REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FLORENCIO S. JIMENEZ
Petitioner,

- versus - C.T.A. CASE NO. 4640

THE COMMISSIONER OF INTERNAL REVENUE,
Respondent.
x - - - - - - - - - - - - - x

7/14/92

D E C I S I O N

The instant petition prays for the refund of the sum of P56,512.68 which was allegedly erroneously deducted and withheld from petitioner's terminal leave pay in the amount of P235,469.50.

The following facts do not appear to be disputed:

Petitioner was Assistant Vice-President of the Legal Department, Land Bank of the Philippines, who optionally retired on April 30, 1990. He received his terminal leave pay in the amount of P235,469.50 from which P56,512.68, representing 25% withholding tax, was deducted. The withheld tax was remitted to the Bureau of Internal Revenue (BIR) on June 8, 1990 (Exhibits "A", "B" and component parts).

Petitioner filed a claim for refund with the respondent in a letter, dated June 20, 1990, received on June 22, 1990, contending that his terminal leave pay is exempt from income tax. The request was not acted upon, so he reiterated the same in another letter, dated September 21, 1990. The second request was similarly ignored. Hence, the instant petition was filed to toll the 2-year prescriptive period.

Respondent filed an answer disclaiming the right of petitioner to the refund, but failed to present evidence.

The only issue herein is whether or not the petitioner's terminal leave pay of P235,469.50 is subject to withholding income tax in the amount of P56,512.68.

The court finds for petitioner.

1. The Supreme Court already resolved on August 23, 1990 in *Administrative Matter 9-0-6-015-SC - RE: Request of Atty. Bernardo F. Zialcita for Reconsideration* of the action of the Financial and Budget Office, that terminal leave pay is not subject to income tax. The pertinent portion is quoted:

> "An examination of the records convinces the Court that the posture of Atty. Zialcita is impressed with merits . In the case of Justice Victoriano, the terminal leave pay he received when he applied for optional retirement had been converted into vacation and sick leave

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> with commutation of salary which forms part of his regular salary subject to income tax, considering that before the effectivity of his optional retirement on December 31, 1982 he was appointed Acting Commissioner of the Land Registration Commission on November 19, 1982. On the other hand, "...the terminal leave pay that Atty. Zialcita received by virtue of his compulsory retirement can never be considered a part of his salary subject to the payment of income tax but falls under the phrase 'other similar benefits received by retiring employees and workes', within the meaning of Sec. 1 of PD. No. 220 and is thus exempt from the payment of income tax. That the money value of his accrued leave credits is not a part of his salary is further buttressed by Sec. 3 of P.D. No. 985, otherwise known as 'The Budgetary Reform Decree on Compensation and Position Classification of 1976' particularly Sec. 3(a) thereof, which makes it clear that the actual service is 'the period of time for which pay has been received, excluding the period covered by terminal leave." (Emphasis supplied.)

2. In *Borromeo v. Civil Service Commission et. al.* (199 SCRA 911 [1991]), the Supreme Court reiterated the Zialcita ruling by holding that terminal leave pay which is the cash value of the accumulated leave credits should not be treated as compensation for services rendered at the time (of the retirement), considering that terminal leave pay is applied for by an officer or an employee who had already severed his connection with his employer and who is no longer working in that

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particular office. Not being part of gross salary or income, but a retirement benefit, the terminal leave pay of a government official or employee is not subject to income tax. (Commissioner of Internal Revenue v. Court of Appeals, et. al. (203 SCRA 72 [1991])

3. The petitioner's documentary evidence, specifically Exhibits "A" and "B" and component parts, as well as Exhibit "C", are public documents which are presumed to have been regularly issued. Respondent has not presented any evidence to refute the same. Hence, they are admitted.

4. The exemption applies to terminal leave pay received out of an optional or compulsory retirement, no distinction having been made in the cited decisions/rulings.

WHEREFORE, judgment is hereby rendered in favor of petitioner and against respondent, directing the latter to refund to petitioner the amount of P36,512.68 which was erroneously collected.

SO ORDERED.

Quezon City, Metro Manila, July 14, 1992.

STELLA DADIVAS-FARRALES
Acting Associate Judge

I CONCUR:

ERNESTO D. ACOSTA
Presiding Judge

C E R T I F I C A T I O N

I hereby certify that this decision was reached after due consultation between 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