Republic of the Philippines
Court of Tax Appeals
Quezon City

G C L Retirement Plan,
represented by the Trustee -
Director,
Petitioner,

- versus - C.T.A. Case No. 4130

Commissioner of Internal
Revenue,
Respondent.

2/18/93

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

D E C I S I O N

This is a claim for refund of the amount of P70,139.00 representing withholding tax on income from bank deposits, money placements and purchase of treasury bills pursuant to Presidential Decree No. 1959.

It appears that petitioner G C L Retirement Plan, is an employees trust set up by the employer for the exclusive benefit of its employees, to provide them retirement pension, disability and death benefits. The plan as submitted was approved and qualified as exempt from income tax by respondent pursuant to Republic Act No. 4917.

That during the year 1985 up to and including January 1987 withholding agents of respondent withheld the 15 %, later increased to 20 % final withholding tax from petitioner's deposits/Money Placements and purchase of treasury bills, as follows :

Name of Bank	Amount withheld and remitted to the BIR
1. China Banking Corp.	P 10,267.41
2. Commercial Bank of Mla.	2,001.65
3. Far East Bank & Trust Co.	1,750.48
4. Manila Banking Corp.	11,623.49
5. PISO Bank	29,300.18
6. Security Bank & Trust Co.	1,113.37
7. State Investment House, Inc.	1,717.76
8. United Coconut Planter's Bank	12,364.66
T O T A L	P 70,139.00

Petitioner filed a claim for refund with respondent on January 21,1987 a claim for refund of the sum of P70,139.00. Petitioner earned from money market placements and purchase of treasury bills from which was withheld the 15 %, later 20 % final withholding tax imposed pursuant to Presidential Decree No. 1959, and that it is tax exempt by virtue of Republic Act 4917 and Section 56 (b) of the Tax Code.

Without waiting for respondent to resolve its claim for refund, petitioner filed the instant petition for review.

The sole issue to be resolved is whether or not petitioner is exempt from withholding tax on income from money placements and purchase of treasury bills imposed pursuant to Presidential Decree No. 1959.

Respondent contends that under the present law, Presidential Decree No. 1959, which took effect on October 15, 1984, interest income derived from money market placements is subject to 15 % final withholding tax.

The laws involved in this case are hereby quoted for ready reference, to wit :

"Republic Act No. 4917"

> "An Act Providing that Retirement Benefits of Employees of Private Firms Shall Not Be Subject To Attachment, Levy, Execution, or Any Tax whatsoever.
>
> Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled :
>
> **Section 1.** Any provision of law to the contrary notwithstanding, the retirement benefits received by officials and employees of private firms, whether individual or corporate, in accordance with a reasonable private benefit plan maintained by the employer shall be exempt from all taxes and shall not be liable to attachment, garnishment, levy or seizure by or under any legal or equitable process

whatsoever except to pay a debt of the official or employee concerned to the private benefit plan or that arising from liability imposed in a criminal action : **Provided,** That the retiring official or employee has been in the service of the same employer for at least ten (10) years and is not less than fifty years of age at the time of his retirement : **Provided,** further, That the benefits granted under this Act shall be availed of by any official or employee only once : **Provided, finally,** That in case of separation of an 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 the said official or employee, any amount received by him or by his heirs from the employer as a consequence of such separation shall likewise be exempt as hereinabove provided.

"As used in this Act, the term reasonable private benefit plan means a pension, grativity, stock bonus or profit sharing plan maintained by an employer for the benefit of some or all of his officials and employees, wherein contributions are made by such employer or officials and employees or both, for the purpose of distributing to such officials and employees the earnings and principal of the fund thus accumulated, and wherein it is provided in said plan that at no time shall any part of the corpus or income of the fund thus accumulated, and wherein it is provided in said plan that at no time shall any part of the corpus or income of the fund be used for, or be diverted to, any purpose other than for the exclusive benefits of the said officials and employees.

Sec. 2. This Act shall take effect upon its approval.

"Approved, June 17, 1967." (Underscoring supplied.) in relation to Section 56 (b) of the Tax Code which reads as follows :

Sec. 56. Imposition of Tax -
a.) Application of Tax - The taxes imposed by this title upon individuals shall apply to the income of estates or of any kind of property held in trust, including.

1.) xxx
2.) xxx
3.) xxx
4.) xxx

b.) Exception - The tax imposed by this Title shall not apply to employee's trust which forms part of a pension, stock bonus or profit - sharing plan of an employer for the benefit of some or all of his employees (1) if contributions are made to the purpose of distributing to such employees, or both for the purpose of distributing to such employees the earnings and principal of the fund accumulated by the trust in accordance with such plan, and (2) if under the trust instrument it is impossible, at any time prior to the satisfaction of all liabilities with respect to employ - es under the trust, for part of the corpus or income to be (within the taxable year or thereafter) used for, or income to be (within the taxable year or thereafter) used for, or diverted to, purposes other than for the exclusive benefit of his employees: **Provided,** That any amount actually distributed to any employee or distributee shall be taxable to him in *the year in which so distributed to the extent that it exceeds the amount contributed by such employee or distributee."*

xxx xxx xxx

Presidential Decree No. 1959
October 15, 1984

Amending Certain Sections of the National Internal Revenue as amended.

Whereas, *the current economic crisis amounts to grave emergency which effects the stability of the nation and requires immediate action ;*

Whereas, *the issuance of this decree is an essential and necessary component of the national economic recovery program formulated to meet and overcome the emergency.*

xxx xxx xxx

Section 1. *A new Subsection (y) is inserted in Section 20 of the National Internal Revenue Code to read as follows :*

"(y) Deposit substitute shall mean an alternative form of obtaining funds from the public other than deposits, through the issuance, indorsement, or acceptance of debt instruments for the borrower's own account, for the purpose of relending or purchasing of receivables and other obligations, or financing their own needs or the needs of their agent or dealer. These promisory notes, repurchase agreements, certificates of assignment or participation and similar instrument with recourse as may be authorized by the Central Bank of the

Philippines for banks and non-bank financial intermediaries or by the Securities and Exchange Commission of the Philippines for commercial, industrial, finance companies and other non-financial companies. <u>**Provided, however,**</u> that only instruments issued, for interbank call loans to cover deficiency in reserves against deposit liability including those between or among banks and quasi-banks shall not be considered as deposit substitute debt instruments."

Section 2. Section 21 (d) of this Code as amended, is hereby further amended to read as follows :

"(d) On interest from bank deposits and yield or any other monetary benefit from deposits substitute and from trust fund and similar arrangements. - Interest from Philippine currency bank deposits and yield or any other monetary benefit from deposit substitute and from trust fund and similar arrangements whether received by citizens of the Philippines ar by resident alien individuals, shall be subject to a 15 % final tax to be collected and paid as provided in Sections 53 and 54 of this Code."

Section 3. Section 24 (cc) of this Code, as amended is hereby further amended to read as follows :

"(cc) <u>**Rates of tax on interest from deposit and yield or any other monetary benefit from deposit substitutes and from trust fund and similar arrangements.**</u> Interest on Philippine currency bank deposits and yield or any other monetary benefit from deposit substitute and from trust fund and similar arrangements received by domestic or resident foreign corporation shall be subject to a 15 % final tax to be collected and paid as provided in Section 53 and 54 of this Code."

Section 4. Section 53 (d) (i) of this Code is hereby amended to read as follows :

"Sec. 53 (d) (i). Withholding of Final Tax - Every bank or non-bank financial intermediary or commercial, industrial, finance companies, and other non-financial companies authorized by the Securities and Exchange Commission to issue deposit substitutes shall deduct and withhold from the interest on bank deposits substitutes shall deduct and withhold from the interest on bank deposits or yield or any other monetary benefit from deposit substitute a final tax equal to fifteen <u>per centum</u> (15 %) of the interest on deposits or yield or any other monetary benefit from deposit substitutes and from trust fund and similar arrangements".

Furthermore, it is undisputed that GCL Plan was qualified as exempt from income tax by the Commissioner of Internal Revenue in accordance with Republic Act No. 4917 approved on 17 June 1967, which reads as follows :

Section 1. <u>Any provisions of law to the contrary notwithstanding,</u> the retirement benefits received by officials and employees of private firms, whether individual or corporate, in accordance with reasonable private benefit plan maintained by the employer

> shall be <u>exempt from all taxes</u> and shall not be liable to attachment, levy or seizure by or under any legal or equitable process whatsoever except to pay a debt of the official or employee concerned to the private benefit plan or that arising from liability imposed in a criminal action; xxx (emphasis ours)

As regards employee's trusts are concerned, the foregoing provision should be taken in relation to then Section 56 (b) (now 53 [b]) of the Tax Code, as amended by Republic Act No. 1983, **<u>supra</u>**, which took effect on 22 June 1957. This provision specifically exempted employee's trusts from income tax and is repeated hereunder for emphasis :

> "<u>Sec. 56. Imposition of Tax</u> - (a) Application of tax - The taxes imposed by this Title upon individuals shall apply to the income of estates or of any kind of property held in trust,
>
> xxx xxx xxx
>
> "(b) Exception - The tax imposed by this Title shall not apply to employee's trusts which forms part of a pension, stock bonus or profit - sharing plan of an employer for the benefit of some or all of his employees xxx"

And the rationale behind the creation of employee's trust or benefits plan is to provide economic assistance to employees upon the occurence of certain contingencies, particularly, old age retirement, death, sickness, or disability. It affords additional and independent protection for the working class. Tax - exemption should likewise be enjoyed by the income of the pension trust. Because if this would not be so, taxation of the earnings would eventually result in the decrease of accumulated income, thus reducing the benefits of the supposed beneficiaries which in effect runs counter to the very purpose of the law.

Further, the deletion in Pres. Decree No. 1959 of the provisos regarding tax exemption and preferential tax rates under the old law, cannot extend to employee's trusts. The said Decree, being a general law, cannot repeal by implication a specific provision, Section 56(b) (now 53[b]) in relation to Rep. Act. No. 4917 granting exemption from income tax to employees trusts. Republic Act 1983, which excepted employee's trust in its Section 56 (b) was effective on 22 June 1957 while Republic Act No. 4917 was enacted on 17 June 1967, long before the issuance of Pres. Decree No. 1959 on 15 October 1984.

Also, a subsequent statute, general in character as to its terms and application, is not to be construed as repealing a special or specific enactment. This is so even if the provisions of the latter are sufficiently comprehensive to include what was set forth in the special act (Villegas vs. Subido, G.R.No. L-31711, 30 September 1971, 41 SCRA 190).

It is undeniable that the final witholding tax is collected from income in respect of which employees trusts are declared exempt (Sec. 56 [b], now 53 [b], Tax Code).

The subsequent application of the withholding systems to interest on bank deposits or yield from deposit substitutes is essentially to maximize and expedite the collection of income taxes by requiring its payment at the source. In this connection, GCL which is an employee's trust enjoys a tax-exempt status from income, we find it absurd in withholding a certain percentage of that income which it is not obliged to pay in the first place.

It should be noted that in the same case of **Commissioner of Internal Revenue vs. The Honorable Court of Appeals, et. al.**, **G.R. No. 95022**, which decision by the High Court was promulgated on **March 23, 1992**, it maintains the same conclusion, that indeed G C L Retirement Plan is exempt from final withholding tax on income and that it enjoys a tax - exempt status in this aspect.

In view of the foregoing, respondent Commissioner of Internal Revenue is hereby ordered to refund to petitioner the sum of P70,139.00 representing withholding tax on income.

No pronouncement as to costs.

SO ORDERED.

Quezon City, Metro Manila, February 18, 1993.

MANUEL K. GRUBA
Associate Judge

WE CONCUR :

ERNESTO D. ACOSTA
Presiding Judge

RAMON O. DE VEYRA
Associate Judge

CERTIFICATION

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.

ERNESTO D. ACOSTA
Presiding Judge
Court of Tax Appeals