REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

THE PHILIPPINE AMERICAN LIFE
INSURANCE COMPANY,
Petitioner,

- versus - C.T.A. CASE NO. 2479

COMMISSIONER OF INTERNAL
REVENUE,
Respondent.

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D E C I S I O N

The petitioner, a domestic life insurance company, is seeking the refund of the sum of ₱681,513.17 which it paid to the Bureau of Internal Revenue as a lending investor for the period from August, 1971 to August, 1972, pursuant to Section 195-A of the National Internal Revenue Code, as amended, which imposes a tax of 3% of the gross income of lending investors.

The claim of petitioner is premised on the theory that an insurance company that invests its funds in loans as authorized by the Insurance Act is not a lending investor within the meaning of Section 195-A of the Revenue Code as its lending transactions are merely incidental to its business as an insurance company. On the other hand, respondent claims that petitioner's lending transactions constitute a business taxable apart from its main business as an insurance company. The sole issue presented for our consideration is whether or not petitioner is taxable as a lending investor for lending its funds at interest.

The legal issue raised in this case was considered and passed upon in Insular Life Assurance Co., Ltd. v. Commissioner of Internal Revenue, C.T.A. Case No. 2337, Nov. 12, 1973 (certiorari denied in G. R. No. L-37984-85, Feb. 27, 1974), wherein this Court held that an insurance company is not a lending investor and is not separately taxable as such apart from the taxes imposed upon it as an insurance company. To quote from our decision in said case:

> Originally, a person who was engaged in lending money at interest was taxed as a money lender. [Sec. 1464(x), Rev. Adm. Code.] The term money lenders was defined as including "all persons who make a practice of lending money for themselves or others at interest." [Sec. 1465(v), id.] Under this law, an insurance company was not considered a money lender and was not taxable as such. To quote from an old B.I.R. ruling:
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> > "The lending of money at interest by insurance companies constitutes a necessary incident of their regular business. For this reason, insurance companies are not liable to tax as money lenders or real estate brokers for making or negotiating loans secured by real property. (Ruling, February 28, 1920; BIR 135.2.)" (The Internal Revenue Law, Annotated, 2nd ed., 1929, by B.L. Meer, page 143.)
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> The same rule has been applied to banks.
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> > "For making investments on salary loans, banks will not be required to pay the money lender's tax imposed by this subsection, for the reason that money lending is considered a mere incident of the banking business. [See Ruling No. 43, (October 8, 1926) 25 Off. Gaz. 1326.]" (The Internal Revenue Law, Annotated, id.)

The term "money lenders" was later changed to "lending investors" but the definition of the term remains the same. [Sec. 1464(x), Rev. Adm. Code, as finally amended by Com. Act No. 215, and Sec. 1465(v) of the same Code, as finally amended by Act No. 3963./ The same law is embodied in the present National Internal Revenue Code (Com. Act No. 466) without change, except in the amount of the tax. [See Secs. 182(A)(3)(dd) and 194(u), National Internal Revenue Code.]

It is a well-settled rule that an administrative interpretation of a law which has been followed and applied for a long time, and thereafter the law is re-enacted without substantial change, such administrative interpretation is deemed to have received legislative approval. In short, the administrative interpretation becomes part of the law as it is presumed to carry out the legislative purpose.

> ". . . Of course, the rule does not operate to freeze a meaning which is in evident conflict with the clearly expressed legislative intent. Helvering vs. Hallock, 309 U.S. 106, 119-121, 60 S. Ct. 444, 84 L. Ed. 604, A.L.R. 1368. But where a statute is susceptible of the meaning placed upon it by Treasury ruling and Congress thereafter re-enacts the provision without substantial change, such action is to some extent confirmatory that the ruling carries out the congressional purpose." (Mead Corporation vs. Commissioner of Internal Revenue, 116 F. [2d] 187, p. 194.)
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> "The law, I believe, is now settled that substantial re-enactment of legis lation which has been construed by Treasury regulations is at least strong evidence of legislative approval of such construction. It is presumed that Congress knew of the existing administrative interpretations of the statute . . ." (Cargill vs. United States, 46 F. Supp. 712, 716.)

> (Quoted with approval in Interprovincial Autobus Co., Inc. vs. Coll. of Int. Rev., 98 Phil. 290; see also Mindanao Bus Co. vs. Coll. of Int. Rev., 1 SCRA 538.)

The rule as regards re-enactment of statutes which have been interpreted and applied for a long time acquires more force in the instant case as the ruling of the Bureau of Internal Revenue cited above has been followed without interruption for more than half a centur y.

We have had occasion to express the same view. It has been held that "When a person or company is already taxed on its main business, it may not be further taxed for doing something or engaging in an activity or work which is merely a part of, incidental to and is necessary to its main business". (Asturias Sugar Central, Inc. vs. Commissioner of Internal Revenue, C.T.A. Case No. 983, February 14, 1963, citing Standard Vacuum Oil Co. vs. Antigua, 96 Phil. 909.) This doctrine was cited and relied upon by this Court in the Asturias case in connection with the issue of whether or not the taxpayer therein was liable for the fixed tax as a lending investor. The doctrine is but the result of the correct application of the rule of interpretation to determine the legislative intent behind revenue laws. Where the law taxes a business, it is presumed to be the legislative intent not to separately tax every activity which is merely incidental or necessary to the conduct of said business.

There can be no question that lending money at interest by life insurance companies is not only incidental to their business but is essential to their very existence. No insurance company can survive without investing its funds in loans.

A well-known authority on insurance, Mr. W.R. Vance, says:

> In considering the causes of this phenomenal growth of life insurance, it is well to observe that the business is not confined to [redacted] insurance against the untimely termination of life, but

> includes, as perhaps its most important element, the feature of investment of savings for the purpose of creating an "insurance estate".
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> x x x x
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> The insured, in effect, pays the insurer annual sums which the latter must hold, invest, and accumulate until the maturity of the policy, by death or the expiration of an endowment term, fixes the duty of the insurer to pay. (Vance on Insurance, 3rd ed., p. 32.)

Another recognized authority on insurance says that "life insurance companies must invest their funds so as to enable them to meet their obligations to their policy holders." (Appleman, Insurance Law and Practice, Vol. 19, p. 180.)

In the case of Bowers vs. Lawyers Mortg. Co., 285 U.S. 182, 76 L. ed. 690, 695 (1931), the U. S. Supreme Court stated:

> "Premiums" are characteristic of the business of insurance, and the creation of "investment income" is generally, if not necessarily, essential to it.

Evidence for the petitioners sustained the fact that they have to invest the premiums they receive, that they can not just hold them idle, and that investing those premiums is incidental to the operation of life insurance companies (p. 12, t.s.n., July 10, 1972).

As a matter of fact, Section 183 of the Insurance Act requires every life insurance company doing business in the Philippines to hold its funds "in secure investments" equal to the "aggregate net value" of its policies, and among the investments indicated in Section 197 of said Act is precisely the lending of money on first mortgages.

That the investment of the premiums collected by insurance companies from policyholders appears to be not merely incidental or necessary but in fact essential to the conduct of the life insurance business cannot be gainsaid. Nor can it be denied that "insurance is affected with a public interest", and that perhaps "no other business affects the public so intimately as does the insurance business."

(Vance on Insurance, p. 36.) It is for these reasons that the investment aspect of the insurance business, including investments in mortgage loans, is subject to stringent regulation by the state. (See Secs. 178-A, 183, 197, 200-A of the Insurance Act.) It is noteworthy that according to Sec. 200(1) of the Insurance Act, an insurance corporation may purchase and hold property "as may have been mortgaged, pledged, or conveyed to it . . . by reason of money loaned by it in pursuance of the regular business of the corporation. . ." (Underscoring supplied.) This provision, to our mind, confirms the fact that lending money is part and parcel of the insurance business.

In this connection, it should be noted that Republic Act No. 5110 amended Section 182(A)(3) of the Revenue Code by inserting therein, among others, subparagraph (gg) in which, for the first time, banks, insurance companies, finance and investment companies doing business in the Philippines were grouped together and made subject to a fixed tax on their businesses. Petitioners allege, and respondent has not denied, that prior to Republic Act No. 6110, which was approved on August 4, 1969, insurance companies were already engaged in lending activities but had never been required by respondent to pay the fixed tax imposed on lending investors under the former Section 182(A)(3)(u) of the Revenue Code. (See BIR ruling dated Feb. 28, 1920, supra.) It appears to us that there is less reason now than before to hold them liable for the fixed tax imposed on lending investors since they are presently subject to the fixed tax under Section 183(A)(3)(gg) by virtue of Republic Act No. 6110. In fact, it would be difficult to accept the view that the legislators, in making them liable for the fixed tax on their businesses, also intended to make them additionally liable for the fixed tax on lending investors under subparagraph (dd) of Sec. 182(A)(3) /formerly, subparagraph (u) of Sec. 182(A)(3)/. It is inconceivable that banks[1] and finance companies, whose lending activities obviously constitute an inherent and integral part of their businesses, are to be required to pay the fixed tax on their businesses as banks or finance companies and again as lending investors. Since lending money is an integral and essential activity not only of banks and finance companies but also of insurance companies, they were all grouped together under subparagraph (gg); and since Congress must have been aware of the nature of their businesses, it is to be presumed in the absence of any express provision to the contrary, that Congress intended them to pay only the fixed tax under subparagraph (gg).

Respondent cites Section 178 of the Revenue Code which provides that "one occupation or line of business does not become exempt by being conducted with some other business or occupation for which such tax has been paid". But the view we have taken in this case does not contravene said provision which, as we had occasion to rule, "contemplates a case where a person is engaged in two or more separate and distinct occupations or businesses" (Ilagan & Alejandrino v. Collector, C.T.A. Case No. 43). In the cited Ilagan case it was held that under Section 178, one who was engaged in business as a road contractor and

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[1] An opinion has been expressed to the effect that if the income derived by banks from interest on their lending transactions is not subject to the lending investor's percentage tax under Section 195(B) of the Revenue Code, said interest would not also be subject to the percentage tax on the gross receipts of banks under Section 249 of the same Code. This opinion apparently overlooks the express provision of Section 249 which imposes the percentage tax provided therein on the "gross receipts" of banks. The term "gross receipts" in said section includes all items of income as defined in Section 29 of the Code, which includes interest.

also as a building contractor was subject to the fixed tax on road contractors and also to the fixed tax on building contractors. It will be noted, however, that unlike the insurance business and lending activity of the petitioners in this case, the business of a road contractor and the business of a building contractor are separate or distinct from each other such that neither is incidental or necessary to, nor an integral part of, the other. In the case of Collector of Internal Revenue v. Eternit Corporation, 105 Phil. 565, the Supreme Court upheld this Court's ruling to the effect that the "installation" of asbestos sheets was an occupation "distinct and separate" from the business of manufacturing and selling those sheets (105 Phil. 568) so that the tax exemption accorded by law to the latter was no bar to the contractor's tax imposed by the Revenue Code on the former.

Since petitioners are not taxable as lending investors under Section 182(a)(3)(dd), it follows that they are not also subject to the percentage tax imposed on lending investors under Section 195-B of the Revenue Code. It should be pointed out in this connection that petitioners as insurance companies are, like banks, finance companies and franchise grantees which are all grouped together under Section 182 (A)(3)(gg), are already subject to the miscellaneous tax imposed in Title VIII of the Revenue Code. It is noteworthy that the miscellaneous tax of "three per centum of the total premiums collected" under Section 255 of the Revenue Code is essentially a percentage tax and is no different in nature from the percentage tax imposed on lending investors in Section 195-B of the same Code.

Our decision in the case of Insular Life Assurance Co., Ltd., supra, was followed in an earlier case which
which was appealed by herein petitioner involving the same issue (The Philippine American Life Insurance Co.

v. Commissioner of Int. Rev., C.T.A. No. 2300, March 4, 1974). We note, however, that our colleague, Associate Judge Estanislao R. Alvarez, made some intriguing observations in his dissenting opinion in the latter case which were not touched in his first dissenting opinion in the former case. We deem it advisable, in the interest of justice and in fairness to all concerned, to comment on said observations.

Our esteemed colleague says that an insurance company is engaged in two major activities, i.e., underwriting and investment, which should be separately taxed, as there is no prohibition against double taxation. To quote from his dissenting opinion:

> Insurance companies are engaged in two major activities, namely: (1) Underwriting and (2) Investments. (See Mertens, Law of Fed. Income Taxation, Vol. 8, p. 10, 1942 ed., citing Rockford Life Insurance Co. v. Commissioner, 292 U.S. 382) In the underwriting activity of insurance companies, they are subject to the percentage tax of 3% on the total premiums collected while in the investment activity they are subject to the percentage tax of 3% on their gross income from interests on mortgage loans. Both are percentage taxes but the nature and bases of their imposition are different. The said taxes are burdensome to petitioners but they do not constitute double taxation. After all, there is no prohibition against double taxation in the Philippines. (De Villata v. Stanley, 32 Phil. 541; Manufacturers Life Insurance Co. v. Meer, 89 Phil. 210; Hawaiian Phil. Co. v. Collector, G. R. No. L-16315, May 30, 1964; Pepsi-Cola Bottling Co. v. City of Butuan, G. R. No. L-22819, Aug. 28, 1968)

The dissenting opinion says that an insurance company is engaged in two major activities which should be separately taxed. That, of course, is the considered opinion of the dissenting Judge but to which we in the majority disagree. The lending transactions of an insurance company are not only a mandatory requirement of the Insurance Act but also necessary to its existence and can not be considered separately and apart from its insurance business.

> There can be no question that lending money at interest by life insurance companies is not only incidental to their business but is essential to their very existence. No insurance company can survive without investing its funds in loans. (Insular Life Assurance Co., Ltd. v. Comm. of Int. Rev., supra.)

We do not know of anybody who can honestly say that an insurance company can continue to do business as such company without investing its funds derived from the business of underwriting. To our mind, an incidental activity of a corporation may be separately taxed only if such activity, even if not engaged in, will not defeat or subvert its main activity for which it was organized, unless there is a clear and explicit provision of law to the contrary. Here, we find no law which clearly and unequivocally imposes a separate tax on the lending transactions of an insurance company.

The dissenting Judge says that although the imposition of two taxes upon insurance companies is burdensome to them, it does not constitute double taxation. After all, he continues, there is no prohibition against double taxation in the Philippines. Nowhere in the majority opinión can be found any opinion or observation that the imposition of two taxes upon insurance companies, one on their underwriting activity and another on their lending transactions, constitutes prohibited double taxation. We heartily agree with the dissenting Judge that there is no such thing as prohibited double taxation in the Philippines, but, as has been aptly observed, duplicate taxation of the same property, either to the same or different persons, while not unlawful, should, wherever possible, be avoided and prevented. As we have stated earlier in this opinion, if it is intended to tax insurance companies on its lending transactions apart from the tax imposed on insurance premiums under Section 255 of the Revenue Code, there should be a clear and explicit provision to that effect, and this would not be legally objectionable as constituting double taxation. Until that is done, however, we see no reason to adopt the view of our esteemed colleague.[1]

The dissenting Judge claims that under the old Internal Revenue Law insurance companies were subject to two fixed and one percentage taxes, citing Sections 1457, 1464 and 1505 of the Revised Administrative Code, and concludes that

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[1]It is to be noted that the law (Sec. 182(A)(3)(a), Revenue Code, as amended) now imposes a fixed annual tax on insurance companies, which is a strong indication that they are not subject to the fixed annual tax as lending investors.

the re-enactment of Sections 1457 and 1464 in the new National Internal Revenue Code without substantial change carries with it the presumption that Congress knew of the existing administrative interpretation. We quote from the dissenting opinion.

> Under the old provisions of the Revised Administrative Code cited above (Secs. 1457, 1464 and 1505), insurance companies are required by law to pay two (2) fixed and one (1) percentage taxes. The two fixed taxes are for insurance business and money lender. The old rulings of the Bureau of Internal Revenue cited in support of the majority decision refers exclusively to the fixed taxes and not to the percentage tax imposed on premiums collected by insurance companies. Consequently, when similar provisions of the fixed taxes found in the Revised Administrative Code were re-enacted by Congress without substantial change, it is presumed that Congress knew of the existing administrative interpretation of the statute on fixed taxes of insurance companies.

The above observation of our esteemed colleague is quite unfortunate. We say unfortunate because never in the entire history of the Bureau of Internal Revenue has an insurance company been held subject to the fixed taxes on business provided in Sections 1457 and 1464 of the Revised Administrative Code, both of which are now embodied in Section 182 of the Revenue Code. Our attention has never been called to any ruling by the Bureau of Internal Revenue to sustain the view of the dissenting Judge. We are amazed at the reference to a supposed "administrative interpretation of the statute on fixed taxes of insurance companies" which does not exist. No such "administrative interpretation" could have been made because Sections

1457 and 1464 of the old Internal Revenue Law were applicable only to businesses taxable under Article V of said law and not to businesses taxable under different articles, such as insurance companies which were taxable under Article VII of said law.

The dissenting opinion of our esteemed colleague further states:

> Section 195-A of the Revenue Code is a new percentage tax imposed by Congress under Republic Act No. 6110. It has not been given any administrative interpretation by the revenue office except the demand for the payment thereof by (sic) insurance companies. Unlike the fixed tax laws on insurance companies and lending investors adverted to above, it cannot be said that Section 195-A of the Revenue Code is a re-enactment of similar percentage tax law which received legislative approval. On the contrary, when Congress enacted Section 195-A of Republic Act No. 6110, it has an unlimited, plenary, comprehensive, and supreme power to do so. If the said law is inimical to the interest of insurance companies which are required by the Insurance Law to engage in business as lending investors, the remedy of the taxpayers is to secure an amendment of the new percentage tax law or work for a grant of legislative grace or exemption from the payment thereof. Courts are powerless to impugn and declare the law in question to be without force and effect insofar as insurance companies are concerned. Let me therefore quote a portion of the majority opinion. It said:
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>> Since petitioners are not taxable as lending investors under Section 182(A)(3)(dd), it follows that they are not also subject to the percentage tax imposed on lending investors under Section 195-B of the Revenue Code. It should be pointed out in this connection that petitioners as insurance companies are like banks, finance companies and franchise grantees which are all grouped together under Section 182 (A)(3)(gg), are already subject to the miscellaneous tax of "three per centum of the total premiums col-

lected" under Section 255 of the Revenue Code is essentially a <u>percentage tax</u> and is no different in nature from the percentage tax imposed on lending investors in Section 195-B of the same Code.

I have already given the background for the exemption of insurance companies from the payment of the <u>additional fixed</u> tax as lending investors. But the majority went further by introducing a novel and unprecedented doctrine in taxation by holding that a taxpayer who is exempt from an additional fixed tax as a lending investor is necessarily exempt from the percentage tax imposed by Section 195-A of the Revenue Code.

There is no question that Section 195-A of the Revenue Code, which was inserted by Republic Act No. 6110, is a new law imposing a percentage tax on lending investors. The majority of this Court never made any claim or pretense that it "is a re-enactment of similar percentage tax law which received legislative approval." That is merely the conclusion reached by our esteemed colleague which has absolutely no basis. What was stated in the majority opinion is that Section 182(A)(3)(dd) of the Revenue Code imposing a fixed annual tax on lending investors and Section 194(u) of the same Code which defines the term "lending investors" are a re-enactment of similar provisions of the old Internal Revenue Law, and that under the provisions of the old law insurance companies were never classified as lending investors. If insurance companies were not lending investors under the old law, as so expressed in rulings of the Bureau of Internal Revenue which were duly published, we expressed the view that they can not also be considered lending investors under the new law, because the latter is merely a re-enactment of a prior law without substantial change. And since insurance companies are not lending investors for purposes of the fixed annual tax under Section 182(A)(3)(dd) of the new Revenue Code, our opinion is that they can not also be considered lending investors for purposes of the percentage tax under Section 195-A. Our esteemed colleague apparently believes that although insurance companies may not be considered lending investors under Section 182(A)(3)(dd), they may be considered lending investors under Section 195-A, and considers our theory "novel" and "unprecendented." We will not elaborate further; we leave it to others to consider which of the two views is correct.

Our esteemed colleague says:

> The majority further stated that "the rule as regards re-enactment of statutes which have been interpreted and applied for a long time acquires more force in the instant case as the ruling of the Bureau of Internal Revenue cited above has been followed without interruption for more than half a century." This conclusion of the majority is not only sweeping but also misleading. What BIR ruling was re-enacted under the National Internal Revenue Code which took effect on July 1, 1939?

Again, our esteemed colleague has obviously misread the majority opinion. He asks: "What BIR ruling was re-enacted under the National Internal Revenue Code which took effect on July 1, 1939? No mention has ever been made in the majority opinion about a BIR ruling which was "re-enacted under the National Internal Revenue Code which took effect on July 1, 1939." What was said was that the <u>re-enactment of the old law</u> on lending investors without substantial change has the effect of legislative approval of the administrative interpretation given to the old law. This finds support in decisions of our Supreme Court cited in the majority opinion.

Our esteemed colleague says further:

> The majority opinion further stated that the miscellaneous tax of "3% of the total premiums collected" under Section 255 of the Revenue Code is not different in nature from the percentage tax imposed on lending investors in Section 195-A of the same Code. I disagree. While both sections of the Revenue Code involve percentage taxes and impose the same rate of tax, the bases and nature of their imposition are different. The premium tax is based on the underwriting activity of the insurance companies while the tax on interest income is imposed on their investment on mortgage loans.
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> I am constrained to believe that the majority is impelled by equitable motives to grant insurance companies exemption from the percentage tax imposed by Section 195-A of the Revenue Code because they are previously subject to the premium tax. But exemption from another percentage tax cannot be granted on grounds of equity and in utter disregard of the validity and efficacy of Section 195-A of the Revenue Code. . . .

We can not understand why our esteemed colleague has to say that he disagrees with us when we are wholeheartedly in agreement with him when he says that while both the tax imposed by Section 195-A and the one imposed by Section 255 are percentage taxes, "the bases and nature of their imposition are different." There is nothing in the majority opinion which even slightly intimates a different view. Our opinion is, and we want to repeat it here, that if it is intended to tax insurance companies as lending investors, the law should so expressly provide.

In such case, there can be no valid objection to the imposition of a tax on insurance companies as lending investors, in addition to the tax on insurance companies. For instance, Sections 182(A)(3)(dd) and 195-A may be amended by imposing the fixed and percentage taxes on lending investors (including insurance companies). In that case, the taxability of insurance companies as lending investors would leave no room for doubt.

Our esteemed colleague says that he is "constrained to believe that the majority (of this Court) is impelled by equitable motives to grant insurance companies exemption from the percentage tax imposed by Section 195-A of the Revenue Code because they are previously subject to the premium tax." We must say, in all candor, that this statement, coming from our esteemed colleague, is unfortunate and regrettable.

In the first place, the majority of this Court did not "grant insurance companies exemption from the percentage tax imposed by Section 195-A." It is the law that does not impose the percentage tax under Section 195-A upon insurance companies because they are not lending investors. We have nothing to do with the law; we merely interpreted it as we honestly think it should be interpreted. That our opinion does not jibe with the opinion of our esteemed colleague is no reason why a motive that does not comport with our sworn duty to perform as members of the judiciary has to be attributed to us.

"Equitable motives" have been attributed to the majority of this Court in "exempting" insurance companies from liability to the percentage tax as lending investors. Can it be said that all the Collectors of Internal Revenue and all Commissioners of Internal Revenue prior to the present incumbent have been impelled by "equitable motives" in not collecting the lending investors tax not only from insurance companies but also from banking institutions? It seems to us that banking institutions, including other financing institutions, have a wider field of lending activities than insurance companies, and yet they have not been required to pay the lending investors' taxes up to the present because of a long standing ruling of the Bureau of Internal Revenue.

It is argued that to "exempt" insurance companies from the taxes imposed on lending investors would be contrary to the well-settled rule that exemption from taxation is highly disfavored; and that he who claims an exemption must be able to justify his claim by the clearest grant of organic or statute law. Further, that an exemption from the common burden cannot be permitted to exist upon vague implications. We do not question the soundness of the principle that exemptions from taxation must be strictly construed against he who claims exemption and liberally in favor of the government. <u>Apparently, however, there seems to be a misconception as to the nature of the law imposing the fixed and percentage taxes on lending investors</u>. <u>It is not a tax exemption law</u>; <u>it is a classification statute which should be construed the same as ordinary tax laws.</u>

that is, in case of doubt, the doubt must be resolved in favor of the taxpayer. (See Commissioner v. Ledesma, G. R. No. L-17509, Jan. 30, 1970.)

The argument has often been made, in cases involving big assessments or claims for refund, that a decision in favor of the taxpayers concerned would result in a tremendous loss of revenue on the part of the government. This, to our mind, is a pernicious argument. There can be no "loss" to the government by not collecting an illegal tax, or any tax that is not expressly authorized by law to be collected. On the other hand, it would be highly immoral for the government to collect what is admittedly an illegal exaction. To paraphrase a classic pronouncement of Justice Holmes, to insist on collecting an illegal exaction in the guise of taxation is, in plain language, extortion. The sole basis for collecting a tax should be its legality, not the amount involved. The government should be the first to abstain from doing what it enjoins the citizens from performing.

In view of our opinion that petitioner, as an insurance company, is not a lending investor within the meaning of Section 195-A of the Revenue Code, it is entitled to the refund of the sum of ₱681,513.17, representing the lending investors' percentage tax which it paid for the period from August, 1971 to August, 1972. Accordingly, respondent is hereby ordered to refund to petitioner the said amount. Without pronouncement as to costs.

SO ORDERED.

Quezon City, May 6, 1974.

ROMAN M. UMALI
Presiding Judge

I CONCUR:

RAMON L. AVANCEÑA
Associate Judge

Associate Judge ESTANISLAO R. ALVAREZ who dissented in previous cases involving the same issue took no part as he was then holding court sessions in Cebu.