REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
MANILA

SERGIO F. NAGUIAT,
Plaintiff,

- versus -

MANILA CIVIL
CASE NO. 22948

J. ANTONIO ARANETA, as
Collector of Internal Revenue,
Defendant.

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

August 6, 1956

DECISION

Plaintiff seeks to recover from defendant Collector of Internal Revenue the sum of ₱4,867.00, representing income tax for the years 1950, 1951 and 1952, allegedly erroneously or illegally collected by the latter from the former.

It appears that from 1950 to 1952 plaintiff was an operator of a taxi and garage service in Clark Field, Pampanga, a military base of the United States, for which a license was duly issued by the United States Air Force operating said military base. During the said period, plaintiff realized incomes and paid income tax, itemized as follows:

Year Income Earned	Amount of Income	Amount of Tax Paid	Date of Payment
1950	₱15,159.42	₱ 602.00 575.00	Mar. 9, 1951 Aug. 14, 1951
1951	16,217.43	615.00 500.00	May 21, 1952 Aug. 5, 1952
1952	25,353.53	1,600.00 1,577.00	May 13, 1953 Aug. 11, 1953

Total income tax paid -- ₱5,469.00

A written claim was filed by plaintiff with the Collector of Internal Revenue on July 28, 1953 for refund of all the sums paid up to May 13, 1953 in the aggregate amount of ₱3,892.00. Subsequently, on August 11, 1953, the second installment of the income tax for 1952 in the amount of ₱1,577.00 was was also paid, refund of which was also claimed by plaintiff on August 28, 1953.

The Collector of Internal Revenue recommended approval of the claim of plaintiff in the amount of ₱3,290.00 and denial of the claim in regard to the sum of ₱602.00, which was paid on March 9, 1951, the claim for refund of the latter amount having been filed beyond the two-year period provided in Section 309 of the National Internal Revenue Code. The recommendation of the Collector was approved by the Secretary of Finance, who, in an indorsement dated October 12, 1953, referred the case to the then Board of Tax Appeals, pursuant to Executive Order No. 401-A.

No action appears to have been taken by the Collector of Internal Revenue on the claim of plaintiff for the sum of ₱1,577.00 paid on August 11, 1953, refund of which was sought by the latter on August 28, 1953.

The Board of Tax Appeals in a resolution dated October 24, 1953 in Tax Appeal No. 145, denied the entire claim of ₱3,290.00. Refund of the sum of ₱602.00 which was paid on March 9, 1951 was denied for failure of plaintiff to file with the Collector of Internal Revenue his claim in writing within two years after the date of payment, while the claim for the sum of ₱3,290.00 was denied on the ground that plaintiff was not entitled to exemption from income tax on incomes derived from his operations in Clark Field under Art. XVIII of the Bases Agreement. The decision of the Board of Tax Appeals was appealed to the Supreme Court in G. R. No. L-7275, but the appeal was dismissed without prejudice on April 29, 1954, following the decision in University of Sto. Tomas v. Board of Tax Appeals, G. R. No. L-5701, June 23, 1953.

Plaintiff instituted the present action in the Court of First Instance of Manila on May 25, 1954, for the recovery of ₱4,867.00, which excludes the amount of ₱602.00 which was disallowed by the Collector, the Secretary of Finance and the Board of Tax Appeals on the ground of prescription, but includes the sum of ₱1,577.00, which was paid on August 11, 1953 on which no action was taken by the Collector. In his answer, defendant claims that plaintiff is not entitled to the refund of ₱4,867.00 in view of the ruling of the former Board of Tax Appeals which, prior to its dissolution, was "the highest administrative body in respect to the refunds in question." And as regards the sums of ₱575.00 and ₱615.00 paid on August 13, 1951 and May 21, 1952, respectively, defendant, in addition, claims that plaintiff is not entitled to refund because the present action was instituted after the two-year period prescribed in Section 306 of the Revenue Code.

Before the case could be heard by the Court of First Instance, the Court of Tax Appeals was organized, and upon motion of counsel for plaintiff the case was remanded to this Court pursuant to Section 22 of Republic Act No. 1125.

Two issues have been raised in this case, to wit: (1) whether or not plaintiff is exempt from income tax on income derived by him from the operation of his taxi and garage service in Clark Field, Pampanga, and (2) whether or not the claim for recovery of the sums of ₱575.00 and ₱615.00 is barred under Section 306 of the Revenue Code.

We shall first take up the issue whether or not the claim of plaintiff for the recovery of the sums of ₱575.00 and ₱615.00 is barred under Section 306 of the Revenue Code. Said section requires that before an action may be instituted in court for recovery of an internal revenue tax allegedly erroneously or illegally collected, the taxpayer must first file a written claim for refund thereof within two years after payment, and the judicial proceeding for recovery of such tax must be instituted within the same period, whether or not the Collector has rendered a decision on the claim of the taxpayer. (Wee Poco v. Posadas, 64 Phil. 640; Bermejo v. Collector, G. R. No. L-3029, July 25, 1950; Kiener v. David, G. R. No. L-5163, April 22, 1953; cited in Panay Electric Co., Inc. v. Collector, Iloilo Civil Case No. 3087, decided by this Court on March 10, 1956.)

In this case, plaintiff filed his claim for refund in writing on July 28, 1953, within two years from the date of payment (on Aug. 14, 1951) of the sum of ₱575.00, the first of the various sums paid which are the subject of the present action. The Collector favorably recommended the refund, which was approved by the Secretary of Finance. As the action of the Collector and the Secretary of Finance in that case was not final until approved by the then Board of Tax Appeals, the case was submitted to said Board. It was only when the claim was disapproved by the Board that plaintiff could have instituted judicial proceedings for recovery of the tax. But Executive Order No. 401-A authorized the taxapayer to appeal directly to the Supreme Court which he did in G. R. No. L-7275. Under the circumstaces, petitioner could not have instituted an action for recovery in the proper Court of First Instance until the case was dismissed without prejudice by the Supreme Court. The running of the two-year period provided in Section 306 of the Revenue Code may, therefore, be considered to have been suspended during the entire period that the case had been pending consideration by the Collector of Internal Revenue, the Secretary of Finance, the Board of Tax Appeals and finally by the Supreme Court, and the said period commenced to run again when the resolution of the Supreme Court dismissing the case dated April 29, 1954 became final. No evidence has been presented by the parties as regards the date when the resolution of the Supreme Court became final and executory, but the records of the case now in the possession of this Court, of which we take judicial notice, show that the decision of the Supreme Court became final and executory on May 22, 1954. The present action was filed in the Court of First Instance of Manila on May 25, 1954.

Considering that the present action was instituted within 3 days after the decision of the Supreme Court in G.R. No. L-7275, which dismissed without prejudice the appeal of herein plaintiff from the decision of the Board of Tax Appeals, became final, we are of the opinion that the present action was timely filed in respect to the amounts of ₱575.00 and ₱615.00, which were paid on August 14, 1951 and May 21, 1952, respectively.

Having arrived at the conclusion that the present action was filed within two years from the dates of payment of the various sums sought to be recovered by plaintiff, we now come to the issue whether or not he is entitled to recovery.

Plaintiff alleges that he is exempt from income tax on his income derived from the operation of his taxi and garage service in Clark Field, a United States military base, pursuant to Art. XVIII of the Bases agreement, which reads as follows:

> "SALES AND SERVICES WITHIN THE BASES
>
> "1. It is mutually agreed that the United States shall have the right to esta-

blish on bases free of all licenses, fees, sales, excise or other taxes, or imposts, Government agencies, including exchanges, messes and social clubs, for the exclusive use of the United States military forces and authorized civilian personnel and their families. The merchandise or services sold or dispensed by such agencies shall be free of all taxes, duties and inspection by the Philippine authorities. Administrative measures shall be taken by the appropriate authorities of the United States to prevent the resale of goods which are sold under the provisions of this Article to persons not entitled to buy goods at such agencies, and, generally, to prevent abuses of the privileges granted under this Article. There shall be cooperation between such authorities and the Philippines to this end.

"2. Except as may be provided in any other agreement, no person shall habitually render any professional services in a base except to or for the United States or to or for the pessons mentioned in the preceding paragraph. No business shall be established in a base, it being understood that the Government agencies mentioned in the preceding paragraph shall not be regarded as business for the purpose of this Article." (43 O. G. No. 3, p. 1020 at 1028-1029)

In a similar case decided by this Court (Republic of the Philippines v. Dominador P. Canlas, et al., Manila Civil Case No. 22366, June 16, 1956), it was held:

"A casual reading of the controversial article brings to our attention some significant facts by which we can readily see that defendants' stand is difficult to sustain. First and foremost is the fact that Article XVIII of the Philippine-United States Bases Agreement is entitled 'Sales and Services Within the Bases', while income taxes are treated in Article XII of said agreement. Moreover, paragraph 1 of Article XVIII enumerates the taxes from which burden the agencies or concessions within the bases are to be exempted, to wit: <u>licenses, fees, sales, excise or other taxes</u>, or <u>imposts</u>. The provision goes on to mention 'merchandise or services sold or dispensed by such agencies to be free of all taxes, duties and inspection by the Philippine authorities.' In this respect, it is significant indeed to note that the exemption accorded local concessionaires operating within U.S. Army and Naval Bases in the Philippines belong to that class of taxes usually imposed on the enjoyment of privileges or the pursuit of a business or occupation. Nowhere in said paragraph of Article XVIII is there any mention of income tax, which is a tax on net income and not a tax on merchandise or service.

"The defendants claim that income tax partakes of the nature of an excise tax and therefore falls within the scope of the exemption in said paragraph and article which specifically mentions excise tax as included therein. The defendants have found support in this contention on some American cases wherein it was held that an income tax is an excise tax and not a tax on property. However, the defendants seem to have overlooked the fact that those rulings were premised on a comparison of direct and indirect taxes and on taxes on property in contra-distinction with excise taxes. 'Excise' as used in Article XVIII of the Philippine-United States Bases Agreement contemplates taxes imposed on the performance of an act, engagement in occupation, or enjoyment of privilege, including operation of motor vehicles on public highways. (State vs. Fields, Ohio App. 35 N.E. 2d 744, 747.) In one American case, the line of demarcation between the two taxes was drawn thus:

> 'An excise tax is an indirect charge for the privilege of following an occupation or trade or carrying on a business; while 'income' tax is a direct tax and is as directly imposed as is a tax on land.' (U.S. v. Philadelphia, B & W. R. Co., D.C. Pa. 262 F. 188, 190)

"Moreover, an income tax is one imposed on individuals while an excise tax is one imposed on goods, right or property. An income tax is one which relates to the product or income from property or from business pursuits. It has been defined as a tax on the yearly profits arising from property, professions, trades or offices or as a tax on a person's income, emoluments, profits and the like, or the excess thereof over a certain amount. (Words & Phrases, Vol. 15 A, p. 159.) While an excise tax is a tax imposed on the manufacture, sale, or consumption of commodities within the country, on licenses to pursue certain occupations, and on corporate privileges. (Vinup v. City of Seattle, 120 F. 2d 464, 11 Wash. 2d 630.)

"Furthermore, the exemptions from the payment of income tax are treated in Article XII of the Philippine-United States Bases Agreement, which reads:

x x x x

"From the above quoted article one would readily see that the exemption from income tax may be invoked only by the following: (1) members of the United States Army who are not Filipinos; (2) nationals of the United States; and (3) corporations organized in and residents of the United States. Obviously, the defendants herein are not among those exempted from the payment of income tax. As a matter of fact, they are expressly excepted from the exemption in paragraph 1 of Article XII which reads in part as follows: 'No member of the United States Armed Forces <u>except Filipino citizens</u>, serving in the Philippines in connection with the bases x x x shall be liable to pay income tax in the Philippines x x.'

"Obviously, if the exemption was intended to be applicable both to American and Filipino concessionaires within the base, the treaty would undoubtedly have so stated in no uncertain terms and would not have made the exception. In order that such income in question may be considered exempt from the tax, the law must so clearly and definitely provide. It cannot simply be inferred therefrom. We find no justification in increasing the scope of the exemption beyond that which the Philippine-United States Bases Agreement intended to cover. 'Exemptions from taxation are highly disfavored in law; and he who claims an exemption must be able to justify his claim by the clearest grant of organic or statute law. An exemption from the common burden cannot be permitted to exist upon vague implication.' (Asiatic Petroleum Co. vs. Llanes 49 Phil. 466-475; see also House vs. Posadas 53 Phil. 338; Gov't of the Philippines vs. Monte de Piedad 35 Phil. 338.)"

We reiterate the view expressed in the opinion quoted above as there is nothing of record to justify a reversal or modification thereof. It is, however, vehemently insisted that income tax is also an excise

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tax and, therefore, plaintiff is entitled to exemption as Article XVIII of the Bases Agreement includes exemption from excise tax. We agree that some authorities hold the view that income tax partakes of the nature of excise tax as distinguished from property tax, but the exemption from excise tax provided in Article XVIII of the Bases Agreement obviously refers to sales of merchandise or services and not to income. If it was the intention of the contracting parties to grant exemption from income tax on income derived by concessionaires operating within United States military bases, the treaty should have so expressly provided as was done in Article XII. The absence in Article XVIII of provisions similar to those contained in Article XII granting exemption from income tax in favor of the persons named therein, is an indication of the manifest intention to withhold such exemption under the former.

FOR THE FOREGOING CONSIDERATIONS, the complaint is hereby dismissed, with costs against plaintiff.

SO ORDERED.

Manila, August 6, 1956.

R. M. Unal
ROMAN M. UMALI
Associate Judge

I CONCUR:

Augusto M. Luciano
AUGUSTO M. LUCIANO
Associate Judge

Presiding Judge MARIANO NABLE
did not take part.