REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

AGENCIA EXQUISITE OF BOGO, INC.,
Petitioner,

- versus -

C.T.A. CASE NO. 6303

JAIME B. SANTIAGO in his capacity as Revenue Regional Director, REVENUE REGION NO. 13 of the BUREAU OF INTERNAL REVENUE, and THE COMMISSIONER OF INTERNAL REVENUE,
Respondents.

Promulgated:

FEB 20 2002

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DECISION

This case emanated from an assessment issued against Petitioner for non-payment of Value-Added Tax in the amount of P123,362.80, inclusive of surcharges and interest, for the year 1997.

The facts, as simplified by the parties in their Joint Stipulation of Facts.

> Petitioner, AGENCIA EXQUISITE OF BOGO, INC., is a domestic corporation duly organized and existing under the laws of the Republic of the Philippines. It is the owner and operator of Agencia Exquisite of Bogo, Inc., which is located at Juan Luna St., Bogo, Cebu.
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> Respondent, JAIME B. SANTIAGO, is being sued in his official capacity as the Revenue Regional Director, Region 13 of the Bureau of Internal Revenue. While Respondent, COMMISSIONER OF INTERNAL REVENUE, is impleaded herein he being the head of the Department which is tasked with the tax collection.

On December 18, 2001, Petitioner received a formal letter of Demand and Details of Discrepancy from the Bureau of Internal Revenue. Attached therewith was the Assessment Notice No. 80-VAT-13-97-2000-12-178. Petitioner was assessed for the taxable year 1997 the amount of One Hundred Twenty Three Thousand Three Hundred Sixty Two Pesos and Eighty Centavos (P123,362.80) which included the total output tax and the 25% surcharge for late payment and 20% interest. The assessment was for the failure to pay the Value-Added Tax.

The assessment was made under the authority of Republic Act No. 8424 which imposes Value-Added Tax on the sale, barter, exchange and lease of goods and services made in the ordinary course of business.

On September 1, 1997, Sixto S. Esquivas IV, OIC Commissioner issued an unnumbered Revenue Memorandum, which imposes a 10% value-added tax on the pawnshop operators.

On January 16, 2001, a Formal Tax protest was filed by Petitioner with the Revenue Regional Director questioning the validity and propriety of the assessment.

On April 25, 2001, Petitioner's counsel received the Letter of Denial of the tax protest. It reiterated the demand for payment of the Value-Added Tax deficiency. On May 10, 2001, a Petition for Review was timely filed with this Honorable Court.

There being no factual controversy, this Court is left to resolve the legal issues which the parties likewise jointly stipulated, to wit:

a. Whether or not a pawnshop is engaged in the sale of goods, property or services in the course of trade or business as to be made liable for the payment of 10% value-added tax;

b. Whether or not the Revenue Memorandum dated September 1, 1997 issued by Commissioner Sixto Esquivas IV, is valid.

Petitioner argues that Section 108 of the National Internal Revenue Code as amended by Republic Act No. 8424 does not include pawnshops as among those entities subject to the ten percent (10%) value-added tax. Besides, pawnshops are not engaged in the sale of goods, property or services in the course of trade or business for in reality, a pawnshop business is a pledgee in a contract of pledge.

Respondent, on the other hand, counters that under Section 102(a) of the Tax Code, as amended by R.A. 7716 (now Section 108), the enumeration of persons performing services for a fee is merely intended to give examples of business subject to VAT on sale or exchange of services, hence, not exclusive. It encompasses the performance of all kinds of service for a fee, remuneration or consideration. Considering that Petitioner, as a pawnshop operator, performs services for others for a fee, remuneration or consideration, gross receipts derived therefrom are subject to 10% VAT.

Respondent further asserts that even assuming arguendo that under Section 102(a) the VAT is imposable only on services performed by persons or entities enumerated therein, the services of a pawnshop would fall under the phrase "similar services" because its services are similar to those of a lending investor. Section 4.102-1 of Revenue Regulations No. 7-95 defines "lending investor" as including all persons other than banks, non-bank financial intermediaries, not performing quasi-banking functions, who make a practice of lending money for themselves or others at interest. Respondent finds support in the case of **Commissioner of Internal Revenue vs. Agencia Exquisite of Bohol, CA G.R. Sp No. 59282, March 23, 2001,** which held that pawnshops are lending investors.

Thus, it is quite apparent that this is not a case of first impression. As early as in the case of **Trustworthy Pawnshop, Inc. vs. Collector of Internal Revenue, CTA Case**

No. 5691, March 7, 2000, We already held that pawnshops are not akin to lending investors. Therefore, they are not subject to lending investor's tax. And up to this moment We find no cogent reason to alter Our decision. In other words, a pawnshop is not engaged in the sale of goods, property or services in the course of trade or business, hence, it is not liable for the 10% value-added tax.

As a matter of fact, the Court of Appeals upheld Our ruling in **Commissioner of Internal Revenue vs. Trustworthy Pawnshop, Inc., CA G.R. Sp No. 59250, August 29, 2001** by pronouncing that:

> "Pawnshops cannot be treated as lending investors for the following reasons, viz:
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> 1. Under the said Tax Code, prior to its amendment by Executive Order No. 273, and prior to the issuance of RMO 15-91, pawnshops and lending investors were subjected to different tax treatments. The reason why they were subjected to different tax treatments is because of the different nature of their respective businesses.
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> 2. By their definitions alone, the two can be distinguished from each other. Section 157(a) of the Tax Code defines a "Lending investor" as one which includes all persons who make a practice of lending money for themselves or others at interest." Section 3 of Presidential Decree No. 114 (Pawnshop Regulatory Act) defines "Pawnshop" as "a person or entity engaged in the business of lending money on personal property delivered as security for loans and shall be synonymous and may be used interchangeably, with pawnbroker or pawnbrokerage." "Lending investors" lend money at interest without provision as to the security for the loan, meaning, the transaction could either be secured or unsecured, while "pawnshops" lend money on personal property delivered as security for the loans. So, the two are different, one is secured and the other unsecured.
>
> 3. The two entities are both subjected to fixed but different tax rates. Paragraph 3 (dd) and (ff) of Section 101 provides for the tax rates as follows:

(dd) Lending Investors –

1. In chartered cities and first class municipalities, one thousand pesos;

2. In second and third class municipalities, five hundred pesos;

3. In fourth and fifth class municipalities and municipal districts, two hundred pesos;

Provided that lending investors who do business as such in more than one province shall pay a tax of one thousand pesos.

x x x x x x x x x

(ff) Pawnshops, one thousand pesos.

But in addition to the fixed rates, "lending investors shall also pay a tax equivalent to five per centum on their gross income.

Lending investors were imposed a graduated type of fixed taxes depending on the class of the city or municipality where they have their business, while pawnshops were differently levied a flat amount of tax.

4. The charges and interests of pawnshops are regulated by the Central Bank pursuant to P.D. 114 while the charges and interests that lending investors charge their clients are flexible and are not pegged by the Central Bank.

Although as claimed by petitioner that by definition, "lending investors" and "Pawnshops" being both engaged in the business of lending money, and therefore, just like the lending investors, pawnshops must be subjected to the five per cent tax on their gross incomes, it admitted though that despite repeated questions asked regarding the issue, the Commissioner of Internal Revenue in past several BIR Rulings had time and again ruled that "lending investors" as contemplated in Section 157(u) do not include persons engaged in pawnshop business."

Such interpretation is in consonance with the principle laid down in the case of **Revenue vs. Fireman's Commissioner of Internal Fund Insurance Company**, G.R. No. L-30654, March 9, 1987, citing the old case of Manila Railroad Co. vs. Collector of Customs, 52 Phil 950, where the Supreme Court held that:

> "It is the general rule in the interpretation of statutes levying taxes or duties, that in case of doubt, such statutes are to be construed in favor of the subjects or citizens, because burdens are not to be imposed, nor presumed to be imposed beyond what statutes expressly and clearly import."

Pursuant to this principle, the Supreme Court held in the case of **Commissioner of Internal Revenue vs. The Court of Appeals, Court of Tax Appeals and Ateneo de Manila**, G.R. No. 115349, April 18, 1997, that the Institute of Philippine Culture, an auxiliary unit of Ateneo de Manila, could not be classified as an independent contractor for tax purposes. As against the argument of the Commissioner of Internal Revenue that the term "independent contractor" is broad enough to cover any person who renders physical and mental service for a fee and Ateneo has the burden of proof to show its exemption from the coverage of the law, the highest Court stated that the:

> "Commissioner erred in applying the principles of tax exemption without first applying the well-settled doctrine of strict interpretation in the imposition of taxes. It is obviously both illogical and impractical to determine who are exempted without first determining who are covered by the aforesaid provision. The Commissioner should have determined first if private respondent was covered by Section 205, applying the rule of strict interpretation of laws imposing taxes and other burdens on the populace, before asking Ateneo to prove its exemption therefrom. The Court takes this occasion to reiterate the hornbook doctrine in the interpretation of tax laws that "(a) statute will not be construed as imposing a tax unless it does so clearly, expressly, and

> unambiguously....(A) tax cannot be imposed without clear and express words for that purpose. Accordingly, the general rule of requiring adherence to the letter in construing statutes applies with peculiar strictness to tax laws, and the provisions of a taxing act are not to be extended by implication." Parenthetically, in answering the question of who is subject to tax statutes, it is basic that "in case of doubt, such statutes are to construed most strongly against the government and in favor of the subjects or citizens because burdens are not to be imposed nor presumed to be imposed beyond what statutes expressly and clearly import."
>
> xxx xxx xxx And it is only after private respondent has been found clearly to be subject to the provisions of Sec. 205 that the question of exemption therefrom would arise. Only after such coverage is shown does the rule of construction – that tax exemptions are to be strictly construed against the taxpayer – comes into play, contrary to petitioner's position."

In the same manner, Petitioner in the instant case is not claiming exception but exclusion from the coverage of VAT. Respondent Commissioner has not clearly shown that Petitioner is covered by the tax exemption. On the contrary, Petitioner has shown that it is not covered by the VAT law. Not only that its business is not expressly enumerated in the VAT law but as shown in the case of Trustworthy Pawnshop, the business of pawnshops is treated differently not only from lending investors but also from other financial institutions. This is so because this Court agrees with the Petitioner that pawnshop is a class of its own. We quote a portion of the memorandum of the Petitioner:

> "A reading of the preamble of Presidential Decree 114, the Act Regulating the Establishment and Operation of Pawnshops, clearly shows the intent of the former President Ferdinand Marcos in enacting the law was to make a Pawnshop a class of its own. The preamble states that:
>
> > "WHEREAS, pawnshops provide an additional source of credit especially for small borrowers left

> unserved by the banking and other financial institutions in the country"
>
> It would be condemning the spirit of P.D. 114 if pawnshops were to be lumped together with "lending investors, banks, non-bank financial companies and other financial intermediaries which are not performing quasi-banking function". The Pawnshop Industry had its birth from the needs of the ordinary people. The Pawnshop Industry caters to small time clientele that the banks cannot or will not handle. It has been the refuge of many Filipino people seeking immediate financial assistance to alleviate them from the pangs of poverty. To classify Pawnshop as belonging to the mentioned institutions would effectively eradicate the distinction that was precisely created to distinguish it from the other institution. It would do violence to the very reason for the enactment of the law."

WHEREFORE, in view of all the foregoing, the instant Petition for Review is hereby **GRANTED.** Revenue Memorandum dated September 1, 1997 issued by Commissioner Sixto Esquivas, IV is declared **NULL and VOID.** Accordingly, Assessment Notice No. 80-VAT-13-97-2000-12-178 issued against Petitioner is **CANCELLED and SET ASIDE.**

SO ORDERED.

ERNESTO D. ACOSTA
Presiding Judge

WE CONCUR:

AMANCIO Q. SAGA
Associate Judge

(Dissenting)
JUANITO C. CASTAÑEDA, JR.
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

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DISSENTING OPINION

I am constrained to dissent from the opinion of the majority which cancelled the assessment for deficiency value-added taxes on the basis of their conclusion that pawnshops are not considered lending investors.

It is my view that pawnshops are subject to value-added tax (VAT) for the following reasons:

1. Then Section 102(a) [now renumbered as Section 108(A)] of the Tax Code subjects to VAT the sale of all kinds of services in the Philippines for a fee, remuneration or consideration, including lending investors, services of banks, non-bank financial intermediaries and finance companies, and similar services. [Note: In the case of banks,

non-bank financial intermediaries and finance companies, VAT imposition has been deferred to January 1, 2003 under Section 5 of RA 8424, as amended by RA 8761 and RA 9010.] Section 102(A) provides in pertinent part:

> "**SEC. 102**. *Value-added Tax on Sale of Services and Use or Lease of Properties*. -
>
> "(A) *Rate and Base of Tax*. - There shall be levied, assessed and collected, a value-added tax equivalent to ten percent (10%) of gross receipts derived from the sale or exchange of services, including the use or lease of properties.
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> "The phrase ***'sale or exchange of services'*** means the performance of all kinds of services in the Philippines for others for a fee, remuneration or consideration, including those performed or rendered by construction and service contractors: stock, real estate, commercial, customs and immigration brokers; lessors or property, whether personal or real; warehousing services; lessors or distributors of cinematographic films; persons engaged in milling, processing, manufacturing or repacking goods for others; proprietors, operators or keepers of hotels, motels, resthouses, pension house, inns, resorts; proprietors or operators of restaurants, refreshment parlors, cafes, and other eating places, including clubs and caterers; dealers in securities; lending investors; transportation contractors on their transport of goods or cargoes, including persons who transport goods or cargoes for hire and other domestic common carriers by land, air and water relative to their transport of goods or cargoes; services of franchise grantees except those under Section 119 of this Code: services of banks, non-life insurance companies (except their crop insurances), including surety, fidelity,. indemnity and bonding companies; and similar services regardless of whether or not the performance thereof calls for the exercise or use of the physical or mental faculties. x x x
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> x x x
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> The term ***'gross receipts'*** means the total amount of money or its equivalent representing the contract price, compensation, service fee, rental or royalty, including the amount charged for materials supplied with the services and deposits and advanced payments

> actually or constructively received during the taxable quarter for the services performed or to be performed for another person, excluding the value-added tax." [Underscoring ours]

From the foregoing, the sale or exchange of services is subject to VAT. The phrase "sale or exchange of services" encompasses the performance of all kinds or services for a fee, remuneration or consideration.

The enumeration of persons performing services for a fee, such as, construction and service contractors, stock, real estate, commercial, customs and immigration brokers, etc., is merely intended to give examples of businesses performing services for a fee that are subject to VAT. The enumeration is not exclusive, which means that other persons performing services for a fee, who are not expressly mentioned in the enumeration, are also subject to VAT. As held in **Gomez vs. Ventura, (54 Phil. 726)**:

> "x x x The maxim expressio unius est exclusio alterius should be applied only as a means of discovering legislative intent and should not be permitted to defeat the plain indicated purpose of the legislature. It does not apply when words are mentioned by way of example, or to remove doubts. (See Cyc., 1122) x x x." [Underscoring ours]

Section 102(A) [now 108(A)] does not limit its application to those enumerated therein because the law speaks of "all kinds of services." To limit its application to the enumeration would contradict the very clear meaning of the phrase "all kinds of services". The phrase "including" should be construed merely as an enlargement and not of limitation.

"The intention of an act will prevail over the literal sense of its terms. Thus, limited words in one part of an act may be expanded by general words in another part, if the general words more nearly express the legislative intent.

A term whose statutory definition declares what it "includes" is more susceptible to extension of meaning by construction than where the definition declares what a term "means". Thus, it has been said that "the word 'includes' is usually a term of enlargement, and not of limitation...It, therefore, conveys the conclusion that there are other items includable, though not specifically enumerated..." Sutherland, *Statutory Construction*, 4th ed. Vol. 24, p. 82, Sec. 47.08, citing United States. Argosy Ltd. v. Hannigan, 404 F2d 14 (CA 5th, 1968); See United States v. Gertz, 249 F2d 662 (CA 9th, 1957); Federal Land Bank of St. Paul v. Bismarck Lumber Co., 314 US 95, 86 L Ed 65, 62 S Ct 1 (1941). [Underscoring ours]

Hence, the terms "includes" and "including" does not exclude items otherwise within the scope of the defined term.

"Includes" and "Including"

The terms "includes" and "including" when used in the Code are not deemed to exclude items otherwise within the meaning of the term defined. Thus, where Section 1(e) applies to the taxable income of estates including" and thereafter lists four types of income from trusts or estates that are taxable, other types of estates may also be subject to taxation under Section 1(e). To hold differently would, in effect, substitute the term "limited to" for "including". Mertens, *Law on Federal Income Taxation*, 1995 ed., Section 3.37, Chap.3, pp. 55-56, citing *In re Joplin*, Jr., 882 F2d 1507 (CA10 1989) applying IRC & 7701(c).

Hence, in the cases of **Genato Commercial Corporation vs. The Court of Tax Appeals, 104 Phil. 615**, and **Philippine American Drug Co. vs. Collector of Internal**

Revenue, 106 Phil. 163, general words were harmonized with specific words found in the statute in question so as not to limit coverage of the taxing statute. In determining that the bank charge in question formed part of the charges enumerated in Art. 183-(B) of the then Tax Code, the Supreme Court in the Genato case (cited in the *Philippine American Drug Co.* case) held:

> As may be seen, an importer is required to pay in advance the necessary percentage tax on the articles imported "based on the import invoice value thereof, certified to as correct by the Philippine Consul at the port of origin if there is any, including freight, postage, insurance, commission, customs duty, and all similar charges." In other words, the law requires that it be included in the assessment not only the import invoice value of the merchandise, which includes freight, postage, insurance, commission and customs duty, but all other similar charges which would necessarily increase the landed cost of the merchandise imported, which, in our opinion, should include the difference of Php 0.015 paid by petitioner to a local bank in the purchase of foreign exchange to carry out the importation. Indeed, the intention of Congress in enacting the above-quoted provision is to include in the assessment all charges, whether specified or otherwise, which an importer has to pay to complete his importation.
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> Invoking the rule of ejusdem generis which provides that "where, in a statute, general words follow a designation of a particular subjects or classes of persons, the meaning of the general words will ordinarily be presumed to be restricted by the particular designation, class or nature as those specifically enumerated," petitioner contends that the difference of Php 0.015 which it paid to a local bank in the purchase of foreign exchange to cover the importations in question cannot be included in the assessment for the purpose of determining the advance sales tax because they are not similar to the charges specifically enumerated in the law.
>
> With this we disagree, for it cannot be denied that the intention of the law is to include all charges, that may be paid by the importer to bring the importation into the country. In other words, all items of expense that may be incurred by the importer in bringing the

> importation into the country and which would necessarily increase the landed cost must be deemed included in the phrase "all similar charges" mentioned in the law. The doctrine of ejusdem generis is but a rule of construction adopted as an aid to ascertain and give effect to legislative intent when that intent is uncertain or ambiguous, but the same should not be given such wide application that would operate to defeat the purpose of the law. In other words, the doctrine is not of universal application. Its application must yield to the manifest intent of Congress (*State vs. Prather, 21 L.R.A. 23,25*). [Underscoring ours]

In this particular case, the law is not only clear in its intent but also in its wording that "all kinds of services" should be subject to VAT. Hence, pawnshop services should a *fortiori* be subject to VAT.

2. Since pawnshops are engaged in the sale of services, they are subject to VAT under Section 108 of the Tax Code.

Section 3 of Presidential Decree No. 114, otherwise known as the "Pawnshop Regulation Act" defines a pawnshop thus:

> "Pawnshop shall refer to a person or entity engaged in the business of lending money on personal property delivered as security for loans and shall be synonymous, and may be used interchangeably with, pawnbroker or pawnbrokerage."

Judicial notice may be taken of the fact that the principal activity of pawnshops is lending money at interest on the security of personal property. The act of lending money at interest constitutes the performance of a service for a fee, remuneration or consideration for such service. Hence, pawnshops are engaged in the sale of services subject to VAT under Section 108 of the Tax Code.

3. Moreover, the term "lending investor" as well as "similar services" in Section 108 of the Tax Code sufficiently encompasses pawnshop activities. Section 116 of the Tax Code (before amendment by Executive Order No. 273) defined "lending investor" in this manner:

> "(u) Lending investors include all persons who make a practice of lending money for themselves or others at interest."

The definition of the term "pawnshop" under Section 3 of P.D. No. 114 is broad enough to fall within the coverage of "lending investors" and "similar services" even if one were to restrict the meaning of "all kinds of services" under Section 108 of the Tax Code. After all, the principal business activity of pawnshops is actually lending money at interest.

In the case of **Commissioner of Internal Revenue vs. Agencia Exquisite of Bohol, Inc., CA -G.R. SP. No. 59282, March 23, 2001**, the Court of Appeals ruled that pawnshops are subject to the then five percent (5%) lending investors' tax since they are considered to be lending investors. In determining that pawnshops are lending investors, the Court of Appeals reasoned as follows:

> "In support of its thesis that the Tax Court erred in holding that pawnshops are not subject to the lending investor's tax, the petitioner adverts to then Section 116 of the Tax Code, which provides that:
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> > "**SECTION 116**. Percentage tax on dealers in securities; lending investors. – Dealers in securities shall pay a tax equivalent to six (6%) per cent of their gross income.

> Lending investors shall pay a tax equivalent to five (5%) per cent of their gross income."

vis-a- vis then Section 157(u) of the Tax Code (before amendment by Executive Order No. 273) which defined "lending investors" in this manner:

> "(u) Lending investors include all persons who make a practice of lending money for themselves or others at interest."

Hence, the definition of the term "pawnshop" under Section 3 of Presidential Decree No. 114, (otherwise known as the "Pawnshop Regulation Act" issued by President R. E. Marcos on 29 January 1973), thusly - -

> "Pawnshop shall refer to a person or entity engaged in the business of lending money on personal property delivered as security for loans and shall be synonymous, and may be used interchangeably, with pawnbroker or pawnbrokergage."

is broad enough to encompass lending investors. Reason: Its principal business activity is actually lending money at interest: its accepting of pawned personal property as security for the loan is merely incidental to its main business activity. So much, in fact, is embodied in Revenue Memorandum Order No. 15-91, dated March 11, 1991, to wit:

> "A restudy of P.D. 114 shows that the principal activity of pawnshops is lending money at interest and incidentally accepting a 'pawn of personal delivered by the pawner to the pawnee as security for the loan. Clearly, this makes pawnshop business akin to lending investor's business activity which is broad enough to encompass the business of lending money at interest by any person whether natural or juridical. Such being the case, pawnshops shall be subject to the 5% lending investor's tax based on their gross income pursuant to Section 116 of the Tax Code, as amended."

It will be recalled that in the implementation of then Section 116 and Section 157(u) of the Tax Code, the Bureau of Internal Revenue had issued several rulings relative to the coverage of the pawnshops under the lending investor's tax. The first of these rulings was an unnumbered BIR Ruling bearing the date 2 March 1968, wherein it was held that "lending investors," as contemplated under then Section 194(u) of the Tax Code, do not comprehend persons engaged in pawnshop business. This rule was reiterated in, amongst other, BIR Ruling No. 135-82, dated 22 April 1982; BIR Ruling No. 001, dated 3 January 1983; and BIR Ruling No. 06-90 dated 23 January 1990.

Complementary to the above, March 11, 1991, herein petitioner issued RMO No. 15-91. This RMO No. 15-91 stated that, according to BIR Ruling No. 06-90, as well as VAT Ruling Nos. 067-90, 022-90, and 226-90, pawnshops are not subject to any business tax, that is, the value added tax, the lending investor's tax, or the percentage tax imposed on non-banking financial intermediary for the reasons therein set forth, amongst which, is that-

> "Pawnshop are not subject to the 5% lending investor's tax under 116 of the Tax Code because, citing BIR Ruling dated March 2, 1968 and 135-82 dated April 22, 1982, lending investors, as contemplated under then Section 194(u) of the Tax Code, do not include persons engaged in pawnshop business."

Later, however, on May 27, 1991, the petitioner issued RMC No. 43-91 clarifying, amongst other, RMO No. 15-91, in this tenor:

> "This Circular subjects to the 5% lending investor's tax the gross income of pawnshops pursuant to Section 116 of the Tax Code, and it thus revokes BIR Ruling Nos. 6-90, and VAT Ruling Nos. 22-90 and 67-90. In order to have a uniform cut-off date, avoid unfairness on the part of taxpayers if they are required to pay the tax on past transactions, and so as to give meaning to the express provisions of Section246 of the Tax Code, pawnshops owners or operators shall becme liable to the lending investor's tax on their gross income beginning January 1, 1991. Since the deadline for the filing of percentage tax return (BIR Form No. 2529A-O) and the payment of the tax on lending investors covering the first calendar quarter of 1991 has already lapsed, taxpayers are given up to June 30, 1991 within which to pay the said tax without penalty. If the tax is paid after June 30, 1991, the corresponding penalties shall be assessed and computed from April 21, 1991.

> "Since pawnshops are considered as lending investors effective January 1, 1991, they also become subject to documentary stamp taxes prescribed in title VII of the Tax Code. BIR Ruling No. 325-88 dated July 13, 198 is hereby revoked."

In other words, RMO No. 15091 and RMC No. 43-91, both expressly revoked previous BIR rulings to the effect that pawnshops are not subject to the five percent lending investor's tax. More importantly, RMC No. 43-91 revoked BIR Ruling No. 325-88, dated July 13, 1988, which held that a pawnshop ticket is not subject to the documentary stamp tax. And, this revocation of prior or previous, rulings is allowed under Section 246 of the Tax Code, to wit:

> "**SEC. 246.** *Non-retroactivity of rulings.* – Any revocation, modification or reversal of any of the rules and regulations promulgated in accordance with the receding section or any of the rulings or circulars promulgated by the Commissioner shall not be given retroactive application xxx."

Undoubtedly, petitioner's later/subsequent stance finds support in *Hilado v. Collector of Internal Revenue, 100 Phil. 288*, which effectively held that the incumbent is not bound by the previous ruling or opinion of his predecessor, if he is satisfied that a different construction of the statute should be adopted.

With such course of action, we are in full accord. For, as the Supreme Court itself held in *Que v. Intermediate Appellate Court, 169 SCRA 137*, even judicial decisions are by no means immutable or infallible. Which is as it should be. For time works changes and brings into existence new conditions and purposes. And the law as an expression of social needs, whilst it is desirable that it should be stable, yet it cannot and must not stand still.

It should ever be borne in mind that taxes are what we pay for civilized society: taxes, indeed, are the lifeblood of the nation. Not much unlike an army, which, to borrow the picturesque prose of Napoleon, marches on its stomach, the prosperity and economic well-being of the country rises or falls on the effectiveness – or lack of its – of the tax collection efforts of the Government. Which explains why, as a matter of policy, the law frowns against exemptions in taxes. So much so that, statutes granting tax exemptions have been held to be *strictissimi juris* against taxpayer, and liberally in favor of the taxing authority, viz., the State, or its instrumentality or agencies. About the only exemption to this rule (that the tax exemption may be withdrawn at the pleasure of the taxing authority) is where the exemption was granted to private parties based on material considerations of a mutual nature, in which event it become contractual, and is thus protected by the non-impairment clause of the Constitution.

Indeed it is the constant teaching of unrelenting case law that rules for the allowance of tax creditors, as well as claims for tax exemptions, must be **expressly granted in a statute**, and couched or stated in language too plain to be misunderstood or mistaken. Here, respondent pawnshop cannot point to any specific provision in P.D. 114, from which it draws its breath of life, that explicitly exempts it from the coverage of RMO No. 15-91 and RMC No. 43-91.

In sum, since the respondent in the case at bench is a pawnshop operator, it must follow, as night follows day, in the elegant poetry of Shakespeare – that it is subject to the five percent lending investor's tax hence, liable for the amount of Pesos: One Hundred Six Thousand Five Hundred Thirty Eight and Fifty-nine Centavos (P106,538.59), by way of deficiency percentage tax for the year 1995."

4. As previously cited, then Section 102(A) [now Section 108(A)] of the Tax Code provides: "The term ***'gross receipts'*** means the total amount of money or its equivalent representing the contract price, compensation, service fee, rental or royalty, including the amount charged for materials supplied with the services and deposits and advanced payments actually or constructively received during the taxable quarter for the services performed or to be performed for another person, excluding the value-added tax."

All interest income, liquidated damages and gains from auction sale of pawned items actually or constructively received by petitioner, *having been derived as an intrinsic part of the pawnshop business*, form part of the gross receipts of pawnshops subject to VAT. In this regard, the BIR subjected to VAT the "gain on auction sale," *not* the proceeds thereof. [Please see "Details of Discrepancy" attached to BIR Formal Letter of Demand, Annex A2/3, Petition for Review]

5. Section 103 [now Section 109] of the Tax Code, as amended by RA 7716, enumerates the transactions that are exempt from VAT. Pawnshop transactions are not among the exempt transactions. Neither are there any express provisions of law exempting pawnshops from VAT. Since the transactions of pawnshops are not among those enumerated in Section 103 [now 109] of the Tax Code or any other express provision of law as VAT exempt, the same are subject to VAT under Section 102(A). In this regard, tax exemptions are strictly construed against the taxpayer. In the absence of any clear provision of law exempting pawnshops from VAT, our conclusion is that pawnshops are subject to VAT on their gross receipts since they are clearly engaged in the performance of services.

In the recent case of **Commissioner of Internal Revenue vs. Court of Appeals and Commonwealth Management and Services Corporation, G.R. No. 125355, promulgated on March 30, 2001**, the Supreme Court ruled that the taxpayer, not falling within the exemptions mentioned under Section 109 [formerly 103] of the Tax Code, is subject to VAT. The high tribunal held:

> Section 108 of the National Internal Revenue Code of 1997 defines the phrase "sale of services" as the "performance of all kinds of services for others for a fee, remuneration or consideration." x x x
>
> x x x

Hence, it is immaterial whether the primary purpose of a corporation indicates that it receives payments for services rendered to its affiliates on a reimbursement-on-cost basis only, without realizing profit, for purposes of determining liability for VAT on services rendered. As long as the entity provides service for a fee, remuneration or consideration, then the service rendered is subject to VAT.

At any rate, it is a rule that because taxes are the lifeblood of the nation, statutes that allow exemptions are construed strictly against the grantee and liberally in favor of the government. Otherwise stated, any exemption from the payment of a tax must be clearly stated in the language of the law; it cannot be merely implied therefrom. In the case of VAT, Section 109, Republic Act 8424 clearly enumerates the transactions exempted from VAT. *Commissioner of Internal Revenue vs. Court of Appeals and Commonwealth Management and Services Corporation, G.R. No. 125355, March 30, 2001.* [Underscoring ours]

WHEREFORE, I vote to uphold the assessment for deficiency value-added tax in the amount of P123,362.80 inclusive of 25% surcharge plus 20% deficiency interest from January 19, 2001 until fully paid pursuant to Sections 248 and 249(B) of the Tax Code.

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