REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EQUITABLE BANKING CORPORATION,
Petitioner,

- versus -

C.T.A. CASE NO. 5521

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
SEP 08 1999

x - x

DECISION

This case involves a claim for refund of alleged overpaid gross receipts tax for the quarter ending March 31, 1995 in the total amount of ₱1,102,979.86.

Petitioner is a banking corporation duly organized and existing under the laws of the Philippines.

On April 20, 1995, petitioner filed with the Bureau of Internal Revenue its Quarterly Percentage Tax Return for the quarter ended March 31, 1995 (Exh. B) reflecting a gross earning in the amount of ₱385,640,115.87 and gross receipts tax payment in the sum of ₱18,212,999.56. Petitioner alleges that the said gross receipts tax payment comprises the aggregate amount of gross receipts tax paid by its Head Office and branches, namely: Arranque, Magdalena, Ongpin, Reina Regente and Soler (Exh. A). Petitioner further avers that the amount of ₱385,640,115.87 included the amounts of ₱1,850,179.43 (Exh. C-3-B) and ₱20,209,417.91 (Exh. C-4-A) which respectively correspond to the 20% portion of tax paid income and income subjected to final tax booked at gross.

On January 30, 1996, this Court rendered a decision in the case of **Asian Bank Corporation vs. Commissioner of Internal Revenue, CTA Case No. 4720,** declaring that the 20% final withholding tax on bank interest should not form part of its taxable gross receipts for purposes of computing gross receipts tax.

Thus, on the basis of the above ruling, petitioner filed on September 26, 1996 an administrative claim for the refund or issuance of tax credit certificate in the total amount of ₱14,125,699.10 from which the ₱1,102,979.86, subject matter of this case, formed a part of (Exh. C). The amount claimed to be refundable is derived at by recomputing the tax base, as follows:

Gross Receipts Subjected to Tax	₱385,640,115.87
Less: 1) 20% Portion of Tax Paid Income	1,850,179.43
2) Investment Income subject to 20% final tax booked at gross	20,209,417.91
Adjusted Gross Receipts Tax Base	₱363,580,518.53

Computation of Adjusted Gross Receipts Tax

Gross Receipts	Tax Rate	Tax Due
₱ 11,212,458.67	0%	0.00
3,825,560.86	1%	38,255.61
17,768,043.05	3%	533,041.29
330,774,455.95	5%	16,538,722.80
₱363,580,518.53		₱17,110,019.70

Gross Receipts Tax Paid	₱18,212,999.56
Less: Adjusted Gross Receipts Tax	17,110,019.70
Tax Refund	₱ 1,102,979.86

The administrative claim having been unacted upon by the respondent, petitioner filed this judicial claim for refund on April 18, 1997.

Respondent, by way of Special and Affirmative Defenses, states, among others, that:

a) Petitioner's claim for tax refund or credit is still undergoing routine administrative investigation or examination by the Bureau of Internal Revenue;

b) Assuming arguendo that petitioner paid the alleged refundable or creditable gross receipts taxes, the same were nevertheless collected and paid pursuant to law and pertinent BIR implementing rules and regulations;

c) Petitioner's allegations that it erroneously or excessively paid its gross receipts taxes during the quarter under review does not ipso facto warrant refund or credit. Petitioner must establish that the exclusions claimed from its gross receipts are allowable under the Tax Code and its pertinent implementing rules and regulations; and

d) Petitioner must likewise establish that the alleged refundable/creditable gross receipts tax was neither automatically applied as tax credit against its tax liability for the succeeding quarter/s of the succeeding year nor included as creditable taxes declared and applied to the succeeding taxable year/s.

To support its claim, petitioner presented the following documentary evidence, to wit:

1. Transmittal Sheet of Percentage Tax of the Head Office and Branches/Units of Large Taxpayers for the Quarter Ended March 31, 1995;

2. Quarterly Percentage Tax Return of the quarter ended March 31, 1995;

3. Written claim for refund dated September 26, 1996;

4. Income & Expense Account Sub-ledgers for the quarter ended March 31, 1995; and

5. Statement of Income and Expense Accounts of EBC for Head Office for the quarter ended March 31, 1995.

Petitioner also presented witnesses to testify and identify the aforecited documents.

All the aforementioned documentary evidence as well as the testimonies of the witnesses were admitted by this Court in a resolution dated February 27, 1998.

Respondent, on the other hand, manifested that there was no investigation or examination conducted on petitioner's claim. Respondent then submitted the case for decision based on the pleadings and other available records.

The Court ordered both parties to submit their respective memoranda after which, the case was deemed submitted for decision on July 3, 1998.

On October 1, 1998, before the case was decided by this Court, petitioner filed a Motion to Reopen the Case to allow the presentation of additional evidence in order to comply with the requirements laid down in the two (2) cases decided by this Court involving the same parties and subject matter (CTA Case Nos. 5411 and 5146).

However, the motion to reopen the case was denied by this Court in a resolution dated October 29, 1998. Quoted hereunder are portions of said Resolution, thus:

> "The presentation of additional evidence is allowed only when it is newly discovered, or where it has been omitted through inadvertence, or mistake, or where the purpose of the evidence is to correct evidence previously offered. x x x
>
> It appears that the reason of petitioner wanting to reopen the case is based solely in our Decision in the case of Equitable Banking vs. CIR, CTA Case No. 5411 and 5416).
>
> Petitioner failed to specifically state the facts surrounding the alleged inadvertence or mistake or inexcusable negligence in the presentation of that alleged additional document except for the fact that it was raised in our previous decision involving the same parties and subject matter. The Court cannot allow the presentation of piecemeal evidence, otherwise, there will be no end to litigation." (CTA records pp. 182-185)

On November 20, 1998, a motion for reconsideration of the resolution dated October 29, 1998 was filed by the petitioner but the Court likewise denied the same in a resolution promulgated on January 25, 1999. The Court then ordered this case to be submitted for decision on the date of promulgation of said resolution.

The issues posed for adjudication in this case are:

(1) Whether or not petitioner is entitled to the refund of gross receipts tax for the quarter ended March 31, 1995 corresponding to the 20% final withholding tax on its passive income; and

(2) Whether or not petitioner has proven its claim by substantial evidence.

As regards the legal issue, this Court has already settled the same in the case of **Asian Bank Corporation vs. Commissioner of Internal Revenue**, CTA Case No. 4720, dated January 30, 1996, the pertinent portions of which are quoted below:

> "We agree with the petitioner that the 20% final withholding tax on its interest income should not form part of its taxable gross receipts.
>
> Revenue Regulations No. 12-80 dated Nov. 7, 1980 on Taxation of Certain Income Derived from Banking Activities provides that the rates of tax to be imposed on the gross receipts of such financial institution, shall be based on all items of <u>income actually received</u>, thus:
>
> SEC. 4. xxx xxx xxx
>
> > (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 <u>shall be based on all</u>

> <u>items of income actually received</u>. Mere accrual shall not be considered, but once payment is received on such accrual or in cases of prepayment, then the amount actually received shall be included in the tax base of such financial institutions, as provided hereunder. (Underscoring supplied.)

From the foregoing, it is but logical to infer that the final tax, not having been received by the petitioner but instead went to the coffers of the government, should no longer form part of its gross receipts for the purpose of computing the GRT. This conclusion is in accord with the interpretation of the Supreme Court in the case entitled **Collector of Internal Revenue vs. Manila Jockey Club,** 108 Phil. 821, as quoted by this Court in disposing of a similar issue in the case entitled ***Compania Maritima vs. Acting Commissioner of Internal Revenue***, CTA Case No. 1426 dated November 14, 1966, thus:

> In the second place, the highest tribunal of the land interpreted the term 'gross receipts': to mean all receipts of a taxpayer excluding those which have been especially earmarked by law or regulation for the government or some person other than the taxpayer. Thus, it was held:
>
> > "xx xx. The Government could not have meant to tax as gross receipt of the Manila Jockey Club the $^1/_2$% which it directs same Club to turn over to the Board of Races. The latter being a Government institution, there would be double taxation, which should be avoided unless the statute admits of no other interpretation. In the same manner, the Government could not have intended to consider as gross receipt the portion of the funds which it directed the Club to give, or know the Club would give, to winning horses and Jockeys - admitted 5%. It is

> true that the law says that out of the total wager funds $12^{1}/_{2}\%$ shall be set aside as the 'commission' of the track owners but the law itself takes official notice, and virtually approves or directs payment of the portion that goes to owners of horses as prizes and bonuses of jockeys, which portion is admittedly 5% out of the $12^{1}/_{2}\%$ commission. As it did not at that time contemplate the application of 'gross receipts' revenue principle, the law in making a distribution of the total wager funds, took no trouble of separating one item from the other; and for convenience, grouped three items under one common denomination.
>
> "Needless to say, gross receipts of the proprietor of the amusement place should not include any money which although delivered to the amusement place has been especially earmarked by law or regulation for some person other than the proprietor." (**The Commissioner of Internal Revenue vs. Manila Jockey Club, Inc., G.R. Nos. L-13890 & L-13887, June 30, 1960**)

It is to be noted that, under Section 260 of the Tax Code, a race-track is subject to an amusement tax of 20% of its gross receipts and the term 'gross receipts' embraces all the receipts of the proprietor, lessee, or operator of the amusement place." Notwithstanding the broad and all-embracing definition of the term "gross receipts" found in our amusement tax law, our Supreme Court did not adopt a literal interpretation of the said term in the case of the **Manila Jockey Club, Inc.**, *supra.*"

In sum, the 20% final withholding tax on bank's interest income should not form part of taxable gross receipts for purposes of computing the gross receipts tax.

The legal issue having been settled, what remains to be resolved are factual matters, particularly as to whether or not petitioner has established by evidence its claim for refund.

While it is true that petitioner clearly declared the exactitude of the amount being claimed for refund, a perusal of the records shows some errors committed by the petitioner in arriving at the Adjusted Gross Receipts tax base which will be subjected to the tax rate of 0%, 1%, 3% and 5%.

A careful scrutiny of the records show that petitioner erred in computing its overpaid gross receipts tax shown in Exhibit "C-2" (page 65, CTA records), particularly in including the amount of ₱20,209,417.91 (Exhibit "C-2-c") allegedly representing the 20% final tax withheld on income received by petitioner. An examination of the other evidence presented by petitioner reveals that the interest income from which the amount of ₱20,209,417.91 was allegedly deducted was recorded in the subsidiary ledger at 100%, meaning without deducting the 20% final tax. The implication being that the 20% final withholding tax was not actually withheld and that petitioner received the full amount of the interest income without deductions for final tax (Exhibits Q to X, GG to JJ, RR to TT).

It is important to note that the account title "Provision for Tax - Final Tax" found in the subsidiary ledgers of petitioner does not necessarily mean final taxes have been paid but may merely be a segregation of the amount to be paid to the BIR. Petitioner should be reminded that the refund of gross receipts taxes is based on the actual payment of the 20% final tax which shall then be deducted from the gross receipts for the purpose of computing the 5% gross receipts tax. This is the essence of the aforequoted Asian Bank case, CTA Case No. 4720. Mere segregation is not sufficient, there must be actual proof of payment of the 20% final taxes to warrant the grant of the claim for refund.

In the case at bar, petitioner failed to present Certificates of Income Tax Withheld at Source to prove that the final taxes were withheld and actually remitted to the coffers of the government. Although petitioner submitted some relevant documents to substantiate its claim for refund, the Court finds the same insufficient to grant the desired relief. Plainly stated, since it appears that petitioner has no other evidence to show how much final withholding tax was paid on interest income it received, we are constrained not to grant petitioner's prayer.

Settled is the rule in this jurisdiction that a claim for refund is in the nature of a claim for exemption, hence should be construed in strictissimi juris against the taxpayer **(Commissioner of Internal Revenue vs. Tokyo Shipping Co. Ltd., 244 SCRA 332).**

Furthermore, in claims for refund of gross receipts taxes, it is incumbent upon the petitioner, not only to present the ledgers and subledgers containing in summary form the amount to be claimed and how it was arrived at, but likewise to submit for the court's appreciation the specific documents and other evidence that would support its entitlement to the refund sought for. As lucidly laid down in the case of **BPI Capital Corporation vs. CIR (CTA Case No. 5457, March 1, 1999),**

> "To comply with these evidentiary requirements, petitioner must present the Statements or Certificates of Tax Withheld at Source issued by its withholding agents, together with a summary of the same, as these documents will clearly show how much final taxes were withheld and remitted by the withholding agents to the Respondent, for the account of the Petitioner. The total of these 20% final taxes withheld from petitioner's interest income will be the basis of the amount which will be deducted from the total gross receipts of the petitioner for the period in question, before the same will be subjected to the 5%, 3%, 1%, 0% GRT rate as required in Section 119, supra and as discussed in the Asian Bank case.

IN THE LIGHT OF ALL THE FOREGOING, the instant petition for review is hereby DISMISSED for insufficiency of evidence.

SO ORDERED.

ERNESTO D. ACOSTA
Presiding Judge

WE CONCUR:

RAMON O. DE VEYRA
Associate Judge

(Dissenting)
AMANCIO Q. SAGA
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

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EQUITABLE BANKING CORPORATION,
Petitioner,

- versus -

C.T.A. CASE NO. 5521

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:

SEP 08 1999

x - x

DISSENTING OPINION

Majority of my esteemed colleagues denied the instant claim for refund due to insufficiency of evidence.

I agree that this claim for refund should be denied but for reasons that go beyond mere lack of evidence.

It is my belief that this Court's ruling in the case of Asian Bank Corporation vs. Commissioner of Internal Revenue, CTA Case No. 4720, dated January 30, 1996, on which the decision in the instant case is partially based, is erroneous.

There is no provision in the Tax Code or any special laws which excludes the 20% final income tax withholding under Section 50(a), as no longer forming part of the gross receipts for purpose of the 5% gross receipts tax. Section 8(c) of Revenue Regulations No. 12-80, dated November 7, 1980, as amended by Section 7(c) of Revenue Regulations No. 17-84, dated October 12, 1984 have the same provisions, thus:

> "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."

Clearly, there is no doubt that the 20% final withholding tax is legally includible as part of the gross receipts for purposes of computing the gross receipts tax.

The petitioner cited the case of **Asian Bank Corporation vs. Commissioner of Internal Revenue, CTA Case No. 4720, dated January 30, 1996**, where this Court has upheld the petitioner's contention that the interest income included as part of such gross receipts should be computed minus the 20% final tax already withheld and deducted by various withholding agents for the reason that the amount did not go to its funds, hence, was not actually received by them. And the Court approved the petitioner's citation of Section 4(e) of Revenue Regulations No. 12-80, dated November 7, 1980, thus:

> "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."

This Court concluded in said case that from the aforestated provisions it can logically be inferred that the amount representing the final tax, not having been received by the petitioner but instead went to the coffers of the government, should no longer form part of its gross receipts for purposes of computing the gross receipts tax. Such conclusion in law is legally objectionable for two (2) reasons, to wit:

(1) Section 4(e) of Revenue Regulations No. 12-80 is not a computation determinative of the amount of gross receipts as basis of the gross receipts tax under Section 119 of the Tax Code. Said revenue regulations merely authorize the determination of the amount of gross receipts on the basis of the method of accounting being used by the taxpayer under Section 37 of the Tax Code. Such accounting methods for tax purposes comprise a set of rules for determining when and how to report income and deductions (Consolidated Mines, Inc. vs. CTA, L-18843, August 29, 1974). The two principal accounting methods expressly and impliedly recognized by the Tax Code and the Income Tax Regulations are:

(a) Cash receipts and disbursement method or cash basis. - 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

(b) Accrual basis. - Income is included in gross income when earned, whether received or not, and expenses are allowed as deductions when incurred although not yet paid within the year.

(2) That the non-inclusion of the 20% final withholding income tax from the gross interest income for purposes of the gross receipts tax operates as an exemption from tax. Being an exemption from tax, the same must be construed strictly not against the government but against the one who asserts the claim of exemption. 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, Section 26, Tax Code. The holding therefore in the Asian Bank Corporation to the effect that the non-inclusion of the 20% final withholding income tax from the gross receipts can logically be inferred from the wordings of said Section 4(e) of Revenue Regulations No. 12-80, is misplaced.

Tax statutes are to receive a reasonable construction with a view to carrying out their purpose and intent (51 Am Jur 361). It should not be construed as to permit the taxpayer to easily evade the payment of the tax (Cabon Steel Co. vs. Lewelyn, 251 U.S. 501). Thus, the good faith of the taxpayer is not sufficient justification for exemption from the payment of surcharges imposed by law (Commissioner vs. Royal Interocean Lines and CTA, L-26506, July 30, 1970). A tax statute should be construed to avoid the possibilities of tax evasion (Lorenzo vs. Posadas, 64 Phils. 353).

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 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:
>
> 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 "<u>regulation</u>". 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 "<u>earmarked by law or legal rule or regulation</u>" 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, but this does not include the imposition of different 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 as long as the basis for the claim for refund or tax credit certificate is based on the non-inclusion of the amount representing the final withholding income tax under Section 50(a) as part of the gross income subject to gross receipts tax, this dissenting opinion will stand. For purposes of the amusement tax under Section 260 of the Tax Code, the term `gross receipts' embraces `all 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**).

WHEREFORE, in view of the foregoing, I hereby register my dissent to the majority opinion and vote for the denial of the claim for refund for lack of legal basis.

AMANCIO Q. SAGA
Associate Judge