REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

JOHN C. BEGG,
Petitioner,

- versus - C.T.A. CASE NO. 2737

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

9/15/87

D E C I S I O N

The case before Us presents an issue no different from the question raised in the cases of Frank Robertson v. Commissioner of Internal Revenue, CTA Case No. 2735; James W. Robertson v. Commissioner of Internal Revenue, CTA Case No. 2736; Robert H. Cathey v. Commissioner of Internal Revenue, CTA Case No. 2738; and John L. Garrison v. Commissioner of Internal Revenue, CTA Case No. 2739, involving the judicial determination of the scope of the tax exemption provision in Article XII, Par. 2 of the RP-US Military Bases Agreement of 1947, quoted as follows:

> "2. No national of the United States serving in or employed in the Philippines in connection with the construction, maintenance, operation or defense of the bases and residing in the Philippines by reason only of such employment, or his spouse and

> minor children and dependent parents of either spouse, shall be liable to pay income tax in the Philippines except in respect of income derived from Philippine sources other than the United States."

Petitioner John C. Begg under similar circumstances, i.e., a national of the United States employed in connection with the construction, maintenance, operation or defense, of the bases, residing in the Philippines by reason of such employment, and the income derived is from the U.S. Government, was likewise assessed for deficiency income tax inclusive of interest and penalties amounting to ₱162,693.81 for the taxable years 1969 thru 1972 under letter dated July 31, 1974 of the respondent Commissioner of Internal Revenue. Petitioner's request for reconsideration thereof on August 29, 1974 invoking the tax exemption privilege accorded in Art. XII, Par. 2 of the Agreement, supra, proved to no avail as the respondent denied the same under letter dated July 30, 1975. Hence, this petition.

The records show that no facts or legal principles have been presented in this case that were not considered in the cases abovementioned, and those cases are stare decisis and govern the issue in the instant case. We regard the question now raised conclusively settled in our consolidated decision which on appeal, was subsequently upheld by the Supreme Court (Commissioner of Internal Revenue v. Frank Robertson, et al. and the Court of Tax Appeals, Nos. L-70116-19, August 12, 1986; 143 SCRA 401-402), by holding, inter alia, that, "We find no justifiable reason to disturb the findings and rulings of the lower court (CTA) in its decision reading as follows:

> 'We find nothing in the said treaty provision that justified the lifting of the tax exemption privilege of the petitioners (private respondents herein). Respondent (petitioner herein) has grafted a meaning other than that conveyed by the plain and clear tenor of the Agreement. An examination of the words used and the circumstances in which they were used, shows the basic intendment "to exempt all U.S. citizens working in the Military Bases from the burden of paying Philippine Income Tax without distinction as to whether born locally or born in their country of origin." Ubi lex non distinguit nec nos distinguere debemos (one must not distinguish where the law does not distinguish) (Translation ours). Moreover, the ruling has altered a satisfactorily settled application of the exemption clause and has fallen short of measuring up to the familiar principle of International Law that, "The obligation to fulfill in good faith a treaty engagement requires that the stipulations be observed in their spirit as well as according to their letter and that

what has been promised be performed without evasion, or subterfuge, honestly and to the best of the ability of the party which made the promise." (Kunz, The Meaning and Range of the Norm (Pacta Sunt Servanda, 29 A.J.I.L. 180 (1945); cited in Freidmann, Lisstzyn, Pugh, International Law (1969) 329). Somehow, the ruling becomes an anacolution and a persiflage.

'It bears repeating as so disclosed in the records that the petitioners together with families upon repatriation in 1945 had since acquired domicile and residency in the United States. And, obtained employment with the United States Federal Service. Not until after several years of a hiatus, petitioners did return to the Philippines not so much of honoring a pledge nor of sentimental journey but by reason of taking up assigned duties with the United States military bases in the Philippines where they were gainfully employed by the U.S. Federal Government. The situation of the petitioners is of no different mold as of the rest of the U.S. civilian employees who continued to enjoy the benefits of tax exemption under the Agreement. Petitioners' circumstances before the questioned ruling remained obtaining thru the taxable years 1969-1972. It appears too much of a stretch to hold petitioners straight-jacketed to an irreversible situs of birth constraint and by reason thereof deny altogether any opportunity to a serendipitous enjoyment of a tax relief accorded in the Agreement. Such random quirk of pirouette in the tax treatment falls sharply at odds with the shared expectations of the high contracting parties. <u>This Court will not deem itself authorized to depart from the plain meaning of the tax exemption provision, so explicit in terms and so searching in extent.</u> (Emphasis

> by the Supreme Court) This does not however foreclose the possibility of petitioners' coming to roost in the country contingent upon the termination of their tour of duty, but only then may the bridge be crossed for tax purposes. (pp. 82-84, Record).'

ACCORDINGLY, the deficiency income tax assessment aggregating P162,693.81, inclusive of interest and penalties for the taxable years 1969 to 1972 against the petitioner is hereby set aside and cancelled. No costs.

SO ORDERED.

Quezon City, Metro Manila, April 15, 1987.

ALEX Z. REYES
Associate Judge

WE CONCUR:

AMANTE FILLER
Presiding Judge

CONSTANTE C. ROAQUIN
Associate Judge