REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST NATIONAL CITY BANK,
Petitioner,

- versus - C.T.A. CASE NO. 1531

COMMISSIONER OF INTERNAL
REVENUE,
Respondent.

8/30/77

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D E C I S I O N

This pertains to a claim for refund of the total amount of ₱21,440.00 corresponding to the withholding tax on premiums paid to a non-resident insurance company abroad, having no office, and not licensed to engage in trade or business in the Philippines covering the taxable period from 1954 to 1957.

The facts which are pertinent and material to the disposition of this case are simple and undisputed.

Petitioner is a resident foreign corporation engaged in the banking business in the Philippines. Its principal or head office, the First City Bank of New York, is located in New York, U.S.A. Petitioner constitutes the Philippine branch of the National City Bank of New York, U.S.A. For the taxable period from 1954 to 1957, inclusive, its head office in New York City, U.S.A. insured the properties used by petitioner in connection with the pursuit of its business in the Philippines, with different foreign insurance companies abroad, without offices and were not engaged in insurance business in the Philippines. The premiums on insurance secured covering the said properties of petitioner were all paid by the latter's head office in New York City, but which were subsequently charged by the National City Bank of New York to the expense account of petitioner. Petitioner did not deny that under the said circumstances, it was deemed to have itself paid the premiums to the different non-resident foreign insurance company without any office or place of business and not engaged in trade or business in the Philippines.

On the basis of the above findings the Deputy Commissioner of Internal Revenue issued an assessment against petitioner for withholding tax in the aggregate amount of ₱31,059.40, pursuant to Section 54, in relation to Section 53 of the Tax Code for the years 1954, 1955, 1956 and 1957, inclusive of 25% surcharge and 1/2 % interest under Section 51(e) of the Tax Code, and compromise penalty for failure to file withholding tax returns (Exh. A, Folder I, pp. 74-75, BIR rec.) portions of which is quoted hereunder:

I have the honor to advise that upon investigation, it was ascertained that, through your New York Office, you insured your properties in the Philippines with the different insurance companies abroad. The insurance premiums were paid in advance by your Home Office and then you were charged with said expense. It appearing that the recipients of such insurance premiums are non-resident foreign corporation not engaged in trade or business in the Philippines and having no Office or place of business therein, the payment of such premiums by your Home Office is considred, under the circumstances, as your payment, and for that matter, you are liable to the withholding tax embodied in Section 54 of the Tax Code, in relation to Section 53 thereof. Accordingly there are due from you withholding taxes in the aggregate amount of ₱31,059.40, details of which are as follows:

1954

Total premiums paid - - - - - - - - - - - - - -	₱13,935.65
Withholding tax at 24% - - - - - - - - - - - - -	3,345.00
Add: 25% surcharge (Sec. 72) - - - - - - - -	836.25
1/2% monthly interest from 6-20-59 to 6-20-62 - - - - - - - - - - - -	602.10
Compromise for failure to file a return - - - - - - - - - - - - - - - -	100.00
Total Amount Due - - - - - - - - - - - - - - -	₱4,883.35

1955

Total premiums paid - - - - - - - - - - - - - -	₱60,699.96
Withholding tax at 24% - - - - - - - - - - - -	14,368.00
Add: 25% surcharge - - - - - - - - - - - - -	3,642.00
1/2% monthly interest from 6-20-59 to 6-20-62 - - - - - - - - - -	2,622.24
Compromise for failure to file a return - - - - - - - - - - - -	100.00
Total Amount Due - - - - - - - - - - - - -	₱20,932.24

1957

Total premiums paid - - - - - - - --	P6,097.82
Withholding tax at 24% - - - - - - -	1,463.00
Add: 25% surcharge (Sec. 72) - - -	365.95
1/2% monthly interest from 6-20-59 to 6-20-62 - - - - - - - - - - -	263.34
Compromise for failure to file a return - - - - - - - -	100.00
Total Amount Due - - - - - - - - - -	P2,192.29

The 1/2% monthly interest has been imposed, pursuant to the provisions of Section 51(d) of the Tax Code, as amended by Republic Act No. 2343 which took effect on June 20, 1959 and as implemented by General Circular No. V-318 of this Office dated March 7, 1960.

In a letter dated August 27, 1962, petitioner protested the aforesaid assessment on the ground, among others, that the premiums paid were not subject to withholding tax because the premiums do not constitute fixed and determinable annual or periodical gains, profits, and income. (Folder I, pp. 83-85, BIR rec.)

In the meantime that the aforesaid protest was pending before the Commissioner of Internal Revenue, petitioner paid on November 7, 1962 the amounts of P3,345.00, P14,568.00, P2,064.00 and P1,463.00 representing the assessment for withholding tax for the years 1954, 1955, 1956 and 1957, exclusive of penalties, or a total of P21,440.00, and evidenced by Revenue Official Receipt No. C458386 dated November 7, 1962, and claimed in a letter dated November 8, 1962 for refund of the said amounts. (Exhs. B & B-1, Folder I, pp. 96-98, BIR rec.)

Acting on petitioner's protest and claim for refund respondent sent a letter dated July 14, 1965 to the former denying said protest and claim for refund in the amount of ₱21,440.00.

Hence, petitioner appealed.

During the pendency of this appeal, respondent issued a subsequent assessment (Exhs. F & F-1, Folder II, p. 159, BIR rec.) by withdrawing from the original assessment the total sum of ₱5,360.20, representing 25% surcharge, and ₱400.00 compromise penalties for the years in question.

Accordingly, the only two (2) issues presented for determination by this Court are, viz:

(1) Whether or not petitioner is entitled to the refund of the total amount of ₱21,440.00 corresponding to the basic withholding tax paid for the years 1954, 1955, 1956 and 1957; and

(2) Whether or not petitioner is still liable to the 1/2% monthly interest on the basic assessment in the amount of ₱3,359.20 in accordance with Section 51(e) of the Tax Code.

We will now come to the first issue.

Petitioner contends that it is not liable for the withholding tax on the ground that the "premiums" paid by it are subject to withholding tax only if said premiums constituted a fixed and determinable annual or periodical gains, profits and income; that not all the premiums received by insurance companies are considered fixed and determinable annual or periodical income; that it is impossible to determine the amount of gain to the recipient insurance company when paying the premiums because such insurance business may result in gain or loss, depending on the amount of claims that it may be required to pay under its contracts; and that in the United States, gross receipts of foreign insurance companies are not subject to withholding tax, a special stamp tax is paid on the gross premiums because it is considered improper to tax gross premiums; that in the Philippines such premiums are subject to 3% tax under Section 255 of the National Internal Revenue Code; and that the Bureau of Internal Revenue in its ruling (BIR Ruling No. 62-0023, June 25, 1962) held that the premiums paid to insurers or non-resident foreign insurance companies not engaged in business in the Philippines are subject to withholding tax reversing a previous BIR ruling, and that it is contended that said BIR Ruling No. 620023 cannot be retroactively applied on petitioner.

On the other hand, respondent maintains that it is not entitled to the refund of the amount claimed because under Section 53 of the Tax Code, it clearly makes the "premium" income of foreign insurance companies subject to withholding tax, and this conclusion finds conformity to the decision promulgated by this Court, and affirmed by the Supreme Court, in the case of Alexander Howden & Co. vs. Comm. of Int. Revenue, Manila Civil Case No. 22848, G.R. L-19392, April 14, 1965; 13 SCRA 601, 603-607).

The contention of petitioner is that the premiums paid to non-resident foreign insurance companies are not income which are fixed or determinable annual or periodical gains is without merit. Petitioner, it seems, would like to convey to us the proposition that since premiums are actually money paid by the insured that will cover the payment of claims for insurance of the risk insured against, it is not possible therefore to determine what portion of this premium constitute "income" for tax purposes. While this contention may not necessarily be rejected outright, it must be borne in mind that Section 53 of the Tax Code which provides the withholding of certain items of income enumerated therein, one of which is the particular item of "premiums" in question, are not conditioned, for purposes of withholding tax, to their being fixed, or determinable annual and periodical gains. The fact that the premiums alone are remittable abroad makes them subject to withholding tax. At any rate, it cannot be denied that "premiums" received even by non-resident foreign corporation, such as the foreign insurance companies in question are considered income for tax purposes under the previsions of Section 24(b) (1) of the National Internal Revenue Code. This being so, "premiums" provided for in Section 53(b) of the same Code should equally be considered income for withholding tax purposes since this falls within the class of income contemplated by the Code. While the basis of objection in subjecting the "premium" paid to the non-resident foreign insurance companies to tax is not without reason, the law however is explicit in providing that one of the items of income subject to withholding is "premiums". To what may these items of "premiums" then refer if not to the premiums paid under insurance contracts to non-resident foreign insurance companies abroad? At any rate, this Court had the occasion to hold, under substantially the same facts and issue as in this case, that "premiums" paid to foreign insurance companies on their reinsurance contracts are subject to withholding tax. This Court sees no reason to deviate from the ruling of the Supreme Court in the case of Alexander Howden & Co. vs. Commissioner of Internal Revenue, cited above, the pertinent portions of which reads:

> Plaintiffs have appealed, thereby squarely raising the following issues: (1) Are portions of premiums earned from insruances locally underwritten by a domestic corporation, ceded to and received by non-resident foreign reinsurance companies, thru a non-resident foreign insurance broker, pursuant to reinsurance contracts signed by the reinsurers abroad but signed by the domestic corporation in the Philippines, subject to income tax or not? (2) If subject thereto, may or may not the income tax on reinsurance premiums be withheld pursuant to Sections 53 and 54 of the National Internal Revenue Code?
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> Section 24 of the National Internal Revenue Code subjects to tax a non-resident foreign corporation' income from sources within the Philippines. The first issue therefore hinges on whether or not the reinsurance premiums in question camd from sources within the Philippines.
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> Appellants would impress upon this Court that the reinsurance premiums came from sources outside the Philippines, for these reasons: (1) The contracts of reinsurance, out of which the reinsurance premiums were earned, were prepared and signed abroad, so that their situs lies outside the Philippines; (2) The reinsurers, not being engaged in business in the Philippines, received the reinsurance premiums as income from their business conducted in England and, as such, taxable in England; and (3) Section 37 of the Tax Code, enumerating what are income from sources within the Philippines, does not include reinsurance premiums.
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> The source of an income is the property, activity or service that produced the income.[1] The reinsurance premiums remitted to appellants by virtue of the

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[1] Mertens, Jr., Jacob, Law on Federal Income Taxation, Vol. 8, Section 45.27.

reinsurance contracts, accordingly, had for their source the undertaking to indemnify Commonwealth Insurance Co. against liability. Said undertaking is the activity that produced the re-insurance premiums, and the same took place in the Philippines. In the first place, the reinsured, the liabilities insured and the risks originally underwritten by Commonwealth Insurance Co., upon which the reinsurance premiums and indemnity were based, were all situated in the Philippines. Secondly, contrary to appellants' view, the reinsurance contracts were perfected in the Philippines, for Commonwealth Insurance Co. signed them last in Manila. The American cases cited are inapplicable to this case because in all of them the reinsurance contracts were signed outside the jurisdiction of the taxing State. And, thirdly, the parties to the reinsurance contracts in question evidently intended Philippines law to govern. Article II thereof provided for arbitration in Manila, according to the laws of the Philippines, of any dispute arising between the parties in regard to the interpretation of said contracts or rights in respect of any transaction involved. Furthermore, the contracts provided for the use of Philippine currency as the medium of exchange and for the payment of Philippine taxes.

Appellants should not confuse activity that creates income with business in the course of which an income is realized. An activity may consist of a single act; while business implies continuity of transactions.[2] An income may be earned by a corporation in the Philippines although such corporation conducts all its businesses abroad. Precisely, Section 24 of the Tax Code does not require a foreign corporation to be engaged in business in the Philippines in order for its income from sources within the Philippines to be taxable. It subjects foreign corporations not doing business in the Philippines to tax for income from sources within the Philippines. If by source of income is meant the business of the taxpayer, foreign corporations not engaged in business in the Philippines would be exempt from taxation on their income from sources within the Philippines.

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[2] Mentholatum Co. vs. Mangaliman, 40 O.G. 1838.

Furthermore, as used in our income tax law, "income" refers to the flow of wealth.[3] Such flow, in the instant case, proceeded from the Philippines. Such income enjoyed the protection of the Philippine Government. As wealth flowing from within the taxing jurisidction of the Philippines and in consideration for protection accorded it by the Philippines, said income should properly share the burden of maintaining the government.

Appellants further contend that reinsurance premiums not being among those mentioned in Section 37 of the Tax Code as income from sources within the Philippines, the same should not be treated as such. Section 37, however, is not an all-inclusive enumeration. It states that "the following items of gross income shall be treated as gross income from sources within the Philippines." It does not state or imply that an income not listed therein is necessarily from sources outside the Philippines.

As to appellants' contention that reinsurance premiums constitute "gross receipts" instead of "gross income", not subject to income tax, suffice it to say that, as correctly observed by the Court of Tax Appeals, "gross receipts" of amounts that do not constitute return of capital, such as reinsurance premiums, are part of the gross income of a taxpayer. At any rate, the tax actually collected in this case was computed not on the basis of gross premium receipts but on the net premium income, that is, after deducting general expenses, payment of policies and taxes.

The reinsurance premiums in question being taxable, we turn to the issue whether or not they are subject to withholding tax under Section 54 in relation to Section 53 of the Tax Code.

Subsection (b) of Section 53 subjects to withholding tax the following: interest, dividends, rents, salaries, wages, premiums, annuities, compensations, remunerations, emoluments, or other fixed or determinable annual or periodical gains, profits, and income of any non-resident alien individual not engaged in trade or business within the Philippines

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[3] Madrigal and Paterno v. Rafferty and Concepcion, 38, Phil. 414, 418.

and not having any office or place of business therein. Section 54, by reference, applies this provision to foreign corporations not engaged in trade or business in the Philippines.

Appellants maintain that reinsurance premiums are not "premiums" at all as contemplated by Subsection (b) of Section 53; that they are not within the scope of "other fixed or determinable annual or periodical gains, profits, and income"; that, therefore, they are not items of income subject to withholding tax.

The argument of appellants is that "premiums", as used in Section 53(b), is preceded by "rents, salaries, wages" and followed by "annuities, compensations, remunerations" which connote periodical income payable to the recipient on account of some investment or for personal services rendered. Premiums" should, therefore, in appellants' view, be given a meaning kindred to the other terms in the enumeration and be understood in its broadest sense as "a reward or recompense for some act done; a bonus; compensation for the use of money, a price for a loan; a sum in addition to interest."

We disagree with the foregoing proposition. Since Section 53 subjects to withholding tax various specified income, among them, "premiums the generic connotation of each and every word or phrase composing the enumeration in Subsection (b) thereof is income. Perforce, the word "premiums", which is neither qualified nor defined by the law itself, should mean income and should include all premiums constituting income, whether they be insurance or reinsurance premiums.

Assuming that reinsurance premiums are not within the word "premiums" in Section 53, still they may be classified as determinable and periodical income under the same provision of law. Section 199 of the Income Tax Regulations defines fixed, determinable, annual and periodical income:

Income is fixed when it is to be paid in amounts definitely predetermined. On the other hand, it is determinable whenever there is a basis of calculation by which the amount to be paid may be ascertained.

> "The income need not be paid annually if it is paid periodically; that is to say, from time to time, whether or not at regular intervals. That the length of time during which the payments are to be made may be increased or diminished in accordance with someone's will or with the happening of an event does not make the payments any the less determinable or periodical. x x x x."
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> Reinsurance premiums, therefore, are determinable and periodical income: determinable, because they can be calculated accurately on the basis of the reinsurance contracts; periodical, inasmuch as they were earned and remitted from time to time.

Moreover, the payments of "premiums", which, as aforesaid, has particular reference to insurance contracts are subject to withholding tax (Jacob Mertens, The Law of Federal Income Taxation, Vol. 8, 1957, Ed., Sec. 478.13, pp. 30-31) and the fact that such are payable in lump sum or in repeated payments is immaterial so long as such income (premiums) falls within that class of income contemplated by the Code. (Ibid., Cumm. Supp., p. 146.) Consequently, we are of the opinion and so hold that petitioner is liable for withholding tax on the premiums remitted to the foreign insurance companies, and therefore, the claim for judicial refund of the withholding tax on premium paid in the total sum of ₱21,440.00 to non-resident foreign insurance companies, therefore, is without merit.

Anent the issue of whether or not it is liable for the 1/2% interest, we hold in the affirmative. Interests are impossable upon the failure of the withholding agents to make the taxes available for use of

Government by paying or remitting said tax when they become due and payable. (Section 54, National Internal Revenue Code; see PH, Federal Taxes, Vol. 2, Sec. 19.228; Ibid., Sec. 18, 206.) It is obvious that since the government intends to make use of the money at certain periods, there is the corresponding duty of the payors of the premiums to withhold the tax under Section 53 of the same Code. Failure of petitioner to withhold the tax due and remit the same to the government makes it liable as debtor to the latter to the extent due, and 1/2% interest on such amounts perforce becomes due and payable as the interest payments are subject to the same conditions as to the withholding and payment of the income tax due. (Sec. 54, ibid.)

IN VIEW OF THE FOREGOING, the claims for refund in the amount of ₱21,440.00 paid as basic withholding tax for the years 1954 and 1957 is hereby denied.

Petitioner is hereby ordered to pay 1/2% interests in the total amount of ₱3,859.20 for the years 1954 to 1957 withih thirty (30) days from the date this decision becomes final. With costs against petitioner.

SO ORDERED.

Quezon City, August 30, 1977.

CONSTANTE C. ROAQUIN
Associate Judge

I CONCUR:

AMANTE FILLER
Acting Presiding Judge