REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

THE PHILIPPINE AMERICAN
LIFE INSURANCE COMPANY,
Petitioner,

versus

C.T.A. CASE NO. 2300

COMMISSIONER OF INTERNAL
REVENUE,
Respondent.

3/4/74

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D E C I S I O N

The petitioner is seeking the refund of the sum of ₱645,568.55, representing fixed and percentage taxes paid by it as a lending investor under Sections 182(A)(3)(dd) and 195-B of the National Internal Revenue Code, as amended, in relation to Section 194(u) of the same Code.

The facts of the case are not disputed and may be briefly stated as follows:

Petitioner is a domestic life insurance corporation duly registered and authorized to transact business in the Philippines. As such, it has been paying the corresponding fixed annual tax as an insurance company under Section 182(A)(3)(gg) and percentage tax on premiums collected under Section 255, both of the National Internal Revenue Code. From 1969 to 1971, petitioner invested in mortgage loans from which it earned interest. Upon the effectivity of Republic Act No. 6110 in

September, 1969, petitioner started paying the fixed and percentage taxes imposed on its lending transactions, in addition to the fixed and percentage taxes on its insurance business as a whole.

On April 24, 1970, petitioner filed with respondent a request for tax credit of ₱205,065.42, as well as of any amount that it may have paid under Section 195-B of the National Internal Revenue Code on the ground that it is not a lending investor as envisaged by said section. Respondent referred the matter to the Chief, Special Laws Enforcement Division, for investigation recommendation and report.

On February 8, 1971, petitioner wrote to respondent a follow-up letter regarding its claim. Not having received respondent's decision on the matter, petitioner interposed the present appeal asking for a refund of ₱645,568.55, the net amount it had paid as a lending investor up to July, 1971.

The only issue to be decided in this case is whether or not petitioner is entitled to the refund of ₱645,568.55, representing the fixed and percentage taxes paid by it as lending investor under Sections 182(A)(3)(dd) and 195-B of the National Internal Revenue Code, as amended, in relation to Section 194(u) of the same Code.

Petitioner contends that it is not subject to the fixed and percentage taxes imposed on lending investors because its lending and investment activity from which it earns interest is part of and necessary to its main business of insurance which is already being taxed under Sections 182(A)(3)(gg) and 255 of the Revenue Code.

Petitioner also argues that the investment of its funds to be able to meet its obligations to policyholders is an accepted practice in the insurance industry, and this view is recognized in this jurisdiction as shown by the fact that our Insurance Act requires that an insurance company should set a reserve fund for the payment of its liabilities equal to the net aggregate value of its 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.

On the other hand, respondent maintains that petitioner is a lending investor as defined in Section 194(u) of the Revenue Code, which "includes all persons who make a practice of lending money at interest." Respondent alleges that the definition is all embracing and does not preclude the imposition of the lending investor's tax on petitioner who is actually engaged in the practice of lending money at interest. Respondent asserts that petitioner is a lending investor because (1) its lending activity is a separate and independent business in itself; and (2) considering the big amount sought to be refunded which is only 3% of its gross receipts, the lending activity is not occasional or isolated but continuous and regular.

The arguments raised by respondent in this case are similar to those which were considered and passed upon by this Court in Insular Life Assurance Co., Ltd. v. Comm. of Int. Rev., C.T.A. Case No. 2336, and Filipinas Life Assurance Co. v. Comm. of Int. Rev., C.T.A. Case No. 2337, Nov. 12, 1973 (certiorari denied in G.R. Nos. L-37984-85, Feb. 27, 1974). For convenience, we deem it sufficient to quote from the decision in said cases, to wit:

> 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:
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> > "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 negotiating 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. [Sec. 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".
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> x x x x
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> 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 "<u>life insurance companies must invest their funds so as to enable them to meet their obligations to their policyholders</u>." (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(a) 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[1] 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

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[1]An opinion has been expressed to the effect that if the income derived by banks from interest on their lending transactions is not subject to the lending investor's percentage tax under Section 195(B) of the Revenue Code, said interest would not also be subject to the percentage tax on the gross receipts of banks under Section 249 of the same Code. This opinion apparently overlooks the express provision of Section 249 which imposes the percentage tax provided therein on the "gross receipts" of banks. The term "gross receipts" in said section includes all items of income as defined in Section 29 of the Code, which includes interest.

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 Re-

> venue 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.

We find no sufficient justification to depart from the view expressed in our decision in Insular Life Assurance Co., Ltd. v. Comm. of Int. Rev. and Filipinas Life Assurance Co. v. Comm. of Int. Rev., supra to the effect that insurance companies are not separately taxable on their lending transactions independently of their insurance business. Accordingly, respondent is hereby ordered to refund to petitioner the sum of ₱645,568.55, representing the fixed and percentage taxes as lending investor which it paid for the years 1969 to 1971.

SO ORDERED.

Quezon City, March 4, 1974.

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.

THE PHILIPPINE AMERICAN
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COMMISSIONER OF INTERNAL
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DISSENTING OPINION

For brevity, I will adopt the facts and the legal issue stated in the majority opinion dealing on the refund of ₱645,568.85 as fixed and percentage taxes paid by petitioner as a lending investor from September 1969 up to July 1971, excluding of course the staggering amount of the same kind of percentage taxes paid by all other insurance companies during the same period and thereafter. At the time material to this case, the maximum annual fixed tax of a lending investor is ₱500.00 so that petitioner paid ₱1,500.00 more or less, as fixed taxes for 1969, 1970 and 1971 out of the amount of ₱645,568.85 as ordered by my two colleagues in the Tax Court to be refunded to petitioner. The balance of ₱644,068.85, more or less, represents the percentage tax of 3% paid by petitioner on its gross interest income from mortgage loans during the same period. The imposition and collection of the said percentage tax is embodied in a new law (Omnibus Tax Law) which took effect on September 1, 1969, providing as follows:

> 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. (Sec. 40, Rep. Act No. 6110, National Internal Revenue Code, 1970 ed., p. 181.)

Before and after the effectivity of the foregoing provisions, insurance companies are also subject to the percentage tax of 3% of the total premium collected by them. (Sec. 255, Revenue Code).

Insurance companies are engaged in two major activities, namely: (1) Underwriting and (2) Investments. (See Mertens, Law of Fed. Income Taxation, Vol. 8, p. 10, 1942 ed., citing Rockford Life Insurance Co. v. Commissioner, 292 U. S. 382) In the underwriting activity of insurance companies, they are subject to the percentage tax of 3% on the total premiums collected while in the investment activity they are subject to the percentage tax of 3% on their gross income from interests on mortgage loans. Both are percentage taxes but the nature and bases of their imposition are different. The said taxes are burdensome to petitioners but they do not constitute double taxation. After all, there is no prohibition against double taxation in the Philippines. (De Villata v. Stanley, 32 Phil. 541; Manufacturers Life Insurance Co. v. Meer, 89 Phil 210; Hawaiian Phil. Co. v. Collector; G. R. No. L16315, May 30, 1964; Pepsi-Cola Bottling Co. v. [illegible]

Aside from the said percentage taxes, insurance companies are subject to <u>two fixed taxes</u>, namely: (1) <u>lending investors fixed tax</u> of ₱500.00 in chartered cities and first class municipalities and (2) <u>insurance companies fixed tax</u> of ₱500.00. (See Sec. 182(3)(dd) and (gg), Revenue Code, p. 151, 1970 ed.)

The majority opinion disregarded the imposition and collection of the percentage tax of around ₱644,068.85 based on the theory that a taxpayer who is exempt from the fixed taxes as a lending investor under the old BIR ruling is necessarily exempt from the percentage tax of 3% imposed by the new law, that is, Sec. 195-B of the Revenue Code, <u>supra</u>. In short, the majority opinion disregarded and consigned to oblivion the efficacy and validity of the additional percentage tax imposed by Sec. 195-A of the Revenue Code.

My present dissent will, therefore, be centered on the efficacy and validity of Section 195-A of the Revenue Code which was not amply discussed in my dissenting opinion in the cases of Insular Life Assurance Co., Ltd. v. Comm. of Int. Rev., CTA Case No. 2336, and Filipinas Life Assurance Co. v. Comm. of Int. Rev., CTA Case No. 2337, Nov. 12, 1973 (certiorari denied in G. R. Nos. L-37984-85, Feb. 27, 1974). Moreover, the refund of ₱340,503.13 is premature and legally objectionable.

The majority opinion claims that under Sec. 1464(x) of the Revised Administrative Code, "an insurance company is not considered a money lender and was not taxable as such." The underlined statement appears to be erroneous and misleading. In the first place, Sec. 1465(v) of the Revised Administrative Code and the Revenue Code define "money lenders" as including all persons who make a practice of lending money for themselves or others at interest. In the second place, petitioner admitted that it is a lending investor or money lender because of the requirement of the Insurance Law.

The term "money lenders" was later changed to "lending investor" but the definition of the term remains the same. Consequently, the majority held "that an administrative interpretation of 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.

It may be asked: (1) What is the scope of the administrative interpretation which received legislative approval? and (2) Does the administrative interpretation cover the exemption of insurance companies from the payment of fixed tax, percentage tax, or both taxes?

Long before the effectivity of the National Internal Revenue Code (Comm. Act No. 466) on July 1, 1939, insurance companies are subject to fixed and percentage taxes, to wit:

> Sec. 1457. Fixed tax upon business subject to percentage tax. - Every person, not hereinbelow exempted, engaging in a business on which the percentage tax is imposed shall pay a fixed tax of two pesos. xx xx (Revised Administrative Code, p. 707, 1934 ed., Meer, Int. Rev. Law Annotated, p. 54, 1925 edition; underscoring supplied).

> Sec. 1464. Amount of tax on business.- Fixed taxes on business shall be collected as follows, the amount stated being for the whole year, when not otherwise specified.
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> 1. In chartered cities and first class municipalities-₱200.00
> 2. In second-class municipalities------------------ 150.00
> 3. In third-class municipalities-100.00
> 4. In fourth-class municipalities------------------ 50.00
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> (Rev. Adm. Code pp. 711-712, 1934 ed., Meer, Int. Rev. Law Annotated, p. 80, 1925 ed.)

> Sec. 1505. Tax on insurance premiums. - There shall be collected from every person, company, or corporation doing insurance business of any part in the Philippine Islands a tax of one per centum of the total premiums collected during each calendar year, xx xx. (Rev. Adm. Code, p. 732, 1934 ed., Meer, Int. Rev. Law Annotated, 1925 ed.)

Under the old provisions of the Revised Administrative Code cited above, insurance companies are required by law to pay two(2) fixed and one(1) percentage taxes. The two fixed taxes are for insurance business and money lender. The old rulings of the Bureau of Internal Revenue cited in support of the majority decision refers exclusively to the fixed taxes and not to the percentage tax imposed on premiums collected by insurance companies. Consequently, when similar provisions of the fixed taxes found in the Revised Administrative Code were re-enacted by Congress without substantial change, it is presumed that Congress knew of the existing administrative interpretation of the statute on fixed taxes of insurance companies.

Section 195-A of the Revenue Code is a new percentage tax imposed by Congress under Republic Act No. 6110. It has not been given any administrative interpretation by the revenue office except the demand for the payment thereof by insurance companies. Unlike the fixed tax laws on insurance companies and lending investors adverted to above, it cannot be said that Section 195-A of the Revenue Code is a re-enactment of similar percentage tax law which received legislative approval. On the contrary, when Congress enacted Section 195-A of Republic Act No. 6110, it has an unlimited, plenary, comprehensive, and supreme power to do so. If the said law is inimical to the interest of insurance companies which are required by the Insurance Law to engage in business as lending investors, the remedy of the taxpayers is to secure an amendment of the new percentage tax law or work for a grant of legislative grace or exemption from the payment thereof. Courts are powerless to impugn and declare the law in question to be without force and effect insofar as insurance companies are concerned. Let me therefore quote a portion of the majority opinion. It said:

> 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.

I have already given the background for the exemption of insurance companies from the payment of the additional fixed tax as lending investors. But the majority went further by introducing a novel and unprecedented doctrine in taxation by holding that a taxpayer who is exempt from an additional fixed tax as a lending investor is necessarily exempt from the percentage tax imposed by Section 195-A of the Revenue Code.

The majority opinion further stated that the miscellaneous tax of "3% of the total premiums collected" under Section 255 of the Revenue Code is not different in nature from the percentage tax imposed on lending investors in Section 195-A of the same Code. I disagree. While both sections of the Revenue Code involve percentage taxes and impose the same rate of tax, the bases and nature of their imposition are different. The premium tax is based on the underwriting activity of the insurance companies while the tax on interest income is imposed on their investment on mortgage loans.

I am constrained to believe that the majority is impelled by equitable motives to grant insurance companies exemption from the percentage tax imposed by Section 195-A of the Revenue Code because they are previously subject to the premium tax. But exemption from another percentage tax cannot be granted on grounds of equity and in utter disregard of the validity and efficacy of Section 195-A of the Revenue Code. Thus, it was held:

> Exemption cannot be recognized on grounds of equity. The long range objective of all tax measures is the accomplishment of social order. Although the variant forms of taxation may sometimes produce individual hardships, a too stilted interpretation of tax laws for the benefit of one particular taxpayer may result in the loss of revenue at the expense of the government and operate to the disadvantage of others contributing to its support. (Sutherland Statutory Construction, p. 297)

Exemption from taxation is a grant of immunity, express or implied by omission, to particular persons or corporations. In fact, exemption from taxation is an act of legislative grace. It cannot be granted by courts based on vague implications.

This point was emphatically stressed by the Supreme Court when it held as follows:

> Exemption from taxation are highly disfavored in law; and 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. (See Asiatic Petroleum Co. v. Llanes, 49 Phil. 471)

In fact, when the legislative body intended to exempt the lending investor from the percentage tax as early as 1917, the exemption is granted in express terms by the statute. This is borne out by Section 1503 of the Revised Administrative Code, which provides as follows:

> SEC. 1503. Exemption of savings institutions.- The deposits in associations or companies, known as provident institutions, savings banks, savings funds, or savings institutions, having no capital stock and which do no other business than receiving deposits to be loaned or invested for the sole benefit of the parties making and without profit or compensation to the association or company shall be exempt from this tax (percentage tax) on so much of their deposits as such institutions have invested in securities satisfactory to the Insular Treasurer and on all deposits not exceeding ₱400.00 made in the name of any one person. (Meer, Annotated Int. Rev. Law, p. 110, 1965 ed.; parenthesis and underscoring supplied.)

The said provisions appeared in Article VII of the Revised Administrative Code dealing on taxes on resources of banks, receipts of insurance companies, and receipts of corporations paying franchise tax. Since the said article deals on percentage taxes, it is clear that when the statute intends to exempt a money lender or lending investor from the payment of the percentage tax, the same is expressed in explicit terms. I am, therefore, of the view that the provisions of Section 195-A of the Revenue Code are still valid and in force.

The majority further stated that "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." This conclusion of the majority is not only sweeping but also misleading. What BIR ruling was re-enacted under the National Internal Revenue Code which took effect on July 1, 1939?

Under Section 1457 of the Revised Administrative Code, supra, insurance companies are subject to the annual fixed tax of ₱2.00. The said fixed tax was abolished under Section 182 of the Revenue Code because only persons subject to the percentage tax imposed by Sections 184, 185, and 186 of the same Code are subject to the fixed tax. The persons referred to therein are the importer, manufacturer, or producer. Under the same Code which took effect on July 1, 1939, insurance companies are not then subject to the percentage tax of 3% on their gross interest income as a lending investor. Consequently, from July 1, 1939 to August 31, 1969, the exemption of insurance companies from the fixed and percentage taxes under the Revenue Code of 1939 was based on exemption by omission and not because the Commissioner of Internal Revenue followed the 1920 BIR ruling.

The new law imposing a fixed tax of P500.00 and the percentage tax of 3% on the gross interest income of insurance companies under the provisions of Republic Act No. 6110, which took effect on September 1, 1969, is a clear indication that Congress considered insurance companies to be engaged in two taxable essential line of activities, namely: (1) Underwriting and (2) Investment. Consequently, the theory of the majority that the old BIR ruling was re-enacted into law finds neither legislative support nor approval. On the contrary, Republic Act No. 6110, particularly the provisions dealing on the new fixed and percentage taxes imposed on insurance companies, was enacted to complement certain missing provisions in the Revenue Code of 1939, namely:

the fixed tax of ₱500.00 to complement the 3% tax on the total premiums collected by insurance companies in their underwriting business; and the percentage tax of 3% on the gross interest income of insurance companies to complement the fixed tax of ₱500.00 as a lending investor in their investment business. The fixed and percentage tax provisions embodied in Republic Act No. 6110 are, therefore, incompatible and inconsistent with the presumptive rule on the effect of the re-enactment of the statute.

But that is not all. The refund of ₱340,503.12 is premature and legally objectionable. The said amount represents the difference between ₱645,568.55 and ₱205,065.42, the former represents the amount appealed to this Court and the latter amount was the subject of a written claim for refund filed by petitioner with the respondent Commissioner of Internal Revenue on April 24, 1970.

Sections 306 and 309 of the Revenue Code applicable to this ~~provide~~ case provide as follows:

> SEC. 306. Recovery of tax erroneously or illegally collected. - No suit or proceed-

ing shall be maintained in any court for the recovery of any national internal revenue tax hereafter alleged to have been erroneously or illegally assessed or collected or of any penalty claimed to have been collected without authority, or of any sum alleged to have been excessive or in any manner wrongfully collected, until a claim for refund or credit has been duly filed with the Commissioner of Internal Revenue; but such suit or proceeding may be maintained, whether or not such tax, penalty, or sum has been paid under protest or duress. In any case, no such suit or proceeding shall be begun after the expiration of two years from the date of payment of the tax or penalty.

SEC. 309. Authority of Commissioner to make compromises and to refund taxes. - xx xxx xx xx xx xx xx

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The authority of the Commissioner of Internal Revenue to credit or refund taxes or penalties under this section can only be exercised if the claim for credit or refund is made in writing and filed with him within two years after the payment of the tax or penalty.

It is a mandatory requirement of the foregoing provisions that a taxpayer seeking the recovery of taxes erroneously or illegally received by the Commissioner of Internal Revenue should file with him a written claim for refund or credit within two years after payment of the tax. In this case, petitioner's written claim for tax credit was for ₱205,065.42 only and the amount that it may have paid under Section 195-A of the Revenue Code. In effect, on April 14, 1970, petitioner was requesting the refund or credit of future taxes to be paid by it, because it did not specify any definite amount of taxes already paid except the amount of ₱205,065.42. As the claim for refund of future taxes was not made after payment thereof, the requirements of Sections 306 and 309 of the Revenue Code were not satisfied. Consequently, the amount of ₱340,503.13 included in the total amount of ₱645,568.55 ordered by the majority of this Court to be refunded by respondent to petitioner is not sanctioned by our tax laws. The refund, therefore, of the amount of ₱340,503.13 is premature because respondent or his fieldmen were not given by this Court the opportunity to investigate and verify the correct amount of taxes paid and to be refunded, the genuineness of the receipts evidencing payments made, and whether or not said payments reached the coffers of the Government.

WHEREFORE, I find myself unable to concur in the decision of the majority and vote to DENY the refund of the fixed and percentage taxes of ₱645,568.55 in favor of petitioner as ordered by the majority.

Quezon City, March 25, 1974.

ESTANISLAO R. ALVAREZ
Associate Judge

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