REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

THE MANILA WINE MERCHANTS, INC.
Petitioner

February 28/66

versus

C.T.A. CASE NO. 1415

THE COMMISSIONER OF INTERNAL REVENUE,
Respondent.

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DECISION

On February 26, 1963, the Commissioner of Internal Revenue demanded upon the Manila Wine Merchants, Inc. payment of ₱126,536.12 as 25% surtax and interest on the latter's unreasonable accumulation of profits and surplus for the year 1957, computed as follows:

Unreasonable accumulation of surplus	₱ 428,934.42
25% surtax due thereon	₱ 107,234.00
Add: ½% monthly interest from June 20, 1959 to June 20, 1962	19,302.12
TOTAL AMOUNT DUE AND COLLECTIBLE	₱ 126,536.12

The letter of demand was issued on the basis of Section 25 of the National Internal Revenue Code which reads as follows:

> SEC. 25. Additional tax on corporations improperly accumulating profits or surplus.—(a) Imposition of tax.— If any corporation, except banks, insurance companies, or personal holding companies, whether domestic or foreign, is formed or availed of for the purpose of preventing the imposition of the tax upon its shareholders or members or the shareholders or members of another corporation, through the medium of permitting its gains and profits to accumulate instead of being

divided or distributed, there is levied and assessed against such corporation, for each taxable year, a tax equal to twenty-five *per centum* of the undistributed portion of its accumulated profits or surplus which shall be in addition to the tax imposed by section twenty-four, and shall be computed, collected and paid in the same manner and subject to the same provisions of law, including penalties, as that tax: *Provided*, That no such tax shall be levied upon any accumulated profits or surplus, if they are invested in any dollar-producing or dollar-saving industry or in the purchase of bonds issued by the Central Bank of the Philippines. (As amended by Republic Act No. 1823.)

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(c) *Evidence determinative of purpose.*—The fact that the earnings or profits of a corporation are permitted to accumulate beyond the reasonable needs of the business shall be determinative of the purpose to avoid the tax upon its shareholders or members unless the corporation, by clear preponderance of evidence, shall prove the contrary.

Before going into the legality and validity of the assessment against the taxpayer, respondent assailed for the first time in its memorandum the power of this Court to take cognizance of the case because the disputed assessment has already become final, demandable and executory by the failure of petitioner to perfect its appeal within the 30-day period provided in Section 11 of Republic Act No. 1125.

The records show that on:

March 1, 1963 - Petitioner received the assessment or demand under question.

March 16, 1963 - Petitioner, thru its auditors, filed with

	the respondent a letter protesting or contesting the assessment.
June 8, 1963 -	Petitioner, thru its auditors, received the respondent's letter dated May 21, 1963, denying the request for cancellation or protest against the assessment.
July 2, 1963 -	Petitioner filed with respondent a request for reconsideration of the decision.
July 2, 1963 -	Petition for Review was filed in this Court.

Respondent contends that the 30-day period provided in Section 11 of Republic Act No. 1125, regarding appeal from the decision of the Commissioner of Internal Revenue to the Court of Tax Appeals, should start from March 1, 1963 to March 16, 1963 and again from June 8, 1963 to July 6, 1963, or a total of forty-three (43) days. On the basis of respondent's computation, this Court has no jurisdiction over the case because the petition for review was filed beyond the statutory period of thirty (30) days. On the other hand, petitioner contends that the assessment and/or demand of respondent, which was received by the former on March 1, 1963, does not have the effect of a decision on a disputed assessment and, therefore, the counting of the 30-day period should start from June 8, 1963, and not March 1, 1963, when petitioner received respondent's letter of denial on the disputed assessment.

Under Section 7(1) of Republic Act No. 1125, the Court of Tax Appeals is given exclusive appellate jurisdiction to review by appeal "decisions of the Commissioner of Internal Revenue in cases involving disputed assessment, refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto, or other matters arising under the National Internal Revenue Code." And pursuant to Section 11 of the same Act, any person or entity adversely affected by the decision of the Commissioner of Internal Revenue should appeal to this Court within thirty (30) days after the receipt thereof, and if the assessment of the Commissioner, or his decision thereon, is not appealed within the aforesaid period, such assessment becomes final, demandable and executory. (Rep. of the Phil. v. Del Rosario, L-10460, March 11, 1959; Uy Ham v. Rep. of the Phil. L-13809, Oct. 20, 1949; Rep. of the Phil. v. Magalona, L-15002, Sept. 30, 1960; Rep. of the Phil. v. Albert, L-12996, Dec. 28, 1961; Rep. of the Phil. v. Manila Port Service, L-18208, Nov. 27, 1964.) However, if the assessment is contested or the taxpayer files a request for reconsideration thereof and the assessment is modified or revised, the last unrevised or unmodified decision is appealable. (Pangasinan Transportation Co. v. Blaquera, L-13101, Apr. 29, 1960; Villamin v. Coll., L-11536, Oct. 31, 1960; Ker & Co. v. Coll., L-12396, Jan. 31, 1962.) If the request for reconsideration is denied or the original assessment is maintained, as in the present case, the appealable decision is the decision denying the request for reconsideration or cancellation. An assessment becomes a "disputed assessment" where the taxpayer questions the legality thereof and asks that the same be reconsidered or cancelled. The decision on the request for reconsideration is the decision on the disputed assessment which is appealable. (St. Stephen's Assn. v. Coll., 55 O.G. 2243; Baguio Country Club v. Coll., L-11419, Apr. 22, 1959; Roman Catholic Archbishop of Cebu v. Coll., L-16683, Jan. 31, 1962; see also Phil. Planters Investment Co. v. Comm., C. T. A. Case No. 1266, Nov. 11, 1962.) Since the decision of the respondent dated May 21, 1963 denying the request of the petitioner for the reconsideration or cancellation of the assessment was received by the latter only on June 8, 1963, it follows that the filing of the petition for review on July 6, 1963 was within the statutory period of thirty days. This Court has therefore the jurisdiction to take cognizance of the present appeal.

The petitioner, a domestic corporation organized in 1937, is principally engaged in the importation and sale of whisky, wines, liquors and distilled spirits. Its original subscribed and paid capital was ₱500,000.00. Its capital of ₱500,000.00 was reduced to ₱250,000.00 in 1950 with the approval of the Securities and Exchange Commission but the reduction of the capital was never implemented. On June 21, 1958, petitioner's capital was increased to ₱1,000,000.00 with the approval of the said Commission.

Respondent's investigating examiners found that, as of December 31, 1957, petitioner had an undistributed surplus of ₱636,934.42 including general reserves of ₱208,000.00. Deducting the latter amount from the former leaves a balance of ₱428,934.32 which was considered an unreasonable accumulation of surplus subject to the 25% surtax imposed by Section 25 of the Tax Code.

The accumulated earnings tax under Section 25 of the Tax Code is a tax on obnoxious hoarding as distinguished from harmless accumulation. If the corporation is availed of for the purpose of avoiding the income tax on its stockholders by permitting the gains and profits of the corporation to accumulate instead of being divided or distributed among its stockholders, then the accumulated earnings tax applies to the corporation. The touchstone of liability is the purpose behind the accumulation of the surplus or profits and not the consequences of the accumulation. (Sauk Investment Co., 34 B. T. A. 732; Law of Federal Income Taxation, Mertens, Vol. 7, p. 347.) As a practical matter, liability for the tax under Section 25 of the Tax Code hinges on whether the corporation has accumulated the earnings in excess of the reasonable needs of the business. The question of unreasonable or reasonable accumulation of profits or surplus is one of fact. The word "reasonable" is a relative term. What would be reasonable in one situation or for one business, might be clearly unreasonable in another. (William C. de Mille Productions, Inc., 30 B. T. A. 826; Wilkerson Daily Corp. Ltd., 42 B. T. A. 1266, aff'd 125 F [2d] 998 [CCA 9th, 1942]; Law of Federal Income Taxation, Mertens, Vol. 7, p. 360). Among the factors to be considered are:

> Some of the more important facts, conditions, circumstances and prospects requiring careful study and analysis to determine whether the law is applicable are: (1) the purpose for which the corporation was formed; (2) <u>the dividend distribution history of the corporation</u>; (3) its dealings with its stockholders; (4) the advances or loans made to stockholders in lieu of dividends; (5) <u>the accumulation of surplus resulting from the retention of cash, securities, or other assets unrelated to and not essential to the normal operations of the business</u>; (6) the need to acquire or finance additional working assets, such as larger inventories, purchase of additional machinery or to meet present demands or provide for unreasonably expected expansion; (7) whether the distribution of earnings to stockholders would not have resulted in surtax because of individual losses or small individual incomes; (8) the stock is widely held in small blocks; (9) the financial condition of the business at the close of the year; and (10) all other factors applicable in any particular case which would be considered by a normally prudent businessman in the conduct of a business. In other words, the determination of whether distributions of earnings are adequate is one of fact depending upon all the conditions and circumstances of each particular case. (Statement in 1949 of the U. S. Treasury Department regarding the administration of Section 102 of the U. S. Internal Revenue Code of 1939; underscoring supplied.)

Inasmuch as the provisions of Section 25 of the National Internal Revenue Code were bodily lifted from

Section 102 of the U. S. Internal Revenue Code of 1939, including the regulations issued in connection therewith, it would be proper to resort to applicable cases decided by the American Federal courts for guidance and enlightenment in resolving similar legal and factual issues.

Respondent contends that petitioner has accumulated earnings beyond the reasonable needs of its business because the average ratio of cash dividends declared and paid by petitioner from 1947 to 1957 was 40.33% of the total surplus available for distribution at the end of each calendar year. On the other hand, petitioner contends that in 1957 it distributed 100% of its net earnings after income tax and part of the surplus for prior years.

For a clearer insight into the dividend policy of the petitioner, hereunder is an analysis of its net income, cash dividends and earned surplus for the years 1946 to 1957 (Exh. C-1):

Year	Net Income After Income Tax	Total Cash Dividends Paid	Percentage of Dividends to Net Income After Income Tax	Balance of Earned Surplus
1946	₱ 613,790.66	₱200,000.-	32.58%	₱234,104.81
1947	425,719.87	360,000.-	84.56%	195,167.10
1948	415,591.83	375,000.-	90.23%	272,991.38
1949	335,058.06	200,000.-	59.69%	393,113.42
1950	399,698.09	600,000.-	150.11%	234,987.07
1951	346,257.26	300,000.-	86.64%	281,244.33
1952	196,161.97	200,000.-	101.96%	277,406.30
1953	169,714.04	200,000.-	117.85%	301,138.84
1954	238,124.85	250,000.-	104.99%	289,263.69
1955	312,284.74	200,000.-	64.04%	401,548.43
1956	374,240.28	300,000.-	80.16%	475,788.71
1957	353,145.71	400,000.-	113.27%	428,934.42
	₱4,179,787.36	₱3,585,000.-	85.77%	₱3,785,688.50

Respondent's view that petitioner had not distributed substantial cash dividends to its stockholders from 1947 to 1957 to warrant the imposition of the 25% surtax is not justified. While respondent claims that only 40.33% of the total surplus available for distribution at the end of each calendar year was actually distributed by the petitioner to its stockholders, the tabulated figures, supra, show that the average percentage of cash dividends distributed was 85.77% for a period of 11 years from 1946 to 1957. The difference lies in the interpretation of the terms profits or surplus subject to the 25% surtax. Respondent submits that the accumulated earnings tax should be based on 25% of the total surplus available at the end of each calendar year while petitioner maintains that the 25% surtax is imposed on the total surplus or net income for the year after deducting therefrom the income tax due. On this score, we sustain the interpretation of petitioner.

An eminent professor of taxation, Dr. Robert S. Holzman of the New York University, discussed the question at issue as follows:

> Imposition of the Tax. - The accumulated earnings tax, where applicable, is imposed upon accumulated taxable income, which is the taxable income of the corporation after applying the minus adjustments to be listed in the next sentence, minus the sum of the dividends paid deduction as defined in Section 531, and the accumulated earnings credit. "Minus adjustments" are: federal income taxes and income, war profits, and excess profits taxes of foreign countries and possessions of the United States (to the extent not allowable as a deduction under Section 164(b) (6) accrued during the

> taxable year; charitable contributions to the extent that they had been disallowed under the percentage limitations of Section 170(b) (2); losses from sales or exchanges of capital assets during the taxable year which are disallowed as deductions under Section 1211(a); the excess of the net long-term capital gain over the net short-term capital loss for that year (determined without regard to the capital loss carryover provided in Section 1212) minus the taxes attributable to this excess; and the deduction described in Section 601 (relating to bank affiliates). "Minus adjustments" are not allowed for: the special deductions for corporations provided in Part VIII (except Section 248) of Sub-chapter B (Section 241 and following, relating to the deduction for dividends received by corporations, etc.); the net operating loss deduction provided in Section 172; the capital loss carryover provided in Section 1212.
>
> The accumulated earnings credit may take one of several forms. In the case of a corporation other than a mere holding or investment company, the credit is the reasonably retained portion of the year's earnings minus the excess of net long-term capital gain over net short-term capital loss as reduced by the tax on this excess. Retained earnings are computed after the dividends paid deductions as defined in Section 561.
> (The Tax On Accumulated Earnings, 1956 ed., p. 7.)

In the light of a long line of judicial decisions in the United States, construing identical provisions found in Section 25 of our Tax Code, the consistent substantial distribution of cash dividends by the petitioner is indicative of the view that the Manila Wine Merchants, Inc. was not formed for the purpose of preventing the imposition of income tax upon its shareholders. (See Korricks, Inc., 53, 096

P-H Memo TC, 1153 TC Memorandum Decisions, Vol. 22; Baker & Co., Inc. 43,436 P-H Memo TC, 1943 TC Memorandum Decisions, Vol. 12; Metal Mouldings Corporation, 43,087 P-H Memo TC, 1943 TC Memorandum Decisions, Vol. 12; J. L. Goodman Furniture Co. 11 TC 530; Universal Steel Co., 5 TC 627; The Lammon Manufacturing Co., Inc., 52,043 P-H Memo TC; Hansen Baking Co., Inc., 53,214 P-H Memo TC; Gazette Publishing Co. v. Self, 41 AFTR 1033; C. R. Burr & Co., Inc., 40,250 BTA Memo Decisions, 1943.)

Another basis of respondent in assessing petitioner for accumulated earnings tax is its substantial investment of surplus or profits in unrelated business. These investments are itemized as follows:

1.	Acme Commercial Co., Inc.	₱ 27,501.00
2.	Union Insurance Society of Canton	1,145.76
3.	U. S. A. Treasury Bonds	347,217.50
4.	Wack Wack Golf & Country Club	1.00
	TOTAL	₱375,865.26

As to the investment of ₱27,501.00 made by petitioner in the Acme Commercial Co., Inc., Mr. N. R. E. Hawkins, president of the petitioner-corporation (Exhibit "D"), explained as follows:

> The first item consists of shares of Acme Commercial Co., Inc. which the Company acquired in 1947 and 1949. In the said years, we thought it prudent to invest in a business which patronizes us. As a supermarket, Acme Commercial Co., Inc. is one of our best customers. The investment has proven to be beneficial to the stockholders of this Company.

> As an example, the Company received cash dividends in 1961 totaling ₱16,875.00 which was included in its income tax return for the said year.

As to the investments of petitioner in Union Insurance Society of Canton and Wack Wack Golf Club in the sums of ₱1,145.76 and ₱1.00, respectively, the same official of the petitioner-corporation stated that (Exhibit "E"):

> The second and fourth items are small amounts which we believe would not affect this case substantially. As regards the Union Insurance Society of Canton shares, this was a pre-war investment, when Wise & Co., Inc., Manila Wine Merchants and the said insurance firm were common stockholders of the Wise Bldg. Co., Inc., and the three companies were all housed in the same building. Union Insurance invested in Wise Bldg., Co., Inc. but invited Manila Wine Merchants, Inc. to buy a few of its shares.

Generally or customarily, investments in unrelated enterprises are not deemed to be for the reasonable needs of the business. (J. M. Perry & Co. v. Commissioner, 120 F. [2d] 123 [9th Cir., 1941].) But investments in affiliates may represent a proper utilization of surplus. (Walkup Drayage & Warehouse Co., et. al., T. C. Memo, Docket No. 3271-2, June 25, 1945.) Investments in customers are likewise a recognized need of the business. (Baker & Co., Inc., T. C. Memo, Docket No. 111870, Sept. 23, 1943.) In the light of the pronouncements of the court and the declarations of Mr. N. R. E. Hawkins, we hold that the said investments are harmless accumulation of surplus and, therefore, not subject to the 25% surtax provided in Section 25 of the Tax Code.)

As to the U. S. A. Treasury Bonds amounting to ₱347,217.50, Mr. Hawkins explained as follows (Exhibit "B"):

> With regards to the U.S.A. Treasury Bills in the amount of ₱347,217.50, in 1950, our balance sheet for the said year shows the Company had deposited in current account in various banks ₱629,-403.64 which was not earning any interest. We decided to utilize part of this money as reserve to finance our importations and to take care of future expansion including the acquisition of a lot and the construction of our own office building and bottling plant.
>
> At that time, we believed that a dollar reserve abroad would be useful to the Company in meeting immediate urgent orders of its local customers. In order that the money may earn interest, the Company, on May 31, 1951, purchased US Treasury Bills with 90-day maturity and earning approximately 1% interest, with the face value of US$175,-000.00. U.S. Treasury Bills are easily convertible into cash and for the said reason they may be better classified as cash rather than investments.
>
> The Treasury Bills in question were held as such for many years in view of our expectation that the Central Bank in spite of the controls would allow no-dollar licenses importations. However, since the Central Bank did not relax its policy with respect thereto, we decided sometime in 1957 to hold the bills for a few more years in view of our plan to buy a lot and construct a building of our own. According to the lease agreement over the building formerly occupied by us in Dasmariñas St., the lease was to expire sometime in 1957. At that time, the Company was not yet qualified to own real property in the Philippines. We therefore waited until 60% of the stocks of the Company would be owned by Filipino citizens before making definite plans.

> Then in 1959 when the Company was already more than 60% Filipino-owned, we commenced looking for a suitable location and then finally in 1961, we bought the main lot with an old building on Otis St., Paco, our present site, for ₱665,000.00. Adjoining smaller lots were bought later. After the purchase of the main property, we proceeded with the remodelling of the old building and the construction of additions, which were completed at a cost of ₱143,896.06 in April, 1962.
>
> In view of the needs of the business of this Company and of the purchase of the Otis lots and the construction of the improvements thereon, most of its available funds including the Treasury Bills had been utilized, but in spite of the said expenses the Company consistently declared dividends to its stockholders. The Treasury Bills were liquidated on February 15, 1962.

Respondent determined and contends that in 1957 petitioner-corporation was "availed of for the purpose of preventing the imposition of the surtax upon its shareholders," under Section 25(a) of the Tax Code, by permitting its earnings and profits "to accumulate beyond the reasonable needs of the business." If such were the case then, under Section 25(c) of the Tax Code, supra, such fact is determinative of the purpose to avoid the imposition of the surtax upon the shareholders, unless petitioner proves the contrary by a clear preponderance of evidence. (See Whitney Claim & Mfg. Company, 3 T.C. 1109, aff'd. [C.A.7] 149 F. 2d 936.)

Whether or not petitioner permitted its earnings and profits to accumulate beyond the reasonable needs of the business and was "availed of" for the prohibited purposes are questions of fact to be determined from all evidence. (Helvering v. National Grocery Co., 304

U. S. 282; Helvering v. Chicago Stockyards Co., 318 U. S. 693.) Consequently, "decided cases are not decisive and have comparative value only." (World Pub. Co. v. United States, 109 F 2d. 186.)

It is true that the "determination of the reasonable needs of the business is, in the first place, a task for the officers and directors of a corporation." (Crawford County Printing and Publishing Co., 17 T. C. 1404.) However, petitioner's cumulative surplus at the end of 1957 is so large that there is no reason for the retention of the current earnings to finance the reasonable needs of the business. As correctly stated by the court, "in determining whether the taxpayer for a certain year accumulated profits beyond the reasonable needs of its business, we must consider not only the undistributed earnings or profits for that year, but the surplus, if any, already accumulated, the assets of the company and their liquidity, the expenditures necessary to be made to meet its financial obligations and to carry on its successful operation." (Southland Industries, Inc., T. C. Memo, Docket No. 3387, Oct. 31, 1946; underscoring supplied.)

Since petitioner has funds to invest in 1951, when it purchased U. S. Treasury Bonds on May 31, 1951 with the face value of US$175,000.00, it may be said that the petitioner has money beyond the reasonable needs of the business. The purchase of foreign bonds were in no way related to petitioner's business of importing and selling wines, whisky, liquors and distilled spirits. (See Helvering v. National Grocery Co., 304 U. S. 282.) It is clear, therefore, that an investment in unrelated enterprise is not deemed to be for the reasonable needs of the business. (J. M. Perry & Co. v. Commissioner, 120 F(2d) 123 /9th Cir. 1941.)

Petitioner contends that it must have sufficient cash available for payment of internal revenue stamps to be affixed to its importations of articles subject to specific taxes. The internal revenue stamps needed by petitioner in 1954, 1955, 1956 and 1957 amounted to ₱1,194,495.09, ₱1,636,489.39, ₱659,103.82 and ₱993,265.61, respectively. We find no merit in petitioner's contention. There was no need for investing in U. S. Treasury bonds to enable petitioner to pay specific taxes on its importations of wines and liquors. In fact, from May 31, 1951, when the U. S. Treasury Bonds were acquired by the petitioner, to February 15, 1962, when the same were liquidated, the said investment in foreign bonds amounting to ₱347,217.50 was never utilized by the petitioner for the payment of internal revenue stamps on imported articles subject to specific taxes.

As to the statement of Mr. Hawkins in Exhibit "B" regarding the expansion program of the petitioner by purchasing a lot and building of its own, we find no justifiable reason for the retention in 1957 or thereafter of the U. S. Treasury Bonds which were purchased in 1951. Even if the petitioner needs a lot and building because of the alleged expiration in 1957 of its lease contract with the owner of the building housing its business, yet, at that time, petitioner was not qualified under the law to own real property in the Philippines because less than 60% of its capital stock are owned by Filipinos.

Moreover, if there was any thought for the purchase of a lot and building for the needs of petitioner's business, the corporation may not with impunity permit its earnings to pile up merely because at some future time certain outlays would have to be made. Profits may only be accumulated for the reasonable needs of the business, and implicit in this is the further requirement of a reasonable time. On this question, Dr. Robert S. Holzman, Professor of Taxation in New York University, in his book entitled "The Tax On Accumulated Earnings" stated as follows:

> The Immediacy Test.- Under the so-called "immediacy test" that the courts have invented for their interpretation of the surtax on unreasonable accumulation of surplus under the 1939 Code, there had to be an immediate need for the funds in order to justify the retention of earnings. In some cases, the surtax was applied even though the corporation had definite plans for expansion and the bona fides of the expansion program were not in question. Some courts felt that inasmuch as the plan could not be consummated for a number of years, there was no reason for retention in the taxable year; there was still plenty of time to accumulate earnings before the expenditure could be made. (World Publishing Co. v. United States, 169 F. 2d 186 (10th Cir., 1948). Colonial Amusement Corp., T. C. Memo, Docket #13257, July 27, 1948.

Considering the period that have elapsed from the time the sum of ₱347,217.50 was invested in U. S. Treasury Bonds in 1951 and the expenses incurred for the lot and building of petitioner in 1962, it is clear that the so-called "immediacy test" invented by the U. S. courts for their interpretation of the surtax on unreasonable accumulation of surplus under Section 102 of the U. S. Internal Revenue Code of 1939 has not been satisfied by a clear preponderance of evidence as required by Section 25(e) of our Tax Code.

The purchase of U. S. Treasury Bonds was in no way necessary or related to the liquor and wine business of petitioner. It can, therefore, be said that petitioner's investment in foreign bonds was not for the reasonable needs of its business. In a similar case involving the purchase of government obligations, the courts of the United States held as follows:

> The purchase of the Government obligations and the incurring of the indebtedness incident thereto was in no way necessary to the paperboard and twine business, despite statements that the paper manufacturers were interested in bond drives. The principal reason advanced for the purchase of the Government obligations was to make money in the security business apart from the paper, paperboard, and twine business. Those purchases and debts in no way benefited the latter business. (Jacob Sincoff, Inc., 20 T.C. 288 /1953/ aff'd, 209 F. 2d 569 /2d Cir., 1954/.)

Petitioner contends that the corporation was not formed or availed for the purpose of preventing the imposition of income tax upon its shareholders because the petitioner is not a closed corporation but a publicly-held corporation and that its shares of stock are openly sold in the stock exchange. On this point, Dr. Robert S. Holzman stated as follows:

> ". . .In the original version of the 1954 Code, the Ways and Means Committee of the House of Representatives had sought to exempt publicly-held corporations from this tax. The very fact that this provision was deleted from the final language of the law is an emphatic reminder that Congress decided that publicly-held corporations were a proper subject of the legislation. (The Tax on Accumulated Earnings, pp. 5-6.)

It is to be noted that, under Section 25(c) of the Tax Code, *supra*, the burden of proof is upon the taxpayer to show by clear preponderance of evidence that the accumulated earnings or profits were for the reasonable needs of the business. However, petitioner failed to present at the hearing of the case any witness to rebut the findings of respondent's examiner. Petitioner merely relied on its letters, balance sheets, papers, and documents attached to the BIR records. We are, therefore, satisfied from the records that the surplus of ₱347,217.50 which was invested in U. S. treasury bonds was availed of for the purpose of preventing the imposition of the surtax upon petitioner's shareholders by permitting its earnings and profits to accumulate beyond the reasonable needs of the business. The fact that in 1957 petitioner declared and paid cash dividends of 100% or more of its net earnings or profits argues against the retention of surplus in the amount of ₱347,217.50 which was invested in unrelated business. Accordingly, we find petitioner subject to the 25% surtax for 1957 in the amount of ₱86,804.38 computed as follows:

Unreasonable accumulation of surplus	₱ 347,217.50
25% surtax due thereon	₱ 86,804.38

In resumé, we are of the opinion that the (1) corporation was not formed for the purpose of preventing the imposition of a surtax on shareholders when it declared and paid yearly substantial cash dividends to its stockholders; (2) petitioner, being a publicly-held corporation, was not formed for the interdicted purpose but it was availed of for the said purpose; (3) purchase of U. S. Treasury Bonds made by petitioner in 1951 was an investment in unrelated business and, therefore, the corporation was availed of for the interdicted purpose; (4) investment of petitioner in customer's business was made for the reasonable needs of petitioner's business; (5) petitioner's profits or surplus in U. S. Treasury Bonds, which were retained for an unreasonable length of time, cannot be for the reasonable needs of the business; and (6) failure of petitioner to prove by clear preponderance of evidence that the accumulated surplus or profit was not availed of for the interdicted purpose justifies the imposition of the 25% surtax.

IN VIEW OF THE FOREGOING CONSIDERATIONS, the decision appealed from is hereby modified. Petitioner is hereby ordered to pay ₱86,804.38 as 25% surtax. If petitioner fails to pay the said amount within thirty (30) days from the date this decision becomes final, then it shall be subject to interest at the rate of 1% a month. With costs against petitioner.

SO ORDERED.

QUEZON CITY, February 28, 1966.

Estanislao R. Alvarez
ESTANISLAO R. ALVAREZ
Associate Judge

I CONCUR:

R. M. Umali
ROMAN M. UMALI
Acting Presiding Judge