REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

MANILA PENINSULA HOTEL, INC.
Petitioner,

- versus -

C.T.A. CASE NO. 2983

THE COMMISSIONER OF INTERNAL REVENUE,
Respondent.

10/15/90

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

D E C I S I O N

This is a claim for the refund or credit of the amount of P1,967,751.90 representing alleged erroneous payment of caterer's tax imposed under Section 191-A of the Tax Code as amended by Republic Act No. 6110, for the sale of food, beverage and tobacco by proprietors or operators of restaurants, refreshment parlors and other places, including clubs and caterers.

As was held by this Court, in the case of Manila Golf and Country Club, Inc. vs. Commissioner of Internal Revenue, CTA Case No. 2630, promulgated on March 30, 1977, Section 191-A of the Tax Code is invalid, it having been vetoed by the President on August 4, 1969 and therefore the taxes paid by petitioner on food, beverages, and tobacco were therefore erroneously paid.

On October 11, 1978, petitioner, through its auditors, filed with respondent a claim for refund or tax credit of the abovementioned alleged erroneous payment of percentage taxes amounting to P1,967,751.90, arrived at as follows:

Period(Quarter)	Amount of Business Tax Paid	Amount of Tax Refundable/ Creditable
a] October-December 1976	P 136,722.64	P 116,606.80
b] January-March 1977	283,493.42	248,265.49
c] March-June 1977	433,627.39	390,240.77
d] July-September 1977	598,272.86	546,024.19
e] October-December 1977	636,925.80	596,674.31
f] January-March 1978	614,870.73	561,362.34
Total	P2,703,962.84	P1,967,751.90

In a letter dated October 18, 1978, respondent denied petitioner's claim for refund or the credit, which we quote as follows:

REPUBLIKA NG PILIPINAS
KAGAWARAN NG PANANALAPI
KAWANIHAN NG RENTAS INTERNAS
Lungsod ng Quezon

October 18, 1978

Sycip, Gorres, Velayo & Co.
6760 Ayala Avenue
Makati, Metro Manila

Attn.: Mr. C. C. Gison
Tax Division

Gentlemen:

With reference to the claim filed by you on October 11, 1978 on behalf of your client, MANILA PENINSULA HOTEL, INC. for refund of P1,967,751.90 as alleged erroneously collected caterer's tax for the period from October, 1976 to March, 1978, inclusive, I have the honor to inform you that the decision of the Court of Tax Appeals in the case of "Manila Golf & Country Club vs. Commissioner of Internal Revenue," C.T.A. Case No. 2630 promulgated on March 30, 1977, which is the legal basis of your claim, is not yet final and executory inasmuch as an appeal was filed by this Office with the Supreme Court for the final resolution of the issues involved in G.R. No. L47421.

Accordingly, your claim for refund is hereby denied and you are advised to urge client to continue paying the caterer's tax until a final decision on the said case of Manila Golf & Country Club vs. Commissioner of Internal Revenue, G.R. No. L47421 has been rendered.

Very truly yours,

(SGD.) BERNARDO D. CARPIO
Asst. Commissioner of Internal Revenue
TAN C6110-A1014-A-7

Considering that due to the constant postponements at the instance of either or both parties to await the adjudication by the Supreme Court of a case involving a similar issue on the said case of Commissioner of Internal Revenue versus Manila Golf Club, Inc. et. al., G.R. No. L-47421, CTA Case No. 2630 on appeal since December 5, 1977, this Court resolved to archive the said case on March 31, 1989.

The Supreme Court have since decided the case of Manila Golf and Country Club, Inc., G.R. No. L-47421 in favor of respondent, Commissioner of Internal Revenue on May 14, 1990, reversing Us therefore, in said CTA Case No. 2630. The Supreme Court held thus:

> The petition now before Us presents an identical question: whether the presidential veto referred to the entire section or merely to the imposition of 20% tax on gross receipts of operators or proprietors of restaurants, refreshments parlors, bars and other eating places which are maintained within the premises or compound of a hotel, motel or resthouses. Reference to the Manila Hotel case, therefore, might have been sufficient to dispose of this petition were it not for the position of the CTA that a chief executive has no power to veto part of an item in a bill; either he vetoes an entire section or approves it but not a fraction thereof.
>
> Herein private respondent, Manila Golf & Country Club, Inc. is non-stock corporation. True, it maintains a golf course and operates a clubhouse with a lounge, bar and dining room, but these facilities are for the exclusive use of its members and accompanied guests, and it charges on cost-plus-expense basis. As such, it claims it should have been exempt from payment of privilege taxes were it not for the last paragraph of

Section 191-A of R.A. No. 6110, otherwise known as the "Omnibus Tax Law." Section 191-A reads:

> "Sec. 191-A. Caterer. A caterer's tax is hereby imposed as follows:
>
> "(1) On proprietors or operators of restaurants, refreshment parlors and other eating places, including clubs, and caterers, three per cent of their gross receipts.
>
> "(2) On proprietors or operators of restaurants, bars, cafes and other eating places, including clubs, where distilled spirits, fermented liquors, or wines are served, three percent of their gross receipts from sale of food or refreshments and seven per cent of their gross receipts from sale of distilled spirits, fermented liquors or wines. Two sets of commercial invoices or receipts serially numbered in duplicate shall be separately prepared and issued, one for sale of refreshments served, and another for each sale of distilled spirits, fermented liquors or wines served, the originals of the invoices or receipts to be issued to the purchaser or customer.
>
> "(3) On proprietors or operators of restaurants, refreshment parlors, bars, cafes and other eating places which are maintained within the premises or compound of a hotel, motel, resthouse, cockpit, race track, jai-alai, cabaret, night or day club by

means of a connecting door or passage twenty per cent of their gross receipts.

"Where the establishments are operated or maintained by clubs of any kind or nature (irrespective of the disposition of their net income and whether or not they cater exclusively to members or their guests) the keepers of the establishments shall pay the corresponding tax at the rate fixed above." [underscoring ours]

Republic Act No. 6110 took effect on September 1, 1969. By this virtue, petitioner assessed the club fixed taxes as operators of golf links and restaurants, and also percentage tax (caterer's tax) for its sale of foods and fermented liquors/wines for the period covering September 1969 to December 1970 in the amount of ₱32,504.76. The club protested claiming the assessment to be without basis because Section 42 was vetoed by the President Marcos. The veto message read:

"MALACAÑANG
Manila

August 4, 1969

"Gentlemen of the House
of Representatives:

"I have the honor to inform you that I have this day signed H.B. No. 17839, entitled:

'AN ACT AMENDING
CERTAIN PROVISIONS
OF THE NATIONAL INTERNAL
REVENUE CODE, AS AMENDED'

"Pursuant to the provisions of Section 20-(3), Article VI, of the Constitution, however, I have vetoed the following items in this bill:

"xxx xxx xxx
pp. 44, SEC. 42. Inserting a new Section 191-A which imposes a caterer's tax of three percent of the gross receipts of proprietors or operators of restaurants, refreshment parlors and other eating places; three percent of the gross receipts from sale of food or refreshment and seven percent on gross receipts from the sale of distilled spirits, fermented liquors or wines, on proprietors or operators of restaurants, bars, cafes and other eating places, including clubs, where distilled spirits, fermented liquors, or wines are served; and twenty percent of gross receipts on proprietors or operators of restaurants, refreshment parlors, bars, cafes and other eating places maintained within the premises or compound of a hotel, motel, resthouse, cockpit, race tract, jai-alai, cabaret, night or day club, or which are accessible to patrons of said establishments by means of a connecting door or passage.

'The burden of taxation will be shifted to the consuming public.

'The development of hotels, essential

> to our tourist industry, may be restrained considering that a big portion of hotel earnings comes from food sale. xxx'

"This bill, H.B. No. 17839, has become Republic Act No. 6110.

"Respectfully,

"(SGD) FERDINAND E. MARCOS [underscoring ours]

The protestation of the club was denied by the petitioner who maintains that Section 42 was not entirely vetoed but merely the words "hotels, motels, resthouses" on the ground that it might restrain the development of hotels which is essential to the tourism industry. This is in fact was the position of the House Ways and Means Committee which reported, to wit:

> "When Congress decided to split Section 191 into two parts, one dealing with contractors, and the other dealing with those who serve food and drinks, the intention was to classify and to improve. While the Congress expanded the coverage of both 191 and 191-A, it also provided for certain exemptions. The veto message seems to object certain additions to 191-A. What additions are objectionables can be gleaned from the reasons given: a general reason that this sort of tax is passed on to the consuming public, and a particular reason that hotel developments, so essential to the tourist industry, may be

restrained. These reasons have been taken together in the interpretations of the veto message and the deletions of such enterprises as are connected with the tourist industry has therefore been recommended.

"To interpret the veto message otherwise would result in the exemption of entities already subject of tax. This would be absurd. Where the Congress wanted to exempt, it was so provided in the bill. While the President may veto any item or items in a revenue bill, the constitution does not give him the power to repeal an existing tax. (2nd Indorsement dated December 9, 1969, Chairman on Ways and Means, Sixth Congress of the Republic of the Phil.) (Exhs. 14, p. 85, B.I.R. rec.)." (pp. 20-21, Rollo)

It was by reason of this interpretation of the Committee that R.A. No. 6110 was published in Volume 66, No. 18, p. 4531 of the Official Gazette (May 4, 1970) in such a way that Section 191-A was included in the text save for the words "hotels, motels, resthouses."

As already mentioned, the Court of Tax Appeals, upon petition by the club, sustained the latter's position reasoning that the veto message was clear and unqualified, as in fact it was confirmed three years later, after much controversy, by the Office of the President, thus:

"Mr. Antero M. Sison, Jr.
San Martin Building, 1964,
A. Mabini, P.O. Box 2288
Manila, Philippines

"Dear Sir:

"With reference to your letter dated July 14, 1972, we wish to inform you that Section 42 [which contains Sec. 191-A] of House bill No. 17837, now R.A. 6110 was one of the Sections vetoed by the President in his veto message dated August 4, 1969, vetoing certain sections of the said revenue bill.

Very Truly Yours,

"(SGD.) IRINEO F. AGUIRRE, JR.
Presidential Staff Assistant"

(p. 49, Rollo)

As mentioned earlier, We have already ruled that the presidential veto referred merely to the inclusion of hotels, motels and resthouses in the 20% caterer's tax bracket but not to the whole section. But, as mentioned earlier also, the CTA opined that the President could not veto words or phrases in a bill but only an entire item. Obviously, what the CTA meant by "item" was an entire section. We do not agree. But even assuming it to be so, it would also be to petitioner's favor. The ineffectual veto by the President rendered the whole section 191-A as not having been vetoed at all and it, therefore, became law as an unconstitutional veto has no effect whatsoever. (See Bolinao Electronics Corp. v. Valeria, No. L-20740, June 30, 1964, 11 SCRA 486).

However, We agree with then Solicitor General Estelito Mendoza and his associates that inclusion of hotels, motels and resthouses in the 20% caterer's tax bracket are "items" in themselves within the meaning of Sec. 20

> (3), Art. VI of the 1935 Constitution which, therefore, the President has the power to veto. An "item" in a revenue bill does not refer to an entire section imposing a particular kind of tax, but rather to the subject of the tax and the tax rate. In the portion of a revenue bill which actually imposes a tax, a section identifies the tax enumerates the persons liable therefor with the corresponding tax rate. To construe the word "item" as referring to the whole section would tie the President's hand in choosing either to approve the whole section at the expense of also approving a provision therein which he deems unacceptable or veto the entire section at the expense of foregoing the collection of the kind of tax altogether. The evil which was sought to be prevented in giving the president the power the disapprove items in a revenue bill would be perpetrated rendering that power inutile (See Commonwealth ex rel. Elkin v. Barnett, 199 Pa. 161, 55 LRA 882 [1901]).

We accordingly hold petitioner not entitled to the claim for the refund or credit of the amount of P1,967,751.90 as caterer's tax.

WHEREFORE, the claim for judicial refund or tax credit by petitioner of the amount of P1,967,751.90 is hereby denied.

With costs against petitioner.

SO ORDERED.

Quezon City, Metro Manila, October 15, 1990.

CONSTANTE C. ROAQUIN
Associate Judge

I CONCUR:

ALEX Z. REYES
Associate 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.

CONSTANTE C. ROAQUIN
Associate Judge
Court of Tax Appeals