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REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

CITIBANK N.A., Philippine Branches Retirement Plan represented by its Trustee, The International Corporate Bank - Trust Division,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

C.T.A. CASES NOS. 4779 and 4949

Promulgated:
JUL 09 1996

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DECISION

This is a consolidated claim for the refund of final withholding taxes alleged to have been deducted from the income derived by petitioner from its bank deposits, money market placements and treasury bills, for the period beginning 1989 to June 30, 1992, in the total amount of P3,717,345.08.

Petitioner, Citibank N.A. Philippine Branches Retirement Plan, was established exclusively for the benefit of the employees of Citibank N.A. primarily to provide them with substantial benefits upon their retirement, permanent disability or separation from Citibank. This retirement plan was duly approved by the respondent in a letter dated January 5, 1972, where its tax-exempt status was likewise acknowledged pursuant to Republic Act 4917. (Exhibit "A").

In line with its purpose, petitioner thru its trustee, the International Corporate Bank (Interbank) maintained deposits, made several investments and as a consequence, received income from such deposits and investments. A 20% final withholding tax was allegedly withheld by various withholding agents on such income in the total amount of P3,717,345.08. The petitions for review embodied in CTA case Nos. 4779 and 4949 contain the summaries of the final taxes withheld from the periods 1989 to September 1991 and October 1991 to June 30, 1992, thus:

CTA Case No. 4779

	1989	1990	1991*	Total
Savings	P 5,935.88	P 8,014.83	P 1,720.88	P 15,671.59
CB bills	529,746.96	1,122,871.95	1,229,766.73	2,882,385.64
Treasury bills	0.00	0.00	1,364.74	1,364.74
	P535,682.84	P1,130,886.78	P1,232,852.35	P2,899,421.64

*Includes tax withheld for the period January to September 1991 only.

CTA Case No. 4949

	Oct. 1, 1991 to Dec. 31, 1991	Jan. 1, 1992 to June 30, 1992	Total
Savings	P 55.72	P 1,089.39	P 1,145.11
CB bills	101,147.44	26,463.59	127,611.03
Treasury bills	328,170.19	360,996.78	689,166.97
	P429,373.35	P388,549.76	P817,923.11

Petitioner filed separate claims for refund corresponding to the two (2) periods above-mentioned on two occasions to wit:

a) April 15, 1991 and December 3, 1991

b) August 21, 1992

Both requests for refund were not acted upon by respondent, hence petitioner filed two petitions for review described as CTA case no. 4779 filed on April 7, 1992 and CTA case no. 4949 filed on January 28, 1993. These two cases were eventually consolidated as the subject matter, the parties and the antecedent facts of both cases are similar in character.

The petitions anchor the claims for refund on the provisions of Republic Act 4917 in relation to Section 53(b) of the Tax Code which exempts retirement funds from income tax. Furthermore, petitioner relies on the statement made by respondent in his letter dated January 5, 1972 (Exhibit "A") which declared that their retirement plan meets the requirements for a reasonable plan under Republic Act No. 4917 as implemented by Revenue Regulations No. 1-68, hence income derived therefrom is tax-exempt.

Respondent disagrees with petitioner's contention because the exemption primarily enjoyed by retirement benefit plans was rooted in the proviso found in Section 21(d) and 24(cc) of the Tax Code but which were already amended by P.D. 1959 which took effect on October 15, 1984, deleting the said proviso granting the tax exemptions. In specific terms, the special and affirmative defenses adduced by respondent are as follows:

SPECIAL AND AFFIRMATIVE DEFENSES

> 4. In an action for refund of taxes, the burden of proof is upon the taxpayer to show that the taxes paid or remitted were erroneously or illegally collected. Failure to sustain said burden is fatal to the action for refund;
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> 5. It is incumbent upon petitioner to show that it has complied with the provisions of Section 230 of the Tax Code regarding the prescriptive period within which to file claims for refund;
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> 6. Granting, but not admitting, that payment was made, the same is presumed to have been collected in accordance with law;
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> 7. Petitioner, who claims to be entitled to income tax exemption on the earnings of its employee or pension trusts under Section 54(b) of the National Internal Revenue Code, cannot invoke the aforesaid section to claim exemption

from the final tax imposed by Section 21(d) and 24(cc) of the said Code on earnings derived from interest on bank deposits and/or deposit substitutes;

8. The exemption from the final tax on interest on bank deposits and deposit substitutes which petitioner previously enjoyed was in pursuance of the aforesaid 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";

9. 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;

10. By virtue of such amendment, the exemption granted under Sections 21(d) and 24(cc) is deemed to have been repealed or withdrawn. Besides, tax exemptions are not favored, and in the case of doubt, they are strictly construed against taxpayer;

11. Petitioner has not shown that the tax sought to be refunded was actually withheld and remitted to herein respondent in accordance with the National Internal Revenue Code;

12. Petitioner who has the burden of proving that it is entitled to tax refund, has failed to establish that the tax subject of its claim for refund was erroneously or illegally collected;

13. The claim for tax refund, being in the nature of an exemption from taxation, must be construed strictly against petitioner (**Insular Lumber Co. vs. Court of Tax Appeals**, 104 SCRA 710[1981]);

> 14. The petition states no cause of action as it does not allege the date/s of the tax sought to be refunded was paid.

The sole issue to be resolved by this Court is whether or not petitioner is entitled to the refund of the final withholding taxes on the income of the retirement plan derived from bank deposits, money market placements and purchase of treasury bills.

This issue has already been comprehensively disposed of by the Supreme Court in the case entitled **Commissioner of Internal Revenue vs. Court of Appeals**, 207 SCRA 487 and later adopted by this Court in the cases entitled **Bank of the Philippine Islands as Trustee of the Employees Retirement Fund vs. Commissioner of Internal Revenue**, CTA Case Nos. 4533, 4566, 4681 and 4655 dated July 1, 1994 and recently in the case entitled **Manila Electric Company and Manila Electric Company Pension Fund, represented by its Agent and Assistant Secretary, Lourdes D. Torres vs. Commissioner of Internal Revenue**, CTA Case No. 4833 dated October 2, 1995.

The aforementioned case decided by the Supreme Court (**Commissioner of Internal Revenue vs. Court of Appeals**, 207 SCRA 487) precisely addressed the issue presented in the instant case, when it ruled, thus:

> The sole issue for determination is whether or not the GCL Plan is exempt from the final withholding tax on interest income from

money placements and purchase of treasury bills required by Pres. Decree No. 1959.

We uphold the exemption.

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

> **SECTION 1.** ***Any provision of law to the contrary notwithstanding,*** 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 *exempt from all taxes* 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;" xxx (emphasis ours).

Similarly, the retirement plan established by herein petitioner was declared tax-exempt by the respondent in a letter dated January 5, 1972 (Exhibit "A"). Portions of said letter are hereinbelow reproduced, thus:

> In this connection, I have the honor to inform you that this Office after a study of the Plan found that it meets the requirements for a reasonable plan prescribe by the law, as amplified by Revenue Regulations No. 1-68.
>
> (1) It is definite written program;
>
> (2) It is more or less a permanent and continuing program;

> (3) It covers all regular employees;
>
> (4) It is non-discriminatory both as to coverage and benefits;
>
> (5) It is duly funded and trusteed;
>
> (6) The funding is sound; and
>
> (7) Finally, it provides for Non-diversion, that is the income and corpus of the Fund shall not be used for, or diverted to, purposes other than the exclusive benefit of the employees and their beneficiaries.
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> In view of the foregoing, the retirement benefits to be received under the Plan of First National City Bank shall be exempt from all taxes; employer's contribution to the Plan shall be deductible from gross income; and the income of the Trust Fund shall be exempt from income tax.
>
> xxx xxx xxx

The argument of respondent that the tax-exemption enjoyed by such employee's trusts springs from provisos contained in Sections 21(d) and 24(cc) which has already been deleted by virtue of PD 1959 has no merit as the Supreme Court in the **Commissioner of Internal Revenue vs. Court of Appeals** (207 SCRA 487) (supra) has acknowledged that such exemption is based on Section 56(b) now Section 53(b) of the Tax Code as amended by Republic Act No. 1983 which took effect on June 22, 1957, thus:

> 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, *supra*, 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 any kind of property held in trust.
>
> xxx xxx xxx
>
> "(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 xxx"

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

The tax-exemption privilege granted to employees' trusts stands consistent with the purpose of the creation of employees' trusts. Employees' trusts or benefit plans as in the instant case are established primarily to provide economic assistance to employees upon the occurrence of certain contingencies such as old age, retirement, death, sickness or disability. To tax the income that may accrue to the retirement plans would result in the reduction of whatever benefits the beneficiaries of such plans would receive thereby defeating the purpose of its creation.

In the light of the decision of the Supreme Court in the **Commissioner of Internal Revenue vs. Court of Appeals** case, 207 SCRA 487, this Court disagrees with respondent's contention that PD 1959 which took effect on October 15, 1984 repealed the tax-exempt privilege granted to employee's trusts. The Supreme Court categorically declared, thus:

> The deletion in Pres. Decree No. 1959 of the provisos regarding tax exemption and preferential tax rates under the old law, therefore, can not be deemed to extend to employees' trusts. Said Decree, being a general law, can not 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 excepted 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 v. Subido, G.R. No. L-31711, 30 September 1971, 41 SCRA 190**).
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> Notably, too, all the tax provisions herein treated of 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 excepts employees' trusts from "the taxes imposed by this Title." Since the final tax and the withholding therefor are embraced within the title on "Income Tax," it follows that said trust must be deemed exempt therefrom. Otherwise, the exception becomes meaningless.

From the foregoing, it has been firmly established that employees' trusts like petitioner's retirement plan enjoys a tax-exempt status on income. However, we find it equally important to delve into the factual aspect of the petitioner's claim as the amount sought to be refunded must directly correspond to the final taxes withheld from the income derived by the retirement plan, because only then can they be considered exempt, hence refundable. On this score, respondent did not present any objections and confined her arguments to the legal basis of the exemption being claimed by the petitioner. Nevertheless, petitioner presented as evidence the certification issued by the BIR acknowledging the tax-exempt status of their retirement plan (Exhibit "A", page 23, CTA records of CTA Case No. 4779) as well as copies of the confirmations of sale evidencing the various purchases of treasury bills on several occasions with the corresponding amount of final taxes withheld therefrom (Exhibits "I" to "I-109"). Copies of certifications issued by the Central Bank were also formally offered as evidence to show that final taxes were withheld by the Central Bank on purchases of treasury bills via credit advice to the account of the Treasurer of the Philippines (see Exhibits "J", "K", "L", "M"). Moreover, a certification issued by Interbank to this effect signed by Nestor Pineda, the Bank's Pro-manager, was presented to prove the amount of final taxes withheld on the savings account maintained by petitioner's retirement plan.

From the evidence thus presented, this Court finds that some of the claims of petitioner are already barred by prescription hence cannot be considered in the final computation of the amount to be granted to petitioner. Section 230 of the Tax Code provides the following, thus:

> SEC. 230. *Recovery of tax erroneously or illegally collected.* - No suit or proceeding shall be maintained in any court for the recovery of any national internal revenue tax hereafter alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority or of any sum alleged to have been excessive or in any manner wrongfully collected, until a claim for refund or credit has been duly filed with the Commissioner; but such suit or proceeding may be maintained, whether or not such tax, penalty, or sum has been paid under protest or duress.
>
> In any case, no such suit or proceeding shall be begun after the expiration of two years from the date of payment of the tax or penalty regardless of any supervening cause that may arise after payment: *Provided,*

> *however*, That the Commissioner may even without a written claim therefor, refund or credit any tax, where on the face of the return upon which payment was made, such payment appears clearly to have been erroneously paid.

It is clear from the aforecited law that the counting of the two-year prescriptive period commences to run from the date of payment of the tax and the payment of the final taxes on interest is considered to be made on the 25th day of the following month after the close of each calendar quarter pursuant to Section 51(a) of the Tax Code, thus:

> SEC. 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 of 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. The return for final withholding tax shall be filed and the payment made within 25 days from the close of each calendar quarter, while the return for creditable withholding taxes shall be filed and the payment made not later than the last day of the month following the close of the quarter

during which withholding was made.[1] (Underscoring supplied)

As such, it is clear that the taxes withheld from the period covering January 1, 1989 to December 31, 1989 are barred by prescription because the earliest judicial claim for refund via a petition for review was filed on April 7, 1992 (CTA Case No. 4779), thus beyond the two-year prescriptive period provided by law. It is for this reason that amounts indicated in Exhibits "I", "I-1" to "I-30", "I-32" and "I-104" to "I-107" were excluded in the final computation.

This Court also disregarded Exhibit "BB" (found on page 24 of CTA Case No. 4949) because this is a mere certification issued by petitioner's trustee bank, unsubstantiated by other proof such as confirmations of sale, which will help us determine the actual income subject to final tax. Tax refunds are in the nature of tax exemptions. As such, they are regarded as in derogation of sovereign authority and to be construed strictissimi juris against the person or entity claiming the exemption (**Commissioner of Internal Revenue vs. Procter and Gamble Philippine Manufacturing Corporation**, 204 SCRA 377).

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[1]As amended by Batas Pambansa Blg. 41.

IN VIEW OF THE FOREGOING, the final taxes on interest income that should be refunded in favor of petitioner is computed as follows:

FOR C.T.A. CASE NO. 4779

A. 20% FINAL WITHHOLDING TAX ON T-BILLS

Issue Date	Securities	Face Value	Purchase Price	Withholding Tax - 20%	Exh.
01-03-90	T-bills	770,000.00	696,832.58	14,633.48	I-31
01-24-90	T-bills	440,000.00	396,230.80	8,753.84	I-34
02-14-90	T-bills	2,020,000.00	1,814,516.13	41,096.77	I-36
02-28-90	T-bills	810,000.00	732,722.23	15,455.55	I-37
04-04-90	T-bills	180,000.00	158,999.87	4,200.03	I-40
04-25-90	T-bills	1,620,000.00	1,433,078.76	37,384.25	I-43
06-13-90	T-bills	150,000.00	133,438.44	3,312.31	I-44
06-20-90	T-bills	990,000.00	878,914.92	22,217.02	I-45
06-22-90	T-bills	1,840,000.00	1,656,662.67	36,667.47	I-46
07-18-90	T-bills	1,330,000.00	1,265,996.83	12,800.63	I-48
07-30-90	T-bills	394,000.00	377,991.03	3,201.79	I-49
05-16-90	T-bills	3,970,000.00	3,556,462.45	82,707.51	I-50
01-10-90	T-bills	1,960,000.00	1,765,430.00	38,914.00	I-51
05-23-90	T-bills	140,000.00	125,105.19	2,978.96	I-52
05-30-90	T-bills	2,340,000.00	2,224,017.49	23,196.50	I-53
09-12-90	T-bills	270,000.00	252,242.48	3,551.50	I-56
07-11-90	T-bills	4,080,000.00	3,676,135.65	80,772.87	I-58
07-20-90	T-bills	60,000.00	48,531.69	2,293.66	I-60
08-08-90	T-bills	480,000.00	384,545.20	19,090.96	I-62
09-05-90	T-bills	220,000.00	193,576.77	5,284.65	I-65
10-10-90	T-bills	1,960,000.00	1,828,287.15	26,342.57	I-67
10-17-90	T-bills	3,690,000.00	3,452,613.63	47,477.27	I-68
10-31-90	T-bills	190,000.00	179,509.89	2,098.02	I-70
11-14-90	T-bills	1,930,000.00	1,686,940.05	48,611.99	I-72
12-12-90	T-bills	840,000.00	732,593.63	21,481.27	I-74
12-26-90	T-bills	1,110,000.00	959,608.09	30,078.38	I-76
01-09-91	T-bills	1,970,000.00	1,954,890.33	3,021.93	I-78
01-16-91	T-bills	3,840,000.00	3,594,664.17	49,067.17	I-79
01-23-91	T-bills	3,950,000.00	3,475,582.93	94,883.41	I-80
01-24-91	T-bills	200,000.00	188,014.10	2,397.18	I-81
01-30-91	T-bills	300,000.00	265,741.49	6,851.70	I-82
02-06-91	T-bills	850,000.00	805,146.62	8,970.68	I-84
02-27-91	T-bills	140,000.00	124,207.38	3,158.52	I-86
03-20-91	T-bills	510,000.00	454,815.70	11,036.86	I-89

04-03-91	T-bills	3,330,000.00	3,147,974.91	36,405.02	I-91
06-18-91	T-bills	230,000.00	214,983.97	3,003.20	I-109
	TOTAL	49,104,000.00	44,837,005.22	853,398.92	

a. Exhs. I-33, I-35, I-38, I-39, I-41, I-42, I-47, I-54, I-55, I-57, I-59, I-61, I-63, I-64, I-66, I-69, I-71, I-73, I-75, I-77, I-83, I-85, I-87, I-88, I-90, and I-108 are excluded in the computation for the reason that they do not specifically pertain to the Citibank retirement plan.

b. Exhs. I-92 to I-103 pertain to 1988 withholding taxes and therefore not included in the subject matter of the instant petition.

B. 20% FINAL WITHHOLDING TAX ON SAVINGS DEPOSIT (Exhs. "F" and "F-1")

January - December 1990	P 8,014.83
January - September 1991	1,720.88
TOTAL	P 9,735.71

Note: The claim for refund for the period January to December 1989 is recommended to be denied on the ground of prescription.

FOR C.T.A. CASE NO. 4949

A. 20% FINAL WITHHOLDING TAX ON SAVINGS DEPOSITS (Exhibits "CC")

October 1, 1991 to June 30, 1992 P 1,145.11

WHEREFORE, respondent Commissioner of Internal Revenue is hereby **ORDERED** to **REFUND** to petitioner the amount of P853,398.92 and P9,735.11 for CTA Case No. 4779 and the amount of P1,145.11 for CTA Case No. 4949, respectively.

SO ORDERED.

RAMON O. DE VEYRA
Associate Judge

I CONCUR:

ERNESTO D. ACOSTA
Presiding 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