REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

BPI UNIBANK, as Trustee of Various Trust Accounts (FORMERLY FAR EAST BANK & TRUST COMPANY, as Trustee of Various Retirement Funds),
Petitioner,

- versus -

C.T.A. CASE NO. 5979

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
JAN 19 2004
[signature]

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DECISION

This is a petition for review seeking for a refund of final taxes in the amount of P5,457,440.51 alleged to have been erroneously withheld from the interest income earned on investments on money market placements, bank deposits, other deposit substitutes and government securities made by petitioner as trustee of various retirement plans.

Petitioner is a commercial banking corporation duly organized and existing under the laws of the Philippines with address at the Far East Bank Centre, Sen. Gil Puyat Avenue, Makati City (par. 1, Joint Stipulation of Facts and Issues). Aside from its commercial banking functions, petitioner is likewise authorized to engage in trust and investment functions. Petitioner has instituted this present action in its capacity as trustee of various retirement funds.

Respondent is the public official charged with the enforcement and administration of the internal revenue laws of the Philippines with office address at the Bureau of Internal Revenue Building, Diliman, Quezon City.

Petitioner is the duly appointed trustee of various companies under trust agreements for the management and investment of the respective trustor-companies' retirement and other trust funds. The retirement trust funds were established by the various companies to provide retirement, death, disability and separation benefits to the members of the companies' retirement plans.

From January 7, 1998 up to July 2, 1998, petitioner, acting pursuant to the trust agreements, purchased various amounts of treasury bills from the Treasury Department of the Bangko Sentral ng Pilipinas (hereinafter referred to as BSP). A 20% final tax on the interest income of the treasury bills was withheld by the BSP automatically upon purchase (page 13, TSN dated February 1, 2001). BSP then credited the demand deposit account of the Treasurer of the Philippines with the total amount of the final taxes withheld from the yield on treasury bills (Exhibits C-2 up to C-8 and page 12, TSN dated February 1, 2001).

Likewise, from July 8, 1998 up to December 29, 1998, BSP purchased various amounts of treasury bills from the Bureau of Treasury which automatically withheld final taxes of 20% upon every purchase by the BSP. According to the petitioner's witness Jeanette C. Siguenza, Bank Officer III of the BSP, since July 3, 1998, the tax exemption privilege of the Bangko Sentral was lifted. And since then, the BSP is being taxed by the Bureau of Internal Revenue on its purchase of government securities. When the BSP sells the treasury bills to petitioner, the taxes are passed on to the bank and included in the cost of the Treasury Bills (Exhibits D, D-1 and pp. 18 – 20, TSN dated February 1, 2001). In effect, it was the petitioner, as trustee of the retirement funds, who bore the burden of the final taxes withheld by the Bureau of Treasury (Memorandum for Petitioner, p. 356 CTA records).

On March 16, 1999, petitioner filed with the Appellate Division, Tax Refund/Credit Case of the Bureau of Internal Revenue a claim for refund of the 20% final taxes withheld from the interest income earned by the trust funds for the year 1998 (Exhibit A), citing the case of Commissioner of Internal Revenue vs. GCL Retirement Plan (CA-GR SP No. 20426, 27 August

1990). In the said case, the Court of Appeals affirmed the decision of this court ruling that interest income on money market placements, bank deposits and treasury bills earned by an employees' trust set up by the employer for the exclusive benefit of its employees is exempt from the withholding tax. According to petitioner, the Supreme Court upheld the judgment of the Court of Appeals affirming that of the Court of Tax Appeals in the said case.

Respondent did not act on petitioner's claim for refund. Hence, on December 23, 1999, petitioner filed this Petition for Review praying that respondent be ordered to refund the amount of P5,457,440.51 representing final taxes for the entire year of 1998, withheld from interest income earned on investments made by petitioner on money market placements, bank deposits, other deposit substitutes and government securities as trustee for the various retirement plans. On August 21, 2000, petitioner filed an Amended Petition for Review in order to reflect the true date of filing of its administrative claim for refund.

Respondent, in his Answer filed through registered mail on February 9, 2000, interposed the following Special and Affirmative Defenses:

> "4. Petitioner's claim for refund is subject to administrative routinary investigation/examination by respondent's Bureau.
>
> 5. Petitioner must be able to prove that the amount of P5,457,440.51 was erroneously withheld and remitted to the respondent.
>
> 6. In an action for refund/credit, the burden of proof is on the taxpayer to establish its right to refund and its failure to sustain the burden is fatal to the claim for refund/credit.
>
> 7. Petitioner must show that it has complied with the provisions of Sections 204 (c) and 229 of the Tax Code."

The parties agreed that the issues to be resolved by the court are as follows:

1. Whether or not interest income earned by qualified and exempt retirement funds managed by petitioner as trustee are exempt from income tax;

2. Whether or not taxes were erroneously withheld from the income of qualified tax-exempt retirement funds managed by petitioner; and

3. Whether or not petitioner is entitled to a refund or tax credit in the amount of P5,457,440.51 representing withholding tax on interest income earned by qualified and exempt retirement funds under trust with petitioner. (Amended Joint Stipulation of Facts and Issues, pp. 80-81, CTA Records).

As to whether or not interest income earned by qualified and exempt retirement funds managed by petitioner as trustee are exempt from income tax, the court rules in the affirmative. In the case of ***COMMISSIONER OF INTERNAL REVENUE vs. THE HONORABLE COURT OF APPEALS, et. al., G.R. No. 95022, March 23, 1992,*** relied upon by petitioner, the High Court ruled in this wise:

> "There can be no denying either 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 application of the withholding system 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. If an employees' trust like the GCL enjoys a tax-exempt status from income, we see no logic in withholding a certain percentage of that income which it is not supposed to pay in the first place."

The particular provision (Sec. 53 [b]) of the previous Tax Code referred to in the above-quoted portion of the decision of the Supreme Court has been carried forward in the ***NATIONAL INTERNAL REVENUE CODE OF 1997*** (NIRC of 1997 for brevity), which took effect on January 1, 1998, as Section 60 (B) thereof. Since the final taxes sought to be refunded were withheld from January up to December 1998, the applicable provision of law is now Sec. 60 (B) of the NIRC of 1997, which provides:

> "SEC. 60. Imposition of Tax. –
>
> xxx xxx xxx

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> (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 (1) if contributions are made to the trust by such employer, or employees, or both for the purpose of distributing to such employees the earnings and principal of the fund accumulated by the trust in accordance with such plan, and (2) if under the trust instrument, it is impossible, at any time prior to the satisfaction of all liabilities with respect to employees under the trust, for any part of the corpus or income to be (within the taxable year or thereafter) used for, or diverted to, purposes other than for the exclusive benefit of his employees: *Provided*, That any amount actually distributed to any employee or distributee shall be taxable to him in the year in which so distributed to the extent that it exceeds the amount contributed by such employee or distributee."

From the foregoing provision of law and jurisprudence, it is indubitably clear that employee's trust funds are not subject to income tax.

The first issue having been settled in the affirmative, we now proceed to the second and third stipulated issues which shall be discussed and resolved simultaneously. As held by the Supreme Court in the GCL case, interest income of duly qualified retirement plans are exempt from final withholding tax in accordance with Republic Act No. 4917, otherwise known as "An Act Providing that the Retirement Benefits of Employees of Private Firms shall not be Subject to Attachment, Levy, Execution, or Any Tax Whatsoever", as implemented by Revenue Regulations No. 1-68.

Revenue Regulations No. 1-68 was later amended by Revenue Regulations No. 1-83 which provides in part:

> "SECTION 1. Section 6 of Revenue Regulations No. 1-68 is hereby amended to read as follows:
>
> Sec. 6. Determination of qualification. (A) Issuance of certificate of qualification. – Before availing of the privileges afforded by pension, gratuity, profit-sharing, or stock bonus plans, a certificate must be secured by the employer to the effect that the qualification of the plan for tax- exemption has been determined. xxx xxx xxx"

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Based on the foregoing, a Tax Exemption Certificate (TEC) is essential before an employee's trust can be qualified as a tax-exempt retirement plan. The independent certified public accountant commissioned by the court for this case, certified that the total claim for refund of the petitioner (p. 277, CTA Records) consists of the following:

	With TEC	**Without TEC**	**TOTAL**
With CER or FICFR or COS	4,653,052.68	678,095.02	5,331,147.70
Without CER or FICFR or COS	126,174.01	-	126,174.01
TOTAL	4,779,226.69	678,095.02	5,457,321.71

TEC – Tax Exemption Certificates
CER – Collection Execution Reports
FIFR – Fixed Income Collection Final Report
COS – Confirmation of Sale

Considering that the commissioned independent certified public accountant had already classified the various trust funds into those With TEC and those Without TEC, the amount of P678,095.02 representing the portion of petitioner's claim for refund without corresponding TECs should be denied outright in view of the lack of an essential requisite prescribed by Rev. Reg. No. 1-68, as amended by Rev. Reg. No. 1-83.

In the same vein, the commissioned independent certified public accountant stated in the List of Retirement Funds with Available Tax-Exemption Certificates (p. 278, CTA Records) that FEB Group Trust Ten (Diversified Fund) and FEB Group Trust Ten (Income Fund) were only supported by Declaration of Trust and that no individual tax exemption certificates were verified. This declaration could only mean one thing, both FEB Group Trust Ten trust accounts do not have tax exemption certificates, hence, their claims for refund in the amounts of P6,909,77 for FEB Group Trust Ten (Diversified Fund) and P855,901.05 [pp. 169-171, CTA Records] for FEB Group Trust Ten (Income Fund) shall likewise be denied outright. A perusal of the Declarations of Trust of both trust funds readily reveals that these funds are not employee's trust funds. Section II (A) thereof provides in part: "It shall be treated as an entity separate and distinct from all other trust accounts" (p. 279, CTA Records). This provision alone is sufficient to disqualify both trust funds as employee's trusts for tax-exemption purposes granted under Sec. 60 (B) of the NIRC of 1997 in relation to Republic Act No. 4917.

Moreover, the commissioned independent certified public accountant included the Employee Retirement Plan of Alfa Laval Raco (Phils.) Inc. in the list of retirement funds with available tax exemption certificates, certifying that as per his verification, the TEC of Alfa Laval Raco (Phils.), Inc., Employee Retirement Plan has already been filed with this court under CTA Case No. 5646. In said case, however, this court ruled that the retirement fund of Alfa Laval Raco (Phils.), Inc. has no tax exemption certificate, but merely an application for tax exemption (TEC-22) and deducted its corresponding claim from the recommended amount by the commissioned independent certified public accountant (***Far East Bank and Trust Company, as Trustee of Various Retirement Funds vs. Commissioner of Internal Revenue, CTA Case No. 5646, August 25, 2000***). Noteworthy also is the fact that petitioner did not offer in evidence the tax exemption certificate of the retirement fund of Alfa Laval Raco (Phils.), Inc. in the present action. This being the case, the claim for refund pertaining to Alfa Laval Raco (Phils.), Inc. in the amount of P34,174.21 shall likewise be denied.

With regard to petitioner's tax refund claims not supported by certified true copies of CERs or FICFRs or COS, this court has consistently ruled that the absence of these documents, which tend to prove that the tax-exempt retirement funds actually earned interest income from investments in government securities and other deposit substitutes is fatal to petitioner's claim for refund (***Far East Bank and Trust Company, as Trustee of Various Retirement Funds vs. Commissioner of Internal Revenue, CTA Case No. 5535, July 21, 2000***). Therefore, petitioner's claim for refund in the amount of P126,174.01 pertaining to retirement funds with available TECs but which are not supported by CERs or FICFRs or COS, as certified to by the commissioned independent certified public accountant, shall likewise be disallowed. Verification of the amounts claimed cannot be had without the source documents proving use of funds or collection of interest income.

After resolving the foregoing issues involving lack of TECs, CERs, FICFRs, COSs, and other source documents brought up in the summary of petitioner's claims for refund, what remains to be determined by this court is whether or not the petitioner is entitled to the refund of the final taxes allegedly withheld erroneously from the interest income of qualified tax-exempt retirement funds (with TECs).

The pleadings filed by the petitioner contained very specific allegations to the effect that petitioner is asking for a refund of final taxes withheld from interest income of tax-exempt retirement funds for the year 1998. Nowhere in the various pleadings extant in this case did petitioner assert refund of final taxes for the last quarter of 1997.

However, a thorough review of the records of the case revealed that there were purchases of treasury bills made in the last quarter of the year 1997 contrary to petitioner's allegation that its claim for refund is for the year 1998. To cite a specific example, in the Memorandum for Petitioner (p. 352, CTA Records), petitioner stated that:

> "3. This is a claim for refund pertaining to taxes on interest income erroneously withheld and paid by petitioner to respondent for the year 1998 arising from investments derived from money market placements, deposit substitute instruments and government securities made by petitioner as trustee of various retirement funds and funds of other exempt entities."

The following purchases of treasury bills made in the last quarter of 1997 were included in the Summary of Tax Refund Claims Supported by Certified True Copies of Collection Execution Reports or Fixed Income Collections or Confirmation of Sale – Final Reports for Retirement Funds with Available Tax Exemption Certificates for the Year Ended December 31, 1998 (pp. 295 to 298, CTA Records), to wit:

DATE OF PURCHASE	PRINCIPAL	AMOUNT OF CLAIM
PHILIPPINE GEOTHERMAL INC.,EMP. RET. PLAN		
10/01/97	1,349,181.92	10,032.46
10/08/97	1,199,646.04	8,338.49
10/17/97	4,499,539.84	28,687.97
10/20/97	17,934,412.55	283,396.86
10/22/97	8,298,898.76	93,338.26
10/29/97	4,699,525.02	69,368.75
11/05/97	1,250,000.00	6,411.39
11/05/97	7,293,937.98	100,015.51
10/31/97	537,407.27	5,617.03
11/19/97	1,465,000.00	12,259.52
11/26/97	4,644,766.62	37,558.35
12/03/97	1,009,667.89	15,941.04
12/17/97	675,137.71	9,965.57
12/17/97	9,199,383.28	319,431.60
12/07/97	3,499,632.36	56,242.04
12/29/97	22,000.00	205.84
Sub-total		1,056,810.68
INSURANCE COMPANY OF NORTH AMERICA		
10/15/97	181,536.02	7,535.62
11/05/97	1,672,049.91	8,576.13
11/19/97	722,805.47	5,033.59
11/19/97	2,627,027.25	21,983.68
12/17/97	300,000.00	10,416.95
12/07/97	224,000.00	3,599.87
12/29/97	71,330.50	570.95
12/29/97	669.50	6.27
Sub-total		57,723.06
SEMIRARA COAL CORP. EMP., RET. PLAN		
10/17/97	322,878.00	2,058.59

PHIL. PETROCHEMICALS PRODUCTS, INC., RET. PLAN			
	10/30/97	24,000.00	135.76
	12/17/97	2,297,556.20	15,860.95
Sub-total			15,996.71
PNOC MARINE GROUP OF COMPANIES			
	10/27/97	749,795.64	4,301.09
TOTAL AMOUNT OF TAX REFUND CLAIM PERTAINING TO 1997			1,136,890.13

It is quite significant to note that petitioner did not submit a single Confirmation of Sale covering the purchases made in the year 1997, unlike the purchases pertaining to 1998 which are all covered by their respective Confirmations of Sale aside from CERs. Petitioner relied upon the CERs of the 1997 purchases to prove that the investment earned interest income, the withholding and remittance of the 20% final tax. However, the CERs, which are only computer generated printouts reflecting two amounts namely: the Outstanding Balance and Total, when considered alone without the corresponding COS only tend to prove an increase in the Total column vis-à-vis the Outstanding Balance column. By itself, a CER does not reflect the total amount of interest earned, the amount of taxes withheld and much less, the fact of remittance of the taxes withheld. Petitioner likewise failed to submit in evidence a certification from the Bangko Sentral ng Pilipinas which would tend to prove the fact of withholding of final tax and remittance of the withheld taxes to the National Treasury for the account of the Bureau of Internal Revenue. The certifications submitted by the petitioner refer only to purchases of treasury bills for 1998 (Exhibits C and D, pp. 227 and 242, CTA Records). Furthermore, the petitioner did not state for the record that the above-mentioned 1997 purchases were not included in its claim for refund in the case of ***Far East Bank And Trust Company, As Trustee of Various Retirement Funds vs. Commissioner of Internal Revenue, CTA Case No. 5646, August 25, 2000,*** where the petitioner sought refund of the final taxes withheld on passive interest income earned by the retirement funds "for the four quarters of 1997."

This court is of the considered opinion that petitioner did not overcome the *onus probandi* required of it in order to sustain its claim for refund with respect to the purchases of treasury bills made in 1997. Therefore, that portion of petitioner's claim for refund in the amount of P1,136,890.13 is hereby denied for insufficiency of evidence.

In connection with the petitioner's failure to prove its claim by competent evidence, it is important to bear in mind the pronouncement made by the Supreme Court in the case of ***Commissioner of Internal Revenue vs. Tokyo Shipping Co., Ltd., G.R. No. 68252, May 26, 1995***, that "a claim for refund is in the nature of a claim for exemption and should be construed in *strictissimi juris* against the taxpayer."

For purposes of clarity, hereunder is a recapitulation of petitioner's claim for refund:

Amount Claimed in Petition for Review		5,457,440.51
Disallowed Claims:		
Difference between amount claimed and amount verified by commissioned CPA	118.80	
Retirement Funds Without TEC per Report	678,095.02	
Claim of Alfa Laval Raco (Phils.) No TEC	34,174.21	
FEB Group Trust Ten (Income) No TEC	807,437.41	
FEB Group Trust Ten (Diversified) No TEC	6,896.94	
Claims without CERs,FICFRs,COS	126,174.01	
Claims for Purchases made in 1997	1,136,890.13	2,789,786.52
REMAINING CLAIM		2,667,653.99

The remaining claim of P2,667,653.99 is apportioned as follows:

Phil. Geothermal Inc., Emp. Ret. Plan	1,488,923.47
Del Monte Philippines, Inc.	919,656.44

Insurance Company of North America	153,152.56
Semirara Coal Corp. Emp. Ret. Plan	7,307.09
Phil. Petrochemical Products, Inc., Ret. Plan	68,982.88
PNOC Marine Group of Companies	29,631.55
TOTAL	P2,667,653.99

Among the documentary evidence contained in the records of this case are CERs, FICFRs, and COS (Folder 1, Annex to Exhibit "G"). These documents, when taken together, serve as proof of the fact that petitioner made investments in behalf of the tax-exempt retirement funds, that interest income was earned and collected on maturity dates, and that the 20% final tax was withheld from the interest income. The COS, in particular, proves that the final tax on the investments has already been paid upon purchase by adding it to the cost of the treasury bills. The CERs, taken together with the COS, the testimony of petitioner's witness (pp. 12 and 13, TSN dated February 1, 2001) as well as the Certifications issued by the Bangko Sentral ng Pilipinas (Exhibits C, C-1 to C-8, D, and D-1) prove that the investment earned interest, that the final tax is automatically withheld upon purchase of the treasury bills, and that the taxes withheld were remitted to the National Treasury. Therefore, herein petitioner was able to prove its entitlement to the refund of erroneously withheld final taxes on interest income of tax-exempt retirement funds in the amount of P2,667,653.99.

WHEREFORE, premises considered, the petition for review **is PARTIALLY GRANTED** and respondent is hereby **ORDERED to REFUND** to petitioner the amount of P2,667,653.99 representing erroneously withheld final taxes on interest income for the year 1998 earned by duly qualified tax-exempt retirement funds.

SO ORDERED.

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

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WE CONCUR:

ERNESTO D. ACOSTA
Presiding Judge

LOVELL R. BAUTISTA
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