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REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

POLYGRAM CORPORATION,
Petitioner,

- versus - C.T.A. Case No. 3890

THE COMMISSIONER OF INTERNAL REVENUE,
Respondent.
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D E C I S I O N

A simple claim for refund/tax credit of alleged overpaid withholding tax on film rentals based on the "most-favored nation" clause of the Republic of the Philippines-United States Tax Treaty.

Petitioner, a non-resident foreign corporation organized and existing under the laws of the State of Delaware, U.S.A., is engaged in the business of film distribution and had license contracts with local television stations and advertising agencies, more particularly, the Greater Manila Area Radio and Television Arts (GMA) and Atlas Promotion and Marketing Corporations, which on various dates withheld and paid taxes on film rentals or royalties payable to petitioner at the rate of 25%

pursuant to Section 24(b)(1) (IV) of the Internal Revenue Code of 1977, detailed as follows:

		Gross Receipts/ Royalties	Tax at 25%	Date Paid
A.	GMA			
	(1) Take Your	US$ 3125	US$ 781.25	
	Best Shot	3125	781.25	2- 1-83
	(2) Isabel's Choice	6250	1562.50	3-31-83
B.	ATLAS			
	(1) Elephant Parts	1500	375	
		1500	375	5- 3-83
	(2) Gnomes	1000	250	1-21-83
	(3) Magic Flute	1000	250	5- 3-83
	(4) Bert Kaempfert	1500	375	5- 3-83
	(5) Hotline	2000	500	
		2000	500	4- 6-84
C.	T O T A L	$23,000.00	$5,750.00	

The payment of the rate of 25% withholding tax nonetheless, petitioner took exception by asserting that the rate of only 10% tax applies on royalties and rentals pursuant to the "most-favored nation" clause in Article 13 of the RP-US Tax Treaty taken in conjunction with Article VIII of the Kingdom of Sweden-Republic of the Philippines Tax Convention and Article IX of the Denmark-RP Tax Convention.

Under the provisions of the RP-US Tax Convention, royalties or rentals derived by a resident of the United States for the use of, or the right to use cinematographic films, or tapes used for radio or television broadcasting are subject to the lowest rate of Philippine tax imposed on similar type of income derived by a resident of a third State. The lowest rate of tax that may be imposed by the Philippines on such royalties is found in the tax conventions of the Philippines with Denmark and the Kingdom of Sweden.

Article VIII of the Kingdom of Sweden-Republic of the Philippines Tax Convention provides:

> "(1) Income which a resident or corporation of Sweden derives from rentals or other amounts paid by a resident or corporation of the Philippines as consideration for the use, or the right to use motion picture films, films or tapes for radio or television broadcasting, may be taxed in the Philippines at ten percent (10%) of such rentals or amount paid."

Article IX of the Denmark-Republic of the Philippines Tax Convention likewise provides:

> "(1) Income which a resident or corporation of Denmark derives from rentals or other amounts paid by a resident or corporation of the Philippines as consideration for the use of, or the right to use, motion picture films, films or tapes for radio or television broadcasting, may be taxed in the Philippines at ten percent (10%) of the gross rentals or amounts paid."

Accordingly, since the royalties derived by petitioner from its contracts with local licensees for the use of motion picture films or films or tapes for radio and television broadcasting are of the same kind as film rentals under the tax conventions of the Philippines with Denmark and the Kingdom of Sweden, they are subject to a ten percent (10%) tax pursuant to Article 13, paragraph 2(b) (iii) of the RP-US Tax Convention.

Thus applied, the ten percent (10%) rate *vis-a-vis* the twenty five percent (25%) earlier computed, shows an excess payment of P36,444.84, *viz.*:

	Tax at 10%	Over-Payment	Refundable or Creditable in Pesos
A. GMA			
(1) Take Your Best Shot	$312.50	$468.75	P 4,356.09
	312.50	468.75	4,356.09
(2) Isabel's Choice	312.50	468.75	4,650.00
	312.50	468.75	4,650.00
			P18,012.18
B. ATLAS			
(1) Elephant parts	$150	$225	P 2,090.92
(2) Gnomes	150	225	3,723.37
(2) Gnomes	100	150	1,393.95
(3) Magic Flute	100	150	1,489.35
(4) Bert Kaempfert	150	225	2,234.02
(5) Hotline	200	300	4,200.60
	200	300	3,300.45
TOTAL			P36,444.84

On January 21, 1984 petitioner filed a claim for the refund or tax credit of the overpaid amount of withholding tax on film rentals or royalties but which remains unacted to date by the respondent.

Hence this petition.

Be that as it may, it needs neither argument nor citation of authorities to establish the validity of the claimed refund or tax credit as the law is clear and the language used amply sufficient to dispel any pall of uncertainty over the same. Moreover, respondent's ruling so provides that -

> "This Office hereby confirms that the royalties derived by Polygram Corporation (petitioner) for the use of motion picture films or films or tapes for radio or television broadcasting are subject to 10% withholding tax pursuant to Section 13(2) (iii) of the RP-US Tax Treaty." *(BIR Ruling No. 065-85)*

We do not think any different conclusion ought to be reached. Certainly the law requires no more and expects no less. Petitioner has fared consistent with the relevant legal standards in proving entitlement to a favorable determination of the desired relief.

WHEREFORE, respondent is hereby ordered to refund or grant a tax credit in favor of the petitioner for the amount sought. No costs.

SO ORDERED.

Quezon City, Metro Manila, December 15, 1989.

ALEX Z. REYES
Associate Judge

WE CONCUR:

AMANTE FILLER
Presiding Judge

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

AMANTE FILLER
Presiding Judge
Court of Tax Appeals