REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

HEIRS OF SPOUSES NAZARIO DEL ROSARIO & EUFEMIA DE OCAMPO REPRESENTED BY DOUGLAS EDWIN DEL ROSARIO,
Petitioners,

- versus - C.T.A. CASE NO. 4614

THE COMMISSIONER OF INTERNAL REVENUE,
Respondent.

2/17/92

x - - - - - - - - - - - - - x

D E C I S I O N

This is a simple claim for refund by petitioner covering the amount of P17,420.92 representing income tax withheld from the accumulated vacation and sick leave credits of their late father, Nazario Del Rosario, who retired from the government service.

It appears from the records of the case that Nazario del Rosario, father of petitioners, was an employee of the Bureau of Internal Revenue until his death on February 14, 1989. He served the government for almost forty (40) years. His heirs was able to collect and to receive the retirement benefits of their father sometime in August 1989. The money value of the terminal leave credits of Nazario del Rosario amounted to P129,831.38 from which the BIR withheld taxes in the amount of P17,420.92.

Petitioner filed a claim for refund of the said amount of P17,420.42 with the BIR which was denied by the Assistant Commissioner for Administrative in a letter dated April 15, 1991 and received by the petitioner on March 29, 1991. Hence, on May 24, 1991, petitioners filed this instant Petition for Review.

Respondent in his answer, denied most of the allegations of the petitioners and by way of affirmative defenses alleged that the case A.M. No. 91-6-015-SC, entitled "Re: Request of Atty. Bernardo F. Zialcita for reconsideration of the action of the Financial and Budget Office", cited by petitioners applies only to retiring employees of the Supreme Court. What is applicable is the case of **Commissioner of Internal Revenue vs. Oscar Victoriano,** G.R. No. 83176, August 10, 1989, holding that the terminal leave pay is part of salaries and therefore subject to withholding tax.

The issue raised is whether or not the money value of the accumulated vacation and sick leave benefits or terminal leave credits is subject to withholding tax.

This court has consistently ruled that the money value of terminal leave credits of retiring government employees is not subject to withholding tax.

We cited in support of this stand Commonwealth Act No. 186 as amended by R.A. 1616, Presidential Decree No. 220 and Section 29 (b) (7) of the National Internal Revenue Code (Now Section 28 (b) (7) and the following Supreme Court cases interpreting the said provisions of laws: **Commissioner of Internal Revenue vs. Court of Tax Appeals and Florencio E. Santos**, G.R. No. 81362, July 4, 1988; **Jesus N. Borromeo vs. the Hon. Civil Service Commissioner, et. al.**, G.R. No. 96032, 31 July 1991, and lately the case of **Commissioner of Internal Revenue vs. The Court of Appeals and Efren Castaneda**, G.R. No. 96016 dated October 17, 1991 involving another employee of the Commissioner of Internal Revenue. The latest case settled any doubt, if any, on the issue by reason of the Supreme Court pronouncement in the **Oscar Victoriano case.**

WHEREFORE, in view of this clear and consistent pronouncement by the Supreme Court, respondent is hereby ordered to refund to

petitioner the amount of P17,420.92 representing erroneously withheld tax from the money value of his terminal leave.

SO ORDERED.

Quezon City, Metro Manila, February 17, 1992.

ERNESTO D. ACOSTA
Associate Judge

I CONCUR:

CONSTANTE C. ROAQUIN
Acting Presiding Judge

C E R T I F I C A T I O N

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

CONSTANTE C. ROAQUIN
Acting Presiding Judge
Court of Tax Appeals