REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

ORIENT PACIFIC CAPITAL
INVESTMENT CORPORATION,
Petitioner,

- versus -

C.T.A. CASE NO. 4113

COMMISSIONER OF INTERNAL
REVENUE,
Respondent.

x - - - - - - - - - - - - .x

6/9/93

R E S O L U T I O N

In its Motion for Reconsideration, Petitioner insisted that "there can be no serious question that contrary to the findings of this Honorable Court, the interests came from funds which are 'deposit substitutes' as defined by the aforequoted law" (Motion For Reconsideration, p. 2). Such contention has already been brushed aside by this Court as unmeritorious when it said:

> It is expressly admitted by petitioner that the subject taxable income is "interest income derived by Philam from the loan arranged by petitioner in favor of Mercury Drug Corporation" (see Rollo, p. 91). Such interest income from a loan paid MDC shall be distinguished from "interest deposits" which connote a different meaning. (see Decision, p. 5)

Needless to emphasize that the subject interest income derived by Philam cannot be clearly considered as income derived from "deposit substitutes" but "was earned from an ordinary loan transaction subject to 35% corporate income tax". (ibid.)

The stand of this Court will not waver inspite of petitioner's submission of an investment management contract which is allegedly a newly discovered evidence. Assuming arguendo for discussion purposes only, the admission of the said contract will even bolster the position of this Court. Under that contract, petitioner has no control of the funds and its acts are purely recommendatory in nature. In fact, it does not want to take responsibility over the funds it is supposed to manage when therein it is provided, thus: "it is further understood that the instrument of the Fund shall be strictly for your account (Philam's) and risk, and we shall not be held liable for any loss arising from the failure of such investment" (underscored insertion supplied, Supplemental Motion for Reconsideration And/or New Trial p. 4). Premises considered, such fund is far from being considered as "deposit substitute." Moreover, petitioner as Investment Manager is no more than an agent of the principal (which in this case is Phil-Am) merely paid by the services it rendered to the principal. (see ibid.) In fine, as admitted by the petitioner the subject taxable income is interest income derived by Philam from the loan arranged by petitioner in favor of Mercury Drug Corporation. It is, therefore, an ordinary loan and has nothing, whatsoever, to do with "deposit substitutes" which petitioner erroneously tried to impart to this Court. It would have been different if petitioner issued its own debt instrument in favor of Philam to obtain the fund from the latter and afterwards relend the fund to Mercury Drug Corp. in consideration of its own promissory notes in favor of petitioner. This promissory notes may be endorsed and negotiated by petitioner to Philam as an underlying instrument to support its own promissory notes or to obtain more funds/instruments from the latter. This process of obtaining fund from Philam or from any other investor by way of issuing its own debt instrument is what the law referred to as "deposit substitute."

ACCORDINGLY, in view of all the foregoing, it is hereby resolved that the twin motions filed by the petitioner are hereby **DISMISSED** for lack of merit.

SO ORDERED

Quezon City, Metro Manila, June 9, 1993

ERNESTO D. ACOSTA
Presiding Judge

RAMON O. DE VEYRA
Associate Judge

MANUEL K. GRUBA
Associate Judge