

**TEODORO PADILLA, PLAINTIFF-APPELLANT, VS. CITY OF PASAY,
HERMOGENES M. DIEGO AS CITY TREASURER OF PASAY CITY,
DEFENDANTS–APPELLEES.***G.R. No. L-24039. June 29, 1968*

Ponente: FERNANDO, J.

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In this suit for the refund of a penalty alleged to be erroneously and illegally collected, the amount due and demandable being in excess of what ought to have been paid on the realty tax due, it being shown that the first installment of such tax was paid on time, but the second installment, through oversight, was not remitted until after the lapse of one month from the date due, the question is whether or not the tax payer should be held liable for the penalty based on the amount of the whole tax to be computed from the date such tax was due or from the time the second installment ought to have been paid but was not. The lower court, on the basis of the statute providing that all taxes on real estate are due and payable annually on the first day of June, held that delinquency is to be counted from such a date even if the first installment were paid on time.

The facts, as alleged by plaintiff Teodoro Padilla against the City of Pasay and its City Treasurer, were substantially admitted. Plaintiff is the absolute owner of the property consisting of land and improvements in the City of Pasay assessed at P113,000.00. Based on such assessment, the total tax due for 1963 on said property was P1,412.50. Plaintiff, as taxpayer, taking advantage of an option granted him by the Pasay City Charter,[1] paid the fifty per cent first installment of the realty tax due that year within the period allowed by law in the amount of P706.25. The second installment in the same amount ought to have been paid not later than October 30, 1963, but through oversight, it was not until December 23, of that year that it was done. Accordingly, defendant City Treasurer required plaintiff to pay a penalty of P169. 50. This was paid under protest, it being the contention of plaintiff that, based on the statute,[2] he should have been required to pay only the sum of P28.25, there being only one full month of delinquency, the payment having been made on December 23, 1963. He therefore sought the refund of P141.25 as being in excess of the penalty that could be legally imposed on him. The answer by defendants alleged that the statutory provision correctly construed would not justify the claim for refund of the amount collected, which was the proper penalty under the law.

The lower court, in a decision appealed from, sustained defendants. Thus: "The provision of the first paragraph of the aforementioned Section 43 of Republic Act 183, provides, among other things, that all taxes on real estate for any year shall be due and payable annually on the first day of June and from this date such taxes together with all penalties accruing thereto shall constitute a lien on the property subject to taxation. Consequently, a taxpayer who fails to pay his real estate tax on the first day of June, the date when the tax becomes due and payable, is delinquent from that time on. When plaintiff did not therefore, pay the whole amount of his estate tax due on the first day of June, he already became delinquent from then on. The contention of the plaintiff that he became delinquent only after October 31, 1963, when he failed to pay the second half of the installment for the payment of the total tax due, is erroneous." [3] It therefore dismissed as already noted, the complaint with costs against

plaintiff. Hence this appeal.

In appellant's brief, it is submitted that the taxpayer having been given an option to pay his realty tax in two installments and appellant having paid within the permissible period, the first installment, he could not be considered delinquent insofar as the first half of the realty tax is due. His delinquency should date only from November 1, 1963 by virtue of his failure to pay on October 30 of the same year. For appellant, it is inconceivable "how he can be declared delinquent from June 1, 1963 since the second installment of his real estate tax was not yet due on that date but will have become due and payable only on the thirtieth of October 1963." [4] The decision, according to appellant, "negates the taxpayer's option to pay his realty tax in two (2) installments, as expressly granted" [5] by law and amounted to "unwarranted judicial legislation."

Appellant's theory is not implausible. Nonetheless, it must yield to the specific language of the law which is controlling. The last sentence of the first paragraph of the controlling legal provision [6] reads thus: "All taxes on real estate for any year shall be due and payable annually on the first day of June and from this date such taxes together with all penalties accruing thereto shall constitute a lien on the property subject to such taxation." Two para-graphs later, the taxpayer is given the option to pay "in two install-ments to be fixed annually by the Municipal Board simultaneously with the rate per centum ad valorem taxation: Provided, That the time limit for the first and second installments shall be set at not later than the thirty-first day of May and the thirtieth day of October of each year, respectively." Then comes the provision as to the penalty to be im-posed in case of delinquency and how to fix the same: "At the expi-ration of time for the payment of the real estate tax without penalty, the taxpayer shall be subject, from the first day of delinquency, to the payment of a penalty at the rate of two per centum for each full month of delinquency that has expired, on the amount of the original tax due, until the tax shall have been paid in full or until the property shall have been forfeited to the city as provided in this Act: Provided, That in no case shall the total penalty exceed twenty-four per centum, of the original tax due."

Construed together, the above provisions yield no other conclusion but that the taxes are due and payable "on the first day of June" from which date "such taxes together with all penalties accruing thereto shall constitute a lien on the property subject to such taxation." It is true the taxpayer is given the option to pay in two installments with the respective dates for the payment thereof "at not later than the thirty-first day of May and the thirtieth day of October of each year, respectively." Then comes the crucial and decisive provision: "At the expiration of the time for the payment of the real estate tax without penalty, the taxpayer shall be subject from the first day of delinquency, to the Payment of a penalty at the rate of two per centum for each full month of delinquency that has expired, on the amount of the original tax due, until the tax shall have been paid in full or until the property shall have been forfeited to the city * * *."

The law is specific and mandatory. It calls for application as thus worded. There is no room for interpretation. The penalty is to be based "on the amount of the original tax due." The fact that the first installment was made on time does not benefit the taxpayer at all, if thereafter the second installment were not paid on time. In effect then, the option thus granted, to pay in two installments, must be strictly complied with, otherwise the operation of the plain statutory command that the tax due and payable on June 1st becomes unavoidable, and delinquency is to be computed from such a date.

It is well-settled that a statute, free from any constitutional infirmity, must be enforced as written. The applicable provision, viewed as a whole, makes clear that the penalty must be computed from the time the realty tax was due. To the extent that the lower court decision adheres literally to such provision, it cannot be assailed as erroneous.

The conclusion reached is reinforced by the principle that lies behind a recent decision in *Acoje Mining Co., Inc. v. The Com-missioner of Internal Revenue*. [7] The principal issue in the case, according to the opinion of Justice

Castro, is whether the petitioner's obligation to pay the whole amount of its tax arose upon its failure to pay the first installment thereof on May 15, 1958, without need of notice or demand from the respondent Commissioner." After quoting the appropriate legal provision,[8] that if any installment is not paid on or before the date fixed for its payment, the whole amount of the tax "shall be paid upon notice and demand," the opinion goes on to state that to sustain petitioner's contention that there should be such a notice or demand would be to place in the hands of the Commissioner of Internal Revenue the power to condone interests. Such a consequence, the Court could not look with approval on, not only because of the uncertainty that would be created and the possibility of the uneven application of the law, but likewise because of the demands of public policy.

It is to be admitted that the case is not squarely in point. None-theless, the peremptory requirements of public policy that would stress the necessity for full and unconditional compliance with the language of the law are present in this case. As a matter of fact, in that opinion less than full adherence to the wording of the statute did not suffice to defeat the challenged government exertion of the taxing power. Where, as here, there is no basis for such an assertion, there being fidelity to what is required by the legal provision applicable, what was done by defendant City of Pasay could not be successfully assailed. The obligation to pay a penalty having been thus provided for in language that evinced legislative intent clearly and the taxpayer having it within his power to avoid the imposition of such penalty in the event he chooses to exercise the option of paying in two installments by avoiding late remittance of the tax due, it does appear clear that no departure from the legal norm had been shown. The terms of the statute provide the safest guide as to the statutory policy, to which obedience is due and from which deviation is not allowable.[9]

The appealed judgment must stand. According to the express provision of the statute, the penalty at the rate of two per centum on the amount of the original tax due should be imposed "for each full month of delinquency." The payment for the second installment having been made on December 23, 1963, the month of December is to be excluded from computation of the penalty. From June to November, at the rate of P28.25, which is 2% of the tax due, based on P1,412.50, the amount that should be collected is P169.50. Such amount having been collected as penalty, the appellant paid exactly what was due.

WHEREFORE, the decision appealed from is affirmed. Without pronouncement as to costs.

Concepcion, C.J., Reyes, Makalintal, Zaldivar, Castro and Angeles, JJ., concur.

Sanchez, J., dissents in a separate opinion.

Dizon, J., concurs in the dissenting opinion of Justice Sanchez.

[1] Section 43, par. 3, Republic Act No. 183.

[2] Ibid, par. 6.

[3] Decision of the lower court, Record on Appeal, pp. 26-27.

[4] Brief for the Plaintiff-Appellant, p. 12.

[5] Ibid, p. 17.

[6] Section 43, Republic Act No. 183.

[7] L-19378, March 27, 1968.

[8] Section 51(c), National Internal Revenue Code, Commonwealth Act No. 466 as amended.

[9] Cf. *Lizarraga Hermanos v. Yap Tico*, 24 Phil. 504 (1913); *People v. Mapa*, L-22301, Aug. 30, 1967; *Pacific*

Oxygen and Acetylene Co. v. Central Bank, L-21881, March 1, 1968; Dequito v. Lopez, L-27757, March 28, 1968.

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