REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

BANK OF THE PHILIPPINE ISLANDS,
as Trustee of the PAL PILOTS'
RETIREMENT BENEFIT PLAN,
Petitioner,

- versus -

CTA Case No. 4778

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated: JUL 26 1996

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DECISION

This case involves a claim for refund in the amount of P1,957,346.40, representing 20% final withholding tax on income from bank deposits, investments in money market placements, deposit substitutes and securities for the year 1990.

Petitioner, Bank of the Philippine Islands, is a commercial banking corporation duly organized and existing under Philippine laws. It is the appointed trustee of the Philippine Airlines Pilots' Retirement Fund ("Fund" for brevity) set up in accordance with the Philippine Airlines Pilots' Retirement Benefit Plan ("Plan" for short).

On September 12, 1973, the Plan was approved and qualified as a reasonable benefit plan by the respondent's Bureau pursuant to the provisions of

Republic Act No. 4917, as implemented by Revenue Regulations No. 1-68. As such, the Plan enjoyed the benefits and privileges granted by said Act, one of which is the exemption from income tax of the earnings derived by the Fund from its investments.

In 1990, petitioner as trustee and investment manager, deposited, invested and reinvested the assets of the Fund in savings and time deposits, money market placements, and in securities, such as treasury bills with various banking and financial institutions. These institutions correspondingly withheld the final tax of 20% provided under Section 21(c)(1), in relation to Section 50 (a) and Section 51 (a) all of Title II of the Tax Code, from the income or yield derived by the Fund on various dates covering the year 1990.

On January 7, 1992, petitioner filed a written claim for refund of the aforestated amount of P1,957,346.40 with the respondent stating that the withholding and collection of the 20% final tax from the income of the Fund were erroneous and illegal as the Fund is fully exempt from income tax.

Without awaiting for the respondent Commissioner to resolve its claim for refund, petitioner filed the instant petition for review on April 7, 1992 as a way of suspending the running of the two (2) year prescriptive period provided under Section 230 of the Tax Code.

Petitioner reasserts its stance *a quo.* Respondent, on the other hand, avers among others, the following:

> "9. Petitioner, who claims to be entitled to income tax exemption on the earnings of its employees' trust under RA No. 4917 in relation to Section 53(b) of the National Internal Revenue Code, cannot invoke the aforesaid Section to claim exemption from the final tax imposed by Section 21(c)(1) and 24(e)(i) of the said Code on earnings derived from interest on bank deposits and/or deposit substitute;
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> 10. The provisions granting exemption from the final tax on interest on bank deposits and deposit substitutes to those recipients who are exempt from income taxation previously found in Sections 21(d) and 24(cc) of the Code was deleted by P.D. No. 1959 which took effect on October 15, 1984. Hence, by virtue of the amendments introduced by P.D. No. 1959, the exemption granted under Sections 21(d) and 24(cc) [now Sections 21(c)(1) and 24(e)(1), respectively] of the Code has already been revoked or withdrawn;" (Answer, pp. 3-4; pp. 31-32, CTA records)

The issues to be resolved in this case are:

> 1) whether or not petitioner is exempt from the 20% withholding tax on income from money market placements, bank deposits and securities; and if in the affirmative,
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> 2) whether or not petitioner has submitted enough evidence to prove the factual elements of its case.

Anent the first issue, we rule in favor of the petitioner.

In the case of Commissioner of Internal Revenue vs. The Hon. Court of Appeals, The Court of Tax Appeals and the GCL Retirement Plan, represented by its Trustee-Director, G.R. No. L-95022, March 23, 1992, 207 SCRA 487, the High Court squarely dealt on the matter and ruled in this wise:

> "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)."

Legally speaking thus, respondent's argument is largely untenable. The fund is still fully exempt from income tax notwithstanding the issuance of P.D. No. 1959.

It is lamentably observed that the argument of the respondent in her answer which was filed on May 29, 1992 (CTA records, p. 29) borders on open defiance of the High

Court's verdict in the GCL case above, as it was made after the promulgation of the latter on March 23, 1992, *supra*, or more than two months thereafter. Respondent should be reminded to bestow respect and adherence to the jurisprudence laid down by the High Court. Obviously, respondent cannot feign ignorance or oversight as she herself was the petitioner in said case. Such actuation of the respondent is deplorable and is a classic example of misleading the Court. It hampers the speedy administration of justice and unduly delays the cause of the taxpayer.

On the second issue, it bears upon us with a sad note, however, that despite the legal validity of petitioner's claim, we are constrained to deny the same based on insufficiency of evidence.

In support of its claim, petitioner adduced the following exhibits, to wit:

1.	PAL Pilots' Retirement Benefit Plan.	Exh. "A"
2.	Trust Agreement between PAL, Inc. and BPI.	Exhs. "F", "F-1" to "F-9", inclusive
3.	BIR Approval of the Plan, dated September 12, 1973.	Exhs. "B" and "B-1"
4.	Written claim for refund filed with BIR on January 7, 1992.	Exhs. "E", "E-1" to to "E-4", inclusive

5.	Report of Ms. Cynthia Makasiar, Senior Manager of BPI Trust and Investment Division, on the Fund's Schedules of Taxes Withheld for 1990.	Exhs. "C", "C-1", "C-2", "D", "D-1" and "D-2"
6.	Schedules of Investment in Government Securities made by BPI as Trustee of the Fund and various BPI Confirmation of Sales covering the sale of Treasury Bills from the BPI Treasury to the BPI Trust and Investment Division.	Exhs. "G", "G-1" to "G-12", inclusive, "H", "H-1" to "H-21", inclusive
7.	Certification, issued by the Senior Vice President-Treasurer of BPI, and the Schedule of Treasury Bills purchased by BPI from the Central Bank of the Philippines and on Treasury Bills sold by the BPI Treasury Operations to the BPI Trust and Investment Division.	Exhs. "I", "I-1" and "I-2-a"
8.	Copies of Acceptances of Bill Tenders issued by the Central Bank of the Philippines.	Exhs. "J" "J-1" to "J-24", inclusive
9.	Certification, dated May 18, 1994, issued by the Chief, Revenue Accounting Division of the BIR, on the Credit Advices covering the payment of internal revenue taxes on the income of the treasury bills in Item No. 7 above.	Exh. "L"
10.	Certification, dated March 9, 1994, issued by the Acting Associate Director, of the Central Bank of the Philippines, on the treasury bills sold by the Central Bank of the Phils. to the BPI and the corresponding withholding and remittance of the	Exhs. "K" and "K-1"

taxes due thereon.

A cursory review of the above exhibits readily show us that no actual proof of the indubitable participation of the Fund to the purchase of the treasury bills can be found.

As we have stated in the similar case of **Bank of the Philippine Islands, as trustee of various Retirement Funds vs. Commissioner of Internal Revenue, CTA Case Nos. 4898, 4900 to 4940, promulgated on October 11, 1995,** proof of participation by the various retirement funds can only be established by a showing of the actual payment made by each of them. We quote:

> "Indeed, as correctly posed by respondent, there is no evidence on record to pinpoint the fact that the assets of the various trust funds were actually used in the purchase of the treasury bills. What petitioner has proven is the transaction between the Treasury Department and Trust Department, but not the one between the Trust Department and the individual trust fund.
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> Evidently, the deposit accounts of the trust funds will have to be debited in the purchase of the treasury bills and the corresponding receipt or acknowledgment, in any convenient form, will have to be issued as proof of payment. Petitioner must have documented or made entries on such transactions. x x x."

In transactions involving treasury bills, such proof of payment or participation can be demonstrated by the originals of the cash vouchers, purchase tickets, trading orders, fixed income, securities placements, official receipts evidencing payment and debit-credit ledger entries of the Fund. It is unfortunate that none of these were submitted.

Petitioner, in the case at bar, offered in evidence Confirmation of Sales documents that show the BPI Trust and Investment Division as the only indicated buyer therein. Nowhere can we find the connection between such documents and the herein Fund. What is conceivably relied upon by the petitioner as proof of the Fund's participation are the Schedules of Withholding Taxes on the income of the Fund for the first and second semester of 1990 (Exhs. "C", "C-1" and "C-2" and "D", "D-1" and "D-2", *supra.*). We are not convinced. The Schedules are mere lists or guides for better appreciation of the evidence submitted. Where the Schedules are not corroborated by any direct evidence on the participation of herein Fund, such Schedules must of necessity be disregarded outright.

"It must be stressed at this point that a refund of taxes partakes the nature of a tax exemption and are construed in ***strictissimi juris*** against the taxpayer and in favor of the taxing authority." (**Insular Lumber Company vs. Court of Tax Appeals and Commissioner of Internal Revenue, G.R. No. L-31057, May 29, 1981,** and

Commissioner of Internal Revenue vs. Court of Tax Appeals and Insular Lumber Company, G.R. No. L-31137, May 29, 1981, 104 SCRA 710; and Commissioner of Internal Revenue vs. Rio Tuba Nickel Mining Corporation and The Court of Tax Appeals, G.R. Nos. L-83583-84, March 25, 1992, 207 SCRA 549).

WHEREFORE, in view of the foregoing, the instant Petition for Review is hereby DISMISSED for lack of merit. No pronouncement as to cost.

SO ORDERED.

ERNESTO D. ACOSTA
Presiding Judge

I CONCUR:

RAMON O. DE VEYRA
Associate Judge

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

I hereby certify that this decision was reached after due consultation with the member 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