REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

BPI FAMILY SAVINGS BANK, INC.
Petitioner,

\- versus -

C.T.A. CASE NO. 5522

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
FEB 02 1999

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DECISION

This is a judicial claim for the refund of ₱1,327,048.66 allegedly representing overpaid gross receipts taxes paid for the first quarter of year 1995.

Petitioner is a domestic savings and mortgage banking corporation duly organized and existing under the laws of the Republic of the Philippines, with head office located at the BPI Family Bank Bldg., Paseo de Roxas corner De la Rosa Sts., Makati City.

The facts are simple.

For calendar year 1995, Petitioner allegedly paid the total amount of ₱22,737,831.33 representing gross receipt tax which was arrived at by including from the tax base the twenty percent (20%) final taxes on passive income already withheld and paid to Respondent by various withholding agents.

On April 1, 1997, Petitioner filed with Respondent a written claim for the refund of ₱1,327,048.66 representing overpaid gross receipts tax for the first quarter of year 1995 pursuant to this Court's Decision in CTA Case No. 4720 entitled, "**Asian Banking Corporation vs. Commissioner of Internal Revenue**", dated January 30, 1996, wherein it was ruled that the basis for determining the gross receipts tax on banks and non-bank financial intermediaries should be the gross receipts of said institutions *minus* the twenty percent (20%) final taxes already withheld by various withholding agents on interest and other passive income of said institutions.

Due to the inaction of the Respondent on said claim, however, Petitioner was constrained to elevate its case before this Court. Hence, this petition filed on April 21, 1997.

At bar, Petitioner reasserts its stance *a quo*. On the other hand, Respondent contends, *inter alia*, the following special and affirmative defenses, to wit:

x x x x x x x x x

> 9. x-x-x Petitioner must prove that the income from which the refundable taxes were paid from were declared and included in its gross income during the years under review.

x x x x x x x x x

> 11. The total amount of ₱1,327,048.66 claimed by the Petitioner as alleged refundable gross receipts taxes for calendar year 1995 was not properly documented. Moreover, taxes paid and collected are presumed to have been made in accordance with law and regulations, hence, not refundable.

x x x x x x x x x

> 14. Well-settled is the rule that claims for tax refund/credit are construed in strictissimi juris against the taxpayer as it partakes of the nature of exemption from tax and it is incumbent upon Petitioner to show that it is entitled thereto under the law.

Records show that both parties filed their respective memorandum. Petitioner merely reiterated its assertions while Respondent brings to the fore a new line of reasoning. Respondent contends, *inter alia*, that the case of **Collector of Internal Revenue vs. Manila Jockey Club**, 108 Phil. 821, cited in the Asian Banking Corporation case, *supra*, is not applicable because it dealt on gross receipts of a proprietor of an amusement place and not to a banking institution such as the Petitioner in the instant case; and that, the term 'gross earnings' which is synonymous to the term 'gross receipts' is defined as 'the entire earnings, receipts, or the like, under consideration, without any deduction', citing *Words & Phrases, 1956 Ed., p. 482.*

Respondent further contends as bereft of factual and legal basis the reliance of the Asian Bank Corporation case, *supra*, upon the provisions of Section 4(e) of Revenue Regulations No. 12-80 which declares in part that the rates of taxes to be imposed on the gross receipts of banking institutions shall be based only on all items of income actually received. Respondent further states that it is erroneous to infer that the questioned items of income (20% final taxes) were not actually received by the Petitioner because in the first place, no final tax can be withheld therefrom if such items of income were not actually received by it.

Moreover, Respondent observes that under the clear language of Section 7(b) of the same Revenue Regulations No. 12-80, the 20% final withholding tax paid by the withholding agent on the interest income received by the Petitioner cannot be deducted or credited against the latter's income or any other taxes, including its gross receipts tax liabilities.

The sole issue to be adjudicated in this case is whether or not Petitioner is legally and factually entitled to its claim for refund of overpaid gross receipts taxes.

After a painstaking scrutiny of the attending facts, the disquisition of the parties and the laws and jurisprudence in point, this Court rules against the Petitioner on the ground of insufficiency of evidence.

The legal aspect of Petitioner's claim for refund is not a case of first impression. As adverted to above, the case of **Asian Bank Corporation vs. Commissioner of Internal Revenue**, CTA Case No. 4720, promulgated on January 30, 1996, has already enunciated the rule that the 20% final taxes already withheld by various withholding agents on the passive income of banks and non-banking intermediaries are to be excluded in the computation of the latter's obligation on the payment of gross receipts tax. We do not intend to depart from the wisdom of said case which is hereunder quoted, to wit:

> "The assessment for GRT is based on Section 119 of the Tax Code, quoted hereunder thus:
>
> > **SEC. 119.** ***Tax on banks and non-bank financial intermediaries. - There*** shall be collected a tax on gross receipts derived from sources within the Philippines by all banks and non-bank financial intermediaries in accordance with the following schedule:
> >
> > (a) On interest, commissions and discounts from lending activities as well as income from financial leasing, on the basis of remaining maturities of instruments from which such receipts are derived.
> >
> > Short-term maturity - not in excess of two (2) years 5%
> >
> > Medium-term maturity - over two (2) years but not exceeding four (4) years 3%
> >
> > Long-term maturity:
> >
> > (i) Over four (4) years but not exceeding seven (7) years 1%
> >
> > (ii) Over seven (7) years 0%
> >
> > (b) On dividends . . 0%
> >
> > (c) On royalties, rentals of property, real or personal, profits from exchange and all other items treated as gross income under Section 28 of this Code 5%

> *Provided, however,* That in case the maturity period referred to in paragraph (a) is shortened thru pretermination, then the maturity period shall be reckoned to end as of the date of pretermination for purposes of classifying the transaction as short, medium or long term and the correct rate of tax shall be applied accordingly.
>
> Nothing in this Code shall preclude the Commissioner from imposing the same tax herein provided on persons performing similar financing activities. (Underscoring supplied)

The aforequoted provision of the law speaks of gross receipts as the basis of the 5% bank tax or GRT, and it is Petitioner's contention that the interest income included as part of such gross receipts should be computed minus the final tax already withheld by various withholding agents for the reason that such amount did not actually go to its funds, hence was not actually received by them.

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 November 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:

> "x x x. 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, 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 12 1/2 % 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***."

With the legal milieu of this case having been settled already, We now go into the examination of the exhibits adduced in evidence by the Petitioner which We have pronounced earlier to be insufficient to surmount the burden of proof required in proving its claim for refund.

To substantiate its allegation that it paid the sum of ₱1,327,048.66 representing overpaid gross receipts taxes, Petitioner relied on its quarterly percentage tax return for the first quarter of calendar year 1995 showing gross receipts of P562,763,166.90 at a tax rate of 5,3 and 1 % with a tax due of P22,737,831.33 (Exhibit A); the deposit slip dated April 20, 1997 (Exhibit A-5) showing the payment of P28,299,357.51 to the Respondent; the schedule of passive income accounts for the first quarter of calendar year 1995 prepared by witness, Eugenia Dr. Baguioro, manager of Central Accounting Department of the Petitioner (Exhibit B); and the Corporate Annual Income Tax Return inclusive of audited financial reports for the calendar year 1995 (Exhibit C, inclusive).

A detailed analysis of the abovementioned exhibits fails to show convincingly that the sum of P1,327,048.66 allegedly representing overpaid gross receipts tax has indeed been paid to the Respondent and that the gross receipts on passive income corresponding to such overpaid gross receipts taxes have been duly reported.

Exhibit A-5 which shows a deposit of P28,299,357.51 on April 20, 1995 does not prove *ipso facto* that, except for the lone averment of the Petitioner, said overpaid gross receipts taxes are a part of such deposit. For all we know, the deposit payment may have been intended for other kinds of taxes and not necessarily for gross receipts tax. More so, there is a discrepancy between the amount of what was deposited (P28,299,357.51) and the amount of tax due indicated in the quarterly percentage tax return (₱22,737,831.33).

Further, the schedule of passive income accounts for the first quarter of 1995 contained in Exhibit B cannot be accepted for what it is without supporting documents firmly establishing its truth. Petitioner should be reminded that said schedule is a mere summary or summation of the individual transactions from which the passive income was derived. This Court will have to inspect and verify such individual transactions to determine the probative weight to be attached to said schedule.

Lastly, We deem the submission of the Corporate Annual Income Tax Return for calendar year 1995 (Exhibit C, inclusive) as unnecessary or inadequate to prove Petitioner's claim. We cannot understand Petitioner's attempt to show to us the "provision for income tax" in the amount of ₱148,145,000.00 and "provision for final tax" in the amount of ₱129,450,660.00 contained in said annual return (Exhibits C-7-a and C-15-a, respectively) in order to prove that its interest and passive income for the calendar year 1995 was subjected to final withholding taxes and duly reported in their gross amount (Formal Offer of Evidence, p. 3; p. 27, docket).

The "provisions" cited by the Petitioner are at most contradictory with the schedule (Exhibit B) in terms of reference, figures and period. The "provision for income tax" is limited to government securities only while the schedule covers interest and passive income. Glaringly also, the gross amount of passive income in the schedule totals ₱139,238,590.28 while the "provisions" differently provide for ₱148,145,000.00 and ₱129,450,660.00. As to the period, the schedule covers the first quarter of calendar year 1995 only while the "provisions" are for the whole year of 1995. Petitioner simply failed to clearly explain to this Court the probative value of such "provisions" in relation to its quest to illustrate the fact of payment of the gross receipts taxes subject of herein claim for refund.

Such claim for refund of Petitioner would have been easily proven if it only presented proof of the individual transactions from which the alleged interest and passive income were sourced. In earning its income, Petitioner is of course expected to have kept documents and computerized records of each and every transaction it has entered into.

In addition, Petitioner should have likewise endeavored to prove that the alleged interest and passive income were the ones duly reported as receipts in its first quarter percentage tax return for the calendar year 1995. Inasmuch as the gross receipts reported in said return pertain to a conglomeration of various income subjected to final and creditable withholding taxes, there is therefore a need for the Petitioner to show that the particular portion of reported passive income tallies with its proof of individual transactions.

WHEREFORE, in view of the foregoing, herein Petition for Review is hereby **DENIED** due to insufficiency of evidence. No pronouncement as to costs.

SO ORDERED.

RAMON O. DE VEYRA
Associate Judge

WE CONCUR:

ERNESTO D. ACOSTA
Presiding 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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DISSENTING OPINION

The majority opinion denied the instant petition for review on the ground of insufficiency of evidence. My esteemed colleagues however, agreed with petitioner's theory that the basis for determining the gross receipts tax on banks and non-bank financial intermediaries should be the gross receipts minus the 20% final taxes already withheld on interest and other passive income of said institutions. In sum, the majority believes that were it not for the dearth of evidence, the present claim for refund should have been granted.

I humbly disagree with them on this point.

There is no provision in the Tax Code or any special law which excludes the 20% final income tax from the gross receipts for the purpose of computing the 5% gross receipts tax.

Section 8(c) of Revenue Regulations No. 12-80, dated November 7, 1980, as amended by Section 7(c) of Revenue Regulations No. 17-84, dated October 12, 1984 have the same provisions, thus:

> "If the recipient of the above-mentioned items of income are financial institutions, the same shall be included as part of the tax base upon which the gross receipts tax is imposed." (Underscoring supplied)

Clearly, there is no doubt that the 20% final withholding tax is legally includible as part of the gross receipts for purposes of computing the gross receipts tax.

The petitioner cited the case of **Asian Bank Corporation vs. Commissioner of Internal Revenue, CTA Case No. 4720, dated January 30, 1996,** where this Court has upheld the petitioner's contention that the interest income included as part of such gross receipts should be computed minus the 20% final tax already withheld and deducted by various withholding agents for the reason that the amount did not go to its funds, hence, was not actually received by them. And the Court approved the petitioner's citation of Section 4(e) of Revenue Regulations No. 12-80, dated November 7, 1980, thus:

> "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 shall be based on all items of income actually received. Mere accrual shall not be considered, but once payment is received on such accrual or in cases of overpayment then the amount actually received shall be included in the tax base of such financial institutions, as provided hereunder."

This Court concluded in said case that from the aforestated provisions it can logically be inferred that the amount representing 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 purposes of computing the gross receipts tax. Such conclusion in law 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 "<u>especially earmarked</u>" 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, <u>but this does not include the imposition of different</u> 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).

IN VIEW OF ALL THE FOREGOING, I hereby register my dissent to the majority opinion and vote for the denial of the entire claim for refund for lack of legal bases.

AMANCIO Q. SAGA
Associate Judge