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REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

MAXIMINO B. CASTILLO,
Petitioner,

- versus - C.T.A. CASE NO. 4346

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

1/11/91

D E C I S I O N

This is a judicial action for the refund of the sum of P8,869.34 deducted from the total money value of petitioner's accumulated unused vacation and sick leave credits as employee of the Philippine National Bank, Tarlac Branch.

Petitioner was formally employed by the Philippine National Bank as Attorney of the Branch at Tarlac until he retired under the provision of Republic Act No. 1616 as amended.

Upon his retirement, petitioner was entitled to the payment of his accumulated unused vacation and sick leave credits amounting to P83,578.74. Of this amount of unused vacation and sick leave credits, the amount of P8,869.34 was withheld for income tax and was remitted to the Bureau of Internal Revenue, evidenced by a certification dated January 26, 1989 issued by Senior Assistant Manager Roberto F. Melo of the Philippine National Bank.

On March 2, 1989, petitioner formally filed with respondent Commissioner of Internal Revenue a claim for refund of the withheld tax in the amount of P8,869.34 as refundable to him.

The only issue in this case is whether or not petitioner is entitled to the refund of the sum of P8,869.34.

We hold that petitioner is entitled to the refund of the sum of P8,869.34 as income tax withheld from out of the unused vacation and sick leave credits of petitioner.

This was the holding in the case of Efren P. Castaneda vs. Commissioner of Internal Revenue, CTA Case No. 3809, decided by the Court of Tax Appeals dated September 26, 1990, affirmed in the decision on appeal by the Court of Appeals, and finally sustained by the Supreme Court of the Philippines, on appeal in G.R. No. 96016, dated October 17, 1991 wherein it held that:

> "The (Supreme) Court has already ruled that the terminal leave pay received by a government official or employee is not subject to withholding (income) tax. In the recent case of

Jesus N. Borromeo vs. The Hon. Civil Service Commission, et al., G. R. No. 96032, 31 July 1991, the Court explained the rationale behind the employee's entitlement to an exemption from withholding (income) tax on his terminal leave pay as follows:"

> "x x x commutation of leave credits more commonly known as terminal leave, is applied for by an officer or employee who retires, resigns or is separated from the service through no fault of his own. (Manual on Leave Administration Course for Effectiveness published by the Civil Service Commission, pages 16-17). In the exercise of the sound personnel policy, the Government encourages unused leaves to be accumulated. The Government recognizes that for most public servants, retirement pay is always less than generous if not meager and scrimpy. A modest nest egg which the senior citizen my look forward to is thus avoided. Terminal leave payments are given not only at the same time but also for the same policy considerations governing retirement benefits."

"In fine, not being part of the gross salary or income of a government official or employee but a retirement benefit, terminal leave pay is not subject to income tax."

WHEREFORE, petitioner is entitled to the refund of the sum of P8,869.34, for which respondent is hereby ordered to so refund immediately upon receipt of this decision.

Without pronoucement as to cost.

SO ORDERED.

Quezon City, Metro Manila, November 11, 1991.

CONSTANTE C. ROAQUIN
Associate Judge

WE CONCUR:

ALEX Z. REYES
Presiding Judge

ERNESTO D. ACOSTA
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 among the members of the Court of Tax Appeals in accordance with Section 13, Article VIII of the Constitution.

ALEX Z. REYES
Presiding Judge