REPUBLIC OF THE PHILIPPINES
Court Of Tax Appeals
QUEZON CITY

SECOND DIVISION

GULF AIR COMPANY, PHILIPPINE BRANCH (GF), ***Petitioner,***	**C.T.A. CASE NO. 7030**
	Members:
	CASTAÑEDA, JR., Chairperson, UY, and PALANCA-ENRIQUEZ, JJ.
-versus-	
	Promulgated:
COMMISSIONER OF INTERNAL REVENUE, ***Respondent.***	MAR 2 1 2007

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DECISION

PALANCA-ENRIQUEZ, J.:

Tax refunds are in the nature of tax exemptions *(Commissioner of Internal Revenue vs. S.C. Johnson & Son, Inc., 309 SCRA 108)*. Such exemptions are strictly construed against the taxpayer *(Magsaysay Lines, Inc. vs. Court of Appeals, 260 SCRA 525)*, being highly disfavored and almost said "to be odious to the law." Hence, those who claim to be exempt from the

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payment of a particular tax must do so under clear and unmistakable terms found in the statute. They must be able to point to some positive provision, not merely a vague implication, of the law creating that right.

The right of taxation will not be surrendered, except in words too plain to be mistaken. The reason is that the State cannot strip itself of this highest attribute of sovereignty – its most essential power of taxation – by vague or ambiguous language. Since tax refunds are in the nature of tax exemptions, these are deemed to be "in derogation of sovereign authority and to be construed *strictissimi juris* against the person or entity claiming the exemption" (*Commissioner of Internal Revenue vs. Solidbank Corporation, 416 SCRA 461*).

THE CASE

This is a Petition for Review filed on August 6, 2004 by Gulf Air Company , Philippine Branch (GF) (hereafter "petitioner") which seeks the reversal of the Final Decision on Disputed Assessment, dated June 30, 2004, of the Deputy Commissioner, OIC, Large Taxpayers Service of the Bureau of Internal Revenue, denying petitioner's 2003 written protest and requesting the immediate payment of the P33,864,186.62 deficiency percentage tax assessment for the first, second and fourth quarters of 2000.

THE FACTS

In their "Joint Stipulation of Facts and Issues", the parties stipulated as follows:

> "1. Petitioner GULF AIR COMPANY, PHILIPPINE BRANCH (GF) is a branch of Gulf Air Company, a foreign corporation organized in accordance with the laws of The Kingdom of Bahrain, with principal office at the Ground Floor, Don Chua Lamko Building, Leviste St. Corner Dela Costa St., Salcedo Village, Makati City, where it may be served with summons.
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> 2. Respondent is the Commissioner of the Bureau of Internal Revenue (BIR), which is the government agency in charge of the assessment and collection of all national internal revenue taxes, fees, and charges, including the 3% Common Carriers Tax imposed under Sec. 118 of the National Internal Revenue Code (NIRC), on international air carriers doing business in the Philippines, with principal office at the BIR National Office Building, Agham Road, Diliman, Quezon City, where he may be served with summons.
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> 3. On October 25, 2001, GF availed of the Voluntary Assessment Program (VAP) under Revenue Regulations 8-2001, for its 1999 and 2000 Income Tax, 3rd Quarter of 2000 Percentage Tax, and 1999 and 2000 Documentary Stamp Tax, with a total VAP payment of PHP11,964,648.00. A copy of the Certificates of Qualification regarding the aforementioned VAP availments, dated November 26, 2001 for 1999 Income Tax, November 26, 2001 for 2000 Income Tax, and December 19, 2001 for 3rd quarter 2000 percentage tax, are attached to the Petition for Review as **Annex 'A', A-1' and 'A-2'**, respectively. With respect to the 1999 and 2000 Documentary Stamp Tax VAP availments, neither a certificate of qualification nor a certificate of disqualification was received from the BIR.

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However, by virtue of the VAP Rules, the same would be considered as an affirmative qualification.

4. On October 4, 2002, petitioner received Letter of Authority (LOA 2000 00002336), dated September 30, 2002, authorizing Revenue Officers Reynoso Jovero and Welita Quimson to examine petitioner's books of accounts and other accounting records in connection with petitioner's claim for refund on percentage taxes for the 1st, 2nd, and 4th quarters of year 2000. A copy of the aforementioned LOA is attached to the Petition for Review as **Annex 'C'**.

5. On April 25, 2003, Revenue Officer Jovero requested petitioner, thru Ms. Aida N. Florencio, Chief, LT Audit and Investigation Division I, for additional documentation on summary of daily passenger uplifts for each month, and sample copies of tax coupons of locally issued tickets showing net net fares actually realized by GF. Petitioner received said letter on April 28, 2003, a copy of which is attached to the Petition for Review as **Annex 'D'**.

6. On May 8, 2003, petitioner, through its Tax Agent, Moises M. Visperas, Jr., submitted a formal written reply, dated May 8, 2003, to Revenue Officer Jovero, thru Ms. Aida Florencio, Chief, LT Audit and Investigation Division I., attaching thereto the requested summary of daily passenger uplifts for each month of the quarters involved, and sample copies of tax coupons of locally issued tickets showing net revenues, as Annexes A and B, respectively. As stated by petitioner in said letter, the claim for refund was based on the following:

> '1. That passenger revenue reflected on original tax returns was based on one gross CAB fare of USD674.00 multiplied by the number of passenger uplifts for the quarter, reduced by 25% allowable deduction. When the amended tax returns were filed on October 25, 2001,

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correct passenger revenues were computed considering correct respective net net revenues realized from uplifts of passengers up to their final destination. This definition of taxable gross receipts was in fact later carried and ratified when Revenue Regulations 15-2002 was issued on March 31, 2002' (date should have read May 30, 2002 but which took effect only on October 26, 2002).

2. Another type of computation error with respect to Taxable Passenger Revenue was noted in the Percentage Tax Return for the 2nd quarter of 2000 wherein the 25% allowable deduction was erroneously not claimed as a deduction and thus accordingly overstating its tax payment by 25%.

3. On the other hand, cargo and mails revenues reflected on the original tax returns were understated as the figures thereon were merely based on amounts actually received from its General Sales Agent that is already net of the GSA override commission. Thus, the amended tax return corrects the understatement by reflecting the correct Cargo and Mails taxable revenue. (This translates to an additional taxable revenue base of PHP16,760,620.46 when the amended tax returns were filed).

4. Kindly note that the claim for refund was limited to 1st, 2nd, and 4th quarters of 2000 as we noted that for the 3rd quarter of 2000, there was an overall understatement. As an honest gesture on

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> my client's part, it had availed of VAP for the 3rd quarter of 2000 which was duly accepted and qualifying certificate being duly issued by the BIR. x x x.'

A copy of the aforesaid reply and its attachments are attached to the Petition for Review as **Annexes 'E', 'E-1' and 'E-2'**, respectively.

7. On July 2, 2003, in compliance with the verbal request of Revenue Officer Jovero, petitioner provided the latter a comparative analysis of Cargo revenue per original return with that of the amended tax returns which resulted in additional taxable revenue of PHP16,760,620.46 or in terms of equivalent 3% tax of PHP502,819.00. A copy of the accompanying July 2, 2003 letter and the comparative analysis are attached to the Petition for Review as **Annexes 'F' and 'F-1'**, respectively.

8. On July 14, 2003, petitioner received a letter from Ms. Armi S. Linsangan, Chief LT Audit and Invetigation I, dated July 1, 2003, advising GF that the report of the investigation by Revenue Officers Jovero and Quimzon had already been submitted, and notifying GF of a proposed assessment of deficiency percentage tax or common carriers tax amounting to PHP32,740,472.03. The same letter requested petitioner to appear before an informal conference scheduled on July 24, 2003 at 10:00 A.M. A copy of the letter-request together with the worksheets attached thereto consisting of 12 pages, regarding the computations of the aforementioned deficiency common carriers tax, are attached to the Petition for Review as Annexes '**H' and 'H-1'**, respectively.

9. In compliance with the July 14, 2003 letter request, petitioner's Tax Agent Moises M. Visperas, Jr., together with GF's Finance Controller – Manila Armand Bautista and Accounts Officer Dina Talla, attended the informal conference on July 24, 2003 and submitted thereat

petitioner's initial comments on the proposed deficiency common carrier's tax assessment. A copy of said initial comments is attached to the Petition for Review as **Annex 'I'**.

10. To formalize the results of the informal conference on July 24, 2003, and to officially transmit additional documentary requirements, petitioner's Tax Agent Moises M. Visperas, Jr. submitted letter dated July 30, 2003 on same date to Ms. Armi S. Linsangan, Chief, Large Taxpayer Audit and Investigation I. A copy of letter dated July 30, 2004 and its annexes are attached to the Petition for Review as Annexes **'J', 'J-1' and 'J-2'**.

11. On November 4, 2003, petitioner received a Preliminary Assessment Notice (PAN), issued by Deputy Commissioner Estelita C. Aguirre dated August 20, 2003, assessing petitioner deficiency common carrier tax amounting to PHP32,745,141.93, broken down as follows:

'Gross Receipts per return	PHP753,210,516.78
Add: Adjustments:	
1.Special Commission on Passengers	PHP 804,280,176.93
2.Special commission of cargo originally reported in USD	116,185,504.63
3.Special commission of cargo originally reported in PHP	91,403,076.47
Total Adjustment	PHP1,011,868,758.63
Gross Receipts per Audit	PHP1,765,079,274.81
Tax Per Audit	PHP 52,952,378.24
Amount paid per return	32,588,593.00

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Basic	PHP	20,363,785.24
Interest up to 9-30-03		12,381,356.69
Total	PHP	32,745,141.93'

A copy of the PAN, the Details of Discrepancies attached thereto as Annex 'A', and the accompanying worksheet consisting of 12 pages, are attached to the Petition for Review as Annexes **'K', 'K-1' and 'K-2'**, respectively.

12. On the same date, petitioner also received together with the PAN a letter issued by Deputy Commissioner Estelita C. Aguirre dated October 14, 2003, denying petitioner's claim for tax credit/refund of excess percentage tax remittance covering the 1st, 2nd, and 4th quarters of taxable year 2000, and requesting the immediate settlement of the PHP32,745,141.93 deficiency percentage tax assessment. A copy of said letter is attached to the Petition for Review as **Annex 'L'**.

13. On November 12, 2003, petitioner filed with the Office of the Deputy Commissioner – Large Taxpayers Service through its Tax Agent, a letter dated on the same day, protesting the above-mentioned PAN, and requesting for a reconsideration of the denial of its request for refund of erroneously paid percentage taxes for the 1st, 2nd, and 4th quarters of year 2000. A copy of said letter is hereto attached as **Annex 'M'**.

14. On December 16, 2003, petitioner received a Formal Letter of Demand denoted as Assessment Number PT-00-000006, dated December 10, 2003 supported by BIR Form 0401-Audit Result/Assessment Notice, dated December 10, 2003, and Annex A-Details of Discrepancies together with Excel based computation sheets consisting of 12 pages, demanding the payment of the total amount of PHP33,864,186.62, the details of which as shown in said letter are quoted hereunder as follows:

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'Gross Receipts per return	PHP753,210,516.78
Add: Adjustments:	
1.Special Commission on Passengers	PHP804,280,176.93
2.Special commission of cargo originally reported in USD	116,185,504.63
3.Special commission of cargo originally reported in PHP	91,403,076.47
Total Adjustment	PHP1,011,868,758.03
Gross Receipts per Audit	PHP1,765,079,274.81
Tax Per Audit	PHP 52,952,378.24
Amount paid per return	32,588,593.00
Basic Deficiency Percentage Tax	PHP 20,363,785.24
Interest up to 01-09-04	13,500,401.38
Total	PHP 33,864,186.62'

A copy of respondent's Formal Letter of Demand, BIR Form 0401, Annex A and Excel Based Worksheets are attached to the Petition for Review as **Annexes 'N', 'N-1', 'N-2' and 'N-3'**, respectively.

15. On December 29, 2003, petitioner filed a letter, dated on the same day, addressed to the Deputy Commissioner, protesting the aforementioned deficiency percentage tax assessment, as well as, reiterating its request for a reconsideration of the denial of its request for refund of erroneously paid percentage taxes for 1st, 2nd and 4th quarters of the year 2000. A copy of the written protest is attached to the Petition for Review as **Annex 'O'**.

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16. On January 24, 2004, Tax Verification Notice No. TVN 1999 00201728 dated January 8, 2004 was received by Petitioner authorizing Revenue Officer Reynoso Jovero Jr. to verify supporting documents and/or pertinent records relative to GF's Request for reinvestigation of Deficiency Percentage Tax Protest Letter dated December 29, 2003 covering the 1st, 2nd, 4th quarters of year 2000, a copy of which is attached to the Petition for Review as **Annex 'P'**.

17. On July 8, 2004, petitioner received a Final Decision on Disputed Assessment from the Deputy Commissioner, OIC, Large Taxpayers Service dated June 30, 2004, denying its December 29, 2003 written protest "for lack of factual and legal basis", and requesting the immediate payment of the PHP33,864,186.62 deficiency Percentage tax assessment. However, should petitioner disagree with the assessment, the Deputy Commissioner gives it thirty (30) days from date of receipt of Final Decision within which to appeal to the Court of Tax Appeals; otherwise said deficiency assessment shall become final, executory and demandable. A copy of the Final Decision is attached to the Petition for Review as **Annex 'Q'**."

In his answer, respondent alleged, by way of special and affirmative defenses, that petitioner is liable for the deficiency percentage tax for the 1st, 2nd and 4th quarters of taxable year 2000 under Revenue Regulations No. 6-66 dated December 1, 1966, providing for the computation of gross receipts of international air carriers based on the cost of single one-way fare on a continuous and uninterrupted flight of passengers, excess baggage, freight or cargo, including mail as reflected

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on the plane manifest of the carriers as approved by the Civil Aeronautics Board ("CAB"); *Revenue Regulations No. 6-66* was never amended, until the issuance of *Revenue Regulations No. 5-2002* on May 30, 2002; *Revenue Regulations No. 5-2002* has no retroactive application; it is well settled that laws have no retroactive application unless it is provided for by the law itself; and presumptions are in favor of the correctness of tax assessments.

Petitioner presented Moises M. Visperas, Jr., its tax consultant, and Maria Divina P. Talla, its Accounts Assistant, as witnesses, and formally offered documentary evidence, marked as *Exhibits "A" to "S"*, inclusive of their submarkings, which were all admitted by the Court, except *Exhibits "J-1-d" and "J-1-e"*, which were denied by the Court due to petitioner's failure to submit the originals for comparison.

On the other hand, counsel for respondent waived his right to present evidence and moved for thirty (30) days to file his memorandum. Both parties were granted thirty (30) days from September 28, 2005 to file their simultaneous memoranda, afterwhich the case shall be deemed submitted for decision.

Both parties having complied thereto, the case was deemed submitted for decision on December 04, 2006.

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ISSUES

As stipulated upon by the parties, the following are the issues for this Court's consideration:

I

WHETHER OR NOT THE CORRECT BASIS FOR COMPUTING THE 3% COMMON CARRIERS PERCENTAGE TAX IMPOSED BY SECTION 118 OF THE NATIONAL INTERNAL REVENUE CODE (NIRC) ON INTERNATIONAL CARRIERS IS THE ACTUAL GROSS RECEIPTS OF THE CARRIER, I.E., THE GROSS RECEIPTS ACTUALLY RECEIVED, DERIVED, COLLECTED, REALIZED, BY GULF AIR FROM PASSENGERS, CARGO, AND EXCESS BAGGAGE, OR THE CIVIL AERONAUTICS BOARD APPROVED FARES/RATES WHICH IS REDUCED BY 25% FOR REVENUES FROM PASSENGERS.

II

WHETHER OR NOT PETITIONER'S RETROACTIVE APPLICATION OF THE PROVISIONS OF REVENUE REGULATIONS NO. 5-2002 IS PROPER.

III

WHETHER OR NOT PETITIONER WAS CORRECT IN USING A SINGLE RATE ON PASSAGE OF PERSONS IN THE AMOUNT OF USD 674.00 LESS THE 25% DISCOUNT IN ITS PERCENTAGE TAX RETURNS FOR THE 1ST, 2ND AND 4TH QUARTERS OF THE YEAR 2000, INSTEAD OF THE COST OF THE TICKET BASED ON THE RATE APPROVED AND PUBLISHED BY THE CIVIL AERONAUTICS BOARD/IATA OR AS REFLECTED IN THE TICKET PER RESPECTIVE FINAL DESTINATION, AS PRESCRIBED UNDER RR 6-66.

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IV

WHETHER OR NOT PETITIONER'S USE OF THE NET FARES AS THE TAX BASE WHEN IT FILED ITS AMENDED RETURNS VIOLATES THE PROVISION OF REVENUE REGULATIONS NO. 6-66.

V

WHETHER OR NOT PETITIONER IS CORRECT IN ADDING BACK THE NORMAL COMMISSION TO THE TAX BASE FOR THE 1ST, 2ND AND 4TH QUARTERS AMENDED PERCENTAGE TAX RETURS IN ITS CLAIM FOR REFUND WHEN IN ITS ORIGINAL RETURN IT REFLECTED THE NET REVENUES ON CARGO, I.E., NET OF THE NORMAL COMMISSION OF THE SALES AGENT AND SPECIAL COMMISSION.

VI

WHETHER OR NOT PETITIONER IS CORRECT IN NOT INCLUDING THE SPECIAL COMMISSION (THE DIFFERENCE BETWEEN THE IATA RATE AND THE ACTUAL CASH PAID ON TICKET OR CARGO) AS PART OF THE COST OF THE TICKET OR CARGO WHEN COMPUTING THE TAXABLE BASE AS PRESCRIBED UNDER RR 6-66.

Principal Issue

The foregoing issues raised by both parties boil down to the principal issue of whether or not the gross receipts for purposes of computing the 3% common carrier's percentage tax assessed against the petitioner shall be based on the "net net rate", *i.e.* revenue actually realized, received, derived or collected by the petitioner from the carriage

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of passengers, cargo, and excess baggage, or the rates approved by the CAB, thus warranting the inclusion in the computation of said gross receipts the special commission on passengers and special commission on cargo.

THE COURT'S RULING

The petition has no merit.

Petitioner's Arguments

Petitioner contends that the correct basis for computing the 3% common carriers percentage tax imposed under *Section 118 of the NIRC* is the fare it actually received, derived, collected, realized from passengers, cargo and excess baggage and not the fare approved by the CAB. In support of its contention, petitioner ratiocinated that the CAB's approved fares are not reflective of the actual revenue or receipt derived or received by it or its agents from its business as an international air carrier. Further, petitioner argues that CAB/IATA fares are not collected from passengers or agents, while actual fares reflect the "cost of air ticket" actually collected from passengers. Petitioner also claims that though CAB/IATA fares may also appear in the ticket, it is an airline industry practice that tickets are actually sold to passengers at a lower rate, ranging from 31% to as much as 43% only of the CAB/IATA

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approved fares. The said actual or market fares reflect the prices passengers in a particular territory are willing to pay for air fare for particular destinations.

Petitioner, thus, concludes that CAB/IATA fares are merely notional, whereas, actual are real. Petitioner also justifies its claim by citing the realization theory or flow of wealth test, that only the amount paid by the passengers are considered as realized income of airline companies. It invokes the provision of *Revenue Regulations No. 15-2002 (which took effect on October 26, 2002)* making the basis for computation of percentages taxes on international air carriers on the "net net fares" appearing on the tax coupon of the plane tickets and no longer on the gross ticket fares, otherwise known as the IATA fare or CAB approved fare.

Petitioner further contends that the gross receipts under *Section 118 of the NIRC* should be construed in relation to the gross receipts definition under the Value Added Tax and other provisions in the *NIRC*, and that *Revenue Regulations No. 6-66*, which was promulgated way back in 1966, became outdated when *Republic Act No. 8424, otherwise known as the Tax Reform Act of 1997,* was enacted. *oal*

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Respondent's Arguments

Respondent argues that *Revenue Regulations No. 6-66, otherwise known as "Regulations for Percentage Tax Purposes on International Air Transport Services"* is the implementing regulation at the time of the assessment of common carriers percentage tax against the petitioner providing for the definition of gross receipts for international air carrier as the cost of a single one-way fare on a continuous and uninterrupted flights of passengers, excess baggage, freight or cargo, including mail as reflected on the plane manifest of the carriers, as approved by the CAB. Respondent contends that *Revenue Regulations No. 6-66* was never amended, until the issuance of *Revenue Regulations No. 5-2002* on May 30, 2002.

In addition, respondent maintains that *Revenue Regulations No. 5-2002* has no retroactive application and cannot be given retroactive effect since well settled is the rule that a law has no retroactive effect unless it is provided for by the law itself and all presumptions are in favor of the correctness of tax assessment.

We rule for the respondent.

Section 118 of the National Internal Revenue Code of 1997 (hereafter "*NIRC of 1997*"), *as amended,* provides:

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"SEC. 118. Percentage Tax on International Carriers. –

(A) International air carriers doing business in the Philippines shall pay a tax of three percent (3%) of their quarterly gross receipts.

xxx xxx."

Pursuant to the above provision, international air carriers doing business in the Philippines shall pay a tax of three percent (3%) of their quarterly gross receipts.

Under *Section 5 of Revenue Regulations No. 6-66*, otherwise known as "Regulations for Percentage Tax Purposes on International Air Transport Services", dated December 1, 1966, gross receipts of international air carriers doing business in the Philippines, is determined as follows:

> "SEC. 5. Gross receipts, determined. – The total amount of gross receipts derived from passage of persons, excess baggage, freight or cargo, including mail cargo, originating from the Philippines in a continuous and uninterrupted flight, irrespective of the place of sale or issue and the place of payment of the ticket, shall be subject to the common carrier's percentage tax (Sec. 192, Tax Code). The gross receipts shall be computed on the cost of the single one way fare as approved by Civil Aeronautics Board on the continuous and uninterrupted flight of passengers, excess baggage, freight or cargo, including mail, as reflected on the plane manifest of the carrier.
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> xxx xxx."

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Revenue Regulations No. 6-66 is explicit in providing that gross receipt shall be computed on the cost of the single one way fare as approved by Civil Aeronautics Board on the continuous and uninterrupted flight of passengers, excess baggage, freight or cargo, including mail, as reflected on the plane manifest of the carrier. Since the above provision is explicit in its terms, no other meaning can be given to it. It is a jurisprudential rule in statutory construction that if a statute is clear, plain and free from ambiguity, it must be given its literal meaning and applied without attempted interpretation. *Verba legis non est recedendum (Del Mar vs. Philippine Amusement and Gaming Corporation, 358 SCRA 781)*.

In a long line of cases, gross receipts has been defined by the Supreme Court to mean as the total, as opposed to the net income.

In *China Banking Corporation vs. Court of Appeals* (*403 SCRA 647-649*), the Supreme Court defined "gross receipts" as follows:

> "As commonly understood, the term 'gross receipts' means the entire receipts without any deduction. Deducting any amount from the gross receipts changes the result, and the meaning, to net receipts. Any deduction from gross receipts is inconsistent with a law that mandates a tax on gross receipts, unless the law itself makes an exception. As explained by the Supreme Court of Pennsylvania in *Commonwealth of Pennsylvania v. Koppers Company, Inc.*,

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> Highly refined and technical tax concepts have been developed by the accountant and legal technician primarily because of the impact of federal income tax legislation. However, this in no way should affect or control the normal usage of words in the construction of our statutes; and we see nothing that would require us not to include the proceeds here in question in the gross receipts allocation unless statutorily such inclusion is prohibited. *Under the ordinary basic methods of handling accounts, the term gross receipts, in the absence of any statutory definition of the term, must be taken to include the whole total gross receipts without any deductions,* x x x [Citations omitted] (Emphasis supplied)

Likewise, in *Laclede Gas Co. v. City of St. Louis,* the Supreme Court of Missouri held:

> The word 'gross' appearing in the term 'gross receipts,' as used in the ordinance, must have been and was there used as the direct antithesis of the word 'net'. *In its usual and ordinary meaning 'gross receipts' of a business is the whole and entire amount of the receipts without deduction, xxx* On the contrary 'net receipts' usually are the receipts which remain after deductions are made from the gross amount thereof of the expenses and cost of doing business, including fixed charges and depreciation. Gross receipts become net receipts after certain proper deductions are made from the gross. And in the use of the words 'gross receipts', the instant ordinance, of course, precluded plaintiff from first deducting its costs and expenses of doing business, etc., in arriving at the higher base figure upon which it must pay the 5% tax under this ordinance. (Emphasis supplied)

Absent a statutory definition, the term 'gross receipts' is understood in its plain and ordinary meaning. Words in a statute are taken in their usual and familiar signification, with due regard to their general and popular use. The Supreme Court of Hawaii held in *Bishop Trust Company v. Burns* that –

> x x x It is fundamental that in construing or interpreting a statute, in order to ascertain the intent of the legislature, the language used therein is to be taken in the generally accepted and usual sense. Courts will presume that the words in a statute were used to express their meaning in common usage. *This principle is equally applicable to a tax statute.* [Citations omitted] (Emphasis supplied).

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> The Tax Code does not also define the term 'gross receipts' for purposes of the common carriers' tax, the international carriers' tax, the tax on radio and television franchises, and the tax on finance companies. All these business taxes under Title V of the Tax Code are based on gross receipts. Despite the absence of a statutory definition, these taxes have been collected in this country for over half a century on the general and common understanding that they are based on all receipts without any deduction."

There is a policy objective why no deductions, exemptions or exclusions are normally allowed in a gross receipts tax. The gross receipts tax, as opposed to the income tax, was devised to maintain simplicity in tax collection and to assure a steady source of state revenue even during periods of economic slowdown. Such a policy frowns upon erosion of the tax base. Deductions, exemptions or exclusions complicate the tax system and lessen the tax collection. By its nature, a gross receipts tax applies to the entire receipts without any deduction, exemption or exclusion, unless the law clearly provides otherwise *(China Banking Corporation vs. Court of Appeals, 403 SCRA 652-653)*.

From the above provisions, it is evident that gross receipt is the whole amount received without any deduction.

However, in the case at bar, petitioner admitted that it did not include in its gross receipts the special commissions on passengers and

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cargo (*Exhibit "R" and TSN dated September 28, 2005, pp. 4-5)*. The said commissions on passengers and cargo are the difference between the amounts actually received, collected or realized by the petitioner and the price of the ticket fixed by the CAB/IATA, which amounts appear on the flight coupon and passenger's coupon. Evidently, petitioner's treatment of the special commissions on passengers and cargo is contrary to the above-mentioned jurisprudence and revenue regulations.

Petitioner's argument that the CAB/IATA fixed fare are merely notional or imaginary revenue as the same is not the actual amount received, realized or collected by the petitioner is devoid of merit. The CAB/IATA amount is not notional, if only petitioner had strictly imposed the same. The fact that the amount received by the petitioner is less than the amount appearing on the face value of the ticket is not sufficient to justify petitioner's claim that the definition of the gross receipt under *Section 118 (A) of the NIRC of 1997, as amended*, be changed to amount actually received, realized or collected. The amount appearing on the face value of the ticket can be realized had the petitioner chosen to. But it did not. Hence, it cannot seek justification from its own discretionary action.

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It is a fundamental doctrine in taxation that taxes are the lifeblood of the government, hence their prompt and certain availability is an imperious need *(Commissioner of Internal Revenue vs. Pineda, 21 SCRA 110; Vera vs. Fernandez, 89 SCRA 204; Atlas Consolidated Mining and Development Corp. vs. Commissioner of Internal Revenue, 102 SCRA 262).*

It bears repeating that it is incumbent upon the petitioner to prove that the said special commissions on passengers and cargo are not subject to taxation. It is too settled a rule in this jurisdiction, as to dispense with the need for citations, that laws granting exemption from tax are construed *strictissimi juris* against the taxpayer and liberally in favor of the taxing power. Taxation is the rule and exemption is the exception. The burden of proof rests upon the party claiming exemption to prove that it is in fact covered by the exemption so claimed, which onus petitioner has failed to discharge *(Commissioner of Internal Revenue vs. Mitsubishi Metal Corporation, 181 SCRA 223-224).*

In the instant case, petitioner failed to establish that special commission on passengers and cargo are not subject to percentage tax. Petitioner had grasped at straws and espoused novel theories in an attempt to escape its tax liability, but all to no avail, as the facts of the case afford them little support. In the end, the sovereign right of the State

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to tax its subjects must prevail *(Northern Lines, Inc. vs. Court of Appeals, 163 SCRA 38)*.

It cannot be gainsaid by the petitioner that its computation of the common carrier tax based on "net net rate" is the correct basis considering that it is in accord with the computation prescribed by *Revenue Regulations No. 15-2002.* It must be emphasized that *Revenue Regulations No. 15-2002* took effect only on October 26, 2002, whereas, as admitted by the petitioner in its Memorandum dated October 10, 2005, the amended tax returns were filed on October 25, 2001, or one (1) year and one (1) day after. Well settled is the rule that laws, as well as rules and regulations, cannot be given retroactive application. Accordingly, *Revenue Regulations No. 15-2002* cannot be made applicable in determining petitioner's common carriers tax for the 1st, 2nd and 4th quarters of 2000.

The respondent, therefore, is correct in adding back the special commission on passengers and special commission on cargo to the gross receipt per return of the petitioner in order to come up with the gross receipts, under *Section 118 (A) of the NIRC of 1997, as amended.*

For all the foregoing, the Court finds that the appealed decision is not flawed by reversible error but, on the contrary, conforms to the

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evidence of record and the applicable laws and jurisprudence. We, therefore, affirm the same.

However, pursuant to *Section 248 of the NIRC of 1997, as amended,* a penalty equivalent to twenty five percent (25%) of the amount due shall be imposed. Likewise, pursuant to *Section 249(B) of the same Code*, the twenty percent (20%) deficiency interest originally computed by respondent should be adjusted to cover the period until July 8, 2004 (petitioner's date of receipt of respondent's decision on the protest). Accordingly, petitioner is liable to pay the respondent the amount of P41,117,734.01 representing deficiency percentage taxes for the first, second and fourth quarters of taxable year 2000, computed as follows:

Gross receipts per return			P 753,210,516.78
Add:	Adjustments		
	1. Special commission on passengers	P 804,280,176.93	
	2. Special commission on cargo originally reported in USD	116,185,504.63	
	3. Special commission on cargo originally reported in PHP	91,403,076.47	
	Total Adjustment		P1,011,868,758.03
Gross receipts per audit			P1,765,079,274.81
Percentage tax due per audit			P 52,952,378.24
Less:	Amount paid per return		32,588,593.00
Deficiency basic percentage tax			P 20,363,785.24
Add:	25% Surcharge		5,090,946.31
	20% Interest up to 07-08-04		15,663,002.45
Total Amount Due			P 41,117,734.01

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In addition, petitioner is liable to pay 20% delinquency interest on the total amount due of P41,117,734.01 computed from July 8, 2004 until full payment thereof, pursuant to *Section 249(C) of the NIRC of 1997, as amended.*

WHEREFORE, premises considered, the present Petition for Review is hereby **DISMISSED** for lack of merit. With the above modification, the decision dated June 30, 2004 of the Deputy Commissioner, OIC, Large Taxpayers Service of the Bureau of Internal Revenue, is hereby **AFFIRMED** in all other respects. Accordingly, petitioner is ordered to pay the respondent the total amount of Forty One Million One Hundred Seventeen Thousand Seven Hundred Thirty Four and 01/100 Pesos (P41,117,734.01), plus twenty percent (20%) delinquency interest thereon computed from July 8, 2004 until full payment thereof, pursuant to *Section 249(C) of the NIRC of 1997, as amended.*

SO ORDERED.

OLGA PALANCA-ENRIQUEZ
Associate Justice

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WE CONCUR:

(Inhibited)
JUANITO C. CASTAÑEDA, JR.
Associate Justice

ERLINDA P. UY
Associate Justice

ATTESTATION

I attest that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

JUANITO C. CASTAÑEDA, JR.
Associate Justice
Chairperson, Second Division

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, and the Division Chairperson's Attestation, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.

ERNESTO D. ACOSTA
Presiding Justice

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