REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

BANK OF THE PHILIPPINE ISLANDS as Trustee of the Employees' Retirement Fund of IBM Philippines, Inc., Citibank N.A., Visayan Electric Co., Philippine, Packing Corporation (Del Monte), Nestle Philippines, Inc., Kimberly Clark Phils., Inc., Goodyear Tire and Rubber Co., Inc., International School, The Shell Chemical Co., Inc., Sime Darby Philippines Inc., Ciba-Geigy Philippines, Inc., Avon Cosmetics Inc., Union Carbide (Phils.), Bank of America, Benguet Corporation, Purefoods Corp., Mead Johnson Phils., Inc., Allied Thread Company, Inc., Ayala Employees Welfare and Retirement Benefit Fund, Procter and Gamble (Phils.) Pension Plan, Johnson and Johnson, Wellington Investment, Filipinas Shell Petroleum Corp., INSCOS Employees' Retirement Benefit Fund, Eli-Lilly Phils., Inc., PLDT Beneficial Trust , Victory Liner, Inc., Engineering Equipment, Inc., Manila Polo Club, Bristol Laboratories, Phils., Inc., Mapua Institute of Technology, American Microsystems, Inc., Du Pont Far East, Coca-cola Export Corp., Hawaiian Phils. Co., American Wire and Cable Multi-Employer, FAPE-A, FAPE-B, and PERAA-C,
Petitioner,

7/1/94

- versus -

C.T.A. CASE NOS. 4533 to 4566
and
4681 to 4685

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

DECISION

A consolidation of the above-mentioned thirty-nine(39) cases docketed as C.T.A. Case Nos. 4533 up to 4566 together with C.T.A. Case Nos. 4681 up to 4685 were ordered by this Court upon motion of petitioner Bank of the Philippine Islands. Considering that the subject matter, the parties and the antecedent facts of the foregoing cases are identical or similar in character, it would be both proper and convenient to have the cases consolidated and tried jointly by this Court.

As trustee of the employees' retirement fund of the various companies/institutions, petitioner uniformly sought the refund of the final withholding taxes alleged to have been erroneously deducted and withheld by the Central Bank of the Philippines (CB) and remitted to the Bureau of Internal Revenue (BIR) in connection with petitioner's purchases of government securities, specifically treasury bills, for the period beginning December 1, 1988 to December 31, 1989 for each of these thirty-nine(39) retirement plans.

A written claim for refund was filed by petitioner with the BIR on December 27, 1990 with respect to C.T.A.

Case Nos. 4533 to 4566 and on December 18, 1991 insofar as C.T.A Case Nos. 4681 to 4685 are concerned.

Considering that the two-year prescriptive period to commence proceedings for the recovery/refund of the tax erroneously and/or illegally collected is about to expire and that the claim for refund is still pending with the respondent, petitioner is constrained to file these petitions for review to interrupt said prescriptive period. The petitions for review of C.T.A. Case Nos. 4533 to 4566 were filed with this Court on January 4, 1991 while those of C.T.A. Case Nos. 4581 to 4588 were filed on December 19, 1991.

Petitioner states that subject retirement plans meet the requirements of a reasonable benefit plan prescribed by Republic Act No. 4917, as implemented by Revenue Regulations No. 1-68. They were thus approved and qualified as exempt from income tax, hence, the income/yield derived from its investment in government securities is tax exempt.

In its "Answer" to each of the thirty-nine(39) petitions for review, respondent Commissioner uniformly argued that Presidential Decree No. 1959, which took effect on October 15, 1984, repealed or withdrew the exemption from final tax on interest from bank deposit and/or deposit substitutes granted under the National Internal Revenue Code (NIRC) to qualified retirement plans. Respondent also contends that petitioner has not shown that the tax sought to be refunded was actually withheld and remitted to the BIR, that it was erroneously or illegally collected and that the date of the alleged withholding and payment of the tax is not alleged in the petition.

Formally offered as evidence by petitioner in the course of the trial were various documents including the testimony of four(4) witnesses for the purpose of establishing entitlement to the refund claimed. For failure of respondent to file her written comment thereon within the time given by the Court, all the exhibits offered by petitioner were admitted subject however to the Court's final evaluation as to their materiality and probative value.

Respondent's counsel submitted these cases for decision based on the records and pleadings without further presentation of evidence. She did not file any memorandum.

With only petitioner filing its memorandum, these cases were considered by the Court submitted for decision.

The sole issue for resolution of the Court is whether or not petitioner, as trustee of the various retirement plans in these cases, is entitled to the refund of the final withholding taxes on the income of the retirement fund from investments in treasury bills.

It is axiomatic that one who claims for refund must first be able to prove legal basis thereof. Cited by petitioner as authority is the precedent-setting case of **Commissioner of Internal Revenue vs. GCL Retirement Plan, et. al.**, G.R. 95022, March 23, 1992, which not only firmly established petitioner's right to the refund sought, but also squarely addressed respondent's opposition thereto. Quoted hereunder are the pertinent portions of the Supreme Court decision in said case:

"To begin with, it is significant to note that GCL Plan was qualified as exempt from income tax by the Commissioner of Internal Revenue in accordance with Rep. Act. No. 4917 approved on 17 June 1967. This law specifically provided:

> "SECTION 1. <u>Any provision of law to the contrary notwithstanding</u>, the retirement benefits received by officials and employees of private firms, whether individual or corporate, in accordance with a reasonable private benefit plan maintained by the employer shall be <u>exempt from all taxes</u> and shall not be liable to attachment, levy or seizure by or under any legal or equitable process whatsoever except to pay a debt of the official or employee concerned to the private benefit plan or that arising from liability imposed in a criminal action;" x x x (emphasis ours).

In so far as employees' trusts are concerned, the foregoing provision should be taken in relation to then Section 56(b) (now 53[b]) of the Tax Code, as amended by Rep. Act No. 1983, <u>supra</u>, which took effect on 22 June 1957. This provision specifically exempted employees' trusts from income tax and is repeated hereunder for emphasis:

> "Sec. 56 *Imposition of Tax.* - (a) Application of tax. - The taxes imposed by this Title upon individuals shall apply to the income of estates or of any kind of property held in trust.
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> xxx xxx xxx
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> "(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 x x x"

The tax-exemption privilege of employees' trusts, as distinguished from any other kind of property held in trust, springs from the foregoing provision. It is unambiguous. Manifest therefrom is that the tax law has singled out employees' trusts for tax exemption.

And rightly so, by virtue of the <u>raison d'etre</u> behind the creation of employees' trusts. Employees' trusts or benefit plans normally provide economic assistance to employees upon the occurrence of certain contingencies, particularly, old age retirement, death, sickness, or disability. It provides security against hazards to which members of the Plan may be exposed. It is an independent and additional source of protection for the working group. What is more, it is established for their exclusive benefit and for no other purpose.

The tax advantage in Rep. Act. No. 1983, Section 56(b), was conceived in order to encourage the formation and establishment of such private plans for the benefit of laborers and employees outside of the Social Security Act. Enlightening is a portion of the explanatory note to H.B. No. 6503, now R.A. 1983, reading:

> "Considering that under Section 17 of the Social Security Act, all contributions collected and payments of sickness, unemployment, retirement, disability and death benefits made thereunder <u>together with the income of the pension trust</u> are exempt from any tax, assessment, fee, or charge, it is proposed that, a similar system providing for retirement, etc. benefits for employees outside the Social Security Act be exempted from income

> taxes." (Congressional Record, House of Representative, Vol. IV, Part. 2, No. 57, p. 1859, May 3, 1957: cited in **Commissioner of Internal Revenue vs. Visayan Electric Co., et. al.**, G.R. No. L-22611, 27 May 1966, 23 SCRA 715); (Underscoring supplied).

It is evident that tax-exemption is likewise to be enjoyed by the income of the pension trust. Otherwise, taxation of those earnings would result in a diminution of accumulated income and reduce whatever the trust beneficiaries would receive out of the trust fund. This would run afoul of the very intendment of the law.

The deletion in Pres. Decree No. 1959 of the provisos regarding tax exemption and preferential tax rates under the old law, therefore, cannot be deemed to extend to employees' trusts. Said Decree, being a general law, cannot repeal by implication a specific provision, Section 56(b) (now 53[b]) in relation to Rep. Act No. 4917 granting exemption from income tax to employees' trusts. Rep. Act 1983, which excluded employees' trusts in its Section 56(b) was effective on 22 June 1957 while Rep. Act No. 4917 was enacted on 17 June 1967, long before the issuance of Pres. Decree No. 1959 on 15 October 1984. A subsequent statute, general in character as to its terms and application, is not to be construed as repealing a special or specific enactment, unless the legislative purpose to do so is manifested. This is so even if the provisions of the latter are sufficiently comprehensive to include what was set forth in the special act (**Villegas vs. Subido**, G.R. No. L-31711, 30 September 1971, 41 SCRA 190).

Notably, too, all the tax provisions herein treated come under Title II of the Tax Code on "Income Tax." Section 21(d), as amended by Rep. Act No. 1959, refers to the final tax on individuals and falls under Chapter II; Section 24(cc) to the final tax on corporations under Chapter III; Section 53 on withholding of final tax to Returns and Payment of Tax under Chapter VI; and Section 56(b) to tax on Estates and Trusts covered by Chapter VII. Section 56(b), taken in conjunction with Section 56(a), supra, explicitly excludes employees' trusts from "the taxes imposed by this Title." Since the final tax and the withholding thereof are embraced within the title on "Income Tax" it follows that said trust must be deemed exempt therefrom. Otherwise, the exception becomes meaningless.

There can be no denying either that the final withholding tax is collected from income in respect of which employees' trusts are declared exempt (Sec. 56[b]), (now 53[b], Tax Code). The application of the withholding system to interest on bank deposits or yield from deposit substitutes is essentially to maximize and expedite the collection of income taxes by requiring its payments at the source. If an employee' trust like the GCL enjoys a tax-exempt status from income, we see no logic in withholding a certain percentage of that income which it is not supposed to pay in the first place.

Respondent also relies on Revenue Memorandum Circular 31-84, dated 30 October 1984, and Bureau of Internal Revenue Ruling No. 027-e-000-00-005-85, dated 14 January 1985, as authorities for the argument that Pres. Decree No. 1959 withdrew the exemption of employees' trusts from the withholding of the final tax on interest income. Said Circular and Ruling pronounced that the deletion of the exempting and preferential tax treatment provisions by Pres. Decree No. 1959 is clear manifestation that the single 15% tax rate is imposable on all interest income regardless of the tax status or character of the recipient thereof. But since we herein rule that Pres. Decree No. 1959 did not have the effect of revoking the tax exemption enjoyed by employees' trusts, reliance on those authorities is now misplaced."

As can be gleaned from the aforequoted decision, it is essential that the retirement plan should be qualified as exempt from income tax by the BIR in accordance with Rep. Act No. 4917 as implemented by Revenue Regulations No. 1-68. It is on this premise that the exemption from the final withholding tax of the income from investment in treasury bills of the retirement fund is anchored.

Formally offered as evidence by petitioner were certifications issued by the BIR confirming the tax exempt status of the retirement plans subject of these cases. (Exhibits "D", "D-1" up to "D-36"). A perusal of the exhibits at hand however, disclosed that Victory Liner, Inc. (C.T.A. Case No. 4559) and American Wire and Cable Multi-employer (C.T.A. Case No. 4682) don't have BIR certifications on file. The purported certification of FAPE A (C.T.A. Case No. 4683) and FAPE B (C.T.A. Case No. 4684) pertains to the "Exchange of Notes" between the government of the Philippines and the United States of America and has nothing to do with retirement plans on which these cases were about (Exhibit "D-35"). It was also noted that the certification of Allied Thread Company, Inc. (C.T.A. Case No. 4550) is dated August 16, 1991 whereas the refund sought covers the year 1989 (Exhibit "D-17").

The timeliness of the filing of the written claim for refund with the BIR and the petition for review with this Court is crucial and need not be over emphasized. For purposes of computing the two-year period within which to recover the tax erroneously or illegally collected as provided under Section 230 and Section 204(e) of the Tax Code, it is important to have an understanding of the treasury bills transactions to determine the reckoning dates.

The Bank of the Philippine Islands (BPI) specifically its Treasury Department purchase Treasury Bills from the Central Bank of the Philippines through the regular auction system. Treasury bills are sold at the discount prevailing at the time of issuance. The final withholding tax thereon is computed based on the discount obtained and added to the purchase price to comprise the total cash outlay of BPI. To illustrate:

a.	Face Value of T-Bills	P1,000,000.00
	Issue Date: 1-27-89 Maturity Date:	2-08-89
b.	Purchase Price	995,024.88
c.	Discount (a-b)	4,975.12
d.	Final Withholding tax (20% x c)	995.02
e.	Cash Out (b + d)	996,019.90

Based on the above illustration, BPI will pay the CB the amount of P996,019.90, inclusive of the tax on date of issue . The tax component thereof (P995.02) will then be remitted by CB to the BIR. At maturity date, CB will pay BPI P1,000,000.00. The BPI Trust and Investment Division will then purchase T-bills from BPI Treasury Department for the account of the various retirement plans under its management following the system as illustrated above.

The foregoing can be readily verified from the exhibits submitted. Exhibit "B" show the purchases of T-bills by BPI from CB for the year 1989, the discounted cost, final tax withheld thereon, and remittance thereof to the BIR via credit advice to the account of the Treasurer of the Philippines. Exhibits "C", "C-1" and "C-2" show the acquisitions of T-bills from BPI Treasury Department by BPI-Trust and Investment Division for its various accounts. Exhibits "A", "A-1" up to "A-38" show the schedule of investments in T-bills of each retirement plan, including the related data thereon.

The Tax Code provisions on final withholding taxes which are pertinent to the cases at bar are quoted hereunder:

SECTION 24. *Rates of tax on domestic corporation.* -

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(e.) *Tax on certain incomes derived by domestic corporations.* (1) Interest from deposits and yields or any other monetary benefit from deposit substitutes and from trust fund and similar arrangements, and royalties. - Interest on Philippine currency bank deposits and yield or any other monetary benefit from deposit substitutes and from trust fund and similar arrangements received by domestic corporations; and royalties, derived from source, within the Philippines, shall be subject to a 20% tax. (Underscoring supplied.)

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SECTION 50. *Withholding of tax at source.*

(a) *Withholding of final tax on certain incomes.* - The tax imposed or prescribed by Sections 21(c), 21(d)(2); 22(a)(2), (b), (c), (d), (e); 24(e)(1), (e)(2)(B), (e)(3); and (25(a)(4), (a)(5), (a)(6)(A), (a)(6)(B), (c)(ii), (b)(1), (b)(2), (b)(3), (b)(4), (b)(5)(A), (b)(5)(B), (b)(5)(c)(ii) of this Code on specified items of income shall be withheld by payor-corporation and/or person and paid in the same manner and subject to the same conditions as provided in Section 51 of the National Internal Revenue Code, as amended. (Underscoring supplied.)

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> SECTION 51. *Returns and payment of taxes withheld at source.*- (a) Quarterly returns and payment of taxes withheld.- Taxes deducted and withheld under Section fifty-three *now* (50) shall be covered by a return and paid to the Revenue District Officer, Collection Agent, or duly authorized Treasurer of the city, or municipality where the withholding agent has his legal residence or principal place or business or where the withholding agent is a corporation, where the principal office is located. The taxes deducted and withheld by the withholding agent shall be held as a special fund in trust for the Government until paid to the collecting officers. The Commissioner of Internal Revenue may, with the approval of the Secretary of Finance, require these withholding agents to pay or deposit the taxes deducted or withheld at more frequent intervals when necessary to protect the interest of the Government. <u>The return for final withholding tax shall be filed and the payment made within 25 days from the close of each calendar quarter</u>, while the return for creditable withholding taxes shall be filed and the payment made not later that the last day of month following the close of the quarter during which withholding was made. (Underscoring supplied.)
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It is clear from the foregoing that the filing of the return and the remittance of the corresponding final taxes withheld on income from investment in Treasury Bills should be made within twenty-five(25) days from the close of each calendar quarter. The two-year period within which to file the claim for refund commences to run from said date (**Bank of the Philippine Islands as Trustee of the PAL Pilots Retirement Benefit Plan vs. Commissioner of Internal Revenue,** CTA Case No. 4217, October 22, 1992; Supreme Court resolution denying petition for review on certiorari has become final and executory on January 10, 1994).

The records show that the final taxes withheld by the Central Bank on purchases of T-bills by BPI were immediately remitted to the BIR via credit advice to the account of the treasurer of the Philippines on the month following their issuance (Exhibit "B"). However, for purposes of computing the two-year prescriptive period, they will be considered paid on the last day for filing the return and remittance of the tax withheld as provided under Section 51(a) of the Tax Code.

In CTA Case Nos. 4533 up to 4566, the earliest acquisition of T-bills and the withholding of final tax thereon was on December 1, 1988. Pursuant to Section 51(a) NIRC, the last day of filing of return and remittance of the final taxes withheld would be on January 25, 1989. As previously disclosed, the written claim for refund with the BIR was filed on December 27, 1990 while the petition for review was filed with this Court on January 4, 1991. Verily, these are well within the reglementary period fixed by law.

In CTA Case Nos. 4681 up to 4685, the earliest recorded investment in T-bills was on January 27, 1989. The corresponding return and payment thereof would be due on April 25, 1989. The written claim for refund was filed with the BIR on December 18, 1991 while the petition for review was filed with this Court on December 19, 1991. Evidently, the claim for refund was filed way beyond two years from its "payments". Only those purchases of T-bills in the last quarter of 1989 (October, November and December 1989) would beat the prescription period since the return and the remittance of the withholding taxes thereon would only be due on January 25, 1990. Claims pertaining to acquisitions of T-bills prior to the last quarter of 1989 have all prescribed.

As to the substantiation of the amounts claimed as refund, We looked into Exhibits "A", "A-1" to "A-38" including the supporting documents and We noted certain discrepancies. The total final tax withheld in certain cases were less than the refund sought with the BIR and this Court while in others the opposite was true. In both instances, only the amounts claimed as refund with the BIR and this Court which are supported and tally with the evidence submitted were allowed.

In view of the foregoing, the following were determined to be the refundable amount for each of the thirty-nine(39) cases, viz:

C.T.A. CASE NO.	Refund claimed with BIR and CTA	Refundable Withholding Tax (Per Exh. "A", "A-1" to "A-38")	Allowable Refund
4533	927,261.68	924,586.68	924,586.68
4534	646,282.26	756,010.65	646,282.26
4535	119,458.28	119,458.28	119,458.28
4536	2,778,934.57	1,970,779.38	1,970,779.38
4537	825,412.83	825,412.83	825,412.83
4538	218,316.25	218,316.23	218,316.25
4539	208,845.17	209,070.17	208,845.17
4540	189,597.11	189,597.11	189,597.11
4541	104,642.51	104,642.51	104,642.51
4542	216,575.04	230,075.04	216,575.04
4543	183,809.45	183,809.46	183,809.45
4544	98,583.76	98,583.75	98,583.76
4545	471,966.45	471,966.46	471,966.45
4546	450,389.91	592,604.49	450,389.91
4547	2,336,577.00	2,323,451.49	2,323,451.49
4548	99,810.50	99,810.50	99,810.50
4549	169,885.64	162,472.84	162,472.84
4550	24,416.29	24,416.29	BIR exemption only in 1991
4551	158,535.96	69,785.96	69,785.96
4552	1,703,770.29	1,572,570.18	1,572,570.18
4553	111,805.80	239,908.73	111,805.80
4554	97,101.14	97,101.14	97,101.14
4555	1,123,619.55	1,123,619.55	1,123,619.55
4556	57,274.02	74,042.99	57,274.02

C.T.A. CASE NO.	Refund claimed with BIR and CTA	Refundable Withholding Tax (Per Exh. "A", "A-1" to "A-38")	Allowable Refund
4557	41,673.83	41,673.83	41,673.83
4558	383,175.02	383,175.02	383,175.02
4559	97,886.42	97,886.42	No BIR exemption on file
4560	9,272.49	9,272.49	9,272.49
4561	41,787.81	41,787.82	41,787.81
4562	81,093.96	88,728.31	81,093.96
4563	68,478.79	68,478.79	68,478.79
4564	81,028.93	81,028.93	81,028.93
4565	20,928.21	62,602.04	20,928.21
4566	362,306.81	362,306.81	362,306.81
4681	5,078.86	225,991.34	5,078.86
4682	35,202.93	35,202.93	No BIR exemption on file. Does not pertain to retirement.
4683	22,813.49	27,254.99	
4684	12,802.95	165,800.87	
4685	77,643.20	697,576.32	77,643.20
T O T A L	14,664,044.00	15,070,859.07	13,106,200.32

WHEREFORE, respondent Commissioner of Internal Revenue is hereby ordered to refund to petitioner Bank of the Philippine Islands as Trustee of the Various Retirement Funds the amount as determined above to be refunded to each of the qualified retirement plan in these consolidated cases.

SO ORDERED

Quezon City, Metro Manila, July 1, 1994.

RAMON O. DE VEYRA
Associate Judge

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Judge

MANUEL K. GRUBA
Associate Judge

CERTIFICATION

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

ERNESTO D. ACOSTA
Presiding Judge
Court of Tax Appeals