. After the filing of the application and acceptance by the tax collector, the issuance of the certificate of indebtedness is left wholly in the hands of government officers charged with that function. The backpay holder has absolutely nothing to do with it; hence, he cannot be held liable for the delay in the issuance of the certificate of indebtedness. But giving retroactive effect to payment by means of a certificate of indebtedness is quite apart from the fact of payment itself, which is effected as we have said by the actual issuance of the certificate and its indorsement and delivery to the tax collector. Until and after the certificate of indebtedness is issued, indorsed and delivered to the tax collector, there can be no payment, and the question of retroactivity for purposes of the delinquency penalties in certain cases will not arise.

The argument has been advanced that "matters relating to the application for the issuance of certificate of indebtedness or the cancellation thereof are wholly the concern of the Treasurer of the Philippines and, therefore, not within the jurisdiction of this Honorable Court. (Good Day Trading v. B.T.A., G. R. No. L-6574, July 31, 1954, 50 O.G. No. 10, p. 4803.)" We think that the decision of the Supreme Court in the case cited has not been clearly understood. Questions incidental to matters coming within the jurisdiction of this Court may properly be passed upon by it, if necessary to the determination of the main controversy. (See Castro v. David, G. R. No. L-8505, Nov. 29, 1956.)

At any rate, the records show that the appeal of herein petitioner is directed mainly to a review of the decision of respondent as contained in the latter's letter of October 24, 1958, Exh. H, the pertinent portion of which reads as follows:

> "This law (Republic Act No. 588) took effect on September 22, 1950 so that from that date, any person offering for rent or renting properties for an aggregate amount of ₱3,000.00 (later increased to ₱4,000.00 in 1957) or more annually is considered a real estate dealer pursuant to Section 194(s) of the Tax Code. It appearing that the total yearly rentals derived by you for 1954 and 1955 exceed ₱3,000.00 per year, you were liable to the real estate dealer's fixed tax paid by you." (page 43, C.T.A. records.)

In the decision of respondent, petitioner is being held liable for the real estate dealer's fixed tax for the years 1954 and 1955. Petitioner who has not yet paid the tax, although he has taken steps to effect payment, has appealed from that decision. Therefore, this case involves a disputed assessment which comes under the jurisdiction of this Court under Section 7 (1) of Republic Act No. 1125. And since there is no question that the appeal was filed within the 30-day period prescribed in Section 11 of Said Act, this Court has jurisdiction to entertain the appeal. The prayer contained in the petition for review for the cancellation and return to petitioner of his application for the issuance of certificates of indebtedness is merely incidental to the issue in regard to the legality of the questioned assessment.

Having arrived at the conclusion that this Court has jurisdiction to entertain the appeal, we will now consider the issue whether or not petitioner was a real dealer in 1954 and 1955, within the meaning of Section 193(s) of the Revenue Code, which defines "real estate dealer" thus:

> ". . . 'Real estate dealer' includes any person engaged in the business of buying, selling, exchanging, leasing, or renting property on his own account as principal and holding himself out as a full or part-time dealer in real estate or as an owner of rental property or properties rented or offered to rent for an aggregate amount of three thousand pesos or more a year . . ." (As amended by Rep. Act No. 588.)

Petitioner contends that he was not a real estate dealer; that he could not have engaged in such business, because he was, and still is, engaged in the practice of law. The case of Imperial v. Collector of Internal Revenue, G. R. No. L-7974, September 30, 1955, has been cited in support of his view.

In support of the view that the plaintiff in the Imperial case was not a real estate dealer, the Supreme Court held:

> It is apparent that as the plaintiff was, from 1946 to 1950, Senator-at-large and later Minister in a foreign country, the exercise of the duties of which offices required the greater part of his time and his absence from the Philippines, there is no weight in the argument, in the absence of proof, that during that period of time he was "engaged" in leasing real estate," especially if it be taken into account that

> the "camarin" which he had been leasing to the merchant-tenants appears to be the only property of his for lease, and the annual rental received therefrom being much less than the annual income he received from the office or offices which he had been holding. "To engage" is to embark in a business or to employ oneself therein (Webster's New International Dictionary). The word "engage" connotes more than a single act or a single transaction; it involves some continuity of action (Day v. Equitable Life Assur. Soc. of the United States, 83 F. 2d 147, 148). "To engage in business" is uniformly construed as signifying to follow the employment or occupation which occupies the time, attention, and labor for the purpose of a livelihood or profit (Sample v. Schwarz, 109, N.W. 633, 636, citing Beikler v. Guenther, 96 N.W. 895, 896). The expressions "engage in business", "carrying on business" or "doing business" do not have different meanings, but separately or connectedly convey the idea of progression, continuity, or sustained activity, and "engage in business" means occupied or employed in business, "carrying on business" does not mean the performance of a single disconnected act, but means conducting, prosecuting, and continuing business by performing progressively all the acts normally incident thereto while "doing business" conveys the idea of business being done, not from time to time but all the time. (Lewellyn v. Pittsburgh, B & L. E. R. Co., C. C.A. Pa., 222 F. 177, 185) Under the circumstances we cannot hold that the plaintiff was "engaged in leasing real estate", as the act of his in leasing his only "camarin" was an isolated transaction, and as he was at the time occupied in holding an office under the Philippine Government which required the greater part of his time and attention. (Lawyers Journal (1950), p. 136.)

It will be noted that in said case the plaintiff was a Senator-at-large and later Minister in a foreign country during the entire period covered by the assessment, "the exercise of the duties of which offices required the greater part of his time and absence from the Philippines". In the instant case, while it is not disputed that petitioner was, and still is, engaged in the practice of law, it has not been shown that the greater part of his time was devoted to the practice of said profession. In fact, his income tax return for 1954 shows he had no income in that year from the practice of law, while his income tax return for 1955 shows an income of ₱2[illegible]. At any rate, it cannot be said that the practice of law is inconsistent with engaging in business as real estate dealer.

Again, in the Imperial case, the plaintiff had only one camarin for rent and the annual rental derived therefrom was very much less than his income from the public office or offices which he held. In the instant case, petitioner has properties for rent both in Manila and in Pasay City, the aggregate annual rental from which is much more than his income from the exercise of his profession as lawyer.

We are, therefore, of the opinion that the decision of the Supreme Court in Imperial v. Collector, *supra*, supports the view that petitioner in this case is a real estate dealer within the meaning of Section 194(s) of the Revenue Code and is subject to the tax prescribed in Section 193(q), as amended by Republic Act No. 588.

The second item in controversy - the compromise of ₱10.00 - is sought to be recovered by petitioner. The said amount was paid in cash on February 16, 1955, and is evidenced by O. R. No. 1129985, exhibit 7. (See page 28, CTA records.) This amount was not included in petitioner's application for the issuance of a certificate of indebtedness, petitioner having been required to pay it in cash, apparently because it is not a tax which may be paid out of the backpay of a government employee under Republic Act No. 304. The official receipt shows that it was paid as "compromise for late payment" of the tax. Petitioner was required to pay this amount notwithstanding that no compromise agreement has ever been entered into between him and respondent for the settlement of the former's criminal liability "for late payment" of the real estate dealer's fixed tax. In this proceeding, respondent has not made any attempt to justify the legality of the collection of said amount, obviously because it has been consistently held that the collection of a compromise penalty, in the absence of a valid and binding compromise agreement, is unauthorized and illegal. (See University of Sto. Tomas v. Collector of Internal Revenue, C.T.A. No. 10, Sept. 10, 1956, affd. on this point in G. R. Nos. L-11274 & L-11280, November 28, 1958.) Therefore, the sole question to be resolved is whether or not petitioner has complied with the statutory requirements for its recovery.

The law governing the procedure for recovery of internal revenue taxes erroneously or illegally collected, or of any penalty claimed to have been collected without authority, or of any sum alleged to have been excessive or in any manner wrongfully collected, is provided in Section 306 of the Revenue Code and Sections 7 and 11 of Republic Act No. 1125, which we quote:

SEC. 306. Recovery of tax erroneously or illegally collected.- No suit or proceeding shall be maintained in any court for the recovery of any national internal-revenue tax hereafter alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, or of any sum alleged to have been excessive or in any manner wrongfully collected, until a claim for refund or credit has been duly filed with the Collector of Internal Revenue; but such suit or proceeding may be maintained, whether or not such tax, penalty, or sum has been paid under protest or duress. In any case, no such suit or proceeding shall be begun after the expiration of two years from the date of payment of the tax or penalty.

SEC. 7. Jurisdiction.- The Court of Tax Appeals shall exercise exclusive appellate jurisdiction to review by appeal, as herein provided -

(1) Decisions of the Collector of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto, or other matters arising under the National Internal Revenue Code or other law or part of law administered by the Bureau of Internal Revenue;

(2) Decisions of the Commissioner of Customs in cases involving liability for customs duties, fees or other money charges; seizure, detention or release of property affected; fines, forfeitures or other penalties imposed in relation thereto; or other matters arising under the Customs Law or other law or part of law administered by the Bureau of Customs; and

(3) Decisions of provincial or city Boards of Assessment Appeals in cases involving the assessment and taxation of real property or other matters arising under the Assessment Law, including rules and regulations relative thereto.

SEC. 11. Who may appeal; effect of appeal.- Any person, association or corporation adversely affected by a decision or ruling of the Collector of Internal Revenue, the Collector of Customs or any provincial or city Board of Assessment Appeals may file an appeal in the Court of Tax Appeals within thirty days after the receipt of such decision or ruling.

No appeal taken to the Court of Tax Appeals from the decision of the Collector of Internal Revenue or the Collector of Customs shall suspend the payment, levy, distraint, and/or sale of any property of the taxpayer for the satisfaction of his

> tax liability as provided by existing laws Provided, however, That when in the opinion of the Court the collection by the Bureau of Internal Revenue or the Commissioner of Customs may jeopardize the interest of the Government and/or the taxpayer the Court at any state of the proceeding may suspend the said collection and require the taxpayer either to deposit the amount claimed or to file a surety bond for not more than double the amount with the Court.

Section 306 of the Revenue Code requires that a taxpayer who seeks the recovery of an internal revenue tax erroneously or illegally collected or of any penalty claimed to have been collected without authority must file a written claim for refund with the Commissioner (formerly Collector) of Internal Revenue within two years after payment, and must institute the corresponding court action also within two years from the date of payment of the tax or penalty. In view of the positive requirement that the court action must be instituted within two years from the date of payment of the tax or penalty, it has been held that it was not necessary for the taxpayer to wait for the decision of the Commissioner. This was the law governing the matter prior to the establishment of the Court of Tax Appeals in 1954 by Republic Act No. 1125. With the establishment of the Court of Tax Appeals in 1954, the jurisdiction over actions for refund of internal revenue taxes and penalties was transferred from the Courts of First Instance to the former. Section 7 of Republic Act No. 1125 vests in the Court of Tax Appeals "exclusive appellate jurisdiction to review by appeal . . decisions of the Collector (now Commissioner) of Internal Revenue in cases involving . . . refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto. . ." And Section 11 of said Act provides that any person adversely affected by a decision or ruling of the Commissioner "may file an appeal in the Court of Tax Appeals within thirty days after the receipt of such decision or ruling."

Section 306 of the Revenue Code has not been expressly repealed by Republic Act No. 1125, but Section 21 of the latter Act provides that any law or part of law inconsistent therewith "is hereby repealed". It is, therefore, necessary to determine what portions, if any, of Section 306 of the Revenue Code are inconsistent with Republic Act No. 1125. There is nothing in Republic Act No. 1125 in regard to the filing of a written claim for refund, so that the requirement in Section 306 of the Revenue Code that a written claim for refund must be filed with the Commissioner of Internal Revenue within two years from the date of payment is still in force. (Johnston Lumber Co., Inc. v. Court of Tax Appeals, G. R. No. L-9292, April 23, 1957.) However, the requirement in Section 306 that court action must be instituted, with or without a decision of the Commissioner, within two years from the date of payment of the tax or penalty sought to be recovered is apparently in conflict with Sections 7 and 11 of Republic Act No. 1125. The jurisdiction of the Court of Tax Appeals, in cases involving refunds of internal revenue taxes and penalties, as provided in Section 7 is limited to appeals from the decisions of the Commissioner of Internal Revenue, and a taxpayer who is not satisfied with a decision of the Commissioner must appeal to said Court "within 30 days after the receipt of such decision or ruling", in accordance with Section 11. Republic Act No. 1125 requires that there be a decision or ruling of the Commissioner and that such decision or ruling must be appealed within 30 days after receipt thereof, while Section 306 of the Revenue Code requires that court action must be instituted within two years from the date of payment of the tax or penalty, with or without a decision or ruling of the Commissioner. Surely, these provisions cannot stand together and the provisions of Republic Act No. 1125 must be deemed to have superseded the inconsistent provisions of Section 306.

However, the majority of this Court is of the opinion that the requirement in Section 306 that a taxpayer must institute court action within two years from the date of payment of the tax or penalty sought to be recovered without the necessity of waiting for the decision of the Commissioner is still in force, citing P. J. Kiener & Co. v. David, G. R. No. L-5163, April 22, 1953. This opinion has been sustained by the Supreme Court in the recent cases of Collector of Internal Revenue v. Sweeney, G. R. No. L-12178, August 21, 1959, and Gibbs v. Collector of Internal Revenue, G. R. No. L-13453, February 29, 1960.

The writer of this opinion is not unaware of the rule that judges of lower courts are bound by the decisions of the Highest Court. However, it is his honest belief that the questions involved in the interpretation and application of Section 306 of the Revenue Code and Sections 7 and 11 of Republic Act No. 1125 were not adequately and carefully presented in the Sweeney and Gibbs cases so that there is need for a reexamination of said questions. The problems involved were discussed at length in the majority and dissenting opinions in Paracale-Gumaus Consolidated Mining Co. v. Alaquero, C.T.A. No. 211, August 22, 1956,[1] and for convenience the pertinent portions thereof are reproduced below.

THE MAJORITY OPINION

x x x x x

> As heretofore stated, the petitioner herein has complied with only one of the two requisites mentioned in section 306 of the National Internal Revenue Code. It filed a formal claim for refund with the Collector of Internal Revenue of the compensating tax paid by it in the amount of ₱478.08 within the statutory period of two (2) years. However, it filed its present action for refund of said amount before this Court by way of a "Petition for Review", four (4) months and fourteen (14) days beyond the statutory period of two years fixed under section 306 of the National Internal Revenue Code.
>
> On the other hand, the petitioner has complied with the provision of section 11 of Republic Act No. 1125, by filing its present action before this court for the recovery of the taxes paid, within the statutory period of thirty (30) days. It appears that petitioner received on October 26, 1955, the letter of the Collector of Internal Revenue dated October 20, 1955, denying its request for refund of the amount of ₱478.08. From this decision, an appeal was interposed before this Court by way of a "Petition for Review" filed on November 23, 1955, which, obviously, is within the statutory period of thirty (30) days fixed under section 11 of Republic Act No. 1125.
>
> We hold that section 11 of Republic Act No. 1125, has not repealed by implication all

1 Not appealed.

the provisions of section 306 of the National Internal Revenue Code. It has, in a way, only modified some of them. Courts are especially averse to repeals by implication. Since laws are presumed to be passed with deliberation, and with full knowledge of existing ones on the same subject, it is but reasonable to conclude that Congress, in passing a statute, did not intend to interfere with or abrogate any former law relating to the same matter, unless the repugnancy between the two is irreconciliable. In other words, repeals by implication may be resorted to by the Courts only as a last recourse where under no reasonable hypothesis can the provisions of both be construed as coexisting. (pp. 549, 551, Vol. 50, American Jurisprudence.)

In the present case, the conflict between the two provisions is more apparent than real. They could easily be reconciled, which it is the function of statutory construction to effectuate, if possible, to give life to the entire enactment.

For the future guidance of taxpayer so as not to deprive them of their day in court, the following rules are worthwhile remembering regarding claims for refund of national internal revenue taxes.

In order to confer jurisdiction upon this Court, the usual claim for refund or credit as a condition precedent, should be filed with the Collector of Internal Revenue within two (2) years from the date of payment, (section 306) National Internal Revenue Code; P. J. Kiener Co., Ltd. v. Saturnino David, supra). A simple protest at the time of payment or previous objections to the tax assessed do not take the place of the required claim for refund (Santiago Bermejo v. Collector of Internal Revenue, supra). The filing of the petition for review before this Court by the taxpayer for the recovery of taxes paid should be made within thirty (30) days from receipt of the ruling, order or decision of the Collector of Internal Revenue denying the claim for refund (section 11, Republic Act No. 1125) and in no instance may the action be filed after two (2) years from the date of payment (section 306, National Internal Revenue Code; C.T.A. Case No. 80, Bay View Hotel, Inc. v. Collector of Internal Revenue; CTA Case No. 121, College of Oral and Dental Surgery v. Collector of Internal Revenue).

For further clarification, we shall illustrate hereunder the modes of applying the two periods of prescription now in question, adopting as a common starting point January 2, 1955, as the date of payment of the national-revenue tax sought to be refunded. We are adopting this date as the starting point because at that time all the provisions of Republic Act No. 1125, which was approved on June 16, 1954, were already in full force and effect.

Case 1. Let us say that after paying on January 2, 1955, a national internal-revenue tax (this includes compensating tax under section 190(d) of the National Internal Revenue Code), the taxpayer filed on February 1, 1955, a formal claim for its refund with the Collector of Internal Revenue. On March 1, 1955, the taxpayer received a reply letter from the Collector of Internal Revenue denying his request for refund. Under section 11 of Republic Act No. 1125, the taxpayer has only thirty (30) days counting from March 2, 1955, within which to file his petition for review before this Court contesting the adverse ruling of the Collector of Internal Revenue regarding his claim for refund. This should be so, because if the taxpayer were really sincere in having his case decided by this Court as promptly as possible, he may, indeed should, cooperate by availing himself of the thirty (30) day period prescribed in section 11 of Republic Act No. 1125 (C. T. A. Case No. 256, Conoy v. Collector of Internal Revenue). As far as the government is concerned, it is just as much interested in having the tax refund case decided by the courts as expeditiously as possible, so as to know definitely for appropriation purposes, the status of the money within its coffer sought to be refunded (Santiago Bermejo v. Collector of Internal Revenue, supra). After the lapse of the thirty-day period prescribed in section 11 of Republic Act No. 1125, the ruling or decision of the Collector of Internal Revenue denying the claim for refund becomes final, and no court in the Philippines, from the highest to the lowest, may review said ruling or decision under sections 11 and 18 of Republic Act No. 1125. The taxpayer, therefore, may no longer avail himself of the remaining period of around 21 months up to January 2, 1957, (section 306, National Internal Revenue Code) within which to file his action before this Court for the refund of the taxes paid on January 2, 1955. By giving him this additional period of 21 months within which to file his action for refund before this Court, we would in effect be legislating an exception to the applicability of the thirty-day period fixed under section 11 of Republic

Act No. 1125 in tax refund cases, when the aforesaid Act provides for none. Taxes are the lifeblood of the government and their prompt and certain availability an imperious need (Bull v. U. S. 260, 79 L. Ed. 1427). Congress created this Court principally to specialize in, to centralize and expedite the disposal of all tax, customs and real estate assessment cases throughout the archipelago (pp. 2208, 2210, 2211, Vol. 1, No. 65, Congressional Record, House of Representatives).

Case 2. Let us say that after paying the tax on January 2, 1955, the taxpayer filed his formal claim for its refund with the Collector of Internal Revenue on February 1, 1955. For one reason or another, it took the Collector of Internal Revenue one (1) year and several months to reply to the taxpayer's letter of February 1, 1955. The taxpayer finally receives the reply letter of the Collector of Internal Revenue denying his claim for refund on December 26, 1956. He has, under section 306 of the National Internal Revenue Code, only seven (7) days within which to file his court action for the refund of the tax paid. After January 2, 1957, the two-year statutory period prescribed in the last mentioned section of the National Internal Revenue Code would have expired and following the decision of the Supreme Court in the Kiener case, the Courts no longer have jurisdiction over the case.

However, if we are to apply section 11 of Republic Act No. 1125, the taxpayer has thirty (30) days counting from December 27, 1956 or up to January 25, 1957, within which to appeal the adverse ruling of the Collector of Internal Revenue to this Court. The question now is: Are we to extend the two-year period of prescription provided in section 306 of the National Internal Revenue Code by giving the taxpayer an additional twenty-three (23) days beyond January 2, 1957 within which to file his appeal to this Court? We believe and so hold, that under the circumstances, the taxpayer has only seven (7) days counting from December 27, 1956, within which to file his appeal to this Court. To rule otherwise, would be tantamount to judicial legislation extending a period of prescription fixed by law. The taxpayer could have avoided a last minute rush and being pressed for time in the preparation and filing of his petition for review had he, let us say, one month or so before the expiration of the two year period, gone ahead with his court action as ruled in the Kiener case without waiting up to the eve of the deadline for the reply of the Collector of Internal Revenue. After all, he has already given the Collector enough time to reply to his claim for refund. Anyway, should the anticipated reply come later, close before or after the deadline, the pleadings already filed could still be amended *nunc pro tunc* with leave of court. (section 2, rule 17, Rules of Court; Cuyugan v. Dizon 79 Phil. 80-84.)

Case 3. The case of the petitioner herein is covered by the illustration.

Let us say that after paying a national internal-revenue tax on January 2, 1955, the taxpayer on February 1st of the same year, filed a formal claim for its refund with the Collector of Internal Revenue. The latter, for one reason or another, as had happened in the present case as in the Kiener case, fails to reply to the claim for refund within two (2) years from the date of payment. Under the circumstances, as w was held in the Kiener case, the taxpayer "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." In other words, in fairness to the taxpayer so as not to deprive him of his day in court and the prompt adjudication of his case, he is left by necessity to presume and conclude before the expiration of the two-year prescriptive period, that his claim for refund has been denied by the Collector of Internal Revenue if no action was taken thereon by the latter during the said period. The taxpayer need not wait indefinitely for a decision or ruling which may or may not be forthcoming and which he has no legal right to expect. As the Supreme Court said in the Kiener case, "Nowhere and in no wise does the law imply that the Collector of Internal Revenue must act upon the claim, or that the taxpayer should not go to court before he is notified of the Collector's action." The taxpayer may, indeed should, proceed without waiting for the decision of the Collector of Internal Revenue, to file his petition for review before this Court on or within a reasonable time before the expiry date of the statutory period of two years prescribed in section 306 of the National Internal Revenue Code.

It might be argued that without the reply of the Collector of Internal Revenue denying the taxpayer's claim for refund, there would be actually no decision, order or ruling that this Court may pass upon in review under sections 7 and 11 of Republic Act No. 1125. Indeed, that would be the case if we were to interpret the two last cited provisions of Republic Act No. 1125 in their strict literal sense. However, we realize that by following such an unreasonable interpretation, the taxpayer would be left at the mercy of the Collector of Internal Revenue, without any positive and expedient relief from the Courts. Let us say for example -- and this is not a remote possibility -- that after receiving a formal claim for refund from the taxpayer, the Collector of Internal Revenue or his subordinates, for one reason or another, or for no reason at all, would just let the claim for refund gather dust in their office files without acting on it for several years or not at all. It has happened once and it can happen again. In the Kiener case, it took the Bureau of Internal Revenue over two years to reply to a simple claim for refund of the taxpayer. In the present case, the claim for refund was filed with the respondent on July 30, 1953, and was not acted upon until October 29, 1955, when it was formally denied. Again, it took the Bureau of Internal Revenue, two (2) years and three (3) months to reply to petitioner's claim for refund consisting of only one page which it could have very well been done on the very same day or a few weeks after it was received. After all, as intended by Republic Act No. 1125, the ruling, order or decision of the Collector of Internal Revenue that may be appealed to this Court need not be as elaborate and exhaustive as those required of courts of record. In S.C. G. R. No. L-7384, decided on December 19, 1955, the Supreme Court has held that a simple assessment or letter of demand sent by the Collector of Internal Revenue to a taxpayer is a "decision" within the contemplation of section 8 of Executive Order No. 401-A. In C.T.A. Case No. 229 entitled "Angel Barros v. Bureau of Internal Revenue", as well as in two other cases, we adopted the same view by considering an assessment and a letter of demand as a decision of the Collector of Internal Revenue within the contemplation of sections 7 and 11 of Republic Act No. 1125. (see also Bull v. U.S. 295 U.S. 247)

Supposing that in the years to come, a much too partisan and/or inept Collector of Internal Revenue is appointed by mistake, and out of political considerations or sheer incompetence, he refuses or fails to act upon a taxpayer's claim for refund during a period of say three, five, seven, ten years or never? Under the circumstances, what possible relief could there be for the taxpayer in order to obtain an early adjudication by this court of his case for tax refund? We see none, if we are to interpret strictly the provisions of sections 7 and 11 of Republic Act No. 1125 by requiring that a ruling, order or decision on the claim for refund be first obtained from the Collector of Internal Revenue in black and white, before assuming jurisdiction over the taxpayer's appeal to this Court. It might be suggested that a petition for mandamus would be the proper remedy of the taxpayer against the Collector of Internal Revenue to compel the latter to act on the claim for refund one way or the other. However, in Olsen & Co. v. Herstein et al 32 Phil. 520, the Supreme Court has held that "Mandamus will not lie to compel the Insular Collector of Customs or the Collector of Internal Revenue to issue a certificate of origin of cigars about to be exported to the United States although the exporter, according to customs, is justly and equitably entitled thereto, and although the refusal to issue such certificate is, according to such custom, unjust, arbitrary and unreasonable, there being no statute or other law laying a duty on such officials to issue such a certificate". Reasoning by analogy, we also say that there is no provision of law at present either in the National Internal Revenue Code, Republic Act No. 1125 or other special laws, as there was none when the Kiener case was decided on April 22, 1953, which imposes upon the Collector of Internal Revenue the duty to decide claims for refund and to do it within a certain period of time. Under section 3, rule 67 of the Rules of Court, a petition for mandamus may be granted only "when any tribunal, corporation, board or person unlawfully neglects the performance of an act which the law specifically enjoins as a duty resulting from an office, trust or station x x x." The act of replying to a claim for refund within a reasonable time after its receipt is not a duty specifically enjoined by law upon the Collector of Internal Revenue. At most, it involves merely a matter of courtesy and efficiency - to reply to official communications with dispatch in the interest of public service.

Moreover, granting for the sake of argument, that a petition for *mandamus* might prosper under the circumstances, are we to require the taxpayer to avail himself of this special remedy before assuming jurisdiction over his case on appeal thereby subjecting him to additional legal expenses and unnecessary loss of time?

It might be suggested that there is still one administrative remedy available to the taxpayer in order to compel the Collector of Internal Revenue to act on his claim for refund one way or the other, before coming to this Court viz., by filing an administrative complaint against said official with the proper authorities for dereliction of duty or for incompetence. Undoubtedly, the taxpayer is free to avail himself of such remedy under the provisions of the Revised Administrative Code or the Civil Service Law. But again, are we to require the taxpayer to go through this long, tedious and expensive *via crucis* before assuming jurisdiction over his case on appeal? We should not lose sight of the fact that with respect to a great majority of taxpayers with claims for refund -- with the exception perhaps of a few extremists and radicals -- their main objective is not to obtain the dismissal of an inefficient and/or arbitrary Collector of Internal Revenue. All they are interested in is the immediate refund of their money, especially if it involves a substantial amount, which they in conscience believe was illegally or erroneously exacted from them in the form of taxes by the government.

It is disheartening enough to a taxpayer to keep him waiting for an indefinite period of time for a ruling or decision of the Collector of Internal Revenue on his claim for refund, only to find out later, after a protracted and expensive court litigation resulting in his favor, that the most he would be able to recover from the government is the amount of tax illegally or erroneously collected from him without even the benefit of the legal rate of interest, attorney's fees and costs. It would make matters more exasperating for the taxpayer if we were to close the doors of the courts of justice for such a relief until after the Collector of Internal Revenue would have, at his personal convenience, given the go signal. In effect, that would be the ultimate result, if we were to interpret sections 7 and 11 of Republic Act No. 1125, strictly and literally by requiring the taxpayer in all instances to produce in black and white the ruling, decision or order of the Collector of Internal Revenue denying his claim for refund before assuming jurisdiction over his petition for review filed with this Court.

Moreover, it will be noted in section 51 (d) of the National Internal Revenue Code, that a period of prescription of three (3) years is fixed therein within which the Collector of Internal Revenue may exercise summary methods of collection of income taxes. In sections 331 and 332 of the same Code, there are likewise two periods of limitation prescribed (5 or 10 years) upon assessment and collection of taxes through judicial action. It would be incongruous to hold, that with respect to actions for refund filed after two years from the date of payment, an exception should be made by leaving the commencement of the running of the thirty day period fixed under section 11 of Republic Act No. 1125, entirely at the discretion and personal convenience of the Collector of Internal Revenue.

We hold that the ruling of the Supreme Court in the Kiener case with respect to claims for refund left unanswered by the Collector of Internal Revenue within two (2) years from the date of payment, still prevails at present, sections 7 and 11 of Republic Act No. 1125 notwithstanding, and that the failure on the part of the petitioner herein to file his action for refund before the Court of First Instance of Manila, the defunct Board of Tax Appeals or this Court within two (2) years from July 9, 1950, the date of payment of the amount of ₱478.08 now in question, is fatal to his cause.

THE DISSENTING OPINION

X X X

Pursuant to Section 306 of the Revenue Code, it was necessary, if a taxpayer wanted to sue for recovery in court of a tax erroneously or illegally paid, in addition to the requirement of filing a written claim for refund, that judicial proceedings in the proper Court of First Instance be instituted before the expiration of two years from the date of payment. The two-year period in this case expired on July 9, 1955, after the establishment of this Court by Republic Act No. 1125.

Under Section 7 of Republic Act No. 1125, which took effect on June 16, 1954, the jurisdiction of the Courts of First Instance over cases involving refunds of internal revenue taxes conferred upon said Courts by Section 306 of the Revenue Code was transferred to the Court of Tax Appeals. Section 7 of said Act provides: "The Court of Tax Appeals shall exercise exclusive appellate jurisdiction to review by appeal x x x decisions of the Collector of Internal Revenue in cases involving x x x refunds of internal revenue taxes x x x ." In conferring upon this Court exclusive appellate jurisdiction to review by appeal decisions of the Collector of Internal Revenue in such cases, Republic Act No. 1125 specifically provides for the period within which to appeal. Section 11 of said Act provides: "Any person, association or corporation adversely affected by a decision or corporation adversely affected by a decision or ruling of the Collector of Internal Revenue x x x may file an appeal in the Court of Tax Appeals within thirty days after the receipt of such decision or ruling." (Underscoring supplied.)

It is thus clear that Section 306 of the Revenue Code, in so far as it requires that court action must be instituted within two years from the date of payment, is diametrically opposed to the requirement of Section 11 of Republic Act No. 1125 that such action be instituted "within thirty days after the receipt" of the decision of the Collector of Internal Revenue. To my mind, a reconciliation of the two provisions is impossible without doing violence to one or the other. I expressed the same view in my concurring opinion in College of Oral and Dental Surgery v. Collector of Internal Revenue, C.T.A. No. 121, Dec. 19, 1955, and I reiterate it now. But, according to the majority opinion, "the conflict between the two provisions is more apparent than real" and the said provisions "could easily be reconciled."

Here is how the majority opinion made the reconciliation:

"The filing of the petition for review before this Court by the taxpayer for the recovery of taxes paid should be made within thirty (30) days from receipt of the ruling, order or decision of the Collector of Internal Revenue denying the claim for refund (section 11, Republic Act No. 1125) and in no instance may the action be filed after two (2) years from the date of payment (section 306, National Internal Revenue Code x x x).

The majority opinion gave the following illustrations to demonstrate the reconciliation:

First Case. An internal revenue tax paid on January 2, 1955. A formal claim for refund was filed with the Collector of Internal Revenue on February 1, 1955. The taxpayer received the decision of the Collector denying his claim for refund on March 1, 1955.

Second Case. The same facts as in the First Case, except that the decision of the Collector denying the refund was rendered and received by the taxpayer on December 26, 1956.

Third Case. The same facts as in the First Case, except that the decision of the Collector was rendered after 2 years from the date of payment, as in the instant case.

In the first case, the majority opinion says the appeal must be filed within 30 days from the date of receipt of the decision of the Collector. The taxpayer can not take advantage of the entire 2-year period from the date of payment for it "would in effect be legislating an exception to the applicability of the thirty-day period fixed under section 11 of Republic Act No. 1125 in tax refund cases, when the aforesaid Act provides for none." However, in the second case, my colleagues would give the taxpayer only 7 days within which to appeal to this Court, instead of 30 days. "To rule otherwise," according to the majority opinion, "would be tantamount to judicial legislation extending a period of prescription fixed by law (referring to Section 306 of the Revenue Code.) And in the third case, the taxpayer is not given even one day within which to appeal; he is totally deprived of his right to appeal under Section 11 of Republic Act No. 1125.

Frankly, I am unable to understand the reconciliation made by my colleagues. In the first case, in holding that the taxpayer has only 30 days from his receipt of the decision of the Collector within which to appeal, instead of the entire 2 years from the date of payment of the tax sought to be recovered, they would not want to legislate "an exception to the applicability of the thirty-day period fixed under section 11 of Republic Act No. 1125 x x x when the aforesaid Act provides for none." In the second and third cases, however, the thirty-day period provided in Section 11 of Republic Act No. 1125 is entirely disregarded, on the ground that to give it effect "would be tantamount to judicial legislation extending a period of prescription fixed by law (Section 306 of the Revenue Code). In the first case, Section 11 of Republic Act No. 1125 prevails over Section 306 of the Revenue Code; in the second and third cases the latter law prevails over the former. In the opinion of my colleagues, it would be judicial legislation if we were to give the taxpayer in the first case (where Section 11, Republic Act No. 1125 is applied) more than 30 days to appeal, but it would not be judicial legislation to cut it down to 7 days in the second case and to give the taxpayer no remedy at all in the third case. It would be judicial legislation to give the taxpayer more than two years to appeal in the second case (where Section 306 of the Revenue Code is applied), but it would not be judicial legislation to shorten it to 90 days in the first case. I am afraid that my colleagues are treading on grounds which they themselves have declared to be forbidden.

As I see it, there is no way of reconciling Section 11 of Republic Act No. 1125 and Section 306 of the Revenue Code in regard to the period for filing appeals. And since Republic Act No. 1125 is a later enactment, it is my opinion that in all such cases the thirty-day period provided in said Act applies, whether or not the decision of the Collector is rendered before or after two years from the date of payment. There is nothing in Section 306 of the Revenue Code which places it beyond the power of Congress to amend or repeal, expressly or by implication. Not having the character of an organic act, it is subject to amendment or repeal by Congress. And Congress has manifested its intention to repeal that portion of Section 306 of the Revenue Code relating to the period for instituting judicial proceedings for recovery of internal revenue taxes in Section 21 of Republic Act No. 1125, which provides:

> "Any law or part of law, or any executive order, rule or regulation or part thereof, inconsistent with the provisions of this Act is hereby repealed."

We have here two inconsistent laws, one enacted in 1939 and the other in 1954. There can be no doubt as to which should prevail.

In support of the proposition that court action for recovery of internal revenue taxes must be instituted within two years from date of payment, the decisions of the Supreme Court in P. J. Kiener Co., Ltd. v. David, G. R. No. L-5163, April 22, 1953; Santiago R. Bermejo v. Collector of Internal Revenue, G. R. No. L-3029, July 25, 1950, and other earlier cases, have been cited. It is enough to state here that these cases were decided by our Supreme Court solely on the basis of Section 306 of the National Internal Revenue Code and its predecessor, Section 1579 of the Administrative Code. So with respect to the period for the institution of judicial proceedings for recovery of internal revenue taxes, cases arising from and after the effectivity of Republic Act No. 1125 must be governed by the new law.

Finally, it is argued that to require the taxpayer to wait for a decision of the Collector would be "an unreasonable interpretation," as he "would be left at the mercy of the Collector of Internal Revenue, without any positive and expedient relief from the courts." My colleagues cite the following example:

"Let us say for example -- and this is not a remote possibility -- that after receiving a formal claim for refund from the taxpayer, the Collector of Internal Revenue or his subordinates, for one reason or another, or for no reason at all, would just let the claim for refund gather dust in their office files without acting on it for several years or not at all."

In such a case, my colleagues would permit the taxpayer to file with this Court an appeal without waiting for a decision to be rendered by the Collector. From what decision then would he appeal? It might be said that where the Collector has not rendered a decision before the expiration of two years from the date of payment, the inaction of the Collector can be construed as a denial, and in case a decision is rendered afterwards while the case is pending, the taxpayer may be allowed to amend his pleading. I regret I cannot subscribe to this view. The law, in words too plain to be mistaken, provides that there must be a decision (Sec. 7, Republic Act No. 1125) and that the appeal must be filed with this Court within 30 days after receipt of such decision (Sec. 11, id.). When the law requires that there be a decision, in order for a taxpayer to appeal, it means a decision in black and white. Similarly, when the law requires that there must be claim for refund, as one of the conditions to entitle a taxpayer to sue for recovery of taxes erroneously or illegally paid, it means a formal claim for refund in writing, not just a protest. As aptly stated by the Supreme Court.

> "Anyway, strict compliance with the conditions imposed for the return of revenue collected is a doctrine consistently applied here and in the United States." (Bermejo v. Collector of Internal Revenue, supra; see also Yee Poco v. Posadas, 64 Phil. 640; Venus v. Posadas, 54 Phil. 632.)

Moreover, the rules of this Court require that all the facts necessary to bring a case within the jurisdiction of this Court must be alleged in the petition for review. We have already held in several cases that the requirement that the appeal or petition for review be filed within 30 days after receipt of the decision of the Collector is jurisdictional. Where no decision has been rendered by the Collector, what must the appellant or petitioner allege in his petition for review? Would it be enough to state that an implied decision has been redered denying the claim for refund? And from what date is the 30-day period to be counted?

The majority opinion mentions a case where "a much too partisan and/or inept Collector of Internal Revenue is appointed by mistake, and out of political considerations or sheer incompetence" he refuses to act on the claim for refund. To the question as to what possible relief the taxpayer could he obtain under the circumstances, if he were to be required to wait for the decision before filing his appeal, my colleagues say there is none.

It is true that there is no law which requires the Collector to render a decision within a specified period. We submit, however, that as the law requires that his decisions are appealable to this Court, it is to be implied that it is his duty to render decisions in all cases submitted to him. Since no law or regulation requires him to render his decisions within a specified period, it is well-settled that the decisions must be rendered within a reasonable time. Therefore, if the Collector refuses to render a decision, without just cause, certainly a taxpayer cannot be without a remedy. If the Collector cannot be compelled to act one way or another by mandamus, an appeal to the Secretary of Finance or to the President would be very effective, and this can be done without much trouble and expense. Then there is also Article 27 of the Civil Code which entitles a person to sue a public servant or employee for damages if the latter refuses or neglects without just cause to perform his official duty.

We might also state that the case mentioned by my colleagues is an exception. It refers to a Collector who may abuse his power or authority, and it is to prevent abuse of power that my colleagues would set aside, in specified instances, the provisions of Section 11 of Republic Act No. 1125. That power conferred upon an official may be abused must be admitted. But, we may ask, what power on earth which has been lodged in the hands of a human being may not be abused? Even the Judicial power, which is admittedly the least susceptible to abuse because of the safeguards provided by the Constitution and by law, is not an exception. But the possibility of power being abused is no excuse for this Court, or any court, to go beyond the clear and explicit provisions of the law. Where, as in this case, the law grants a taxpayer the right to appeal within thirty days after receipt of a decision, the taxpayer may not be deprived of that right just because the power to render a decision may be abused by the Collector of Internal Revenue.

That taxpayers may in some instances be inconvenienced if they are not permitted to sue for recovery of taxes illegally or erroneously paid within a specified period from the date of payment may also be admitted. But this matter involves a question of legislative policy which is within the exclusive province of Congress. Until Congress shall provide otherwise, our only duty is to see that the policy laid down in the law is observed.

In holding that a taxpayer who seeks recovery of an internal revenue tax must institute his action for recovery in court within two years from the date of payment without the necessity of waiting for the decision of the Commissioner, the Supreme Court in the Sweeney case cited the cases of P. J. Kiener v. David, supra, and College of Oral and Dental Surgery v. Court of Tax Appeals, G. R. No. L-10446, January 28, 1958. As already adverted to above, the Kiener case arose before the effectivity of Republic Act No. 1125 and the establishment of this Court. In fact, the decision in that case was promulgated on April 22, 1953. There can be no disagreement as to the applicability of Section 306 of the Revenue Code. As regards the case of College of Oral and Dental Surgery, the tax involved in that case was paid and the two-year period expired before the enactment of Republic Act No. 1125, although the decision of the Collector of Internal Revenue denying the refund was handed down after the creation of this Court. Again, there can be no doubt as to the applicability of Section 306 and the Kiener doctrine, and the writer of this opinion so stated in his concurring opinion which reads:

> It is contended by counsel for petitioner that Republic Act No. 1125 prescribing the period within which appeals from decisions of the Collector of Internal Revenue must be filed with this Court has superseded Section 306 of the Revenue Code. The opinion of my colleagues is to the effect that the two-year period within which an action may be instituted in court for recovery of internal revenue taxes, as provided in Section 306 of the Revenue Code, is still applicable despite Section 11 of Republic Act No. 1125 which specifically provides that decisions of the Collector of Internal Revenue are appealable to this Court within thirty days after receipt of such decisions. The two laws being irreconcilable, I am inclined to hold that Section 11 of Republic Act No. 1125, in regard to the period for filing appeals from decisions of the Collector of Internal Revenue, has repealed the corresponding provision of Section 306 of the Revenue Code. I shall elaborate on this at the proper time as I do not find it necessary for the present to consider the same in the final disposition of the instant case.
>
> The amounts sought to be recovered in this case were paid on May 15, 1951, September 15, 1951 and May 15, 1952. The two-year period within which an action in court could be instituted under Section 306 of the Revenue Code for the recovery of said amounts expired before the effectivity of Republic Act No. 1125 on June

> 16, 1954. It is clear, therefore, that Section 306 of the Revenue Code is the law applicable to the case and not Section 11 of Republic Act No. 1125. Petitioner having lost its right of action under Section 306 of the Revenue Code, that right can not be deemed to have been revived by Republic Act No. 1125, unless expressly so provided by law. Unfortunately, there is no law which makes the provisions of Section 11 of Republic Act No. 1125 applicable to cases similar to the case at bar. (College of Oral & Dental Surgery, CTA No. 121, Dec. 19, 1955; Concurring Opinion, pp. 3-5.)

The Supreme Court affirmed the decision of this Court in the case of College of Oral and Dental Surgery (G. R. No. L-10446, January 28, 1958). Rejecting appellant's argument that the 30-day period provided in Section 11 of Republic Act No. 1125 was applicable to its case and not the two-year period provided in Section 306 of the Revenue Code, the Supreme Court held:

> But even adopting for a moment petitioner's line of argument, still we find reason to uphold the ruling of the court a quo. We must bear in mind that Republic Act No. 1125 creating the Court of Tax Appeals took effect only on June 16, 1954. Considering that the taxes involved herein were paid on May 15, 1951, September 15, 1951 and May 15, 1952, said legislative enactment (Republic Act No. 1125) cannot be invoked as the action for recovery of the taxes paid in this case must be governed by the pertinent law then enforced. And pursuant to the existing law on the matter, which undoubtedly is Section 306 of the Tax Code and the jurisprudence obtaining in connection therewith, as petitioner failed to institute the corresponding judicial proceeding within the 2-year prescriptive period, his right to recover the taxes claimed to have been erroneously paid had prescribed even before the enactment of Republic Act No. 1125, and there is no reason to construe R. A. 1125 as reviving actions that have already prescribed on the date of its enactment.

While we cannot feign innocence of the existence of visible inconsistency in the provision of Section 306 of the National Internal Revenue Code, as construed by this Court -- requiring the institution of court proceeding for the recovery of taxes erroneously or illegally collected within 2 years from payment thereof, irrespective of the action taken by the Collector of Internal Revenue on the claim for refund of the same, which the taxpayer must first undertake -- and Section 11 of Republic Act No. 1125 specifically providing that actions should be brought to the Court of Tax Appeals within 30 days from receipt of the decision of the Collector of Internal Revenue, considering firstly that both mandatory provisions must be construed strictly, and secondly that for purposes of the case at bar no further discussion would be necessary, we leave the proper dissertation on the same to some other opportune time. We feel free, however, to state that although to courts belong the prerogative and power of construction and interpretation and while we do not shirk from that duty bestowed on Us by law, the legislative branch of the Government should take notice of such apparent conflicts in our statute books and start the elimination of the same by corresponding legislation. (See also Rufino Lopez & Sons, Inc. v. Court of Tax Appeals, 58 O.G. No. 10, p. 3065 and Sampaguita Shoe and Slipper Factory v. Commissioner of Customs et al., G. R. No. L-10025, prom. January 14, 1958). (Phil. Tax Journal, pp. 155-156.)

It will be noted that the Court expressly stated that inconsistencies exist between Section 306 of the Revenue Code and Section 11 of Republic Act No. 1125, obviously referring to the period for instituting court action for recovery of an internal revenue tax, but it did not pass squarely on the point for it was not necessary for the determination of the issue in that case. However, it suggested to Congress that the inconsistencies between the two provisions be eliminated by appropriate legislation. Frankly, we do not see the necessity for such legislation as Congress has already adequately provided for such purpose in Section 21 of Republic Act No. 1125 which says that "Any law or part of law, or any executive order, rule or regulation or part thereof, inconsistent with the provisions of this Act is hereby repealed."

It is to be observed that the jurisdictional requirements for appeals from the decisions of the Commissioner of Internal Revenue and those of the Commissioner of Customs are contained in the same sections (Secs. 7 & 11) of Republic Act No. 1125. Obviously, the purpose of Congress is to provide a uniform set of rules in both cases. And in providing that there should be a decision before a person adversely affected may appeal to the Court of Tax Appeals, the intention of Congress was to require the taxpayers to exhaust all administrative remedies before resorting to the courts. (Sampaguita Shoe & Slipper Factory v. Comm. of Customs, G. R. No. L-10285, Jan. 14, 1958.) In connection with the insinuation that the provision that a taxpayer need not wait for the decision of the Commissioner of Internal Revenue is intended to forestall any possible abuse that may be committed by the Commissioner who may, for no valid excuse, refuse to decide the claim for refund promptly, it may be asked, Is the Commissioner of Internal Revenue made of a different stuff than the Commissioner of Customs? That Congress made the same provisions for both internal revenue and customs cases in the same sections of Republic Act No. 1125 is a clear indication that the intention was to give both cases a uniform treatment.

The writer of this opinion believes that the opinion of the Supreme Court in Johnston Lumber Co. v. Court of Tax Appeals, G. R. No. L-9292, April 23, 1957, has correctly interpreted the law. The said opinion states:

> ". . . We can, therefore, conclude that where payment has already been made and the taxpayer is merely asking for its refund, he must first file with the Collector of Internal Revenue a claim for refund before taking the matter to the Court, as required by Section 306 of the National Internal Revenue Code and that <u>appeals from decisions or rulings of the Collector of Internal Revenue to the Court of Tax Appeals must always be perfected within 30 days after the receipt of the decision or ruling that is being appealed, as required by Section 11 of Republic Act No. 1125</u>. . ." (Quoted in Gibbs v. Coll. of Int. Rev., G. R. No. L-13453, Feb. 29, 1960.)

We note from the above quotation that the portion "that appeals from decisions or rulings of the Collector of Internal Revenue to the Court of Tax Appeals must always be perfected within 30 days after the receipt of the decision or ruling that is being appealed, as required by Section 11 of Republic Act No. 1125" was underscored in Gibbs v. Collector, <u>supra</u>.

The foregoing observations have been made solely for the purpose of provoking a reexamination of the entire question. In the meantime, and until such a reexamination takes place, it is clearly our duty to abide by and apply the rule laid down in the Sweeney and Gibbs cases.

In the case at bar, the sum of P10.00 was paid on February 16, 1956. The claim for refund was filed with respondent within the two-year period, but the decision denying the claim is contained in the letter of respondent dated October 24, 1958, or more than two years from the date of payment. The petition for review was filed with this Court on December 17, 1958, admitted by the parties as within the 30-day period after receipt of the decision by petitioner, but more than two years from the date of payment. If the case of Johnston Lumber Co. v. Court of Tax Appeals, supra, is to be applied, the appeal was filed on time; but applying the rule laid down in the Sweeney and Gibbs cases, petitioner should not have waited for the decision of respondent. He should have filed an action with this Court (obviously not an appeal but an original action for recovery as in cases filed in the Courts of First Instance before the creation of this Court) within two years from the date of payment on February 16, 1955, without waiting for the decision of respondent. Having decided to wait for the decision of respondent, which unfortunately, was handed down after the lapse of two years, petitioner came too late to this Court.

FOR THE FOREGOING CONSIDERATIONS, the herein appeal is hereby dismissed, without pronouncement as to costs.

SO ORDERED.

Manila, June 13, 1960.

ROMAN M. UMALI
Associate Judge

I CONCUR:

MARIANO NABLE
Presiding Judge

Associate Judge AUGUSTO M. LUCIANO did not take part.