fib.

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FLORENTINO VISITACION, JR.,
Petitioner,

-versus -

C.T.A. CASE NO. 4585

THE COMMISSIONER OF INTERNAL REVENUE,
Respondent.

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

11/26

D E C I S I O N

This is a simple claim for refund involving the amount of P155,401.23 representing taxes withheld from the money value of the unused leave credits of petitioner who retired from the government service.

It appears from the record that petitioner was formerly an Assistant Provincial Prosecutor of Iloilo under the Department of Justice until his compulsory retirement on November 6, 1989. Petitioner retired under Republic Act No. 1616, as amended and in accordance with the said law, he was entitled to the payment of the money value of his accumulated unused vacation and sick leave credits in the amount of P602,350.83. The Department of Justice withheld from the said money value of leave credits the amount of P155,401.23 as income tax payment and remitted to the Bureau of Internal

Revenue under PNB Check No. 800381 dated February 9, 1990 which was acknowledged by the BIR under CB Confirmation Receipt No. B-18912254 and BIR Payment Order No. C-6740789 both dated February 27, 1990.

However, when petitioner came to know of the decision of the Supreme Court in the case of Atty. Bernardo F. Zialcita, Administrative Matter No. 90-6-015-SC, holding the money value of the terminal leave credits of Atty. Zialcita exempt from payment of income tax, petitioner wrote respondent a letter dated September 18, 1990, received by him on November 14, 1990, claiming refund of the amount of P155,401.25 withheld income tax. On February 22, 1991, petitioner received a letter dated January 31, 1991 from the BIR Deputy Commissioner Eufracio D. Santos denying his claim for refund on the ground that the Zialcita case applies only to employees of the Judiciary. Respondent likewise raised the case of Oscar W. Victoriano, G.R. 83176, August 10, 1989 as applicable in the instant case.

The sole issue submitted to this court for resolution is whether petitioner's terminal leave pay credits received upon retirement from government service is subject to withholding tax.

This court had occasioned to pass upon similar cases, namely: Efren P. Castaneda vs. The Commissioner of Internal Revenue, CTA Case No. 3809, February 4, 1987; Florencio E. Santos vs. The Commissioner of Internal Revenue, CTA Case No. 4004, November 18, 1987 and most recently the case of Marcos F. Catalan vs. The Commissioner of Internal Revenue, CTA Case No. 4345, dated November 11, 1991. The first two cases mentioned were affirmed by the Supreme Court in the cases of Commissioner of Internal Revenue vs. The Court of Appeals and Efren Castaneda, G.R. No. 96016 dated October 17, 1991 and Commissioner of Internal Revenue vs. Court of Appeals and Florencio E. Santos, G.R. No. 83162 dated July 4, 1988. In all these cases the courts held that the money value of the terminal leave credits of retiring government employees are exempted from income tax pursuant to Commonwealth Act No. 186, as amended by R.A. 1616, Presidential Decree No. 220 and Section 29(b)(7) of the National Internal Revenue Code (now Section 28(b)(9)). The Castaneda Case as affirmed by the Supreme Court erases any doubt in the mind of the respondent that the doctrine in the case of

Zialcita will apply not only to employees of the judiciary but to other government employees as well. Efren Castaneda was formerly an official of the Bureau of Internal Revenue.

It is likewise in the case of Zialcita that the Supreme Court clarified and differentiated the case of Oscar R. Victoriano from the Zialcita. In the case of Victoriano, the Supreme Court decided to subject to withholding tax his terminal leave pay because when he applied for optional retirement the terminal leave pay he received had been converted into vacation and sick leave with commutation of salary which forms part of his regular salary subject to income tax. The conversion and commutation were done because before the effectivity of his optional retirement on December 31, 1982, he was appointed Acting Commissioner of the Land Registration Commission on November 17, 1982.

WHEREFORE, in view of this clear and consistent pronouncement by the Supreme Court, respondent is hereby ordered to refund to petitioner the amount of P155,401.23 representing erroneously withheld tax from the money value of his terminal leave.

SO ORDERED.

Quezon City, Metro Manila, November 26, 1991.

ERNESTO D. ACOSTA
Associate Judge

I CONCUR:

CONSTANTE C. ROAQUIN
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