REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
Quezon City

STATE INVESTMENT HOUSE, INC. AND AFFILIATED COMPANIES RETIREMENT PLAN,
Petitioner,

- versus -

C.T.A. Case No. 4837

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
APR 05 1995

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DECISION

This is a petition for refund of twenty percent (20%) final taxes withheld from total interest income earned on investments of funds in treasury bills and deposit substitutes from 1988 to 1992 in the total amount of P247,806.26.

Petitioner is a duly qualified retirement plan established under Philippine laws for the employees of State Investment House, Inc. (SIHI) and its affiliated companies.

From 1988 to 1992, petitioner remitted to Respondent, through respondent's withholding agent, twenty percent (20%) final taxes in the amount of P1,239,031.41 which it earned on investments of its funds in treasury bills and deposit substitutes.

Citing the case of Commissioner of Internal Revenue versus The Honorable Court of Appeals, et. al., G.R. No. 95022, promulgated by the Supreme Court on March 23, 1992, which upheld exemption from final withholding tax on interest income from money placements and purchases of treasury bills of a retirement plan (GCL Retirement Plan), petitioner wrote respondent on August 3, 1992 requesting for a refund of the 20% final taxes on the investment of its funds which it said it erroneously withheld/collected and remitted to respondent in the total amount of P247,806.26.

Without any action taken by respondent Bureau on the request for refund, the present judicial proceeding was instituted purportedly to comply with the provisions of Section 230 of the National Internal Revenue Code (NIRC) with reference to the prescriptive period.

Before us, the parties' litigant entered into a "Joint Stipulation" which is hereunder reproduced verbatim:

1. Petitioner is a duly qualified retirement plan established under Philippine laws.

2. Petitioner was established for the employees of SIHI and its affiliated companies.

3. Petitioner was certified by respondent to qualify as a reasonable benefit plan within the contemplation of Republic Act No. 4917, and as such, is entitled to all benefits and privileges provided for by said act. A copy of said certification is hereto attached as Annex "A" and also attached as Annex "A" of the Petition.

4. From 1988 to 1992, Petitioner remitted through respondent's withholding agent 20% final taxes in the total amount of P247,806.26 from the total interest income of P1,239,031.41 which were earned by Petitioner on investments of its funds in treasury bills and deposit substitutes. A copy of the certificate of said remittance is hereto attached as Annex "B" and also attached as Annex "B" of the Petition.

5. Petitioner, through counsel, wrote respondent a letter dated 3 August 1992, requesting for a refund of the 20% final taxes it erroneously withheld/collected and remitted to respondent in the total amount of P247,806.26. A copy of said letter is hereto attached as Annex "C".

6. On 23 March 1992, the Supreme Court rendered a decision in the case of *Commissioner of Internal Revenue vs. Honorable Court of Appeals, et. al.*, G.R. No. 95022, upholding the exemption of final withholding taxes on interest income from money placements and purchases of treasury bills of the GCL Retirement Plan.

7. Respondent admits the genuineness and due execution of the following documents:

   i. Confirmation Receipt issued by the Central Bank
   ii. Payment Order issued by the BIR
   iii. Cash Voucher issued by SIHI
   iv. Quarterly Return of Taxes Withheld on Interest paid on deposits and yield on deposit substitutes/trusts/etc.
   v. Summary of Return of Remittance of Final Tax Withheld from interest / yield paid on deposit substitutes
   vi. Short Term Non-Negotiable Promissory Note
   vii. Non-Negotiable Repurchase Agreement
   viii. Cash/Journal Voucher
   ix. Confirmation of outright sale/ confirmation of purchase issued by SIHI.
   x. Security-In Receipt issued by SIHI.

8. Respondent admits that the photocopies marked as Exhibits for the Petitioner are faithful reproductions of the original document.

9. The foregoing evidence on remittance by Petitioner to withholding agent of 20% final taxes in the total amount of P247,806.26 from the total interest income of

P1,239,031.41 which were earned by Petitioner on investments of its funds in treasury bills and deposit substitutes.

10. The foregoing annexes shall be submitted to the Revenue Accounting Division of the Respondent's Bureau for verification.

Petitioner and Respondent likewise stipulated that the issue to be litigated is:

Whether or not Petitioner is entitled to a refund of the 20% final taxes it erroneously withheld/collected and remitted to respondent in the total amount of P247,806.26?

As stated in the aforesaid Joint Stipulation, we agree that the only issue to be resolved is whether or not petitioner is entitled to a refund of the 20% final taxes it alleged was erroneusly withheld/collected and remitted to respondent in the total amount of P247,806.26.

The specific provision of law governing this case is Section 230 of the NIRC which provides:

Sec. 230. **Recovery of tax erroneously or illegally collected.** - *No suit or proceeding shall be maintained in any court for the recovery of any national internal revenue tax hereafter alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority or of any sum alleged to have been excessive or in any manner wrongfully collected, until a claim for refund or credit has been fully filed with the Commissioner; but such suit or proceeding may be maintained, whether or not such tax, penalty, or sum has been paid under protest or duress.*

In any case, no such suit or proceeding shall be begun after the expiration of two years from the date of payment of tax or penalty regardless of any supervening cause that may arise after payment: Provided, however, That the Commissioner may, even without a written claim therefor, refund or credit any tax, where on the face of the return upon which payment was made, such payment appears clearly to have been erroneously paid.

> *Under Section 292 (now 230) of the National Internal Revenue Code, before a taxpayer may judicially recover a tax or penalty illegally or erroneously collected, whether paid or not under protest (protest is not required) or whether paid or not under duress, he must first ask for refund (or credit) in writing but in no case must the filing of the action be beyond two years from date of payment regardless of any supervening cause that may arise after payment. The judicial action contemplated is an appeal to the Court of Tax Appeals. (Nolledo & Nolledo, The National Internal Revenue Code of the Philippines, Annotated, 1993, 16th and Revised Edition, p. 959; emphasis ours).*

The reasons for requiring the filing of a claim for refund of tax before recourse to court is had are the following:

> (1) To afford the Commissioner of Internal Revenue an opportunity to correct the action of subordinate officers; and
>
> (2) To notify the Government that such taxes have been questioned and the notice should then be borne in mind in estimating the revenue available for expenditure. (Bermejo vs. Collector, L-3028, July 29, 1950).

Under the "Joint Stipulation" entered into by the parties, it was substantiated that petitioner is a duly qualified retirement plan established for the benefit of the employees of SIHI and its affiliated companies. In fact, respondent confirmed that within the contemplation of R.A. No. 4917, petitioner is entitled to all benefits and privileges provided for in said Act which are as follows:

1. The retirement benefits to be received by the member-employees shall be exempt from all taxes;

2. The income of the Trust Fund from the investments are exempt from income tax; and

3. The contributions of the participating employer companies to the retirement fund are deductible from their gross income (Annex A, Joint Stipulation and Petition; emphasis ours)

These exemption privileges afforded to petitioner was confirmed by the Supreme Court in the aforesaid case of Commissioner of Internal Revenue vs. Honorable Commissioner of Appeals, et. al., G.R. No. 95022, March 23, 1992, which is similarly situated as the petitioner.

As aptly stated by the Supreme Court in said case:

> To begin with it is significant to note that the GCL Plan was qualified as exempt from income tax by the Commissioner of Internal Revenue in accordance with Republic Act No. 4917 approved on 17 June 1967. This law specifically provided:
>
> > *Section 1*. Any provision of law to the contrary notwithstanding, the retirement benefits received by officials and employees of private firms, whether individual or corporate, in accordance with a reasonable private benefit plan maintained by employer shall be exempt from all taxes x x x
> >
> > There can be no denying either that the final withholding tax is collected from income in respect of which employees' trusts are declared exempt [Sec. 56(b), now 53(b), Tax Code]. The application of the withholding system to interest on bank deposits or yield from deposit substitutes is essentially to maximize and expedite the collection of income taxes by requiring its payment at the source. If an employees' trust like the GCL enjoys a tax-exempt status from income, we see no logic in withholding a certain percentage of that income which it is not supposed to pay in the first place.

The last remaining matter to be determined is the amount of refund or alleged erroneously withheld final taxes. To put it in another way, is petitioner entitled to the total amount of P247,806.26 claimed and prayed for in this petition? Regrettably, it is not. Again, citing Section 230 of the NIRC, "x x x in any case, no such suit or proceeding shall be begun after the **expiration of two years from the date of payment of the tax or penalty regardless of any supervening cause that may arise after payment x x x".** [emphasis supplied]

The general rule therefor is that the two-year period is counted from the act of payment and this period is mandatory.

In the case of Gibbs vs. Commissioner, L-17406, November 29, 1965, it was ruled by the High Court that:

> A taxpayer who contributes to the withholding tax system does not really deposit an amount to the Commissioner of Internal Revenue, but in truth to perform and extinguish his tax obligation for that year. Consequently, a taxpayer whose **income is withheld at source** will be deemed to have paid his tax liability when the same falls due at the end of the tax year. It is from the latter date then or **when the tax liability falls due** that the two-year period in Section 292 (now 230) of the Revenue Code starts to run with respect to payments effected through the withholding tax system. [emphasis ours; see also ACCRA Investments Corporation vs. The Honorable Court of Appeals, et al, G.R. No. 96322, December 20, 1991]

Section 51 of the Tax Code states that "(T)he return for final withholding tax shall be filed and the payment made within 25 days from the close of each calendar quarter". Thus, the following returns were submitted by petitioner:

Quarter Covered	Date of Filing	Exh.	CBCR No.	Exh.	Payment Order	Exh.	Amount Claimed
1988:							
4th	01-25-89	A-3	B16199617	A	C4404565	A-1	P 2,780.69

1989:							
1st	04-20-89	B-3	B17312927	B	C5009515	B-1	3,837.32
2nd	07-25-89	C-3	B17680928	C	C5736479	C-1	4,269.43
3rd	10-25-89	D-3	B18168711	D	C6313768	D-1	3,572.79
4th	01-25-90	E-3	B18253138	E	C6720393	E-1	3,654.19
1990:							
1st	04-25-90	F-3	B19904745	F	C7469331	F-1	4,314.76
2nd	07-25-90	H-3	B20392265	H	C8413024	H-1	4,619.57
3rd	10-25-90	I-3	B20861096	I	C8749766	I-1	5,239.83
4th	01-25-91	G-3	B21175491	G	C9526695	G-1	5,467.04
1991:							
1st	04-25-91	J-3	B22678397	J	C10154994	J-1	7,021.68
					T O T A L		₱44,777.30

It appears then from the above table that payments of final withholding taxes on deposit substitutes from fourth quarter of 1988 to the second quarter of 1990 have prescribed. Note that two years have lapsed from the date of payment up to the date this petition for review was filed, to wit:

Quarter Covered	Date of Filing/Payment	Exh.	Amount Claimed	Filed w/BIR	Filed w/CTA
1988:					
4th	*01-25-89*	A-3	P 2,780.69	08-03-92	*08-10-92*
1989:					
1st	04-20-89	B-3	3,837.32	08-03-92	08-10-92
2nd	07-25-89	C-3	4,269.43	08-03-92	08-10-92
3rd	10-25-89	D-3	3,672.79	08-03-92	08-10-92
4th	01-25-90	E-3	3,654.19	08-03-92	08-10-92
1990:					
1st	04-25-90	F-3	4,314.76	08-03-92	08-10-92
2nd	07-25-90	H-3	4,619.57	08-03-92	08-10-92
	T O T A L		P27,048.75		

As to the final withholding tax on treasury bills (Exhs. "K" to "FF-1", inclusive), specifically Document No. COS 00498 with maturity date of July 13, 1988 in the amount of P1,287.20 (Annex "B-1"), likewise, has evidently prescribed. Hence, it cannot be refunded.

Therefore, only the remaining final withholding taxes on deposit substitutes from the third quarter of 1990 to the first quarter of 1991 and final withholding taxes on treasury bills from January 9, 1991 to June 3, 1992 can be refunded, as follows:

INVESTMENTS IN DEPOSIT SUBSTITUTES

Quarter Covered	Date of Filing	Exh.	CBCR No.	Exh.	Payment Order	Exh.	Amount Claimed
1990:							
3rd	10-25-90	I-3	B20861096	I	CB749766	I-1	P 5,239.83
4th	01-25-91	G-3	B21175491	G	C9526695	G-1	5,467.04
1991:							
1st	04-25-91	J-3	B22678397	J	C10154994	J-1	7,021.68
							P17,728.55

INVESTMENTS IN TREASURY BILLS

Document Number	Maurity Date	Exh.	Interest/ Discount	Tax Withheld
COP 0202	06-03-92	FF,FF-1	P 2,077.51	P 415.50
COS 0316	03-31-92	EE,EE-1	433.54	88.71
COP 0184	04-22-92	DD,DD-1	191,175.51	38,235.10
COP 0127	02-26-92)		2,520.37	504.07
	01-08-92)	CC,CC-1	1,583.30	316.66
COP 0055	01-22-92	BB,BB-1	209,477.96	41,895.59
COP 0021	11-27-91	AA,AA-1	4,562.31	912.46
COS 0240	01-22-92	Z, Z-1	73,400.55	14,680.11
COS 0203	09-25-91	Y, Y-1	81,091.70	16,218.34
COS 0182	09-25-91	X, X-1	27,916.37	5,583.27
COS 0167	08-28-91	W, W-1	3,749.96	749.99
COS 0142	06-06-91	V, V-1	380.81	76.16
COS 0117	07-24-91	U, U-1	34,390.85	6,878.17
COS 0093	07-10-91	T, T-1	117,146.07	23,429.21
COS 0076	06-26-91	S, S-1	32,011.79	6,402.36
COS 0051	04-24-91	R, R-1	17,953.37	3,590.67
COS 0046	05-29-91	Q, Q-1	4,489.31	897.86
COS 00516	04-24-91	P, P-1	7,336.19	1,467.24
COS 00506	04-10-91	O, O-1	137,840.27	27,568.05
COS 00501	01-16-91	N, N-1	1,184.88	236.98
COS 00500	04-03-91	M, M-1	47,146.38	9,429.28
COS 00499	01-09-91	L, L-1	5,414.96	1,082.99
COS 00498	01-09-91	K, K-1	5,414.96	1,082.99
				P201,741.76
TOTAL				P219,470.31

WHEREFORE, in view of the foregoing, respondent is hereby ordered to refund the amount of **P219,470.31** representing erroneously paid final withholding taxes for the years 1988 to 1992 in favor of petitioner.

SO ORDERED.

RAMON O. DE VEYRA
Associate Judge

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Judge

MANUEL K. GRUBA
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.

ERNESTO D. ACOSTA
Presiding Judge
Court of Tax Appeals