REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

ARTEMIO S. TIPON,
Petitioner,

- versus - C.T.A. CASE NO. 4348

THE COMMISSIONER OF INTERNAL REVENUE,
Respondent.

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D E C I S I O N

There is no dispute as to the relevance of the ruling in Commissioner of Internal Revenue v. The Court of Tax Appeals and Efren P. Castaneda, G.R. No. 96016, October 17, 1991, and the Resolution of the Supreme Court of October 18, 1990 Re: Request of Atty. Bernardo Zialcita for Reconsideration of the Action of the Financial and Budget Office, to wit: "not being part of the gross salary or income of a government benefit, terminal leave pay is not subject to income tax", or that the actual service of a government employee is the period of time for which pay has been received, excluding the period covered by terminal leave, respectively, to the case on hand.

Plainly, the cases just cited and the instant case involve similar issues. In its last "Manifestation" petitioner argued for the application of the doctrine in the aforecited cases and prayed for the grant of the reliefs prayed for in his Petition for Review.

The following facts predominate the instant case. On February 15, 1987, petitioner retired from the Philippine National Bank (PNB) a government owned or controlled corporation. Upon his retirement, he was entitled to payment of the money value of his accumulated unused vacation and sick leave credits in the amount of P135,357.97. Against the foregoing amount, the sum of P20,277.44 was withheld as tax on income. Further, from January 1, 1987 to February 15, 1987, petitioner also received from PNB P19,390.26 as salaries and allowances. The amount of P2,937.13 was withheld as tax on income against the aforesaid sum.

Consistent with the ruling in Castaneda and Zialcita, however, the amount of P20,277.44 is refundable pertaining to the first cause of action of petitioner; while as to the second cause of action, since only P3,390.26 is the taxable income, only the amount of P8.90 is the tax due. This was arrived at through the following computation of petitioner which we find correct:

Total Compensation as reflected in BIR Form No. W-2:		
1. Sheet #1	P 19,290.26	
2. Sheet #2	135,357.97	P154,748.23
Less: Amount erroneously reflected as compensation (See Annex "B" certification issued by PNB dated Mar. 21, 1988 to the effect that the sum of P135,357.97 represents the money value of unused leave credits paid as of date of retirement on Feb. 16, 1987). Under CA 186, as amended, in relation to Sec. 29(c)(7)(B) of the National Internal Revenue Code, the Court of Tax Appeals in the case entitled "Efren P. Castaneda v. The Commissioner of Internal Revenue, C.T.A. Case No. 3809 held that the money value of leave credits is an item which should not be included in gross income since it is exempt from taxation		P135,357.97
Correct Amount of Gross Compensation		P 19,390.26
Less: Exemption		
Married	P 12,000.00	
Special (P4,000.00 if aggregate gross income is not more than P20,000.00)	4,000.00	16,000.00
Taxable Income		P 3,390.26
Tax Due		P 8.90
Less: Tax withheld (See Sheets #1 & #2)		23,214.57
Total Amount of Tax Due/ (Refundable)		(P 23,205.67)

WHEREFORE, the Court renders judgment in favor of petitioner. Respondent is hereby ordered to **REFUND** to petitioner the amounts of P20,277.44 and P2,937.13, or a total of P23,205.67 which were deducted by respondent on the erroneous presumption that petitioner's terminal leave pay is subject to tax.

SO ORDERED.

Quezon City, Metro Manila, July 16, 1992.

ERNESTO D. ACOSTA
Presiding Judge

I CONCUR:

STELLA DADIVAS-FARRALES
Acting Associate Judge

CERTIFICATION

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

ERNESTO D. ACOSTA
Presiding Judge
Court of Tax Appeals