REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EQUITABLE PCI BANK (formerly Equitable Banking Corporation),
Petitioner,

- versus -

C.T.A. CASE NO. 6000

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
NOV 23 2001

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DECISION

The instant petition seeks for the refund or issuance of a tax credit certificate in the total amount of P4,967,096.45 allegedly representing overpaid gross receipts tax for the quarter ended December 31, 1997.

Petitioner is a banking corporation duly organized and existing under the laws of the Philippines with principal office at Equitable PCI Tower I, cor. H.V. dela Costa Street and Makati Avenue, Makati City. However, during the quarter ended December 31, 1997, Petitioner's principal office was located at 262 Juan Luna Street, Binondo, Manila.

On January 20, 1998, Petitioner filed with the Bureau of Internal Revenue (BIR) the various quarterly percentage tax returns of its Head Office and branches, for the period ended December 31, 1997 and paid a total of P98,000,343.36 as gross receipts tax (GRT) (Exhibits A, A-2). Of the total GRT payments, the amount of P54,888,588.49 was attributable to its Head Office as shown by its Quarterly Percentage Tax Return for the same quarter (Exhibit B, ,B-2).

In a letter dated March 25, 1999 which was received by the BIR on April 14, 1999, Petitioner filed its claim for refund or issuance of a tax credit certificate in the amount of P4,967,096.45, corresponding to the quarter ended December 31, 1997, computed as follows:

Gross Receipts Subjected to Tax	P1,229,739,678.60
Less: 20% Portion of Tax Paid Income (Annex B1 of 2)	10,674,630.99
Investment Income subject to 20% final tax booked at gross (Annex B2 of 2)	88,667,297.85
Adjusted Gross Receipts Tax Base	P1,130,397,749.76

Computation of Adjusted Gross Receipt Tax:

	Gross Receipts	Tax Due
0%	P105,342,679.79	P 0.00
1%	19,873,756.64	198,737.57
3%	26,815,559.81	804,466.79
5%	978,365,753.55	48,918,287.68
	P1,130,397,749.76	P49,921,492.04

Gross Receipts Tax Paid	P 54,888,588.49
Adjusted Gross Receipts Tax	49,921,492.04
Tax Refund	P 4,967,096.45

Petitioner's claim was basically anchored on the case of **Asian Bank Corporation vs. Commissioner of Internal Revenue, CTA Case No. 4720 promulgated on January 30, 1996** where this Court ruled that the twenty percent (20%) final withholding tax on a bank's passive income shall not form part of the bank's taxable gross receipts for the purpose of computing the Gross Receipts Tax (GRT). Such claim was likewise premised on the principle that no one shall unjustly enrich himself at the expense of another and on Section 229 of the National Internal Revenue Code of 1997 which allows the recovery of any national internal revenue tax erroneously and illegally collected by the BIR.

As there was no action on the part of herein Respondent, the instant Petition was filed on January 20, 2000, in order to toll the running of the two-year prescriptive period.

Respondent, in his Answer, filed on February 7, 2000, raised the following Special and Affirmative Defenses:

> "11. The decision in *Asian Bank Corporation vs. Commissioner of Internal Revenue (CTA Case No. 4720)* is pending appeal with the Court of Tax Appeals. Hence, invocation thereof at this point in time is premature. In fact, in the case of *Commissioner of Internal Revenue vs. Asianbank Corporation (CA-GR SP No. 51248 dated November 22, 1999 [CTA Case No. 5412],* the Court of Appeals (Thirteenth Division) has reversed the Decision of the Court of Tax Appeals relative to the refundability of the alleged overpaid 5% gross receipts tax which is the same subject matter of the instant case.
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> 12. While it is true that Revenue Regulation No. 12-80 provides that the gross receipts tax on banks and other financial institutions should be based on all items of income actually received, actual receipt here is used in opposition to mere accrual. Accrued income refers to income already earned but not yet received *(Republic vs. Lim Tian Teng Sons & Co., 16 SCRA 584).*
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> 13. The term "receipt" may be actual or constructive. Article 531 of the Civil Code provides that possession is acquired by the material occupation of a thing or the exercise of a right, or by the fact that it is subject to the action of one will, or by the proper acts and legal formalities established for acquiring such right. Moreover, taxation may be received by the taxpayer himself or by someone authorized to receive it for him (Article 532, Civil Code). The 20% final tax withheld from interest income on banks and other similar institutions is not income that they have not received; it is simply withheld from them and paid to the government, for their benefit. Thus, the 20% income tax withheld from interest income, is in fact, money of the

taxpayer bank but paid by the payor to the government in satisfaction of the bank's obligation to pay the tax on interest earned. It is the bank's obligation to pay the tax, hence, the withholding of the said tax and its payment to the government is for its benefit *(Commissioner of Internal Revenue vs. Asianbank Corporation, CA GR S.P. No. 51248 dated November 22, 1999 [CTA Case No. 5412]).*

14. In the operation of the withholding tax system, the payee is the taxpayer, the person on whom the tax is imposed, while the payor, a separate entity, acts no more than an agent of the government for the collection of the tax in order to ensure its payment. Obviously, the amount thereby used to settle the tax liability is deemed sourced from the proceeds constitutive of the tax base. Since the payee, not the payor, is the real taxpayer, the rule on constructive remittance (or receipt) can be easily rationalized, if not indeed, made clearly manifest *(Bank of America NT & SA vs. Court of Appeals, 234 SCRA 302).*

15. There is no provision in the Tax Code or any Special Law which excludes the 20% final income tax withholding under Section 50(a) of the Tax Code, as no longer forming part of the gross receipts for the purpose of computation of gross receipts tax under Section 119 of the Tax Code.

16. The petition does not state a cause of action as there is no allegation that the tax sought to be refunded was actually paid to the Bureau of Internal Revenue and that the 20% final withholding tax on income was actually remitted by its withholding agents in accordance with the provisions of the Tax Code.

17. The claim for refund is pending administrative investigation.

18. Taxes are presumed to have been collected in accordance with law. Hence, petitioner must prove that the taxes sought to be refunded were erroneously or illegally collected.

19. The non inclusion of the 20% final withholding tax on income from the gross income for purposes of the gross receipts tax operates as an exemption from tax. Hence, the same must be construed strictly against the one who asserts the claim of exemption, considering that the tax exemption can only be given effect when the grant is clear and categorical inasmuch as taxation is the rule and exemption is the exception.

20. Claims for refund of taxes are to be construed strictly against claimants, the same being in the nature of an exemption from taxation *(Manila Electric Co. vs. Commissioner of Internal Revenue, 67 SCRA 351).*

21. Petitioner must show that it has complied with the provisions of Section 204(3) and Section 230 of the Tax Code, as amended."

In order to support its claim for refund, Petitioner presented the following documents in evidence:

1. EBC's Transmittal Sheet of quarterly Withholding Tax Returns for Quarter ended December 31, 1997 (Exhibit A);
2. EBC Head Office Quarterly Percentage Tax Return for Quarter ended December 31, 1997 (Exhibit B);
3. EBC's Subsidiary Ledger Transactions on Income Account (Exhibits C, D, E, F, G, and H);
4. EBC's Subsidiary Ledger Transactions on Expense Account (Exhibits I, J, K, and L);
5. EBC Head Office Income and Expense Statement for the period ended December 1997 (Exhibit M); and
6. Written claim for refund dated March 25, 1999 (Exhibit N).

Respondent did not present any evidence to support its claim.

Before proceeding with the main issue of this Petition, that is, whether or not Petitioner is entitled to the refund or issuance of a tax credit certificate of the amount of P4,967,096.45 representing excess GRT for the quarter ended December 31, 1997, we shall first dispose of the legal issue involved in this case.

The legal issue to be resolved is whether or not the 20% final withholding tax under Section 57(A) of the 1997 Tax Code (formerly 50(a) of the same Code) should form part of the total gross receipts for purposes of computing the gross receipts tax.

Petitioner anchored its claim on the basis of the case of **Asian Bank Corporation vs. Commissioner of Internal Revenue, CTA Case No. 4720 promulgated January 30, 1996.** In the said case, the Court held that the twenty percent (20%) final withholding tax on bank's passive income should not form part of the bank's taxable gross receipts for the purpose of computing the Gross Receipts Tax (GRT).

We rule in favor of the Respondent.

The case of **Equitable Banking Corporation vs. Commissioner of Internal Revenue, CTA Case No. 5686 promulgated on July 3, 2000** adopted the ruling in the Asian Bank case. However, the Dissenting Opinion penned by Judge Saga in the Equitable Bank case adopted the view that for purposes of computing the gross receipts tax on certain passive income of a bank, the 20% final withholding tax shall be included as part of its gross receipts.

The legal basis used in the aforementioned Asian Bank case was Section 4(e) of Revenue Regulations No. 12-80 dated November 7, 1980 which states, thus:

> "**Section 4.** x x x x x x x x x
>
> (e) Gross receipts tax on banks, non-bank financial intermediaries, financing companies, and other non-bank financial intermediaries not performing quasi-banking activities. The rates of taxes to be imposed on the gross receipts of such financial institutions shall be based on all items of income actually received. Mere accrual shall not be considered, but once payment is received on such accrual or in cases of overpayment then

> the amount actually received shall be included in the tax base of such financial institutions, as provided hereunder." (Underscoring supplied)

Note that in the Asian Bank case, said bank was being assessed for deficiency gross receipts tax of 5% for the taxable year 1986 which at that time the aforequoted Section 4(e) of Revenue Regulations No. 12-80 had already been amended, superseded and omitted in the amendatory Revenue Regulations No. 17-84 dated October 12, 1984. Verily, the citation of Section 4(e) of Revenue Regulations No. 12-80 as cited by Petitioner's counsel in the Asian Bank case was erroneous and that the applicable legal basis that should have been cited is Section 8(c) of Revenue Regulations No. 12-80 which became Section 7(c) of Revenue Regulations No. 17-84 which provides, viz:

> "**Section 8.** x x x x x x x x x
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> (c) If the recipient of the above-mentioned items of income are financial institutions, the same shall be included as part of the tax base upon which the gross receipts tax is imposed."

Petitioner's counsel purposely did not cite said section because certainly it will not be able to get a refund or tax credit for the alleged overpaid gross receipts tax for obvious reasons. Section 4(e) of Revenue Regulations No. 12-80, as worded, is not a computation which is determinative of the amount to be used as basis of the 5% gross receipts tax. Rather, said Section is reflective of the method of accounting being adopted by the taxpayer, such as the cash receipts and disbursement method or the accrual method of accounting. Said methods of accounting comprise a set of rules for determining when and how to report income and deduction **(Consolidated Mines, Inc. vs. Court of Tax**

Appeals, L-18843, August 29, 1974). Thus, under the cash receipts and disbursements method, income earned by the taxpayer is not included in gross income until received and expenses are not deducted until paid within the taxable year. And in the case of the accrual method, income is included in gross income when earned, whether received or not, and expenses are allowed as deductions when incurred although not paid (BIR Ruling No. 35-98, April 13, 1998).

The 5% gross receipts tax under Section 120 of the Tax Code is collectible from all finance companies doing business in the Philippines from interests, discounts and all other items treated as gross income under the Tax Code. Accordingly, its income derived from investing the excess funds in short-term market placements through commercial banks constitute income, hence, subject to the 5% gross receipts tax under said section. The fact that it has been subjected to the 20% final withholding tax under Section 50(a) is immaterial. Besides, the withholding tax is imposed under Title II of the Tax Code while the finance tax is provided under Title V thereof (BIR Ruling No. 223, November 2, 1989). The fact that the same income is subjected to two (2) different kinds of taxes would not make such payments a case of double taxation.

By quoting a superseded revenue regulation, Petitioner in the Asian Bank case, led this Court to believe that indeed the basis of the gross receipts tax is total gross receipts exclusive of the 20% final withholding tax deducted and withheld under Section 50(a) of the Tax Code. Section 7(c) of Revenue Regulations No. 17-84 clearly and categorically provides that the basis of such tax is inclusive of the final withholding tax.

Under Section 2.57 of Revenue Regulations No. 2-98 implementing Republic Act No. 8424, the basis of the 5% gross receipts tax includes the 20% final withholding income tax deducted at source, to wit:

> **"Sec. 2.57. Withholding of Tax at Source**
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> (A) *Final Withholding Tax.* – Under the final withholding tax system the amount of income tax withheld by the withholding agent is constituted as a full and final payment of the income tax due from the payee on the said income. The liability for payment of the tax rests primarily on the payor as a withholding agent. Thus, in case of his failure to withhold the tax or in case of under withholding, the deficiency tax shall be collected from the payor/withholding agent. The payee is not required to file an income tax return for the particular income.
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> The finality of the withholding tax is limited only to the payee's income tax liability on the particular income. It does not extend to the payee's other tax liability on said income, such as when the said income is further subject to a percentage tax. For example, if a bank receives income subject to final withholding tax, the same shall be subject to a percentage tax."

The High Court's decision in the case of **Commissioner of Internal Revenue vs. The Manila Jockey Club, Inc., 108 Phils. 821, June 30, 1960**, which was reaffirmed by the said Court in the case of **Visayan-Cebu Terminal Co., Inc. vs. Commissioner of Internal Revenue, 13 SCRA 357, February 27, 1965** cannot be considered as a precedent cases, hence, inapplicable to the two cases decided by this Honorable Court in the cases of **Compania Maritima vs. Acting Commissioner of Internal Revenue, CTA Case No. 1426 dated November 14, 1966 and Asian Bank Corporation vs. Commissioner of Internal Revenue, CTA Case No. 4720 dated January 30, 1996**, for the following reasons:

> "In the Manila Jockey Club, Inc. case, the Club was authorized to operate horse races in which betting was made through the sale of tickets to the public. The total amount of bets called "wager fund" were distributed pursuant to Executive Order No. 320 and Republic Act No. 309, as follows:
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> 87% as dividends to holders of winning tickets
>
> $12^{1}/_{2}$ as "commissions" of the Manila Jockey Club, of which $^{1}/_{2}$ % was assigned to the Board on Races and 5% was distributed as prizes for owners of winning horses and authorized bonus for jockeys.

According to the above-mentioned distribution of the "wager fund", the then Collector of Internal Revenue assessed the Club on the whole amount of its "commission" of $12^{1}/_{2}$. But since the Club had already paid the amusement tax based on its 7% share of the "commission", the amount assessable pertains only to the $5^{1}/_{2}$% for the period from November 1946 to October 1950. On various instances, the Club protested the proposed assessments and was sustained by the opinions of the Secretary of Justice rendered on three different occasions (Opinion No. 345, series of 1941; Opinion No. 249, series of 1952 and Opinion No. 340, series of 1955).

Notwithstanding the opinions of the Secretary of Justice to the effect that the amount corresponding to the $5^{1}/_{2}$% was held only by the Club in trust for the owners of winning horses and authorized bonuses of jockeys, the then Collector of Internal Revenue demanded payment of amusement taxes for the period November 1946 to October 1950. Said demand letter was timely appealed to the Court of Appeals wherein a unanimous judgment was obtained reversing the Collector's stand on the matter. In the High Court, the position of the Secretary of Justice was sustained thereby upholding the Court of Tax Appeals' decision.

Accordingly, gross receipts of the proprietor of the amusement place should not include any money which, although delivered to the amusement place was "especially earmarked" by law or legal rule and regulations for some persons other than the proprietor. Undeniably, they are money received by the racing club but they are moneys earmarked by law or regulations for winning horse owners and jockeys and never for a minute become the property of the race track. The same is true in the case of the $^{1}/_{2}$% which the law directs the club to deliver to the Board on Races. The High Court therefore agrees with the stand of the Court of Tax Appeals that such funds representing $5^{1}/_{2}$% of the $12^{1}/_{2}$% "commissions" of the race track do not form part of the gross receipts, hence not subject to the amusement tax of 20%.

The above-mentioned decision of the High Court was also applied in the case of **Visayan Cebu Terminal Co., Inc. vs. Commissioner of Internal Revenue, 13 SCRA 357, Nos. L-19530 and L-19444, February 27, 1965**. The legal issue involved in this case is the interpretation of the management contract entered into by and between the Bureau of Customs and Visayan Cebu Terminal Co., Inc. whereby the latter as contractor was appointed the sole manager of the Arrastre Service at the Port of Cebu City. In the said Management Contract, it was further agreed and understood that in consideration of the rights and privileges granted the Contractor for the management of the Arrastre Service, the Bureau of Customs shall receive twenty eight (28%) percent of the total monthly gross income derived from whatever source in connection with the operations of the Arrastre Service, payable within ten (10) days of the succeeding month. The main legal issue involved in this case is whether or not the gross receipts corresponding to the 28% of the total gross income of the Service Contractor delivered to the Bureau of Customs within ten (10) days of the following month should form part of the gross receipts subject to 3% contractor's tax under Section 191 of the Tax Code. The Court of Tax Appeals ruled in favor of the petitioner, holding the view that the said 28% payment by the Arrastre Contractor based on its monthly gross income should not form part of the gross receipts subject to 3% contractors tax and that paragraph 23 of the said Management Contract can legally be construed as a "regulation". As the learned trial court has aptly observed: "x x x the government could not have intended to consider as gross receipts the 28% that went to one of its institutions, the Bureau of Customs, and thereby collect percentage tax on it from petitioner. To hold Petitioner liable for the payment of percentage tax is unquestionably unjust and not contemplated by Section 191 of the Tax Code."

All the above-mentioned decisions of the High Court made specific reference to gross receipts which are especially "earmarked by law or legal rule or regulation" as not forming part of the taxable gross receipts for purposes of the gross receipts tax under the Tax Code. For this purpose, it is pertinent to define the word "earmark" as a mark put upon a thing to distinguish it from another. Originally and literally, a mark upon the ear, a mode of marking sheep and other animals. Property is said to be earmarked when it can be identified or distinguished from other property of the same nature. To set apart from others (Black's Law Dictionary, 6th Edition, p. 508). In the case of the Manila Jockey

Club, Inc. Executive Order No. 320 and Republic Act No. 309 made the specific "earmarking" for distribution of the total wager fund to different persons other than the proprietor. The same is true in the case of Visayan Cebu Terminal Co., Inc. where the specific earmarking of the 28% of the total monthly gross income to be delivered to the Bureau of Customs by the Contractor was provided in paragraph 23 of the Management Contract. Such specific earmarking of the twenty percent (20%) final income tax as not includible in the gross receipts for purposes of the gross receipts tax was not provided by any law or legal rule or regulations, hence the non-applicability of the above-cited High Court decisions to the Asian Bank Corporation case. This legal observation is also in point in the case of Compania Maritima case where the non-inclusion of the 10% reserve from the total cash collection to avoid claim for refund on freight and passengers tickets not taken is not provided by any law or legal rule or regulations.

In the Asian Bank Corporation case, petitioner bank alleges that subjecting the gross receipts to the 20% final withholding income tax and later to the 5% gross receipts tax is not only oppressive and obnoxious but even a confiscatory form of double taxation. Double taxation has been defined "as the taxing of the same item or piece of property twice to the same person, or taxing it as the property of one person and again as the property of another, <u>but this does not include the imposition of different</u> taxes concurrently on the same property or income (e.g. federal and state income taxes), nor the taxation of the same piece of property to different persons when they hold different interests in it or when it represents different values in their hands, as when both the mortgagor and mortgagee of property are taxed in respect to their interests in it, or when a tax is laid upon the profits of the corporation and also upon the dividends paid to its stockholders" (Black's Law Dictionary, 6th Edition, p. 491). This acceptable form of double taxation is reflected in BIR Ruling No. 223 dated November 2, 1989, thus:

> "The 5% gross receipts tax under Section 120 of the Tax Code is collectible on all finance companies doing business in the Philippines from interests, discounts, and all other items treated as gross income under the Tax Code. Accordingly, your income derived from investing the excess funds in short-term market placements through commercial banks constitutes income hence, subject to the 5% gross receipts tax under said Section. The fact that it has been subjected to the 20% final withholding income tax under Section 50(a) is immaterial. Besides, the withholding tax is imposed under Title II of the Tax Code while the finance tax is provided under Title V thereof." (BIR Ruling No. 223, November 2, 1989)

For purposes of the amusement tax under Section 260 of the Tax Code, the term 'gross receipts' embraces 'the receipts' of the proprietor, lessee, or operator of the amusement place. The words 'all the receipts' refer to the total amount of cash received which becomes part of the funds of the taxpayer and does not include any money which has been specially earmarked by any law or legal rule or regulation for some other person other than the proprietor, lessee or operator of the amusement place. Receipts means actually received (**Philippine Long Distance Telephone Co. vs. Collector of Internal Revenue, G.R. No. L-3222, January 21, 1952)** for itself and not for others, for otherwise they would not be receipts (**Manila Jockey Club, Inc. vs. Collector of Internal Revenue, CTA Case No. 205, April 15, 1958; Jai Alai Corporation of the Philippines vs. Araneta, CTA Case No. 108, July 31, 1956 [Annotated, NIRC by Commissioner Jose Arañas, 1988 Edition, p. 687).**

In his **Annotations and Jurisprudence on the National Internal Revenue Code as amended,** former Commissioner of Internal Revenue Jose Arañas defined gross receipts under then Section 260 (previously Section 249 and now Section 121) of the Tax Code as follows:

> **Sec. 260 (3).** ***Meaning of "gross receipts.*** - The term "gross receipts" provided for in Section 249 of the Tax Code should be interpreted to mean "as the whole amount received without deductions," otherwise, it will be considered as "net receipts". (*National City Bank of New York vs. CIR*, BTA Case No. 52, July 12, 1952).
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> Profits derived from the sale of miscellaneous accounts, whether it is in connection with the banking business of the banking institution or not, so long as they were earned or derived from its fund, as a banking institution, should be included in gross receipts. *(Ibid).* Arañas, **Annotations and Jurisprudence on the National Internal Revenue Code as amended,** 6th ed. (1983), Vol. II, p. 479.

In his Commentaries and Jurisprudence on the National Internal Revenue Code of the Philippines, Jose N. Nolledo draws the same conclusion:

> No deductions are allowed from gross income before the 5% tax is imposed as otherwise, the tax is based on net receipts. (See National City Bank of New York vs. CIR, BTA Case No. 52, July 12, 1952). Nolledo, **Commentaries and Jurisprudence on the National Internal Revenue Code of the Philippines,** 1976 Revised Edition, p.1127.

Moreover, in the United States, whose jurisprudence has a persuasive effect in this jurisdiction, the term "gross receipts" had this established meaning:

> "Gross income," "gross proceeds" and "gross receipts" all mean the same, it has been held, although "gross earnings" are sometimes distinguished from "gross receipts." Gross receipts ordinarily mean the

total receipts before anything is deducted for the expenses of management." Cooley, **The Law on Taxation,** 4th ed. (1924), Vol. II, pp. 1789-1790, citing State v. Illinois Cent. R. Co., 246 Ill. 188, 92. N.E. 814.

"Gross earnings means entire earnings from all operations and not earnings less operating expenses, taxes and bad debts. State v. United Electric Light & Water Co., 90 Conn. 452, 97 Atl. 857" Cooley, *The Law on Taxation*, 4th ed. (1924), Vol. II, p. 1790.

Furthermore, excise tax has not been allowed as a deduction for purposes of determining gross receipts. In interpreting the term "gross receipts", Mertens, **Law of Federal Income Taxation,** has this to say:

& 3.37. Construction of Specific Words

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Gross Receipts

In determining "gross receipts" such descriptions as "the total amount received or accrued" have been applied. That gross receipts represent the total amount received or accrued is plain; with respect to inventory, it is the amount the customer paid and not such amount reduced by any excise tax for which the seller is responsible. This definition of gross receipts - not subtracting the excise payments - has been applied in formulas for DISCs. Mertens, **Law of Federal Income Taxation,** 1995 edition, Chapter 3, page 54, Section 3.37, citing **Lucky Lager Brewing Co. v. Comm.**, 26 TC 836 (1956), affd 246 F2d 621 (CA9 1957) and **Brown-Forman Corp. v. Comm.**, 94 TC 419 (1990).

In fine, for purposes of computing the gross receipts tax of banks and other financial institutions, the 20% final withholding tax on their certain passive income shall form part of their gross receipts.

Considering that this Court has passed upon the legal issue appurtenant to Petitioner's claim for refund, We find it no longer necessary to delve into the factual issues as the Court finds no legal basis for such claim.

WHEREFORE, in view of all the foregoing, the instant claim for refund is hereby **DENIED** for **LACK OF MERIT**.

SO ORDERED.

AMANCIO Q. SAGA
Associate Judge

WE CONCUR:

(Dissenting)
ERNESTO D. ACOSTA
Presiding Judge

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Judge

CERTIFICATION

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

ERNESTO D. ACOSTA
Presiding Judge