REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

PHILIPPINE AIRLINES, INC.,
Petitioner,

- versus - C.T.A. CASE NO. 6465

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
JUL 26 2004

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DECISION

This case involves claims for refund in the aggregate amount of **THREE MILLION FIVE HUNDRED EIGHTY THOUSAND TWO HUNDRED FIFTY FIVE AND 24/100 PESOS (P3,580,255.24)**, broken down as follows:

1. The amount of **US$69,956.19 OR P3,560,070.50** (PHP50.890 to US$1.00) allegedly representing the **7 1/2% final income tax** erroneously withheld by the China Banking Corporation from the interest income of petitioner for the period covering September 10, 1999 to October 18, 2000 and remitted to the respondent;

2. The amount of **PHP9,195.05** allegedly representing the **20% final income tax** erroneously withheld by the Security Bank Corporation from the interest income of petitioner for the period covering March 31, 2000 to March 31, 2001 and remitted to the respondent;

3. The amount of **US$215.95 OR PHP10,989.69** (PHP50.890 to US$1.00) allegedly representing the **7 1/2% final income tax** erroneously withheld by the Security Bank Corporation from the interest income of petitioner for the period covering March 31, 2000 to December 31, 2000.

The following are the factual background as contained in the records of the case:

Petitioner, Philippine Airlines, Inc. (PAL) is a domestic corporation organized in accordance with the laws of the Republic of the Philippines with principal office at 9th Floor, PAL Center, Legaspi St., Legaspi Village, Makati City *(par 1, Joint Stipulation of Facts*).

During the period covering September 10, 1999 to March 31, 2001, petitioner allegedly earned from its US dollar time deposit with China Banking Corporation (CBC), a total interest income of US$862,793.42 net of the amount of US$69,956.19 representing the 7½% final taxes. Said

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amount of US$69,956.19 was alleged to be erroneously withheld by CBC and remitted to the BIR (*par 3 & 4, Petition for Review*).

Moreover, for the period covering March 31, 2000 to March 31, 2001, petitioner allegedly earned from its Peso All in One Account with Security Bank Corporation (SBC), a total interest of PHP42,753.22, of which the amount of PHP8,550.64 representing the 20% final income tax was purportedly withheld by SBC and remitted to the BIR *(par 5 & 6, Petition for Review*).

Also, for the period covering March 31, 2000 up to December 31, 2000, petitioner's Current Account with Security Bank Corporation earned a total interest of PHP3,222.04, of which the amount of PHP644.41 representing the 20% final income tax was supposedly withheld from it by SBC and remitted to the BIR *(par 7 & 8, Petition for Review).* Finally, on petitioner's FCDU Deposit Account with Security Bank Corporation, for the same period, a total of US$215.95 representing the 7 ½% final income taxes was allegedly withheld and remitted to the BIR *(par 9, Petition for Review*).

Believing that it is entitled to the refund of the withheld final income taxes from its interest income by virtue of its franchise, more particularly Section 13 of PD 1590, on September 6, 2001, petitioner's AVP Financial Planning & Analysis, Ms. Ma. Stella L. Diaz, filed with the office of the respondent, a written request for the refund of the amounts of PHP16,244.02 and US$70,406.00 representing the total amount of final withholding taxes alleged to be erroneously withheld from the petitioner by Security Bank Corporation and China Banking Corporation, respectively, for the period covering March 31, 1999 to March 31, 2001, attaching thereto certifications from the said banks of the subject withheld taxes (*par 3, Joint Stipulation of Facts; Annex "F", Petition for Review).*

Unable to obtain an immediate relief from the respondent, petitioner deemed it proper to elevate the case to this court on April 24, 2002.

On June 10, 2002, respondent filed his Answer to the Petition for Review and by way of Special and Affirmative Defenses, interposed the following:

(4) Petitioner's alleged claim for refund is subject to investigation by respondent's Bureau.

(5) Petitioner failed to demonstrate that the tax subject of the case at bar was erroneously or illegally collected.

(6) Taxes paid and collected are presumed to have been paid in accordance with law and regulations, hence, not refundable.

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(7) The petition states no cause of action. It failed to allege the date when the tax sought to be refunded was paid.

(8) Neither has petitioner shown that the tax sought to be refunded was actually paid.

(9) Tax exemptions were effectively withdrawn by E.O. 93 dated December 17, 1986. Section 1 of Executive Order No. 93 dated December 17, 1986 but became effective on March 10, 1987 withdrew all the tax and duty incentives granted to government and private entities, subject to the following exceptions:

a. Those covered by the non-impairment clause of the Constitution;

b. Those conferred by effective international agreements to which the Government of the Republic of the Philippines is a signatory;

c. Those enjoyed by enterprises registered with:

i. The Board of Investments pursuant to Presidential Decree No. 1789, as amended;
ii. The Export Processing Zone Authority, pursuant to Presidential Decree No. 66, as amended;
iii. The Philippine Veterans Investment Development Corporation Industrial Authority pursuant to Presidential Decree No. 538, as amended

d. those enjoyed by copper mining industry pursuant to the provisions of Letter of Instruction No. 1416;

e. Those conferred under the four basic codes namely:

i. The Tariff and Customs Code, as amended;
ii. The National Internal Revenue Code, as amended;
iii. The Local Tax Code, as amended;
iv. The Real Property Tax Code, as amended

f. Those approved by the President upon the recommendation of the Fiscal Incentives Review Board.

It is clear from the foregoing that PAL is not covered by any of the aforecited exceptions.

(10) Finally, the taxpayer has the burden of proof that he is covered by the exemption under the clearest grant of organic or statute law. (*Asiatic Petroleum Co. v. Llanes, 49 Phil 466; Northern Phil. Tobacco Corp. v. Mun. of Agoo, La Union, 31 SCRA 304; Reagan v. Commissioner, 30 SCRA 968; Austrias Sugar Central, Inc. v. Commissioner of Customs, 29 SCRA 617*). Thus, exemption from taxation is never presumed. For tax exemption to be recognized, the grant must clear and expressed; it cannot be made to rest on vague implication (*Davao Light and Power Co., Inc. v. Commissioner of Customs, 44 SCRA 122, cited in Insular Lumber Co. v. Court of Tax Appeals, 140 SCRA 710*). Furthermore, when tax exemption is claimed, it must be

> sworn indubitably to exist, for every presumption is against it, and a well founded doubt is fatal to the claim (*Farrington v. Tennessee & Country Shelby, 93 US 679, 686; Manila Electric Co. v. Vera, L-29987, October 22, 1975, 67 SCRA 351).*

Petitioner and respondent mutually agreed to the following issues:

1. Whether or not claim for refund was filed within the two-year period under Section 229 of the NIRC as amended.
2. Whether or not petitioner's withholding taxes are substantiated by documentary evidence.
3. Whether or not the amounts withheld were actually remitted to the BIR.
4. Whether or not petitioner is entitled to a refund of the said withholding taxes.
5. Whether or not petitioner is exempt from payment of final tax.

In a resolution promulgated by this court on April 19, 2004, this case was considered submitted for decision after both parties have filed their respective memorandum.

On the whole, the resolution of this entire case would depend on only one issue, that is, whether or not petitioner is entitled to a refund of the said final taxes withheld and allegedly remitted by China Banking Corporation and Security Bank Corporation to the Bureau of Internal Revenue for the subject period, as evidenced by the certificates issued by said banks.

In its Memorandum filed on February 19, 2004, petitioner's assertion concentrates mainly on the terms of its franchise, P.D. 1590, more particularly Section 13 thereof, which allegedly allows petitioner to pay either the basic corporate tax as provided for under the National Internal Revenue Code, or a franchise tax of 2% based on its gross revenues derived from all sources, whichever will result in a lower tax, and accordingly, either tax payment "shall be in lieu of all other taxes, duties, royalties, x x x of any kind, nature of description imposed, levied, established, assessed, or collected by any municipality, city, provincial, or national authority or government agency, now or in the future x x x ." Petitioner contends that, pursuant to the terms of the franchise, the 20% and 7 ½% final taxes on interest income from bank deposits and the yield from deposit substitutes clearly fall under the terms "all other taxes x x x of any kind, nature or description imposed, levied, established, assessed or collected by any x x x national authority or government agency, now or in the future x x x", therefore, erroneously withheld and collected by the said banks.

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In addition and in the belief that the same would help bolster its claim, petitioner submitted certificates issued by Security Bank Corporation and China Banking Corporation, confirming the alleged fact of withholding and remittance of the corresponding 20% and 7 ½% final taxes on interest income from bank deposits and the yield from deposit substitutes *(Exhibits "A" to "E")*.

On the other hand, it is respondent's position that all tax and duty exemptions or incentives granted to government and private entities have already been effectively withdrawn by Section 1 of Executive Order No. 93 dated December 17, 1986 but which took effect on March 10, 1987. For a proper disposition of this case, said section is reproduced below:

> *"The provisions of any general or special law to the contrary notwithstanding, all tax and duty incentives granted to government and private entities are hereby withdrawn, except:*
>
> *a. those covered by the non-impairment clause of the Constitution;*
> *b. those conferred by effective international agreements to which the Government of the Republic of the Philippines is a signatory;*
> *c. those enjoyed by enterprises registered with:*
>
> > *i. the Board of Investments pursuant to Presidential Decree No. 1789, as amended;*
> > *ii. the Export Processing Zone Authority, pursuant to Presidential Decree No. 66, as amended;*
> > *iii. the Philippine Veterans Investment Development Corporation Industrial Authority pursuant to Presidential Decree No. 538, as amended;*
>
> *d. those enjoyed by copper mining industry pursuant to the provisions of Letter of Instruction No. 1416;*
> *e. Those conferred under the four basic codes namely:*
>
> > *i. the Tariff and Customs Code, as amended;*
> > *ii. the National Internal Revenue Code, as amended;*
> > *iii. the Local Tax Code, as amended;*
> > *iv. the Real Property Tax Code, as amended;*
>
> *f. Those approved by the President upon the recommendation of the Fiscal Incentives Review Board."*

After a thorough consideration of all the facts of the case, this court rules to deny this instant petition.

First of all though, this court deems it important to reconcile respondent's arguments with regard to the application of Section 1 of E.O. No. 93 to the instant case before going into the main thrust of the case.

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There is no question that the tax exemption or incentive allowed to petitioner was conferred through a franchise granted to it by the Philippine Government. A franchise is defined as " a **contract** for public works or public service granted by a government to an individual or company; a right or privilege conferred by grant from a sovereign or a government and vested in an individual or group; right to do business conferred by a government" *(Webster's Third New International Dictionary of the English language).* Apparently, there exists a contract between the Philippine Government and petitioner through P.D. 1590, which contract or franchise has never been previously withdrawn or rescinded. Obviously, such contract or franchise is binding between the parties affected by its terms and conditions. And as Section 1 of E.O. No. 93 clearly provides, one of the exceptions to the rule on the withdrawal of tax and duty incentives are "those covered by the non-impairment clause of Constitution", to wit:

> *"The provisions of any general or special law to the contrary notwithstanding, all tax and duty incentives granted to government and private entities are hereby withdrawn, except:*
>
> *a. **Those covered by the non-impairment clause of the Constitution**;*
>
> xxx xxx xxx
>
> (Emphasis supplied.)

Verily, petitioner's tax exemption or incentive granted through its franchise is therefore not in any way covered by the said provision of Executive Order No. 93.

And now to the merits of the case.

The core of the present controversy lies on the provision of Presidential Decree No. 1590, more particularly Section 13, which provides:

> *Section 13. In consideration of the franchise and rights hereby granted, the **grantee shall pay** to the Philippine Government during the life of this franchise whichever of subsections (a) and (b) hereunder will result to a lower tax:*
>
> *(a) The basic corporate income tax based on the grantee's annual net taxable income computed in accordance with the provisions of the National Internal Revenue Code; or*
>
> *(b) A franchise tax of two per cent (2%) of the gross revenues derived by the grantee from all sources, without distinction as to transport or non-transport operations; provided that with respect to international air-transport service, only the gross passengers, mail, and freight revenues from its outgoing flights shall be subject to this tax.*

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> *The **tax paid** by the grantee under either of the above alternatives shall be in lieu of all other taxes, duties, royalties, registration, license, and other fees and charges of any kind, nature, or description imposed, levied, established, assessed, or collected by any municipality, city, or provincial, or national authority or government agency, now or in the future, including but not limited to the following:* (Emphasis supplied.)
>
> *xxx xxx xxx*

The rule is that if the statute is clear, plain and free from ambiguity, it must be given its literal meaning and applied without any attempted interpretation. This rule rests on the presumption that the words employed by the legislature in a statute correctly express its intent or will and preclude the courts from construing it differently.

From the very wordings of the above terms of the franchise, it is evident that the grantee, Philippine Airlines, is given the option to pay to the Philippine Government during the life of the franchise whichever will result in a lower tax, either (a) the basic corporate tax in accordance with the provisions of the National Internal Revenue Code, or (b) a franchise tax of two per cent (2%) based on the gross revenues derived from all sources. The choice having been made and paid, consequently, according to the last part of the provision, "the tax paid by the grantee under either of the alternatives, shall be in lieu of all other taxes, duties, x x x of any kind, nature or description imposed, levied, established, assessed or collected by any municipality, x x x or national authority or government agency, now or in the future x x x."

In the case of **Philippine Airlines, Inc. (PAL) vs. Commissioner of Internal Revenue, C.T.A. Case No. 5824, June 13, 2001,** this court had this to say with regard to the "in lieu of" phrase, to wit:

> *The phrase "in lieu of" means instead of, in place of; or in substitution for (Black vs. Barnes, 46 P. 2d 625, 626, 142 Kan. 361; Rutherland vs. Oroville-Wyandotte Irr. Dist., 22 P. 2d 505, 218 Cal. 242; Words and Phrases, Vol. 21, p. 472). The "in lieu of" implies the existence of something for which a substitution is being made. Analyzing, therefore, the wordings of the franchise more particularly the last paragraph of Section 13 of PD 1590, it is clear that Petitioner has the option to pay either a corporate income tax or a 2% franchise tax to avail of the incentive. Had Petitioner paid the 2% franchise tax, then the final withholding taxes withheld may be considered as "other taxes" as it falls under income tax. However, should it choose to avail of the first alternative, then final withholding tax on income may not be considered*

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> *as "other taxes". In other words, should PAL opt to avail of the first alternative, that is, to pay corporate income tax, payment of final withholding tax is deemed part of its corporate income tax liability, therefore not refundable.*

Unequivocally then, it is indispensable that petitioner pay first, either the basic corporate tax or the franchise tax, before it can avail of the incentive provided under the last paragraph of Section 13 of P.D. No. 1590. Unfortunately, this petitioner failed to prove. Nothing was presented or offered to show proof that petitioner had paid either of the two options granted to it by the said franchise. Petitioner failed to convince this court that it had already opted for a preference from either alternative given in the franchise for the year wherein such refund is being sought for. Petitioner may have offered documents to prove that the amount withheld were remitted by the banks to respondent. However, the crucial requirement necessary to prove that it had already paid either the corporate or franchise tax is missing. Hence, petitioner cannot be considered as entitled to the benefits allowed by said law. As it has already been resolved in the case of **Philippine Airlines, Inc. vs Commissioner of Internal Revenue Mr. Rene Banez, C.T.A. Case No. 6298, April 23, 2004**, thus:

> *As in its previous claim for refund of Overseas Communications Tax, herein petitioner failed* ***to prove that it has paid either of the two taxes provided for under Section 13 of P.D. No. 1590, which is an indispensable requirement before it may enjoy the privileges granted therein****. Petitioner did not present its Income Tax Return covering the period of the subject refund; hence, it is not entitled to the other benefits of the decree.*
> (Emphasis supplied.)

It is cardinal rule in taxation that exemptions are highly disfavored and whoever claims an exemption must justify his right by the clearest grant or organic or statute law *(Commissioner of Internal Revenue vs China Banking Corporation, G.R. No. 147938, June 10, 2003)*. An exemption from the common burden cannot be permitted to exist upon vague implications *(Commissioner of Internal Revenue vs General Foods (Phils.), Inc., G.R. No. 143672, April 24, 2003 citing Asiatic Petroleum Co. vs Llanes, 49 Phil 466).*

Accordingly, this court finds it needless to resolve the other issues so stipulated.

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IN VIEW OF ALL THE FOREGOING, the Petition for Review is hereby **DENIED** for lack of merit.

SO ORDERED.

LOVELL R. BAUTISTA
Associate Justice

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Justice

(With separate concurring opinion)
JUANITO C. CASTAÑEDA, JR.
Associate Justice

CERTIFICATION

I hereby certify that the above 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 Justice

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