Lib.

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FLORENCIO E. SANTOS,
Petitioner,

- versus -

C.T.A. CASE NO. 4004

THE COMMISSIONER OF
INTERNAL REVENUE,
Respondent.

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

11/18/87

D E C I S I O N

This is a claim for refund of the amount of ₱34,113.84 representing income tax withheld by respondent Commissioner of Internal Revenue from petitioner Florencio E. Santos' terminal leave pay of ₱235,155.38.

The facts are not disputed, respondent having submitted this case for decision on the basis of the pleadings after petitioner has presented his evidence. As alleged in the petition for review and admitted by respondent:

1. Petitioner is of legal age, Filipino and resides at 1063 Sylvia St., Ermita, Manila where he may be served with summons while respondent is the Commissioner of the Bureau of Internal Revenue, holding office at the BIR National Office Building,

Diliman, Quezon City, where he may be served with summons and other court processes;

2. Petitionerwas the Commercial Attache of the Bureau of Foreign Trade, Ministry of Trade and Industry, Philippines, to Rio de Janeiro, Brazil until he was phased-out in March 1982;

3. By virtue of his having been phased-out from government service, petitioner received terminal leave pay amounting to ₱235,155.38;

4. Out of petitioner's terminal leave pay of ₱235,155.38, the Bureau of Internal Revenue withheld as income tax the sum of ₱34,113.84 as evidenced by O.R. No. 3635620 dated August 27, 1984 and the Certificate of Income Tax Withheld on Compensation dated April 15, 1985;

5. The Bureau of Internal Revenue in its ruling Nos. 055-85 and 056-85 both dated April 11, 1985 stated to wit:

> "Pursuant to Section 29(c)(7)(B) of the Tax Code as amended, any amount received by an official or employee or by his heirs from his employer as a consequence of separation by such official or employee from the service of the employer, due to death, sickness or other physical disability or for any cause beyond the control of said

> official or employee is exempt from taxes regardless of age or length of service. The phrase "for any cause beyond the control of the said official or employee" connotes involuntariness on the part of the official or employee. The separation from the service of the official or employee must not be asked for or initiated by him. In other words, the separation must not be of his own making or choice (Sec. 2)(b)(2), Revenue Regulations No. 6-82 dated October 1, 1982)".

6. Petitioner, who was a phased-out employee of the Ministry of Trade and Industry is entitled to terminal leave pay as provided for by Section 286 of the Revised Administrative Code, as amended by Republic Act No. 1081, insofar as pertinent, reads:

> "Sec. 286. When vacation and sick leave may be taken - Vacation and sick leave shall be cumulative and any part thereof which may not be taken within the calendar year in which earned may be carried over to the succeeding years, but whenever any officer, employee or laborer of the Government of the Philippines shall voluntarily resign or be separated from the service through no fault of his own, he shall be entitled to the commutation of all accumulated vacation and/or sick leave to his credit;
>
> Provided, That the total vacation and sick leave that can accumulate to the credit of any

> officer or employee shall, in no case, exceed ten months x x x" (Macatangay vs. COA Chairman, 117 SCRA 231, 233; Manuel vs. GAO, 42 SCRA 660, 663; Underscoring supplied.)

Moreover, the Civil Service Commission, which is the agency charged with the implementation of the leave law (Opinion No. 133, S. 1982, of the Minister of Justice), issued Resolution No. 81-1158, dated October 12, 1981, as follows:

> "3. The accumulation of vacation and sick leave by an officer, employee, or laborer shall have no limit. However, only a maximum of ten (10) months leave shall be credited to him. The accumulated leave in excess of ten (10) months shall not be forfeited unless the officer, employee or laborer voluntarily resigns, retires, or is separated from the service through no fault of his own, in which case he shall be entitled to the commutation of all his accumulated vacation and/or sick leave to his credit which, in no case, shall exceed three hundred (300) days, exclusive of Saturdays, Sundays and public holidays." (Underscoring supplied)

7. The terminal leave pay of petitioner in the amount of ₱235,155.38 is exempt from tax, as asserted by him, by virtue of Section 1 of Presidential Decree 220, which provides:

"1. That, provisions of any existing law to the contrary notwithstanding, social security benefits, retirement gratuities, pensions and other similar benefits received by retiring employees and workers, whether received from Philippine or foreign government agencies and other institutions, private or public, shall be exempt from the payment of income tax."

8. Leave benenfits are exempt from tax as opined by the Office of the President in Opinion No. 99, Series of 1985, to wit:

"Any amount received by a government officer or employee upon reaching the compulsory retirement age, as cash equivalent of his accumulated vacation and sick leave creadits, falls within the meaning of the phrase "other similar benefits received by retiring employees and workers' as used by P.D. No. 220, and is thus exempt from income tax."

Strictly speaking, leave benefits are not retirement benefits as the same may be enjoyed by an officer or employee while still in the service. But, when he resigns or is separated from the service through no fault of his own as when he reaches the compulsory retirement age (No. 3, CSC Resolution No. 81-1158), he is by law entitled to the commutation of all his accumulated vacation and sick leaves and to the payment of money value thereof (See: Manuel vs. GAO, supra). Hence, the commutation of accrued vacation and sick leaves of an officer or employee upon reaching the compulsory retirement idential Decree No. 220 or under Section 29(c)(7)(B) of the National Internal Revenue Code, as amended, any amount received by a retiring government officer or worker as cash equivalent of his unused vacation and sick leaves is exempt from income tax. Because of its controlling effects on the instant case, we will quote at length from the decision.

> Contrary to the assertion of respondent, as primarily cited heretofore, P.D. 220 and Section 29(c)(7)(B)of the National Internal Revenue Code had clearly and unequivocally provided for the exemption from the imposition of income tax on benefits received from Philippine government agencies, among which is the amount pertaining to the accumulated accrued leaves of retiring government officials and employees, and which shall be exempt from tax; and P.D. 220, which is accorded the status and nature of a legislative enactment (Aquino, Jr. vs. Enrile, 59 SCRA 183; De Chavez v. Zobel, 55 SCRA 26, 31), and Section 29(c)(7)(B) of the National Internal Revenue Code, being actually a legislative enactment, like any other law or statute, their essence are their intents, policies or objectives and our judicial duty is to discover and ascertain these, and once known it is the duty of the Courts to so declare and carry their intents, policies or objectives courageously into effect (Vda. de Macabenta vs. Davao Stevedore Terminal Co., 32 SCRA 553, 557; Sue vs. Hord, 12 Phil. 485; U.S. vs. Toribio, 15 Phil. 85;

age is, by fiction of the law, a benefit "received by retiring employees and workers."

9. In a letter dated April 17, 1985 and filed with Respondent's Office on April 19, 1985 petitioner requested respondent for the refund of the erroneously paid income tax amounting to ₱34,113.84 but up to now, no action has been taken on it.

10. To date respondent has not yet granted petitioner's request for refund.

11. The claim for refund as well as this Petition for Review have been filed within two (2) years from the date of payment of the tax sought to be refunded in accordance with Section 292 and 295 of the applicable Tax Code.

The lone question tendered for resolution is whether or not the money value of unused vacation and sick leaves of a phased-out government employee is subject to withholding tax.

A similar issue was recently settled by this Court in C.T.A. Case No. 3809, Efren P. Castaneda vs. Commissioner of Internal Revenue, February 4, 1987, the factual setting of which is identiical to that in the case at bar and where this Court unequivocally ruled that whether taken under Pres-

Riera vs. Palmaroli, 40 Phil. 105; Comm. vs. Caltex, 106 Phil. 829; Sarcos vs. Castillo, 26 SCRA 853, 859-861.) and the language and letter and the clear purpose or policy of the laws prevail. (Sarcos vs. Castillo, 26 SCRA 853, 859-861.)

xxx xxx xxx

Lest a distorted legal impression shall be created in the important subject of taxation, the narrow, restrictive or strict application of the rule that exemptions from tax is always disfavored in law does not always apply. Where tax exemption, as had been provided and built in P.D. 220 and Section 29(c)(7)(B) of the National Internal Revenue Code, was clearly granted to government retiring employees, precisely as an act of public policy, and not as a matter of grace or favor to them since government officers and employees render a very special public duty or service to the government and to the Filipino people at large, this exemption from the payment of tax on their accumulated accrued leaves upon their retirement must have to be, as we do hereby liberally construe the same in their favor (Ambrocio Padilla, Civil Code Annotated, 1956 Ed., Vol. IV, p. 195; Tolentino, Commentaries on the Civil Code, Vol. V, 1959 Ed., p. 250; Carmelo V. Monserrat, 55 Phil. 644; see Mertens, ibid., citing Estate of Emily StA Tait, 11 TC 731; Comm. v. White's Estate, op. cit.) as a reward for their selfless dedicated and admittedly not adequately compensated service in terms of the salary due their positions. Moreover, the tax exemption provisions in P.D. 220 and Section 29(c)(7)(B) exempting them from the payment of income tax on the amount of their accumulated accrued leaves are just too plain to be mistaken and too categorical to be misinterpreted.

It must have to be stated and emphasized in this connection that respondent Commissioner of Internal Revenue requested for reconsideration of Opinion No. 99, which held that BIR Ruling No. 432, dated August 14, 1958, has been superseded by Section 1 of Presidential Decree 220, to the end "xxx that any amount received by a retiring government officer or employee, as the equivalent of his accumulated vacation and sick leave credits, is exempt from income tax," the Presidential Assistant for Legal Affairs, Office of the President, in Opinion No. 114, series of 1985, in denial to aforesaiid respondent's motion for reconsideration, opined in effect that "xxx whether taken under P.D. No. 220 or under the Tax Code as amended by P.D. No. 1159 and Batas Pambansa Blg. 135, any amount received by a retiring government officer or worker as cash equivalent of its unused vacation and sick leaves is exempt from income tax." (underscoring supplied; pp. 67-76, CTA rec.)

We are in full conformity with the Opinion No. 114 of the Presidential Assistant for Legal Affairs, Office of the President, which made a very concise effort to make an incisive explanation and illucidation of, and then finally making a concise declaration of the true essence, intent, purpose, policy and objective of P.D. No. 220 and Section 29(c)(7)(B) of the National Internal Revenue Code and Batas Pambansa Blg. 135, granting exemption from income taxes onall benefits due to government officers and employees, the very office from which particularly P.D. 220 had proceeded and originated, which office and no other can authoritatively state what in exactitude, is, to our mind,, the essence, intent, purpose and objective, scope and extent, of the tax exemption granted therein.

Accordingly, petitioner Florencio E. Santos is entitled to the refund of the amount of ₱34,113.84 withheld as income tax by the Bureau of Internal Revenue from his terminal leave pay of ₱235,155.38.

WHEREFORE, respondent is hereby ordered to grant the refund to petitioner the amount of P34,113.84, without pronouncement as to costs.

SO ORDERED.

Quezon City, Metro Manila, November 18, 1987.

AMANTE FILLER
Presiding Judge

WE CONCUR:

(on official leave)
CONSTANTE C. ROAQUIN
Associate Judge

ALEX Z. REYES
Associate Judge

612