Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

SAN MIGUEL CORPORATION
Retirement & Death Benefit
Plan-Foreign Personnel
represented by its Trustees,
Petitioner,

- versus -

C.T.A. CASES NO. 4331
and 4332

COMMISSIONER OF INTERNAL
REVENUE,
Respondent.

Promulgated:
JAN 05 1995

x - x

D E C I S I O N

This is a twin claim for refund of the amount of ₱542,966.12 and ₱1,017,188.90 representing withholding tax on income from money market placements.

It appears that petitioner San Miguel Corporation Retirement and Death Benefit Plan is an employees' trust, set up by the employer for the exclusive benefit of its foreign personnel, to provide them retirement pension, disability, death and separation benefits.

Accordingly, the Fund is controlled, managed and administered by a Board of Trustees pursuant to a Trust Agreement for the payment of definite amounts and the grant of certain benefits to its employees. The administrative and clerical function of the Board of Trustees are handled and performed by the Retirement and Death Benefit Plan Department of San Miguel Corporation.

Petitioner is wholly financed by SMC through yearly contributions to a fund to be invested with the end in view that the income and principal of said yearly contributions would be sufficient to finance the guaranteed liability of SMC under the plan.

From March 20, 1987 to December 16, 1988 and November 1986 to October 1988, petitioner made investments in bank deposits and money market placements, and respondent's withholding agents pursuant to Presidential Decree No. 1959 withheld and remitted to the Bureau of Internal Revenue the 20% final withholding tax on the interest on savings deposits and yields from deposit substitutes in the amount of ₱1,017,188.00 and ₱542,966.12 respectively.

On January 30, 1988, petitioner filed with respondent a claim for refund on the aforementioned amounts. Without waiting for respondent to resolve its claim for refund, petitioner filed the instant petition for review as a way of tolling the two (2) year prescriptive period set by law.

The sole issue to be resolved in this case is whether or not petitioner is exempt from withholding tax on income from money market placements pursuant to Presidential Decree No. 1959.

Moreover, petitioner contends that Presidential Decree No. 1959 does not apply to retirement plans for reasons that it is not a business enterprise, neither are they engaged in any economic activity.

Additionally, Executive Order No. 37 which amended Secs. 21(d) and 24(c) of the Tax Code, as amended by Pres. Decree No. 1959 which increased the tax on interest on savings deposits and yields from deposit substitutes to 20% and transferred the provision on the manner of collecting taxes to Secs. 50 and 51 of the Tax Code is inapplicable to the retirement plan. Considering that it is a format amendment to group homogenous provisions together without any manner touching the source of the Plan's exemption found in Sec. 56(b), now Sec. 53(b) of the Tax Code in relation to Republic Act No. 4917, now Sec. 28(b)(7)(A) of the Tax Code.

On the other hand, respondent raised the following affirmative defenses:

Petitioner does not state a cause of action.

One who claims to be entitled to income tax exemption on the earnings of its employees trust under R.A. 4917 in relation to Section 56 (b), now Sec. 53(b) of the Tax Code in relation to now Sec. 56(b) [now

Section 53(b)] of the National Internal Revenue Code, cannot invoke the aforesaid section to claim exemption from the final tax imposed by Section 21(d) and 24(cc) [now Sections 21(cc) and 24(e)(1)] of the said Code on earnings derived from interest on bank deposit substitutes.

The exemption from the final tax on interest on bank deposit and deposit substitutes which petitioner previously enjoyed was in pursuance of the then proviso found in Section 21(d) and 24(cc) of the Tax Code.

Respondent contends that Presidential Decree No. 1959 which took effect on October 15, 1984, already amended the aforementioned sections by the deletion of the provision granting exemption from final tax on interest from bank deposits and/or deposit substitutes to those recipients who are exempted from income taxation.

Respondent went further by arguing that:

- petitioner has not shown that the tax sought to be refunded was actually withheld and remitted to herein respondent in accordance with the Tax Code.

- petitioner failed to establish that the tax subject of its claim for refund was erroneously or illegally collected.

- the claim for tax refund, being in the nature of an exemption from taxation must be construed strictly against the petitioner.

We find for the petitioner.

First of all, it is essential to note that San Miguel Corporation Retirement and Death Benefit Plan has qualified as exempt from income tax by the Commissioner of Internal Revenue in accordance with Republic Act No. 4917 approved on 17 June 1967. The said law is herein quoted to wit:

> **Section 1.** **Any provision of the law to the contrary notwithstanding,** the retirement benefits received by officials and employees of private firms, whether individual or corporate, in accordance with a reasonable private benefit plan maintained by the employer shall be exempt from all taxes and shall not be liable to attachment, levy or seizure by or under any legal or equitable process whatsoever except to pay a debt of the official or employee concerned to the private benefit plan or that arising from liability imposed in a criminal action." (Underscoring supplied)

The specific provision of law which specifically exempted employees trusts from income tax is Section 56(b) (now 53[b]) of the Tax Code, as amended by Rep. Act No. 1983, supra. which took effect on 22 June 1957 is herein quoted to wit:

> "**Sec. 56. Imposition of Tax.** - (a) Application of tax. - The taxes imposed by this Title upon individuals shall apply to the income of estates or of any kind of property held in trust.

xxx xxx xxx

> "(b) Exception. - The tax imposed by this Title shall not apply to employee's trust which forms part of a pension, stock bonus or profit-sharing plan of an employer for the benefit of some or all of his employees x x x"

The tax-exemption privilege of employees trusts, as differentiated from any other kind of property held in trust, springs from the foregoing provision. Clearly, the law has declared as exempt employees trust from the tax imposition.

Mainly, the rationale behind the tax exemption extended to employees trust is because of the purpose of its creation. Employees trust or benefit plans are designed to provide economic assistance to employees upon the occurrence of certain contingencies, namely old age, retirement, death, sickness or disability. It assures protection against certain risk to which members of the Plan may be exposed. Likewise, it is an independent and additional source of protection for the working group, and is established for their sole benefit and for no other purpose. (*GCL Retirement Plan vs. Commissioner of Internal Revenue, CTA Case No. 4130, February 18, 1993*)

The deletion in Pres. Decree No. 1959 of the provisos dealing with tax exemption and preferential tax rates under the old law, therefore cannot apply or extend to employees trusts. The said decree, being a general law, cannot impliedly repeal a specific provision, Section 56(b) (now 53[b]) in relation to Rep. Act No. 4917 granting exemption from income tax to employee's trusts. Republic Act No. 4917 was enacted on June 17, 1967, long before the issuance of Pres. Decree No. 1959 on October 15, 1984. A subsequent statute, general in character as to its terms and application, is not to be construed as repealing a special or specific enactment, unless the legislative purpose to do so is manifested. This is so even if the provisions of the latter are sufficiently comprehensive to include what was set forth in the special act. (*Villegas vs. Subido, G.R. No. L-31711, 30 September 1971, 41 SCRA 190*).

Considering that the final tax and the withholding thereof are contained under Title II of the Tax Code on "Income Tax", necessarily said trust must be deemed exempt therefrom. This is so, since Section 56(b), taken in conjunction with Section 56(a) supra, specifically excepts employees trusts from "the taxes imposed by this Title".

It cannot be denied that the final withholding tax is collected from income in respect of which employees trusts are declared exempt (Sec. 56[b] now 53[b], Tax Code).

The subsequent application of the withholding systems to interest on bank deposits or yield from deposit substitutes is essentially to maximize and expedite the collection of income taxes by requiring its payment at the source. Since, San Miguel Corporation Retirement and Death Benefit Plan, which is an employee's trust, enjoys a tax-exempt status from income, we find it illogical in withholding a certain percentage of that income which it is not obliged to pay in the first place. (*Commissioner of Internal Revenue vs. The Honorable Court of Appeals, et.al., G.R. No. 95022, March 23, 1992*)

In view of the foregoing, respondent Commissioner of Internal Revenue is hereby ordered to refund to petitioner San Miguel Corporation Retirement and Death Benefit Plan the sum of ₱542,966.12 and ₱1,017,188.90 representing withholding tax on income.

SO ORDERED.

MANUEL K. GRUBA
Associate Judge

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Judge

RAMON O. DE VEYRA
Associate Judge

CERTIFICATION

I hereby certify that this decision was reached after due consultation among the members of the Court of Tax Appeals in accordance with Section 13, Article VIII of the **Constitution.**

ERNESTO D. ACOSTA
Presiding Judge
Court of Tax Appeals