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

**JAIME A. COTERO,**
Petitioner,

- versus -

C.T.A. CASE NO. 6267

**COMMISSIONER OF INTERNAL REVENUE,**
Respondent.

Promulgated:

SEP 12 2002

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# DECISION

This case involves a claim for refund of income tax paid on compensation in the amount of P1,334,210.08 alleged to be erroneously paid by the petitioner in the year 1998.

Petitioner is a citizen of the United States, of legal age, married, and is an employee of Coastal Subic Bay Terminal, Inc., with address at 42A Grayling Street, West Kalayaan, Subic Bay Freeport Zone, Philippines. He was employed as Operations Services Manager of Coastal Subic Bay Terminal Inc. in 1998 (*pars. 1 and 3, Amended Joint Stipulation of Facts).*

Coastal Subic Bay Terminal Inc. is a business entity located within the Subic Special Economic Zone, as created by Republic Act 7227, and was issued by the Subic Bay Metropolitan Authority a Certificate of Registration and Tax Exemption No. 93-0019 on December 4, 1997, valid until December 4, 1998 (*par. 4, Amended Joint Stipulation of Facts.*).

On April 15, 1999, petitioner, with tax identification number 900-876-976, filed his Annual Income Tax Return for taxable year 1998 and paid income taxes in the amount of P1,334,210.08 (*par. 5, Amended Joint Stipulation of Facts; Annexes A, B and C, Petition for Review*).

Claiming that the payment of tax on his compensation income was erroneous, petitioner filed a written claim for refund with the Bureau of Internal Revenue (BIR) on April 5, 2001 (*par.6, Amended Joint Stipulation of Facts; Annex D, Petition for Review*). Since there was no immediate action on the part of the respondent and the two-year prescriptive period was about to expire, petitioner filed this petition on the following day, April 6, 2001.

Petitioner and respondent jointly stipulated the issues to be resolved in this case, to wit:

> (1) Whether or not aliens working within the Subic Special Economic Zone are subject to Philippine income taxes on income earned from such employment;
>
> (2) Whether or not petitioner is entitled to a refund or tax credit of P1,334,210.08 representing income taxes erroneously paid on compensation earned from working within the Subic Special Economic Zone; and
>
> (3) Whether or not Section 12(c) of Republic Act No. 7227 applies to petitioner.

Petitioner anchored his claim on Section 12(c) of Republic Act No. 7227, quoted below for easy reference:

> (c) The provision of existing laws, rules and regulations to the contrary notwithstanding, <u>no taxes, local and national, shall be imposed within the Subic Special Economic Zone</u>. In lieu of paying taxes, three percent (3%) of the gross income earned by all businesses and enterprises within the Subic

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> Special Economic Zone shall be remitted to the National Government, one percent (1%) each to the local government units affected by the declaration of the zone in proportion to their population area, and other factors. In addition, there is hereby established a development fund of one percent (1%) of the gross income earned by all businesses and enterprises within the Subic Special Economic Zone to be utilized for the development of the municipalities outside the City of Olongapo and the Municipality of Subic, and other municipalities contiguous to the base areas.
>
> In case of conflict between national and local laws with respect to tax exemption privileges in the Subic Special Economic Zone, the same shall be resolved in favor of the latter. (Emphasis supplied.)

Petitioner asserts that in view of the above provision, the Subic Special Economic Zone became a tax-free territory. Consequently, the income derived within the Zone are free from income and other taxes. Individuals deriving income from businesses within the Zone are not subject to tax as only businesses and enterprises situated within the Zone are subject to the total of 5% remittance on gross earned. Hence, the amount of P1,334,210.08 paid as tax on his compensation income was erroneously made.

Respondent, as Answer, raised the following Special and Affirmative Defenses, *viz*:

a) Petitioner's alleged claim for refund is still subject to administrative routinary investigation/examination by respondent's Bureau;

b) Petitioner, <u>not</u> being a Subic Bay Metropolitan Authority (SMBA) registered enterprise doing trade or business within the Subic Special Economic Zone (SSEZ) <u>is not covered by the exemption privilege</u> granted under Section 12(c) of the Republic Act No. 7227, as implemented by Section 4 of Revenue Regulations No. 1-95. <u>Only a Subic Bay Metropolitan Authority (SMBA) registered enterprise doing trade or business within the Subic Special Economic Zone (SSEZ) are covered by the exemption privilege</u> granted under the aforesaid law;

c) The amount of P1,334,210.08 being claimed by petitioner as erroneously paid compensation income tax for the year 1998 was not properly substantiated;

d) In an action for refund/credit, the burden of proof is on the taxpayer to establish its right to refund. Failure to adduce sufficient proof is fatal to the claim for refund/credit;

e) Petitioner must show that it has complied with the provisions of Sections 204(C) and 229 of the Tax Code, as amended; and

f) Claims for refund are construed strictly against the claimant for the same partake the nature of exemption from taxation (Commissioner of Internal Revenue vs. Ledesma, 31 SCRA 95) and as such, they are looked upon with disfavor (Western Minolco Corp. vs. Commissioner of Internal Revenue, 124 SCRA 121).

The issues raised by the parties can be summarized into whether or not Section 12(c) of Republic Act No. 7227 applies to the petitioner to render the payment of P1,334,210.08 income tax on compensation erroneous, hence, refundable.

After a deliberative review of the facts involved, issues raised, arguments of the parties and the apropos laws and jurisprudence, this court rules that Section 12(c) of the Republic Act No. 7227 does not apply to the petitioner.

Section 12(c), earlier cited, provides, among others, that "no taxes, local and national, shall be imposed within the Subic Special Economic Zone. In lieu of paying taxes, three percent of the gross income earned by all businesses and enterprises within the Subic Special Economic Zone shall be remitted to the National Government, xxx". Petitioner argues that said provision declares the Subic Special Economic Zone as a tax free territory and the income derived within the Zone are tax-free of income tax and other taxes. According to petitioner, since the payment of the 5% remittance on gross is being required only from businesses and enterprises therein, individuals deriving income from such businesses and enterprises are not subject to tax.

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We do not agree.

Indeed, the requirement of 5% remittance on gross income refers only to the businesses and enterprises within the Subic Special Economic Zone (Zone, for brevity). This is so because businesses and enterprises are given tax incentives by the government for bringing investments into the country thereby boosting our economic growth and development. Thus, in lieu of the usual imposable corporate income tax, gross receipts tax, value-added tax, percentage taxes, franchise tax and other taxes, national and local, 3% on their gross income should be remitted to the National Government, 1% to the local government affected and 1% as development fund. In other words, the phrase "no taxes, local and national, shall be imposed" should be understood to mean the usual taxes, local and national, imposed on businesses and enterprises doing business in the Philippines. In lieu of paying the usual taxes, the businesses and enterprises concerned are made liable to pay only a total of 5% remittance on gross. That is why the phrase "in lieu of paying taxes." It does not mean that no tax is imposed but the usual taxes imposed are being substituted by another form. But still, this is a tax on gross income to be remitted to the government, however it may be worded under Section 12(c).

As clearly pointed out by the respondent, only businesses and enterprises within the Zone are covered by the tax exemption privilege. However, the law is silent with respect to the income derived by individuals working in the said businesses and enterprises. A tax cannot be imposed unless it is supported by the clear and express language of a statute. On the other hand, once the tax is unquestionably imposed, a claim of exemption from tax payments must be clearly shown and based on the language in the law too plain

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to be mistaken.[1] The claim of tax exemption must expressly be granted in a statute stated in a language too clear to be mistaken.[2] Section 12(c) of Republic Act No. 7227 only provides tax incentives to businesses and enterprises within the Zone; thus, petitioner's assertion that his income derived from a company doing business within the Zone should also be tax exempt is not correct. To adopt petitioner's view would be expanding the coverage provided by law, which cannot be countenanced. Tax exemptions cannot be granted by mere implication. Tax exemption of individuals working within the Zone is not expressly granted by Republic Act No. 7227. Therefore, petitioner's income on compensation is still subject to tax under Republic Act No. 8424 or the Tax Reform Act of 1997.

To better appreciate the law, it is important to delve on the reasons for its creation. Republic Act No. 7227 was created to accelerate the sound and balanced conversion of military reservations into other productive uses, to raise funds by the sale of portions of Metro Manila military camps, and to apply said funds as provided herein for the productive civilian use of the lands covered under the 1947 Military Bases Agreement between the Philippines and the United States of America, as amended. Under its Declaration of Policies, it is so provided that:

> "It is likewise the declared policy of the Government to enhance the benefits to be derived from said properties <u>in order to promote the economic and social development of Central Luzon in particular and the country in general</u>." (Emhasis ours.)

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[1] Davao Gulf Lumber Corp. vs. Commissioner of Internal Revenue, 293 SCRA 76
[2] Commissioner of Internal Revenue vs. Court of Appeals, 298 SCRA 83

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Indubitably, the prime objective of the law is to attract and encourage investors to promote economic and social growth. As elucidated by the Supreme Court in one case:[3]

> "From the above provisions of the law, it can easily be deduced that the real concern of RA 7227 is to convert the lands formerly occupied by the US military bases into economic and industrial areas. In furtherance of such objective, Congress deemed it necessary to extend economic incentives to attract and encourage investors, both local and foreign. Among such enticements are: (1) a separate customs territory within the zone, (2) tax-and-duty-free importations, (3) restructured income tax rates on business enterprises within the zone, (4) no foreign exchange control, (5) liberalized regulations on banking and finance, and (6) the grant of resident status to certain investors and of working visas to certain foreign executives and workers."

It is noteworthy that except for the privilege of granting working visas to working aliens, the law is silent as regards their taxability. This goes without saying that the provisions of the Tax Code, as amended, apply. Under Section 23(D) of the 1997 Tax Code, "an alien individual, whether a resident or not of the Philippines, is taxable only on income derived from sources within the Philippines."

Petitioner maintains that the Subic Special Economic Zone is beyond the reach of the Tax Reform Act of 1997 as well as other Philippine tax laws by virtue of Section 12(c), declaring it as a tax-free territory. Consequently, any income derived from within the Zone is tax-free and shall not be considered as income derived within the Philippines for tax purposes.

We are not persuaded by petitioner's view.

As already discussed earlier, the provision of Section 12(c) of Republic Act No. 7227 should be understood to mean that the usual taxes, local and national, are not

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[3] Tiu vs. Court of Appeals, 301 SCRA 278

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imposed on businesses and enterprises within the Zone. In lieu thereof, a total of 5% on gross is mandated to be remitted to the government. Plainly, the Zone is not a tax free territory in the full sense of the word, i.e., no tax at all, for the 5% gross remittance is in place of the usual taxes due. Thus, it is a tax in another form.

It is the assertion of petitioner that the income he derived within the Zone shall not be considered as income within the Philippines. So being an alien not deriving income within the Philippines, he is not liable to pay income tax on compensation.

We do not concur.

The secured area of the Zone which is virtually delineated in metes and bounds by Proclamation No. 532, issued by the then President Fidel Ramos on February 1, 1995, is in reality part of the territorial jurisdiction of the Philippines, the provision of Section 12(c) notwithstanding. This is evidenced by Section 12(h) which placed the fenced-off area of the Zone under the responsibility of the Philippine National Government, thus:

> "The defense of the zone and the security of its perimeters shall be the responsibility of the National Government in coordination with the Subic Bay Metropolitan Authority. The Subic Bay Metropolitan Authority shall provide and establish its own internal security and fire-fighting forces."

Since all subjects over which the Philippines can exercise dominion are necessarily objects of taxation, it follows that all subjects of taxation within its jurisdiction are required to pay tax in exchange for the protection that they receive.[4] The Tax Code, as amended, operates with equal force and effect to all subjects within the territorial jurisdiction of the Philippines. Being a general law, it covers all persons, properties and privileges, which are found within its jurisdictional limit. Republic Act 7227 is a special

[4] Commissioner of Internal Revenue vs. Algue, Inc., et al., 158 SCRA 9

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law which axiomatically prevails over the general law[5] but only as to what are expressly covered by it. Everything outside its coverage is within the purview of the general law.

In the case at bar, the Zone being within the territorial boundaries of the Philippines, aliens whether residing therein or not but enjoy the benefits and protection from the government, are not exempt from contributing their share in the running of the government. Accordingly, the income tax paid on compensation by the petitioner for the year 1998 amounting to P1,334,210.08 was correctly paid and is not refundable.

**WHEREFORE,** in view of all the foregoing, the instant Petition for Review is hereby **DENIED** for lack of merit.

**SO ORDERED**.

**ERNESTO D. ACOSTA**
Presiding Judge

**I CONCUR:**

**JUANITO C. CASTAÑEDA, JR.**
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

[5] Tano vs. Socrates, 278 SCRA 154

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