REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EFREN P. CASTAÑEDA,
Petitioner,

- versus - C.T.A. CASE NO. 3809

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

2/4/87

D E C I S I O N

This involves a claim for refund in the amount of ₱12,557.13, representing income tax withheld by respondent on petitioner's terminal leave pay upon his retirement from the government service in the amount of ₱100,116.45 in 1983.

There exist no dispute as to facts of this case. The records show that petitioner Efren P. Castañeda is a Revenue Attache in the Philippine Embassy in London, with the designation as Revenue Operations Performance Officer of the Bureau of Internal Revenue, until his retirement on December 10, 1982, under the provisions of Section 12 (c) of Commonwealth Act 186, as amended by Republic Act 1616, and further amended by Republic Act 4968;

which as amended by Republic Act No. 1616, aforesaid, provides as follows:

> "Officials and Employees retired under this Act shall be entitled to the commutation of the unused vacation and sick leave based on the highest rate received, which they may have to their credit at the time of retirement". (underscoring supplied)

By virtue of petitioner's compulsory retirement, he received, among others, a terminal leave pay in money equivalent to ₱100,116.45. However, from said amount of petitioner's terminal leave pay, respondent Commissioner of Internal Revenue withheld as income tax, the amount of ₱12,567.13 allegedly due and owing the government as evidenced by Voucher No. 0183042529 of the Accounting Division of the Bureau of Internal Revenue.

Petitioner, believing that he is not liable for an income tax on his terminal leave pay which was withheld by his office, the Bureau of Internal Revenue, in the said amount of ₱12,567.13, filed on July 7, 1983 a formal written claim for refund with the respondent Commissioner of Internal Revenue, relying on the strength of the provision of Section 12 (c) of C.A. 186, as amended by R.A. 1616, aforecited, asserting that he, the petitioner, is entitled to receive his terminal leave benefits in the amount of ₱100,116.45 as a matter of right and, hence, said sum should be paid to petitioner in full, free from tax of whatever kind in conformity with Section 33 of Presidential Decree No. 1146, 'Amending, Expanding, Increasing and Integrating the Social Security and Insurance Benefits of Government Employees and Facilitating the Payment thereof under C.A. 186, as amended, and for Other Purposes,' which provides:

> "Sec. 33. Exemption from Tax. Legal Process and Lien. --xxx Accordingly notwithstanding any laws to the contrary, the System, its assets, revenue including accruals thereto and benefits paid, shall be exempt from all taxes, assessments, fees, charges or duties of all kinds x x x". (underscoring supplied)

(Annex "D", p. 8, CTA rec.) Considering that respondent Commissioner of Internal Revenue failed to act on the aforesaid claim for refund, petitioner was constrained on July 16, 1984 to interpose his appeal to this Court by way of Petition for Review and judicially claiming for the refund of the amount of ₱12,567.13 as withheld income tax.

Respondent,,im his "Answer" to petitioner's petition for review, filed on December 4, 1984, asserted the following "Special and Affirmative Defenses," to wit:

> 3. Retirement gratuity received by government officials and employees is exempt from withholding tax. Terminal leave pay on the other hand is supplementary compensation paid an employee for services performed and as such, it is subject to the withholding tax on compensation.
>
> 4. Section 12(c) C.A. 186 provides: for entitlement of retiring employees to commutation of unused vacation and sick leave based on the highest salary received, but not exemption from tax of terminal leave pay;
>
> 5. Terminal leave pay is not among the benefits covered by P.D. 1146 particularly Section 33 thereof;
>
> 6. The amount of ₱12,557.13 sought to be refunded was paid in accordance with law and regulations on the matter, and the same is not refundable;
>
> 7. In action for refund, the taxpayer has the burden of showing that the taxes withheld and paid were erroneously collected and failure to sustain said burden is fatal in an action for refund;
>
> 8. Claims for refund are construed strictly against claimants since a claim for refund is in the nature of an exemption from taxation (Manila Electric Co. vs. Comm. of Int. Rev., G.R. No. L-29987, October 22, 1975, 67 SCRA 351);

Considering that the issue herein involves only a question of law, the parties submitted the case for decision on the basis of pleadings and records of the instant case.

The only issue in this case is whether or not petitioner's terminal leave pay as a retired government employee is subject to withholding tax.

Opinion No. 99, Series of 1985, of the Presidential Assistant on Legal Affairs, states that the commutation of all accumulated leaves and the payment of the money value thereof of one who retires upon reaching the compulsory retirement age, is doubtless and clearly, a benefit received by retiring employees and workers. (see Section 286 (the leave law) of the Rev. Adm. Code, as amended by R.A. 1081.) Considering that it is a monetary benefit received by retiring employees and workers, the money value of said accrued leave therefore is an item which shall not be included in the gross income of said retiring employees and workers as it is exempt from taxation, under the strength of Section 29(c)(7)(B) of the National Internal Revenue Code, as amended, which provides thus :-

"Section 29(c). Exclusion from gross income. The following items shall not be included in gross income and shall be exempt from taxation under this title: (underscoring ours)

(7) Retirement benefits, pensions, gratuities, etc. x x x.

(8) Any amount received by an official or employee or by his heirs from the employer as a consequence of separation of such official or employee from the service of the employer due to death or other physical disability or for any cause beyond the control of the said official or employee." (underscoring ours)

Moreover, under the provisions of Section 1 of P.D. 220, the intent and policy of the law is clear to the effect that social security benefits "and other similar benefits received by retiring employees and workers, whether received from Philippines or foreign government agencies and other institutions, private and public, shall be exempt from the payment of income tax." Applying the provision of law to the amount of ₱100,116.45 as terminal leave pay of herein petitioner, "which represents the cash equivalent of the accrued vacation and sick leave credit payable to a retiring employee upon actual retirement," said amount equivalent to the accrued vacation and sick leave of a government employee upon actual retirement is exempt from the payment of withholding tax, and it was error for respondent Commissioner of Internal Revenue, as employer of petitioner, to have withheld the income tax therefrom in the sum of ₱12,557.13, which we hereby declare as refundable to petitioner.

Respondent, however, asserted, and which is his own serious solitary contention, that the retirement law, particularly Section 12(c), C.A. 186, as amended by R.A. 1616, provides only for the commutation of the unused vacation and sick leave to their credit at retirement, but provides no exemption from the payment of income tax due on the said terminal leave pay; and the claim for refund of the withheld income tax on the amount of accumulated leaves, being in the nature of exemption, should be strictly construed citing with favor the case of Manila Electric Co. vs. Comm. of Int. Rev., 67 SCRA 351.

Contrary to the assertion of respondent, as primarily cited heretofore, P.D. 220 and Section 29(c)(7)(B) of the National Internal Revenue Code had clearly and unequivocably provided for the exemption from the imposition of income tax on benefits received from Philippine government agencies, among which is the amount pertaining to the accumulated accrued leaves of retiring government officials and employees, and which shall be exempt from tax; and P.D. 220, which is accorded the status and nature of a legislative enactment (Aquino, Jr. vs. Enrile, 59 SCRA 183; De Chavez v. Zobel, 55 SCRA 26, 31), and Section 28(c)(7)(b) of the National Internal Revenue Code, being actually a legislative enactment, like any other law or statute, their essence are their intents, policies or objectives and our judicial duty is to discover and ascertain these, and once known it is the duty of the Courts to so declare and carry their intents, policies or objectives courageously into effect (Vda. de Macabenta vs. Davao Stevedore Terminal Co., 32 SCRA 553, 557; Sue vs. Hord, 12 Phil. 485; U.S. vs. Toribio, 15 Phil. 85; Riera vs. Palmaroli, 40 Phil. 105; Comm. vs. Caltex, 106 Phil. 829; Sarcos vs. Castillo, 26 SCRA 853, 859-861.) and the language and letter and the clear purpose or policy of the laws prevail. (Sarcos vs.

Castillo, 26 SCRA 853, 859-861.) We should not base our decisions on oft-repeated and sometimes abused principle, as respondent often so invokes, as it did in this case which in effect is that exemptions from taxations of taxpayers are strictly construed and highly disfavored in law and must have to point out to a provision of law creating their

right thereto. This general rule, which is equally a technical rule of construction, is, we admit strict, but there is definitely a limit to the strict technical interpretation of an exemption statute (Comm. vs. White's Estate, 144 F 2d 1019, 1021, Mertens, Law of Federal Income Taxation, Vol. 1, 1956 Ed., Chap. 3, Sec. 3.02, pp. 3-4, citing Banker's Trust Co., 33 BTA 746; Waynesboro Manufacturer's Assoc. v. Comm. 1 BTA 911, 914) and this general strict rule of interpretation should not be used to thwart the otherwise clear intent, purpose, policy and objective of that exemption law and should bow to the clear statutory language and policy of said exemption law. (Philip Zinet, Law of Federal Income Taxation, Cumulative Supplement, Vol. 1, Sec. 308, p. 14 citing City Bank

Farmer's Trust Co. v. Petride, 168 F 2d 618.)

Lest a distorted legal impression shall be created in the important subject of taxation, the narrow, restrictive or strict application of the rule that exemptions from tax is always disfavored in law does not always apply. Where tax exemption, as had been provided and built in P.D. 220 and Section 29(c)(7)(B) of the National Internal Revenue Code, was clearly granted to government retiring employees, precisely as an act of public policy, and not as a matter of grace or favor to them since government officers and employees render a very special public duty or service to the government and to the Filipino people at large, this exemption from the payment of tax on their accumulated accrued leaves upon their retirement must have to be, as we do hereby liberally construe the same in their favor (Ambrosio Padilla, Civil Code Annotated, 1956 Ed., Vol. IV, p. 195; Tolentino, Commentaries on the Civil Code, Vol. V, 1959 Ed., p. 250; Carmelo v. Monserrat, 55 Phil. 644; see Mertens, ibid., citing Estate of Emily St A Tait, 11 TC 731; Comm. v. White's Estate, op. cit.) as a reward for their selfless, dedicated and admittedly not adequately compensated service in terms of the salary due their positions. Moreover, the tax exemption provisions in P.D. 220 and Section 29(c)(7)(B) exempting them from the payment of income tax on the amount of their accumulated accrued leaves are just too plain to be mistaken and too categorical to be misinterpreted.

It must have to be stated and emphasized in this connection that respondent Commissioner of Internal Revenue requested for reconsideration of Opinion No. 99, which held that BIR Ruling No. 432, dated August 14, 1958, has been superseded by Section 1 of Presidential Decree No. 220, to the end "xxx that any amount received by a retiring government officer or employee, as the equivalent of his accumulated vacation and sick leave credits, is exempt from income tax," the Presidential Assistant for Legal Affairs, Office of the President, in Opinion No. 114, series of 1985, in denial to aforesaid respondent's motion for reconsideration, opined in effect that "xxx whether taken under P.D. No. 220 or under the Tax Code as amended by P.D.

No. 1159 and Batas Pambansa Blg. 135, any amount received by a retiring government officer or worker as cash equivalent of its unused vacation and sick leaves is exempt from income tax." (underscoring supplied; pp. 67-76, CTA rec.)

We are in full conformity with the Opinion No. 114 of the Presidential Assistant for Legal Affairs, Office of the President, which made a very concise effort to make an incisive explanation and illucidation of, and then finally making a concise declaration of the true essence, intent, purpose, policy and objective of P.D. No. 220 and Section 29(c)(7)(B) of the National Internal Revenue Code and Batas Pambansa Blg. 135, granting exemption from income taxes on all benefits due to government officers and employees, the very office from which particularly P.D. 220 had proceeded and originated, which office and no other can authoritatively state what in exactitude, is, to our mind, the essence, intent, purpose and objective, scope and extent, of the tax exemption granted therein.

In view of the aforestated conformity thereto, we quote at length the said Opinion No. 114 of the

Presidential Assistant on Legal Affairs, Office of the President, which we here consider as authority in support of herein decision.

OFFICE OF THE PRESIDENT
OFFICE OF THE PRESIDENTIAL ASSISTANT
FOR LEGAL AFFAIRS
MALACAÑANG

OPINION NO. 114
Series of 1985

Manila, July 29, 1985

The Acting Commissioner
Bureau of Internal Revenue
Quezon City

S i r :

This refers to your petition of April 10, 1985, for reconsideration of Opinion No. 99 of this Office, dated January 7, 1985, holding "that BIR Ruling No. 432, dated August 14, 1958, has been superseded by Section 1 of Presidential Decree No. 220" and, therefore, any amount received by a retiring government officer of employee, as the equivalent of his accumulated vacation and sick leave credits, is exempt from income tax.

You seek reconsideration on the basis of the following arguments:

> "Social Security benefits, retirement gratuities, pensions and other similar benefits <u>received by retiring employees and workers, whether received from Philippine or Foreign government agencies and other institutions</u>,

private or public, were unqualifiedly exempt from income tax pursuant to P.D. No. 220 which took effect on June 20, 1973. However, on June 3, 1977, Presidential Decree No. 1158-A was passed amending certain sections of the National Internal Revenue Code of 1939 for incorporation in the consolidation and codification of all existing revenue laws, i.e., as of June 3, 1977 under Presidential Decree No. 1158. Thus, effective June 3, 1977, subparagraph (b) of Section 29 of the National Internal Revenue Code of 1939 was amended by Section 2 of Presidential Decree No. 1158-A by incorporating in the National Internal Revenue Code of 1977, the provisions of Section 1 of Republic Act No. 4917 and of Presidential Decree No. 220 as Section 29(b)(7)(A), (B),(C),(D),(E) and (F) (now Section 29 (C)(7)(A),(B),(C),(D),(E), and (F) thereof). In fact, Section 29(c)(7)(A), (B),(C),(D),(E) and (F) of the Tax Code of 1977, as amended, covers the whole subject of Presidential Decree No. 220 and retirement benefits, pensions and similar benefits received by retiring officials and employees only from Philippine Government agencies are among those in the enumeration of items of income excluded from gross income or gross compensation income, as the case may be, which shall be exempt from taxation. Under the principle of 'Ejusdem generis' where general terms follow the designation of particular things or classes of persons or subject, the general terms will be construed to include those things or persons of the same class or of the same nature as those specifically enumerated. (Crawford, Statutory Construction, p. 191) Thus, the phrase 'other similar benefits' in P.D. No. 220 following an enumeration of social security benefits, gratuities, pensions include only such benefits which are of the same nature or like character as those particularly mentioned or enumerated which consist of payment of benefits on account of complete separation from the service of the employer thereby excluding from the ambit of the statute, payment of benefits which are actually part of the compensation/salary earned, payable and accumulated throughout the years, e.g., accumulated vacation and sick leave credits, while the employee is still in the employ of the Development Bank of the Philippines (DBP) and, therefore, part of taxable compensation of said employee. Such being the case, the ruling of this Office subjecting the money value of accumulated vacation and sick leaves to income tax is still in force and is not in any way superseded by P.D. No. 220.

"Leave privilege is an accessory to an individual's right to hold public office. It is a privilege enjoyed by an employee and, in fact, payable to him even while he is still in the service or employ of his employer as part of his compensation for services rendered. That it is cumulative and commutative does not change its true nature that of being an 'actual service privilege' (Civil Service Commission Ruling dated June 1, 1960, CSC Opinions and Rulings, Volume I-III). Vacation and sick leaves are privileges arising out of employment as specifically provided for under Rule XVI of the Civil Service

> of 1959. A vacation leave is granted to give employees opportunity to replenish worn-out energies and acquire new vitality to perform duties efficiently (Sun-Ripe Coconut Products, Inc. vs. The National Labor Union, No. L-7964, prom. Oct. 18, 1955) while a sick leave is intended to improve the health during employment for better work performance (Recio vs. Auditor General, G.R. L-11557, prom. April 17, 1959)"

The primary or cardinal rule in the interpretation of laws is to ascertain and give effect to the intention of the legislator (Roldan and Daza vs. Villaroman, 69 Phil. 12, 20, citing Borromeo vs. Mariano, 41 Phil. 322, and People vs. Concepcion, 44 Phil. 126; see also Tanada & Macapagal vs. Cuenco, L-10520, Feb. 28, 1957; Manila Lodge No. 761 vs. Court of Appeals, 73 SCRA 162, 177), and that, when the language of a law is reasonably susceptible of two or more interpretations, that should be adopted which tends to give effect to the manifest intention of the legislator and to promote the purpose for which it was enacted, and that interpretation should be rejected which tends to defeat the purpose which the legislator has intended to attain by its enactment (Ibid, citing U.S. vs. Toribio, 15 Phil. 85 and U.S. vs. Navarro, 19 Phil. 134).

All other rules of statutory construction, like the <u>ejusdem generis</u> maxim invoked by that office, are <u>subordinate</u> to this primary and fundamental rule (Francisco, Statutory Construction, Third Ed., p. 106, citing Black on Interpretation of Laws, 2d Ed., p. 46) for the legislative intent is the vital part, the soul and essence of the law, and the guiding star in the interpretation thereof (50 Am. Jur. pp. 200, 201) and, therefore, is the canon of statutory construction (Francisco, <u>supra</u>, citing Burke v. State, 119 N.Y.S. 1101, 64 Misc. 558).

What then is the intent of the legislator (the President) when he issued Presidential Decree No. 220? For full appreciation and clarity, we again quote hereunder the pertinent provision of P.D. No. 220 -

> "1. That, provisions of any existing law to the contrary notwithstanding, social security benefits, retirement gratuities, pensions and other similar benefits received by retiring employees and workers, whether received from Philippine or foreign government agencies and other institutions, private or public, shall be exempt from the payment of income tax." (Underscoring supplied.)

As the said Decree does not contain a preamble and contains only two (2) sections, the second being the effectivity clause, we have no other intrinsic aids in discovering the intent of the legislator other than the abovequoted provision of Section 1.

Already exempt from income tax long before the issuance of P.D. No. 220 were (1) "social security benefits" like those received from the Social Security System (Sec. 16, RA 1161, as amended) and compensation for personal injuries or sickness (Sec. 29/b/ /5/ of the National Internal Revenue Code); (2) government employees; "retirement gratuities" (RA 1616) and retirement""pensions" (RA 660) under Section 28(c) of Commonwealth Act No. 186, as amended. Likewise, retirement benefits of private firms' employees were exempt from such tax (RA 4917). Considering that such "social security benefits", "retirement gratuities" and "pensions" were already exempt from income tax before the promulgation of P.D. 220, it becomes very evident that the intention of the President when he used the words "other similar benefits" in P.D. No. 220 was to likewise exempt from income tax benefits received by retiring employees and workers not yet then exempt from such tax or whose income tax exemption is still in legal doubt, and place them in the same category, at least insofar as income tax exemption is concerned, as those already exempt from such tax like social security benefits, retirement gratuities and pensions.

The only qualification or condition imposed by the Decree for the exemption is that the "benefits" are "received by retiring employees and workers", irrespective of its nature or source. It may then be asked: Is cash equivalent of a government officer's or employee's accumulated vacation and sick leave credits among those benefits received by said officer or employee upon his retirement? Our firm affirmative answer to this question is legally impeccable because Section 286 of the Revised Administrative Code provides that "whenever any officer, employee or laborer of the Government of the Philippines shall voluntarily resign or be separated from the service through no fault of his own, like compulsory retirement, he shall be entitled to the commutation of all accumulated vacation and/or sick leave to his credits," and Resolution No. 81-1158, issued on October 12, 1981 by the Civil Service Commission, the agency charged with the implementation of our leave law (Opinion No. 133, s. 1982), ordains, "The accumulated leave in excess of ten (10) months shall not be forfeited unless the officer, employee or laborer voluntarily resigns, retires, or is separated from the service through no fault of hisoown, in which case he shall be entitled to the commutation of all his accumulated vacation and/or sick leaves to his credit which, in no case, shall exceed three hundred (300) days, exclusive of Saturdays, Sundays and public holidays."

Likewise, Section 12(c) of Commonwealth Act No. 186, as amended by RA 1616 and further amended by Republic Act No. 4968, provides that -

> "x x x Officials and employees retired under this Act shall be entitled to the commutation of the unused vacation and sick leave, based on the highest rate received, which they may have to their credit at the time of retirement." (Underscoring supplied.)

Being a benefit granted under our retirement law, the payment of unused vacation and sick leaves to a retiring government employee, whether under RA 1616 (gratuity retirement) or under RA 660 (pension retirement), is exempt from "all types of taxes", including income tax, pursuant to Section 28(c) of C.A. No. 186, as amended.

Notwithstanding said Section 28(c), however, the Bureau of Internal Revenue still adheres to its BIR Ruling No. 432, dated August 14, 1958, holding "that payment of the unused vacation and sick leave of a retiring employee under Republic Act No. 1616 is subject to income tax." P.D. No. 220 put an end to whatever doubt engendered by said BIR Ruling on the income tax exemption of cash equivalent of unused vacation and sick leaves received by retiring employees and workers.

Even the rule of ejusdem generis invoked by that Office sustains the above conclusion. The law (PD No. 220) itself, as intimated above, classifies the benefits declared thereunder exempt from income tax into two (2) classes, namely: benefits "received by retiring employees and workers. Being made by the law itself, this classification, not the one suggested in the petition for reconsideration, must be considered in the application of said rule of statutory construction. Thus, since by operation of the provisions of Section 286 of the Revised Administrative Code as implemented by CSC Resolution No. 81-1158 and of Section 12(c) of C.A. No. 186, as amended by RAs 1616 and 4968, retiring government officers and employees are entitled to the commutation of the accumulated or unused vacation and sick leaves, the same benefit falls within the class of benefits "received by retiring employees and workers" and, therefore, under the ejusdem generis, is deemed included in the coverage of the Decree.

Indeed, to limit the tax exemption granted under P.D. No. 220 to purely retirement benefits (gratuities and pensions) as suggested in the petition for reconsideration, is to render the said Decree useless and ineffective, for practically all benefits of the nature of retirement gratuities and pensions were already exempt from income tax before the issuance of the same Decree. The President could not have the intention to issue a useless, ineffective or inefficient decree (Bird vs. Alaska, 187, U.S. p. 118); but rather to have promulgated a valid and permanent statute which would have the most beneficial effect that its language permits (Orlosky vs. Haskell, 155 A.112).

It may be worthy to note, at this stage, that not all benefits or income considered parts of compensation or salary are taxable, for even supplemental allowances, per diems, benefits and the like received by officers and employees of the Foreign Service are exempt from income tax (RA 708). The BIR Ruling of February 6, 1952 likewise exempts from income tax subsistence and quarter allowances given to commissioned officers of the Bureau of Coast and Geodetic Survey.

We agree that the provision of P.D. No. 220 were incorporated in the amendment introduced by P.D. No. 1158-A (dated June 3, 1977) in Section 29(b)(7) of the Tax Code. But the incorporation did not change the exemption granted under P.D. No. 220. Said Section 29 (b)(7), as amended by P.D. No. 1158-A reads:

> "(7) Retirement benefits, pensions, gratuities, etc.
>
> "(A) (Retirement benefits of private firms' employees under RA 4917)
>
> "(B) Any amount received by an official and employee or by his heirs from the employer as a consequence of separation of such official or employee from the service of the employer due to death, sickness or other physical disability or for any cause beyond the control of the said official or employee.
>
> "(C) The provisions of any existing law to the contrary notwithstanding, social security benefits, retirement gratuities, pensions and other similar benefits received by resident or nonresident citizens or aliens who come to reside permanently in the Philippines from foreign government agencies and other institutions, private or public.
>
> "(D) Payments of benefits due or to become due to any person residing in the Philippines under the laws of the United States administered by the United States Veterans Administration.
>
> "(E) Payments of benefits made under the Social Security Act of 1954, as amended.

"(F) Benefits received from the GSIS and the retirement gratuity received by government officials and employees." /now Sec. 29(c)(7)(A), (B), (C), (D), (E) & (F), Batas Pambansa Blg. 135; underscoring supplied./

The above enumeration excludes (1) proceeds of life insurance policies paid to beneficiaries upon the death of the insured; (2) any amount received by an insured as return of premium; (3) compensation for injuries or sickness under Workmen's Compensation Acts (employees' compensation under the Labor Code); and (4) income exempt under treaty agreement, as they are all already covered by, or declared exempt from income tax under, Section 29(b)(1), (2), (5) and (6), respectively, of the Tax Code as amended by P.D. No. 1158-A.

The mere fact that Section 29(b)(7)(C) /now Sec. 29 (c)(7)(C), BP Blg. 135/ abovequoted (which enumerates in the same sequence the same benefits mentioned in P.D. No. 220 as income tax exempt, namely "social security benefits", "retirement gratuities", "pensions" and "other similar benefits") limits the tax exemption to benefits received from foreign government agencies and foreign public or private institutions, does not justify the conclusion that a change or amendment has been made on the tax exemption granted under P.D. No. 220 as incorporated into the Tax Code by P.D. No. 1158-A. The limited coverage of subparagraph (b)(7)(C) is understandable, for it would be repetitious to include in its coverage social security benefits, retirement gratuities, pensions and other similar benefits received b from Philippine agencies declared tax exempt under P.D. No. 220, since such benefits are already covered by other provisions of Section 29 of the Tax Code, as amended. Social security and retirement benefits of private firms' employees received from Philippine agencies are already covered by subparagraph (b)(5) and (b)(7) (A), (B) and (E). Social security benefits, retirement gratuities, pensions and other similar benefits received from Philippine agencies by government employees are already covered by subparagraph (b)(5) and (c) (7) (B) and (F).

Subparagraph (b)(7)(B) /(c)(7)(B), BP Blg. 135/ abovequoted is even more comprehensive in coverage than P.D. No. 220, as it covers benefits received as consequence of separation from the service "due death, sickness or other physical disability or for any cause beyond the control" of the employee or employee concerned. Separation from the service may also be due to retirement (Nationalista Party vs. Bautista, 85 Phil. 101) or to abolition of the Office (Zandueta vs. de la Costa, 66 Phil. 615; Antiquera vs. Baluyot, 91 Phil. 213; Manalang vs. Quitoriano, 94 Phil. 903). Definitely, the separation from the service of a government officer or employee due to old age (compulsory retirement age) or to the abolition of his office is, like death, sickness and physical disability, a separation "beyond his control." Hence, any amount received by such officer or employee as a consequence of such separation from the service (like cash equivalent of his vacation and sick leaves to which he is entitled upon retirement pursuant to Section 12(c) of C.A. No. 186, as amended, and Section 286 of the Revised Administrative Code as implemented by CSC Resolution No. 81-1158) is exempt from income tax pursuant to Section 29(b)(7)(B) of the Tax Code, as amended by P.D. No. 1158-A, or Section 29(c)(7)(B) as amended by Batas Pambansa Blg. 135.

Thus, whether taken under P.D. No. 220 or under the Tax Code as amended by P.D. No. 1158-A and Batas Pambansa Blg. 135, any amount received by a retiring government officer or worker as cash equivalent of his unused vacation and sick leaves is exempt from income tax.

ACCORDINGLY, this Office regrets to inform that office that it cannot reconsider or disturb Opinion No. 99 of this Office, dated January 7, 1985.

Please be guided accordingly.

Very truly yours,

By authority of the President:

(SGD.) MANUEL M. LAZARO
Presidential Assistant for Legal Affairs

12-77

Copy for:

The Development Bank of the Philippines
Makati, Metro Manila

In view of the foregoing, petitioner Efren P. Castaneda is entitled to the refund of, and respondent Commissioner of Internal Revenue is hereby ordered to refund the sum of ₱12,557.13 withheld as income tax due from said petitioner's accumulated unused leaves in the taxable year 1983.

Without pronouncement as to costs.

SO ORDERED.

Quezon City, Metro Manila, February 4, 1987.

CONSTANTE C. ROAQUIN
Associate Judge

WE CONCUR:

AMANTE FILLER
Presiding Judge

ALEX Z. REYES
Associate Judge