REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

GENERAL MILLING CORPORATION,
Petitioner,

- versus -

C.T.A. CASE NO. 3517

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

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D E C I S I O N

Petitioner, a domestic corporation organized under the laws of the Philippines, filed with this Court a judicial action for the tax refund or credit of the amount of ₱493,110.20 alleged to have been erroneously paid transaction tax to respondent Commissioner of Internal Revenue in 1980.

On November 29, 1979, petitioner had previously entered into an agreement with respect to the purchase and sale of commercial papers with Philippine American Life Insurance Company (hereinafter referred to as Philamlife) and the Philippine American Investment Corporation (hereinafter referred to as PAIC for brevity). In this agreement, petitioner is referred to as the issuer of the notes of indebtedness. Among the terms and conditions of the said agreement are:

1. The Issuer shall issue and the Dealer shall purchase the notes issued by the Issuer on each value date fixed in the Agreement at a price equal to the face amount of each note.

2. Upon purchase of the notes by the Dealer pursuant to the Agreement, the Dealer shall sell and Philamlife shall purchase, for a price equal to their aggregate face amount, all of the notes so purchased by the Dealer from the Issuer.

3. The transaction tax provided in Presidential Decree No. 1154, on any amendment thereof, and chargeable on the sale of the Notes shall be paid by the Issuer on the date regioned by law. The Issuer shall furnish Philamlife with proof of payment of said tax within fifteen (15) business days from due dates of said tax.

4. The principal sum of the Notes shall be payable as provided for on Annex "B" of the Agreement. The Notes shall bear interest at the rate of ELEVEN AND FIFTY NINE THOUSAND PER CENT (11.059%) per annum.

5. In the event that the transaction tax referred to in Item (3) above is abolished and/or this transaction is exempted from such tax and Philamlife

shall become liable for Income Tax, or a withholding tax on interest earned by Philamlife is imposed instead, Philamlife, shall have the right to require the Issuer and the latter stipulates to reimburse Philamlife for income and/or other taxes it has paid directly or indirectly on the interest on the Notes.

Accordingly, petitioner obtained, on January 2, 1980, a loan from PAIC in the amount of ₱50,000,000.00. Under the provisions of the loan agreement between petitioner and PAIC, the former shall pay quarterly interests to the latter beginning on April 1, 1980, and from out of these interest payments, petitioner paid respondent Commissioner of Internal Revenue, the sum of ₱493,110.20, equivalent to 35% tax on money market transactions and due on the interest earned on the promissory note issued by petitioner for the period October 1, 1980 to January 1, 1981 amounting to ₱1,408,886.30, withheld under the provisions of Section 210(b) of the National Internal Revenue Code which was effective until its repeal on September 17, 1980 by PD 1739. In P.D. 1739, it provides, in Section 3 thereof, the imposition of 20% tax on interest from deposits and yield from deposit substitutes, and by all appearances, this law changed Section 210(b) of the National Internal Revenue Code and shifted the liability to pay the tax on money market transactions from the debtor/issuer to the lender/placer. Section 210(b) of the National Internal Revenue Code, before its repeal by P.D. 1739, and Sections 3 and 13 of P.D. 1739, repealing said Section 210(b) and amending Section 24 of the same Code, effective on the date of repeal on September 17, 1980 aforesaid, by inserting therein paragraph (cc), provides, respectively, as follows:

> "SEC. 210. <u>Percentage tax on certain transactions</u>.-
>
> "(a) xxx xxx xxx.
>
> "(b) Commercial paper transactions.- There shall be levied, assessed, collected and paid on every commercial paper issued in the primary market as principal instrument, a transaction tax equivalent to thirty-five percent (35%) based on the gross amount of interest thereto as defined hereunder, which shall be paid by the borrower/issuer: Provided, however, That in the case of a long-term commercial paper whose maturity exceeds one year, the borrower shall pay the tax based on the amount of interest correspondent to one year, and thereafter shall pay the tax upon accrual or actual payment (whichever is earlier) of the untaxed portion of the interest which corresponds to a period not exceeding one year.

"The transaction tax imposed in this section shall be a final tax to be paid by the borrower and shall be allowed as a deductible item for purposes of computing the borrower's taxable income."

SEC. 3. Section 24 of the same Code is hereby amended by adding a new subsection (cc) between subsections (c) and (d) to read as follows:

(cc). Rates of tax on interest from deposits and yield from deposit substitutes. - Interest on Philippine Currency bank deposits and yield from deposit substitutes received by domestic or resident foreign corporations shall be subject to a final tax on the total amount thereof as follows: (a) 15% of the interest on savings deposits; and (b) 20% of the interest on time deposits and yield from deposit substitutes which shall be collected and paid as provided in Sections 53 and 54 of this Code: Provided, That if the recipient of such interest is exempt from income taxation, no tax shall be imposed and that, if the recipient is enjoying preferential income tax treatment, then the preferential tax rates so provided shall be imposed.

SEC. 13. Section 210 of the same Code is hereby repealed.

On October 1, 1980, petitioner paid a 35% transaction tax under Section 210(b) of the Tax Code in the amount of ₱493,110.20 (Exhs. D, D-2 and D-1, p. 68 CTA rec.) on account of the ₱50,000,000.00 note of indebtedness issued in favor of the PAIC, and which was purchased by Philam Life on the said date i.e. October 1, 1980.

On April 1, 1981, petitioner, aside from the transaction tax of ₱493,110.20 it paid under said Section 210(b) of the Tax Code, reimbursed the Philam Life, by way of another amount of ₱493,110.20, which the Philam Life had withheld and remitted to the Bureau of Internal Revenue as 35% transaction tax provided in their credit agreement. (see Exh. F; p. 3. Memorandum of Petitioner, pp. 98, 111-112, CTA rec.)

On August 3, 1982, within the 2-year period allowed by law, petitioner filed a claim for refund or tax credit with respondent, counted from the date of payment of said 35% transaction tax with the Commissioner of Internal Revenue aforesaid in the amount of ₱493,110.20 (Exh. E, p. 69 CTA rec.), which was paid on account of the aforesaid loan transaction obtained from PAIC in the sum of ₱50,000,000.00, and based on the interest due and payable in the amount of ₱1,408,886.30 for the period from October 1, 1980 to January 1, 1981, the period in which the loan was enforced.

The aforesaid letter or claim for refund or tax credit is quoted hereunder for purposes of clarity:

The Commissioner of Internal Revenue
Quezon City

Attention: <u>Chief, Appellate Division</u>

S i r :

This refers to our erroneous remittance to the Bureau of Internal Revenue of ₱493,110.20 as 35% transaction tax on October 1, 1980 which we are now claiming for refund or tax credit memo.

On January 2, 1980, we obtained a loan amounting to ₱50,000,000.00 from the PhilippineAAmerican Investment Corporation and for the quarter October 1, 1980 to January 1, 1981 on our interest payment of ₱1,408,886.30, we withheld and paid erroneously the BIR the amount of ₱493,110.20 as 35% transaction tax under Confirmation Receipt No. A-5148681 dated October 1, 1980. On April 1, 1981, we reimbursed our creditor the identical sum of ₱493,110.20 as 35% withholding tax on the same transaction as provided for in the credit agreement but they informed us that they have paid the BIR already because under Presidential Decree No. 1739 which took effect on September 17, 1980, they are the ones liable to the withholding tax on interest earnings of commercial papers and deposit substitutes and therefore, our remittance of the 35% transaction tax is erroneous as we are no longer liable thereto under the aforesaid decree. Consequently, a clear case of double payment of the 35% transaction tax on the same transaction for the same taxable period arose, hence we are now claiming for refund or tax credit of the overpayment amounting to ₱493,110.20. Attached herewith are xerox copies of the official receipts and borrower's return of remittances in support of our claim.

We trust that you will act on this claim favorably and hope to receive your refund or tax credit soon.

Very trulyuyours,

GEORGE K. YOUNG
Executive Vice-President

Prior to petitioner's alleged erroneous payment on October 1, 1980 of the ₱493,110.20 35% transaction tax due from the loan secured from the PAIC aforesaid, Section 210(b) of the Tax Code imposing said tax was, however, repealed by PD 1739 on September 17, 1980, the date of effectivity of the latter law.

As far as the records indicate, <u>the payment of the transaction tax by petitioner was made on October 1, 1980, which payment was made at a time when the law /(Section 210(b)/ imposing a transaction tax on the debtor/placer had already been repealed by P.D. 1739 on September 17, 1980</u>. (<u>Underlining ours</u>.) Moreover, when petitioner paid the 35% transaction tax aforesaid, PAIC itself paid the transaction tax since it was, under P.D. 1739, liable to pay the said tax as it was then the lender/placer (see Exhs. E & F, pp. 69 and 70, CTA rec., respectively) and which the former was bound under their contract to reimburse, and in fact had reimbursed the same. There was, therefore, clearly, and in effect, a double payment of the 35% transaction tax made by petitioner. Hence, the instant judicial claim of petitioner for refund or tax credit of its alleged erroneous transaction tax payment.

There was no disclaimer made by respondent that Philam Life did not pay to him the other 35% transaction tax of ₱493,110.20, which resulted in the aforesaid double tax payment. (See t.s.n., pp. 9-10, 13-14, of witness Asst. Vice Pres. Angelica de Leon, May 31, 1983; t.s.n., pp. 17-19, 21-22, witness Romeo O. Real, May 31, 1983.) And evidence clearly showed that petitioner actually paid to respondent Commissioner of Internal Revenue the 35% transaction tax on October 1, 1980, which was after September 17, 1980, the date when Section 210(b) imposing 35% transaction tax on the debtor/placer was repealed. Notwithstanding these facts, respondent Commissioner of Internal Revenue still doggedly insists that-

> "Pursuant to BIR Rulings Nos. 189-82 and 190-82, however, both dated June 3, 1982, issued in connection with the repeal of Section 210(b) of the Tax Code, in the case of long-term commercial papers issued prior to September 17, 1980 and maturing thereafter for over one (1) year, the transaction tax is to be paid by the borrower, based on the interest for the first year at the rate of 35%.

We quote BIR Rulings Nos. 189-82 and 190-82, both dated June 3, 1982:

> "Under the abovequoted provision, it seems clear that the 35% transaction tax is due upon the issuance of the commercial paper (Sec. 3, Rev. Regulations No. 7-77). Consequently, interest earned on short-term commercial paper issued before the repeal ot the said provision on September 17, 1980 is subject to the 35% transaction tax, even if the note matures after said date. This conclusion finds support in the fact that in the case of said short-term commercial paper maturing for one year, which includes one issued before September 17, 1980 and maturing thereafter, the 35% transaction tax is a final tax based on the amount of interest corresponding to one year to be paid by the borrower at the time of the issuance of the commercial paper.
>
> "In the case of a long-term commercial paper issued prior to September 17, 1980 and maturing thereafter for over one (1) year, the 35% transaction tax shall be paid by the borrower based on the interest for the first year. Thereafter, if the untaxed portion of the interest accrued or was actually paid after September 17, 1980, the same shall be subject to the 20% final tax to be paid by the lender/placer in accordance with P.D. No. 1739".

Notwithstanding the profference of respondent, the facts clearly stand out, however, that the ₱50,000,000 note of indebtedness was renewable or issued every 3 months (p. 3, Petitioner's Memo, p. 98 CTA rec.) and that the interest due the period October 1, 1980 to January 1, 1981 amounted to ₱1,408,886.30 for which the 35% transaction tax was withheld. (p. 98, CTA rec.)

Consequently, the interest of ₱1,408,886.30 due on the loan of ₱50,000,000 was actually interest income, upon which the questioned 35% transaction tax of ₱493,110.20 was withheld and which indebtedness, is to our mind, considered as short term loan as it was covered by a promissory note, or note of indebtedness enforced only for 3 months, or less than 1 year. It is obvious that petitioner paid the 35% transaction tax on October 1, 1980, based upon a note of indebtedness issued on the same date, It not having been disputed that the interest of ₱1,408,886.30 on the note of indebtedness was due during the period from October 1, 1980 to January 1, 1981, and the tax in the sum of ₱493,110.20 thereon due beginning October 1, 1980 and also the date in which petitioner paid the questioned tax to respondent Commissioner of Internal Revenue, the said 35% transaction tax was erroneously paid since it was paid after Section 210(b) had been repealed, i.e., on September 17, 1980. When petitioner reimbursed the Philam Life which the latter paid as transaction tax, petitioner had therefore doubly paid as transaction tax due the government. Justice will never allow, an absurd and unjust situation to prevail, as in this instant case, to the disadvantage of the herein taxpayer. Hence, petitioner is hereby entitled to the refund or tax credit of the erroneous payment of the 35% transaction tax of ₱493,110.20.

WHEREFORE, respondent Commissioner of Internal Revenue is hereby ordered to grant tax refund/or credit of the sum of ₱493,110.20 to petitioner-claimant General Milling Corporation.

Without pronouncement as to costs.

SO ORDERED.

Quezon City, Metro Manila, February 19, 1987.

CONSTANTE C. ROAQUIN
Associate Judge

WE CONCUR:

AMANTE FILLER
Presiding Judge

ALEX Z. REYES
Associate Judge