REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

THE MANILA BANKING CORPORATION,
Petitioner,

- versus -

C.T.A. CASE NO. 2993

THE COMMISSIONER OF INTERNAL REVENUE,
Respondent.

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10/30/81

D E C I S I O N

This action involving a claim for tax credit is nothing more than a question of the legality of an imposition of administrative penalty directed against late payment of the transaction tax prescribed under Section 210(b) of the Tax Code of 1977, as amended by Presidential Decree No. 1154, providing insofar as pertinent, that -

> "Commercial paper transactions. - There shall be levied, assessed, collected and paid on every commercial paper issued in the primary market as principal instrument, a transaction tax equivalent to thirty-five percent (35%) based on the gross amount of interest thereto as defined hereunder, which shall be paid by the borrower/issuer; xxx xxx xxx
>
> "The tax herein imposed shall be remitted by the borrower to the Commissioner of Internal Revenue or his Collection Agent in the municipality where such borrower has its principal place of business within five (5) working days from issuance of the commercial paper. xxx xxx xxx"

It appears that petitioner Manila Banking Corporation which is duly authorized to engage in a general and commercial banking business, in a borrowing transaction, issued instruments of indebtedness/commerical papers on June 3, 6, 7, 8, 9, and 10, all in 1977, and paid the respondent Commissioner of Internal Revenue on June 22, 1977, a total amount of ₱169,450.26 for the requisite 35% transaction tax inclusive of the ₱34,295.45 representing surcharge and interest which had accrued therein incident to the delinquency pursuant to Section 193(a) of the Tax Code of 1977. The same penal clause was plucked and restated in the implementing Revenue Regulations No. 7-77, issued on June 3, 1977, by the then Secretary of Finance.

Submitted for decision on the basis of the pleadings on purely question of law, petitioner assails the legality of the imposition and collection of the administrative penalty which amounted to ₱34,295.26, sought in this instant claim for tax credit, alleging that the amendatory Presidential Decree No. 1154, incorporated as Section 210(b) of the Tax Code effective on June 3, 1977, did not prescribe any separate penalty and much less called for in an implementing regulation. In short, petitioner categorically repudiates the applicability of any sanction on its admitted breach of the law. We disagree.

Rather, we share and sustain respondent's view that Presidential Decree No. 1154, entitled, "Further amending certain sections of the National Internal Revenue Code, as amended, so as to impose a final tax on the interest derived from every commercial paper issued in the primary market", added Section 195-C, now Section 210(b), to the Internal Revenue Code of 1977, relating to percentage taxes under Title V. Such being the case, it is unnecessary and superfluous for the decree to separately provide penalties for its violation, as Title V, specifically Section 193(a) of said 1977 Code, already contains penalties of 25% surcharge and 14% interest per annum for non-compliance therewith. Thus, the imposition.

We find nothing ambiguous or obscure in the language of Section 193(a) of the Tax Code insofar as the same is brought to bear upon the transaction effected under Section 210(b), supra, which reads thus,

> "Section 193. Payment of percentage taxes. - (a) In general. - Unless otherwise specifically provided, it shall be the duty of every person conducting a business on which a percentage tax is imposed under this Title, to make a true and complete return of the amount of his, her or its gross

> quarterlysales, receipts or earnings, or gross value of output actually removed from the factory or mill warehouse and within twenty-days after the end of each quarter pay the tax due thereon; xxx (emphasis supplied)
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> "If the percentage tax in any business is not paid within the time specified above, the amount of the tax shall be increased by twenty-five per centum, the increment to be part of the tax and the entire unpaid amount shall be subject to interest at the rate of fourteen per cent per annum."

The simple issue with which we are here confronted is whether the cases of delinqquency in the payment of the percentage tax under Section 210(b), are removed from the operative sanctions prescribed in Section 193(a), supra.

We find that the provision of Section 210(b) erects no shield against the applicability of Section 193(a) which prescriptions on the manner and time of payment of the percentage taxes and penalty thereby consequenced remain and continue in force even after the amendment by Presidential Decree No. 1154, now Section 210(b) of the Tax Code. Given expression, "An amended statue is construed, as regards any action had after the amendment was made, as if the statute had been originally enacted in the amended form." (Holbrook v. Nichol, 36 Ill. 161; Turney v. Wilton, id. 385; Conrad v. Nall, 24 Mich. 275, 41 NE 65, 33 LRA 392; Meer v. Board of

Com'rs, 26 Ind. App. 59 NE 65; Mortimer v. Chambers, 63 Hun 335, 17 NYS 874). The effect of an amendmant of a section of the law is not to sever it from its relation to other sections of the law, but to give it operation in its new form as if it had been drawn originally, treating the whole act as harmonious entirety with its several sections and parts mutually acting upon each other. (Farrell v. State, 54 NJ L 421, Atl. 727, cited in Lewis' Sutherland Statutory Construction). Both requisitions in Sections 193(a) and 210(b) are of symbiotic application to effect the end for which they were intended.

It is evident that the sanctions in Section 193 (a) addressed to the violations of the provisions under the common denomination of percentage taxes in Title V of the Code, equally operate in the same manner and to the same extent evoked by the delinquency arising in Section 210(b). These provisions in pari materia under the said title have to be construed together as though they constitute one act. (U.S. v. Freeman, 3 How. 556, 11 L ed. 724). Where statutes are part of a general system relating to the same class of subjects, and rest upon the same reason, they should be construed, if possible, as to be uniform in their application and in the results which they accomplish. (Shield v. Boston, A.R.R. Co., 172 Mass. 180, 182, 51 NE 1078). Section 210(b), used to be P.D. No. 1154, duly incorporated under Title V (Business Tax) of the National Internal Revenue Code of 1977, comes within the contemplated coverage of the penal sanction of said title so provided in Section 193(a). The prophylactic function of Section 193(a) has lost none of its efficacy but remains just as valid. And this all what we need decide.

Thus, petitioner's striveling agitation for a separate penal clause to govern the violation of the restrictive caveat of Section 210(b) is rendered superfluous. It is not essential, either. "The law does not make the obviously impractical requirement that every act shall recite all other acts that its operation may incidentally affect either by way of modification or extension." Searrights Estate, 163 Pa. St. 210, 217, 29 Atl. 800. It is to be inferred that a code of statutes relating to one subject was governed by one spirit and policy and was intended to be consistent and harmonious in its several parts and provisions. (State v. Williams, 13 SC 558). In a gesture of fairness, it will be of immense naivette if we do not presume that when the law-making body enacted the statute, it had full knowledge of prior existing laws and legislations on the subject of the statute and acted in accordance or with respect thereto. (Tamiani Trial Tours v. Lee, 194 So. 305; Manila Lodge No. 701 v. Court of Appeals, L-41061, September 30, 1976, 73 SCRA 163, cited in Rural Bank of Calinog, Inc. v. Commissioner of Internal Revenue, CTA Case No. 2658, January 30, 1981). Ludicrous and expedient piffle indeed to have the effective enforcement of the statutory requirement to be simply derfused in a cul-de-sac of impotency, so to speak. Natura vacuum abhoret.

In the case at bar, petitioner's failure to pay the transaction tax fixed at a given rate and within a specified period as prescribed in Section 210(b), supra, inevitably incurs the incremental surcharge and interest imposed in Section 193(a), supra. And such is mandatory and works out automatically. See Lim Co Chui v. Posadas, 47 Phil. 470; reiterated in Republic of the Philippines v. Luzon Industrial Corporation, L-7992, October 30, 1957, cited in Republic v. Lim Teng Sons & Co., Inc. 16 SCRA 595. The proviso "unless otherwise specifically provided" engrafted in the language of the provision of Section 193(a), furnishes the best means of its exposition. It is flexible and broad enough to require inclusion of any delinquency in meeting the time frame set forth in Section 210(b). We find no justification in stultifying the import and scope of these terms, which but close any possible legal loophole in effecting proper compliance of the peremptory demands of Section 210(b), that 'the tax shall be remitted within five (5) working days from the issuance of the commercial paper." There can therefore be no occasion to further speculate upon how the prestation, far from showing a mere fascinating resemblance of an illusion, should be enforced.

Suffice it to state, consideration of the convenience of petitioner or any taxpayer for that matter, stands as an aberration from the otherwise intended imperative. We cannot substitute and indulge in any amorphous and unworkable rule lest we suffer the cornerstone of effective collection to petrify at the cost of the animating principles tinged with strong issues of public policy that taxes are the lifeblood of government and their prompt and certain availability are an imperious need (Commissioner of Internal Revenue v. Pineda, L-22734, September 15, 1967, 21 SCRA 105; Collector of Internal Revenue v. Goodrich International Rubber

Co., L-22265, March 27, 1968, 22 SCRA 1256), and being the chief source of revenue for the Government to keep it running must be paid immediately and without delay. (Collector of Internal Revenue v. Yuseco, L-12518, October 28, 1961, 3 SCRA 313). To require less would seriously and unjustifiably fetter perfectfuly legitimate methods of enforcement. Neither can we countenance petitioner's posture which by its own wrong and inequity the law could be profitously flouted with impunity. Ex dolo malo non oritur actio.

Our conclusion that respondent Commissioner of Internal Revenue did no err in imposing and collecting the administrative penalty pursuant to Section 193(a) of the Tax Code consequenced by late payment of the transaction tax prescribed in Section 210(b), supra, renders consideration of the subsidiary questions unnecessary. They no longer fascinate.

WHEREFORE, petition is dismissed with cost against petitioner.

SO ORDERED.

Quezon City, Metro Manila, October 30, 1981.

ALEX Z. REYES
Associate Judge

I CONCUR:

Amante Filler
AMANTE FILLER
Presiding Judge

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Associate Judge Constante C. Roaquin
dissents in a separate opinion.

THE MANILA BANKING CORPORATION,
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DISSENTING OPINION

Considering the apparent lack of a complete factual exposition in the majority decision and in order to isolate the grain from the chaff, it is indispensable that the same be clearly recounted in this dissenting opinion.

This is a claim by petitioner for tax credit of the amount of ₱34,295.45, representing 25% surcharge, interest and compromise penalties for the late payment of the 35% transaction tax on commerical papers it had paid pursuant to Presidential Decree No. 1154 effective on June 3, 1977.

Petitioner is a domestic corporation engaged in general banking business. It is authorized to act as a commercial bank by the Central Bank of the Philippines. It can borrow money through the issuance of promissory notes or other instruments of indebtedness in the primary market and use the money borrowed in its business as a bank.

On its borrowing transactions on June 3, 6, 7, 8, 9 and 10, 1977, petitioner had intended to pay the basic 35% transaction tax upon the interests paid on such borrowings, imposed under PD 1154, but was, however, required by respondent not only to pay the basic 35% transaction tax of ₱135,154.81 on the borrowed amount, but also the 25% surcharges and 14% interests, plus compromise penalties in the total sum of ₱34,295.45 for its failure to pay the said transaction tax within the period of five (5) days from the dates of the borrowing transactions. Petitioner, accordingly, paid the ₱34,295.45 representing surcharges, interests and compromise penalties, since respondent refused to accept the payments of the basic 35% transaction tax alone, and the said payments made were covered by official receipts, and itemized as follows:

O.R. NO.	BASIC TAX	SURCHARGE, INTEREST & COMPROMISE PENALTIES
05281253	₱ 35,027.92	₱ 8,900.85
10012763	25,261.05	6,423.36
10012774	12,776.93	3,268.50
10012796	2,641.87	704.51
10012800	2,288.31	614.71
10012811	57,158.73	14,383.52
	₱135,154.81	₱ 34,295.45

As admitted by petitioner, the payments of the aforesaid transaction tax were made more than five (5) days after the commercial papers' dates of issue, which were on June 3, 6, 7, 8, 9 and 10, 1977.

Immediately after the payment of the transaction tax, surcharges, interests and compromise penalties, or on June 29, 1977, petitioner filed a claim for tax credit of the total sum of ₱34,295.45, representing the aforesaid 25% surcharges, 14% interests, and compromise penalties it had paid.

Respondent Commissioner of Internal Revenue failed to act on petitioner's claim for tax credit. Hence, petitioner appealed, by way of a petition for review, filed with this Court on February 13, 1979. After the filing of the respondent's answer to the petition for review, petitioner filed a motion to submit the case for decision based on the pleadings and only on the issue of legality of the imposition of 25% surcharges, 14% interests and compromise penalties in the total sum of ₱34,295.45, which was paid, as required by respondent, for violation of Section 210(b) of the National Internal Revenue Code of 1977, and allegedly imposable under Section 193(a) of the same Code.

The only issue therefore in this case, which is one of law, is whether or not petitioner is liable for the payment of 25% surcharges, interests and compromise penalties for late payment of the 35% transaction tax, in violation of the provisions of Section 210 (b) [formerly PD 1154] of the National Internal Revenue Code of 1977, taken in relation to Section 193 (a) of the same Code.

The laws involved in this case are Sections 193 (a) and 210 (b) of the National Internal Revenue Code of 1977 (formerly Presidential Decree No. 1154), and Revenue Regulation No. 7-77 (Ramon Cachuela Reyes, Tax Affairs, pp. 212-216), published in the July 4 and 11, 1977 issue of the Official Gazette (Vol. 73, Nos. 27 & 28), implementing Section 210 (b) of said Tax Code of 1977.

The pertinent provisions of Section 193 (a) and Section 210 (b) both of the National Internal Revenue Code of 1977, provide as follows:

> Sec. 193 Payment of percentage taxes. (a) In General. Unless otherwise specifically provided, it shall be the duty of every person conducting a business on which a percentage tax is imposed under this Title, to make a true and complete return of the amount of his, her or its gross quarterly sales, receipts, or earnings or gross value of output actually removed from the factory or mill warehouse and within twenty days after the end of each quarter pay the tax due thereon: x x x
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> x x x x x x x x x
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> If the percentage tax in any business is not paid within the time specified above, the amount of the tax shall be increased by twenty-five per centum, the increment to be

a part of the tax and the entire unpaid amount shall be subject to interest at the rate of fourteen per centum per annum.

x x x x x x x x x

Sec. 210. Percentage tax on transactions. - x x x

x x x x x x x x x

(b) Commercial paper transactions.- There shall be levied, assessed, collected and paid on every commercial paper issued in the primary market as principal instrument, a transaction tax equivalent to thirty-five per cent (35%) based on the gross amount of interest thereto as defined hereunder, which shall be paid by the borrower/issuer: Provided, however, That in the case of a longterm commercial paper whose maturity exceeds one year, the borrower shall pay the tax based on the amount of interest corresponding to one year, and thereafter shall pay the tax upon accrual or actual payment (whichever is earlier) of the untaxed portion of the interest which corresponds to a period not exceeding one year.

The transaction tax imposed in this section shall be a final tax to be paid by the borrower and shall be allowed as a deductible item for purposes of computing the borrower's taxable income.

For purposes of this tax -

(i) Commercial paper shall be defined as an instrument evidencing indebtedness of any person or entity, including banks and non-banks performing quasi-banking functions, which is issued, endorsed, sold, transferred or in any manner conveyed to another person or entity, either with or without recourse and irrespective of maturity. Principally, commercial papers are promissory notes and/or similar instruments issued in the primary market and shall not include repurchase agreements, certificates of assignments, certificates of participations, and such other debt instruments issued in the secondary market.

(2) The term interest shall mean the difference between what the principal borrower received and the amount it paid upon maturity. of the commercial paper which shall, in no case, be lower than the interest rate prevailing at the time of the issuance or renewal of the commercial paper. Interest shall be deemed synonymous with discount and shall include all fees, commissions, premiums and other payments which form integral parts of the charges imposed as a consequence of the use of money.

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Revenue Regulation No. 7-77, entitled "Imposition of tax on interest derived from commercial papers issued in the primary market," promulgated by Secretary Cesar Virata pursuant to Section 326, in relation to Section 4, of the National Internal Revenue Code of 1977, provides in its Sections 3, 7 and 10 (Ramon Cachuela Reyes, Ibid, pp. 213, 214-215) thereof as follows:

Section 3. Imposition of tax.- Every promissory note and/or similar instruments issued as a commercial paper in the primary market as a money market instrument shall be subject to the transaction tax of 35% based on the gross amount of interest as herein defined: Provided, however, That promissory notes issued by an entity availing itself of credit facilities of the Central Bank of the Philippines, Development Bank of the Philippines, Land Bank of the Philippines, and such other government institutions as may be authorized to extend the same, and promissory notes issued for interbank loans, including those between or among quasi-banks, shall not be subject to the tax herein imposed.

Debt instruments issued in the secondary market such as repurchase agreements, certificates of assignment, certificates of participation and/or similar instruments are exempt from the transaction tax herein imposed provided that the underlying debt instrument has been previously taxed under Presidential Decree No. 1154

The transaction tax shall become due once the promissory notes is issued, renewed or extended regardless of the manner of payment of interest agreed upon.

Section 7. Manner of filing of returns and payment of taxes. - Within five (5) working days from the issuance of the commercial paper and in the case of a commercial paper with a maturity of more than 365 days, within five days from date of issue and within five days after every year thereafter, the borrower shall file a return covering all interest on the commercial paper issued and pay the tax due thereon to the Commissioner of Internal Revenue, Revenue Regional Director, Revenue District Officer or the Collection Agent of the city or municipality where the corporation's principal office is located and where its books of accounts and other data from which the return is prepared are kept. For this purpose, B.I.R. Form No. 25.26 shall be used.

Section 10. Penalties. - Where the amount shown by the taxpayer to be due on its return or part of such payment is not paid on or before the date prescribed for its payment, the amount of tax shall be increased by twenty-five (25%) per centum, the increment to be a part of the tax and the entire amount shall be subject to interest at the rate of fourteen (14%) per centum per annum from the date prescribed for its payment.

Petitioner contends that Section 193 (a) of the National Internal Revenue Code is not applicable in the imposition of 25% surcharge and 14% interest on the late payment of the 35% transaction tax, and Section 10 of Revenue Regulation No. 7-77, imposing the 25% surcharge and 14% interest for late payment of the 35% transaction tax is illegal and wanting of any valid basis. It argues that while under Section 4 of the National Internal Revenue Code of 1977, the Secretary of Finance is authorized to promulgate the implementing regulation to enforce Presidential Decree No. 1154, that regulation should however, comply strictly with the provisions thereof. It further argues that when the Revenue regulation in question imposed the 25% surcharge for late payment, the increment to be a part of the tax, and the entire tax plus 25% surcharge subject to 14% interest, such imposition becomes illegal for lack of basis under Section 210 (b) [PD 1154] of the National Internal Revenue Code of 1977, or under any other statute. Finally, petitioner urged this Court, as alternative claim, that Revenue Regulation 7-77, insofar as it affects its liability for the payment of 25% surcharge and 14% interest, is in violation of the provisions of Section 79 (b) of the Revised Administrative Code and Section 1 of Commonwealth Act No. 638 which provides for the publication of said regulation in order to be valid and enforceable.

On the other hand, respondent contends that the provision imposing a penalty of 25% surcharge and 14% interest for late payment of the 35% transaction tax in Section 10 of Revenue Regulation No. 7-77 is superfluous and unnecessary because Section 193 (a), taken in relation to Section 210 (b), both found under Title V of the National Internal Revenue Code of 1977, already provided for the imposition of 25% surcharge and 14% interest for late payment of said 35% transaction tax.

Respondent maintains that Revenue Regulation No.7-77 merely reiterated what was already provided in Section 193 (a) of the 1977 Tax Code, i. e. the imposition of 25% surcharge and 14% interest aforesaid on any percentage tax on business that is not paid within the period provided therein.

He argues that Presidential Decree No. 1154 enlarged the provisions in Title V thereof "by adding Section 195-C [of the Tax Code by PD 1154, now Section 210 (b)] and the provisions of the Tax Code that are not affected by the amendment continue to be effective and operative" (p. 3, Memorandum of Respondent), and that Section 210(b) "eventually became part of the law it intended to amend." (Ibid.) Respondent insists that Section 193(a), being a part of Title V of the Tax Code of 1977, should govern the imposition of penal sanctions for late payment of the 35% transaction tax in Section 210(b), which is also found under Title V.

He emphatically concluded that since Section 210(b) specifically provided the time or period w ithin which to pay the 35% transaction tax, which is within five (5) working days from the issuance of the commercial paper, the failure to make such payment on time would subject the petitioner to the penalty of 25% surcharge and 14% interest under said Section 193(a) of said Code.

I take the view that Section 193(a) of the Tax Code of 1977, which imposes a surcharge of 25% and 14% interest for late payment of a percentage tax, is a provision that imposes a penalty and, therefore, is subject to the rule of strict interpretation and construction and that, being a penal provision, should never be understood to include anything beyond its letter even though it may be within its s spirit. (36 Am. Jur. 2d., Forfeiture and Penalties, Sec. 8, pp. 615-616.) In other words, since it is a penal statute, Section 193(a) must be subject to a strict judicial construction inorder to safeguard taxpayers and should not be extended beyond the clear import of the language used therein and nothing should be read into it by implication. (Am. Jur. 2d., Sec. 295, pp. 453-454; Old Colony R. Co vs. Comm. of Int. Rev. 284 US 561, 562; 76 Led 490; Kuttner vs. Collector, 18 Phil. 461; Luzon Stevedoring Co. vs. Trinidad, 43 Phil. 803.) To state it more clearly, under a strict interpretation and construction of a penal provision, this Court should presume nothing that is not expressed, and in that respect, courts of justice, like this Court, and if we truly consider it as such court of justice, should refuse to enlarge and extend the law to matters not necessarily or unmistakably implied therein. (73 Am. Jur. 2d., Sec. 274, pp. 440-441.)

Based on the letters of Section 193(a), only the non-payment of percentage taxes are subject to a penalty tax of 25% and interest of 14%, if such percentage taxes are not paid "within twenty (20) days at the end of each quarter" and based "on gross quarterly sales, receipts, or earnings or gross value of output actually removed from the factory or mill warehouse." Section 193(a) does not seem to clearly include therein as subject to said penalty the non-payment of the 35% transaction tax which is payable within a different period of time that is, within five (5) days from the date of the issuance of the commercial paper. It is often stated that a statute imposing a penalty should not be construed so as to include within its scope any act not plainly or fairly intended to be included therein, and for the true intent of the law, care should be taken not to enlarge that statute by implication. (73 Am. Jur. 2d., Ibid, p. 617 citing Stockwell vs. U.S. 13 Wall 531, 20 Led. 491.) A penalty is one which is generally imposed to insure the performance of duty or conduct required by the statute, like the one imposed as surcharge and interest for the failure to pay a tax and this is a legislative function (51 Am. Jur., 2d., Forfeitures and Penalties, Sec. 51, p. 643) exercised by the legislative body, or by the President, in the proper exercise of his legislative powers, like in the issuance of presidential decrees in a Government under Martial Law. A penalty for the non-payment of taxes takes the form of an imposition of surcharge and interest charges on the delinquent taxes, but neither the interest, nor any other form of pecuniary penalty, may be exacted for delay in the payment of taxes, unless authority is clearly given by legislative enactment (51 Am. Jur., Taxation, Sec. 970, pp. 838-849, citing Western U. Teleg. Co. vs. Indiana, 165 US 304, 41 Led. 725, 17 S Ct 345), or under a presidential decree, which has the force and effect of law.

I strongly am in great doubt as to whether Section 193(a) of the Tax Code of 1977 is applicable to cover the liability of petitioner for the payment of 25% surcharge and 14% interest for late payment of the 35% transaction tax in the sum of ₱34,295.45, imposed under Section 210(b) /formerly PD 1154/ of the same Code. The original Presidential Decree No. 1154 which first imposed the 35% transaction tax on the issuance of commercial paper or instruments of indebtedness in the money market never provided the imposition therein of a surcharge and interest for the late payment or remittance of the 35% transaction tax. In the case where the language of a statute, which is PD 1154 and Section 193(a) of the Tax Code of 1977 in this case, is obscure or doubtful with respect to the imposition of the surcharge and interest, the Court should, in construing such statute, take into serious consideration the history of the time the law was passed (73 Am. Jur. 2d., Sec. 150, p. 355), or look into the law's attendant circumstances at that time. (Ibid. p. 355.) And if after such study, there still remains a doubt as to the true and correct interpretation and construction of the terms of that tax provision, or that another meaning is reached, that meaning of the words that would incline the scale of construction most favorable to the taxpayer must be adopted. (Old Colony R. Co vs. Com. of Int. Rev., op. cit.; Gould v. Gould, 263 US 179; Powers vs. New York, etc., 273 US 346, 7 Led 984, 50 S Ct. 367; Burnet vs. Magara Falls Brewing Co., 282 US 648, 78 Led. 594, 575 S Ct. 262.) This is in accord with the general principle that tax laws must be construed and interpreted in favor of the taxpayer and strictly against the government (Luzon Stevedoring Co. vs. Trinidad, 43 Phil. 803) and doubts as to the liability of the taxpayer must be resolved in its favor. (MRR Co. vs. Coll. of Customs, 53 Phil. 950; La Orden de Padre Benedictines vs. Coll. & Treas. of Manila, CTA 76, July 16, 1955, 52 OG No. 6, 3123; see also Froelich & Kuttner vs. Insular Coll. of Customs, 18 Phil. 461.)

While I can agree that penalties for delinquency are intended to hasten tax payments, or to punish neglect of duty as a matter of public policy (Celso Jamora et. al. vs. Meer, 74 Phil. 22), it must have to be categorically stated that surcharges and interests, being penalties, to be enforced at all must be based upon the strict construction and enforcement of the law. Unless the law (Section 193(a) of the Tax Code of 1977) is clear, and in unmistakable terms imposes the 25% surcharge and 14% interest, which aforesaid, I am in doubt, the said surcharge and interest for late payment of the 35% transaction tax should not be deemed to be imposed at all.

The only remaining law, rule or regulation which clearly imposes without any doubt the 25% surcharge and 14% interest, for violation of Section 210(b) of the Tax Code of 1977, is Revenue Regulation No. 7-77. While it is true, as argued by respondent, that Presidential Decree No. 1154 subsequently became Section 210(b) of the National Internal Revenue Code of 1977, and the latter became the law that governed the period within which the 35% transaction tax should be remitted by the borrower/payor on the interest payable, or within five (5) days upon the issuance of the commercial paper, Section 193(a) of the Tax Code of 1977 never, in the clearest terms of words aforesaid, included therein the imposition of the 25% surcharge and 14% interest on the non-payment on time of the 35% transaction tax.

It cannot lightly and validly contended by respondent that Presidential Decree No. 1154, which by its terms did not actually provide a penalty or surcharge or interest for the non-payment of the tax on time, did not provide for the penalty because "it was unnecessary" inasmuch as the said decree, which was incorporated later as Section 210 (b) of the Tax Code of 1977, could only be enforced under the penal sanction of said Section 193 (a), a provision falling under Title V of the said Code. This contention is based upon a wrong conception that because Section 210 (b) falls under Title V, non-payment of the 35% transaction tax on time, i.e. within five (5) days after the issuance of the commercial papers as provided in said Section 210 (b), will subject the tax to 25% surcharge and 14% interest under Section 193 (a), which also falls under Title V of the Tax Code of 1977.

A scrutiny of the pertinent provision of Section 193 (a) of the Tax Code of 1977, textually provides:

> Sec. 193. Payment of percentage taxes. - (a) In general. - Unless otherwise specifically provided, it shall be the duty of every person conducting a business on which a percentage tax is imposed under this Title, to make a true and complete return of the amount of his, her or its gross quarterly sales, receipts or earnings or gross value of output actually removed from the factory or mill

> warehouse and within twenty days after the end of each quarter pay the tax due thereon: x x x
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> If the percentage tax in any business is not paid within the time specified above, the amount of the tax shall be increased by twenty-five *per centum*, the increment to be a part of the tax and the entire unpaid amount to be subject to interest at the rate of fourteen *per centum per annum*.
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> x x x x x x x x x
>
> (Underlining ours.)

It seems to me that respondent, in a too much strained interpretation and construction of the afore-cited provision, had leaned far over and stated, in effect, that when the 35% transaction tax (which he claims to be a business tax) was not paid by petitioner within five (5) days from the dates of the issuance of the commercial papers, the tax is subject to 25% surcharge and 14% interest under Section 193 (a). There is nothing in said Section 193(a) which provided that the period to pay the 35% transaction tax (which respondent refers to as percentage tax) should be made within five (5) days from date of issuance of the commercial paper, the non-payment of which will subject it to the 25% surcharge and 14% interest. As I see it, the percentage tax contemplated therein is one that is laid upon persons conducting a business on which it is imposed and based on the gross quarterly sales, receipts or earnings or gross value of output from a factory or mill warehouse of such business, and is payable within twenty days after the end of each quarter, the non-payment of which percentage tax clearly shall be subject to the imposition of 25% surcharge and 14% interest. (Emphasis mine.) In this case at bar, petitioner, being a bank, cannot be said to be a person engaged in a business on which the percentage tax on its "gross quarterly sales, receipts, or earnings or gross value of output" is imposed. Petitioner, not being a person engaged in a business on which the percentage tax is imposed, there is, therefore, no legal basis upon which to come to the conclusion that Section 193(a), is the law upon which penalties can be imposed upon said bank for non-payment of the 35% transaction tax. Stress, however, was laid by respondent on the proviso in said Section 193(a), "Unless otherwise specifically provided," to support its claim that the non-remittance by petitioner of the 35% transaction tax within five (5) day period from the issuance of the commercial papers will subject the latter to the penalties provided therein. Otherwise stated, respondent is of the view that the non-payment of the transaction tax within five (5) days from the issuance of the commercial papers, which is a period other than the period provided for the payment of percentage taxes, which is within twenty (20) days after the end of each quarter under Section 193 (a) of the Tax Code of 1977, will subject the non-payment thereof on time to the penalty tax of 25% and 14% interest for the period to pay the transaction tax falls under the proviso "Unless otherwise specifically provided" in the same Section 193 (a). The interpretation and application by respondent of the proviso in said Section 193 (a), was made without apparent regard to the changes that took place in the past when the period to pay the percentage tax on gross quarterly sales, receipts or earnings or gross value of output of the business was changed or amended by the legislative body, by amending the period to pay the percentage tax from "within twenty days after the end of each calendar quarter" (Sec. 183, National Internal Revenue Code, 1950 Ed., as amended by Sec. 1, RA 253) to "within ten days after the end of each month" (Sec. 183, as amended by Sec. 1, RA 594; Sec. 1, RA 1511; Sec. 5, RA 1612; 1956 Ed. Sec. 3, National Internal Revenue Code, 1956 Ed.), or to "within twenty days after the end of each month" (Sec. 183, as amended by Sec.1, RA 48;

Sec. 7, RA 253; Sec. 1, RA 1612; Sec. 5, RA 2025; 1964 Ed., National Internal Revenue Code.)

In 1974, Section 183 (now Section 193 of the Tax Code of 1977), was again amended by Presidential Decree No. 539, and, this time it reverted again the period to pay the percentage tax "within twenty days after the end of each quarter." Under the former Section 183, and so is the law at present [Section 193 (a)], the percentage tax has always been imposed on those persons conducting a business on which the percentage tax is laid based on the gross quarterly sales, receipts or earnings or gross value of output of the factory or mill warehouse, and payable "within twenty days after the end of each quarter." Note that during the development of Section 193 (a) providing for the payment of the percentage tax, it has experienced amendment on two occasions. Note that in Section 193 (a), it has been consistently provided therein that the non-payment of the percentage tax within the time provided therein called for the imposition of 25% surcharge, to form part of the tax itself. And it was in the said provision of Section 183 that the 14% interest was first imposed as part of the penalty for the failure to pay the percentage tax on time.

And subsequently, in 1975, Section 183 (a), as amended by PD 69 and PD 820, included for the first time the proviso "Unless otherwise specifically provided" which reads:

> Sec. 183. Payment of percentage taxes.- (a) In general.- Unless otherwise specifically provided, it shall be the duty of every person conducting a business on which a percentage tax is imposed under this Title, to make a true and complete return of the amount of his, her or its gross quarterly sales, receipts or earnings or gross value of output actually removed from the factory or mill warehouse and within twenty days after the end of each quarter pay the tax due thereon: x x x

In 1977, the former Section 183, became the present Section 193 of the Tax Code of 1977 in question, which was effective on June 3, 1977.

Analyzing the development of Section 193 (a), the fact stands out clearly that the proviso "Unless otherwise specifically provided," which has as its object to cover any probable change of the time in which the percentage tax on gross quarterly sales, receipts or earnings or gross value of output shall be paid that may be precipitated by a change in tax administration and policy, does not, therefore, clearly purport to include the period within which to remit the 35% transaction tax withheld by petitioner, which is not a person conducting a business on which a percentage tax is imposed, but only the borrower/issuer in the transactions on commercial papers in the money market. (Italics mine.)

Moreover, traditional studies in taxation

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will show clearly that Title V of the Tax Code of 1977, under which Section 193 (a) particularly belongs, generally imposes percentage tax on those who produce, manufacture, sell or otherwise import articles for sale to the general public for purposes of gain (Secs. 193, 194, 196, 197 all of the Tax Code of 1977); on those who produce agricultural products (Sec. 198); on those who produce other articles (Sec. 199); on those who process meat, food stuffs and other essential articles (Sec. 201); on those who produce rope, sugar, casava and coconut products (Sec. 203); or on those who construct buildings and other installations (Sec. 205); or on those who sell foods and drinks (Sec. 206); or on those who engage in transportation such as carriers and garages. (Sec. 207.) These aforecited businesses were made subject to percentage tax computed upon their "gross sales, receipts or earnings or gross value of output from their factory or mill warehouse." These were substantially the same provisions of the law on the percentage taxes since the enactment of the National Internal Revenue Code (Commonwealth Act 466) which was in force and effective July 1, 1939 up to the present. Note that in Revenue Regulation No. 8-78 dated May 12, 1978 (Ramon Cachuela Reyes, Tax Affairs, pp. 336-352; E.G. Gonzales & C.R.

Gonzales, National Internal Revenue Code of 1977, 1979 Ed., pp. 280 & 296) officially published on July 24, 1978 (Vol. 74, No. 30, Official Gazette, p. 5805) entitled "Sales Tax Regulations," promulgated by Secretary Cesar Virata, which intended to provide the regulations to implement, by and large, the percentage provisions in the Tax Code, it did not include in that regulation for penal sanction under Section 193 (a), the late payment of the 35% transaction tax imposable in Section 210 (b). As can be inferred from said revenue regulation, only the provisions of Sections 193, 194, 196, 197, 198, 199, 200, 201, 202, and 203, as amended by Presidential Decree No. 1358, are subject to the penal sanctions of Section 193 (a) of the Tax Code of 1977. (See Sec. 1, Rev. Reg. No. 8-78) This confirms my doubts that the 35% transaction tax is a tax that is not subject to the penal provision of Section 193 (a), since this 35% transaction tax is not included as one of those provisions implemented in Revenue Regulation No. 8-78.

I took into very serious consideration the fact that the 35% transaction tax, which is a new tax provided under Presidential Decree No. 1145 (Section 195-C) is not only in the nature of income tax but is in reality one that is imposed on interest earned by the lender and paid by the borrower upon the issuance of every commercial paper issued in the money market as principal instrument. The tax when paid is final and is withheld and remitted by the borrower/issuer, not the lender who actually earns or is legally entitled to receive the so-called interest on the commercial paper issued, and this tax when paid is deductible in computing the borrower's taxable income. The interest on which the 35% transaction tax is imposed is the difference between what the principal borrower received from the lender and the amount it will pay to the latter upon maturity of the commercial paper. This interest, synonymous with discount, includes all fess, commissions, premiums and other payments forming integral part of the charges for the use of the borrowed money. This, therefore, is the tax that shall be remitted by the borrower to the Bureau of Internal Revenue within five (5) working days from the issuance of the commercial paper.

As I see it, and borne by the explanation made by Hon. Efren I. Plana, Acting Commissioner of Internal Revenue (now Associate Justice of the Supreme Court), in his article, "BIR Explains New Tax Laws" (The Times Journal, June 24, 1977, p. 15), the transaction tax came about as the result of inability of the tax administrators to reach the interest earnings du to the failure of the income taxpayers (the lenders or recipients of interests earned in money market transactions) to report their interest earnings for income tax purposes. Therefore, this resulted to the inequity in tax administration in that honest taxpayers who declared their interest income were taxed, while those that did not declare their interest income and remain anonymous went scot free. It was this sad experience in tax administration that, on account of the complexity of money market transaction, it was difficult, if not virtually impossible, to tax the interest earners or the lenders. It was on this account that the Bureau of Internal Revenue took this step to collect the income tax that is legally payable upon the interests earned, but which were not paid aforesaid, for the issuance of money market instrument. And since the <u>borrower</u> (not the lender) <u>is the most convenient person upon whom the tax on the interest income may be collected, a tax in the nature of excise or transaction tax was, therefore, effected</u>. In other words, in substance, the borrower became the most convenient personal instrument Government to collect the tax on this interest income. It was further stated by Acting Commissioner (now Associate Justice of the Supreme Court) Plana that this tax measure (PD 1154, now Section 210 (b) of the 1977 Tax Code), which is an entirely new tax measure "x x x <u>is in reality</u>

just a collection measure designed to strengthen or re-enforce the effectiveness of tax administration. x x x." Considering the reason of the Government in imposing the 35% transaction tax, in the truest sense of the word, this tax becomes the logical substitute of the income tax which should have been paid upon interest earnings in a manner that "part of the interest income (due to the lender from the borrower in the money market transactions and which should have been subject to income tax on the lender) goes to the Government in the form of the 35% transaction tax." In recapitulation, the 35% transaction tax is more in the nature of a withheld tax on interest income earned by the lender or income earner. Acting Commissioner Plana had emphasized and quoting the words of President Marcos, that "The tax x x x is merely withheld by the borrower from the interest that he was supposed to pay the lender." The transaction tax is, to my mind, clearly not, therefore a tax laid upon the gross sales, receipts, earnings or gross output of a business subject to percentage tax. Consequently, I entertain very serious, nay grave doubts, that the 35% transaction tax can be categorized as percentage tax subject to a 25% surcharge and 14% interest under Section 193 (a) of the 1977 Tax Code for failure of the borrower, as in the case of petitioner herein, to remit said tax within five (5) days from the dates of the issuance of the commercial papers. I am, therefore, of the opinion that Section 193 (a), which imposes the 25% surcharge and 14% interest for failure to pay on time of the transaction tax, is inapplicable upon the petitioner's late payments of the transaction tax in question.

The only provision of law, rule or regulation, which provides, with utmost clarity, for the imposition of a 25% surcharge and 14% interest for failure to pay the 35% transaction tax within five (5) days from the issuance of the commercial paper is Revenue Regulation No. 7-77, dated June 3, 1977 (<u>See</u> Ramon Cachuela Reyes, <u>Tax Affairs</u>, pp. 212-216; E.G. Gonzales & C.R. Gonzales, <u>National Internal Revenue Code of 1977</u>, pp. 367-371) and which was, as aforesaid, published in the Official Gazette on July 4 and 11, 1977. (Vol. 73, Nos. 27-28.) Assuming that Revenue Regulation No. 7-77 is not invalid because it was issued by the proper administrative authority in pursuance to the provisions of Sections 4 and 326 of the Tax Code of 1977, this Revenue Regulation cannot, however, be enforced retroactively to cover the transactions in question. The commercial papers dates of issue were June 3, 6, 7, 8, 9, and 10, 1977, which took

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place before the date of effectivity of Revenue Regulation No. 7-77, which must be held to be fifteen days after July 4 and 11, 1977, the dates on which the said regulation was officially published in the Official Gazette. (Pedro G. Peralta vs. Comm. on Elections, 82 SCRA 30; Art. 2, Civil Code of the Philippines.) Revenue Regulation No. 7-77 never had any binding force upon any taxable person before the 15th day after its publication. (See Angela E. Lazatin vs. Comm. of Customs, CTA 782, Jan. 19, 1962; Olsen & Co. vs. Herstein and Rafferty, 32 Phil. 530 (1915); People vs. Que Po Lay, 94 Phil. 640, 642, 643; Lim Hoa Ting vs. Central Bank of the Phil., GR L-10666, Sept. 24, 1958, 55 OG No. 1006.)

In other words, Revenue Regulation No. 7-77 should be enforced only prospectively and cannot be applied retroactively to cover the late payments made by petitioner of the 35% transaction tax in question. (ABS-CBN Broadcasting Corp. vs. Court of Tax Appeals, GR No. L-52306, October 23, 1981.)

It is, therefore, my humble opinion that petitioner is not liable for the payment of the 25% penalty and 14% interest in the total amount of ₱34,295.45, inclusive of compromise penalties, imposed under Section 10 of Revenue Regulation No. 7-77, and the said amount having been paid, petitioner is entitled to tax credit thereof. However, the payment and collection by respondent of the 25% surcharges, interests and compromise penalties in the said amount of ₱34,295.45, not having been attended with arbitrariness, as it was collected upon relatively doubtful provision of law, petitioner should not be entitled to an interest on the said amount. (Coll. of Int. Rev. vs. Prieto, et. al., 112 Phil. 907, 920; Victorias Milling Co., Inc. vs. Comm. of Int. Rev., 19 SCRA 430, 433.)

I, therefore, on the basis of the above legal discussion, interpose my dissent and vote against the conclusion reached by my majority colleagues.

Quezon City, Metro Manila, December 8, 1981.

CONSTANTE C. ROAQUIN
Associate Judge