REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

GENERAL MILLING CORPORATION,
Petitioner,

- versus - C.T.A. CASE NO. 5496

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated: JUL 08 1999

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DECISION

This is a judicial claim for the issuance of tax credit in the amount of ₱1,020,960.00 representing overpaid income tax for the year 1994.

Petitioner is a food manufacturing corporation, duly organized and existing under Philippine law, with principal office address at 6th Floor, Corinthian Plaza Bldg., 121 Paseo de Roxas St., Makati City. It owns and operates a feedmill plant in Cebu, Philippines, which is duly registered with the Board of Investments ("BOI", for brevity) under Certificate of Registration No. AP 90-501. As such, it is entitled, from among other incentives, an income tax holiday or exemption for three (3) years starting July 1991 to June 30, 1994.

The facts are simple.

On April 10, 1997, as a result of the adoption by the Board of Investments on October 22, 1996 of a new method of computing income tax holiday for less than a year availment, Petitioner filed the abovementioned claim through an amended income tax return. Under this so-called new method, the total sales/revenue and deductible expenses for the whole year of the feedmill plant were considered in the computation instead of the previous method which considered only the period covered by the income tax holiday within the year.

Based therefore on this new method, the amended and the original computation as presented by the Petitioner are as follows, to wit:

		Amended (Jan. 1-Dec. 31, 1994)	Original (Jan. 1-June 30, 1994)
A.	Total Sales	P925,241,515.00	438,826,645.00
B.	Eligible Sales	438,826,645.00	-
C.	Less: Base Figure	-	-
D.	Incremental Sales	438,826,645.00	-
E.	Rate of Exemption (B/A)	47.43 %	100 %
F.	Taxable Income	53,414,654.00	22,417,541.00
G.	Tax Due-35 %	18,695,129.10	7,846,139.00
H.	Rate of Exemption	47.43 %	100 %
I.	Income Tax Holiday	8,867,100.00	7,846,139.00
J.	ADDITIONAL INCOME TAX HOLIDAY	₱ 1,020,960.00	

Due to the near expiry of its right to claim for tax credit within two years from date of payment as provided under Section 230 of the Tax Code, Petitioner was constrained to institute the present appeal.

At bar, Petitioner echoed its stance <u>a quo</u>. On the other hand, Respondent interposes, from among others, the following special and affirmative defenses, to wit:

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> 7. The BOI adopted method of computation of ITH (ManCom Res. No. 80-24 s'96) dated October 22, 1996 has no

> retroactive effect and, therefore, does not apply to petitioner's 1994 income tax payment;
>
> 8. The petitioner has already filed its final corporation annual income tax return for the taxable year ending December 31, 1994 on April 17, 1995, hence, the amended 1994 corporation annual income tax return filed only two years later on March 7, 1997 is highly irregular, improper and has no legal basis;
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> 11. He who claims exemption must be able to justify his claim or right thereto, by a grant expressed in terms too plain to be mistaken and too categorical to be misinterpreted. (Comm. vs. Kiener Co. Ltd., L-24754, July 18, 1975; Reagan vs. Comm., L-26379, Dec. 27, 1969) An exemption from a common burden cannot be permitted to exist upon a vague implication or inference. (Asiatic Petroleum Co. vs. Ylanes, 49 Phil. 466; Manila Electric Co. vs. Vera, L-29987, Oct. 22, 1975);

During the hearings and in his memorandum, Respondent submitted in evidence his examiner's findings on Petitioner's claim (Exhibit 2) which granted a reduced amount of ₱348,317.00, after disallowing administrative expenses and factory cost, in the amount of ₱10,688.70 and ₱732,592.92, respectively (Schedule B of Memorandum, dated January 20, 1998, p. 154 of BIR records)

Petitioner rebutted the findings of Respondent's examiner by contending that the alleged factory cost and administrative expense actually pertained to the 13th month pay of its factory workers and administrative employees which were all below ₱30,000.00 for each worker, thus, not subject to income and withholding tax, pursuant to Republic Act No. 7833, (pp. 8-9, TSN, April 29, 1998; Memorandum for the Petitioner, p. 4)

Based on the facts and arguments of the parties, the following are the issues confronting this Court, namely:

1. Whether or not Petitioner is entitled to a retroactive application of the method of computing income tax holiday approved by the BOI on October 22, 1996; and if in the affirmative,

2. Whether or not petitioner is entitled to its entire claim or limited only to a reduced amount of P348,317.00 as recommended by Respondent examiner.

As regards the first issue, this Court is not only against a retroactive application of the BOI method of computing income tax holiday but most importantly, rules against the method itself, for being contrary to Respondent's Revenue Regulations No. 2 on income taxation which, in particular states:

> **SEC. 61.** ***Exclusions from gross income.*** -The term "gross income" as used in the Act **does not include those items of income exempted by statute or by fundamental law. Such tax-free income should not be included in the income tax return unless information regarding it is specifically called for.** The exclusion of such income should not be confused with the reduction of gross income by the application of allowable deductions.
> (Italics and emphasis supplied)

It is crystal clear that the method approved by the BOI contravenes the above section in view of the inclusion of Petitioner's sales/revenues and deductions covered by income tax holiday within the period January

1, 1994 to June 30, 1994. In the computation of the income tax return for year 1994, these should have been excluded as they fall within the period of exemption granted by the Omnibus Investment Code.

An income tax holiday is but another term for income tax exemption, hence, all receipts accruing or covered therefrom should not be mixed or included in the computation of Petitioner's taxable income from July 1, 1994 to December 31, 1994.

Respondent's Bureau is the government agency specifically tasked with the implementation of income taxation. Its regulations necessarily prevail over the BOI method of computing income tax.

This Court further believes that to sanction said BOI method would result in a spill over or an unwarranted extension of the benefit of income tax exemption to Petitioner's taxable income for the period July 1, 1994 to December 31, 1994. This observation is taken from the fact that Petitioner is claiming a tax credit at bar when the computation is made for the whole year of 1994, inclusive of the income tax holiday period.

On this score alone, this Court reiterates the well-settled rule that tax exemptions are strictly construed and can only be given force when the grant is clear and categorical. (Commissioner of Internal Revenue vs. Rio Tuba Nickel Mining Corp., 202 SCRA 137)

With the finding that the BOI method in question is legally flawed, this Court deems it moot and academic to discuss the second issue at bar.

WHEREFORE, in view of the foregoing, the instant Petition for Review is hereby **DENIED** for lack of merit.

SO ORDERED.

RAMON O. DE VEYRA
Associate Judge

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Judge

AMANCIO Q. SAGA
Associate Judge

CERTIFICATION

I hereby certify that this decision was reached after due consultation with the members of the Court of Tax Appeals in accordance with Section 13, Article VIII of the Constitution.

ERNESTO D. ACOSTA
Presiding Judge
Court of Tax Appeals