Library

ARTHUR HENDERSON,
Petitioner,

- versus - C.T.A. CASE NO. 237

COLLECTOR OF INTERNAL REVENUE,
Respondent.

x- - - - - - - - - - - - -x June 26, 1957

D E C I S I O N

This is a petition seeking the refund of or the credit to any future tax liability of petitioner the sum of ₱7,858.51 allegedly paid in excess of the income tax due during the tax years 1948 to 1952.

The petitioner, Arthur Henderson, is the president of the American International Underwriters for the Philippines, Inc., a domestic corporation engaged in insurance business. For the tax years 1948 to 1952, inclusive, petitioner filed his income tax returns on the basis of which he paid the corresponding income taxes. Subsequently, on July 14, 1955, respondent determined against petitioner the following deficiency income tax.

1948 - - - - - - - - - - -	₱4,370.24
1949 - - - - - - - - - - -	3,662.23
1950 - - - - - - - - - - -	3,023.00
1951 - - - - - - - - - - -	2,058.00
1952 - - - - - - - - - - -	4,108.00

	Income Items determined by Respondent as Taxable	
	Disputed by Petitioner	Conceded Taxable by Petitioner
1948		
Rental Expense ----	₱7,200.00	
Bonus, 1947 received 1948 ------		₱6,500.00
Managers residential expense -----	1,400.00	
Managers residential expense -----	1,849.32	
1949		
Capital loss (not deductible) ------		3,248.84
Bonus -------------		3,857.75
Rental from A.I.U.-	1,800.00	
Subsistence Allowance ------------	6,051.50	
1950		
Rent, electricity, water allowance --	8,373.73	
1951		
House rental allowance ----------	5,782.91	
1952		
Income taxes paid Co. --------------		600.00
Travel allowances--	3,247.40	
Allowance for rent-	7,044.67	

However, prior to the above final determination, petitioner had paid the aforesaid deficiencies on February 27, 1954, under separate official receipts but, on the basis of the deficiencies above determined by respondent, petitioner had in fact overpaid the income tax for 1948 by the sum of ₱56.00 which respondent concedes to be refundable. However, petitioner was not satisfied with the above decision of respondent, hence, this appeal.

Petitioner, according to evidence, entertained officials, guests and customers of his employer-corporation, in apartments furnished by the latter and successively occupied by him as president thereof. In 1952, petitioner's wife, Mrs. Marie Henderson, upon request of Mr. C. V. Starr, chairman of the parent corporation of the American International Underwriters for the Philippines, Inc., undertook a trip to New York in connection with the purchase of a lot in Dewey Boulevard by petitioner's employer-corporation, the construction of a building thereon, the drawing of prospectus and plans for said building, and other related matters.

On the theory that all aforesaid allowances recorded as such in the books of the employer-corporation were compensation or income in addition to petitioner's basic annual salary of ₱30,000.00, respondent determined against petitioner deficiency income taxes, which the latter paid and now seeks to regain as refund or tax credit.

The issues involved in this case are as follows:

1. Whether or not the rentals of the quarters furnished to petitioner by his employer-corporation are taxable as petitioner's income; and

2. Whether or not the allowance given by said employer-corporation to petitioner's wife is taxable as income of petitioner.

Relative to the first issue, petitioner contends that the so-called rental and subsistence allowances furnished him were for the convenience, use and benefit of his employer-corporation from which no taxable income arises and that even if otherwise, only the amount of ₱4,800.00 for each tax year is taxable as income, the same being the value to him of such quarters and meals or the amount just sufficient to secure an apartment with utilities commensurate to his own personal and family needs and his own standard of living. Upon the other hand, respondent maintains that the total amount of the quarters and subsistence allowances is taxable as compensation for petitioner's services to the employer-corporation.

The basic law upon which respondent's deficiency assessments are predicated is found in Section 29 (a) which provides:

> "SEC. 29. Gross income. - (a) General definition. - 'Gross income' includes gains, profits, and income derived from salaries, wages, or compensation for personal service of whatever kind and in whatever form paid, or from professions, vocations, trades, businesses, commerce, sales, or dealings in property, whether real or personal, growing out of the ownership or use of or interest in such property; also from interests, rents, dividends, securities, or the transactions of any business carried on for gain or profit, or gains, profits, and income derived from any source whatever."

Pursuant to Sections 4 and 338 of the National Internal Revenue Code, the Secretary of Finance upon recommendation of the Collector of Internal Revenue, promulgated Revenue Regulations No. 2, Section 41 of which implemented the afore-quoted codal provisions and which reads:

> "Sec. 41. x x x. When living quarters are furnished in addition to cash salary, the rental value of such quarters should be reported as income."

However, the foregoing regulation should be read together with Section 2 (a) of Revenue Regulations No. V-8, which implements the statutory provisions affecting the withholding of income taxes on wages. The pertinent portion of the latter regulation reads as follows:

> "Sec. 2 (a) In general x x x
> x x x x
>
> "x x x x x
>
> "x x x. If a person receives as remuneration for services rendered a salary and in addition thereto living quarters or meals, the value to such person of the quarters and meals so furnished shall be added to the remuneration otherwise paid for the purpose of determining the amount of wages subject to withholding. If, however, living quarters or meals are furnished to an employee for the convenience of the employer, the value thereof need not be included as wages subject to withholding."

The legal question relative to the taxability or non-taxability of the value of quarters and meals furnished to an employee by his employer comes to us at first instance. There being no local jurisprudential authority or pronouncement on this question, we are constrained to look to American judicial decisions and administrative interpretations treating of this particular receipt, considering that Section 29 (a) of our Tax Code was lifted and adopted bodily from Section 22 (a) of the U. S. Revenue Act of 1938. When the legislative history of a law such as Section 29 (a) of our Tax Code shows it to be of American origin, American precedents are in point in determining its construction. (Mitsui Bussan Kaisha v. Hongkong & Shanghai Bank, 36 Phil. 27.)

The prevailing judicial opinion is to the effect that generally the value to the employee of living quarters and meals furnished in addition to salary, constitutes income subject to tax. However, where the quarters and meals are furnished for the convenience of the employer, the ratable value of the same need not be added to the salary or cash compensation of the employee for income tax purposes.] (Briggs & Briggs v. U.S., Par. 72,319 P-H Fed. 1956; Benaglia & Benaglia v. Commissioner, 36 BTA 838; Ellis & Ellis v. Commissioner, 6 TC 138; Hazel W. Carmichael v. Commissioner, (1948) 7 TCM 278; Moulder & Moulder v. Commissioner Par. 72,442 P-H Fed. 1956.) To the same tenor and effect is Section 29.22 (a) 3 of U.S. Treasury Regulation No. 111 (U.S. Income Tax Regulations).

The "convenience of the employer rule," as qualifying the value of quarters and meals to nontaxable item and therefore excludible from the taxable income of the employee, has been interpreted thus:

> "'Convenience of the employer' has been generally heretofore interpreted as meaning not merely the request, direction or pleasure of the employer but that the inherent nature of the employment require that the employee occupy premises supplied by the employer, in which the occupation of the designated quarters becomes an inherent part of the services performed. Under such circumstances, the rental value of the quarters occupied is not included in the employee's taxable income. However, if living in the supplied quarters is not an essential element of the taxpayer's employment, even though such occupancy may be requested by the employer, and convenient to the employer, the rental value of the occupied quarters becomes a part of the employee's taxable income." (Carmichael vs. Commissioner, supra.)

Based upon these judicial decisions and administrative regulations, and the factual evidance adduced during the hearing of this case, we find that the inherent nature of petitioner's employment as president of the American International Underwriters of the Philippines, Inc. does not require him to occupy the apartments supplied by his employer-corporation. While petitioner, as such president, had to entertain and in fact entertained officials, guests and customers of his employer, nevertheless, we do not see how his living in the supplied quarters could be an essential element of his employment. He could have entertained in hotels or other quarters rented out to the public without rendering improper and inefficient the performance of his presidential duty of entertaining. Moreover, entertaining his employer's officials, guests and customers is not the predominant occupation of petitioner as president. We believe that it is more for petitioner's convenience than his employer's to dwell in the furnished apartments. Consequently, the rental and subsistence allowances given to him as part of the compensation for his employment and as such constituted taxable income.

The cases cited by petitioner are distinguishable from and inapplicable to the instant case upon the fact that petitioners herein worked under conditions which require them, as part of their employment and for the convenience of their employers, to be on duty more or less continuously in the premises of their employment. In the case at bar, we do not find the same situation.

Petitioner argues, in addendum, that inasmuch as there was at least a tacit approval by respondent's predecessor-in-office of the deduction of rental and utility allowances, it would be unjust and inequitable if the ruling as to the taxability of these allowances, which was made in 1955, should be applied retroactively to the tax years in question. Granting arguendo that respondent's predecessor opined that the rental and utility allowances were deductible items, such opinion could not bind this Court nor could it control the operation of our income tax law. And besides, the "construction of a statute by those administering it is not binding on them or to their successors if thereafter they become satisfied that a different construction should be given." (Association of Clerical Employees v. Brotherhood of R. & S. S. Clerks (CCA 7th) 85 F 2d 1952, 109 ALR 345 cited in Hilado v. Collector, G.R. No. L-9408, October 31, 1956.)

We agree however with petitioner's view that the taxable income is the ratable value to him of the quarters furnished by his employer in accord with the regulations and tax jurisprudence cited above. From the uncontroverted evidence, we find that the quarters provided by petitioner's employer was the choice of the latter and that the apartment (consisting of a large sala, dining room, 3 bedrooms, 2 bathrooms, kitchen and a large porch) was large for petitioner's family (himself and his wife only) and far beyond his requirements. Petitioner testified that given his own choice, he would have provided for a less expensive residence. Considering the size of petitioner's family and the character of his employment and financial position, we believe that quarters with a monthly rental cost of ₱400.00 (or ₱4,800.00 annually) within the vicinity of Manila would be reasonably sufficient for petitioner's needs and would represent the equivalent value to him of the quarters provided by his employer and which amount would constitute taxable income to petitioner.

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In respect of the second issue, petitioner asserts that his wife, though not a regular employee of the American International Underwriters for the Philippines, Inc., may be considered as a special agent or employee of the latter corporation and therefore the expense for her travel could not be regarded as part of his taxable income nor of his wife. It is the contrary contention of respondent, that the travelling expense of Mrs. Henderson, formed part of the allowances given to petitioner by his employer in consideration of his high position and valuable services and therefore taxable as petitioner's income. Upon the finding that Mrs. Henderson, at the behest of the chairman of the parent corporation of petitioner's employer, made the trip to New York in connection with the business affairs of the American International Underwriters for the Philippines, Inc. the same constituted an expense of the latter for which no benefit was retained by petitioner. Petitioner herein has not gained nor profited from the travel allowance furnished to his wife. And if granting that the same was income of petitioner's wife, the fact that the same amount was incurred by her for travel in pursuance of the nature of the services rendered, she was entitled to the deduction thereof as travel expenses. The result would be the same--the income would be offset by the deduction and does not affect the taxable net income. It follows that he cannot be legally taxed therefore.

On the basis of the items admitted by petitioner as taxable which we have earlier enumerated and on the items we have determined to be taxable, a recomputation of the income tax liability of petitioner for the years in question will show the following amounts as refundable:

Year	Amount Due as Deficiency	Total Amount Paid	Amount to be Refunded
1948	₱3,698.24	₱4,426.24	₱ 728.00
1949	3,092.90	3,662.23	569.33
1950	1,729.00	3,023.00	1,294.00
1951	1,704.00	2,058.00	354.00
1952	1,944.00	4,108.00	2,164.00

TOTAL AMOUNT TO BE REFUNDED - ₱5,109.33

WHEREFORE, the decision on appeal is modified and respondent Collector of Internal Revenue is hereby ordered to refund to petitioner Arthur Henderson the amount of ₱5,109.33, with interest from February 27, 1954, without pronouncement as to costs.

SO ORDERED.

Manila, Philippines, June 26, 1957.

MARIANO NABLE
Presiding Judge

I CONCUR:

AUGUSTO M. LUCIANO
Associate Judge

I reserve my vote.

ROMAN M. UMALI
Associate Judge