REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

INSULAR LIFE ASSURANCE CO., LTD.,
Petitioner,

versus

C.T.A. CASE NO. 2336

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

x - - - - - - - - - - x

FILIPINAS LIFE ASSURANCE COMPANY,
Petitioner,

versus

C.T.A. CASE NO. 2337

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

x - - - - - - - - - - x

D E C I S I O N

These two (2) cases involve claims for refund of the sums of ₱122,362.97 and ₱9,934.23, representing the lending investor's fixed and percentage taxes paid in 1969 and 1970 by petitioners Insular Life Assurance Co., Ltd., and Filipinas Life Assurance Company. As these cases involve a common legal issue, they were jointly tried and submitted for decision.

Petitioners are duly registered domestic corporations engaged in life insurance business.

During the years 1969 and 1970, petitioners invested in mortgage loans from which they earned substantial amount of interest. They paid the aforesaid fixed and percentage taxes as lending investors, the claims for the refund of which were filed with respondent on June 9, 1970.

The sole issue to be resolved in these cases is whether or not petitioners are subject to the fixed and percentage taxes as lending investors under Sections 182(A)(3)(dd) and 195-A, respectively, in relation to Section 194(u) of the National Internal Revenue Code.

Petitioners contend that they are not subject to the fixed and percentage taxes imposed on lending investors because the investment of their funds in mortgage loans from which they earn interests is part of, incident to, and is necessarily connected with their insurance business, arguing in support thereof, firstly, that it is a settled principle in taxation that an activity is not subject to tax if it is carried on as an incident of a main business which is already taxed and that this settled principle is applicable to privilege taxes on business and occupation imposed by the Revenue Code; secondly, that life insurance companies are required to invest their funds so as to enable them to meet their obligations to their policyholders, and that this view is true in this jurisdiction as demonstrated by the fact that our Insurance Act requires that insurance companies set a reserve fund for the payment of their liabilities equal to the net aggregate value of their policies and to hold the same in secured investments, such as lending money at interest, subject to the approval and control of the Insurance Commissioner; thirdly, that they are already subject to the fixed tax as insurance companies and to the 3% tax on the insurance premiums collected under Sections 182(A)(3)(gg) and 255, respectively, of the Revenue Code; and lastly, that the introduction of subparagraph (gg) by Republic Act No. 6110 under Section 182(A)(3) strengthens the view that insurance companies are not liable as lending investors, apart from their liability as insurance companies, despite their lending activities.

On the other hand, respondent maintains that petitioners' contention is untenable because it allegedly suffers from two infirmities, namely: (1) the lending activity of petitioners for profit is a business separate and independent from life insurance as shown by their Amended Articles of Incorporation stating that one of their purposes is "To lend money on such terms as may seem expedient, subject to the requirements of law"; and (2) their lending activity is on a year round and continuous basis as evidenced by the huge number of loans granted and the substantial amount of interests derived therefrom.

We find ourselves in accord with petitioners' position that they are not taxable as lending investors.

Originally, a person who was engaged in lending money at interest was taxed as a money lender. [Sec. 1464(x), Rev. Adm. Code.] The term money lenders was defined as including "all persons who make a practice of lending money for themselves or others at interest." [Sec. 1465(v), id.] Under this law, an insurance company was not considered a money lender and was not taxable as such. To quote from an old B.I.R. ruling:

> "The lending of money at interest by insurance companies constitutes a necessary incident of their regular business. For this reason, insurance companies are not liable to tax as money lenders or real estate brokers for making or negoti-

> ating loans secured by real property. (Ruling, February 28, 1920; BIR 135.2.)" (The Internal Revenue Law, Annotated, 2nd ed., 1929, by B. L. Meer, page 143.)

The same rule has been applied to banks.

> "For making investments on salary loans, banks will not be required to pay the money lender's tax imposed by this subsection, for the reason that money lending is considered a mere incident of the banking business. [See Ruling No. 43, (October 8, 1926) 25 Off. Gaz. 1326.)" (The Internal Revenue Law, Annotated, id.)

The term "money lenders" was later changed to "lending investors" but the definition of the term remains the same. [See Sec. 1464(x), Rev. Adm. Code, as finally amended by Com. Act No. 215, and Sec. 1465(v) of the same Code, as finally amended by Act No. 3963.] The same law is embodied in the present National Internal Revenue Code (Com. Act No. 466) without change, except in the amount of the tax. [See Secs. 182(A)(3)(dd) and 194(u), National Internal Revenue Code.]

It is a well-settled rule that an administrative interpretation of a law which has been followed and applied for a long time, and thereafter the law is re-enacted without substantial change, such administrative interpretation is deemed to have received legislative approval. In short, the administrative interpretation becomes part of the law as it is presumed to carry out the legislative purpose.

> ". . . Of course, the rule does not operate to freeze a meaning which is in evident conflict with the clearly expressed legislative intent. Helvering vs. Hallock, 309 U.S. 106, 119-121, 60 S. Ct. 444, 84 L. Ed. 604, A.L.R. 1368. But where a statute is susceptible of the meaning placed upon it by Treasury ruling and Congress thereafter reenacts the provision without substantial change, such action is to some extent confirmatory that the ruling carries out the congressional purpose." (Mead Corporation vs. Commissioner of Internal Revenue, 116 F./2d/ 187, p. 194.)
>
> "The law, I believe, is now settled that substantial re-enactment of legislation which has been construed by Treasury regulations is at least strong evidence of legislative approval of such construction. It is presumed that Congress knew of the existing administrative interpretations of the statute. . ." (Cargill vs. United States, 46 F. Supp. 712, 716.)
>
> (Quoted with approval in Interprovincial Autobus Co., Inc. vs. Coll. of Int. Rev., 98 Phil. 290; see also Mindanao Bus Co. vs. Coll. of Int. Rev., 1 SCRA 538.)

The rule as regards re-enactment of statutes which have been interpreted and applied for a long time acquires more force in the instant case as the ruling of the Bureau of Internal Revenue cited above has been followed without interruption for more than half a century.

We have had occasion to express the same view. It has been held that "when a person or company is already taxed on its main business, it may not be further taxed for doing something or engaging in an activity or work which is merely a part of, incidental to and is necessary to its main business". (Asturias Sugar Central, Inc. vs. Commissioner of Internal Revenue, C.T.A. Case No. 983, February 14, 1963, citing Standard Vacuum Oil Co. vs. Antigua, 96 Phil. 909). This doctrine was cited and relied upon by this Court in the Asturias case in connection with the issue of whether or not the taxpayer therein was liable for the fixed tax as a lending investor. The doctrine is but the result of the correct application of the rule of interpretation to determine the legislative intent behind revenue laws. Where the law taxes a business, it is presumed to be the legislative intent not to separately tax every activity which is merely incidental or necessary to the conduct of said business.

There can be no question that lending money at interest by life insurance companies is not only incidental to their business but is essential to their very existence. No insurance company can survive without investing its funds in loans.

A well-known authority on insurance, Mr. W. R. Vance, says:

> In considering the causes of this phenomenal growth of life insurance, it is well to observe that the business is not confined to mere insurance against the untimely termination of life, but includes, as perhaps its most important element, the feature of investment of savings for the purpose of creating an "insurance estate".
>
> x x x x x
>
> The insured, in effect, pays the insurer annual sums which the latter must hold, invest, and accumulate until the maturity of the policy, by death or the expiration of an endowment term, fixes the duty of the insurer to pay. (Vance on Insurance, 3rd ed., p. 32.)

Another recognized authority on insurance says that "life insurance companies must invest their funds so as to enable them to meet their obligations to their policyholders." (Appleman, Insurance Law and Practice, Vol. 19, p. 180.)

In the case of Bowers vs. Lawyers Mortg. Co., 285 U.S. 182, 76 L. ed. 690, 695 (1931), the U.S. Supreme Court stated:

> "Premiums" are characteristic of the business of insurance, and the creation of "investment income" is generally, if not necessarily, essential to it.

Evidence for the petitioners sustained the fact that they have to invest the premiums they receive, that they can not just hold them idle, and that investing those premiums is incidental to the operation of life insurance companies (p. 12, t.s.n., July 10, 1972).

As a matter of fact, Section 183 of the Insurance Act requires every life insurance company doing business in the Philippines to hold its funds "in secure investments" equal to the "aggregate net value" of its policies, and among the investments indicated in Section 197 of said Act is precisely the lending of money on first mortgages.

That the investment of the premiums collected by insurance companies from policyholders appears to be not merely incidental or necessary but in fact essential to the conduct of the life insurance business cannot be gainsaid. Nor can it be denied that "insurance is affected with a public interest", and that perhaps "no other business affects the public so intimately as does the insurance business." (Vance on Insurance, p. 36.) It is for these reasons that the investment aspect of the insurance business, including investments in mortgage loans, is subject to stringent regulation by the state. (See Secs. 178-A, 183, 197, 200-A of the Insurance Act.) It is noteworthy that according to Sec. 200(1) of the Insurance Act, an insurance corporation may purchase and hold property "as may have been mortgaged, pledged, or conveyed to it . . . by reason of money loaned by it in pursuance of the regular business of the corporation . . ." (Underscoring supplied.) This provision, to our mind, confirms the fact that lending money is part and parcel of the insurance business.

In this connection, it should be noted that Republic Act No. 6110 amended Section 182(A)(3) of the Revenue Code by inserting therein, among others, subparagraph (gg) in which, for the first time, banks, insurance companies, finance and investment companies doing business in the Philippines were grouped together and made subject to a fixed tax on their businesses. Petitioners allege, and respondent has not denied, that prior to Republic Act No. 6110, which was approved on August 4, 1969, insurance companies were already engaged in lending activities but had never been required by respondent to pay the fixed tax imposed on lending investors under the former Section 182(A)(3)(u) of the Revenue Code. (See BIR ruling dated Feb. 28, 1920, supra.) It appears to us that there is less reason now than before to hold them liable for the fixed tax imposed on lending investors since they are presently subject to the fixed tax under Section 183(A)(3)(gg) by virtue of Republic Act No. 6110. In fact, it would be difficult to accept the view that the legislators, in making them liable for the fixed tax on their businesses, also intended to make them additionally liable for the fixed tax on lending investors under subparagraph (dd) of Sec. 182(A)(3) [formerly, subparagraph (u) of Sec. 182(A)(3)]. It is inconceivable that banks and finance companies, whose lending activities obviously constitute an inherent and integral part of their businesses, are to be required to pay the fixed tax on their businesses as banks or finance companies and again as lending investors. Since lending money is an integral and essential activity not only of banks and finance companies but also of insurance companies, they were all grouped together under subparagraph (gg);

and since Congress must have been aware of the nature of their businesses, it is to be presumed, in the absence of any express provision to the contrary, that Congress intended them to pay only the fixed tax under subparagraph (gg).

Respondent cites Section 178 of the Revenue Code which provides that "one occupation or line of business does not become exempt by being conducted with some other business or occupation for which such tax has been paid". But the view we have taken in this case does not contravene said provision which, as we had occasion to rule, "contemplates a case where a person is engaged in two or more separate and distinct occupations or businesses" (Ilagan & Alejandrino v. Collector, C.T.A. Case No. 43). In the cited Ilagan case it was held that under Section 178, one who was engaged in business as a road contractor and also as a building contractor was subject to the fixed tax on road contractors and also to the fixed tax on building contractors. It will be noted, however, that unlike the insurance business and lending activity of the petitioners in this case, the business of a road contractor and the business of a building contractor are separate or distinct from each other such that neither is incidental or necessary to, nor an integral part of, the other. In the case of Collector of Internal Revenue v. Eternit Corporation, 105 Phil. 565, the Supreme Court upheld this Court's ruling to the effect that the "installation" of asbestos sheets was an occupation "distinct and separate" from the business of manufacturing and selling those sheets (105 Phil. 568) so that the tax exemption accorded by law to the latter was no bar to the contractor's tax imposed by the Revenue Code on the former.

Since petitioners are not taxable as lending investors under Section 182(A)(3)(dd), it follows that they are not also subject to the percentage tax imposed on lending investors under Section 195-B of the Revenue Code. It should be pointed out in this connection that petitioners as insurance companies are, like banks, finance companies and franchise grantees which are all grouped together under Section 182(A)(3)(gg), are already subject to the miscellaneous tax imposed in Title VIII of the Revenue Code. It is noteworthy that the miscellaneous tax of "three per centum of the total premiums collected" under Section 255 of the Revenue Code is essentially a percentage tax and is no different in nature from the percentage tax imposed on lending investors in Section 195-B of the same Code.

IN VIEW OF THE FOREGOING, respondent is hereby ordered to refund to petitioner Insular Life Assurance Co., Ltd., the sum of ₱122,362.97, representing the fixed and percentage taxes as lending investor which it paid for the years 1969 and 1970, and to petitioner Filipinas Life Assurance Company the sum of ₱9,934.23, representing the fixed and percentage taxes which it paid for the same years.

SO ORDERED.

Quezon City, November 12, 1973.

R. M. Umali
ROMAN M. UMALI
Presiding Judge

I CONCUR:

Ramon L. Avanceña
RAMON L. AVANCEÑA
Associate Judge

Associate Judge ESTANISLAO R. ALVAREZ dissents in a separate opinion.

INSULAR LIFE ASSURANCE CO., LTD.,
Petitioner,

- versus - C.T.A. CASE No. 2336

COMMISSIONER OF INTERNAL REVENUE,
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FILIPINAS LIFE ASSURANCE COMPANY,
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x- - - - - - - - - - - - - -x

9/5/12/73

DISSENTING OPINION

Petitioners Insular Life Assurance Co., Ltd., and Filipinas Life Assurance Company sought the refund of ₱122,362.97 and ₱9,934.23 as fixed and percentage taxes paid by them in 1969 and 1970, respectively. As these cases involve a common issue, on motion of both parties, they were heard jointly.

Petitioners are domestic life insurance corporations organized and engaged in life insurance business. Aside from their insurance business, petitioners invested the premiums collected by them from policyholders in mortgage loans, housing programs, car financing loans, and promissory notes from which they earned substantial amount of interests. Consequently, they paid fixed and percentage taxes as lending investors in the said amounts of ₱122,362.97 and ₱9,934.23, respectively.

In 1969 and 1970, the interests earned by petitioner Insular Life Assurance Co., Ltd., on its mortgage loans alone amounted to ₱4,490,276.31 and ₱4,986,358.20. In the same years, petitioner Filipinas Life Assurance Company earned interests on its mortgage loans amounting to ₱353,701.60 and ₱338,639.24. (Exhs. T & T-1, pp. 62 & 63, respectively, CTA 2336.) Both petitioners and respondent admitted that the interests earned in two (2) years from petitioners' investments in mortgage loans were comparatively smaller than the premium income realized by the two petitioners. (p. 67, t.s.n.)

On June 9, 1970, petitioners filed with respondent written claims for the refund of the fixed and percentage taxes paid by them in 1969 and 1970 and alleged that the funds invested in mortgage loans were incidental transactions to their principal business of life insurance and, therefore, exempt from the fixed and percentage taxes imposed by the Tax Code on lending investors.

The only issue posed for resolution is whether or not petitioners are subject to the fixed and percentage taxes as lending investors under Sections 182(A)(3)(dd) and 195-A, respectively, in relation to Section 194(u) of the National Internal Revenue Code, which provide as follows:

Sec. 182. Fixed Taxes.- (A) On business.-

x x x x

(3) Other fixed taxes. - The following fixed taxes shall be collected as follows, the amount stated being for the whole year, when not otherwise specified.

x x x x

(dd) Lending investors.- x x

1. In chartered cities and first class municipalities, five hundred pesos.

x x x x

Sec. 194. Words and phrases defined. In applying the provisions of this Title, words and phrases shall be taken in the sense and extension indicated below:

x x x x

(u) "Lending investor" includes all persons who make a practice of lending money for themselves or others at interest.

x x x x

Sec. 195-A. Percentage tax on dealers in securities; lending investors.- Dealers in securities and lending investors shall pay a tax equivalent to three per centum on their gross income. (As inserted by Rep. Act No. 6110.)

Petitioners contend that they are not subject to the fixed and percentage taxes imposed on lending investors because the funds invested by them in mortgage loans and from which they earned interests are merely a part of, incidental to and is necessarily connected with their main insurance business, citing as authority a decision of the Supreme Court holding that "when a person or company is already taxed on its main business, it may not be further taxed for doing something or engaging in an activity or work which is merely a part of, incidental to and is necessarily connected with its main business." (Standard-Vacuum Oil Co. vs. Antigua, 96 Phil. 909, 913; See also Smith Bell & Co. vs. Municipality of Zamboanga, 55 Phil. 466; Ah Nam vs. City of Manila, 109 Phil. 808, 812; City of Manila vs. Fortune Enterprises, Inc., 108 Phil. 1058, 1060-61; Manila Press, Inc. vs. Sarmiento, 99 Phil. 32, 35.)

The main thrust of petitioners' arguments is predicated on the following considerations:

1. Under Section 183 of the Insurance Law, they are required to set a reserve fund for the payment of their liabilities equal to the net aggregate value of their policies and to hold the same in secure investments, such as lending money for interest, subject to the approval and control of the Insurance Commissioner;

2. They are already subject to the fixed tax as insurance companies and to the 3% tax on the insurance premiums collected under Sections 182(A)(3)(gg) and 255 of the Tax Code; and

3. Before the Tax Code was amended by Republic Act No. 6110, petitioners were never assessed by re-

spondent as lending investors since insurance companies are only subject to the privilege and premium taxes. Consequently, under the amendatory law, respondent's assessments against petitioners are not justified because of his alleged previous stand on the question at issue.

Respondent, however, contends that petitioners' defense is untenable because it suffers from two infirmities, namely: (1) the lending activity of petitioners for profit is a separate and independent business from life insurance as shown by their Amended Articles of Incorporation stating that one of their purposes is "To lend money on such terms as may seem expedient, subject to the requirements of law"; and (2) their lending activity is on a year round and continuous basis as evidenced by the huge number of loans granted and the substantial amount of interests derived therefrom.

Petitioners have not disputed the existence of the law imposing a fixed tax of ₱500.00 per annum and the 3% tax on the gross income of a lending investor. They impugn, however, the efficacy and application of the said law to life insurance companies by invoking and relying on the <u>obiter dicta</u> rather than on the <u>ratio decidendi</u> enunciated by the Supreme Court in the case of Standard-Vacuum Oil Co., supra, "that when a person or company is already taxed on its main business, it may not be further taxed by doing something or engaging in an activity or work which is merely a part of, incidental to and is necessary to its main business." In pronouncing the said ruling which petitioners call a "settled principle in taxation," our Supreme Court reasoned out as follows:

> "x x x. To us, it is clear that if a company manufactures tin cans to be sold to the public or to companies engaged in the sale and distribution of liquids, then the said manufacture would be a business or occupation subject to the tax imposed by the ordinance. However, where the manufacture of tin cans as in the present case is conducted not as an independent business, and for profit but merely as an incident to or part of its main business, then it may not be considered as an occupation or business which may be taxed separately. x x." (Standard-Vacuum Oil Co. vs. Antigua, et al. 96 Phil. 912; Underscoring supplied.)

Our attention was invited to the same settled principle of taxation which was allegedly reiterated by the Tax Court in the case of Asturias Sugar Central, Inc. vs. Commissioner of Internal Revenue, CTA Case No. 983, Feb. 14, 1963, involving the tax-exemption of a lending investor. In exempting the taxpayer from the lending investor's fixed tax, the Tax Court reasoned out as follows:

> Note that one of the requisites before a person can be classified and taxed as a lending investor is that the lending of the money must be with interest. And to our mind, the word interest means profit or gain, for just like any other kind of business, the business of a lending investor must be conducted for profit or gain in order to be taxable. (Underscoring supplied.)

Our attention was again invited to the same settled principle of taxation which was allegedly followed by our Supreme Court in the case of Ah Nam vs. City of Manila, et al., 109 Phil. 812. But the said court, contrary to petitioners' pretension, justified the tax-exemption because the taxpayer therein was not engaged in business for gain or profit. The court reasoned out as follows:

> Neither may appellee be obliged to pay the permit and license fees required under Ordinance No. 3000 because, as heretofore stated, the sale of the empty bags is not being carried as a separate or distinct trade or enterprise, but merely as incident to the bakery business. As a matter of fact, the sale of the flour bags depends on the volume of consumption or use by appellee's bakery business. Appellee does not buy empty flour bags, independently of the flour he uses, for the purpose of re-selling them, nor does he buy flour in order to get the empty bags for sale, the main reason for the purchase being the utility of the flour to the bakery business. That after attaining his purpose, appellee finds some use for the empty bags, is cer-

> tainly incidental only to his bakery business. As under the ordinance the fees are imposed on persons engaged in the trade or business of dealer, and as appellee is not, in the real sense of the term, engaged in the business of buying and selling used flour bags, the lower court committed no error in exempting appellee from payment of the license and permit fees in connection with the sale of such empty flour bags.

We are not impressed with the alleged settled principle of taxation as applicable to all tax cases whether national or local. In the cases cited by petitioners in their memorandum, the tax-exemption of incidental business is premised on the findings that the taxpayers involved therein were not engaged in business for profit or gain; otherwise, the incidental business is taxable.

The cases at bar differ factually from the case of Asturias Sugar Central, Inc., in that the herein petitioners were engaged in business of lending investors for profit or gain. As aptly stated by the Tax Court, "the business of a lending investor must be conducted for profit or gain in order to be taxable." And the Supreme Court affirmed that "business" is restricted to activities or affairs where profit is the purpose or livelihood is the motive. (Commissioner of Internal Revenue vs. The Club Filipino, Inc., G.R. No. L-12719, May 31, 1962; Collector vs.

Convention of the Philippine Baptist Churches, et al., G. R. No. L-11807, Jan. 28, 1961.)

The main as well as the incidental business conducted by a taxpayer for gain or profit, like the petitioners in this case, is governed by Section 178 of the National Internal Revenue Code which explicitly provides as follows:

> Sec. 178. Payment of privilege taxes.- A privilege tax must be paid before any business or occupation hereinafter specified can be lawfully begun or pursued. The tax on business is payable for every separate or distinct establishment or place where business subject to the tax is conducted; and one line of business or occupation does not become exempt by being conducted with some other business or occupation for which such tax has been paid.

The second clause "one line of business or occupation does not become exempt by being conducted with some other business or occupation for which such tax has been paid," contemplates a case where a person is engaged in two or more separate and distinct occupation or business, but has only one place of business or office for their operation. Thus, our Supreme Court held that Ilagan and Alejandrino, a partnership, should pay two separate fixed taxes for engaging in business as a road contractor and as a building contractor. (Ilagan and Alejandrino vs. Collector of

Internal Revenue, G.R. Nos. L-1113 & L-1114, Sept. 30, 1959.)

In another case, our Supreme Court held that where a manufacturer sold asbestos corrugated sheets and, as an incident of the sale, engaged in the installation thereof, the seller is deemed engaged in two lines of business, that is, as a manufacturer and as a contractor. (Collector of Internal Revenue vs. Eternit Corporation, 105 Phil. 568.)

Life insurance companies, including petitioners and many others with identical refund cases pending in this Court, are engaged in two major lines of activities or businesses, namely: (1) underwriting and (2) investments. Thus, it was held:

> "Nor can the business of lending money be distinguished from the business of insurance. It is a part of that business. Every insurance business consists of two major activities: underwriting and investments. Speaking of the 'investment business' of a life insurance company, the Supreme Court has said:
>
> > 'That phrase may be taken to include activities relating to interest, dividends, and rents constituting the income taxed as distinguished from its "underwriting business" which embraces its other activities.' (Mertens, Law of Federal Income Taxation, Vol. 8, p. 10, 1942 ed.; citing Rockford Life Insurance Co. v. Commissioner, 292 U.S. 382; 78 L. Ed. 1315; 54 S. Ct. 761; underscoring supplied.)

As an underwriter and a lending investor at the same time, an insurance company is subject to fixed and percentage taxes. An insurance company is subject to an annual fixed tax of ₱500.00 and another fixed tax of ₱500.00 as a lending investor under Section 182(A)(3)(dd) and (gg) of the National Internal Revenue Code, respectively. As an underwriter, an insurance company is subject to the 3% tax of the total premiums collected and another 3% tax of the gross income (interest income) as a lending investor under Sections 255 and 195-A, respectively, of the same Code. The first is a percentage tax on premiums collected while the other is a percentage tax on interest received from investments.

There are, therefore, two major lines of activities engaged in by a life insurance company and, therefore, under Section 178 of the Revenue Code, supra, one line of business does not become exempt by being conducted with some other business for which such tax has been paid. The mere fact that our Insurance Law required any life insurance company to invest its money for the purpose of gain or profit does not make the investment an incidental business because, with or without that legal requirement, the premiums collected by an insurance company will have to be invested for gain or profit to safeguard and protect the interest of policy holders as well as to benefit the companies dealing in life insurance. Moreover, as I have already pointed out, an incidental business is only exempt from taxes where the same <u>is not</u> conducted for gain or profit.

Exemption from taxation is an act of legislative grace. The majority opinion has not cited any law expressly granting tax-exemption to petitioners which would warrant the refund of fixed and percentage taxes imposed by and paid under Sections 182(A)(3)(dd), 182(A)(3)(gg), 255, and 195-A of the Revenue Code. As pointed out by the Supreme Court in the case of Commissioner v. Guerrero, 21 SCRA 183; G.R. No. L-20942, Sept. 22, 1967, a tax refund is virtually an exemption which cannot be enjoyed in the absence of a categorical declaration in words that admit of no doubt. In one case, our Supreme Court emphasized this point when it said:

> Exemptions from taxation are highly disfavored in law; and <u>he who claims an exemption must be able to justify his claim by the clearest grant of organic or statute law. An exemption from the common burden cannot be permitted to exist upon vague implications.</u> (Asiatic Petroleum Co. v. Llanes, 49 Phil. 471; underscoring supplied.)

The majority decision relied and followed the 1920 ruling of the Collector of Internal Revenue holding that an insurance company which is already subject to the fixed tax cannot be required to pay another fixed tax as a money lender (lending investor) because the latter business is merely incidental to insurance business. The said ruling cited no law in support thereof. Neither was it shown that the said line of activity was not engaged in for gain or profit as a basis for tax exemption.

The 3% tax on the gross income or interest income of a lending investor, being a new percentage tax imposed by Section 40 of Republic Act No. 6110 which took effect on September 1, 1969, cannot be affected by an old ruling involving only the fixed tax of a lending investor; otherwise, the Government will be refunding all the percentage taxes paid by life insurance companies for the last four (4) years despite the absence of any organic or statute law clearly granting life insurance companies exemption from the payment thereof. Consequently, the promulgation of a decisional law granting tax exemption to the life insurance companies based upon vague implications is legally objectionable. The reason is obvious. Section 40 of Republic Act No. 6110 (now Section 195-A of the Tax Code, supra), in relation to Sec. 255 of the Tax Code, recognizes and declares that life insurance companies are engaged in two major lines of activities, namely: (1) underwriting and (2) investments.

The 3% tax on premiums collected by life insurance companies was imposed by Section 255 of the Tax Code on their underwriting activities. The other 3% tax was imposed by Section 195-A of the same Code on the interest income from the investment of a lending investor. This is a tacit recognition by the new law itself of the two lines of activities or businesses engaged in by life insurance companies. How can we now disregard the law (Sections 255 and 195-A of the Tax Code) and rule that lending investment is an incidental business of underwriting? Can we rule and treat the Omnibus Tax Law passed by Congress and approved by the President as mere exercises in futility?

In the majority decision, reference has been made to the ruling of the Collector of Internal Revenue in 1926 exempting banks from the lending investors fixed tax because it is incidental to the banking business. Suffice it to state that, in addition to the income tax, business tax, and residence taxes, banks are required under Section 249 of the National Internal Revenue Code to pay a tax of 5% on their gross receipts from interests, discounts, dividends, commissions, profits from exchange, royalties, rentals of property, real and personal, and all other items treated as gross income under Section 29 of the Tax Code. In short, banks are required to pay a higher rate of percentage tax - 5% - on interest income as lending investors than life insurance companies which are required under Section 195-A of the same Code to pay only 3% on their interest income as lending investors.

If the gross receipts of banks enumerated in Section 249 of the Tax Code, particularly the interest income from investment, are considered incidental to the principal banking business of accepting deposits, in view of the administrative ruling of the Collector of Internal Revenue in 1926, the inevitable conclusion is that the interest income of banks from their investments are also exempt from the 5% tax imposed by said Section 249 of the Revenue Code. Are we also to refund the 5% tax on the said interest income of banks despite the absence of any justifiable legal basis? That would be the disastrious effect of the majority decision.

WHEREFORE, I find myself unable to concur in the decision of this Court and vote that petitioners' claim for the refund of fixed and percentage taxes amounting to ₱122,362.97 and ₱9,934.23 paid by them as lending investors in 1969 and 1970 be DENIED.

Quezon City, Nov. 19, 1973.

Estanislao R. Alvarez
ESTANISLAO R. ALVAREZ
Associate Judge