file

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

OSCAR R. VICTORIANO,
Petitioner,

- Petitioner -

C.T.A. CASE NO. 4035

THE COMMISSIONER OF
INTERNAL REVENUE,
Respondent.

x - - - - - - - - - - x

1/29/88

D E C I S I O N

The case is one of a claim for refund of income tax withheld on accumulated terminal leave pay of a retiree from the Government service.

Petitioner was an Associate Justice of the Court of Appeals until his optional retirement on December 31, 1982 under R.A. No. 910, as amended by R.A. No. 5095. He had for his terminal leave pay the amount of P131,594.13 and out of which P18,377.59 was withheld for income tax purpose. For the taxable year 1983 petitioner had a total gross income of P294,915.95 declared in the income tax return. On May 3, 1985, petitioner filed with the respondent Commissioner a written claim for refund of the amount of P35,492.75 computed as follows:

Total tax withheld on terminal leave pay, Court of Appeals, Manila	P18,377.59
Taxes withheld on - Salary/allowance/bonus, Land Registration Commission, Quezon City	13,566.16
Honorarium, National Housing Authority	3,220.00
Income from teaching - FEU & Lyceum	80.50
Total taxes withheld ...	P35,353.50
Add: Taxes paid for 1983 income tax return	26,131.49
Total taxes withheld & paid	P61,484.99
Less: Alleged tax due if terminal leave pay would be exempted	25,992.23
Alleged overpayment (refundable)	P35,492.76

Before respondent Commissioner of Internal Revenue could act on the claim for refund, petitioner filed this petition for review on March 4, 1986.

Considering that the sole issue presented is purely legal, parties submitted the case for decision upon the filing of their respective memoranda.

By and large petitioner contends that the terminal leave pay or what amounts to it such as the money value of the unused vacation and sick leaves upon retirement is an income tax exempt benefit contemplated under existing statutes providing insofar as pertinent, viz.:

> C.A. No. 186, as amended
>
> Sec. 28(c). Except as herein otherwise provided, the Government Service Insurance System, all benefits granted under this Act, and all its forms and documents required of the members shall be exempt from all types of taxes, documentary stamps, duties and contributions, fiscal or municipal, established or to be established; x x x
>
> P.D. No. 1146
>
> Sec. 33(2). The benefits granted under this Act shall not be subject, among others, to attachment, garnishment, levy or other processes. This however, shall not apply to obligations of the member to the System, or to employer or when the benefits granted herein are assigned by the member with the Authority of the System.
>
> P.D. No. 220
>
> Sec. 1. That, provisions of any existing laws to the contrary notwithstanding, social security benefits, retirement gratuities, pension, and other similar benefits received by retiring

> employees and workers, whether received from Philippines or foreign government agencies and other institutions, private or public, shall be exempt from the payment of income tax.
>
> (Underscoring supplied)

The respondent considers the terminal leave pay as compensation for service performed and not benefit conferred by the Government Service Insurance System hence subject to withholding tax. The Commissioner would make much of the fact that the cited statutes do not categorically mention terminal leave payment among the specified benefits entitled to the tax exemption privilege.

All told the material facts are relatively simple so is the issue under resolve essentially addressed to the question of whether or not the terminal leave pay of retiring official/employee in the government service is tax exempt.

The question must be answered by looking into the language of the pertinent provision of the statute providing, inter alia, "That, provisions of existing laws to the contrary notwithstanding, social security benefits, retirement gratuities, pensions and other similar benefits received by retiring employees and workers x x x shall be exempt from the payment of income tax." (Sec. 1) Construed in its plain and ordinary meaning, it appears clear that the manifest presidential intent is to broaden the applicable scope and effect of the existing "all benefits" granted in Section 28(c) of C.A. No. 186, as amended (GSIS Charter). The pellucidity of the intendment requires no further exegesis. "Indeed, to limit the tax exemption granted under P.D. 220 to purely retirement benefits (gratuities and pensions) as suggested in the petition for reconsideration (by respondent Commissioner of Internal Revenue), is to render the said Decree useless and ineffective, for practically all benefits of the nature of retirement gratuities and pensions were already exempt from income tax before the issuance of the same Decree. The President could not have the intention to issue a useless, ineffective or inefficient or inefficient decree (Bird v. Alaska, 187 U.S. p. 118); but rather to have promulgated a valid and permanent statute which would have the most beneficial effect that its language permits (Orlosky v. Haskell, 155 A. 112)." (Opinion No. 114, s. 1985, Presidential Assistant for Legal

Affairs). This makes explicit what seems to Us already implicit in the statute itself.

Moreover, We shall be less than respecting the full and compelling import of the law should We posit a narrow and unvarying meaning to the "other similar benefits" engrafted in P.D. 220, thus foreclose and stultify altogether its intended scope. "Hence, any amount received by such officer or employee as a consequence of such separation from the service (like cash equivalent of his vacation and sick leaves to which he is entitled <u>upon retirement</u> pursuant to Section 12(c) of C.A. No. 186, as amended, and Section 286 of the Revised Administrative Code as implemented by CSC Resolution No. 81-1158) is exempt from income tax pursuant to Section 29(b)(7)(B) of the Tax Code, as amended by P.D. No. 1158-A or Section 29(c)(7)(B) as amended by Batas Pambansa Blg. 135. Thus, whether taken under P.D. No. 220 or under the Tax Code as amended by P.D. No. 1158-A and Batas Pambansa Blg. 135, any amount received by a retiring government officer or worker as cash equivalent of his unused vacation and sick leaves is exempt from income tax." (<u>Ibid</u>.). Accordingly, there is nothing obscure and ambiguous in the language of the pertinent provision of PD 220 insofar as the same is brought to bear upon the circumstances of the petitioner in the case at bar.

Suffice it, the issue now raised was squarely met in a recent case similar in many or so in tenor and terms, where as there, so here, the ruling equally applies, inter alia, thus -

> Lest a distorted legal impression shall be created in the important subject of taxation, the narrow, restrictive or strict application of the rule that exemptions from tax is always disfavored in law does not always apply. Where tax exemption, as had been provided and built in P.D. 220 and Section 29(c)(7)(B) of the National Internal Revenue Code, was clearly granted to government retiring employees, precisely as an act of public policy, and not as a matter of grace or favor to them since government officers and employees render a very special public duty or service to the government and to the Filipino people at large, this exemption from the payment of tax on their accumulated accrued leaves upon their retirement must have to be, as we do hereby liberally construe the same in their favor (Ambrosio Padilla, Civil Code Annotated, 1956 Ed., Vol. IV, p. 195; Tolentino, Commentaries on the Civil Code, Vol. V, 1959 Ed., p. 250; Carmelo v. Monserrat, 55 Phil. 644; see Mertens, ibid., citing Estate of Emily St A Tait, 11 TC 731; Comm. v. White's Estate, op. cit.) as a reward for their selfless, dedicated and admittedly not adequately compensated service in terms of the salary due their positions. Moreover, the tax

exemption provisions in P.D. 220 and Section 29(c)(7)(B) exempting them from the payment of income tax on the amount of their accumulated accrued leaves are just too plain to be mistaken and too categorical to be misinterpreted.

It must have to be stated and emphasized in this connection that respondent Commissioner of Internal Revenue requested for reconsideration of Opinion No. 99, which held that BIR Ruling No. 432, dated August 14, 1958, has been superseded by Section 1 of Presidential Decree No. 220, to the end "x x x that any amount received by a retiring government officer or employee, as the equivalent of his accumulated vacation and sick leave credits, is exempt from income tax," the Presidential Assistant for Legal Affairs, Office of the President, in Opinion No. 114, series of 1985, in denial to aforesaid respondent's motion for reconsideration, opined in effect that "x x x <u>whether taken under P.D. No. 220 or under the Tax Code as amended by P.D. No. 1159 and Batas Pambansa Blg. 135, any amount received by a retiring government officer or worker as cash equivalent of its unused vacation and sick leaves is exempt from income tax.</u>" (<u>underscoring supplied</u>; pp. 67-76, CTA rec.)

We are in full conformity with the Opinion No. 114 of the Presidential Assistant for Legal Affairs, Office of the President, which made a very concise effort to make an incisive explanation and illucidation of, and then finally making a concise declaration of the true essence, intent, purpose, policy and objective of P.D. No. 220 and Section 29(c)(7)(B) of the National Internal Revenue Code and Batas Pambansa Blg. 135, granting exemption from income taxes on all benefits due to government officers and employees, the very office from which

> particularly P.D. 220 had proceeded and originated, which office and no other can authoritatively state what in exactitude, is, to our mind, the essence, intent, purpose and objective, scope and extent, of the tax exemption granted therein. (Castaneda v. Commissioner of Internal Revenue, CTA Case No. 3809, February 4, 1987)

WHEREFORE, respondent is hereby ordered to refund the petitioner the income tax withheld and/or paid corresponding to the amount of terminal leave pay declared in the taxable year involved. No costs.

SO ORDERED.

Quezon City, Metro Manila, January 29, 1988.

ALEX Z. REYES
Associate Judge

WE CONCUR:

AMANTE FILLER
Presiding Judge

CONSTANTE C. ROAQUIN
Associate Judge

CERTIFICATION

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

AMANTE FILLER
Presiding Judge
Court of Tax Appeals