## TRANSFER ORDER; DISMISSAL

Is a managerial employee's refusal to comply with a valid transfer order a just and sufficient cause for dismissal?

Petitioner, a foreigner married to a Filipina, had been respondent's resident manager for its Manila office for 7-1/2 years. He declined a promotion and transfer to the respondent's General Office in the United States, electing to stay as the local manager for "personal reasons and reasons involving my family". Considering his letter declining the offer to be a resignation without notice, respondent terminated his employment.

The NLRC decided that the hiring, firing, transfer, demotion and promotion of employees have been traditionally identified as management prerogatives. These are functions associated with the employer's inherent right to control and manage effectively its enterprise. The Commission likewise mentioned th. "if an employee finds himself in a situation where he believes that personal reasons cannot be sacrificed in favor of the exigency of the service, then he has no other choice but to disassociate himself from his employment". Respondent's decision to consider petitioner resigned after he defied management's order to transfer and promote him was ruled to be justified and warranted. (Helmut Dosch vs. Northwest Airlines, Inc., NLRC Case No. RB 4220 July 16, 1979)

## WORK WEEK PREMIUM

Where the CBA provided that the work week premium will be paid "for each hour of work performed in excess of 40 hours per week over a complete four-week shift cycle", an employee who worked for 56 hours during one work week is not entitled to the work week premium for the excess of 16 hours as such employee failed to complete the four-week shift cycle.

In other words, the number of hours worked in a week should never be taken independently of the total number of hours worked by the employee over a four-week shift cycle. (Philippine Petroleum Corporation Employees Association vs. Philippine Petroleum Corporation and William T. Barrett, NLRC Case No. RB-IV-18655-77, June 28, 1979)



# TAX RULINGS OF THE BIR

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## CAPITAL GAINS

Parcels of land acquired on May 7, 1939 and originally intended as factory site but were actually never developed, maintained nor utilized for any business venture due to change in plans on account of the government's prohibition to construct factories near urban areas or centers of population, and did not have further forseeable use nor particular bearing on business activities for the company which consist mainly of manufacture and sale of furniture, flour, etc., are capital assets and the gains derived from the sale of the same are capital gains. (BIR Ruling dated October 20, 1978).

Proceeds of the sale of a parcel of land owned by a religious order organized as a corporation sole are subject to capital gains tax, where said proceeds are donated to the school it operates which is organized as a separate entity under the corporation law. However, said donation is deductible in full from the gross income of the donor-religious order where (a) the donee-school is recognized by the government and (b) said donation is not for the payment or granting of any salary increase, bonus, or personal benefits to any of its school officials, faculty and personnel. (BIR Ruling dated November 14, 1978).

## EXPANDED WITHHOLDING TAX

Duly registered professional partnerships (like law firms) are not among the contemplated taxable juridical persons defined in Section 1 (b) of Rev. Reg. No. 13-78 which implements P.D. 1357. Accordingly, payments made to duly registered professional partnerships are not subject to the expanded withholding tax of 5%. (BIR Ruling dated October 20, 1978).

While tax on interest/gains on investments in bonds made by non-residents is to be withheld at source, interest/gains on investments on said bonds made by residents are not subject to withholding tax. (BIR Ruling dated June 25, 1979).

Revenue Regulations No. 8-77 implementing P.D. No. 1156 which prescribes 15% tax on interest on bank deposits provides that where a depositor is enjoying preferential income tax treatment, the withholding tax rate to be applied shall in no case exceed the tax rate applicable to said class of taxpayer or to such type of income. Consequently, since private educational institutions are obliged to pay the preferred tax rate of 10% only, the rate of tax that must be withheld from the interest income of their bank deposits shall be 10%. (BIR Ruling dated April 4, 1979).

Accumulated vacation and sick leave benefits of retiring officials and employees are not subject to the withholding tax provisions of Revenue Regulations No. 13-78 implementing P.D. No. 1357. (BIR Ruling No. 046-79, dated June 21, 1979).

While benefit payments made by the SSS under Section 16 of R.A. No. 1161 are tax exempt, benefits paid by a corporation over and above that required by the Social Security Act, as amended by P.D. 1202, are taxable income to the recipients and should thus be subjected to withholding tax. (BIR Ruling No. 045-79, dated June 21, 1979).

## STOCK TRANSACTION TAX

Stock acquired on or after November 5, 1970 is subject to stock transactions tax of 1/4 of 1% based on gross selling price thereof, pursuant to Section 210(a) of the Tax Code of 1977. However, if the stocks were acquired before November 5, 1970, the gains derived from the sale thereof are subject to income tax. (BIR Ruling dated November 15, 1978).

A Denominated Banker's Acceptance falls under the category of a commercial paper transaction and is therefore subject to the 35% transaction tax. (BIR Ruling dated March 26, 1979).



## POLITICAL SUBDIVISION SUBJECT TO TAX

Under P.D. No. 1177, otherwise known as the Budget Reform Decree of 1977, all units of government, including government-owned and controlled corporations, are subject to income tax, customs duties and other taxes and fees as are imposed under revenue laws. Hence, the income from any source of the Province of Antique which is not exempted from tax by any other law promulgated subsequent to said decree, shall be subject to tax. Accordingly, the interest earnings accruing to the bank deposits of the said province shall be subject to the 15% withholding tax imposed by Sec. 53(c) of the Tax Code of 1977, as amended P.D. No. 1156. (BIR Ruling dated February 27, 1979).

## ADVANCE SALES TAX

The terms "precious stones" and "semi-precious stones" as used in Sec. 194(a) of the Tax Code of 1977, as amended, do *not* include industrial diamonds used with drilling equipment basically by mining companies for exploration, location and blocking mineral ore bodies. Accordingly, imported industrial diamonds are subject to the advance sales tax at the rate of 10% based on landed cost thereof, plus 25% mark-up pursuant to Sec. 193(b) of the Tax Code of 1977, in relation to Sec. 199 of the same Tax Code, as amended by P.D. 1358. (BIR Ruling no. 005-79, dated March 6, 1979).

Imported articles which are to be used by the importer as raw materials in his own manufacturing business, or for sale, barter or exchange, are subject to advance sales tax with the corresponding mark up. If, however, said articles are only for personal use of the importer, the same shall be subject to compensating tax without the mark-up. The rates of tax and the corresponding mark up, where applicable, depend on the classification of the imported articles.

## COMPENSATING TAX

A non-profit foundation which is exempt from the payment of income tax pursuant to Sec. 27(e) of the Tax Code is not exempt from the payment of compensating tax because importations by non-profit institutions are not included in the enumeration of the exemptions under Sec. 204 of the Tax Code of 1977, as amended by P.D. No. 1457. (BIR Ruling No. 007-09, dated March 6, 1979).

## DONOR'S TAX

Donations by a corporation of machinery to a state college or university in line with the school's program to uplift the technical education of its students, especially in computer technology, are exempt from the payment of donor's tax. For income tax purposes, the fair market value thereof is deductible in full from the gross income of the donor pursuant to P.D. No. 1437 Sec. 3(c). (BIR Ruling No. 047-79, dated June 21, 1979).

Donations to a school incorporated as a non-stock entity which is governed by trustees who receive no compensation, which pays no dividend and which devotes all its income to the accomplishment and promotion of the purposes enumerated in its Articles of Incorporation, are exempt from donor's tax. The exemption is subject to the condition that not more than 30% of the donations shall be used by the donee for administration purposes. (BIR Ruling dated November 14, 1978).

## OVERSEAS COMMUNICATION TAX

A service contractor is not liable to 10% overseas tax on outgoing telecommunication services imposed by Sec. 290-A of the Tax Code because said contractor is exempt from the payment of all taxes except income tax under P.D. No. 87. (BIR Ruling No. 036-79, dated June 21, 1979; BIR Ruling No. 035-79 dated June 20, 1979; BIR Ruling No. 017-79 dated April 19, 1979).

Multinational companies registered under P.D. No. 218, are not among those exempt from the payment of the 10% overseas communication tax prescribed in Section 290-A of the Tax Code, as inserted by P.D. No. 1457. Accordingly, payments made by them are subject to said tax. (BIR Ruling No. 052-79, dated June 27, 1979).



## TAX ON DIVIDENDS RECEIVED BY A NON-RESIDENT FOREIGN COMPANY FROM A PHILIPPINE CORPORATION

Dividends received by a U.S. corporation from a Philippine corporation are subject to 15% withholding tax, instead of 35%, because the United States Internal Revenue Code allows the former to claim as tax credit a portion of the income tax paid by the latter equivalent to more than 20%, as required by Section 24(b) (1) (iii) of the National Internal Revenue Code of 1977. The same rate of withholding tax applies to dividends received by a Swiss corporation from a Philippine corporation because the Swiss government does not impose income tax on such dividends. (BIR Ruling dated December 18, 1978).