8b.

FILIPINAS COMPANIA DE SEGUROS,
Petitioner,

Nov. 22, 1958

- versus -

C.T.A. CASE NO. 447

COLLECTOR OF INTERNAL REVENUE,
Respondent.

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

DECISION

This is an appeal from the decision of the respondent on a disputed assessment for real estate dealer's tax in the sum of ₱350.00 allegedly due from the petitioner for the year 1956. The facts in this case are undisputed and are briefly summarized hereunder.

The petitioner is an insurance company organized and existing under the laws of the Philippines with offices at 21 Plaza Moraga, Manila, Philippines. It is also engaged in business as a real estate dealer. On January 4, 1956, the petitioner, in accordance with the rates then prescribed by Section 182 of the National Internal Revenue Code, paid the sum of ₱150.00 as real estate dealer's fixed annual tax for the year 1956. Later, or more particularly on August 24, 1956, Section 182 of the Tax Code was amended by Republic Act No. 1612, by increasing the rates of the real estate dealer's fixed annual tax. (Sec. 4, Rep. Act No. 1612)

On June 17, 1957, the respondent, thru Mr. Misael P. Vera, Regional Director of District No. 3, Bureau of

Internal Revenue and pursuant to Section 182 of the National Internal Revenue Code, as amended by Republic Act No. 1612, assessed and demanded from the petitioner the sum of ₱350.00 as additional real estate dealer's fixed annual tax for the year 1956. (Annex "A", Petition for Review; Par. 1, Answer.) On July 16, 1957, the petitioner, in reply to respondent's assessment wrote the latter that the "records will show that the real estate dealer's fixed tax for 1956 of this Company was fully paid by us prior to the effectivity of Republic Act No. 1612 which amended, among other things, Sections 178 and 182 of the National Internal Revenue Code." And as to the retroactive effect of Republic Act No. 1612, the petitioner added that "in Republic Act No. 1856 which, among other things, amended Section 182 of the National Internal Revenue Code, Congress had clearly shown its intention when it provided that the increase in rates of taxes envisioned by Republic Act No. 1612 is to be made effective as of 1 January 1957." (Annex "B", Petition for Review.)

On October 23, 1957, the respondent, informed the petitioner that "Republic Act No. 1856 which took effect June 22, 1957 amended the date of effectivity of Republic Act 1612 to January 1, 1957. However, the said amendment applies only to fixed taxes on occupation and not to fixed taxes on business." (Annex "C", Petition for Review; par. 1, Answer.) Hence, the respondent insisted that the petitioner should pay the sum of ₱350.00

as additional real estate dealer's fixed annual tax for the year 1956.

On November 25, 1957, the petitioner filed the instant appeal and inasmuch as the respondent practically admitted the material factual allegations in the petition for review, the case at bar was submitted for judgment on the pleadings.

The only question to be decided in this case is whether or not the petitioner should be held liable for the payment of the assessed additional real estate dealer's fixed annual tax for the year 1956 in accordance with the new rates prescribed by Republic Act No. 1612.

It is a well-established legal principle honored by time and jurisprudence that laws have no retroactive effect unless the contrary is provided therein. (Art. 4, Civil Code of the Philippines; Manila Trading and Supply Co. vs. Santos & Saez, 66 Phil. 237; La Previsora Filipina vs. Ledda, 66 Phil. 573.) In other words, "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 clearly demands or expresses that it shall have a retroactive effect" (Lorenzo v. Posadas, 64 Phil. 353 at 366-367). The foregoing rule should be applied with equal, if not greater, vigor to this case, for it should be noted that Republic Act No. 1612 which imposes the new and higher rates of real estate dealer's annual fixed tax expressly provides in Section 21 thereof that the said law shall take <u>effect upon its approval</u> which in this case is August 24, 1956.

The case at bar is concerned with the annual fixed tax of real estate dealers due and payable at the beginning of each year, which the petitioner did pay for the year 1956. As already stated, during the year, the rate of said tax was increased and the respondent assessed against and demanded from the petitioner the increase in the amount prescribed by the new law. The assessment results in the imposition upon the petitioner of a tax burden to which it was not liable before the law. The theory of the respondent, if followed, would in effect create a new tax burden or obligation upon the petitioner and all others similarly situated to pay the annual tax for real estate dealers in an increased amount which was not existing at the time of the passage of such law, thus rendering the operation thereof retrospective. (82 CJS Sec. 418, pp. 995-996; State v. Galveston, H.S.A. Ry. Co., 100 Tex. 153, 97 SW 71 at 78; Smith v. Dirck, 283 Mo. 188, 223 SW 104, 11 ALR 510) rather than prospective. This, we believe cannot be sanctioned nor be legally done, for it would contravene Section 21 of Republic Act No. 1612, as well as the established rule of prospectivity of statutes.

The legislative intent that the application of the new and increase rates of fixed taxes shall have prospective operation finds affirmation in Republic Act No. 1856, approved on June 22, 1957, which fixed the effective date of the new rates prescribed by Republic Act No. 1612 by adding to Section 182 of the Tax Code the following proviso:

> "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." (Sec. 1, Rep. Act No. 1856.)

As a matter of fact, respondent "does not dispute petitioner's contention that Republic Act 1856 changed the effectivity of Republic Act 1612 as of January 1, 1957." (Memorandum for the Respondent, p. 7.)

In connection with the above-quoted proviso of Section 182 of the National Internal Revenue Code, as amended by RA 1856 the respondent contends however that it refers only to fixed taxes on occupation, and does not cover fixed taxes on business such as the real estate dealer's fixed tax. We have searched in the Congressional Record the unequivocal intention of the legislature in enacting Republic Act No. 1856 (former House Bill No. 5819, 3rd C.R.P.) and we have found the contention of the respondent without merit. We have noted from the deliberations in the Senate where the proviso was introduced as an amendment that House Bill No. 5819 was considered, amended and passed into law so that the iniquitous effects which were then being felt on account of the approval of Republic Act No. 1612 may be eliminated and that the complaint that the Bureau of Internal Revenue had been collecting these taxes with retroactive effect will be finally settled. (Congressional Record, Senate, May 4, 1957; pp. 1032-1033.) We have also noticed that House Bill No. 5819 as originally presented, sought to amend certain provisions of the Tax Code principally dealing on fixed taxes on business and that the provisions relative to fixed tax as an occupation were added subsequently. This leads to the conclusion that the proviso in question was intended to cover not only fixed taxes on occupation as maintained by the respondent but also fixed taxes on business as correctly contended by the petitioner. (Congressional Record, Senate, March 7, 1957, p. 444.) That the proviso was placed at the end of the fixed taxes on occupation is understandable, for it applies to both fixed taxes on business and fixed taxes on occupation and certainly would be out of place, if rendered after "(c) exemptions". Besides, the proviso uses the term "the rates" without placing any distinction as to rates of taxes on business and that on occupation. Nec lex non distinguit non debere distinguimos.

IN VIEW OF THE FOREGOING CONSIDERATIONS, the decision of the respondent Commissioner of Internal Revenue assessing and demanding from petitioner Filipinas Compania de Seguros, the sum of ₱350.00 as additional real estate dealer's fixed annual tax for the year 1956 should be, as it is hereby reversed, and the respondent is hereby ordered to desist from collecting the same.

Without pronouncement as to costs.

SO ORDERED.

Manila, November 22, 1958.

MARIANO NABLE
Presiding Judge

WE CONCUR:

AUGUSTO M. LUCIANO
Associate Judge

ROMAN M. UMALI
Associate Judge

Aff'd. G.R. L-14880, April 29, 1960.