

REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

FORMER SECOND DIVISION

MERMAC, INC.,

Petitioner,

C.T.A. CASE NO. 7758

Members:

- versus -

CASTAÑEDA, JR., *Chairperson*
UY, and
PALANCA-ENRIQUEZ, JJ.

**COMMISSIONER OF INTERNAL
REVENUE,**

Respondent.

Promulgated:

JUN 28 2010

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DECISION

UY, J.:

Before the Court is a Petition for Review filed by Mermac, Inc. against the Commissioner of Internal Revenue, seeking the refund or issuance of tax credit certificate in the amount of **TWO MILLION TEN THOUSAND FOUR HUNDRED FIFTY TWO PESOS (P 2,010,452.00)**, representing alleged excess and unutilized creditable withholding tax for taxable year 2005.

THE FACTS

Culled from the records of this case and as stipulated by the parties in the Joint Stipulation of Facts and Issues, the facts of the case are as follows.

Petitioner Mermac, Inc. is a corporation duly organized and existing under the laws of the Republic of the Philippines, with principal place of

business at the 35th Floor, Tower One and Exchange Plaza, Ayala Triangle, Ayala Avenue, Makati City.¹ It was incorporated with the following primary purpose:

“To acquire, subscribe to, invest in and own, hold, use, assign, transfer, mortgage, pledge, exchange, or otherwise dispose of, real and personal property of every kind and description, including shares of stock, bonds, debentures, notes, evidences of indebtedness, and other securities, contracts or obligations of any corporation or association, domestic or foreign, and to pay therefor in whole or in part in cash or by exchanging therefor stocks, bonds, or other evidences of indebtedness or securities of this or any other corporation, and while the owner or holder of any such real or personal property, stocks, bonds, debentures, notes, evidences of indebtedness or other securities, contracts, or obligations, to receive, collect and dispose of the interest, dividends and income arising from such property, and to possess and exercise in respect thereof, all the rights, powers and privileges of ownership, including all voting powers on any stocks so owned without being a broker of securities or investment corporation.”²

Petitioner is a registered taxpayer of the Bureau of Internal Revenue (BIR), Large Taxpayers District Office (LTDO), with Taxpayer Identification No. 000-317-278-000.³

Respondent is the duly appointed Commissioner of the Bureau of Internal Revenue (BIR), vested with authority to carry out all the functions, duties and responsibilities of said office, including, *inter alia*, the power to decide, approve, and grant refunds or tax credits of overpaid and erroneously paid or collected internal revenue taxes. He holds office at the 5th Floor, BIR National Office Building, BIR Road, Diliman, Quezon City.⁴

¹ Joint Stipulation of Facts and Issues (JSFI), Admitted Facts Part II, Par. 1, Docket, p. 73.

² JSFI, Admitted Facts Part II, Par. 3, Docket, p. 73. Exhibit “B”, Docket, p. 209.

³ JSFI, Admitted Facts Part II, Par. 4, Docket, p. 73. Exhibit “A”, Docket, p. 206.

⁴ JSFI, Admitted Facts Part I, Par. 1, Docket, p. 72.

On April 17, 2006, petitioner filed with the BIR, through the Electronic Filing and Payment System (EFPS), its Annual Income Tax Return (or Final Adjustment Return) for taxable year 2005.⁵

On November 17, 2006, petitioner filed with the BIR LTDO its administrative claim for refund of excess creditable withholding taxes for taxable year 2005 in the amount of ₱ 1,671,632.80.⁶

On August 9, 2007, petitioner filed with the same office a letter dated August 2, 2007, amending the amount of its claim for refund to ₱ 2,010,452.00.⁷ It explained that the increase in the amount of the claim (*i.e.*, ₱ 338,819.20) represents the minimum corporate income tax for taxable year 2005 which was inadvertently credited against the total creditable withholding tax for purposes of computing the amount of overpaid creditable withholding tax.

Due to respondent's inaction on its refund claim, petitioner filed the instant Petition for Review before this Court on April 10, 2008.

Respondent filed his Answer⁸ through registered mail on May 6, 2008, alleging the following Special and Affirmative Defenses:

- "4. Granting *arguendo* that Petitioner filed a claim for refund, the same is subject to investigation by the Bureau of Internal Revenue.
5. Petitioner failed to demonstrate that the alleged tax sought for refund or tax credit has been or erroneously or illegally collected in violation of the tax laws relied upon by the petitioner.

⁵ Exhibit "D", Docket, pp. 250 to 255.

⁶ JSFI, Admitted Facts Part II, Par. 6, Docket, p. 74. Exhibit "G", Docket, pp. 265 to 266.

⁷ JSFI, Admitted Facts Part II, Par. 7, Docket, p. 74. Exhibit "H", Docket, p. 267.

⁸ Docket, pp. 42 to 45.



6. Well-settled is the rule that the interpretation placed upon a statute by executive officers, whose duty is to enforce it, is entitled to great respect by the courts. Nevertheless, such interpretation is not conclusive and will be ignored if judicially found to be erroneous. Thus, the courts will not countenance administrative issuances and rulings that override, instead of remaining consistent and in harmony with the law which they seek to apply and implement (Philippine Bank of Communications v. Commissioner of Internal Revenue, G.R No: 112024, 302 SCRA 241, January 28, 1999).
7. Taxes paid and collected are presumed to be made in accordance with the laws and regulations, hence, not creditable or refundable.
8. It is incumbent upon the Petitioner to show that it has complied with the provision of Sections 108 and 112 in relation to Section 229 of the 1997 Tax Code, as amended.
9. In an action for tax credit or refund, the burden is upon the taxpayer to prove that he is entitled thereto, and failure to discharge the said burden is fatal to the claim (Emmanuel & Zenaida Aguilar v. Commissioner, CA-GR No. Sp. 16432, March 30, 1990 cited in Aban, Law of Basic Taxation in the Philippines, 1st Edition, p. 206).
10. Claims for refund are construed strictly against the claimant, the same partake the nature of exemption from taxation (Commissioner of Internal Revenue vs. Ledesma, 31 SCRA 95) and, as such, they are looked upon with disfavor (Western Minolco Corp. vs. Commissioner of Internal Revenue, 124 SCRA 121)."

During trial, petitioner presented testimonial and documentary evidence primarily aimed at proving its supposed entitlement to the refund or issuance of a tax credit certificate in the total amount of ₱ 2,010,452.00, representing petitioner's excess and unutilized creditable withholding taxes for taxable year 2005.

When it was respondent's turn to present evidence on May 13, 2009, his counsel manifested that he is submitting the case for decision based on

the pleadings. Accordingly, the Court granted the parties thirty (30) days to file their respective memorandum, after which, this case shall be deemed submitted for decision.⁹

On July 24, 2009, petitioner filed its Memorandum. Respondent, however, failed to file his memorandum.

Hence, this Decision.

THE ISSUES

The parties jointly stipulated the following issues¹⁰ for the Court's resolution:

- "1. Whether or not petitioner's withholding tax credits for CY 2005 in the amount of ₱2,010,452.00 are duly substantiated by documentary evidence.
2. Whether or not the income from which the subject creditable income taxes were withheld were reported as part of petitioner's revenues in its Annual Income Tax Return for CY 2005.
3. Whether or not petitioner carried over and applied its excess creditable withholding taxes for CY 2005 against its income tax liability in the succeeding taxable year/s.
4. Whether or not petitioner filed its administrative and judicial claims for refund of excess creditable withholding taxes for CY 2005 within the two-year prescriptive period provided in Section 204(C) of the National Internal Revenue Code (the 'Tax Code').
5. Whether or not petitioner is entitled to its claim for refund or issuance of TCC for its excess and unutilized creditable withholding taxes for CY 2005 in the amount of ₱2,010,452.00."

The above-enumerated issues may simply be summarized as follows:

⁹ Minutes of Hearing, May 13, 2009, Docket, p. 472; Transcript of Stenographic Notes, May 13, 2009.

¹⁰ Docket, pp. 74 to 75.

"Whether or not petitioner is entitled to the refund of or issuance of tax credit certificate in the amount of ₱ 2,010,452.00, representing its alleged unutilized creditable withholding taxes for taxable year 2005, based on the evidence presented."

Petitioner's arguments

Petitioner argues that its withholding tax credits for taxable year 2005 in the amount of ₱ 2,010,452.00 are duly supported by documentary evidence; that the income upon which the creditable withholding taxes being claimed for refund was reported as part of the gross revenues declared in petitioner's Annual Income Tax Return for taxable year 2005; that petitioner did not carry over and apply its excess withholding tax credits for taxable year 2005 to the succeeding taxable year; and that petitioner's administrative and judicial claims for refund of excess and unutilized creditable withholding taxes for taxable year 2005 were filed within the two-year prescriptive period provided in Sections 204(C) and 229 of the National Internal Revenue Code (NIRC) of 1997.

THE COURT'S RULING

A perusal of petitioner's Annual Income Tax Return for taxable year 2005¹¹ shows that the excess tax credits as of December 31, 2005 in the amount of ₱ 3,555,497.98¹², which petitioner marked as "To be refunded"¹³, consisted of the balance of the prior year's (2004) excess credits in the amount of ₱ 1,545,045.98 and the creditable taxes withheld during the year (2005) in the amount of ₱ 2,010,452.00, as shown below:

¹¹ Exhibit "D", Docket, pp. 250 to 255.

¹² Exhibit "D-4", Docket, p. 251.

¹³ Exhibit "D-5", Docket, p. 251.

Minimum Corporate Income Tax	₱ 338,819.20
Less: Prior Year's Excess Credits	1,883,865.18 ¹⁴
Balance of Prior Year's Excess Credits	₱ 1,545,045.98
Add: Creditable Taxes Withheld During the Year	2,010,452.00
Excess Tax Credits	₱ 3,555,497.98

Since only the prior year's (2004) excess credits in the amount of ₱ 1,545,045.98 was carried over by petitioner in its amended Quarterly Income Tax Returns¹⁵ and Annual Income Tax Return¹⁶ for taxable year 2006, the excess tax credits for taxable year 2005 in the amount of ₱ 2,010,452.00 may be the proper subject of a claim for refund, pursuant to Section 76 of the NIRC of 1997, which reads:

"SEC. 76. *Final Adjustment Return.* - Every corporation liable to tax under Section 27 shall file a final adjustment return covering the total taxable income for the preceding calendar or fiscal year. If the sum of the quarterly tax payments made during the said taxable year is not equal to the total tax due on the entire taxable income of that year, the corporation shall either:

- (A) Pay the balance of tax still due; or
- (B) Carry-over the excess credit; or
- (C) Be credited or refunded with the excess amount paid, as the case may be.

In case the corporation is entitled to a tax credit or refund of the excess estimated quarterly income taxes paid, the excess amount shown on its final adjustment return may be carried over and credited against the estimated quarterly income tax liabilities for the taxable quarters of the succeeding taxable years. Once the option to carry-over and apply the excess quarterly income tax against income tax due for the taxable quarters of the succeeding taxable years has been made, such option shall be considered irrevocable for that taxable period and no application for cash refund or issuance of a tax credit certificate shall be allowed therefor." (*Emphasis supplied*)

¹⁴ Exhibit "C-1", Docket, p. 224.

¹⁵ Exhibits "BB-2", "CC-2", and "DD-1", Docket, 454, 457, and 459.

¹⁶ Exhibits "F", and "F-1", Docket, pp. 261 to 264.

Based on the foregoing provisions, the corporate taxpayer's excess tax credits or overpaid income tax in a given taxable year may either be carried over/applied to the succeeding taxable years or refunded (either in the form of cash or tax credit certificate). However, once the option to carry-over has been made, the same becomes irrevocable for that taxable period.

In the instant case, petitioner chose the second option, *i.e.*, the refund of the excess amount paid. In order to be entitled to a refund or issuance of tax credit certificate of excess/unapplied creditable withholding tax, petitioner must comply with the following conditions, to wit:

1. the claim is filed with the Commissioner of Internal Revenue within the two-year period from the date of the payment of the tax;
2. it is shown on the return of the recipient that the income payment received was declared as part of the gross income; and
3. the fact of withholding is established by a copy of a statement duly issued by the payor (withholding agent) to the payee, showing the amount paid and the amount of tax withheld therefrom.¹⁷

The *first* condition is pursuant to Sections 204(C) and 229 of the NIRC of 1997, *viz*:

"SEC. 204. *Authority of the Commissioner to Compromise, Abate and Refund or Credit Taxes.* — The Commissioner may –
xxx xxx xxx

(C) Credit or refund taxes erroneously or illegally received or penalties imposed without authority, refund the value of internal revenue stamps when they are returned in good condition by the purchaser, and, in his discretion, redeem or change unused stamps that have been rendered unfit for use and refund their value upon proof of destruction. **No credit or refund of taxes or penalties shall be allowed unless the taxpayer files in writing with the Commissioner a claim for credit or refund within two (2) years**

¹⁷ *Banco Filipino Savings and Mortgage Bank vs. Court of Appeals, et al.*, G.R. No. 155682, March 27, 2007.

after the payment of the tax or penalty: *Provided, however, That a return filed showing an overpayment shall be considered as a written claim for credit or refund.” (Emphasis supplied)*

“SEC. 229. *Recovery of Tax Erroneously or Illegally Collected.* — No suit or proceeding shall be maintained in any court for the recovery of any national internal revenue tax hereafter alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, or of any sum alleged to have been excessively or in any manner wrongfully collected, **until a claim for refund or credit has been duly filed with the Commissioner**; but such suit or proceeding may be maintained, whether or not such tax, penalty, or sum has been paid under protest or duress.

In any case, no such suit or proceeding shall be filed after the expiration of two (2) years from the date of payment of the tax or penalty regardless of any supervening cause that may arise after payment: *Provided, however, That the Commissioner may, even without a written claim therefor, refund or credit any tax, where on the face of the return upon which payment was made, such payment appears clearly to have been erroneously paid.” (Emphasis supplied)*

And the *second* and *third* conditions are anchored on Section 2.58.3(B) of Revenue Regulations No. (RR) 2-98¹⁸, which states:

“Sec. 2.58.3. Claim for Tax Credit or Refund
 xxx xxx xxx

(B) Claims for tax credit or refund of any creditable income tax which was deducted and withheld on income payments shall be given due course **only when it is shown that the income payment has been declared as part of the gross income and the fact of withholding is established by a copy of the withholding tax statement duly issued by the payor to the payee showing the amount paid and the amount of tax withheld therefrom.**

Proof of remittance is the responsibility of the withholding agent.” (Emphasis supplied)

¹⁸ SUBJECT: Implementing Republic Act No. 8424, “*An Act Amending The National Internal Revenue Code, as Amended*” Relative to the Withholding on Income Subject to the Expanded Withholding Tax and Final Withholding Tax, Withholding on Income Tax on Compensation, Withholding of Creditable Value-Added Tax and Other Percentage Taxes.

As for the first condition and in accordance with the Supreme Court ruling in *ACCRA Investments Corporation vs. Court of Appeals, et al.*¹⁹, petitioner has two years from the filing of the Final Adjustment Return within which to file a claim for refund of excess creditable income taxes withheld, both in the administrative and judicial levels. The present claim covers taxable year 2005 for which petitioner filed its Annual Income Tax Return on April 17, 2006²⁰. Thus, counting from such date, the administrative claim originally filed by petitioner on November 17, 2006 and the amendment thereof on August 9, 2007, as well as the Petition for Review filed on April 10, 2008, are all within the two-year prescriptive period.

As for the second condition, petitioner's Income Tax Return for 2005 disclosed a gross income in the amount of ₱ 19,538,680.00²¹ and provided a breakdown thereof.²² As testified to by Vanessa Maturana, petitioner's Financial Accountant,²³ the gross income of ₱ 19,538,680.00 consisted of the following:

Sale of goods/properties	₱ 17,680,684.00
Lease of properties	1,857,996.00
TOTAL	₱ 19,538,680.00

Maturana pointed out that the withholding tax on the sale of real property in the amount of ₱ 1,917,552.00 represents six percent (6%) of the property's fair market value amounting to ₱ 31,959,200.00²⁴, which is in accordance with Section 2.57.2(J) of RR 2-98, as amended by RR 6-01.

¹⁹ G.R. No. 96322, December 20, 1991, 204 SCRA 957.

²⁰ April 15, 2006 fell on a Saturday

²¹ Exhibit "D-1", Docket, p. 251.

²² Exhibit "D" (Section A, Schedule 1), Docket, p. 252.

²³ Exhibit "AA", 443 to 451.

²⁴ Exhibit "AA", page 5, Docket, p. 447.

Maturana further explained that petitioner actually reported the gain on sale of real property, computed as follows:²⁵

Selling price (inclusive of VAT)	₱ 20,000,000.00
Less: 10% VAT	1,818,181.82
Selling price (exclusive of VAT)	₱ 18,181,818.18
Book value as of Aug. 31, 2005	501,134.26
Gain on sale of real property	₱ 17,680,683.92

The foregoing is supported by the following documents, to wit:

1. Deed of Absolute Sale between petitioner and Spouses Nico Jose S. Nollado and Maita A. Nollado dated August 31, 2005;²⁶
2. Petitioner's Official Receipt No. 21555 dated September 1, 2005;²⁷
3. BIR Form 2550-Q Quarterly VAT Return for the third quarter of 2005;²⁸ and
4. Property, Plant and Equipment Schedule as of August 31, 2005.²⁹

Such being the case, the Court finds that petitioner has sufficiently proven that it reported in its Annual Income Tax Return for taxable year 2005 the income from sale of real property, from which the creditable tax of ₱ 1,917,552.00 was withheld. Similarly, petitioner has proven that income payments from the lease of properties, from which the ₱ 92,899.80 creditable tax was withheld,³⁰ were properly reported in its return.

Based on the foregoing circumstances, there is no doubt that petitioner complied with the first two requirements for the grant of a claim for refund of creditable withholding tax.

²⁵ Exhibit "U", Docket, p. 405.

²⁶ Exhibit "V", Docket, pp. 412 to 413.

²⁷ Exhibit "U-2", Docket, p. 407.

²⁸ Exhibit "Z".

²⁹ Exhibits "U-4" and "Y", Docket, pp. 410 to 411, and 439 to 440.

³⁰ Exhibit "M", Docket, p. 279.

However, We cannot entirely say the same as regards the third condition necessitating that proof of withholding be established by a copy of a statement **duly issued by the payor to the payee**, showing the amount paid and the amount of tax withheld therefrom.

In *Banco Filipino Savings and Mortgage Bank vs. Court of Appeals*³¹, the Supreme Court ruled that the document, which may be accepted as evidence to establish the fact of withholding, **must emanate from the payor itself, and not merely from the payee**, and must indicate the name of the payor, the income payment basis of the tax withheld, the amount of the tax withheld and the nature of the tax paid.

To prove compliance with the third condition, petitioner submitted a Summary of Creditable Withholding Tax for the year 2005,³² Certificates of Creditable Tax Withheld at Source (BIR Form No. 2307) issued by petitioner's lessee, Sonoma Services, Inc.,³³ and Withholding Tax Remittance Return (BIR Form No. 1606)³⁴ purportedly filed by petitioner relative to the above-stated sale of real property by petitioner to the Nollado Spouses, all of which reflects the total amount of ₱ 2,010,452.00, representing the creditable withholding tax that were supposedly withheld from the income payments it received in taxable year 2005 (*i.e.*, ₱ 19,538,680.00). Said total amount is summarized as follows:

Exhibit	Income Payor	Period Covered		CWT
"M-1" (BIR Form 2307)	Sonoma Services, Inc.	1/1/2005	3/31/2005	₱ 23,224.95
"M-2" (BIR Form 2307)	Sonoma Services, Inc.	4/1/2005	6/30/2005	23,224.95

³¹ G.R. No. 155682, March 27, 2007.

³² Exhibit "M", Docket, p. 279.

³³ Exhibits "M-1" to "M-4", Docket, pp. 280 to 283.

³⁴ Exhibit "M-5", Docket, p. 285.

"M-3" (BIR Form 2307)	Sonoma Services, Inc.	7/1/2005	9/30/2005	23,224.95
"M-4" (BIR Form 2307)	Sonoma Services, Inc.	10/1/2005	12/31/2005	23,224.95
"M-5" (BIR Form 1606)	Spouses Nollado	8/31/2005		1,917,552.00
TOTAL				P 2,010,451.80

Correlative to the earlier-quoted Section 2.58.3(B) of RR 2-98, regarding the withholding tax statement which establishes the fact of withholding, Section 2.58(B) of the same Regulations, as amended by RR 3-2002, specifies such document as follows:

"Sec. 2.58. RETURNS AND PAYMENT OF TAXES WITHHELD AT SOURCE.

xxx xxx xxx

(B) *Withholding tax statement for taxes withheld.*— **Every payor required to deduct and withhold taxes under these regulations shall furnish, in triplicate, each payee, whether individual or corporate, with a withholding tax statement, using the prescribed form (BIR Form No. 2307) showing the income payments made and the amount of taxes withheld therefrom, for every month of the quarter, within twenty (20) days following the close of the taxable quarter employed by the payee in filing his/its quarterly income tax return. The payor, nonetheless, should always retain a copy of duly issued BIR Form 2307. Failure to furnish the same shall be a ground for the mandatory audit of payor's income tax liabilities (including withholding tax) upon verified complaint of the payee.**

For final withholding taxes, the statement should be given to the payee on or before January 31 of the succeeding year.

Upon request of the payee, however, the payor must furnish such certificate simultaneously with the income payment."
(Emphasis supplied)

Based on the foregoing, it is crystal clear that it is BIR Form No. 2307 issued by the income payor—the duly constituted withholding agent, which establishes the fact of withholding, and no other. Thus, for purposes of

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complying with the third condition for entitlement to the instant claim for refund or credit, the only acceptable evidence is BIR Form No. 2307 to establish the fact of withholding.

Such being the case, only the income payments which are supported by BIR Form No. 2307 shall be refundable, which in this case, refer only to income payments of Sonoma Services, Inc. to petitioner in the total amount of ₱ 92,899.80.³⁵

With respect to the income payments made by the Nollado Spouses to petitioner, the supposed withholding tax appertaining thereto in the amount of ₱ 1,917,552.00 cannot be refunded, simply because it is not supported by BIR Form 2307 issued by them. The BIR Form 1606 (Withholding Tax Remittance Return)³⁶ presented by petitioner, although it indicated the name of the payor, the income payment basis of the tax withheld, the amount of tax withheld and the nature of the tax paid, does not suffice because it did not emanate from the Nollado spouses. Apparently, the said BIR Form 1606 does not appear to have come from them, as the same was filed by petitioner through its representative.

The requirement that the fact of withholding must be established by a copy of the statement emanating from the payor itself, and not merely from the payee, proceeds from the fact that the said payor is in a better position to state that the withholding of tax was in fact made, being the duly constituted withholding agent. In this connection, it must be remembered that insofar as taxable sales, exchanges or transfers of real property are concerned, **the**

³⁵ Exhibits "M-1" to "M-4", Docket, pp. 280 to 283.

³⁶ Exhibit "M-5", Docket, pp. 284 to 285

buyers (not the sellers), **whether or not engaged in trade or business**, are constituted as withholding agents.³⁷ Furthermore, Section 2.57.2(J) of RR 2-98, as amended by RR 6-2001 and RR 17-03, provides as follows:

"Sec. 2.57.2 Income Payments Subject to Creditable Withholding Tax and Rates Prescribed Thereon.— Except as herein otherwise provided, there shall be withheld a creditable income tax at the rates herein specified for each class of payee from the following items of income payments to persons residing in the Philippines:

xxx xxx xxx

(J) *Gross selling price or total amount of consideration or its equivalent paid to the seller/owner for the sale, exchange or transfer of real property classified as ordinary asset.*— A creditable withholding tax based on the gross selling price/total amount of consideration or the fair market value determined in accordance with Section 6(E) of the Code, whichever is higher, paid to the seller/owner for the sale, transfer or exchange of real property, other than capital asset, **shall be imposed upon the withholding agent/buyer**, in accordance with the following schedule:

xxx xxx xxx

C. Where the seller/transferor is not habitually engaged in the real estate business 6%

xxx xxx xxx

In any case, no Certificate Authorizing Registration (CAR)/Tax Clearance Certificate (TCL), shall be issued to the buyer unless the withholding tax due on the sale, transfer, or exchange of real property has been fully paid.

xxx xxx xxx." (*Emphasis supplied*)

While petitioner's witness Vanessa Maturana was able to elucidate why the 6% withholding tax rate was applied, by invoking the foregoing provision,³⁸ petitioner failed to explain why it was the one who filed the said BIR Form 1606, and not the Nollado Spouses. It also failed to explain why the Nollado

³⁷ Section 2.57.3, RR 2-98, as amended by RR 17-03.

³⁸ Exhibit "AA-2" (Q27 A27), Docket, p. 447.



Spouses never issued the prescribed BIR Form 2307 for their transaction, in violation of the above-quoted Section 2.58(B) of the RR 2-98, as amended by RR 3-2002, and Section 58(B) of the NIRC of 1997, to wit:

“SEC. 58. *Returns and Payment of Taxes Withheld at Source.*—

xxx xxx xxx

(B) *Statement of Income Payments Made and Taxes Withheld.*— **Every withholding agent required to deduct and withhold taxes under Section 57 shall furnish each recipient, in respect to his or its receipts during the calendar quarter or year, a written statement showing the income or other payments made by the withholding agent during such quarter or year, and the amount of the tax deducted and withheld therefrom,** simultaneously upon payment at the request of the payee, but not later than the twentieth (20th) day following the close of the quarter in the case of corporate payee, or not later than March 1 of the following year in the case of individual payee for creditable withholding taxes. For final withholding taxes, the statement should be given to the payee on or before January 31 of the succeeding year.” (*Emphasis supplied*)

Apropos, codal provisions on withholding tax are mandatory and must be complied with by the withholding agent.³⁹

Tax refunds, like tax exemptions, are construed strictly against the taxpayer and liberally in favor of the taxing authority, and the taxpayer bears the burden of establishing the factual basis of his claim for a refund.⁴⁰

WHEREFORE, premises considered, the instant Petition for Review is hereby **PARTIALLY GRANTED**. Accordingly, respondent Commissioner of Internal Revenue is hereby **ORDERED TO REFUND, OR ISSUE A TAX CREDIT CERTIFICATE** in the amount of **NINETY TWO THOUSAND EIGHT HUNDRED NINETY NINE PESOS AND EIGHTY CENTAVOS (₱ 92,899.80)**

³⁹ *Commissioner of Internal Revenue vs. Court of Appeal, et al.*, G.R. No. 108576, January 20, 1999.

⁴⁰ *PLDT vs. Commissioner of Internal Revenue*, G.R. No. 157264, January 31, 2008.



in favor of petitioner, representing petitioner's excess and unutilized creditable withholding tax for taxable year 2005.

SO ORDERED.


ERLINDA P. UY
Associate Justice

WE CONCUR:


JUANITO C. CASTAÑEDA, JR.
Associate Justice


OLGA PALANCA-ENRIQUEZ
Associate Justice

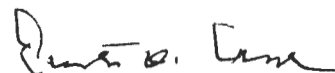
ATTESTATION

I attest that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.


JUANITO C. CASTAÑEDA, JR.
Associate Justice
Chairperson

CERTIFICATION

I hereby certify that the decision was reached after due consultation with the members of the division of the Court of Tax Appeals in accordance with Section 13, Article VIII of the Constitution.


ERNESTO D. ACOSTA
Presiding Justice