

**REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY**

**NIPPON LIFE INSURANCE COMPANY
OF THE PHILIPPINES, INC.,**

Petitioner,

- versus -

C.T.A. CASE NO. 6289

**COMMISSIONER OF INTERNAL
REVENUE,**

Respondent.

Promulgated:

SEP 22 2003

Christophmann

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DECISION

This is a petition that seeks to refund the amount of P3,092,878.68 allegedly representing income taxes erroneously withheld from petitioner's investment in long-term Fixed Rate Treasury Bonds from August 28, 1998 to April 26, 1999.

The material facts as culled from the records are as follows:

Petitioner is a domestic corporation duly organized and existing under the laws of the Republic of the Philippines, with principal office address at the 21st Floor, Tower 2, RCBC Plaza, 6819 Ayala Avenue corner Sen. Gil J. Puyat Avenue, Makati City, Metro Manila. It is authorized to engage in the business of life insurance by the Insurance Commission (*pars. 1 & 3, Stipulation of Facts*)

As a company engaged in the business of life insurance, petitioner is required under the Insurance Code of the Philippines to invest in and purchase certain government securities during the course of its operations. These investments consist of bonds or other

evidences of debt of the Philippine Government, its political subdivisions or instrumentalities, or of government-owned or controlled corporations and entities (*par. 4, Stipulation of Facts*).

From August 28, 1998 to February 17, 1999, petitioner purchased several long-term Fixed Rate Treasury Bonds (*Bonds, for brevity*) from various banks in the secondary market, namely: Citibank, N.A. (*Citibank, for brevity*), Hongkong and Shanghai Banking Corporation (*HSBC, for brevity*) and Rizal Commercial Banking Corporation (*RCBC, for brevity*), with the following details as declared in its Summary of Treasury Bonds purchased (*Exhibit "BB"*):

Bond Series	Face Value	Issue Date	Term & Interest	Semi-Annual Interest	Interest Payable	Purchased From	Date of Purchase
PIBD0704J092	14,500,000.00	30-Oct-97	7 years 20.875%	1,513,437.50	30-Oct 30-Apr	Citibank	28-Aug-98
PIBD0704J092	30,000,000.00	30-Oct-97	7 years 20.875%	3,131,250.00	30-Oct 30-Apr	HSBC	28-Aug-98
PIBD0704C080	22,872,884.43	20-Mar-97	7 years 13.500%	1,543,919.70	20-Mar 20-Sep	RCBC	2-Sep-98
PIBD0704C080	12,912,399.45	20-Mar-97	7 years 13.500%	871,586.96	20-Mar 20-Sep	RCBC	4-Sep-98
PIBD1007K042	21,000,000.00	27-Nov-97	10 years 22.875%	2,401,875.00	27-Nov 27-May	RCBC	5-Feb-99
PIBD1007K042	42,000,000.00	27-Nov-97	10 years 22.875%	4,803,750.00	27-Nov 27-May	Citibank	17-Feb-99

The Bureau of Treasury originally issued the Bonds to different banks at their issue or face values, with interest payable semi-annually during the Bonds' respective terms (*par. 6, Petition for Review*).

On the dates that petitioner purchased the Bonds, the Bonds offered yield rates different from their respective fixed interest rates. The Bonds' different yield rates at the

time of acquisition determined whether petitioner had to purchase the Bonds at a premium or at a discount. Thus, a yield rate lower than the Bonds' interest coupon rate implied that petitioner had to pay a premium, or a price higher than the Bonds' issue or face value, to acquire the Bonds. Conversely, a yield rate higher than the Bonds' interest coupon rate meant that the Bonds could be acquired at a discount, or for a price lower than the Bonds' issue or face value (*par. 7, Petition for Review*).

Petitioner alleged that its total cash outlay included the purchase price (as determined by the yield rate on the date of the purchase) and any accrued interest payable to the selling banks at the time of purchase, net of applicable final withholding taxes on the purchase price and the accrued interest, as imposed under the NIRC. Thus, on the different dates of purchase, the gross cost of purchasing the Bonds and the corresponding amount of taxes withheld on cost were computed as follows:

Date of Purchase	Selling Bank	Exhibit	Bond Series No.	Issue/Face Amount	Gross Cost	Tax Withheld on Gross Cost
28-Aug-98	Citibank	A, B	PIBD0704J092	P14,500,000.00	P15,155,952.52	P 71,452.87
28-Aug-98	HSBC	C, D	PIBD0704J092	30,000,000.00	30,873,948.39	90,875.38
2-Sep-98	RCBC	E, F	PIBD0704C080	22,872,884.43	18,275,213.20	(552,976.81)
4-Sep-98	RCBC	G, H	PIBD0704C080	12,912,399.45	10,342,149.36	(312,319.53)
5-Feb-99	RCBC	I, J	PIBD1007K042	21,000,000.00	27,527,090.93	672,311.86
17-Feb-99	Citibank	K, L	PIBD1007K042	42,000,000.00	55,327,941.52	<u>1,383,792.11</u>
TOTAL						<u>P1,353,135.88</u>

(*par. 8, Petition for Review*)

These Bonds were held by petitioner from the dates of purchase, up to the early part of 1999. During the first quarter of 1999, specifically on March 20, 1999, petitioner was able to collect interest income from the Bureau of Treasury on Bonds belonging to Series No. PIBD0704C080. These Bonds, which were issued on March 20, 1997 with a coupon

interest rate of 13.5% payable semi-annually, had issue or face values of P22,800,000 and P12,900,000.

Thus, the interest income which petitioner earned on March 20, 1999 amounted to a total of P1,927,800, net of P481,950 representing the aggregate amount of the 20% final withholding tax deducted and withheld by the Bureau of Treasury, computed as follows:

<u>Issue or Face Value</u>	<u>Gross Interest Income computed at 13.5% payable semi-annually</u>	<u>Less: 20% Final Withholding Tax</u>	<u>Net Interest Income</u>
P22,800,000.00	P1,539,000.00	P307,800.00	P1,231,200.00
12,900,000.00	870,750.00	174,150.00	696,600.00
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Total	P2,409,750.00	P481,950.00	P1,927,800.00

(*par. 9, Petition for Review*)

However, on several dates during the early part of 1999, petitioner sold the Bonds to Citibank and HSBC either at a premium or at a discount, depending on whether the Bonds offered yield rates that were lower or higher than the respective coupon interest rates at the time of sale. Petitioner averred that the proceeds it received from the sale of the Bonds included the selling price and any interest income which petitioner earned during the period that it held the Bonds, net of final withholding taxes on the selling price and the interest income earned (*par. 10, Petition for Review*), detailed as follows:

Date of Sale	Buying Bank	Exhibit	Bond Series No.	Gross Selling Price	Tax Withheld on Selling Price	Interest Income Earned	Tax Withheld On Interest
30-Mar-99	Citibank	N, O	PIBD0704J092	17,949,866.69	P 476,334.38	P748,310.76	P149,662.15
27-Jan-99	HSBC	P, Q	PIBD0704J092	34,974,143.60	641,910.57	452,291.67	90,458.33
19-Apr-99	HSBC	R, S	PIBD0704C080	23,198,496.84	58,305.79	247,950.00	49,590.00
26-Apr-99	Citibank	T, U	PIBD0704C080	12,895,479.82	(1,604.83)	174,150.00	34,830.00
16-Mar-99	HSBC	V, W	PIBD1007K042	27,942,808.84	733,995.65	547,093.75	109,418.75
16-Mar-99	Citibank	X, Y	PIBD1007K042	55,873,466.86	<u>1,466,376.27</u>	773,937.50	<u>154,787.50</u>
TOTAL					<u>P3,375,317.83</u>		<u>P588,746.73</u>

On the basis of the foregoing transactions, the total final taxes withheld from petitioner's income from its investment in Bonds until the early part of 1999 amounted to P3,092,878.68, computed as follows:

Withholding Taxes on Selling Price	P 3,375,317.83
Withholding Taxes on Accrued Interest Income	588,746.73
Withholding Taxes on Interest Income Earned on 20 Mar 99	481,950.00

Subtotal	P 4,446,014.56
Less: Tax Withheld on Purchase of Bonds	(1,353,135.88)

Total Withholding Taxes subject to Refund	P3,092,878.68
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In BIR Ruling No. 166-99 dated October 25, 1999, the Bureau of Internal Revenue (BIR) ruled that the interest income, yield or gain derived from bonds, debentures or other certificates of indebtedness as "deposit substitutes", which are ordinarily subject to 20% final tax under Section 27 (D)(1) of the NIRC, should "exclude the interest income, yield or gain [from the gross income] if the bonds, debentures or the certificate of indebtedness have maturities of more than five (5) years. Conversely, only the income derived on these debt instruments with maturity of more than five (5) years shall be excluded from gross income." (*par. 12, Petition for Review*)

In BIR Ruling No. 016-2000 dated January 7, 2000, the BIR reiterated its position on the non-taxability of interest income, yield or gain derived from bonds, debentures and other certificates of indebtedness with a maturity of more than five (5) years. The BIR stated that "(S)ince the law speaks of the exclusion from gross income of all gains derived

from long-term investments, it follows that embraced thereunder are income, yield or interest, which are all synonymous with gains, whether discounted or at a premium. Thus, the exemption applies to interest/coupon or profit from the principal of such long-term regular or SDT bonds complying with the statutory mandatory period.” (*par. 13, Petition for Review*)

On the basis of the foregoing rulings, petitioner filed a written claim for refund with BIR Revenue District Office No. 34, Makati City on April 23, 2001 in the amount of P3,092,878.68 representing erroneously withheld income tax on its investment in Bonds (*par. 6, Stipulation of Facts*).

As there was no action on the part of the respondent, this petition for review was filed on April 24, 2001.

Respondent filed his Answer on June 7, 2001, claiming by way of Special and Affirmative Defenses that:

- "4. Petitioner's alleged claim for refund is subject to administrative routinary investigation/examination;
5. Nevertheless, despite the documents submitted by petitioner it failed to show that the tax subject of the case at bar is refundable;
6. Consistent with the well settled principle in tax refund, the claimant has the burden of proof to establish the factual basis of his or her claim for tax credit or refund. After all, tax refunds, like exemptions, are construed strictly against taxpayer. Failure to prove the same is fatal to its claim for the tax refund;

7. Moreover, it is incumbent upon petitioner to prove that it has complied with the governing rules relative to tax recovery or refund as provided for under Sections 204 (c) and 229 of the Tax Code.

In their Joint Stipulation of Facts and Issues filed on September 4, 2001, the parties submitted the following issues for resolution:

- (a) Whether or not petitioner invested in long-term Fixed Rate Treasury Bonds issued by the Bureau of Treasury (“Bonds”) from 28 August 1998 to 17 February 1999;
- (b) Whether or not the Bureau of Treasury withheld the amount of P3,092,878.68 as final withholding taxes from petitioner’s income from investments in the Bonds during the period, and remitted such amount to the BIR;
- (c) Whether or not the term "gains", as used in Section 32(B)(7)(g) of the Tax Code, includes interest, yield and other forms of income derived from bonds, debentures and other certificates of indebtedness with a maturity of more than 5 years, and whether interest, yield and other forms of income from such long-term bonds, debentures and other certificates of indebtedness are therefore exempt from final withholding taxes imposed under the Tax Code;
- (d) Whether or not the income derived by petitioner from its investments in the Bonds, including interest income, qualifies as such “gains” under Section 32 (B)(7)(g) of the Tax Code, and should therefore, be exempt from final withholding taxes imposed under the Tax Code; and

- (e) Whether or not petitioner's claim for refund of P3,092,878.68 as final taxes erroneously withheld from its income from investments in the Bonds is properly substantiated.

We shall resolve first the legal issues under letters (c) and (d) which center on the proper interpretation of the term "gains" as used in Section 32(B)(7)(g) of the Tax Reform Act of 1997. Under the said section, gains realized from the sale or exchange or retirement of bonds, debentures or other certificates of indebtedness with a maturity of more than five (5) years shall not be included in gross income and shall be exempt from taxation. Petitioner interpreted the word "gains" in Section 32(B)(7)(g) as broad enough to include interest income from Bonds.

To support its view that interest from the Bonds is exempt from tax, petitioner cited respondent's own rulings, namely, BIR Ruling No. 166-99 dated October 25, 1999, BIR Ruling No. 016-2000 dated January 7, 2000, and BIR Ruling No. 020-01 dated May 31, 2001.

In BIR Ruling No. 166-99, issued on October 25, 1999 and addressed to Aegon Life Insurance (Philippines), Inc., respondent ruled that interest income or yields or gain from the sale of bonds, debentures and certificates of indebtedness with maturities of more than five (5) years are excluded from gross income in accordance with Section 32(B)(7)(g) of the 1997 Tax Code and therefore exempt from the 20% final withholding tax on deposit substitutes. BIR Ruling No. 166-99 states in pertinent part:

"B. As a general rule, the interest income on currency bank deposit and yield or other monetary benefit from these "deposit substitutes" and similar arrangement derived by banks and non-bank financial intermediaries are

being taxed at the final rate of 20% under Section 27(D)(1) of the 1997 Tax Code.

However, Section 32(B)(7)(g) of the 1997 Tax Code, provides an exception, thus:

"Section 32. Gross Income. —

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"(B) Exclusions from Gross Income. — The following items shall not be included in gross income and shall be exempt from taxation under this Title:

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"(7) Miscellaneous Items. —

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"(g) Gains from the Sale of Bonds, Debentures or other Certificate of Indebtedness. Gains realized from the sale or exchange or retirement of bonds, debentures or other certificate of indebtedness with a maturity of more than five (5) years."

The idea therefore, is to still treat bonds, debentures or other certificates of indebtedness as "deposit substitutes" the interest income, yield or gain derived therefrom subject to the 20% final tax under Section 27(D)(1) of the 1997 Tax Code, but exclude said interest income, yield or gain from the gross income if the bonds, debentures or the certificate of indebtedness have maturities of more than five (5) years. Conversely, only the income derived on these debt instruments with maturity of more than five (5) years shall be excluded from the gross income.

Furthermore, the term sale is not limited to the subsequent transfer of the instrument but to its origination and issuance, as well. Thus, from the time of its issuance, we should consider the "income" which is actually the amount coming to a person within a specified time, whether as payment for the services, interest, or profit from investment. Its usual synonyms being "gain", "profit", "revenue". (Trefry v. Putnam, 116 N.E. 904, 907 227 Mass. 522, L.R.A. 1917F, 806." (Words & Phrases, Gain, page 11, Permanent Edition 18) (BIR Ruling No. 166-99)

Notwithstanding the abovementioned rulings, we cannot agree with petitioner's contention that interest income on its long term investments in Bonds should be considered as 'gains' exempt from income tax pursuant to Section 32(B)(7)(g) of the 1997 Tax Code. In a long line of cases involving a similar issue (*Nippon Life Insurance Company of the Philippines, Inc. vs. Commissioner of Internal Revenue*, CTA Case No. 6142, February 4, 2002; *Malayan Reinsurance Corporation (formerly Eastern General Reinsurance Corporation) vs. Commissioner of Internal Revenue*, CTA Case No. 6252, July 24, 2002; *Malayan Zurich Insurance Company, Inc. vs. Commissioner of Internal Revenue*, CTA Case No. 6251, September 30, 2002; *First Nationwide Assurance Corporation vs. Commissioner of Internal Revenue*, CTA Case No. 6253, October 3, 2002; *Rizal Commercial Banking Corporation vs. Commissioner of Internal Revenue*, CTA Case No. 6228, December 4, 2002; *Malayan Insurance Company, Inc. vs. Commissioner of Internal Revenue*, CTA Case No. 6243, December 16, 2002, *Nippon Life Insurance Company of the Philippines, Inc. v. Commissioner of Internal Revenue*, CTA Case No. 6323, July 24, 2003; and *Nippon Life Insurance Company of the Philippines, Inc. v. Commissioner of Internal Revenue*, CTA Case No. 6348, September 12, 2003), this court interpreted the word "gains" under Section 32(B)(7)(g) of the 1997 Tax Code in this wise:

"We take the 1997 view that 'gains' as the term is used therein in Section 32(B)(7)(g) of the 1997 Tax Code cannot include interest since it clearly refers to gains from the sale of bonds, debentures and other certificates of indebtedness.

"Initially, it must be pointed out that whereas the term 'gains' includes 'interest' as a general rule, this rule cannot be applied to Section 32(B)(7)(g) of the 1997 Tax Code which particularly refers to 'Gains from the Sale of Bonds, Debentures or other Certificate of Indebtedness' in its title and 'Gains realized from the sale or exchange or retirement of bonds, debentures and other

certificate of indebtedness with a maturity of more than five (5) years' in its body. Stated otherwise, Section 32(B)(7)(g) of the 1997 Tax Code specifically refers to gains from the sale of bonds, debentures and other certificates of indebtedness as contradistinguished from the term 'gains' in its general sense which is synonymous to income.

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"From the aforequoted Section 32(A) of the 1997 Tax Code, it is clear that there is a distinction between 'gains derived from dealings in property' and 'interests', which are separately classified as items of gross income. 'Gains realized from the sale or exchange or retirement of bonds, debentures and other certificate of indebtedness' would fall under the category of 'gains derived from dealings in property'. On the other hand, 'interests' would include interest from bonds, debentures and other certificate of indebtedness. Gain realized from the sale or exchange or retirement of bonds, debentures and other certificate of indebtedness and interest from bonds, debentures and other certificate of indebtedness fall under separate and distinct income categories.

"It should be noted that both Sections (24)(B)(1) and 25(A)(2) of the 1997 Tax Code expressly exempt interest derived from certain long-term deposit or investment (covered by Bangko Sentral ng Pilipinas [BSP] certificates and with maturity of five years or more) by citizens, resident aliens and non-resident aliens engaged in trade or business within the Philippines from income tax. However, there is no such exemption from income tax on such interest for corporation, domestic or foreign, under Sections 27 and 28 of the 1997 Tax Code.

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There is a clear distinction between interest from bonds and gain from the sale of bonds. It is only the 'Gains realized from the sale or exchange or retirement of bonds, debentures or other certificate of indebtedness with a maturity of more than five (5) years' that is excluded from gross income and thus exempt from income tax under Section 32(B)(7)(g) of the 1997 Tax Code. Such gains from sale or exchange or retirement of bonds, debentures or other certificate of indebtedness fall within the general category of 'Gains derived from dealings in property' as distinguished from interest from bonds, debentures or other certificate of indebtedness, which fall within the general category of 'Interests' under Section 32(A) of the 1997 Tax Code.

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We believe that if Congress intended to exempt interest from bonds, debentures and other certificates of indebtedness under Section 32(B)(7)(g) of

the 1997 Tax Code, it would have done so in clear and specific terms. The fact that it used the term 'Gains from sale' in the aforementioned section, knowing fully well of the reference to interest under Sections 24, 25, 27 and 28 of the 1997 Tax Code shows that it did not intend to exempt such interest under the aforementioned Section 32(B)(7)(g).

In the case of *Nippon Life Insurance Company of the Philippines, Inc., vs. Commissioner of Internal Revenue*, CA-G.R. SP No. 69224, November 15, 2002, the Court of Appeals, in affirming our pronouncement in the appealed case, elucidated, thus:

“The CTA is absolutely correct. Income is the flow of money to an individual or corporation within a specified time, as payment for services, interests, or profits from investments. Income is the return in money from one's business, labor or capital invested. The famous analogy used by the Supreme Court described property, labor and capital as trees and income as their fruits. Thus, income is synonymous with profit or gain. Nippon used this general concept of income or gain to include interest within the meaning of Section 32(B)(7)(g). This strained interpretation suffers from serious flaws.

First, while the Tax Reform Act adhered to the above definition of income, it also classified income into the following categories: compensation for services, income derived from the conduct of business or exercise of profession, gains derived from dealings in property, interest, rents, royalties, dividends, annuities, prizes and winnings, pensions, and a partner's distributive share from net income of a general professional partnership. Section 32(B)(7)(g) clearly refers to gains realized from the sale, exchange or retirement of bonds, among others, with a maturity date of more than five (5) years. There is no reason to confuse gains from sale of bonds with gains in the general sense of income. Nippon argued that the law did not qualify the term "gains" but it is impossible not to see that the law did qualify such term and restricted it to gains from sale of bonds.

Section 32(B) enumerates the exclusions from gross income. Exclusions, like tax exemptions, are highly disfavored in law. A person claiming a tax exemption must justify his claim by the clearest terms possible because an exemption from the common burden of taxation is not allowed upon vague implications but on language too plain to be mistaken. In the instant case, Nippon's claimed exclusion runs counter to the plain, unequivocal language of the law. It resorted to the legislative intent behind the provision to justify departure from the literal meaning but we all know

this is prohibited. The only intent that must be given effect is the one expressed in the language of the statute. If a statute is clear, plain and free from ambiguity, it must be given its literal meaning and applied without attempted interpretation. To depart from the meaning expressed by the words of the statute is to alter the statute and legislate, not to interpret. A statute which is plain, clear and free from doubt is not subject to construction; there is no need for interpretation, only application.

In enacting the Tax Reform Act, the legislature may have intended to develop the capital market and encourage savings in long-term investments but even under the restrictive interpretation that gains under the subject provision means gains from sale of bonds, debentures and other certificates of indebtedness, such legislative intent still finds full expression. Section 32(B)(7)(g) as written and as interpreted by the CTA is still an incentive to the development of the bond market because it excludes gains from sales from the computation of the gross income. This may not be as sweeping as Nippon would have wanted to but it is an incentive nonetheless, which is faithful to the legislative intent. Nippon's all or nothing stance on the exclusion of gains from bonds finds no support in either the language or intent of the law.

Nippon's position must have drawn inspiration from the tax exemption of long-term deposits under Section 24(B)(1) and 25(A)(2) of the Tax Reform Act. However, these provisions fall under Chapter III, entitled Tax on Individuals and cover specifically citizens/resident aliens and non-resident aliens, respectively. On the other hand, Chapter IV, the Tax on Corporations does not contain a similar exemption on long-term deposits held by corporations, such as Nippon. Thus, the CTA correctly concluded that interests income on bonds held by corporations are not tax exempt, unlike those held by individuals. This is the law but Nippon could not abide by this and so it attempted to make up for this deficiency in Chapter IV by enlarging the scope of Section 32(B)(7)(g). For these unassailable reasons, the petition must fail."

Rulings issued by the Commissioner of Internal Revenue command respect and weight. However, such rulings are not conclusive upon the courts and will be ignored if found to be erroneous (*Philippine Bank of Communications vs. Commissioner of Internal Revenue, G. R. No. 112024, January 28, 1999*).

We conclude in the present case that the aforementioned BIR rulings are erroneous. Such rulings were based on the mistaken belief that the term "gains" as used in Section 32(B)(7)(g) of the 1997 Tax Code include interest (*Nippon Life Insurance Company of the Philippines, Inc. vs. Commissioner of Internal Revenue, CTA Case No. 6142, February 4, 2002*).

It is a well-settled rule of statutory construction that tax exemptions are strictly construed against the taxpayer. Consequently, where Section 32(B)(7)(g) of the Tax Code, which grants tax exemption, is susceptible of a restrictive interpretation, such interpretation must be adopted.

From the above discussion, only the gain from sale (*as distinguished from interest*) of bonds, debentures or other certificate of indebtedness with maturity of more than five years shall be exempt from income tax. Clearly, petitioner is barred from claiming the amount of P1,070,696.73 representing final withholding taxes on interest income, computed as follows:

Withholding Taxes on Accrued Interest Income	P 588,746.73
Add: Withholding Taxes on Interest Income Earned on 20 March 1999	<u>481,950.00</u>
Total Withholding Taxes on Interest Income	<u>P1,070,696.73</u>

We shall now resolve the substantiation aspect of the remaining amount of the claim, P2,022,181.95, representing final withholding tax on gain on sale of bonds which can legally be the subject of a claim for refund, computed as follows:

Withholding Taxes on Selling Price	P3,375,317.83
Less: Tax Withheld on Purchase of Bonds	<u>1,353,135.88</u>
Withholding Taxes on Gain on Sale	<u>P2,022,181.95</u>

Under Section 229 of the 1997 Tax Code, no suit or proceeding shall be filed after the expiration of two (2) years from the date of payment of the tax. Considering that the tax involved in the present instant case is final tax on gain on sale of long-term bonds, the same must be paid and remitted on the 25th day following the close of the calendar quarter pursuant to Section 2.58(A)(2)(c) of Revenue Regulations No. 02-98, in relation to Section 58(A) of the Tax Code.

Inasmuch as the gain on sale of bonds can be determined only at the time of the sale of the bonds, the periods to consider are the dates of sale of the bonds which in this case are: January 27, 1999, March 16, 1999, March 30, 1999, April 19, 1999 and April 26, 1999 (*Exhs. N, P, R T, V & X*). Thus, the corresponding withholding taxes on gain on sale of bonds for the said dates should have been remitted on April 26, 1999, the considered date of remittance of final taxes withheld for the first quarter of 1999. Petitioner, therefore, had until April 25, 2001 (*year 2000 being a leap year*) within which to file its administrative and judicial claims for refund. Since petitioner filed its written claim for refund with the BIR on April 23, 2001 and the petition for review on April 24, 2001, both the administrative and judicial claims for refund were made within the two-year prescriptive period.

We proceed to determine whether or not petitioner was able to prove its payment of final withholding taxes on gain on sale of long-term bonds by clear and convincing evidence.

Records show that from August 28, 1998 to February 17, 1999, petitioner purchased the subject bonds from the secondary market: Citibank, HSBC and RCBC, as evidenced by

various Confirmations of Outright Purchase of Government Securities (*Exhibits A to L*). Petitioner subsequently sold these bonds to Citibank and HSBC, as evidenced by its own Confirmations of Outright Sale of Government Securities and/or Confirmations of Outright Purchase of Government Securities (*Exhibits N to Y and Y-3*) issued by the buyers. However, from among the documents evidencing purchase and sale of bonds, the court has noted that final withholding taxes were reflected only on the documents supporting the purchases and sales of bonds to Citibank. There were no final withholding taxes reflected on the documents evidencing purchase and sale of bonds as to the other banks.

While petitioner presented various Confirmations of Outright Purchase/Sale of Government Securities, these alone cannot be considered as valid proofs that the final withholding taxes were withheld and remitted to the Bureau of Internal Revenue. The persons who executed the same were not presented in court to attest to the accuracy of the entries made therein. More importantly, under Section 58(B) of the Tax Code, a prescribed form is required to be accomplished by every withholding agent to be issued to the recipient of the income. Section 58(B) of the Tax Code is quoted hereunder for easy reference:

SEC. 58. *Returns and Payment of Taxes Withheld at Source.*

(A)xxx

(B) *Statement of Income Payments Made and Taxes Withheld.* – Every withholding agent required to deduct and withhold taxes under Section 57 shall furnish each recipient, in respect to his or its receipts during the calendar quarter or year, a written statement showing the income or other payments made by the withholding agent during such quarter or year, and the amount of the tax deducted and withheld therefrom, simultaneously upon payment at the request of the payee, but not later than the twentieth (20th) day following the close of the quarter in the

case of corporate payee, or not later than March 1 of the following year in the case of individual payee for creditable withholding taxes. For final withholding taxes, the statement should be given to the payee on or before January 31 of the succeeding year.

The written statement referred to above with respect to final tax withheld is BIR Form No. 2306 (*formerly BIR Form No. 1743-2*) denominated as “Certificate of Final Income Tax Withheld” (*Revenue Regulations No. 7-96*), which form is the best evidence to prove that final income tax was withheld and remitted to the Bureau of Internal Revenue (*ITAD Ruling No. 031-01*). Hence, the confirmation letters, standing alone, carry little probative value.

Moreover, since petitioner failed to present as evidence the proof of withholding using the prescribed form, the court found it necessary for the petitioner to prove the remittance of the alleged final withholding tax on gain on sale of bonds. Unlike the remittance of final withholding tax on interest of bonds which is the duty of the Bureau of Treasury, the obligation to remit withholding tax on gain on sale of bonds lies on the buyer or seller of the bonds, depending on whether the bonds were sold at a premium or at a discount. Again, petitioner failed to adduce evidence to prove remittance of the alleged final withholding tax on the gain on sale of bonds. Thus, the court cannot determine if the alleged erroneously paid taxes went to the coffers of the government (*Nippon Life Insurance Company of the Philippines, Inc. vs. Commissioner of Internal Revenue, CTA Case No. 6323, July 24, 2003*).

It is likewise worth stressing that the final withholding taxes on the purchase and sale of bonds were on gross cost or selling price. This means that the final withholding

taxes on purchase and sale of bonds may have included withholding taxes on accrued interest income attributed to the holding period of the Bonds. Thus, there must be proper segregation or details of final withholding tax because, as we held, the final withholding tax on interest income on long-term bonds is not refundable. Since petitioner failed to show how the final withholding taxes on gross cost and selling price were computed, this court has no way of verifying if the amount of P2,022,181.95 represents a valid final taxes withheld on gain on sale of bonds alone.

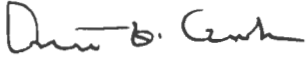
Tax refunds are in the nature of tax exemptions, and as such they are regarded as in derogation of sovereign authority and to be construed *strictissimi juris* against the person or entity claiming the exemption (*Commissioner of Internal Revenue vs. S.C. Johnson and Son, Inc.*, 309 SCRA 87; and *Commissioner of Customs vs. Court of Tax Appeals*, 328 SCRA 822). The power of taxation is a high prerogative of sovereignty, its relinquishment is never presumed and any reduction or diminution thereof with respect to its mode or its rate, must be strictly construed, and the same must be coached in clear and unmistakable terms in order that it may be applied (84 C.J.S., pages 659 to 800; cited in *Philippine Telegraph and Telephone Corporation vs. Commission on Audit, et al.*, G.R. No. L-55236, December 12, 1986).

IN THE LIGHT OF ALL THE FOREGOING, the instant petition for review is hereby **DENIED** for lack of merit.

SO ORDERED.


JUANITO C. CASTAÑEDA, JR.
Associate Judge

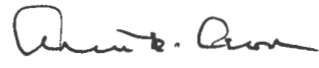
WE CONCUR:


ERNESTO D. ACOSTA
Presiding Judge


LOVELL R. BAUTISTA
Associate Judge

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 Judge