ELLEN WOOD McGRATH,
Petitioner,

July 1, 1957

- versus -

C.T.A.
CASE NO. 259

THE COLLECTOR OF INTERNAL
REVENUE,
Respondent.

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

D E C I S I O N

This is an appeal from the decision of respondent Collector of Internal Revenue denying petitioner's claim for refund of the sum of ₱13,670.73 which was paid to the former as estate and inheritance taxes on the estate of Dora Anna Wood.

Dora Anna Wood, widow, died in Los Angeles, California, U.S.A., on April 21, 1952. At the time of her death and previous thereto, she was a citizen of the United States and a resident of Los Angeles, California, U.S.A. The deceased left her only daughter and sole residuary heiress - Ellen Wood McGrath, the herein petitioner who is a resident of Menlo Park, California, U.S.A.

Petitioner valued the estate of Dora Anna Wood in the Philippines at ₱187,280.78 while on the other hand, respondent appraised the same estate at ₱326,707.49. However, during the hearing of the case, both parties agreed to a compromise valuation of the assets in the Philippines in the total sum of ₱261,063.70, which was arrived at as follows:

A. SHARES OF STOCK

Company	No. of Shares	Par Value	Compromise Valuation	Total
Culaman Company	1,086	₱100.00	₱119.37	₱129,635.82
Picong Plantation Co., Inc.	100	100.00	100.50	10,050.00
Lais Trading & Development Co.	38	200.00	846.52	32,167.76
Benguet Consolidated Mining Co.	200	1.00	3.25	650.00
		TOTAL		₱172,503.58

B. CASH OR DIVIDENDS

Company	Compromise Valuation	
Culaman Company	₱68,607.58	
Picong Plantation Co., Inc.	1,876.31	
Lais Trading & Development Co.	18,076.23	₱ 88,560.12
TOTAL GROSS ESTATE IN THE PHILIPPINES		₱261,063.70

On September 17, 1952, petitioner filed with respondent a provisional estate and inheritance tax return, with the reservation of the right to file an amended estate and inheritance tax return, as per petitioner's counsel's letter of September 15, 1952. On February 20, 1953, respondent issued Assessment Notice No. Est. A-18533-52 showing no estate tax due from the estate but assessed the sum of ₱13.00 as inheritance tax due and payable on or before April 22, 1954.

On October 16, 1953, the petitioner filed an amended estate and inheritance tax return showing a liability for estate tax in the sum of ₱6,901.46 but without any inheritance tax due and payable. On January 22, 1954, the petitioner tendered to respondent the aforesaid sum of ₱6,901.46 in alleged full settlement of the estate tax in accordance with the return as filed. However, respondent on February 2, 1954 accepted the said amount of ₱6,901.46 only as part payment of the estate tax due from the estate of the late Dora Anna Wood.

On January 10, 1956, after an investigation conducted by respondent's examiner, and after crediting the sum of ₱6,901.46 previously paid as estate tax, respondent demanded from petitioner the sum of ₱13,670.73 as deficiency estate tax, and the sum of ₱36,144.91 as deficiency inheritance tax which includes the sum of ₱3.00 as compromise for late payment.

Petitioner protested against the deficiency estate and inheritance tax assessments, but on February 22, 1956, she paid to respondent by way of deposit the deficiency assessment for estate tax in the sum of ₱13,670.73. Later, petitioner requested for its refund which respondent denied.

On August 21, 1956, petitioner requested respondent to convert the aforesaid deposit of ₱13,670.73 into a payment of the tax and at the same time demanded for its refund. Again, respondent denied petitioner's claim for refund.

On August 23, 1956, the respondent, on the basis of the agreed compromise valuation of the gross estate in the Philippines, re-assessed the death taxes collectible from the estate as follows:

Estate tax		₱13,160.55
5% surcharge on ₱6,259.09		312.95
1/2% def. int. on ₱6,259.09 from 1/22/54 to 1/10/56		751.09
1% mo. int. on ₱7,010.18 from 1/11/56 to 2/22/56		93.24
Compromise for late payment		5.00
TOTAL		₱14,322.83
Less:	₱ 6,901.46	
	13,670.73	20,572.19
Overpayment to be credited to inheritance tax		(₱ 6,249.36)

Inheritance tax	₱24,041.96
5% surcharge	1,202.10
1% int. on ₱13.00 from 4/22/54 to 2/22/56	2.86
1/2% def. int. on ₱24,028.96 from 4/22/54 to 12/22/55	2,402.90
1% mo. int. on ₱26,431.86 from 12/23/55 to 2/22/56	528.64
1% mo. int. on ₱20,195.50 from 2/23/56 to 9/23/56	1,413.69
Compromise for late payment	20.00
TOTAL	₱29,612.15
Less: Overpayment on Estate tax ..	6,249.36
DEFICIENCY TAX AND PENALTIES DUE ON 9/23/56	₱23,362.79

The issues raised in this case in relation to the aforesaid revised assessment are as follows:

1. Whether or not the estate of the late Dora Anna Wood is liable for the payment of inheritance tax.

2. Whether or not a deduction of ₱4,000.00 should be allowed the estate for purposes of the estate tax; and

3. Whether or not the respondent Collector of Internal Revenue was correct in assessing penalties and interest.

There are other minor issues presented for resolution which we however deem not necessary in order to decide the case on the merits.

On the first issue: Whether or not the estate of the late Dora Anna Wood is liable for the payment of the inheritance tax, the proviso contained in section 122 of the National Internal Revenue Code is pertinent and quoted hereunder:

> "And provided, further, That no tax shall be collected under this title in respect of intangible personal property (a) if the decedent at the time of his death was a resident of a foreign country which at the time of his death did not impose a transfer tax or death tax of any character in respect of intangible personal property of citizens of the Philippines not residing in that foreign country, or (b) if the laws of the foreign country of which the decedent was a resident at the time of his death allow a similar exemption from transfer taxes or death taxes of every character in respect of intangible personal property owned by citizens of the Philippines not residing in that foreign country."

In the case at bar, it is uncontroverted that the decedent - Dora Anna Wood, at the time of her death, was a citizen and resident of California, United States of America. And the petitioner herein has proved to the satisfaction of this Court that the laws of the United States as well as the State of California does not impose a death tax of any character in respect of intangible personal property of citizens of the Philippines not residing in California, U.S.A. Moreover, this Court has, on at least three occasions, recognized reciprocity between California and Philippine laws on the matter of death tax on intangible personal property. (Lara vs. Collector of Internal Revenue, B.T.A. Case No. 181, June 25, 1955; Norton et al., vs. Collector of Internal Revenue, C.T.A. Case No. 73, January 12, 1956; and Fisher & Fisher vs. Collector of Internal Revenue, Manila Civil Case No. 23029, September 26, 1956.) Hence, we are of the opinion and so hold that under the reciprocity provisions of section 122 of the Tax Code quoted above, the taxpayer herein is not liable for the payment of the inheritance tax in question.

On the second issue: Whether or not a deduction of ₱4,000.00 should be allowed the estate for purposes of the estate tax, by virtue of the U. S. Federal Estate Law, this Court, in the case of Domingo E. Lara vs. Collector of Internal Revenue (B.T.A. Case No. 181, decided on June 25, 1955) stated and held:

> "Exemption is also claimed by petitioner for ₱4,000.00 ($2,000.00) from the estate tax, by virtue of the U.S. Federal Estate Tax, the pertinent provision therein stating -

'Sec. 861. Net Estate -
(a) Deductions allowed. For the purpose of the tax value of the net estate shall be determined in the case of a non-resident not a citizen of the United States, by deducting from the value of that part of his gross estate (determined as provided in section 811), which at the time of his death is situated in the United States.

x x x x

(4) Exemption - An exemption of $2,000.00.' (Section 861, Tit. 26, United States Code.)

"We believe that petitioner cannot claim this exemption of ₱4,000.00, from the estate: firstly, because this ₱4,000.00 is allowed under the U.S. Federal Estate Tax Law in the nature of a deduction and not in the nature of an exemption; secondly, because this exemption is allowed on all gross estates of non-residents of the United States, who are not citizens thereof, irrespective of whether there is a corresponding or similar exemption from transfer or death taxes of non-residents of the Philippines, who are citizens of the United States; and thirdly, because this exemption is allowed on all gross estates of non-residents, irrespective of whether it involves tangible or intangible, real or personal property; so that for these reasons petitioner cannot claim a reciprocity. The purpose of the intangible exemptions granted to non-residents under the reciprocity provisions of Section 122 of the National Internal Revenue Code, is evidently to reduce the burdens of multiple taxation, so common to intangible personal properties considering the multiple distinct relationships which may be entered into with respect thereto." (See Wells Fargo Bank v. Collector, supra; State Tax Commission v. Aldrich, supra.)

We have applied and followed the above ruling in the Lara case in a subsequent decision of this Court (Fisher & Fisher vs. Collector of Internal Revenue, Manila Civil Case No. 23029, September 26, 1956) and we find no valid and strong reason in the instant case to depart from the same. To our mind, the principle established in the said two cases is controlling in the case under consideration, and we therefore hold that the deduction of ₱4,000.00 should not be allowed the estate of Dora Anna Wood.

Let us now come to the third question which is the correctness of the assessment and imposition of the penalties and interests.

(a) 5% Surcharge on ₱6,259.09 .... ₱312.95

The provision of law under which the 5% surcharge was assessed and is sought to be collected by the respondent provides as follows:

> "Sec. 101. Additions to the tax in case of nonpayment.-
>
> (c) Surcharge.- If any amount of the taxes included in the notice and demand from the Collector of Internal Revenue is not paid in full within thirty days after such notice and demand, there shall be collected in addition to the interest prescribed herein and in sections ninety-nine and one hundred and as part of the taxes a surcharge of five per centum of the unpaid amount." (National Internal Revenue Code; underscoring supplied.)

On August 23, 1956, respondent served on petitioner his revised and final assessment notice and demand of the estate tax proper in the sum of ₱13,160.55. Actually however, petitioner even before said assessment and notice was served on her not only paid in full the amount of estate tax due but paid an amount in excess of the revised assessment of estate tax as determined by respondent to be lawfully due and payable from decedent's estate.

On February 2, 1954, petitioner paid ₱6,901.46, and again, on February 22, 1956, she also paid the amount of ₱13,670.73, or a total sum of ₱20,572.19 as the basic estate tax payment. Respondent admits that these payments were made and has considered the same in his final computation of the estate tax. As a matter of fact, he acknowledges the overpayment in estate tax in the sum of ₱6,249.36. Clearly therefore, the petitioner is not guilty of delay in the payment of the estate tax in controversy, and consequently no 5% surcharge should be imposed and collected from her.

(b) 1/2% DEFICIENCY INTEREST ON ₱6,259.09 FROM 1/22/54 TO 1/10/56 .... ₱751.09

Section 100 of the National Internal Revenue Code which provides for the assessment and collection of the 1/2% deficiency interest reads:

> "Sec. 100. Interest on deficiency.- Interest upon the amount determined as a deficiency shall be assessed at the same time as the deficiency, shall be paid upon notice and demand from the Collector of Internal Revenue, and shall be collected as a part of the tax, at the rate of six per centum per annum from the due date of the tax to the date the deficiency is assessed." (Underscoring supplied.)

It will be noted from the provision of the Tax Code quoted above that the interest is levied, assessed and collected upon the amount of the deficiency as determined by the Collector of Internal

Revenue. And note further, that the interest is to be assessed at the same time as the deficiency.

In the case at bar, there was no deficiency estate tax due and collectible from the estate of Dora Anna Wood when the interest in question was assessed against petitioner. On the contrary, and as finally found and determined by respondent, there was already an overpayment of the estate tax in the amount of ₱6,249.36. Since no interest can be collected on a non-existing deficiency, we rule and so hold that the amount of ₱751.09 was erroneously assessed by respondent.

It is true that on January 10, 1956, respondent assessed and demanded from petitioner the sum of ₱19,162.20 as estate tax due, but this assessment and demand was questioned and protested by petitioner on valid and strong grounds. In fact, respondent abandoned said assessment and issued a revised or new assessment of ₱13,160.55 as the basic estate tax due. Compared with the cancelled assessment, there is a substantial difference of more than ₱6,000.00 from the revised assessment. If we consider the present final assessment of the estate tax proper which was made by respondent to be correct it shall necessarily follow that the assessment of January 10, 1956 is erroneous. Hence, the determination of the amount of the deficiency in said assessment should not be given any legal effect or

315

consideration. To do otherwise would be tantamount to putting a stamp of approval on an illegal act of respondent.

(c) 1% MONTHLY INTEREST ON ₱7,010.18 FROM 1/11/56 TO 2/22/56 .... ₱93.24

Respondent, as legal authority for the assessment and collection of the 1% monthly interest on ₱7,010.18, cites Section 101 (b) (1) of the Tax Code which provides as follows:

> "Sec. 101. Additions to the tax in case of nonpayment.-
>
> (b) Deficiency.
>
> (1) Payment not extended. Where a deficiency, or any interest assessed in connection therewith under section 100, or any addition to the taxes provided for in section 102 is not paid in full within thirty days from the date of the notice and demand from the Collector, there shall be collected as part of the taxes, interest upon the unpaid amount of the rate of one per centum a month from the date of such notice and demand until it is paid."

As regards this item which respondent seeks to collect from petitioner, it shall suffice to state that inasmuch as there is no deficiency estate tax, or any interest on such deficiency as ruled above, or any *ad valorem* penalty under Section 102 of the Tax Code, no monthly interest can be collected from petitioner under the provisions of Section 101 (b) (1) of the National Internal Revenue Code. There is no unpaid amount on which the 1% monthly interest could be computed on and collected. We are therefore of the opinion that the amount of ₱93.24 representing 1% monthly interest was not assessed in accordance with law.

(d) COMPROMISE FOR LATE PAYMENT ... ₱5.00

As the name implies, compromise penalty can only be collected with the agreement and conformity of the taxpayer concerned. Neither the Collector of Internal Revenue nor this Court can compel the petitioner to pay the compromise penalty. This has been our consistent rule as enunciated in a long line of decisions. (Briñas vs. Collector of Internal Revenue, C.T.A. Case No. 16, Sept. 14, 1956; Central Azucarera de Tarlac vs. Collector of Internal Revenue, C.T.A. Case No. 90, July 9, 1956; Bonifacio Go Kim vs. Collector of Internal Revenue, C.T.A. Case No. 44, July 31, 1956; Jai Alai Corp. of the Phil., vs. Araneta, C.T.A. Case No. 108, July 31, 1956; Genato Commercial Corp. vs. Collector of Internal Revenue, C.T.A. Case No. 218, Oct. 5, 1956; Pio Barretto Sons, Inc. vs. Collector of Internal Revenue, C.T.A. Case No. 75, Nov. 8, 1956; Eternit Corporation vs. Collector of Internal Revenue, C.T.A. Case No. 201, Dec. 15, 1956.)

IN VIEW OF THE FOREGOING CONSIDERATIONS, the estate of Dora Anna Wood is hereby declared exempt from the payment of the inheritance tax, but is subject to the estate tax in the amount of ₱13,160.55. Since the petitioner has already paid ₱20,572.19, the respondent is hereby ordered to refund to the

DECISION -
C.T.A. CASE NO. 259

petitioner the sum of ₱7,411.64 with interest from the date of payment.

SO ORDERED.

Manila, Philippines, July 5, 1957.

MARIANO NABLE
Presiding Judge

I CONCUR:

AUGUSTO M. LUCIANO
Associate Judge

Associate Judge ROMAN M. UMALI
concurs and dissents in
a separate opinion.

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
MANILA

ELLEN WOOD McGRATH,
Petitioner,

- versus - C.T.A. CASE NO. 259

THE COLLECTOR OF INTERNAL REVENUE,
Respondent.

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

CONCURRING AND DISSENTING OPINION

I concur in the opinion of the majority in this case, except as regards the portion thereof holding that the intangible personal property of the deceased situated in the Philippines is exempt from the inheritance tax but is subject to the estate tax. On the question involving the application of the reciprocity provisions of Section 122 of the Revenue Code, I reiterate the view expressed in my concurring and dissenting opinion in Douglas Fisher and Bettina Fisher v. The Collector of Internal Revenue, Manila Civil Case No. 23029, decided by this Court on September 26, 1956, to the effect that the law does not allow partial reciprocity.

ROMAN M. UMALI
Associate Judge

311