

COMMISSIONER OF INTERNAL REVENUE, PETITIONER, VS. VISAYAN ELECTRIC COMPANY AND THE COURT OF TAX APPEALS, RESPONDENTS.

G.R. No. L-22611. May 27, 1968

Ponente: SANCHEZ, J.

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SANCHEZ, J.

The problems cast in legal setting in this petition for review of the judgment of the Court of Tax Appeals are:

Is Visayan electric Company liable for deficiency income tax on dividends from the stock investment of its employees' reserved fund for pensions?

Is it also liable for 25% surcharge on alleged late payment of franchise tax?

Respondent company is the holder of a legislative franchise, Act 3499 of the Philippine Legislature, to operate and maintain an electric light, heat, and power system in the City of Cebu, certain municipalities in the Province of Cebu, and other surrounding places.

In a board of directors' meeting held on March 14, 1949 respondent company established a pension fund, known as the "Employees' Reserve for Pensions." Said fund is for the benefit of its "present and future" employees, in the event of retirement, accident or disability. Every month thereafter an amount has been set aside for this purpose. It is taken from the gross operating receipts of the company. This reserve fund was later invested by the company in stocks of San Miguel Brewery, Inc., for which dividends have been regularly received. But these dividends were not declared for tax purposes.

It was in a letter dated August 9, 1957 that the Auditor General gave notice that as the company has retained full control of the fund, therefore, the dividends are not tax exempt; but that such dividends may be excluded from gross receipts for franchise tax purposes, provided the same are declared for income tax purposes.

In pursuance of the above letter, the Provincial Auditor of Cebu allowed the company the option to declare the dividends either as part of the company's income for income tax purposes or as part of its income for franchise tax purposes. The company elected the latter.[2]

The Revenue Examiner of Cebu, however, conducted a separate investigation for the Bureau of Internal Revenue. His report dated September 17, 1959 likewise revealed that the "company itself is the custodian or has the complete control of the fund." That report disagreed with the action of the Provincial Auditor, instead considered the dividend as subject to corporate income tax under Section 24 of the National Revenue Code.

Said report further disclosed that: (a) during the years 1957, 1958 and 1959, some payments of the franchise tax were made after fifteen days - although within twenty days - of the month following the end of each calendar quarter, allegedly contrary to Section 259 of the Tax Code, which imposes a 25% surcharge if the franchise taxes "remain unpaid for fifteen days from and after the date on which they must be paid"; and (b) from 1954 to 1959,

the company had not paid additional residence tax imposed by Section 2 of Act 465.

With the foregoing report as basis, the Commissioner of Internal Revenue, in two letters of demand dated September 7 and 15, 1960, assessed the following amounts against the company: (a) P2,443.30 representing deficiency income tax for the years 1953 to 1958, plus interest and 50% surcharge; (b) P3,850.00 as additional residence tax from 1954 to 1959; and (c) P35,419.05 as 25% surcharge for late pay franchise taxes for the years 1957, 1958 and 1959. Reconsideration having been denied, the company went to the Court of Tax Appeals on petition for review.

On January 31, 1964, the Court of Tax Appeals sustained the correctness of the additional residence tax assessment^[3] but freed the company from liability for deficiency income tax and the 25% surcharge for late payment of franchise taxes.

It is now the turn of the Commissioner of Internal Revenue to appeal to this Court.

1. Admittedly, the investment of the fund in shares of stock, the San Miguel Brewery, Inc. is not a part of respondent company's business. Neither is it necessary or incidental to its operation under its franchise. And yet, those dividends were assessed by petitioner a part of the income of respondent company. The tax court joins petitioner in this, but applied the following provision in Section 8, Act 3499 – the company's legislative franchise - in holding that the dividends are not subject to income tax, viz:

SEC. 8. The grantee shall pay the same taxes as are now or may hereafter be required by law from other persons, on its real estate, buildings, plant, machinery, and other personal property, except property declared exempt in this section. In consideration of the franchise and rights hereby granted, the grantee shall pay into the municipal treasury of each municipality in which it is supplying electricity to the public under this franchise, a tax equal to two per centum of the gross earnings for electric current sold under this franchise in each of the respective municipalities. Said percentage shall be due and payable quarterly and shall be in lieu of all taxes, of any kind levied, established or collected by any authority whatsoever, now or in the future, on its poles, wires, insulators, switches, transformers and other structures installations, conductors and accessories, placed in and over the public streets, avenues, roads, thoroughfares, squares, bridges, and other places, and on its franchises, rights, privileges, receipts, revenues and profits, from which taxes the grantee is hereby expressly exempted."^[4]

We perceive incorrectness of this approach by the Tax Court. What is envisioned in the statute granting exemption, so far as is pertinent to this case, is the last underscored portion thereof which speaks of its receipts, revenues and profits, "from which taxes the grantee is hereby expressly exempted." The heavy accent is on the word its. Plain import of this word, taken in context, is that the receipts, revenues and profits, which could be tax-exempt under the statute, must be the company's - not somebody else's. No doubt this provision should not be broadened so as to include situations which fair intendment are excluded therefrom. To do so is to take too loose a view of the statute.

The disputed income are not receipts, revenues or profits of company. They do not go to the general fund of the company. They are dividends from the San Miguel Brewery, Inc. investment which form part of and are added to the reserve pension fund which is solely for the benefit of the employees,^[5] "to be distributed among the employees."^[6]

Not escaping notice is that by the resolution of respondent company's board and the setting aside of monthly amounts from its gross operating receipts for that fund, said company was merely acting, respect to such fund, as trustee for its employees. For, indeed, the intention to establish a trust in favor of the, employees is clear. A valid express trust has thus been created.^[7] And, for tax purposes, the employees' reserve fund is a separate taxable entity.^[8] Respondent company then, while retaining legal title and custody^[9] over the property, holds it in trust

for the beneficiaries mentioned, in the resolution creating the trust, in the absence of any condition therein, which would, in effect, destroy the intention to create a trust.[10]

Given the fact that the dividends are returns of the trust estate and not of the grantor company, we must say that petitioner misconceived the import of the law when he assigned said dividends as, part of the income of the company. Similarly, the tax court should not have

2. As we look back at the resolution creating the employees' reserve fund and having in mind the company's admission that it is "solely for the benefit of the employees" and that the company is holding said fund "merely as a trustee of its employees,"[11] we reach the conclusion that the fund may not be diverted for other purposes, and that the trust so created is irrevocable. For, really nothing in respondent company's acts suggests that it reserved the power to revoke that fund or for that matter appropriate it for itself. The trust binds the company to its employees. The trust created is not therefore a revocable trust as provided in Section 59 of the Tax Code.[12] Nor is it a trust contemplated, in Section 60, the income from which is for the benefit of the grantor.[13]

This state of facts calls for inquiry into the applicability of Section 56, of the Tax Code, which in part reads:

"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 of any kind of any kind of property held in trust, including -

(1) Income accumulated in trust for the benefit of unborn or unascertained person or persons with contingent interests and income accumulated or held for future distribution under the terms of the will or trust;

x x x

(c) Computation and payment -

(1) In general. - The tax shall be computed upon the net income at the estate or trust and shall be paid by the fiduciary, except as provided in Section fifty-nine (relating to revocable trust) and section sixty (relating to income for the benefit of the grantor);

x x x."[14]

Of interest here is that an amendment to Section 56 Republic Act 1983,[15] approved on (June 22, 1957 - singles out employees' trust for tax exemption in the following language:

"(b) Exception. - The tax imposed by this Title shall not apply to employees 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 (1) if contributions are made to the trust, by such employer, or employees, or both for the Purpose of distributing to such employees the earnings and principal of the fund accumulated by the trust in accordance with such plan, and (2) if under the trust instrument it is impossible, at any time prior to the satisfaction of all liabilities with respect to employees under the trust, for any part of the corpus or income to be within the taxable year or thereafter) used exclusive benefit of his employees: Provided. That any amount actually distributed to any employee or distributee she be taxable to him in the year in which so distributed to the extent that it exceeds the amount contributed by such employee or distributee."[16]

A dig into the legislative history unearths the fact that this exemption in Republic Act 1983 was conceived in order to encourage the formation of pension trust systems for the benefit of laborers and employees outside the Social Security Act.[17]

Understandably, the second requirement in paragraph (b) of Section 56 of the Tax Code as it was inserted by Republic Act 1983 – non-diversion of fund - was written into the statute the better to insure that the trust fund and its income will be used "for the exclusive benefit" of the employees.

Of importance is the employment of the word plan as it is applied to pension set forth in the first part of paragraph (b) aforesaid. Worth mentioning is that a sizeable portion of our Tax Code has been lifted from the United States Internal Revenue Code. To be sure, Republic Act 1983 which amends Section 56 of our Tax Code is substantially similar in terms to Section 165 of the United States Internal Revenue Code of 1939.[18] It is thus permissible for this Court to look into the interpretations of the American counterpart in an effort to determine the congressional scheme in exempting employees' trusts from taxation.

In the American jurisdiction, the word plan is emphasized. To qualify for exemption, the employees trust must refer to a definite program, scheme or plan it must be set up in good faith. It must be actuarially sound. Under such plan, employees generally are to be extended retirement and pension benefits. But why? The fund is not thereafter to be controlled or used for the benefit of the company in any way.[19] A trust device used to disguise added compensation to the shareholders and officers of a company and thereby avoid present payment of income tax thereon instead of providing for future security of the employees in general will not qualify under the exemption.[20] *Hubbell vs. Commissioner of Internal Revenue*, 150 F. 2d 516, 161 A.L.R. 764, 773, which was decided under the 1939 version, confirms this view; There, the United States Circuit Court of Appeals took into account the direction of the amendments In construing congressional purpose, and held that the 1942 amendment which added the requirement of non-discrimination in favor of shareholders, officials, or highly-compensated employees presents no apparent change in congressional purpose: "to insure that x x x pension x x x plans are operated for the welfare of employees in general, and to prevent the trust device from being used for the benefit of shareholders, officials or highly paid employees x x x."

This is not to say, of course, that the employees' trust fund established by private respondent is a device calculated to unserve its purpose and serve tax evasion. Unquestionably, the trust fund was created in good faith. It is meant as it was intended to mean for the employees' welfare.

But wanting are sufficient data which would justify this Court to make a conclusive statement that the trust qualifies under Section-56 (b) as it was inserted into the Tax Code by Republic Act 1983. The only written evidence of record of the creation of the pension trust is the minutes the board of directors' meeting of March 14, 1949, the pertinent portion of which reads:

"3. Upon motion duly seconded, the following - resolution was unanimously passed:

RESOLVED, that the sum of FOUR HUNDRED FIFTEEN THOUSAND PESOS (P415,000.00) be appropriated from the surplus of the company arising from prewar operations in order to cover the payments of back pay and payment of reason-able compensations to those persons who have materially aided the Company in its Organization and Rehabilitation and in the preparation and prosecution of the Company's claims. This appropriation shall cover a reserve fund for pensions for all the present and future employees of the firm in the amount of SIXTY THOUSAND PESOS (P60,000.00), Reserve Fund for Employees' Welfare to the amount of FIFTY THOUSAND PESOS (P50,000.00), Reserve Funds for Medical Hospitalization, etc. to the amount of THIRTY THOUSAND PESOS (P30,000.00), Reserve Fund for Insurance and Accident to the amount of TWENTY FOUR THOUSAND PESOS (P24,000.00) and a Reserve Fund for Bonuses Payable to the amount of FIFTY THOUSAND PESOS (P50,000.00).

4. Upon motion by Mr. Jesus Moraza, duly seconded by Mr. Juan Coromina, it was resolved further that the committee consisting of Dr. Mamerto Escaño, as Chairman and Messrs. Gil Garcia and Salvador E. Sala as members be constituted, as it is hereby constituted, to study the details of all the above resolutions and give effect thereto. The said committee is hereby empowered to immediately put into effect the above resolutions."

We have the admitted fact also that every, month thereafter an amount has been set aside for the fund and the

investment thereof in stocks of San Miguel Brewery, Inc. on

And yet, something is amiss. For one, there is the admission made on page 3 of respondents' brief that:

"x x x It is, of course, admitted by the respondent Company that the strict requirements of Section 56 (b) of the Tax Code on the formation of employees trust funds for pension had not been strictly complied with, although said funds and their returns are, exclusively for the benefit of respondent Company's employees."

And then, nothing extant in the record will show a pension plan actuarially sound. Correctly did the Court of Tax Appeals find that "[i]t does not appear however, that said pension, trust was created le accordance with the provision of Section 56 (b) of the Revenue Code." [21]

The absence of such plan prevents us from taking a view which fits the purpose of the statute. Coming into play then is the specific prevision in paragraph (a), Section 56, heretofore transcribed, which directs that the "taxes imposed by this Title upon individuals shall apply to the income x x x of any kind of property held in trust." For which reason, the income received by the employees' trust fund from January 1, 1957 is subject to the income tax prescribed for individuals under Section 21 of the Tax Code.

To follow a different construction would run "smack against the familiar rules that exemption from taxation is not favored,[22] and that exemptions in tax statutes are never presumed,"[23] and these are but statements in adherence to the ancient rule that exemptions from taxation are construed in strictissimi juris against the taxpayer and liberally in favor of the taxing authority." [24]

3. Having reached the conclusion that the assessment made by petitioner and the ruling of the Court of Tax Appeals on lack of income tax liability were on a mistaken premise, but that the trust established by respondent should pay the taxes imposed upon individuals, we are now faced with the mechanics of tax collection.

The problem of prescription comes in. By Section 331 of the Tax Code, internal revenue taxes shall be assessed within five years after the return is filed. Here, no return was filed upon a belief in good faith that no tax liability attaches. Add to this the fact that the Commissioner of Internal Revenue made an assessment of income but upon the mistaken assumption that the tax payable was upon the basis of a corporate tax and not individual tax, and the picture is complete. Good faith in one, and honest mistake in the other. Both petitioner and respondent company are on the same footing. It is because of this that we rule that Section 832 (a) of the Tax Code final application. It reads:

"SEC. 332. Exceptions as to period of limitation of assessment and collection of taxes. - (a) In the case of a false or fraudulent return with intent to evade tax or of a failure to file a return, the tax may be assessed, or a proceeding in court for the collection of such tax may be begun without assessment, at any time within ten years after the discovery of the falsity, fraud, or omission."

Assessment should have as starting point the known figures. From 1953 to 1958, the following mounts were dividends received on the San Miguel Brewery, Inc. investment:

1953 - P4,430.00

1954 - 4,384.00

1955 - 6,240.00

1956 - 8,000.00

1957 - 8,009.60

1958 - 7,999.20

As far as we could read from the record, en the 1953 to 1956 dividends, payments under protest were made as follows:

1. Deficiency franchise tax - P 468.14
 2. 25% surcharge - 117.04
 3. Compromise penalty - 50.00
- T o t a l ----- P 635.18

On the 1957 dividends, the following were paid under protest:

1. Deficiency franchise tax - P 166.85
 2. 25% surcharge - 41.71
 3. Compromise - 10.00
- T o t a l ----- P 218.56

The 1958 dividends were included in the franchise tax return for the first quarter of 1959, the tax for which was paid on April 16, 1959.

In the determination of the taxes due, the 50% surcharge sought by petitioner should not be included. To subject a taxpayer to the payment of 50% surcharge provided for in Section 72 of the National Internal Revenue Code, the State must show either that there was a neglect to file a return or that a case of a false or fraudulent return wilfully made exists. There is total absence of proof, and petitioner does not allege, that respondent company wilfully neglected to file a return or that it made a false or fraudulent, return In fact, this Court's pronouncement was necessary to determine whether such dividends are taxable at all, and if so, under what law. In *Yutivo Sons Hardware Company vs. Commissioner*,^[25] our ruling is that where a man "honestly believes" that the method employed by him in computing his tax liability is correct, he does not incur any fraud; in which case, no fraud penalty attaches under Section 72 of the Tax Code, which in part reads:

"SEC. 72. Surcharges for failure to render returns and for rendering and fraudulent returns. - x x x In case of willful neglect to file the return or list within the time prescribed by law, or in case a false or fraudulent return or list is willfully made, the Commissioner of Internal Revenue shall add to the tax or to the deficiency tax, in case any payment has been made on the basis of such return before the discovery of the falsity or fraud, a surcharge of fifty per centum of the amount of such tax or deficiency tax. x x x."

Absent the specifics exacted in Section 72, no 50% surcharge is collectible,

4. Was respondent company late in the payment of its franchise taxes?

We first go to the controlling statutes. Section 259, paragraph (2) of the National Internal Revenue Code reads:

"SEC. 259. Tax on corporate franchise. - x x x.

The taxes, charges, and percentages on corporate franchises, shall be due and payable as specified in the particular franchise, or in case no time limit is specified therein the provisions of section one hundred and eighty-three shall apply; and if such taxes, charges, and percentages remain unpaid for fifteen days from and after tie date on which they must be paid twenty-five per centum shall be added to the amount of such taxes, charges, and percentages, which increase shall form part of the tax."^[26]

Section 183(a) mentioned in Section 259 of the same Code in turn partly reads:

“Sec 183. Payment of percentage taxes. - (a) In general. - It shall be the duty of every person, conducting a business on which a percentage tax is imposed under this Title, to make a true and complete return of the amount of Ms, her or its gross monthly sales, receipts or earnings, or gross value of output actually removed from the factory or mill warehouse and within twenty days after the end of each month, pay the tax due thereon: x x x.”

Upon the other hand, the company's franchise provides:

"x x x Said percentage shall be due and payable quarterly."

The quintessence of petitioner's argument is that the phrase "due and payable quarterly" in the franchise of the company means that the tax is immediately demandable at the end of each calendar quarter; and that since the franchise itself sets the time limit for the payment of the franchise tax, Section 183 just quoted finds no application. In which case, so petitioner avers, the 25% surcharge would be collectible if the percentage taxes remain unpaid after fifteen days from the end of each calendar quarter.

Decisive of the question is the meaning of the term "due and payable quarterly." Resort to the following definitions may help in clearing up the issue:

- (1) The word "due" is only equivalent to or synonymous with "payable." [27]
- (2) The word "due" with reference to taxes implies that such taxes are then "owing, collectible or matured." [28]
- (3) "The word 'due' in one sense means that the debt or obligation to which it is applied has by contract or operation of law become immediately payable, but in another sense it denotes the existence of a simple indebtedness, without reference to the time of payment, in which it is synonymous with, 'owing, and includes all debts whether payable in praesenti or in futuro.'" [29]
- (4) "Unless context clearly indicates a contrary meaning, the phrase 'due and payable' on a specified date means the debt or obligation to which it is applicable is then immediately payable." [30]

In line with the foregoing definitions, the term "due and payable the first day of each month" was interpreted to mean that payment on any day during the month other than the first day would constitute non-compliance. [31]

In our opinion, the term "due and payable quarterly" in this case merely indicates the frequency of payment of the franchise tax, viz., every three months. It does not refer to the time limit or, in the precise language of Section 259, "the date on which they (the taxes) must be paid."

Under Section 183(a) in relation to Section 259, second paragraph, the law has opted to collect the tax within twenty days after it become due and payable, namely the last day of each quarter. The time limit or the date on which the percentage tax must be paid by the company is the twentieth day after the last day of each quarter, Section 259 grants another grace period of fifteen days from the termination of this time limit before imposing the 25% surcharge.

To say that Section 183(a) is not applicable simply because, as amended, it provides for monthly payment, while the company's charter speak of quarterly payment, is to hang so heavy a meaning on too slender a frame. Prior to its amendment by R.A. 1612 on August 24, 1956, said Section 183(a) prescribed quarterly payment of percentage taxes. [32] Accurately read, the amendment merely changed the manner or frequency of payment of the tax, whereas. Section 259 makes reference to Section 133(a) with respect to the time limit for payment of percentage taxes. The amendment does not nullify the applicability of Section 183(a) to franchises which do not set any time limit for payment although, providing for a different manner or frequency of payment. Common sense dictates that it be so. For, if the law has chosen to allow a fifteen-day grace period to taxpayers paying every month, no

cogent reason exists why the same period - if not longer - should be denied taxpayers pay every three months. The latter required more time for preparation there return covers a longer period. The tax court is correct.[33]

Really, the tax cannot be immediately demandable at the end of each calendar quarter. Reason for this is that transactions on the last day of the quarter must have to be included in the computation of the taxpayer's return for each particular quarter. It is well-nigh impossible for the taxpayer to add up his income, write down the deductions, and compute the net amount taxable as of the last working hour of the last day of the quarter, and at the same time go to the nearest revenue office, submit the quarterly return and pay the tax. This accounts 'for the fact that Section 183(a) of the National Internal Revenue Code gives the taxpayer a leeway of twenty days after the end of each quarter to-do all of these. And by Section 259, it is only upon failure to pay for fifteen days "from and after the date on which they must be paid" that, the twenty-five per centum shall be added to the amount of "taxes, charges, and percentages," on corporate franchises. Statutes are not to be so narrowly read as to beget unreasonableness.

We accordingly rule that the franchise tax "must be paid" within "twenty days after the end" of each quarter and that if such tax remains unpaid for 1 days "from and after the date on which they must be paid," then twenty-five per centum shall be added to the amount due.

No surcharge for late payment of respondent company's franchise taxes accrues.

For the reasons given -

The judgment under review is hereby **AFFIRMED** insofar as it reverses petitioner's assessment of surcharge for late payment of respondent company's franchise tax;[34] and

Said judgment is hereby **REVERSED** insofar as it exempts respondent company from the payment of deficiency income tax, in the sense that respondent company, in its capacity as fiduciary of its employees' reserve fund is hereby declared liable for the payment of individual income tax set forth in Section 56(a) in connection with Section 21 of the National Internal Revenue Code; and

Conformably to the opinion expressed herein, let the record of this case be returned to the Court of Tax Appeals with instructions to hear and determine the tax liability of the trust known as "Employees Reserve for Pensions" and/or tax refund if any, to respondent Visayan Electric Company, upon the dividends received during the years 1953 to 1958 on the investment of its employees' reserve fund or pensions, and tax payments made by reason thereof, said tax to be computed in accordance with Section 56(a) and (c) of the National Internal Revenue Code in relation to Section 21 of the same Code.

No costs.

SO ORDERED.

Concepcion, C.J, Reyes, J.B.L., Dizon, Makalintal, Zaldivar, Castro and Angeles, JJ., concur.

[1] Appeal from the decision of the Court of Tax Appeals in C.T.A. No. 1024 holding respondent taxpayer exempt from the payment of sums of P2,443.30 as deficiency income tax for the years 1953 to and P35,419.05 as 25% surcharge for late payment of its franchise for the years 1957 to 19??9.

[2] Petition below, paragraph 7.

[3] CTA held that the residence tax is a tax on real property for which the company is not exempt under Section 8 of its franchise, hereinafter reproduced, which provides that the "grantee shall pay the same taxes as are now or

may hereafter be required by law from other persons on its real estate, buildings" etc.

[4] As amended by Act 3591 of the Philippine Legislature approved November 23, 1929; emphasis supplied.

[5] Petition below, paragraph 7, p. 2.

[6] Transcript, p. 8.

[7] The Civil Code provides:

"ART. 1441. x x x Express trusts are created by the intent of the trustor or of the parties. x x x."

"ART. 1444. No particular words are required for the creation of an express trust, it being sufficient that a trust is clearly intend.

"ART. 1446. Acceptance by the beneficiary is necessary. Nevertheless, if the trust imposes no onerous condition upon the beneficiary, his acceptance shall be presumed, if there is no proof to the contrary."

See: Julio vs. Dalandan, L-19012, October 30, 1967.

The essential elements for a valid express trust are: (1) person competent to create a trust; (2) indication of intention; (3) property to which the trust may or does pertain; (4) a define and complete present disposition of that property, although to take effect in enjoyment in the future; (5) a provision, at least by implication, for the office of trustee, although the nomination of a trustee is not essential; and (6) a person capable of holding the equitable interest in property as beneficiary, although such person may be undetermined or unborn. 54 Am. Jur., p. 43.

[8] A separation of the legal and equitable title, a condition essential for validity of a trust for income tax purposes, is present where the owner of the property declares that he holds it as trustee for others, even though he does not part with possession of the trust property or the instrument creating the, trust, provided another person exists as the beneficiary. Rivera, Taxation Self-Taught, Bk. 4, 1966 ed., p. 263, citing Moraman vs. Comm. of Internal Revenue, 90 F. 2d 18, writ cert denied 302 US 70.

[9] The grantor of a trust may in general make himself the trustee of it. 54 Am. Jur., p. 101.

[10] "It is a general rule that where a valid and effective voluntary trust has been created, and no power of revocation has been reserved, it cannot be revoked by the settlor without the consent of the cestui que trust." Id., p. 79.

Parenthetically, theories other than the trust fund doctrine have been offered regarding the right of the employees embodied a pension plan of an employer to enforce payment. It is postulated that the announcement of a pension plan has a tendency to induce the employees to remain in the employment; consequently, the benefits derived by the employer in the form of reduced labor turnover, constitutes sufficient consideration to support an enforceable contract or creates a promissory estoppel. 42 A.L.R. 2d 463, 467, 470-471.

An example of the contract doctrine is in Re Wood 299 Mich 635, 1 NW2d 19 cited in 164 A.L.R. 1135 where a resolution of a board of directors providing for the payment of salaries of executive officers for one year after their death was enforced upon the theory that by remaining in the employment of the corporation the officer had accepted the offer embodied in the resolution and performed the agreement upon his part.

Instances of unsuccessful attempts to apply the trust fund doctrine are cited in 42 A.L.R. 2d 471-472. The rejection however is mainly because no assets or funds have been actually set aside or segregated, thus, there are no assets which could be considered as impressed with trust.

[11] Petition, paragraph 7, p. 2.

[12] "SEC. 59. Revocable trusts. - Where at any time the power to revest in the grantor title to any part of the corpus of the trust is vested (1) in the grantor, either alone or in conjunction with any person not having a substantial adverse interest in the disposition of such part of the corpus or the income therefrom, or (2) in any person not having a substantial adverse interest in the disposition of such part of the corpus or the income therefrom, the income of such Art of the trust shall be included in computing the net income of the grantor."

[13] SEC. 60. Income for benefit of grantor. - (a) Where any part of the income of a trust (1) is, or in the discretion of the grantor or of any person not having a substantial adverse interest in the disposition of such part of the income may be held or accumulated for future distribution to the grantor; or (2) may, in the discretion of the grantor or of any person not having a substantial adverse interest in the disposition of such part of the income, be distributed to the grantor; or (3) is, or in the discretion of the grantor or of any person not having a. substantial adverse interest in the disposition of such part of the income may be, applied to the payment of premiums upon policies of insurance on the life of the grantor; such part of the income of the trust shall be included in computing the net income of the grantor."

[14] Emphasis supplied. Par. (c) originally was par. (b).

[15] The exemption was made to apply to income received from January 1, 1957.

[16] Underscoring ours. The proviso is not without its parallel in American law. It has been said that the employee is not taxed on his share of the fund until the amounts are distribute or made available to him after retirement or at some other time. 33 Am. Jur. 2d p. 873.

[17] A portion of the explanatory note to H.B. No. 6503, now R.A. 1983 reads: "Considering that under Section 17 of the Social Security Act all contributions collected and payments of sickness employment retirement, disability and death benefits made thereunder together with the income of the pension trust are exempt from any tax, assessment, fee, or charge, it is proposed that a similar system providing for retirement, etc. benefits for employees outside the Social Security Act be exempted from income taxes." Congressional Record, House of Representatives, Vol. IV, Part 2, No. 57, p. 1858, May 3, 1957.

[18] Subsequent amendments, beginning with the 1942 amendment have substantially changed this provision by adding requirements for exemption and transferring the provision itself from the chapter on estate and trusts to the chapter on corporate distributions. Thus, the exemption, now found in Section 401, is from computation as past of the income of the employer for income tax as well as excess profits tax purposes. USCA (1967) Tit. 26, Sec. 401, pp. 334 et seq; Sec. 501 pp. 8 et seq.

[19] 161 A.L.R. Anno. p. 783.

[20] For an elaborate discussion on the subject refer to the annotation in 161 A.L.R. 774-187; see also, 164 A.L.R. 1125-1135; 26 USCA Sec. 401, pp. 350-352; Sec. 501, p. 15, in reference to the Internal Revenue Code of 1954, and noted.

[21] Printed Decision of the Court of Tax Appeals, p. 3.

[22] Esso Standard Eastern, Inc. vs. Acting Comm. of Customs, L-21841, October 28, 1966 and citations therein.

[23] Id., citing Song Kiat Chocolate Factory vs. Central Bank, 102 477, 480, and other cases.

[24] Id., citing Cooley on Taxation, 4th Ed., Vol. 2, pp. 1403-1404; Carlota Sugar Central vs. Jimenez, L-12436, May 31, 1961; Phil. Int'l. Fair, Inc. vs. Collector, L-12928 & L-12932, March 31, 1962. Resolution in the Phil. Guaranty Co., Inc. vs. Commission, L-22074, September 6, 1965.

[25] L-13203, January 28, 1961.

[26] As amended by Rep. Acts Nos. 39 and 418, approved June 18, 1949.

[27] 13-A Words and Phrases, p. 107 citing *Ball vs. Northwestern Mutual Accep. Ass'n*, 57 N.W. 1063, 1064; *Miller vs. Jones*, 290 N.W. 467, 470.

[28] *Ibid.*, p. 109, citing *Succession of Brower vs. State*, 80 So. 2d 217, 220.

[29] *Ibid.*, p. 110, citing *S. Gumbel Realty & Security Co. vs. L. Feibleman & Co.*, 164 So. 627, 629; emphasis supplied. *U.S. vs. Reis* (1954), 54-2 USTC par. 9493.

[30] *Furrow vs. C.I.R. C.A.*, July 7, 1961, 292 F. 2d 606, 61-2 Sec. 9587, emphasis supplied.

[31] *Id.*

[32] See: *Arañas' Annotations and Jurisprudence on the National Internal Revenue Code*, as amended, 1963 ed., Vol. II, p. 202.

[33] See: Printed Decision of CTA, pp. 6-8.

[34] In L-24921 (*Commissioner vs. Visayan Electric Co.*) promulgated on March 31, 1967, we ordered the execution of the judgment for the amount of P3,850 (additional residence tax for 1957, 1956 and 1959) - which is not involved in the present appeal.

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