REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EQUITABLE BANKING CORPORATION,
Petitioner,

- versus -

C.T.A. CASE NO. 5440

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
JUN 25 1999

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DECISION

This case involves a claim for refund and/or issuance of tax credit certificate in the amount of ₱1,242,252.66 allegedly representing overpaid gross receipts tax for the quarter ending September 30, 1994.

Petitioner is a banking corporation duly organized and existing under the laws of the Philippines.

On October 20, 1994, petitioner filed with the Bureau of Internal Revenue its Quarterly Percentage Tax Return for the quarter ended September 30, 1994 (Exh. B) declaring a gross earning in the amount of ₱324,166,359.84 and gross receipts tax payment in the sum of ₱14,256,032.11 (Exh. B-1).

On January 30, 1996, this Court rendered a decision in the case of Asian Banking Corporation versus Commissioner of Internal Revenue, CTA Case No. 4720, declaring that the 20% final withholding tax on bank interest should not form part of its taxable gross receipts for purposes of computing gross receipts tax.

Thus, on the strength of said decision, petitioner filed on September 26, 1996, an administrative claim for the refund or issuance of tax credit certificate (Exh. C) in the total amount of ₱14,125,699.10 from which the ₱1,242,252.66, subject matter of this petition, formed a part of (Exh. C-1).

With the two-year reglementary period about to expire, petitioner prudently did not wait for the result of its administrative claim. Hence, this petition on October 19, 1996.

On February 7, 1997, petitioner filed a Motion to Admit Amended Petition which this Court granted "considering that the allegations sought to be incorporated in the amended petition are factual allegations which are supplementary and do not substantially alter or change petitioner's cause of action" (Rec., p. 60).

Petitioner then alleges that for the quarter ending September 30, 1994 it paid to the BIR gross receipts tax in the sum of ₱27,070,042.69 and ₱14,256,032.12 of which comprises the aggregate amount of gross receipts tax paid by the following:

Head Office	₱13,589,268.23	Exhibit A-1
Branches:		
Arranque	19,525.87	Exhibit A-2
Magdalena	9,568.24	Exhibit A-3
Ongpin	27,134.28	Exhibit A-4
Reina Regente	6,129.40	Exhibit A-5
Soler	604,406.10	Exhibit A-6
Total	₱14,256,032.12	

Petitioner further claims that the amount of ₱324,166,359.84 included the amounts of ₱5,118,097.58 (Exh. C-4, C-10) and ₱19,726,955.50 (Exh. C-5, C-11, D-1, SS-1) which respectively correspond to 20% portion of tax paid income and investment income subjected to final tax booked at gross. The amount claimed to be refundable is arrived at by recomputing the tax base, as follows:

Gross Receipts Subjected to Tax	₱324,166,359.84
Less: 1) 20% Portion of Tax Paid Income	5,118,097.58
2) Investment Income subject to 20% final tax booked at gross	19,726,955.50
Adjusted Gross Receipts Tax Base	₱299,321,306.76

Computation of Adjusted Gross Receipts Tax

Gross Receipts	Tax Rate	Tax Due
₱ 4,605,275.06	0%	0.00
34,584,305.44	1%	345,843.05
16,932,495.29	3%	507,974.86
243,199,230.97	5%	12,159,961.55
₱299,321,306.76		₱13,013,779.46

Gross Receipts Tax Paid	₱14,256,032.12
Less: Adjusted Gross Receipts Tax	13,013,779.46
Tax Refund	₱ 1,242,252.66

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Respondent, by way of Special and Affirmative Defenses, states, among others, that the petition does not state a cause of action; respondent is still investigating the claim; the burden of proof is upon the claimant to establish its right to the refund and any claim for tax refund is construed strictly against the claimant.

To bolster its claim, petitioner presented the following documentary evidence, to wit:

1. Transmittal Sheet of Percentage Tax of the Head Office and Branches/Units of Large Taxpayers for the Quarter Ended September 30, 1994;

2. Quarterly Percentage Tax Return for the quarter ended September 30, 1994;

3. Written claim for refund dated September 26, 1996;

4. Income & Expense Account Sub-ledgers for the quarter ended September 30, 1994; and

5. Statement of Income and Expense Accounts of EBC for Head Office for the quarter ended September 30, 1994.

Petitioner also presented a witness to testify and identify the aforecited documents.

Respondent, on the other hand, presented no evidence and submitted the case for decision based on the pleadings (CTA rec., p. 176).

This case was submitted for decision on August 7, 1998. However, before a decision could be rendered, petitioner filed a "Motion to Reopen Case and Allow EBC to Present Additional Evidence". Said motion was filed mainly to comply the requirements of proof set forth in two cases involving the same parties, namely: Equitable Banking Corporation versus Commissioner of Internal Revenue, CTA Case No. 5411, June 15, 1998 and Equitable Banking Corporation versus Commissioner of Internal Revenue, CTA Case No. 5146, August 8, 1998.

On January 5, 1999, this Court denied petitioner's motion, ruling thus:

> The presentation of additional evidence is allowed only when it is newly discovered, or where it has been omitted through inadvertence or mistake, or where the purpose of the evidence is to correct evidence previously offered. In addition, the Court, for good reasons, in the furtherance of justice, may permit them to offer evidence upon their original case, and its ruling will not be disturbed in the appellate court where no abuse of discretion appears.
>
> It appears that the reason of petitioner for wanting to reopen this case is based solely in our decision in the cases of Equitable Banking Corporation vs. Comm. of Internal Revenue, CTA Case Nos. 5411 and 5416.

> Petitioner failed to specifically state the facts surrounding the alleged inadvertence or mistake or excusable negligence in the presentation of that alleged additional document except for the fact that it was raised in our previous decisions involving the same parties and subject matter. The Court cannot allow the presentation of piece-meal evidence, otherwise, there will be no end to litigation. (Citations deleted.)

Petitioner expectedly filed a Motion for Reconsideration on January 28, 1999 which this Court denied for being a mere rehash of its earlier Motion for Reconsideration in the case of Equitable Banking Corporation, CTA Case No. 5521 and in other similar cases. Furthermore, this Court held that petitioner was given ample time to cover all the evidence it could present to prove its case. Besides, failing to state the particular additional evidence to be presented and the purpose for which they will be offered would prejudice the rights of respondent.

The issues posed for adjudication in this case are:

(1) Whether or not the 20% final withholding tax on bank's interest income should form part of the taxable receipts for purposes of computing the gross receipts tax; and

(2) Whether or not petitioner has proven its claim by substantial evidence.

This is not a case of first impression. In fact, this Court has already settled the legal issue in the case of **Asian Bank Corporation versus Commissioner of Internal Revenue, CTA Case No. 4720, January 30, 1996,** when it ruled that the 20% final withholding tax on bank's interest income should not form part of taxable gross receipts for purposes of computing gross receipts tax. The pertinent portions of the above case are quoted below:

> "We agree with the petitioner that the 20% final withholding tax on its interest income should not form part of its taxable gross receipts.
>
> Revenue Regulations No. 12-80 dated Nov. 7, 1980 on Taxation of Certain Income Derived from Banking Activities provides that the rates of tax to be imposed on the gross receipts of such financial institution, shall be based on all items of <u>income actually received</u>, thus:
>
> > SEC. 4. xxx xxx xxx
> >
> > (e) *Gross receipts tax on banks, non-bank financial intermediaries, financing companies, and other non-bank financial intermediaries not performing quasi-banking activities.* - The rates of taxes to be imposed on the gross receipts of such financial institutions <u>shall be based on all items of income actually received</u>. Mere accrual shall not be considered, but once payment is received on such accrual or in cases of prepayment, then the amount actually received shall be included in the tax base of such financial institutions, as provided hereunder. (Underscoring supplied.)

From the foregoing, it is but logical to infer that the final tax, not having been received by the petitioner but instead went to the coffers of the government, should no longer form part of its gross receipts for the purpose of computing the GRT. This conclusion is in accord with the interpretation of the Supreme Court in the case entitled **Collector of Internal Revenue vs. Manila Jockey Club**, 108 Phil. 821, as quoted by this Court in disposing of a similar issue in the case entitled ***Compania Maritima vs. Acting Commissioner of Internal Revenue***, CTA Case No. 1426 dated November 14, 1966, thus:

> In the second place, the highest tribunal of the land interpreted the term 'gross receipts': to mean all receipts of a taxpayer excluding those which have been especially earmarked by law or regulation for the government or some person other than the taxpayer. Thus, it was held:
>
> > "xx xx. The Government could not have meant to tax as gross receipt of the Manila Jockey Club the 1/2% which it directs same Club to turn over to the Board of Races. The latter being a Government institution, there would be double taxation, which should be avoided unless the statute admits of no other interpretation. In the same manner, the Government could not have intended to consider as gross receipt the portion of the funds which it directed the Club to give, or know the Club would give, to winning horses and Jockeys - admitted 5%. It is true that the law says that out of the total wager funds 12 1/2% shall be set aside as the 'commission' of the track owners but the law itself takes official notice, and virtually

> approves or directs payment of the portion that goes to owners of horses as prizes and bonuses of jockeys, which portion is admittedly 5% out of the 12½% commission. As it did not at that time contemplate the application of 'gross receipts' revenue principle, the law in making a distribution of the total wager funds, took no trouble of separating one item from the other; and for convenience, grouped three items under one common denomination.
>
> "Needless to say, gross receipts of the proprietor of the amusement place should not include any money which although delivered to the amusement place has been especially earmarked by law or regulation for some person other than the proprietor." (**The Commissioner of Internal Revenue vs. Manila Jockey Club, Inc., G.R. Nos. L-13890 & L-13887, June 30, 1960**)

It is to be noted that, under Section 260 of the Tax Code, a race-track is subject to an amusement tax of 20% of its gross receipts and the term 'gross receipts' embraces all the receipts of the proprietor, lessee, or operator of the amusement place." Notwithstanding the broad and all-embracing definition of the term "gross receipts" found in our amusement tax law, our Supreme Court did not adopt a literal interpretation of the said term in the case of the **Manila Jockey Club, Inc.**, *supra*."

The legal issue having been dealt with, a determination on whether or not petitioner has established its claim by substantial evidence is apropos.

As already adverted to, petitioner in recomputing its gross receipts tax base, deducted the amounts of ₱5,118,097.58 and ₱19,726,955.50 representing 20% portion of tax-paid income and investment income subjected to 20% final tax booked at gross, respectively. As regards the amount of ₱5,118,097.58, herein petitioner submitted subsidiary ledgers of the following passive interest income with the exception of the interest income on Time Loan - Asahi:

	INTEREST INCOME (Net of FT)	EXH.	20% FINAL TAX	EXH.
On deposits with local banks	₱ 116,717.64	HH	₱ 29,179.41	C-9
Trading gains on Gov't. Sec.	18,652,052.11	OO	4,553,012.03	C-9
On interbank loans	628,367.98	GG	157,242.00	C-9
On time loan - Asahi			268,663.14	C-9
T O T A L			₱5,118,097.58	

Based on the subsidiary ledgers (Exhs. M to Q, V, AA to CC, GG, HH, MM to OO) and the Income & Expense Summary (Exh. D), petitioner was able to show that the interest income was booked net of final withholding tax. In other words, petitioner's computation of overpaid gross receipts tax on this tax-paid income appears to be correct (Exh. C-9). Nevertheless, petitioner failed to prove that the final tax was indeed withheld and remitted to the BIR. The subsidiary ledgers are not conclusive evidence of payment of final tax. They are insufficient to check the accuracy of the amounts so indicated. Petitioner should have submitted the corresponding certificates of income tax withheld.

With respect to the amount of ₱19,726,955.50, this represents the 20% final tax on interest income from trading accounts securities which was booked at gross, inclusive of the 20% final tax (Exhs. G to L, W to Z, II to LL) and recorded under Provision for tax - final tax (Exh. R to U, DD to FF, PP to SS). Petitioner deducted this amount to derive its adjusted gross receipts tax base. Petitioner alleges that this amount had been withheld and therefore should not longer form part of the gross receipts for the purpose of computing the gross receipts tax (TSN, Sept. 24, 1997, pp. 34-35). Yet, petitioner failed to support this allegation. No evidence has been presented to prove that indeed the 20% final tax on trading accounts securities has been withheld and remitted to the BIR.

Once again, it cannot be over emphasized that tax refunds partake of the nature of tax exemptions and are construed in *strictissimi juris* against the taxpayer and in favor of the taxing authority. (**Resins, Inc. vs.**

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Auditor General, G.R. No. L-17888, 25 SCRA 754; **Commissioner of Internal Revenue vs. Ledesma**, G.R. No. L-17509, 31 SCRA 95; **Insular Lumber Co. vs. Commissioner of Internal Revenue and Court of Tax Appeals**, G.R. No. L-31057, May 29, 1981; **Commissioner of Internal Revenue vs. Rio Tuba Nickel Mining Corporation**, G. R. Nos. L-83583-84, March 25, 1992).

WHEREFORE, in view of all the foregoing, the instant claim for refund or issuance of a tax credit certificate is hereby **DENIED** for insufficiency of evidence.

SO ORDERED.

ERNESTO D. ACOSTA
Presiding Judge

WE CONCUR:

RAMON O. DE VEYRA
Associate Judge

(Dissenting)
AMANCIO Q. SAGA
Associate Judge

CERTIFICATION

I hereby certify that the above decision was reached after due consultation with the members of the Court of Tax Appeals in accordance with Section 13, Article VIII of the Constitution.

ERNESTO D. ACOSTA
Presiding Judge

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REPUBLIC OF THE PHILIPPINES
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EQUITABLE BANKING CORPORATION,
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- versus -

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COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
JUN 25 1999

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DISSENTING OPINION

The majority opinion denied the petition for review due to the petitioner's failure to substantiate its claim for refund.

I humbly disagree with the reason for the denial and I believe that the claim for refund should not be granted due to lack of legal basis.

The majority view based its conclusion on the case entitled Asian Bank Corporation vs. Commissioner of Internal Revenue, CTA Case No. 4720 dated January 30, 1996 which ruled that the interest income included as part of the gross receipts should be computed minus the 20% final tax already withheld and deducted by various withholding agents.

I disagree with the aforecited Asian Bank case and find that the conclusion embodied therein is legally objectionable for two (2) reasons, to wit:

1) Section 4(e) of Revenue Regulations No. 12-80 is not a computation determinative of the amount of gross receipts as basis of the gross receipts tax under Section 119 of the Tax Code. Said revenue regulations merely authorize the determination of the amount of gross receipts on the basis of the method of accounting being used by the taxpayer under Section 37 of the Tax Code. Such accounting methods for tax purposes comprise a set of rules for determining when and how to report income and deductions (**Consolidated Mines, Inc. vs. CTA, L-18843, August 29, 1974**). The two principal accounting methods expressly and impliedly recognized by the Tax Code and the Income Tax Regulations are:

(a) Cash receipts and disbursement method or cash basis. - Income earned by the taxpayer is not included in gross income until received and expenses are not deducted until paid within the taxable year; and

(b) Accrual basis. - Income is included in gross income when earned, whether received or not, and expenses are allowed as deductions when incurred although not yet paid within the year.

2) That the non-inclusion of the 20% final withholding income tax from the gross interest income for purposes of the gross receipts tax operates as an exemption from tax. Being an exemption from tax, the same must be construed strictly not against the government but against the one who asserts the claim of exemption. Tax exemption can only be given effect when the grant is clear and categorical inasmuch as taxation is the rule and exemption is the exception, Section 26, Tax Code. The holding therefore in the Asian Bank Corporation

to the effect that the non-inclusion of the 20% final withholding income tax from the gross receipts can logically be inferred from the wordings of said Section 4(e) of Revenue Regulations No. 12-80, is misplaced.

Tax statutes are to receive a reasonable construction with a view to carrying out their purpose and intent (**51 Am Jur 361**). It should not be construed as to permit the taxpayer to easily evade the payment of the tax (**Cabon Steel Co. vs. Lewelyn, 251 U.S. 501**). Thus, the good faith of the taxpayer is not sufficient justification for exemption from the payment of surcharges imposed by law (**Commissioner vs. Royal Interocean Lines and CTA, L-26506, July 30, 1970**). A tax statute should be construed to avoid the possibilities of tax evasion (**Lorenzo vs. Posadas, 64 Phils. 353**).

The High Court's decision in the case of Commissioner of Internal Revenue vs. The Manila Jockey Club, Inc. 108 Phils. 821, June 30, 1960, which was reaffirmed by the said Court in the case of **Visayan-Cebu Terminal Co., Inc. vs. Commissioner of Internal Revenue, 13 SCRA 357, February 27, 1965** cannot be considered as precedent cases, hence, inapplicable to the two cases decided by this Honorable Court in the cases of Compania Maritima vs. Acting Commissioner of Internal Revenue, CTA Case No. 1426 dated November 14, 1966 and Asian Bank Corporation vs. Commissioner of Internal Revenue, CTA Case No. 4720 dated January 30, 1996, for the following reasons:

1) In the Manila Jockey Club, Inc. case, the Club was authorized to operate horse races in which betting was made through the sale of tickets to the public. The total amount of bets called "wager fund" were distributed pursuant to Executive Order No. 320 and Republic Act No. 309, as follows:

87½% as dividends to holders of winning tickets

12½% as "commissions" of the Manila Jockey Club, of which ½% was assigned to the Board on Races and 5% was distributed as prizes for owners of winning horses and authorized bonus for jockeys.

According to the above-mentioned distribution of the "wager fund", the then Collector of Internal Revenue assessed the Club on the whole amount of its "commission" of 12½%. But since the Club had already paid the amusement tax based on its 7% share of the "commission", the amount assessable pertains only to the 5½% for the period from November 1946 to October 1950. On various instances, the Club protested the proposed assessments and was sustained by the opinions of the Secretary of Justice rendered on three different occasions (Opinion No. 345, series of 1941; Opinion No. 249, series of 1952 and Opinion No. 340, series of 1955).

Notwithstanding the opinions of the Secretary of Justice to the effect that the amount corresponding to the 5½% was held only by the Club in trust for the owners of winning horses and authorized bonuses of jockeys, the then Collector of Internal Revenue demanded payment of amusement taxes for the period November 1946 to October 1950. Said demand letter was timely appealed to the Court of Appeals wherein a unanimous judgment was obtained reversing the Collector's stand on the matter. In the High Court, the position of the Secretary of Justice was sustained thereby upholding the Court of Tax Appeals' decision.

Accordingly, gross receipts of the proprietor of the amusement place should not include any money which, although delivered to the amusement place was "especially earmarked" by law or legal rule or regulations for some persons other than the proprietor. Undeniably, they are money received by the racing club but they are moneys earmarked by law or regulations for winning horse owners and jockeys and never for a minute become the property of the race track. The same is true in the case of the ½% which the law directs the club to deliver to the Board on Races. The High Court therefore agrees with the stand of the Court of Tax Appeals that such funds representing 5½% of the 12½% "commissions" of the race track do not form part of the gross receipts, hence not subject to the amusement tax of 20%.

The above-mentioned decision of the High Court was also applied in the case of Visayan Cebu Terminal Co., Inc. vs. Commissioner of Internal Revenue, 13 SCRA 357, Nos. L-19530 and L-19444, February 27, 1965. The legal issue involved in this case is the interpretation of the management contract entered into by and between the Bureau of Customs and Visayan Cebu Terminal Co., Inc. whereby the latter as contractor was appointed the sole manager of the Arrastre Service at the Port of Cebu City. In the said Management Contract, it was further agreed and understood that in consideration of the rights and privileges granted the Contractor for the management of the Arrastre Service, the Bureau of Customs shall receive twenty eight (28%) percent of the total monthly gross income derived from whatever source in connection with the operations of the Arrastre Service, payable within ten (10) days of the succeeding month. The main legal issue involved in this case is whether or not the gross receipts corresponding to the 28% of the total gross income of the Service Contractor delivered to the Bureau of Customs within ten (10) days of the following month should form part of the gross receipts subject to 3% contractor's tax under Section 191 of the Tax Code. The Court of Tax Appeals ruled in favor of the petitioner, holding the view that the said 28% payment by the Arrastre Contractor based on its monthly gross income should not form part of the gross receipts subject to 3%

contractors tax and that paragraph 23 of the said Management Contract can legally be construed as a "regulation". As the learned trial court has aptly observed: "x x x the government could not have intended to consider as gross receipts the 28% that went to one of its institutions, the Bureau of Customs, and thereby collect percentage tax on it from petitioner. To hold petitioner liable for the payment of percentage tax is unquestionably unjust and not contemplated by Section 191 of the Tax Code."

All the above-mentioned decisions of the High Court made specific reference to gross receipts which are especially "earmarked by law or legal rule or regulation" as not forming part of the taxable gross receipts for purposes of the gross receipts tax under the Tax Code. For this purpose, it is pertinent to define the word "earmark" as a mark put upon a thing to distinguish it from another. Originally and literally, a mark upon the ear, a mode of marking sheep and other animals. Property is said to be earmarked when it can be identified or distinguished from other property of the same nature. To set apart from others (Black's Law Dictionary, 6th Edition, p. 508). In the case of the Manila Jockey Club, Inc. Executive Order No. 320 and Republic Act No. 309 made the specific "earmarking" for distribution of the total wager fund to different persons other than the proprietor. The same is true in the case of Visayan Cebu Terminal Co., Inc. where the specific earmarking of the 28% of the total monthly gross income to be delivered to the Bureau of Customs by the Contractor was provided in paragraph 23 of the Management Contract. Such specific earmarking of the twenty (20%) percent final income tax as not includible in the gross receipts for purposes of the gross receipts tax was not provided by any law or legal rule or regulations, hence the non-applicability of the above-cited High Court decisions to the Asian Bank Corporation case. This legal observation is also in point in the case of Compania Maritima case where the non-inclusion of the 10% reserve from the total cash collection to avoid claim for refund on freight and passengers tickets not taken is not provided by any law or legal rule or regulations.

In the Asian Bank Corporation case, petitioner bank alleges that subjecting the gross receipts to the 20% final withholding income tax and later to the 5% gross receipts tax is not only oppressive and obnoxious but even a confiscatory form of double taxation. Double taxation has been defined "as the taxing of the same item or piece of property twice to the same person, or taxing it as the property of one person and again as the property of another, but this does not include the imposition of different taxes concurrently on the same property or income (e.g. federal and state income taxes), nor the taxation of the same piece of property to different persons when they hold different interests in it or when it represents different values in their hands, as when both the mortgagor and mortgagee of property are taxed in respect to their interests in it, or when a tax is laid upon the profits of the corporation and also upon the dividends paid to its stockholders" (Black's Law Dictionary, 6th Edition, p. 491). This acceptable form of double taxation is reflected in BIR Ruling No. 223 dated November 2, 1989, thus:

> "The 5% gross receipts tax under Section 120 of the Tax Code is collectible on all finance companies doing business in the Philippines from interests, discounts, and all other items treated as gross income under the Tax Code. Accordingly, your income derived from investing the excess funds in short-term market placements through commercial banks constitutes income hence, subject to the 5% gross receipts tax under said Section. The fact that it has been subjected to the 20% final withholding income tax under Section 50(a) is immaterial. Besides, the withholding tax is imposed under Title II of the Tax Code while the finance tax is provided under Title V thereof." (BIR Ruling No. 223, November 2, 1989)

For as long as the basis for the claim for refund or tax credit certificate is based on the non-inclusion of the amount representing the final withholding income tax under Section 50(a) as part of the gross income subject to gross receipts tax, this dissenting opinion will stand. The fact that petitioner-claimant is able to establish by competent documentary and testimonial evidence is of no moment. For purposes of the amusement tax under Section 260 of the Tax Code, the term 'gross receipts' embraces 'all the receipts' of the proprietor, lessee, or operator of the amusement place. The words 'all the receipts' refer to the total amount of cash received which becomes part of the funds of the taxpayer and does not include any money which has been specially earmarked by any law or legal rule or regulation for some other person other than the proprietor, lessee or operator of the amusement place. Receipts means actually received (Philippine Long Distance Telephone Co. vs. Collector of Internal Revenue, G.R. No. L-3222, January 21, 1952) for itself and not for others, for otherwise they would not be receipts (Manila Jockey Club, Inc. vs. Collector of Internal Revenue, CTA Case No. 205, April 15, 1958; Jai Alai Corporation of the Philippines vs. Araneta, CTA Case No. 108, July 31, 1956 (Annotated, NIRC by Commissioner Jose Arañas, 1988 Edition, p. 687).

WHEREFORE, in view of the foregoing, I vote to deny the claim for refund due to lack of legal basis instead of dismissing the same for insufficiency of evidence.

AMANCIO Q. SAGA
Associate Judge