Lit

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

HOLIDAY INN (PHILIPPINES), INCORPORATED AND HOLIDAY INN MANILA,
Petitioners,

- versus -

C.T.A. CASE NO. 3089

THE ACTING COMMISSIONER OF INTERNAL REVENUE,
Respondent.

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

1/20/89

D E C I S I O N

This is a claim for refund of the sum of P31,939.00 representing the difference between the total amount of P244,866.00 which petitioners allegedly paid in 1978, 1979 and 1980 as 15% branch profit remittance tax for profits realized by them in 1978 and 1979 and the sum of P212,927.00 which allegedly should have been the correct amount of tax due in accordance with a ruling of respondent Commissioner of Internal Revenue dated January 21, 1980.

The background facts are not in controversy. As summarized by respondent:

1. Petitioner Holiday Inn (Philippines), Inc. is a resident foreign corporation engaged in hotel business with office address in the Philippines at 1700 Roxas Boulevard, Pasay City,

Metro Manila; while the other petitioner Holiday Inn Manila is a domestic corporation duly organized and existing under and by virtue of the laws of the Philippines, likewise engaged in hotel business and with same principal office as the former; (Par. 1, Petition)

2. For profits realized in the years 1978 and 1979, petitioners paid the corresponding 15% branch profit remittance tax thereon in the total amount of P244,866.00, detailed as follows:

Date Paid	Official/Confirmation Receipt No.	Amount Paid
May 24, 1978	RTR 33005593 (Exh. "C")	P27,439.00
July 19, 1978	RTR 32712606 (Exh. "E")	7,612.00
October 16, 1978	RTR 36308233 (Exh. "G")	27,032.00
January 22, 1979	RTR A0252296 (Exh. "I")	
January 23, 1979	CR A0959424 (Exh. "J")	33,928.00
July 19, 1979	RTR A2153379 (Exh. "L")	69,328.00
July 19, 1979	CR A2844958 (Exh. "M")	
October 17, 1979	RTR A2578059 (Exh. "O)	46,231.00
October 19, 1979	CR A3144661 (Exh. "N")	
January 17, 1980	RTR A2756263 (Exh. "Q")	33,296.00
January 18, 1980	CR A3566700 (Exh. R")	
		P244,866.00

3. Thru letter dated April 28, 1980 and filed with the respondent's bureau on April 30, 1980, petitioners requested for the refund of the total amount of P31,939.00 allegedly representing their overpaid branch profit remittance tax for the years 1978 and 1979 (Exhs. "A", "A-1" to "A-4");

4. Petitioners' claim for refund is anchored solely on their interpretation of respondent's ruling dated January 21, 1980 which states that "the 15% branch profit remittance tax shall be imposed on the profit actually remitted abroad and not on the total branch profit out of which the remittance is to be made";

5. Apparently wary of the 2-year prescriptive period under Section 292 (now Section 243) of the Tax Code for instituting the judicial action for the recovery of the alleged overpaid branch profit remittance tax, petitioners filed the instant petition with this Court on May 5, 1980.

The sole issue for resolution is whether or not petitioners overpaid their 15% branch profit remittance tax for 1978 and 1979, hence, entitled to the refund of P31,939.00.

We find petitioners' claim for refund meritorious.

Four square with the case at bar on this point, by reason of the exact or close identity of the factual settings, provisions of law as well as BIR ruling and memorandum involved, and issue litigated, is ***Commissioner of Internal Revenue versus Burroughs Limited and the Court of Tax Appeals****, G.R. No. 66653, June 19, 1986, 142 SCRA 324*. Because of its controlling effects on the instant case, we will quote at length from the decision.

> We rule in the affirmative. The pertinent provision of the National Revenue Code is Sec. 24(b)(2)(ii) which states:
>
> > "Sec. 24. Rates of tax on corporations. x x x
> >
> > (b) Tax on foreign corporations. x x x
> >
> > (2)(ii) Tax on branch profits remittances. - Any profit remitted abroad by a branch to its head office shall be subject to a tax of fifteen per cent (15%) x x x."
>
> In a Bureau of Internal Revenue ruling dated January 21, 1980 by then Acting Commissioner of Internal Revenue Hon. Efren I. Plana the aforequoted provision had been interpreted to mean that "the tax base upon which the 15% branch profit remittance tax x x x shall be imposed x x x (is) the profit <u>actually remitted</u> abroad and not on the total branch profits out of which the remittance is to be made."

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Applying therefore, the aforequoted ruling, the claim of private respondent (petitioners) that it made an overpayment in the amount of P172,058.90 (P31,939.00 in this case) which is the difference between the remittance tax actually paid of P1,147,058.70 (P244,866.00) and the remittance tax that should have been paid of P974,999.89 (P212,927.00), is well-taken. As correctly held by respondent Court in its assailed decision -

> "Respondent concedes at least that in his ruling dated January 21, 1980 he held that under Section 24(b)(2) of the Tax Code the 15% branch profit remittance tax shall be imposed on the profit <u>actually remitted abroad</u> and <u>not</u> on the total branch profit out of which the remittance is to be made. Based on such ruling petitioner should have paid only the amount of P974,999.89 in remittance tax computed by taking the 15% of the profits of P6,499,999.89 in remittance tax actually remitted to its head office in the United States, instead of P1,147,058.70, on its net profits of P7,647,058.00. Undoubtedly, petitioner has overpaid its branch profit remittance tax in the amount of P172,058.90."

Petitioner contends that respondent is no longer entitled to a refund because Memorandum Circular No. 8-82 dated March 17, 1982 had revoked and/or repealed the BIR ruling of January 21, 1980. The said memorandum circular states -

> "Considering that the 15% branch profit remittance tax is imposed and collected at source, necessarily the tax base should be the amount actually applied for by the branch with the Central Bank of the Philippines as profit to be remitted abroad."

Petitioner's aforesaid contention is without merit. What is applicable in the case at bar is still the Revenue Ruling of January 21, 1980 because private respondent Burroughs Limited (petitioners Holiday Inn [Phils.] Inc. and Holiday Inn Manila) paid the branch profit remittance tax in question on March 14, 1979 (from May 24, 1978 to January 18, 1980). Memorandum Circular No. 8-82 dated March 17, 1982 cannot be given retroactive effect in the light of Section 327 of the National Internal Revenue Code.

The prejudice that would result to private respondent Burroughs Limited (petitioners Holiday Inn [Phils.] Inc. and Holiday Inn Manila) by a retroactive application of Memorandum Circular No. 8-82 is beyond question for it would be deprived of the substantial amount of P172,058.90 (P31,939.00). And, insofar as the enumerated exceptions are concerned, admittedly, Burroughs Limited (petitioners Holiday Inn [Phils.] Inc. and Holiday Inn Manila) does not fall under any of them.

WHEREFORE, respondent Commissioner of Internal Revenue is hereby ordered to grant a refund and/or tax credit to petitioners Holiday Inn (Philippines), Incorporated and Holiday Inn Manila in the amount of P31,939.00 representing overpaid

branch profit remittance tax for profits realized in the years 1978 and 1979.

SO ORDERED.

Quezon City, Metro Manila, December 20, 1989.

AMANTE FILLER
Presiding Judge

WE CONCUR:

CONSTANTE C. ROAQUIN
Associate Judge

ALEX Z. REYES
Associate Judge

C E R T I F I C A T I O N

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.

AMANTE FILLER
Presiding Judge
Court of Tax Appeals