REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FRINE C. ZABALLERO,
Petitioner,

versus Feb. 27/70 CTA CASE NO. 1931

COMMISSIONER OF
INTERNAL REVENUE,
Respondent.

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

D E C I S I O N

Petitioner appealed from a decision of respondent dated April 1, 1968, denying cancellation of the 1965 deficiency income tax assessment of ₱2,869.02, computed as follows:

Undeclared income from the Office of the Solicitor General		₱17,499.96
Car maintenance and repair . . .		950.00
Car depreciation		3,000.00
Driver's salary		1,020.00
Insurance		295.00
Miscellaneous		120.00
Total net income as per office audit		₱23,514.96
Less: Personal exemption	₱3,000.00	
Additional exemption. .	1,000.00	4,000.00
Amount subject to tax		₱19,514.96
Amount of tax due.		3,363.00
Less:		
Amount of tax withheld W-2	₱ 630.60	
Amount of tax withheld by W/Agent		630.60
Balance of tax due		
Deficiency interest from April 16, 1966 to February 16, 1967		136.62
TOTAL AMOUNT DUE		₱ 2,869.02

Petitioner is an Assistant Solicitor General, Office of the Solicitor General, Manila. In March, 1967, petitioner received from respondent's office an Audit Sheet and Assessment No. 25-EA-0649961 demanding payment of ₱2,869.02, supra, representing petitioner's 1965 deficiency income tax and interest due thereon. The deficiency income tax assessment is based chiefly on petitioner's undeclared salary of ₱17,499.96 as Assistant Solicitor General. On March 10, 1967, petitioner contested the assessment in question and requested respondent to cancel the same because the privilege of undiminished compensation is granted to Assistant Solicitors General by Section 1, Republic Act No. 4360, which provides as follows:

> SECTION 1. . . . .
>
> The rank, privileges, and qualifications for appointment to the position of Solicitor General shall be the same as an Associate Justice of the Court of Appeals; the rank, privileges, and qualifications for appointment to the position of the First Assistant Solicitor General and the Assistant Solicitors General shall be the same as those prescribed for Judges of Courts of First Instance, and those of Solicitors shall be the same as those prescribed for provincial fiscals. (Underscoring supplied.)

The other items of deduction from petitioner's gross income were not questioned by petitioner in the appeal and, therefore, we consider them as undisputed.

The only issue, therefore, to be resolved in this case is whether or not petitioner's undeclared salary as Assistant Solicitor General is exempt from income tax imposed by the National Internal Revenue Code under the provisions of Republic Act No. 4360, supra.

Respondent contends that petitioner is not exempt from income tax because exemption from taxation is a matter of legislative grace; tax exemption cannot be presumed but must be granted under a clear mandate of the law; Republic Act No. 4360 does not make petitioner a judge within the purview of Article VIII, Section 9 of the Constitution of the Philippines, and that the rationale for the prohibition of the diminution of salaries and/or compensation of judges is to maintain judicial independence and that reason does not apply to the petitioner who is holding a position in the executive department of the government; and the word "privileges" in Republic Act No. 4360 could mean acts, immunities and preprogatives which petitioner could enjoy as that of judges, but not the privilege of exemption from income tax.

Petitioner vigorously objected to the contention of respondent and claims that respondent's 1965 deficiency income tax assessment of ₱2,869.02 is illegal and contrary to the provisions of Section 1, Republic Act No. 4360, supra; the privileges of judges under the constitution include exemption from income tax under the doctrine laid down by the Supreme Court in the Perfecto and Endencia-Jugo cases; the same privileges of tax-exemption were extended to petitioner by said Republic Act No. 4360 considering the explanatory note to the bill and the historical background of the law; and the tax-exemption granted by said law was an act of Legislative grace.

Our Constitution provides in Article VIII, Section 9, as follows:

> SEC. -. The members of the Supreme Court and all judges of inferior courts shall hold office during good behaviour, until they reach the age of seventy years, or become incapacitated to discharge the duties of their office. They shall receive such compensation as may be fixed by law, which shall not be diminised during their continuance in office. Until the Congress shall provide otherwise, the Chief Justice of the Supreme Court shall receive an annual compensation of sixteen thousand pesos, and each Associate Justice, fifteen thousand pesos. (Underscoring supplied.)

The constitutional mandate provides that the members of the Supreme Court and all judges of inferior courts "shall receive such compensation as may be fixed by law, which shall not be diminished during their continuance in office."

In the case of Perfecto v. Meer, G.R. No. L-

2348, February 27, 1950 (85 Phil. 552), the issue squarely presented to the Supreme Court is whether or not the imposition of an income tax upon the salary of Justice Gregorio Perfecto in 1946 amounts to a diminution of his salary. Eight Justices of the Supreme Court upheld the affirmative view while two justices of the same court dissented.

A cursory reading of the constitutional provisions in question does not explicitly grant exemption from income tax on the salaries of justices and judges because the non-paymnt thereof is not a mere privilege but a basic limitation upon legislative or executive action affecting the undiminishable character of judicial salaries. Consequently, we cannot subscribed to the view advanced by the petitioner in this case that "by taking into account the Perfecto decision and the privilege enunciated therein, Congress commenced granting tax immunity to a few selected subjects." (Petitioner's Memo., p. 13, CTA rec., p. 64.) On the contrary, in the Perfecto case our Supreme Court said: "<u>Indeed the exemption of the judicial salary from taxation is not really a gratuity or privilege</u>." The import and significance of the decision of the Supreme Court on this point is clearly stated in the language of the Court in the Perfecto case, <u>supra</u>, as follows:

Judges would indeed be hapless guardians of the Constituion if they did not perceive and block encroachments upon their prerogatives in whatever form. The undiminishable character of judicial salaries is not a mere privilege of judges - personal and therefore waivable - but a basic limitation upon legislative or executive action imposed in the public interest (Evans v. Gore).

Indeed the exemption of the judicial salary from reduction by taxation is not really a gratuity or privilege. Let the highest court of Maryland speak:

> "The exemption of the judicial compensation from reduction is not in any true sense a gratuity, privilege or exemption. It is essentially and primarily compensation based upon valuable consideration. The covenant on the part of the government is a guaranty whose fulfillment is as much a part of the consideration agreed as is the money salary. The undertaking has its own particular value to the citizens in securing the independence of the judiciary in crisis; and the establishment of the compensation upon a permanent foundation whereby judicial preferment may be prudently accepted by those who are qualified by talent, knowledge, integrity and capacity, but are not possessed of such a private fortune as to make an assured salary an object of personal concern. On the other hand, the members of the judiciary relinquish their position at the bar, with all its professional emoluments, sever their connection with their clients, and dedicate themselves exclusively to the discharge of the onerous duties of their high office. So, it

> is irrefutable that the guaranty against a reduction of salary by the imposition of a tax is not an exemption from taxation in the sense of freedom from a burden or service to which others are liable. The exemption for a public purpose or a valid consideration is merely a nominal exemption, since the valid and full consideration or the public purpose promoted is received in the place of the tax. Theory and Practice of Taxation (1900) D.A. Welles, p. 541." (Gordy v. Dennis [Md.] 1939, 5 atl. Rep. 2d Series, p. 80; underscoring supplied.)

In the light of the ratio dicidendi in the above quoted decision of the Supreme Court, we need not stretch our imagination to disagree with the views and conclusion of petitioner that Article VIII, Section 9, of our Constitution, supra, is a privilege of tax exemption granted to justices of the Supreme Court and to all judges of inferior courts and, therefore, the said tax exemption may be extended by Congress to a few selected subjects of their bounty. The constitutional provisions in question, far from being a grant of tax exemption, are basic limitations and prohibitions upon legislative or executive action decreasing or diminishing the salaries of judicial officials during their continuance in office. Our views and conclusions on this point were reiterated by our Supreme Court in the cases of Endencia and Jugo v. David, G.R. Nos. L-6355 and L-6356, Aug. 31, 1953; 93 Phil. 699, 704, 706, the pertinent portions of which read as follows:

> As already stated construing and applying the above constitutional provision, we held in the Perfecto case that judicial officers are exempt from the payment of income tax on their salaries, because the collection thereof by the Government was a decrease or diminution of their salaries during their continuance in office, a thing which is expressly prohibited by the Constitution. . . .
>
> So we have this situation. The Supreme Court in a decision interpreting the Constitution, particularly section 9, Article VIII, has held that judicial officers are exempt from payment of income tax on their salaries, beCAUSE the collection thereof was a diminution of such salaries, specifically prohibited by the Constitution. . .
>
> x x x x x
>
> When a judicial officer assumes office, he does not exactly ask for exemption from payment of income tax on his salary, as a privilege. It is already attached to his office, provided and secured by the fundamental law, not primarily for his benefit, but based on public interest, to secure and preserve his independence of judicial thought and action. . . .
>
> x x x x x
>
> . . . In other words, for reasons of public policy and public interest, a citizen may justifiably by constitutional provision or

> statute be exempted from his ordinary obligation of paying taxes on his income. Under the same public policy and perhaps for the same if not higher considerations, the framers of the Consitution deemed it wise and necessary to exempt judicial officers from paying taxes on their salaries so as not to decrease their compensation, thereby insuring the independance of the Judiciary. (Underscoring supplied.)

From the pronouncements of the Supreme Court in the Perfecto and Endencia-Jugo cases, supra, it is abundantly clear that the constitutional provisions prohibiting and limiting the power of the legislative and executive departments of the government from reducing the salaries of justices and all judges of inferior courts, which are based on public policy and public interest, can not judiciously be equated with the statutory provisions contained in Section 1, Republic Act No. 4360, granting to the First Assistant Solicitor General and Assistant Solicitors General the same privilege as those prescribed for Judges of Courts of First Instance. In the first place, the constitutional provisions in question limit and prohibit the diminution of salaries of judicial officials while the statutory provisions grant privileges to non-judicial officials. In the second place, the terms limitation upon and prohibition against legislative or executive action on the constitutional mandate used by the Supreme

Court in the Perfecto and Endencia-Jugo cases are opposed and incompatible with the words grant of privileges mentioned in the statutory provisions. In short, a justice or judge does not exactly ask for exemption from the income tax as a privilege because it is already attached to his office while the grantees of the exemption are the beneficiaries of legislative grace. In the third place, if Congress intended to implement the constitutional provisions embodied in Section 1, Article VIII, or our Constitution, as envisioned and concluded in Petitioner's Memorandum, why is it that Congress failed to make a clear manifestation of its policy and intention either in the Explanatory Note to the bill, which became Republic Act No. 4360, or in the congressional deliberations thereof? And finally, if Congress were influenced by the decisions of the Supreme Court in the practical result or end-effect of the Perfecto and Endencia-Jugo cases, holding that judicial officials are not subject to income tax on their salaries because that would mean a dimunition of judicial compensation, why is it that Congress failed to grant the tax exemption in clear and unmistakable language as done by it in the following Republic Acts, to wit:

1. Republic Act No. 35. - Granting to any person, partnership,

company or corporation who or which shall engage in a new and necessary industry and oprating in the Philippines exemption from the payment of all internal revenue taxes for a period of four years from the date of the organization of such industry.

2. Republic Act No. 136. - SEC. 12. The monies to which the legal heirs of the deceased may be entitled to receive shall be exempt from execution and taxation.

3. Republic Act No. 210. SEC. 1. The provisions of existing law to the contrary notwithstanding, officers and enlisted men of the Army of the Philippines who served in the Armed Forces of the United States, including their beneficiaries, are hereby exempted from the payment of income tax on their compensation, insurance and maintenance support allowances earned by virtue of such service for the tax able years Nineteen H undred and Forty-two, Nineteen Hundred and Forty-three, Nineteen Hundred and Forty-four and Nineteen Hundred and Forty-five. Income so earned shall be exempt from income tax regardless of the date of receipt thereof. . . .

4. Republic Act No. 227. SEC. 1. Any amount received by a taxpayer from the Government of the United States of of the Philippines, or from any of their agencies and instrumentalities, for or on account of damages or losses suffered during the last war is hereby exempted from the payment of income tax and/or any other taxes to the Government of the P hilippines; and any such tax heretofore collected thereon shall be credited, if such tax credit is requested, within one year from the approval of this Act.

5. Republic Act No. 265. SEC. 130. Tax exemptions - The Central Bank of the Philippines shall be exempt from all national, provincial, municipal and city taxes and assess-

ments now in force or hereafter established.

The exemptions authorized in the preceding paragraph of this section shall apply to all property of the Central Bank, to the resources, receipts, expenditures, profits and income of the Bank, as well as to all contracts, deeds, documents and transactions related to the conduct of the business of the Bank: . . . .

6. Republic Act No. 304. SEC. 5. The salaries or wages or certificates of indebtedness herein provided, shall be exempt from attachment or levy, except for the payment of taxes or obligations for which the particular officers or employees may be directly liable as provided in this Act. Any amount of back pay received by an officer or employee under the provisions of this Act, whether in cash or by means of the certificate of indebtedness, shall be exempt from all taxes of every kind and nature.

7. Republic Act No. 358. SEC. 2. - To facilitate payment of its indebtedness, the National Power Corporation shall be exempt from all taxes, except real property tax, from all duties, fees, imposts, charges, and restrictions of the Republic of the Philippines, its provinces, cities and municipalities.

8. Republic Act No. 360. Granting exemption from assignment, taxation, claims of creditors, attachment, levy or seizure, benefits derived by beneficiaries residing in the Philippines under the laws of the United States administered by the U.S. Veterans Administration.

9. Republic Act No. 702. Grant of tax exemption to Cooperative Marketing Associations.

x x x x x

SEC. 48. Exemptions. - Any association organized under this

Act shall not be subject to the payment of the merchant's sales tax, the income tax, and all other percentage taxes of whatever nature and description.

10. Republic Act No. 708. Title VI, Part D. - Benefits.

SEC. 6. Exemption from taxation - All supplemental allowances, per diems, benefits, and the like received by officers and employees of the service in consideration of their service, except their basic salaries, shall be exempt from the Philippine income tax.

11. Republic Act No. 815. SEC. 7-A. Exemption from the Income tax. - The overseas pay, overseas duty bonus, death gratuity, disability pension, and family subsistence allowance provided for herein shall be exempt from the income tax, and no portion thereof shall be withheld as withholding tax; and any income tax collected thereon or withholding tax with held therefrom shall be refunded.

12. Republic Act No. 1176. An Act providing that the Society for the Prevention of Cruelty to Animals be exempted from the payment of all taxes.

13. Republic Act No. 1345. SEC. 16 (c). The NAMARCO shall be exempt from all taxes incidental to its operation except as herein provided for. All notes, bonds and debentures and other obligations issued by the NAMARCO shall be exempt from all taxes, both as to principal and interest, except inheritance and gift taxes.

14. Republic Act No. 1370. SEC. 8. All donations, contributions, subsidies or aids which from time to time may be made to the Foundation shall be considered allowable deductions on the income of the donors or givers for income tax purposes; and other transactions undertaken by the Founda-

<u>tion in pursuance of its objectives shall be free from any and all taxes</u>.

15. Republic Act No. 1373. SEC. 1. . . . .

The benefit boxking shows promoted by the <u>Philippine Sportswriters Association</u> pursuant to the provisions of this Act <u>shall be exempt from all taxes</u>.

16. Republic Act No. 1400. SEC. 22. - <u>Exemption from tax</u>. - (<u>Infra.</u>)

17. Republic Act No. 2062. SEC. 1. - The provisions of any existing law to the contrary notwithstanding, <u>all awards given by the Ramon Magsaysay Award Foundation shall be exempted from the payment of income, gift and all other taxes</u>.

18. Republic Act No. 2640. SEC. 11 - <u>The Federation is expressly exempted from payment of any and all taxes</u>.

19. Republic Act No. 3054. SEC. 9. - <u>Exempting to payment of taxes</u>. - <u>The CLCVA, its property and income are hereby expressly exempted from taxation in any manner or form by the Government or any of its entities or instrumentalities</u>.

20. Republic Act No. 3128. SEC. 14. - All <u>Rural Banks</u> created and organized under the provisions of this Act, with net assets not exceeding one million pesos, excluding the counterpart capital subscribed and paid in by the government under sections seven and eight of this Act, <u>shall be exempt from the payment of all taxes, charges and fees of whatever nature and description</u>.

21, Republic Act No. 3538. SEC. 2. - <u>Non-Filipino citizens</u> serving on the staff of the Ford Foundation grants <u>shall be exempted from the payment of income tax on</u>

salaries and stipends in dollars received solely and by reason of service rendered under the Ford Foundation program.

22. Republic Act No. 3844. SEC. 98. - Tax Exemption - The operations, as well as holdings, equipment, property, income and earnings of the Bank from whatever sources shall be fully exempt from taxation.

The foregoing Republic Acts granting tax-exemptions, which were picked at random by this Court, clearly show beyond doubt that, if our law-making body intended to grant tax-exemptions as acts of legislative grace, the said grant of tax-exemptions must be clear, emphatic, unmistakable, and represents the surrender of the sovereign taxing power of the State in favor of the grantees. The same cannot be said of Section 1, Republic Act No. 4360, supra, despite the pretensions and protestations to the contrary.

By invoking the legislative history and evolution of what is known as Republic Act No. 4360, supra, petitioner claims that "respondent can not now practically repudiate such laws and deny exemption from the income tax to the officials affected thereby" on the theory "that the privilege of non-dimunition of salary for judges of the Court of First Instance was clearly held to comprehend tax immunity, following the Perfecto v. Meer and the Endencia-Jugo cases." (Petitioner's Memo, p.

16, CTA rec. p. 67.) If that was the legislative intent, Congress could have easily stated so in Republic Act No. 4360 that the salaries of the Solicitor General, First Assistant Solicitor General, and the Assistant Solicitors General shall not be considered as income of the said officials for purposes of the income tax. A typical example of a legislative policy of non-diminution of income is found in Section 22 of Republic Act No. 1400 which provides:

> SEC. 22. Exemption from tax. - All land certificates issued by this Act shall be exempt from all forms of taxes. The purchase price paid by the Government for any agricultural land acquired for resale to tenants under the authority of this Act, whether through negotiation or expropriation, shall not be considered as income of the landowner concerned for purposes of the income tax. (Underscoring supplied.)

There is no dispute whatsoever that the constitutional mandate on non-diminution of the salaries of judicial officals, which in effect relieves them from the burden of income tax, is applicable solely and exclusively to members of the Supreme Court and all judges of inferior courts. Such enumeration excludes all others by implication. Expressio unius est exclusio alterius. Likewise, there is no controversy that our lawmaking body with the approval of the President, may exempt a citizen from his ordinary obligation of paying taxes on his income. But certainly a government official or body of officials who are not members of the Supreme Court, and judges of inferior courts or constitutional officials, can not validly claim exemption from the income tax imposed by the National Internal Revenue Code based on the constitutional mandate of non-diminution of salaries unless the statutory grant of tax exemption is specific and clear because exemption from taxation, which is in derogation of the sovereign power of the State to tax is not favored and is never presumed. It is a well-established jurisprudence in this country and the United States, where our income tax laws are patterned, that exemption from taxation is construed strictly against the taxpayer and in favor of the taxing power. Thus, in the case of E. Rodriguez, Inc, v. The Collector of Internal Revenue and the Court of Tax Appeals, G.R. No. L-23041, promulgated on July 31, 1969, our Supreme Court, following a long line of precedents, held as follows:

> We find no cogent reasons to disturb the above holding of the Court of Tax Appeals. It has been the constant and uniform holding of this Court that exception from taxation is not favored and is never presumed; in fact if it is granted, the grant must be strictly construed against the taxpayer. (4). Affirmatively

---

(4) See Commissioner of Internal Revenue vs. Guerrero, L-20812, Sept. 22, 1967; 21 SCRA 180, 183, and the numerous cases therein cited.

put the law requires courts to frown on alleged exemptions from taxation, hence, an exempting provision in a legislative enactment should be construed in strictissimi juris[5] against the taxpayer and liberally in favor of the taxing authority.[6] This Court has been most consistent in this holding. In Aisatic Petroleum Co. vs. Llanes, [7] it was explained beyond any possibility of miscomprehension that:

> "x x x Exemptions from taxation are highly disfavored, so much so that they may almost be said to be odious to the law. He who claims an exemption must be able to point to some positive provision of law creating the right. It cannot be allowed to exist upon a vague implication such as is supposed to arise in this case from the omission from Act No. 1654 of any reference to liability for tax. The books are full of very strong expressions on this point. As was said by the Supreme Court of Tennessee in Memphis vs. U.& P. Bank (91 Tenn., 546, 550), 'The right of taxation is inherent in the State. It is a prerogative essential to the perpetuity of the government; and he who claims an exemption from the common burden, must justify his claim by the clearest grant of organic or staute law.' Other utterances equally or more

---

(5) Id., citing Philippine Guaranty Co. v. Commissioner, L-22074, Sept. 6, 1965.

(6) Esso Standard Eastern, Inc. v. Actg. Commissioner of Customs, L-21841, Oct. 28, 1966, 18 SCRA, citing cases.

(7) 49 Phil. 466, 471.

emphatic come readily to hand from the highest authority. In Ohio Life Ins. and Trust Col <u>vs</u>. Debot (16 Howard, 416), it was said by Chief Justice Taney, that the right of taxation will not be held to have been surrendered, 'unless the intention to surrender is manifested by words too plain to be mistaken.' In the case of the Delaward Railroad Tax (18 Wallace, 206, 226), the Supreme Court of the United States said that the surrender, when claimed, must be shown by clear, unambiguous language, which will admit of no reasonable construction consistent with the reservation of the power. If a doubt arise as to the intent of the legislature, that doubt must be solved in favor of the State. In Erie Railway Company <u>vs</u>. Commonwealth of Pennsylvania (21 Wallace, 492, 499), Mr. Justice Hunt, speaking of exemptions, observed that <u>a State cannot strip itself of the most essential power of taxation by doubtful words</u>. '<u>It cannot, by ambiguous language, be deprived of this highest attribute of sovereignty</u>.' In Tennessee <u>vs</u>. Whitworth (117 U.S., 129, 136), it was said: '<u>In all cases of this kind the question is as to the intent of the legislature, the presumption always being against any surrender of the taxing power</u>.' In Farrington <u>vs</u>. Tennessee and County of Shelby (95 U.S., 679, 686), Mr. Justice Swayne said: '*** When exemption is claimed, it must be shown indubitably to exist. At the outset, every presumption is against it. <u>A well-founded doubt is fatal to the claim. It is only when the terms of the concession are too ex-</u>

plicit to admit fairly of any other construction that the proposition can be supported.' (Underscoring supplied.)

In a bid to bolster the proposition that the constitutional mandate of non-diminution of salaries of Supreme Court justices and all judges of inferior courts is not exclusive and all-embracing, petitioner argued, and we quote:

> If petitioner understands correctly respondent's position in this regard, respondent would have the tax exemption privilege confined to the purely judicial hierarchy and to the exclusion of all who do not fall within the category of judges of superior and inferior courts as established by the Constitution and the present laws (p/ 374, Tañada & Carreon, Political Law of the Philippines, Vol. 1961, Ed.). Administrative tribunals invested with quasi-judicial powers and the nature of whose functions do not properly pertain to the judicial department (p. 388, ibid) like the Court of Tax Appeals, the Court of Agrarian Relations to mention a few, would be excluded and their judges would be disqualified from the privilege of non-diminution of their salaries by tax exemption (Alhambra Cigar and Cigarette Manufacturing Co. vs. The Commissioner of Internal Revenue, L-23226, Nov. 28, 1967; Florencio Reyes and Angel Reyes vs. Commissioner of Internal Revenue and the Hon. Court of Tax Appeals, L-24020-21, July 29, 1968). Thus, respondent's reasoning spreads the drag net for all outside the judicial heirarchy established by the Constitution and the statutes. (Petitioner's Memo., pp. 26-27; CTA rec., p. 77.)

Because of the bold assertion that the Court of Tax Appeals and other special courts are "administrative tribunals invested with quasi-judicial powers and the nature of whose functions does not pertain to the judicial department" and, "their judges would be disqualified from the privilege of non-diminution of their salaries by tax exemption," it is quite embarrassing for the judges of this Court to decide the question here at issue considering their supposed involvement in the resolution thereof. Be that as it may, we cannot shirk from our sworn duty even if the party or parties to be affected by the decision are friends of the Court. Borrowing from the language of the Supreme Court in the Perfecto case and paraphrasing the latter part thereof, "still, as the outcome indirectly affects all the members of the Court, consideration of the matter is not without its vexing feature. Yet adjudication may not be declined, because (a) we are not legally disqualified; (b) jurisdiction may not be renounced," as it is the petitioner who appealed to this Court, and there is no other tribunal to which the decision of the respondent Commissioner of Internal Revenue may be referred; (c) U.S. Supreme Court has decided a case _in pari causa_; and (d) the status of the Tax Court, whether it is an administrative tribunal or a judicial body, has repeatedly been decided by our Supreme Court.

After passing on the issue that the constitutional mandate embodied in Article VIII, Section 9, can only be availed personally by justices of the Supreme Court and all judges of inferior courts, petitioner claims that the Solicitor General, First Assistant Solicitor General, and Assistant Solicitors General are in the category of judges because they are performing quasi-judicial functions like judges of the special courts mentioned above, who are members of administrative tribumls. Consequently, it is argued that the constitutional mandate of non-diminution of salaries of judges is likewise applicable to petitioner and other officials similarly situated because the word "privileges" found in Section 1, Republic Act No. 4360 and statutes of similar import granted them immunity from the payment of income tax imposed by the Tax Code. It must be emphasized, however, that the Tax Court is a regular court and not an administrative tribunal. Congressman Constancio Castañeda who sponsored House Bill No. 175 creating the Tax Court said in his sponsorship speech on May 3, 1954 that "House Bill No. 175 has for its purpose the creation of a regular Court of Tax Appeals." (Congressional Record, Third Congress of the Republic, First Session, Vol. 1, No. 65, p. 204; see Montejo, Court of Tax Appeals Act Annotated, pp. 179-182.) In reply to an interpellation by then Congressman Diosdado Macapagal, Congressman Castañeda, in consonance with his previous answers relative to the Board of Tax Appeals created by the late President Quirino under Executive Order No. 401-A, replied as follows:

> MR. CASTAÑEDA. In the first place, gentlemen from Pampanga, I doubt seriously if this Reorganization Commission has jurisdiction to create a regular Court of Tax Appeals. The Reorganization Commission will effect only the reorganization of the executive branch of the government. Inasmuch as this Tax Court is a part of the judicial branch of the government, it will not be affected by the reorganization, it will be beyond the power or jurisdiction of this Reorganization Commission to do so. (Ibid., pp. 2205-2206.)

It is clear, therefore, from the Explanatory Note to the bill and the discussions in Congress that the Court of Tax Appeals is a regular court and a part of the judicial branch of the Government. And the Supreme Court sustained this view in the case of Ursal v. Court of Tax Appeals, et al., G.R. Nos. L-10123 and L-10355, April 26, 1957; 101 Phil. 211, when it held, among others as follows:

> . . . and (b) instead of being another superior administrative agency as was the former Board of Tax Appeals(2) the Court of Tax Appeals

---

(2)" . . . to hear and decide administratively." (Executive Order No. 401-A, series of 1951.)

> as created by Republic Act No. 1125 is a part of the judicial system presumably to act only on protests of private persons adversely affected by the tax, customs, or assessment.

The same ruling between the same parties was reiterated by the Supreme Court in G.R. No. L-10165, promulgated on August 30, 1957. While it is true that the Tax Court passes upon administrative decisions, our Supreme Court held that the Court of Tax Appeals is a judicial body.

> . . . While the Court of Tax Appeals, as a judicial body, its functions are to pass upon administrative decisions of the Commissioner of Customs, the Commissioner of Internal Revenue and the provincial or city Board of Assessment Appeals. (Auyong Hian v. Court of Tax Appeals, et al., G.R. No. L-25181, January 11, 1967.)

> . . . We find this contention untenable. In the first place, the two remedies suggested are entirely different, one from the other; an appeal to the Commissioner of Customs is purely administrative, whereas, appeal to the Court of Tax Appeal is manifestly judicial. And it is a sound rule that before one resorts to the Courts, the administrative remedy provided by law should first be exhausted. . . (Lopez & Sons, Inc. v. Court of Tax Appeals, G.R. No. L-9274, Feb. 1, 1957; 100 Phil. 856-857.)

Petitioner's theory that the grant of "privileges of a Judge of First Instance" includes by implication the constitutional mandate of non-diminution of salaries of judges because her position requires the exercise of quasi-judicial functions, suffice it to state that our highest tribunal has declared in plain and unequivocal language that petitioner and other officials similarly situated are executive officials whose functions are plainly executive. Thus, in the case of Antonio H. Noblejas v. Claudio Teehankee and Rafael M. Salas, G.R. No. L-28790, April 29, 1968, our Supreme Court in passing upon the question as to the nature of petitioner's function, whether judicial or executive, held as follows:

> In the second place, petitioner's theory that the grant of "privileges of a Judge of First Instance" includes by implication the right to be investigated only by the Supreme Court and to be suspended or removed upon its recommendation, would necessarily result in the same right being possessed by a variety of executive officials upon whom the Legislature had indiscriminately conferred the same privileges. These favoured officers include (a) the Judicial Superintendent of the Department of Justice (Judiciary Act, sec. 42); (b) the Assistant Solicitors General, seven in number (Rep. Act No. 4360); (c) the City Fiscal of Quezon City, (R.A. No. 4495); (d) the City Fiscal of Manila (R.A. No. 4631) and (e) the Securities and Exchange Commissioner (R.A. No. 5050, s. 2). To adopt petitioner's theory, therefore, would mean placing upon the Supreme Court the duty of investigating and disciplining all these officials, whose functions are plainly executive. . . (Underscoring supplied.)

The non-diminution of the salaries of members of the Supreme Court and all judges of inferior courts embodied in Article VIII, Section 9, of our Constitution, supra, whether we call it a "right" or a "privilege," is not merely a personal privilege which can be transmitted by an act of Congress, but a basic limitation upon legislative or executive action imposed in the public interest (Perfecto case, supra.), unless the statutory grant of tax exemption leaves no room of doubt as to its interpretation. Even a statutory grant of tax exemption can only be availed of by the grantee and nobody else except in cases where the statutory grant itself includes or refers to another statutory grant of tax exemption which is adopted by it.

> The above rules should be applied to the case at bar where the law invoked (Section 9 of Republic Act No. 333) does not make any reference whatsoever to exemption of income derived from the sale of expropriated property thereunder, unlike under Republic Act No. 1400 where, relative to the price paid by the Government for any agricultural land acquired for resale to tenants,

> There is an express declaration that the same "shall not be considered as income of the landowner concerned for purposes of the income tax." . . . . The pertinent Congressional Record of the proceedings held during the consideration of the bill which later became Republic Act No. 333, [8] does not show that Congress had intended to exempt said property owners from the payment of income tax on the proceeds of the sale of their properties when the same is paid in government bonds issued under the said law. . . . (E. Rodriguez, Inc. v. The Collector of Internal Revenue and the Court of Tax Appeals, supra.)

A controversy, which is in pari causa with the case at bar, was decided by the Circuit Court of the United States for the Middle District of Tennessee in favor of the taxpayer. The U.S. Supreme Court reversed the decision of the lower court in the case entitled P.P. Pickard v. The East Tennessee, Virginia and Georgia Railroad Company, 130 U.S. 637-642, 32 Law, Ed. 1051-1053, under the following facts:

> This is a suit to enjoin the collection of certain taxes for the years 1883 and 1884, assessed by the Board of Railroad Tax Assessors of Tennessee against the property of the complainant, the East Tennessee, Virginia and Georgia Railroad Company. The property formerly belonged to the Cincinnati, Cumberland Gap and

---

(8) Consideration of House Bill No. 2003, Congressional Record, House of Representatives, Vol. III, Nos. 1-9, June 14-24, 1948, p. 323, et seq.

> Charleston Railroad Company; and the claim asserted by the bill is that the property, whilst held by that Company, was exempt from taxation, and that such exemption has accompanied it in its transfer to the complainant. That company was incorporated by an Act of the Legislature of Tennessee, passed November 18, 1853. Among other things the Act provided that whenever the company should have completed its road from Cumberland Gap to the East Tennessee and Virginia Railroad, or to the southern boundary line of the State, it should "have all the rights and privileges" conferred by its charter for a period of ninety-nine years. (Acts of Tenn., 1853-4, chap. 301 S 6.) It also declared that the company should be vested, except as otherwise provided by its charter, with "all the rights, powers and privileges, and subject to all the restrictions and liabilities, of the Nashville and Lousville Railroad Company." . . .

In reversing the decision of theCircuit Court, the United States Supreme Court took into account that immunity from taxation is not in itself transferable unless otherwise so declared in express terms or by language so clear and unmistakable as to leave no doubt of the purpose of the Legislature; immunity from taxation is personal and incapable of transfer without express statutory direction; and the term "privileges" has been held in some cases to include immunity from taxation but only where other provisions of the statutory grant have given such meaning to it; otherwise, it will not be so construed. These views and conclusions of the U.S. Supreme Court are now part of our established legal jurisprudence which was succinctly reiterated in the case of E. Rodriguez, Inc., supra. However, as the question of the term "privileges" involving immunity from taxation is a case of first impression in this jurisdiction, we will seek solace and refuge in disposing the principal issue in this case by invoking the decision of the U.S. Supreme Court in the Pickard case, supra, wherein it was held:

> By this sale and the conveyance which followed, immunity from taxation did not pass. Such immunity is not in itself transferable. It has been held, and the doctrine has been so often repeated that it is no longer an open question, that the Legislature of a State may exempt the property of particular persons or corporations from taxation, either for a limited period or perpetually; but to justify the conclusion that such exemption is granted, it must appear by language so clear and unmistakable as to leave no doubt of the purpose of the Legislature. The power of taxation is one of the highest attributes of sovereignty, and the suspension of its exercise as to any persons or property is not a matter to be presumed or inferred. It must be declared or it will not be deemed to exist. If the Legislature can lay aside a power devolved upon it for the good of the whole people of the State for the benefit of a private party, it must speak in such unmistakable terms that they will not admit of any reasonable construction consistent with the reservation of the power. The Delaware Railroad Tax, 85 U.S. 18 Wall. 206, 225 [21 L.ed. 888, 894]

> Yielding to the doctrine that immunity from taxation may be granted,

That point being already adjudged, it must be considered as a personal privilege not extending beyond the immediate grantee, unless otherwise so declared in express terms. The same considerations which call for clear and unambiguous language to justify the conclusion that immunity from taxation has been granted in any instance, must require similar distinctness of expression before the immunity will be extended to others than the original grantee. It will not pass merely by a conveyance of the property and franchises of a railroad company, although such company may hold its property exempt from taxation. As we said in Morgan v. Lousiana, 93 U.S. 217, 223 [23:860, 861]: "The franchises of a railroad corporation are rights or privileges which are essential to the operation of the corpofation, and without which its road and works would be of little value, such as the franchise to run cars, to take tolls, to appropriate earth and gravel for the bed of its road, or water for its engines, and the like. They are positive rights or privileges, without the possession of which the road of the company could not be successfully worked. Immunity from taxation is not one of them. The former may be conveyed to a purchaser of the road as part of the property of the company; the latter is personal, and incapable of transfer without express statutory direction."

It is true there are some cases where the term "privileges" has been held to include immunity from taxation, but that has generally been where other provisions of the Act have given such meaning to it. The later and, we think, the better opinion is that unless other provisions remove all doubt of the intention of the Legislature to include the immunity in the term "privileges," it will not be so construed. It can have its full force by confining it to other grants to the corporation.

> . . . The court held that immunity from taxation did not pass to the purchaser upon the sale of the property under the decree rendered in the suit brought by the State against the company (Underscoring supplied.)

In 1965 and 1966, petitioner claims that respondent refunded to her and to First Assistant Solicitor General Esmeraldo Umali certain amount of withholding income tax presumably on the basis that their salaries, like judges of the Courts of First Instance, are tax-exempt under Republic Act No. 4360.

An examination of the 1965 income tax return of petitioner (Exh. H, p. 36, CTA rec.) shows that she failed to declare any amount as her salary during the said year because the space for the amount of salary received by her from the Government was left in blank. The salary of ₱2,829.40 which she received in 1965 from the University of the East was below her exemption of ₱3,000.00 as head of the family. Consequently, the amount of ₱134.75 as income tax withheld from her salary of ₱2,829.40 was refunded to her by the Bureau of Internal Revenue. In short, the income tax refund of ₱134.00 (Exh. G, p. 35, CTA rec.) has nothing to do with petitioner's income as Assistant Solicitor General which was not declared for income tax purposes. The question, therefore, of tax-exemption under Republic Act No. 4360 was never passed upon by respondent in the said refund of P134.00

The 1965 income tax return of First Assistant Solicitor General Esmeraldo Umali [illegible] p. 42, CTA rec.) shows on page 2 thereof that he received P18,249.96 as salary during the year from the Office of the Solicitor General and deducted therefrom the amount of P10,133.31 as salary received from June 19 to December 31, 1965. There is no showing, however, that the tax-exemption of said official under Republic Act No. 4360 was formally passed upon by respondent on the basis of the said return because no amount was ever refunded to the aforesaid official.

Even assuming arguendo that petitioner and the First Assistant Solicitors General were granted tax refunds on the basis of their salaries, the said refunds made without statutory sanction cannot bind the Government following the well-known rule and established jurisprudence that erroneous application and enforcement of the law by public officers do not block subsequent correct application of the statute, and that the Government is never estopped by mistake or error on the part of its agents.)

> . . . It is a well-known rule that erroneous application and enforcement of the law by public officers do not block subsequent correct application of the statute,[9] and that the Government is never estopped by mistake or error on the part of its agents.[10] . . . (E. Rodriguez, Inc. v. The Collector of Internal Revenue, et al., supra.)

After determining and holding that petitioner is subject to the 1965 deficiency income tax, we find that said tax, plus deficiency interest, amount to ₱3,224.23, computed as follows:

Amount of tax due	₱3,363.00
Less: Amount of tax withheld	630.60
Balance of tax due.	₱2,732.40
Add: Deficiency interest of ½% a month from April 16, 1966 to April 15, 1969	491.83
Total amount due	₱3,224.23

(9) Philippine Long Distance Telephone Co. v. Collector of Internal Revenue, 90 Phil. 674, 680; Republic v. Philippine Long Distance Telephone Company, L-18841, January 27, 1969 26 SCRA 620, 631.

(10) Pineda v. Court of First Instance of Tayabas, 52 Phil. 803, 807; Benguet Consolidated Mining Company v. Pineda, 98 Phil. 711, 724; Central Azucarera de Tarlac v. Collector, et al., 104 Phil. 653, 656; Philippine American Drug Co. v. Collector of Internal Revenue, et al., 106, 168; Koppel (Phil.) Inc. v. Collector of Internal Revenue, L-10550, September 19, 1961; Luzon Stevedoring Corporation v. Court of Tax Appeals, L-21005, October 22, 1966, 18 SCRA 436, 440; Tan Guan v. Court of Tax Appeals, L-23676, April 27, 1967, 19 SCRA 903, 907; Republic v. Philippine Long Distance Telephone Co., supra.

WHEREFORE, the decision of the respondent Commissioner of Internal Revenue appealed from is sustained. Petitioner is hereby ordered to pay respondent or his duly authorized collection agent the sum of ₱3,224.23 inclusive of 18% deficiency interest. If the said amount is not paid within thirty (30) days from the date this decision becomes final and executory, petitioner shall pay a surcharge of 5% plus a delinquency interest of 1% a month on the unpaid deficiency income tax until fully paid, provided that said interest shall not exceed a period of three (3) years, or 36%. No costs.

SO ORDERED.

Quezon City, February 27, 1970.

ORIGINAL SIGNED
ESTANISLAO R. ALVAREZ
Associate Judge

Presiding Judge ROMAN M. UMALI and Associate Judge RAMON L. AVANCEÑA concur in separate opinions.

CONCURRING OPINION OF
PRESIDING JUDGE ROMAN M. UMALI

I concur in the opinion of my colleagues that Republic Act No. 4360, which grants to Assistant Solicitors General the same "privileges" enjoyed by Judges of Courts of First Instance, does not comprehend exemption of the salaries of the former from income tax. I should like to stress, however, one other point.

There is no law or provision of the Constitution which expressly exempts from income tax the salaries of Judges of Courts of First Instance. The exemption from income tax of the salaries of Judges of Courts of First Instance, as in the case of all other members of the judiciary, emanates solely from the provision (Sec. 9, Art. VIII) of the Constitution which prohibits diminution of their salaries during their terms of office. Assuming that the prohibition against diminution of the compensation of the members of the judiciary is a "privilege," yet Congress may not, by law, prohibit diminution of the salaries of executive officers for it would be tantamount to enactment of an irrepealable law. Congress can not bind a future Congress. Since Congress cannot prohibit diminution of the salaries of executive officials, as in the case of the salaries of the members of the judiciary, it follows that Assistant Solicitors General can not be deemed to have been granted the same "privileges" by Republic Act No. 4360; and the exemption from income tax of the salaries of judicial officers which is merely implied from the undiminishable character of such salaries, can not likewise be deemed to have been extended to them.

There is no question that Congress has full power to exempt from taxation the salaries of certain executive officials. But each exemption must be expressly provided by law.

ORIGINAL SIGNED
ROMAN M. UMALI
Presiding Judge

CONCURRING OPINION OF
ASSOCIATE JUDGE RAMON
L. AVANCEÑA

The question posed before the Court turns on the meaning of the term "privileges" as same is used in Republic Act 4360 providing that "the rank, privileges, and qualifications" of the Assistant Solicitors General shall be the same as those of Judges of the Court of First Instance. Petitioner's position is that the term "privileges" in said law includes exemption from the income tax law of the salaries of the Assistant Solicitors General. It is urged that this is so because Judges of the Court of First Instance enjoy said tax exemption privilege on the strength of the doctrine laid down in the cases of Perfecto v. Meer (85 Phil. 552) and Endencia and Jugo v. David (49 O.G. No. 11, p. 4822), which held that the prohibition against the reduction of salaries of judicial officers during their tenure in office provided by Section 9, Article VIII of the Constitution includes indirect reduction by way of taxation. It is further urged that the history of the word as it is used in Republic Act 4360 shows that the same had been interpreted since 1954 to include exemption from income taxes of salaries of officers similarly situated as petitioner. Respondent's position on the other hand is that the term "privileges" used in said Republic Act does not clearly embrace tax exemption and the established rule is that exemption should appear in clear and unambiguous language.

The established principles of taxation applicable to the case at bar are those applied to corporations with charters granting powers to exercise all the powers and privileges conferred on another corporation. On this point the authorities say the following:

> A statute authorizing or directing the grant or transfer of the "privileges" of a corporation which enjoys immunity from taxation should not be interpreted as including that immunity. Charter power "to exercise all the powers and privileges" conferred on another company does not grant a partial exemption from taxation possessed by the other company. Wright v. Georgia Railroad & Banking Co., 216 U.S. 420, 436, 54 L. Ed. 544, 30 Sup. Ct. 242, reviewing earlier federal decisions and following Rochester R. Co. v. City of Rochester, 205 U.S. 236, 252, 51 L. Ed. 784, 27 Sup. Ct. 489.
>
> "It is true there are some cases where the term 'privileges' has been held to include immunity from taxation, but that has generally been where other provisions of the act have given such meaning to it. The later and, we think, the better opinion is that unless other provisions remove all doubt of the intention of the legislature to include the immunity in the term 'privilege,' it will not be so con-

> strued. It can have its full force by confining it to other grants to the corporation." Pickard v. East Tennessee, V. & G.R. Co., 130 U.S. 637, 32 L. Ed. 1051, 9 Sup. Ct. 640. (Footnote, p. 1523, Cooley on Taxation, 4th Edition, Volume 2.)

There is nothing in the provisions of Republic Act 4360 from which one may gather that the privileges granted to the Assistant Solicitors General include exemption of their salaries from the Income Tax Law. Said law uses the term "privileges" nakedly and merely confers upon the Assistant Solicitors General the same privileges that the Judges of the Court of First Instance enjoy, and the reference may well be confined to grants other than immunity from taxation of salaries, following established doctrine on the matter.

The Perfecto v. Meer, <u>supra</u>, and Endencia and Jugo v. David, <u>supra</u>, cases strengthens respondent's stand rather than supports petitioner's position. Under the doctrine of these two cases, the judicial official does not enjoy the immunity of his salary from the Income Tax Law in the concept of privilege as the term is used in its common acceptation in relation to tax exemptions. The line of thought followed in the Perfecto case is aptly expressed in the following language of the decision thereof:

> "Second period. 1862-1918. In July, 1862, a statute was passed subjecting the salaries of 'civil officers of the United States' to an income tax of three per cent. Revenue officers, construed it as including the compensation of all judges; but Chief Justice Taney, speaking for the judiciary, wrote to the Secretary of the Treasury a letter of protest saying, among other things:
>
> 'The act in question, as you interpret it, diminishes the compensation of every judge 3 per cent, and if it can be diminished to that extent by the name of a tax, it may, in the same way, be reduced from time to time, at the pleasure of the legislature.
>
> 'The judiciary is one of the three great departments of the government, created and established by the Constitution. Its duties and powers are specifically set forth, and are of a character that requires it to be perfectly independent of the two other departments, and in order to place it beyond the reach and above even the suspicion of any such influence, the power to reduce their compensation is expressly withheld from Congress, and excepted from their powers of legislation.
>
> 'Language could not be more plain than that used in the Constitution. It is, moreover, one of its most important and essential provisions. For the articles which limit the powers of the legislative and executive branches of the governments, and those which provide safe-

guards for the protection of the citizen in his person and property, would be of little value without a judiciary to uphold and maintain them, which was free from every influence, direct and indirect, that might by possibility in times of political excitement warp their judgments.

'Upon these grounds I regard an act of Congress retaining in the Treasury a portion of the compensation of the judges, as unconstitutional and void.'

x x x x x

"Judges would indeed be hapless guardians of the Constitution if they did not perceive and block encroachments upon their prerogatives in whatever form. The undiminishable character of judicial salaries is not a mere privilege of judges--personal and therefore waivable--but a basic limitation upon legislative or executive action imposed in the public interest (Evans vs. Gore).

"Indeed the exemption of the judicial salary from reduction by taxation is not really a gratuity or privilege. Let the highest court of Maryland speak:

'The exemption of the judicial compensation from reduction is not in any true sense a gratuity, privilege or exemption. It is essentially and primarily compensation based upon valuable consideration. The covenant on the part of the government is a guaranty whose fulfillment is as much as part of the consideration agreed as is the money salary. The undertaking has its own particular value to the citizens in securing the independence of the judiciary in crises; and in the establishment of the compensation upon a permanent foundation whereby judicial preferment may be prudently accepted by those who are qualified by talent, knowledge, integrity and capacity, but are not possessed of such a private fortune as to make an assured salary an object of personal concern. On the other hand, the members of the judiciary relinquish their position at the bar, with all its professional emoluments, sever their connection with their clients, and dedicate themselves exclusively to the discharge of the onerous duties of their high office. So, it is irrefutable that the guaranty against a reduction of salary by the imposition of a tax is not an exemption from taxation in the sense of freedom from a burden or service to which others are liable. The exemption for a public purpose or a valid consideration is merely a nominal exemption, since the valid and full consideration or the public purpose promoted is received in the place of the tax. Theory and Practice of Taxation (1900), D. A. Wells, p. 541.' (Gordy vs. Dennis (Md.) 1939, 5 Atl. Rep. 2d Series, p. 80.)"

In the case of Endencia and Jugo, it was said that:

"When a judicial officer assumes office, he does not exactly ask for exemption from payment of income tax on his salary, as a privilege. It is already attached to his office, provided and secured by the fundamental law, not primarily for his benefit, but based on public interest, to secure and preserve his independence of judicial thought and action. . ." (49 O.G. 4828.)

From the pronouncements of the Supreme Court in the foregoing excerpts it is hardly necessary to say that the Judges of the Court of First Instance do not enjoy the immunity of their salaries from the Income Tax Law in the concept of a privilege as this term is used in its usual acceptation in relation to tax exemption. This is made clear in Gordy v. Dennis (Md.) 1939, 5 Atl. Rep. 2d Series, p. 80, which is cited by the Supreme Court in support of its decision in Perfecto v. Meer, supra. %Exemption is an immunity or privilege; it is freedom from a charge or burden to which others are subjected." (Greenfield v. Meer, 77 Phil. 314.) Gordy v. Dennis, supra, clearly holds that "the guaranty against a reduction of salaries by the imposition of a tax is not an exemption from taxation in the sense of freedom from a burden or service to which others are liable." Rather, the Judges of the Court of First Instance enjoy the immunity because it is a condition attached to their office by a constitutional provision pursuant to the policies underlying the distribution and limitations of powers of the three great departments of our government. To put it differently, the immunity is part of the attributes given by the constitution to the judicial department.

Well-established is the rule that the right of taxation will not be held to have been surrendered unless the intention to surrender is manifested by words too plain to be mistaken and it is only when the terms of the concession are too explicit to admit fairly of any other construction that the tax exemption may be enjoyed. (R. Rodriguez, Inc. v. The Collector of Internal Revenue and the Court of Tax Appeals, G.R. No. L-23041, July 31, 1969.) We can hardly give so expansive a meaning to the grant of privileges to the Assistant Solicitors General as to include what the Judges do not clearly enjoy in the concept of privilege, without violating the rules of strict construction of tax exemption.

It is urged that when Republic Act No. 4360 used the word "privileges" the same had already administratively received a practical construction as including therein exemption from income tax of salaries of non-judicial officers to whom the same privileges as Judges of the Court of First Instance had been expressly granted by law. In support of this contention, it is alleged by petitioner that the law creating the Land Registration Commission effective 1954 provided that the Commissioner "shall be entitled to the same compensation, emoluments and privileges as those of the Judges of the Court of First Instance." No assessments were made of the salary of the Land Registration Commissioner. Since then Congress enacted laws granting to officials outside of the judicial hierarchy as well as to members of some special courts the same privileges as Judges of the Court of First Instance. With respect to the salaries of these officials the Bureau of Internal Revenue followed then its practice of non-assessment of salaries of non-judicial officers granted the same privileges as judges of the Court of First Instance. In 1965, Republic Act 4360, a law raising the salaries of the Solicitors but not of the Assistant Solicitors General, granted the latter the same privileges as Judges of the Court of First Instance. Thus, it may be presumed that when this law was passed Congress was cognizant of the practical administrative interpretation of the term "privileges" when similarly used, that is, that it includes tax exemption.

The rule is of course to the effect that great weight should be given to an administrative interpretation particularly when Congress presumably has re-enacted the statute with that construction in mind. Administrative and congressional interpretations however should be in harmony with the accepted constitutional conc concepts and not violative thereof. It seems difficult to accept an interpretation that in effect converts into a privilege what is concetually not a privilege under the pertinent provision of the constitution in the light of the decisions in Perfecto v. Meer, supra, and Endencia and Jugo v. David, supra.

> Although recognizing that a Treasury Regulation, if valid, long in effect and never disapproved by Congress, notwithstanding the amendment by that body several times of the income tax laws, may be treated as an administrative interpretation of the existing law, the court in Hilgenberg v. United States (1937; DC) 21 F Supp 453, said that citation of authorities was scarcely necessary to refute the proposition that what is not in fact income within the meaning of the Sixteenth Amendment can be made such by legislative act or by a mere regulation of an administrative department. (308 U.S. 84 L Ed 73.)

CONCURRING -
CTA CASE No. 1931

WHEREFORE, I concur with the decision of Judge Estanislao R. Alvarez.

(Sgd.) RAMON L. AVANCEÑA
Associate Judge