REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

MIGUEL J. OSSORIO PENSION
FOUNDATION, INC.,
Petitioner,

- versus - C.T.A. CASE NO. 4244

COMMISSIONER OF INTERNAL
REVENUE,
Respondent.
x - - - - - - - - - - - - - - - x

11/2/90

D E C I S I O N

This is a judicial claim for the refund of the sum of P1,092,958.68, representing final withholding taxes wrongfully collected and/or withheld from petitioner from April 1986 to June 30, 1987.

Petitioner is a non-stock, non-profit corporation duly organized and existing under and by virtue of the laws of the Philippines. It was organized and existed for the purpose of holding title to, and administering, the employee trust and retirement funds established for the benefit of the employees of the Victorias Milling Co., Inc. and its subsidiaries, such as the North Negros Marketing Co., Inc., as shown by its Articles of Incorporation and By Laws as duly approved by the Securities and Exchange Commission.

In or about 1968, Victorias Milling Co., Inc. established a retirement or pension plan for its employees and those of its subsidiary companies pursuant to a 22-page plan. Pursuant to said pension plan, Victorias Milling Co., Inc. makes a regular financial contributions to the employee trust for the purpose of distributing or paying to said employees, the earnings and principal of the funds accumulated by the trust in accordance with said plan. Under the plan, it is imposable, 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 used for, or diverted to, purposes other than for the exclusive benefit of said employees. Moreover, upon termination of the plan, any remaining assets will be applied for the benefit of all employees and their beneficiaries entitled thereto in proportion to the amount allocated for their respective benefits as provided in said plan.

The petitioner and Victorias Milling Co., Inc., on January 22, 1970, entered into a Memorandum of Understanding, whereby they agreed that petitioner would administer the pension plan funds and assets, as assigned and transferred to it in trust, as well as all amounts that may from time to time be set aside by Victorias Milling Co., Inc. "For the benefit of the Pension Plan, said administration is to be strictly adhered to pursuant to the rules and regulations of the Pension Plan and of the Articles of Incorporations and By Laws" of petitioner.

This pension plan was thereafter submitted to the Bureau of Internal Revenue for registration and for a ruling as to whether its income or earnings are exempt from income tax pursuant to Rep. Act 4917, in relation to Sec. 56(b), now Sec. 54(b), of the Tax Code.

In a letter dated January 18, 1974 addressed to Victorias Milling Co., Inc., the Bureau of Internal Revenue ruled that "the income of the trust fund of your retirement benefit plan is exempt from income tax, pursuant to Rep. Act 4917 in relation to Section 56(b) of the Tax Code."

In accordance with petitioner's Articles of Incorporation (Annex A), petitioner would "hold legal title to, control, invest and administer, in the manner provided, pursuant to applicable rules and conditions as established, and in the interest and for the benefit of its beneficiaries and/or participants, the private pension plan as established for certain employees of Victorias Milling Co., Inc. and other pension plans of Victorias Milling Co. affiliates and/or subsidiaries, the pension funds and assets, as well as the accruals, additions and increments thereto, and such amounts as may be set aside or accumulated of said pension plans. Moreover, pursuant to the same Articles of Incorporations, petitioner is empowered to "settle, compromise or submit to arbitration, any claims, debts or damages due or owing to or from pension funds and assets and other funds and assets of the corporation, to commence or defend suits or legal proceedings and to represent said funds and assets in all suits or legal proceedings."

Petitioner, through its investment manager, the City Trust Banking Corporation, has invested the funds of the employee trust in treasury bills, Central Bank bills, direct lending, etc. so as to generate income or earnings for the benefit of the employees-beneficiaries of the pension plan. Prior to the effectivity of Presidential Decree No. 1959 on October 15, 1984, respondent did not subject said income or earnings of the employee trust to income tax because they were exempt from income tax pursuant to Sec. 56(b), now Sec. 54(b), of the Tax Code and the BIR Ruling dated January 18, 1984 (Annex D). (Underlining ours.)

After Presidential Decree No. 1959 took effect on October 15, 1984, respondent and/or the Bureau of Internal Revenue began subjecting the income or earnings of the employee trust held by petitioner to income or final withholding tax and collecting from petitioner said final withholding taxes on the ground that Presidential Decree No. 1959 allegedly withdrew or repealed the tax exemptions of employee trust funds on their earnings.

In view of the position taken by respondent, the said respondent collected from petitioner, through the latter's investment manager, final withholding taxes consisting of:

(1) Taxes withheld and remitted to the Bureau of Internal Revenue on account of direct lending of the employee trust fund, to wit:

Date Tax Withheld	Amount of Tax Remitted to BIR
April, 1986	P100,761.44
May, 1986	1,883.68

June, 1986	38,112.40
July, 1986	18,166.67
August, 1986	2,164.91
September, 1986	79,592.71
October, 1986	12,506.90
November, 1986	2,156.78
December, 1986	42,457.56
January, 1987 to June 30, 1987	14,830.35
Total	P312,633.40

as shown by a sworn certification of Rosario C. Capino of Citytrust Banking Corporation (Annex E).

(2) Taxes withheld by the Central Bank on account of petitioner's employee trust fund investment in Treasury Bills and/or Central Bank Bills, from January, 1986 to June 30, 1987 in the total amount of P780,352.28, as shown by a sworn certification of Rosario C. Capino of Citytrust Banking Corporation (Annex F), which states in part that the "taxes were, and formed part of, the taxes withheld and remitted to the Bureau of Internal Revenue by the Central Bank, as appearing in the attached certification of the Central Bank dated December 11, 1987." The Central Bank remitted said taxes to the Bureau of Internal Revenue by means of credit advice on November 5, 1986, January 8, 1987, and from March 5, 1987 to November 5, 1987 (Annexes G and G-1).

It is alleged that the collection from

petitioner of final withholding taxes on the income and earnings of the employee trust held by petitioner violates Sec. 54(b), formerly Sec. 56(b), of the Tax Code as this provision exempts from income or withheld tax earnings of employee or pension trusts. The taxes, therefore, collected above are allegedly wrongfully collected.

This is because, while as a general rule, Sec. 21(c), formerly Sec. 21(d), of the Tax Code subjects all interests and yields from deposit substitute to final withholding tax, Sec. 54(b), formerly Sec. 56(b), of the Tax Code exempt from income tax the income or earnings of employee trust funds, as an exception to the general rule. The employee trust fund held by petitioner for the benefit of the employees of Victoria Milling Co., Inc. and its subsidiaries qualify as tax exempt under Sec. 54(b), formerly Sec. 56(b), of the Tax Code as ruled by respondent Commissioner himself in his letter dated January 18, 1974 (Annex D). Hence, the said taxes collected from petitioner above-mentioned were allegedly wrongfully collected and should therefore be refunded to petitioner.

Section 54(b) of the Tax Code exempts earnings of employee trust from income tax, since said provision did not make any distinctions or qualifications as to the kind of income tax that would be collected, nor as to the kind of earnings of employee trust that are exempt from income tax, then income tax includes final withholding tax, and earnings include interests and yields from deposit substitute which should be accordingly exempt from final withholding tax.

Contrary to respondent's position and to BIR Ruling No. 006 dated January 14, 1986, Presidential Decree No. 1959 did not impliedly repeal the exemption from final withholding tax on interest income and yields from deposit substitute of employee trusts held by petitioner not only because implied repeals are not favored, the presumption being against implied repeals, but also because Sec. 54(b), formerly Sec. 56(b), of the Tax Code was left untouched by Presidential Decree No. 1959. Moreover, Presidential Decree No. 1955 as clarified by Ministry of Finance Order No. 39-84 and Executive Order No. 93, while withdrawing all tax exemptions generally, expressly preserve, as exceptions thereto, those tax exemptions provided in the Tax Code, one of which is the exemption from income tax of earnings of employee trust funds under Sec. 54(b), formerly Sec. 56(b) thereof.

While P.D. No. 1959 expressly amended Sec, 21(d), now Sec. 21(c), of the Tax Code by deleting the provision exempting from final withholding tax bank interests and yields from deposit substitutes and from trust fund, said deletion or amendment did not operate to withdraw nor repeal the tax exemptions on interest income and yields from deposit substitutes of employee trusts because employee trust funds enjoy income tax exemption not by virtue of Sec. 21(d), now Sec. 21(c), of the Tax Code, but by virtue of Sec. 54(b), formerly Sec. 56(b) of said Code, which latter provision remains in force so that it has not been amended nor repealed.

Section 54(b), formerly Sec. 56(b), of the Tax Code remains therefore in force and the tax exemptions therein provided in favor of employee trust remain unaffected by P.D. No. 1959. This conclusion is reinforced by the fact that P.D. No. 1994 and Exec. Order No. 273 recognized, maintained, re-enacted, or re-adopted Sec. 54(b) formerly Sec. 56(b) of the Tax Code.

In a letter dated September 21, 1987, petitioner filed with respondent a claim for refund of taxes wrongfully collected from petitioner. (Annex H)

In a letter dated September 21, 1987, respondent Commissioner of Internal Revenue asked petitioner to submit supporting documents showing the taxes withheld and remitted to the BIR. (Annex I)

In a letter dated January 22, 1987, petitioner submitted to respondent, an amended claim for refund of taxes praying that the taxes collected from petitioner as above stated, in the total amount of P1,092,985.68, be refunded to it and presented documents in compliance with respondent's request contained in his letter dated September 21, 1987 (Annex I). [Annexes E, F, G and G-1]

In a letter dated February 29, 1988 to respondent Commissioner, petitioner made a follow-up of its claim for refund of taxes and stated, among others, the following:

> "Inasmuch as under Sec. 243 of the Tax Code, suit for refund cannot be maintained for taxes paid to the BIR after two years from date of payment thereof, an action for refund of taxes paid to the BIR in April 1986 onward would be barred unless such suit is filed with the Court of Tax Appeals before or in April, 1988. For this reason, unless the BIR acts favorably on claimant's claim for refund of taxes at least five

> days before the end of March, claimant would be restrained to file the necessary action with the Court of Tax Appeals for recovery of said taxes itemized in our said letter of January 22, 1988, in accordance with the ruling of the Supreme Court in Gibbs vs. Collector of Internal Revenue, 107 Phil. 232.
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> "In view of the foregoing, it is respectfully prayed that the BIR act on claimant's claim for refund as embodied in our letter dated September 2, 1987 and January 22, 1988, before the last week of March, 1988, failing which claimant will take it that the BIR has denied its claim for refund and claimant will then be free to file the necessary action in the Court of Tax Appeals." (Annex K)

Notwithstanding petitioner's letters of January 22, 1988 (Annex J) and February 29, 1988 (Annex K), respondent Commissioner failed to act on petitioner's claim for refund of taxes.

Since the Bureau of Internal Revenue did not act on petitioner's claim for refund, petitioner filed the instant judicial claim for taxes paid up to June 30, 1987.

With respect to those final taxes paid after June 30, 1987, the parties have stipulated that the same will be subject to the final outcome of the instant case, to the effect that said taxes will be refunded if petitioner wins the case without the need on its part to file a claim for refund therefore with the Bureau of Internal Revenue and a supplemental petition with the Court of Tax Appeals.

The parties have defined the issues for determination in their stipulation of facts dated November 14, 1988, as follows:

> (a) Under what section or provision of the Tax Code do or did the interests on direct loans (Annex "E" of Petition) and yields from bank deposits and deposit substitutes on T-bills (Annex "F" of Petition) of the trust funds of the pension plan enjoy exemption from income or final tax?
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> (b) Did PD 1959 repeal or withdraw the exemption from tax on interests and yields from bank deposits and deposit substitutions of said trust funds of the pension plan administered by petitioner?
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> (c) Assuming arguendo that PD 1959 repealed or withdrew said tax exemption, did not PD 1994 and Executive Order No. 273 revive said tax exemption on earnings of the trust funds of the pension plan?

With reference to the first issue, petitioner contends that the interest on direct loans and yields from bank deposits and deposit substitutes on Treasury Bills of the trust funds of the pension plan of petitioner enjoys exemption from income or final tax under Section 56(b), now Section 54(b), of the Tax Code.

It asserted that the pension plan in question was previously submitted to the Bureau of Internal Revenue for a ruling as to whether the income or earnings of the retirement funds of said plan are exempt from income tax and in a letter dated January 18, 1984, the Bureau ruled that the earnings of the trust funds of the pension plan are exempt from income tax under Sec. 56(b) of the Tax Code.

> "A close review of the provisions of the plan and trust instrument disclose that in reality the corpus and income of the trust fund are not at no time used for, or diverted to, any purpose other than for the exclusive benefit of the plan beneficiaries. This fact was likewise confirmed after verification of the plan operations by the Revenue District No. 63 of the Revenue Region No. 14, Bacolod City. Section X also confirms this fact by providing that if any assets remain after satisfaction of the requirements of all the above clauses, such remaining assets will be applied for the benefits of all persons included in such classes in proportion to the amounts allocated for their respective benefits pursuant to the foregoing priorities.
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> "In view of all the foregoing, this Office is of the opinion, as it hereby holds, that the income of the trust fund of your retirement benefit plan is exempt from income tax pursuant to Republic Act 4917 in relation to Section 56(b) of the Tax Code." (Annex "D" of Petition)

Section 56(b), now Section 54(b), of the Tax Code, which is cited by the BIR in the Ruling of January 18, 1974, reads as follows:

"(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 satisfaction of all liabilities with respect to employees under 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."

After the enactment of PD 1959 on October 15, 1984, the Bureau of Internal Revenue, through its withholding agents, collected from petitioner final withholding taxes for the interest income from direct loans or direct lending of the pension funds, which taxes paid to the Bureau of Internal Revenue amounted to P312,633.40 from April, 1986 to June 30, 1987. Petitioner is seeking for the refund of this amount of tax.

In its BIR Ruling No. 334-87 dated November 3, 1987, the Bureau of Internal Revenue admitted that interest income of the retirement fund arising from direct loans is exempt from income a final tax pursuant to Section 56(b), now Section 54(b) of the Tax Code. BIR Ruling No. 334-87 dated November 3, 1987 reads as follows:

> "This refers to your letter dated August 14, 1987 requesting a ruling as to whether interest income by the retirement fund from direct loans made by it are subject to the 20% withholding tax.
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> "In reply thereto, I have the honor to inform you that income of retirement fund from its investments consisting of interest from loans is exempt from income tax pursuant to Section 56(b) of the Tax Code, as amended. This is in line with Ministry Order No. 39-84 which states that the withdrawal of the exemption by P.D. No. 1955 does not apply to exemptions embodied in the National Internal Revenue Code."

Petitioner concludes, to which We hereby agree, that it is entitled to a refund of the amount of P312,633.40 representing interest income for direct loans made by the retirement funds of the pension plan.

With reference to the amount of P780,452.28, representing the final tax on interests or yields from Treasury-Bills placement of the retirement fund paid by petitioner in 1986 and up to June 30, 1987, as well as those paid by petitioner after June 30, 1987, the question is whether or not interests or yields from treasury bill placements of the pension funds are exempt from final tax.

Petitioner claims that the interests or yields for Treasury Bill placements of petitioner are exempt from final withholding tax under Section 56(b), now Section 54(b), of the Tax Code because this section exempts from income tax all earnings and income of retirement funds. And earnings include interests or yields from bank deposits and deposit substitute, such as treasury bills, or income from "capital invested, gains, profit or private revenue" citing the case of Fisher vs. Trinidad, 43 Phil. 973, 981. Payment of income tax includes the withholding tax on income under Title II of the Tax Code. It is under Section 56(b), now Section 54(b), of the Tax Code, falling under Title II, that the Bureau of Internal Revenue, in its Ruling dated January 18, 1974 said that the earnings of the retirement funds of petitioner are exempt from income tax and not under any section or provision of the Tax Code.

<u>Regarding the second issue</u>, petitioner contends that PD No. 1959 did not repeal or

withdraw the exemption from income tax of interests or yields from T-Bill placements of the retirement fund because Section 54(b), formerly Section 56(b), of the Tax Code, which interests or yields are exempt from income tax and remained in force and has not been repealed.

However, respondent contends that the applicable provision is Section 21(d) and Section 24(c) of the Tax Code and not Section 56(b), now Section 54(b), of the Tax Code. Respondent claims as follows:

> "10. The exemption from the final tax on interest on bank deposits and deposit substitutes which petitioner previously enjoyed was in pursuance of the afore-quoted proviso found in Section 21(d) and 24(cc) of the National Internal Revenue Code which expressly provided that "If the recipient of such interest is exempt from income taxation, no tax shall be imposed and that, if the recipient is enjoying preferential income tax treatment, then the preferential tax rates so provided shall be imposed.
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> "11. Presidential Decree No. 1959, which took effect on October 15, 1984, amended the aforesaid sections by deleting the said proviso granting exemption from final tax on interest from bank deposits and/or deposit substitutes to those recipients who are exempted from income taxation.
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> "12. By virtue of such amendment, the exemption granted under sections 21(d) and 24(cc) is deemed to have been repealed or withdrawn. xxx."

We agree with petitioner. In his BIR Ruling dated January 18, 1974, respondent stated that the income of the trust fund of the retirement benefit plan is exempt from income tax, pursuant to Republic Act No. 4817, in relation to Section 56(b) of the Tax Code. (Stipulation of Facts, par. 4, p. 120, CTA rec.) Under this BIR Ruling, the interest income from T-bill placement of the retirement fund is exempt from final tax. At the time the pension plan was established in 1967 or thereabouts, and at the time the BIR Ruling of January 18, 1974 was issued, Section 21(d) and Section 24(cc), which provide as follows, respectively:

> "Interest from Philippine Currency bank deposits and yields from deposit substitutes whether received by citizens of the Philippines or by resident alien individuals, shall be subject to the final tax as follows: (a) 15% of the interest on savings deposits, and (b) 20% of the interest on time deposits and yield from deposit substitutes, which shall be collected and paid as provided in Sections 53 and 54 of this Code: Provided, That no tax shall be imposed if the aggregate amount of the interest on all Philippine Currency deposit accounts maintained by a depositor alone or together with another in any one bank at any time during the taxable period does not exceed Eight Hundred Pesos (P800.00) a year or Two Hundred Pesos (P200.00) per quarter; Provided, Further, That if the recipient of such interest is exempt from income taxation, no tax shall be imposed and that, if the recipient is enjoying

preferential tax treatment, then the preferential tax rate so provided shall be imposed."

"(cc) Rates of tax on interest from deposits and yield from deposit substitutes. - Interest on Philippine Currency bank deposits and yield from deposit substitutes received by domestic or resident foreign corporations shall be subject to a final tax on the total amount thereof as follows: (a) 15% of the interest on savings deposits; and (b) 20% of the interest on time deposits and yield from deposit substitutes which shall be collected and paid as provided in Sections 53 and 54 of this Code; Provided, That if the recipient of such interest is exempt from income taxation, no tax shall be imposed and that, if the recipient is enjoying preferential income tax treatment, then the preferential tax rate so provided shall be imposed."

Said sections were not yet in existence because these sections were inserted as new provisions only on September 17, 1980 by PD No. 1739, and yet long before said date (Sept. 17, 1980), petitioner was already enjoying tax exemption on its interests or yields from its investment in T-Bills and other deposit substitutes.

The aforequoted provisions of Sections 21(d) and 24(cc) of the Tax Code, introduced by P.D. 1739, which took effect on September 17, 1980, cannot be the source of the tax exemption from petitioner's investments in T-Bills and other deposit substitutes. In the first place, the above provisions do not refer to earnings of retirement funds of pension plan. The specific provision on the subject is Section 56(b), now Section 54(b), of the Tax Code under which the pension or retirement plan qualify as ruled by the BIR in its letter dated January 18, 1974. In the second place, petitioner's retirement fund has been enjoying tax exemption long before Section 21(d) and Section 24(cc) were enacted on September 17, 1980. It cannot be claimed therefore that said Section 21(d) and Section 24(cc) were the source of petitioner's exemption from income tax. In the third place, the proviso in Section 21(d) and Section 24(cc) of the Tax Code to the effect that "if the recipient of such interest is exempt from income taxation, no tax shall be imposed and that, if the recipient is enjoying preferential income tax treatment, then the preferential tax rates so provided shall be imposed," is not a tax exempt provision. This is so because the proviso does not, by itself, grant a tax exemption but points to another law, if any, as the source of tax exemption. Without another law granting tax exemption on the subject, the proviso is meaningless and grants no tax exemption privileges at all; with another law granting tax exemption, the proviso is a surplusage because what governs and grants tax exemption is the separate law and not the proviso.

In other words, the source of tax exemption of retirement employee fund is Section 56(b), now Section 54(b), of the Tax Code. Thus, even after the issuance of PD 1379 providing the new Sections 21(d) and 24(cc) of the Tax Code, the Bureau of Internal Revenue still holds that the income of retirement or employee trust is exempt from income tax under Section 56(b), now Section 54(b), of the Tax Code when, in BIR Ruling No. 036 dated March 10, 1983, it held "*that CB Provident Fund is an employees' trust exempt from income tax under Sec. 56(b) of the Tax Code and, therefore, it need not file an income tax return; that the income of the trust from its investments are exempt from income tax provided that in its investment activities, no part of the corpus or income of the fund shall be diverted to purposes other than the exclusive benefit of the member employees or their beneficiaries xxx.*" (Italics ours.)

Subsequently, PD 1959 was enacted, taking effect on October 15, 1984, which deleted the proviso in 1984 in Section 21(d) and Section 24(cc) of the Tax Code. Respondent claims that the "deletion of the exempting and preferential tax treatment provision under the old law is clear manifestation that the single 15% rate is imposable on all interest income from deposits, deposit substitutes, trust funds and similar arrangement, regardless as to the status or character of the recipient thereof." (BIR Ruling No. 006 dated January 14, 1985)

The stand taken by respondent is without basis in law. As was stated by petitioner:

> "The deleted proviso is not the source of tax exemption on interest or yields from bank deposits and deposit substitutes of pension plan, but Sec. 54(b), formerly Sec. 56(b), of the Tax Code. The proviso is not an exempting tax provision because it does not, by itself, grant exemption from tax on such interest or yields, but relies on another law or provision. In other words, if there is a separate law or provision of the subject, the proviso is meaningless for what governs is the separate provision or law. If there is no such separate provision or law granting tax exemption, the proviso is meaningless because it does not by itself grant tax exemption.
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> Moreover, PD 1959 did not repeal the following paragraph of Sec. 53 of the Tax Code:
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> > "(2) Depositors or placers/investors enjoying tax

> exemption privilege or preferential tax treatment. - In all cases where the depositor or place/investor is tax-exempt or is enjoying preferential income tax treatment under existing laws, the withholding tax imposed in this paragraph shall be refunded or credited, as the case may be upon submission to the Commissioner of Internal Revenue of proof that the said depositor, or placer/investor is a tax exempt entity or enjoys a preferential income tax treatment,"

Pursuant to the above provision, final taxes on interests or yields from deposit substitutes of tax exempt persons or entities, like herein petitioner, are entitled to a refund of the taxes paid thereon.

PD 1959 did not expressly or impliedly repeal Sec. 56(b), now Sec. 54(b), of the Tax Code exempting the imposition of income tax on employee trust on its interest or yields from T-Bill placements and deposit substitutes.

We are in full agreement with petitioner when it asserted that neither PD 1959 nor any subsequent law expressly repealed Sec. 56(b), now Sec. 54(b) of the Tax Code. Said Section remains intact in force up to the present.

But can it be correctly said that PD 1959 impliedly repealed the tax exemption privileges of pension or employee trust on its interests or yields from T-Bill placements or deposit substitutes, as respondent contends? A number of considerations, as herein below discussed, show a negative answer:

1. Implied repeal is not favored. - It is well settled that repeals of statutes by implication are not favored. The presumption is against implied repeal. Hence, all efforts should be exerted to harmonize and give effect to all laws on the subject. (Valdes vs. Tuason, 40 Phil. 943; Villegas vs. Subido, 41 SCRA 190). Implied repeal will not be decreed, unless it is manifest that the legislature so clearly intended or unless the repugnancy between two laws is not only irreconcilable but is also clear and convincing from the language used. (U.S. vs. Palacio, 33 Phil. 208).

In the case at bar, it is submitted that there is no inconsistency between PD 1959 and Sec. 54(b), formerly Sec. 56(b), of the Tax Code, nor is there a clear legislative intent to repeal Sec. 54(b), formerly Sec. 56(b), of the Tax Code. In fact, PD 1955 issued on the same day as PD 1959, as clarified by Ministry Order 39-84, preserved tax exemption privileges of those provided in the Tax Code, one of which is Sec. 56(b), now Sec. 54(b), of said Code.

2. Sec. 54(b), formerly Sec. 56(b), is an exception to Sec. to Sec. 21(c)(1) of the Tax Code. - Sec. 21(d), now Sec. 21 (c)(1) of the Tax Code subjects all interests or yields from bank deposits and deposit substitutes to final tax (15% from October 15, 1984 to December 31, 1985 per PD 1959; 17-1/2% from January 1, 1986 to July 31, 1986 per PD 1994; and 20% from August 1, 1986 per Ex. Order No. 37), without qualifications. It is, for this reason, a general provision. On the other hand, Sec. 54(b), formerly Sec. 56(b), exempts

from income tax earnings of employee or pension trust and its coverage is limited to employee trust funds. It is, for this reason, a specific or special provision. Since Sec. 21(c)(1) and Sec. 54(b) are provisions of the same Tax Code and refer to the same subject matter - income taxation and exception therefrom - they should be read together and any repugnancy between them is reconciled by construing the specific or special provision as an exception to the general provision. (Bagatsing vs. Ramirez, 74 SCRA 306)

PD 1959 made Sec. 21(d) and Sec. 24(cc) general provision by deleting the proviso therein expressed. The fact that Sec. 21(d) or Sec. 24(cc) in its comprehensive term covers the subject matter of Sec. 56(b), now Sec. 54(b), does not necessarily operate to impliedly repeal the latter. For settled is the principle in legal hermeneutics that a general law on a subject does not operate to repeal a prior special law on the same subject. The presumption against implied repeal is stronger where, of two laws, one is special and the other general, and this rule applied even though the terms of the general law are broad enough to conclude the matter covered by the special law. (Camacho vs. CIR, 80 Phil. 848; Manila Railroad Co. vs. Rafferty, 40 Phil. 224)

3. <u>The law granting tax exemption to employee trust funds not having made any distinction, the BIR should not make any distinction.</u> - Section 54(a), formerly Sec. 56(a), provides that the "tax imposed by this Title upon individuals shall apply to the income of estates or any kind of property held in trust." Section 54(b), formerly Sec. 56(b), provides the exception and states that the "tax imposed by this Title shall not apply to employee's trust." The "tax

imposed by this "Title" refers to income tax, and income tax includes final or withholding tax on income. The law not having made any distinction, the tax that "shall not apply to employee's trust" embraces all kinds of income tax, including final or withholding tax.

Moreover, the law speaks of "income" and makes no distinction as to what it embraces. Since "income" includes interests and yields from bank deposits and deposit substitutes, the income of employee trust exempt from income tax necessarily includes such interests or yields. Consequently, when Sec. 54(b) provides that the "tax imposed by this Title shall not apply to employee's trust, it exempts from all kinds of income tax, including final interests or yields from T-Bill placements or deposit substitutes. For the rule is well settled that where the law does not distinguish, we should not distinguish. (Colgate-Palmolive Phil., Inc. vs. Gimenez, 1 SCRA 267)

4. Legislative history of the provisions involved shows clear intent to preserve the tax exemption privileges of employee's trust or retirement funds. - In or about 1967 when the pension plan (Annex "B" of Petition) was established or on January 18, 1974 when the BIR ruled that the earnings of said pension plan are exempt from income tax (Annex "D" of Petition), the law in force on the subject was and still is Sec. 56(b), now Sec. 54(b) of the Tax Code. There was yet no Sec. 21(d) nor Sec. 24(cc) because these sections were introduced for the first time only on September 17, 1980 by PD 1739. However, while Sec. 21(d) or Sec. 24(cc) contains the proviso that "if the recipient of such interest is exempt from income taxation, no tax shall be imposed", such proviso is not a tax exemption provision because it does not, by itself, grant any tax exemption but

relies on another law that grants the tax exemption. Moreover, PD 1739 did not repeal Sec. 56(b), now Sec. 54(b), of the Tax Code.

On October 10, 1984, PD 1955 was issued withdrawing all tax exemption privileges previously enjoyed under special laws, except those therein provided and those provided in the Tax Code. (Ministry Order No. 39-84). In other words, Sec. 56(b), now Sec. 54(b), of the Tax Code granting tax exemption to employee trust funds is left untouched and preserved.

On October 10, 1984 PD 1959 was issued, expressly repealing a number of specific provisions of the Tax Code, including Secs. 21(d) and 24(cc) by deleting the provisos thereof and imposing a straight final tax of 15% on interests and yields from bank deposits, and deposit substitutes. However, PD 1959 did not repeal Sec. 56(b), now Sec. 54(b), of the Tax Code. This fact clearly indicates the intent to preserve the tax exemption privileges of employee trust funds.

Subsequently, PD 1994 was promulgated codifying all tax laws and amendments into what is called the "National Internal Revenue Code of 1986". PD 1994 increased the final withholding tax on interests and yields to 17-1/2%, and it re-enacted in toto Sec. 56(b) and re-numbered it as Sec. 54(b). As the tax exemption under Sec. 54(b) covers final tax, its re-enactment is an express recognition that the employee trust funds are not subject to final tax on their interests from bank deposits and yields from deposit substitutes.

On July 31, 1986, Executive Order No. 37 was issued amending a number of specific provisions of the Tax Code, including Sec. 21(d) by increasing the

> final tax to 20%. However, Executive Order No. 37 did not repeal or amend Sec. 54(b) of the Tax Code; it did re-enact provisions supportive of the tax exemption privileges of employee trust funds, such as the provision making retirement benefits under a private retirement plan exempt from income tax (Sec. 10, E.O. No. 37) and the provision making contributions of the employer to the employee trust funds deductible expense. (Sec. 11, ibid.) These circumstances could only mean that Executive Order No. 37 intended to preserve the tax exemption privileges of employee trust funds, including their earnings from deposit substitutes or T-Bill placements. This is fortified by the fact that Executive Order No. 93, while withdrawing tax exemptions in general, expressly preserved those tax exemptions provided for in the Tax Code, which includes Sec. 54(b). (pp. 135-139, CTA rec.)

Petitioner asserts that, with reference to the third issue, assuming arguendo that PD 1959 impliedly repealed the tax exemption of retirement fund on their earnings on deposit substitutes, PD 1994 and Executive Order No. 273 revived said tax exemption. Truly, assuming that PD 1959 impliedly repealed the tax exemption privileges of employee trust or retirement funds on their earnings from deposit substitutes such as T-Bill placement, without however ruling it is so, PD 1994 and Executive Order No. 273, which are later statutes, revived such exemption from income tax when they reenacted Sec. 54(b) of the Tax Code. *(Montelibano vs. Ferrer, 97 Phil. 228)* The re-enactment restores to the employee trust fund its tax exemption on its interest income and yields from deposit substitutes. Thus, in a case where a cooperative's tax exemption, previously withdrawn by PD 1955, was restored by PD 2008 and the question raised is whether such restoration of tax exemption entitles the cooperative to exemption from paying final tax on its interest income, the BIR in its Ruling No. 148 dated August 12, 1986 held:

> "Accordingly, since the exemption of cooperatives from income tax, among others, is restored by PD 2008 which is a law promulgated later that PD No. 1959 (effective October 15, 1984), you are exempt from the 17-1/2% now 20%) final tax on interest income from Philippine currency bank deposits and yield from deposit substitutes xxx." (BIR Ruling No. 148, Aug. 12, 1986).

Moreover, in point of location, Sec. 54(b) is later than Sec. 21(d) or Sec. 24(cc). When PD 1994 and Executive Order No. 273 re-enacted Sec. 54(b), formerly Sec. 56(b), it made the latter section a law of later enactment than Sec. 21(d) or Sec. 24(cc) because PD 1994 and Executive Order No. 273 are enacted later than PD 1959. It is a settled principle that where the special law is later it will be regarded as a qualification of the general law or considered grafted as an exception thereto. *(Lagman vs. City of Manila, 17 SCRA 579; Pacis vs. Averia, 18 SCRA 907; Lopez vs. Customs, 137 SCRA 327)* Applying this rule, deemed read as an exception to Sec. 21(d) or Sec. 24(cc), now Sec. 21(c)(1), of the Tax Code is Sec. 54(b), formerly Sec. 56(b), thereof, which means that the general provision subjecting interests from bank deposits and yields from deposit substitutes does not apply to interest income and yields from deposit substitutes of employee trust funds.

Finally, petitioner asserts that petitioner's claim for refund of P312,633.40, representing tax paid on interest income from loans, cannot be dispelled by respondent Commissioner of Internal Revenue because in his BIR Ruling No. 334 dated November 3, 1987, he ruled that income of retirement fund from its investment consisting of interest from loans is exempt from income tax. BIR Ruling No. 334 reads in part:

> "This refers to your letter August 14, 1987 requesting a ruling as to whether interest income by the retirement fund from direct loans made by it are subject to the 20% withholding tax.

"In reply thereto, I have the honor to inform you that income or retirement fund from its investments consisting of interest from loans is exempt from income tax pursuant to Section 56(b) of the Tax Code, as amended. This is in line with Ministry Order No. 39-84 which states that the withdrawal of the exemption by P.D. No. 1955 does not apply to exemptions embodied in the National Internal Revenue Code."

Also, in its claim for refund of P780,352.28, representing final tax on yields from Treasury Bill placement of retirement fund petitioner cites the case of GCL Retirement Plan vs. Commissioner of Internal Revenue, CTA Case No. 3888 promulgated on December 15, 1986, in which this Court held that the interests or yields from T-Bill placements of employee retirement funds are exempt from the final tax and ordered their refund.

WHEREFORE, We find and so hold that (1) petitioner is entitled to a refund of the amount of P312,633.40 representing withholding taxes paid on interest income from direct loans and made by the retirement funds of the pension plan being exempt from income tax pursuant to Sec. 65(b), now Sec. 54(b), of the Tax Code; and that (2) it is equally entitled to a refund of the amount of P780,352.28 representing final tax on yields from T-Bill

placements of the retirement fund of the pension plan paid to the BIR in 1986 up to June 30, 1987, as well as final taxes paid after June 30, 1987, for being exempt pursuant to Sec. 56(b), now Sec. 54(b), of the Tax Code or the total refundable sum of P1,092,958.68.

Without pronouncement as to costs.

SO ORDERED.

Quezon City, Metro Manila, November 2, 1990.

CONSTANTE C. ROAQUIN
Associate Judge

I CONCUR:

ALEX Z. REYES
Associate Judge

CERTIFICATION

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
Associate Judge
Court of Tax Appeals