REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
MANILA

MERCED DRUG HOUSE,
Petitioner,

- versus - C.T.A. CASE NO. 180

COLLECTOR OF INTERNAL REVENUE,
Respondent.

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

May 21/56

R E S O L U T I O N

Petitioner is appealing from the decision of respondent requiring it to pay the sum of ₱327.50 as real estate dealer's fixed tax imposed by Section 193 (q) of the National Internal Revenue Code.

Briefly, these are the facts: In a letter dated April 2, 1955, petitioner was required to pay the sum of ₱327.50 as real estate dealer's fixed tax for the period from the first quarter of 1953 to the first quarter of 1955, inclusive, plus ₱30.00 as penalty, within 30 days from receipt of said letter. (Annex "A", Petition for Review.) This letter was received by petitioner on April 19, 1955. (Annex "B", Petition for Review.) In a communication of the petitioner's counsel dated May 5, 1955, which was received by the respondent on May 10, 1955 (p. 7, BIR records; p. 2, Opposition to Motion to Dismiss), the validity of the tax assessed against petitioner was contested and the cancellation of the letter of demand was requested. In a letter dated August 2, 1955 and signed by the Deputy Collector of Internal Revenue, petitioner's request was denied. This letter was received by petitioner's counsel on August

16, 1955. (p. 2, Opposition to Motion to Dismiss.) On August 30, 1955, the petition for review was filed with this Court.

On April 7, 1956, subsequent to the filing of respondent's answer to the petition for review, respondent Collector of Internal Revenue filed a motion to dismiss, alleging that this Court has no jurisdiction over the subject matter of the action as the petition for review was filed beyond the 30-day period provided for in Section 11 of Republic Act No. 1125.

The questions raised by the parties are:

1. Whether or not the petition for review was filed within the 30-day period provided in Section 11 of Republic Act No. 1125.

2. Whether or not the issue regarding the 30-day period provided for in Section 11 of Republic Act No. 1125 can be legally raised after the answer has been filed by the respondent.

Relative to the first issue, respondent contends that the 30-day period provided in Section 11 of Republic Act No. 1125 should be counted from the date after the receipt (on April 19, 1955) by petitioner of the letter of respondent dated April 2, 1955, and that the running of said period was suspended during the time petitioner's letter requesting the cancellation of the assessment contained in respondent's aforesaid letter was pending consideration by the latter. If this is correct, it would appear that the petition for review was filed 35 days after receipt by petitioner of the decision appealed from, or beyond the 30-day period prescribed by law. On the other hand, petitioner maintains that the 30-day period should be counted from August 16, 1955, when it received respondent's letter (Annex "C", Petition for Review) reiterating the demand for payment of the tax. It argues that respondent's letter dated April 2, 1955 being a mere demand and not an assessment, is not a decision within the contemplation of Sections 7 and 11 of Republic Act No. 1125. It is contended that there cannot be a decision or ruling until a taxpayer is heard.

Section 7 of Republic Act No. 1125 confers upon this Court exclusive appellate jurisdiction to review by appeal -

> "(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."

And Section 11 of said Act requires that a person who desires to appeal from a decision of the Collector of Internal Revenue must file his appeal with this Court within 30 days after the receipt of such decision.

What are the "decisions" of the Collector of Internal Revenue which are appealable to this Court under Sections 7 and 11 of Republic Act No. 1125? In Angel Saraos v. Bureau of Internal Revenue, C.T.A. Case No. 229, March 5, 1956, the term "decisions" has been defined thus:

> "The term 'decisions' mentioned in Section 7 (in cases involving disputed assessments) refers to determinations made or arrived at by the Collector which would become final and executory unless modified or reversed by said official, or appealed to a superior authority in accordance with law."

We adhere to this definition as one which reflects the intention of Congress when it enacted Republic Act No. 1125. A simple letter of demand or notice sent by the Collector of Internal Revenue to a taxpayer requiring the latter to pay an internal revenue tax imposed by the National Internal Revenue Code is a determination by the Collector of the taxpayer's tax liability, which becomes final and executory if not protested or appealed as provided by law. In this sense, such a letter of demand or notice is a decision within the meaning of Sections 7 and 11 of Republic Act No. 1125, and if not protested and modified or annulled by the Collector or appealed to this Court within the period required by law, the same becomes final and executory.

In the instant case, respondent made a determination of petitioner's tax liability by notifying the latter in a letter dated April 2, 1955, and actually received by it on April 19, 1956, to pay the sum of ₱327.50 as real estate dealer's fixed tax corresponding to the period from the first quarter of 1953 to the first quarter of 1955. But it is contended that the Collector of Internal Revenue cannot render a decision until after a hearing has been conducted and the taxpayer has presented his side of the case. If this view is correct, the commencement of the thirty-day period within which to appeal would rest solely in the hands of taxpayers. A taxpayer may unduly prolong the period by not protesting an assessment until after six months, or even after one or two years. We do not believe Congress intended such a result.

There can be no question that respondent made an assessment against petitioner for the sum of ₱327.50 as real estate dealer's fixed tax. Counsel for petitioner, in their letter to respondent dated May 5, 1955 (Annex "B", Petition for Review), admitted that it was an assessment when they said, and we quote:

> "With due respect, we submit that the assessment has no factual and legal basis and we, therefore, request that it be cancelled."

That the assessment is a "disputed assessment," can not also be controverted. Petitioner has assailed its validity from the beginning. We are, therefore, of the opinion that the letter of respondent dated April 2, 1955 containing an assessment of an internal revenue tax is a decision in a case involving a disputed assessment within the meaning of Section 7 (1) of Republic Act No. 1125, which, if not appealed to this Court within 30 days after receipt thereof, pursuant to Section 11 of said Act, becomes final and executory. "The assessment made by the Collector of Internal Revenue is the substantial and dispositive part of his decision x x x ." (Ventanilla v. Board of Tax Appeals,

G. R. No. L-7384, December 19, 1955.)

Having arrived at the conclusion that the letter of respondent dated April 2, 1955 is his decision which is appealable to this Court, we shall proceed to consider whether the appeal from said decision was filed with this Court within 30 days after receipt thereof. The records show that said letter was received on April 19, 1955. Counsel for petitioner in a letter dated May 5, 1955, and received in the Bureau of Internal Revenue on May 10, 1955, contested the validity of the assessment and asked that the same be cancelled. The request was denied in a letter of the Deputy Collector of Internal Revenue dated August 2, 1955 and received by counsel for petitioner on August 16, 1955. The petition for review was filed on August 30, 1955. From April 19, 1955, when the letter of demand was received by petitioner to May 10, 1955 when counsel for petitioner requested that the assessment be set aside, 21 days elapsed. Then from August 16, 1955, when the period continued to run again to the date when the petition for review was filed on August 30, 1955, 14 days elapsed. Therefore, petitioner consumed a total of 35 days from the date of its receipt of the decision of respondent to the date of the filing of its appeal, which is five days beyond the 30-day period provided in Section 11 of Republic Act No. 1125.

It is, however, contended that even assuming that the petition for review was filed beyond the thirty-day period, the motion to dismiss is out of order "because it should have been filed before respondent filed his answer." We are of the opinion that the question whether or not an appeal has been filed with this Court within the statutory period of thirty days is jurisdictional and may be raised by respondent at any stage of the proceedings.

> "It is a well settled rule of law that questions of jurisdiction can be raised at any stage of the proceeding or action. It is a rule likewise well settled both in American and Philippine jurisdictions, that if a statutory remedy provides as a condition <u>sine qua non</u> that the action to enforce it must be commenced within a prescribed time, such requirement is jurisdictional, and failure to comply therewith may be raised in a motion to dismiss (Callahan v. Chesapeake & Ohio R. Co., 5 Fed. Rules Service, p. 99, cited in 1 Moran, Commentaries on the Rules of Court, p. 175) for the reason that prescription of action is a matter of substantive law. x x x ." (Bay View Hotel, Inc. v. Collector of Internal Revenue, C.T.A. Case No. 80, Nov. 21, 1955; see 1 Moran, Commentaries on the Rules of Court, p. 169.)

In a similar case where the petition for review was filed with this Court beyond the thirty-day period, both the taxpayer and the Collector of Internal Revenue prayed that the case be decided on the merits. This Court nevertheless dismissed the case for lack of jurisdiction.

> "The right to appeal from a decision of the Collector of Internal Revenue being a statutory right, the same can be invoked only in accordance with the requisites which the law has provided for the purpose. (Wee Poco v. Posadas, 64 Phil. 648; Secretary of Agriculture v. Court of First Instance, G.R. No. L-7752, May 27, 1955.) Failure to comply with the requirements is fatal; and the defect may not be cured by the allegation of the parties that they understood or regarded respondent's letter of January 14, 1955 as his final decision, and that they 'firmly believed that the jurisdictional require-

> ments had been fully complied with.' Jurisdiction can not be conferred upon this Court by agreement of the parties." (Robert L. Janda v. J.Antonio Araneta, C.T.A. Case No. 87, Feb. 23, 1956.)

IN VIEW OF THE FOREGOING, the herein petition for review is hereby dismissed for lack of jurisdiction, with costs against petitioner.

SO ORDERED.

Manila, Philippines, May 21, 1956.

ROMAN M. UMALI
Associate Judge

I CONCUR:

AUGUSTO M. LUCIANO
Associate Judge

MARIANO NABLE
Presiding Judge
(On Leave)