

REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

SECOND DIVISION

PHILAM FINANCIAL ADVISORY
SERVICES, INC.,

Petitioner,

- versus -

COMMISSIONER OF INTERNAL
REVENUE,

Respondent.

C.T.A. CASE NO. 7765

Members:

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

Promulgated:

JAN 08 2010

✓ 4:06 p.m.

X-----X

DECISION

UY, J.:

Before the Court is a Petition for Review involving a claim for refund in the amount of **Three Million Two Hundred Eighty Eight Thousand One Hundred Forty Five Pesos and Fifty Nine Centavos** (₱ 3,288,145.59), allegedly representing excess/unutilized creditable withholding taxes of petitioner, Philam Financial Advisory Services, Inc., for taxable year 2005.

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THE FACTS

Petitioner, Philam Financial Advisory Services, Inc. (formerly, Seguros Oriente Services, Inc.)¹ is a corporation duly organized and existing under and by virtue of the laws of the Philippines, with principal office at the 18th Floor, Robinson's Summit Center, Ayala Avenue, Makati City.² Its primary purpose is to act as agent for insurance companies in soliciting and receiving application for life, fire, marine, accident, industrial, health, aviation, liability, workmen's compensation, casualty, plate glass, steam boiler, elevator, burglary, rent, credit, indemnity, earthquake, typhoon, automobile, fidelity and all other kinds of insurance, to collect premiums and to do such other business as may be delegated to agents by such companies.³ Based on its original Articles of Incorporation, the term for which petitioner is to exist is fifty (50) years from and after the date of issuance of the certificate of incorporation.⁴

On the other hand, respondent is the Commissioner of Internal Revenue, duly appointed and empowered to perform the duties of his office, including among others, the duty to act and approve claims for refund or tax credit as provided by law, with office at the Bureau of Internal Revenue (BIR) National Office Building, Diliman, Quezon City.⁵

¹ Exhibits "A" and "B", Docket, pp. 195 to 228.

² Par. 2, Joint Stipulation of Facts and Issues (JSFI), Docket, p. 133.

³ Exhibit "B-2", Docket, p. 217.

⁴ Articles of Incorporation of Seguros Oriente Services, Inc., Fourth provision, Exhibit "A", Docket, pp. 195-213, at p. 199.

⁵ Par. 1, JSFI, Docket, p. 133.



On April 17, 2006, petitioner filed its final adjustment return (BIR Form No. 1702-Annual Income Tax Return) for taxable year 2005, indicating therein, *inter alia*: (i) under item number 21 (*Taxable Income*) and box number 21B, a net loss in the amount of ₱ 29,425,675.00, and (ii) under item and box number 31 [*Total Amount Payable/(Overpayment)*], a tax overpayment in the total amount of ₱ 4,526,666.00, which it initially intended to be carried over to the following quarter/year by marking the box corresponding to the option "*To be carried over as tax credit next year/quarter*" with an "x" mark.⁶

Out of the said total amount of ₱ 4,526,666.00 representing the "*Tax Credits/Payment*", the amount of ₱ 3,269,579.00 corresponds to the Creditable Tax Withheld for the said period, computed as follows:⁷

Creditable Tax Withheld for the First Three Quarters	₱ 2,492,147.00
Creditable Tax Withheld Per BIR Form No. 2307 for the Fourth Quarter	777,432.00
Total	<u>₱ 3,269,579.00</u>

On February 5, 2007, meetings of petitioner's shareholders and Board of Directors were held. In the said meetings, with the unanimous vote of said shareholders representing more than two-thirds (2/3) of the outstanding capital stock of petitioner, and the majority vote of all the members of said Board, an amendment of the Articles of Incorporation of petitioner was effected to shorten its corporate term until March 31, 2008.⁸

On April 11, 2007, however, petitioner amended its final adjustment return for taxable year 2005 by no longer reflecting the said amount of ₱ 4,526,666.00 and the

⁶ Exhibit "D", Docket, pp. 251 to 253.

⁷ Exhibits "D", "D-5", and "D-6", Docket, p. 251.

⁸ Exhibit "B", Docket, p. 225 to 226. Exhibit "B-3", Docket, p. 220.



details thereof, and then marking the box corresponding to the option “*To be refunded*” with a check (“√”) mark. However, notwithstanding said marking, it is noteworthy that item and box 31 shows no amount of income tax overpayment or refundable amount.⁹

On April 16, 2007, petitioner filed its final adjustment return for taxable year 2006.¹⁰ In this return, item and box number 31 (*Prior Year’s Excess Credits other than MCIT*) was left blank by petitioner.¹¹

On March 31, 2008, petitioner’s corporate existence expired.¹²

On April 11, 2008, petitioner filed an administrative claim for refund of its excess/unutilized creditable withholding taxes for taxable year 2005 with the BIR Revenue District Office No. 50 in the amount of ₱ 3,288,145.59.¹³

Due to the inaction by respondent on said claim for refund, petitioner elevated the matter to this Court by way of the instant Petition for Review on April 15, 2008.¹⁴ In the said pleading, petitioner alleged that due to its loss position since taxable year 2002, it could not utilize its creditable withholding taxes for taxable year 2005, broken down as follows:

<u>Quarter</u>	<u>Amount</u>
1 st Quarter	₱ 631,452.25
2 nd Quarter	659,842.22
3 rd Quarter	1,333,750.38
4 th Quarter	663,100.74
Total	<u>₱ 3,288,145.59</u>

⁹ Exhibit “E”, Docket, p. 280.

¹⁰ Exhibit “G”, Docket, p. 327.

¹¹ Exhibit “G-4”, Docket, p. 327.

¹² Par. 2, JSFI, Docket, p. 133.

¹³ Par. 3, JSFI, Docket, p. 134. Exhibit “I”, Docket, pp. 358-361.

¹⁴ Docket, pp. 1 to 5.



Such being the case, petitioner alleged that it could not utilize and did not carry-over said creditable withholding taxes to the succeeding taxable year 2006.

In his Answer¹⁵ filed on May 26, 2008, respondent interposes the following Special and Affirmative Defenses, to wit:

“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.

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 that 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)

¹⁵ Docket, pp. 112 to 115.



and, as such, they are looked upon with disfavor (Western Minolco Corp. vs. Commissioner of Internal Revenue, 124 SCRA 121)."

The parties filed their Joint Stipulation of Facts and Issues¹⁶ on July 29, 2008, which the Court approved in its Resolution dated July 31, 2008.¹⁷

During trial, petitioner presented oral and documentary evidence and afterwhich, correspondingly filed its Formal Offer of Exhibits on November 17, 2008.¹⁸ The Court admitted petitioner's documentary exhibits in the Resolution dated February 2, 2009.¹⁹ During respondent's turn to present evidence on March 18, 2009, counsel for respondent manifested that he is constrained to submit the case for decision without presenting any evidence. The Court directed the parties to file their respective memorandum within thirty (30) days from said date.²⁰

Petitioner filed its Memorandum on May 13, 2009,²¹ while respondent filed his Memorandum on May 14, 2009.²² Thus, this case was deemed submitted for decision in a Resolution dated May 15, 2009.²³

Hence, this Decision.

STATEMENT OF ISSUES

The issues as stipulated by the parties are as follows:

"Whether or not Petitioner is entitled to the tax credit/refund of its excess/unutilized creditable withholding taxes amounting to P3,288,145.59 under Section 204 in relation to Sections 229 and 76 of the National Internal Revenue Code (NIRC), as amended"

¹⁶ Docket, pp. 133 to 134.

¹⁷ Docket, p. 136.

¹⁸ Docket, pp. 179 to 413.

¹⁹ Docket, pp. 415 to 416.

²⁰ Docket, p. 421.

²¹ Docket, pp. 425 to 433.

²² Docket, pp. 435 to 439.

²³ Docket, p. 434.

“ Whether or not Petitioner’s claim for refund/tax credit certificate of its alleged excess/unutilized creditable withholding tax for taxable year 2005 is fully substantiated by documentary evidence.”²⁴

We consolidate the foregoing issues into a single issue, to wit:

“Whether or not petitioner is entitled to a refund of its alleged excess or unutilized creditable withholding taxes for taxable year 2005, in the amount of ₱ 3,288,145.59 pursuant to Section 204 of the National Internal Revenue Code (NIRC), as amended, in relation to Sections 76 and 229 of the same Code.”

Petitioner’s Arguments:

Petitioner contends that it is entitled to the tax credit/refund of its excess/unutilized creditable withholding taxes amounting to ₱ 3,288,145.59 under Section 204 in relation to Sections 229 and 76 of the National Internal Revenue Code (NIRC) of 1997.

It submits that the Supreme Court has consistently laid down the rule that an application for refund shall be granted as long as the following requisites have been complied with – (a) the claim for refund was filed within two years as prescribed under the NIRC; (b) the income upon which the taxes were withheld were included in the return of the recipient; and (c) the fact of withholding is established by a statement duly issued by the payor (withholding agent) to the payee showing the amount paid and the amount of tax withheld therefrom. All these requisites, according to petitioner have been duly complied with, thus entitling it to the refund prayed for in the instant petition.



²⁴ JSFI, Docket, p. 134.

Respondent's Counter-Arguments:

Respondent submits that the applicable tax provision in this case, is Section 76 of the NIRC of 1997, as implemented by Section 2.58.3 (c) of Revenue Regulation No. 2-98. Section 76 gives the corporation three (3) options as regards its excess quarterly income tax payments/creditable withholding taxes, namely: (a) to be refunded; (b) to be issued a tax credit certificate; and (c) to carry-over as excess to the succeeding taxable quarters/years.

Section 76 is allegedly explicit. Once the option to carry over has been chosen, the same becomes irrevocable for that taxable period and an application for cash refund or issuance of tax credit certificate shall no longer be allowed.

The present claim in the amount of ₱ 3,288,145.59 covers excess creditable withholding taxes for taxable year 2005. A close scrutiny of petitioner's income tax return for year 2005 shows that petitioner has an overpayment of ₱ 4,526,666.00 to be carried over as tax credit for the following 2006 taxable year; that in its Quarterly Income Return and other exhibits petitioner allegedly failed to mark the option box that will indicate its intention that the taxes withheld are to be refunded for succeeding taxable years 2006 and that such omission is allegedly fatal to the claim for refund of withholding taxes.

Moreover, respondent asserts that the instant claim for refund was based on taxable year 2005, hence, petitioner had until April 15, 2007 to file the instant petition for review. Based on the records, the herein petition was filed on April 15, 2008 way beyond the two (2) year prescriptive period. Thus, the instant petition for review should be denied for lack of merit.



THE COURT'S RULING

Conditions for the grant of a claim for refund of creditable withholding tax

In *Banco Filipino Savings and Mortgage Bank vs. Court of Appeals, et al.*²⁵, the Supreme Court ruled that there are three (3) conditions for the grant of a claim for refund of creditable withholding income tax, to wit: 1) the claim is filed with the Commissioner of Internal Revenue within the two-year period from the date of payment of the tax;²⁶ 2) it is shown on the return of the recipient that the income payment received was declared as part of the gross income;²⁷ and, 3) the fact of withholding is established by a copy of a statement duly issued by the payor to the payee showing the amount paid and the amount of the tax withheld therefrom.

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 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*)

²⁵ G.R. No. 155682, March 27, 2007.

²⁶ Jose C. Vitug and Ernesto D. Acosta, Tax Law and Jurisprudence, 329 (2006), citing *Gibb v. Collector*, 107 Phil. 230 (1960).

²⁷ *Calamba Steel Center, Inc. v. Commissioner on Internal Revenue*, G.R. No. 151857, April 28, 2005, 457 SCRA 482.

“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*)

The *second* and *third* conditions are anchored on Section 2.58.3(B) of Revenue Regulations No. 2-98²⁸, 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.**” (*Emphasis supplied*)

Petitioner has complied with the *first* and *third* conditions.

Anent the *first* condition, the Supreme Court has ruled that, at the earliest, the two-year prescriptive period for claiming a refund commences to run on the date of

²⁸ 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.

the filing of the final adjustment return,²⁹ and that such period consisted of twenty-four (24) months from such date.³⁰ Hence, since petitioner filed its final adjustment return for taxable year 2005 on April 17, 2006, it had until April 18, 2008 to file an administrative claim for refund, assuming that it has the right to do so.

Records show that petitioner filed said claim on April 11, 2008. Thus, the same claim was made within the reglementary period. Parenthetically, it must be pointed out that the judicial claim was also timely made within the same period, *i.e.*, on April 15, 2008.

As regards the *third* condition, the fact of withholding was established by the submission of copies of withholding tax statements³¹ (BIR Form No. 2307) issued by the respective payors to petitioner showing the amount paid and the amount of the tax withheld therefrom, summarized as follows:

<u>Exhibit</u>	<u>Quarter and Year</u>	<u>Amount of income</u>	<u>Amount of Tax Withheld</u>
"K"	1 st Quarter 2005	2,667,335.32	364,099.48
"O"		469,694.63	46,969.47
"S"		1,356,140.39	203,421.07
"W"		61,844.04	6,184.41
"AA"		71,852.15	10,777.82
"L"	2 nd Quarter 2005	3,484,035.56	522,604.24
"P"		395,736.34	39,573.64
"T"		435,505.61	65,325.84
"X"		83,493.57	8,576.73
"BB"		158,411.82	23,761.77
"M"	3 rd Quarter 2005	6,892,991.33	1,087,841.82
"Q"		675,570.01	67,557.00
"U"		920,969.85	138,145.49
"Y"		88,838.41	8,883.87
"CC"		208,814.65	31,322.20

²⁹ *ACCRA Investments Corp. vs. Court of Appeals, et al.*, G.R. No. 96322, December 20, 1991.

³⁰ *Commissioner of Internal Revenue vs. Primetown Property Group, Inc.*, G.R. No. 162155, August 28, 2007.

³¹ Exhibits "K" to "DD", Docket, pp. 363 to 382.

"N"	4 th Quarter 2005	3,511,339.99	526,700.29
"R"		367,736.80	36,773.68
"V"		548,673.20	82,300.98
"Z"		24,152.89	2,415.19
"DD"		99,404.00	14,910.60

As for the *second* condition, *i.e.*, that there must be a showing **on the return** of the petitioner that the income payment subjected to withholding tax was declared as part of the gross income, petitioner failed to convince Us that it has complied therewith.

In proving that it reported the income from which the subject creditable taxes were withheld as part of its gross income, petitioner points to (1) its audited financial statements for taxable year 2005, and (2) the testimony of its witness.³² According to petitioner, Note 13(c) of the said financial statements provides as follows:

"c. The Company's revenues are derived from services rendered to its affiliates. Commissions and related outstanding receivables are as follows:

	Commissions		Receivables	
	2005	2004	2005	2004
Philamlife	₱ 16,974,793	₱ 5,429,241	₱ 1,434,883	₱ 878,054
Philam Plans, Inc. (PPI)	3,262,518	3,513,713	621,384	1,094,602
Philam Asset Management, Inc. (PAMI)	1,992,440	1,459,260	91,547	135,371
Philam Insurance Company, Inc. (PICI)	521,541	202,759	27,693	19,403
PhilamCare Health Systems, Inc. (PHSI)	329,145	77,864	44,609	29,410
	₱ 23,080,437	₱ 10,682,837	₱ 2,220,116	₱ 2,156,840

The Company is related to PPI, PAMI, PICI and PHSI through Philamlife, which exercises control or significant influence over these entities";

³² Pars. 3.5 to 3.6, Petitioner's Memorandum, Docket, pp. 429 to 430.

while petitioner's witness, Ms. Rizza Blanco-Latorre, testified³³ to this effect:

"Q22: How much was Petitioner's taxable income for CY 2005?

A22: Petitioner's taxable income for CY 2005 was (P29,425,675).

Q23: Can you please explain how this figure was arrived at?

A23: Petitioner generated sales/revenues from commissions amounting to P 23,080,438. After considering cost of sales/services amounting to P 40,792,192 and deductions of P 12,400,120, Petitioner's income of (P29,425,675) was arrived at.

Q24: I am showing to you item no. 1 of the income tax return which indicates the amount P23,080,438 and item 20 which indicates taxable income amounting to (P29,452,675), which for the record were pre-marked as Exhibits 'D-3' and 'D-4,' respectively, are these the amounts reflecting the sales/revenues and the taxable income respectively of Petitioner for CY 2005?

A24: Yes.

Q25: What is the nature of the P23,080,438 sales/revenues generated by Petitioner?

A25: These are in the nature of commissions/service fees for services rendered to its affiliates, namely, Philamlife, Philam Plans, Inc., Philam Asset Management, Inc., Philam Insurance Company, Inc. and PhilamCare Health Systems, Inc.

Q26: Were the commissions/service fees subject to withholding tax?

A26: Yes.

Q27: What is the rate of withholding tax due on such commissions?

A27: These are subject to the 10% to 15% expanded withholding tax due on commissions of insurance agents/insurance adjusters.

Q28: Did Petitioner's clients withhold the tax on the commissions/revenue paid to Petitioner?

A28: Yes.

Q29: How much were the total taxes withheld by Petitioner's clients?

A29: Based on the summary which was filed with PFASI's corporate annual income tax return for CY 2005, Petitioner's clients, specifically, Philamlife, PAMI, PPI, Philamcare and Philam Insurance withheld a total amount of P3,288,145.59." (*Emphasis supplied*)

³³ Exhibit "GG", Docket, pp. 401 to 413.

However, an examination of the original and amended final adjustment return of petitioner for taxable year 2005, particularly on Schedule 1 thereof or the “*Schedule of Sales/Revenues/Receipts/Fees*”,³⁴ would reveal that the Sales / Revenues / Receipts / Fees in the amount of ₱ 23,080,438.00 have no entry on the “*Creditable Tax Withheld*” corresponding therefor. In other words, said return is to the effect that the gross income reported therein were not subjected to creditable withholding tax.

This discrepancy, between the said testimony of Ms. Blanco-Latorre and the absence of an entry in the said Schedule 1 of both the original and amended final adjustment return of petitioner for taxable year 2005, is significant because it affects the integrity of petitioner's claim.

And as between the said testimony and petitioner's return, the latter is superior, not only because the grant of a refund is founded on the assumption that the tax return is valid, *i.e.*, the facts stated therein are true and correct, but also because, as a rule, testimonial evidence cannot prevail over documentary evidence.³⁵

In the same vein, We also noted another discrepancy, pertaining to the amount of the refund being claimed supposedly representing the total amount of creditable tax withheld for taxable year 2005. In petitioner's final adjustment return for said taxable year filed on April 17, 2005, the total amount of creditable tax

³⁴ Exhibits “D” and “E”, Docket, pp. 252 and 281.

³⁵ *Romago Electric Co., Inc. vs. Court of Appeals, et al.*, G.R. No. 125947, June 8, 2000, citing *Ereñeta vs. Bezore, et al.*, No. L-29746, November 26, 1973, and *Soriano vs. Compañía General de Tabacos de Filipinas*, No. L-17392, December 17, 1966.

withheld for the four quarters is ₱ 3,269,579.00;³⁶ while in this petition, the amount of the claim for the same quarters is ₱ 3,288,145.59.³⁷ On this score, petitioner offers no explanation.

As cases filed before this Court are litigated *de novo*, party-litigants should prove every minute aspect of their cases.³⁸ Thus, there should be no room for inconsistencies, especially on the part of claimant, who has the burden of proof to establish the factual basis of its claim for tax refund.

Irrevocability rule under Section 76 of the NIRC of 1997; Securing a certificate of tax clearance from the Bureau of Internal Revenue upon dissolution

The above finding that petitioner failed to comply with one of the above-stated conditions for the grant of a claim for refund of creditable withholding income tax is sufficient to deny the instant Petition for Review.

However, even if We assume that petitioner has complied with all of the said conditions, it still failed to hurdle the other requirements of the law.

Section 76 of the NIRC of 1997 provides as follows:

“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

³⁶ Exhibits “D”, “D-5”, and “D-6”, Docket, p. 251.

³⁷ Par. 6, Petition for Review, Docket, p. 2; Exhibit “I”, Docket, p. 359; and Par. 2.5, Petitioner’s Memorandum, Docket, p. 426.

³⁸ *Dizon vs. Court of Tax Appeals, et al.*, G.R. No. 140944, April 30, 2008; *Atlas Consolidated Mining and Development Corporation vs. Commissioner of Internal Revenue*, G.R. No. 145526, March 16, 2007; and *Commissioner of Internal Revenue vs. Manila Mining Corporation*, G.R. No. 153204, August 31, 2005.

- (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*)

As clearly seen from this provision, the taxpayer is allowed three (3) options if the sum of its quarterly tax payments made during the taxable year is not equal to the total tax due for that year: (a) pay the balance of the tax still due; (b) carry-over the excess credit; or (c) be credited or refunded the amount paid. If the taxpayer has paid excess quarterly income taxes, it may be entitled to a tax credit or refund as shown in its final adjustment return which may be carried over and applied against the estimated quarterly income tax liabilities for the taxable quarters of the succeeding taxable years.

However, once the taxpayer has exercised the option to carry-over and to apply the excess quarterly income tax against income tax due for the taxable quarters of the succeeding taxable years, such option is irrevocable for that taxable period and no application for cash refund or issuance of a tax credit certificate shall be allowed.³⁹ This is known as the *irrevocability rule* on income tax credits under the NIRC of 1997.

³⁹ *Paseo Realty & Development Corporation vs. Court of Appeals, et al.*, G.R. No. 119286, October 13, 2004.

The evident intent of the legislature, in adding the last sentence to the above-quoted Section 76 of the NIRC of 1997, is to keep the taxpayer from flip-flopping on its options, and avoid confusion and complication as regards said taxpayer's excess tax credit.⁴⁰

The rule also prevents a taxpayer from claiming twice the excess quarterly taxes paid: (1) as automatic credit against taxes for the taxable quarters of the succeeding years for which no tax credit certificate has been issued, and (2) as a tax credit either for which a tax credit certificate will be issued or which will be claimed for cash refund.⁴¹

The controlling factor for the operation of the *irrevocability rule* is that the taxpayer chose an option; and once it had already done so, it could no longer make another one. Consequently, after the taxpayer opts to carry-over its excess tax credit to the following taxable period, the question of whether or not it actually gets to apply said tax credit is irrelevant.⁴²

Thus, considering that petitioner chose the option to carry over the amount of ₱ 4,526,666.00, as indicated in its final adjustment return for taxable year 2005 filed on April 17, 2006, the subsequent amendment thereof by not reflecting said amount and marking the box corresponding to the option "*To be refunded*" with a check mark ("√"),⁴³ and by leaving blank item no. 28A ("*Prior Year's Excess Credits other than*

⁴⁰ *Commissioner of Internal Revenue vs. Bank of the Philippine Islands*, G.R. No. 178490, July 7, 2009.

⁴¹ *Systra Phils., Inc. vs. Commissioner of Internal Revenue*, G.R. No. 176290, September 21, 2007.

⁴² *Commissioner of Internal Revenue vs. Bank of the Philippine Islands*, G.R. No. 178490, July 7, 2009.

⁴³ Exhibit "E", Docket, p. 280.

MCIT”) of petitioner’s final adjustment returns for the following taxable years 2006 and 2007⁴⁴, respectively, are of no moment.

And even if We assume, for the sake of argument, that said amendment of petitioner’s final adjustment return for taxable year 2005 has the effect of taking it away from the coverage of the *irrevocability rule*, still, We cannot give it any significance because it does not show any amount of income tax overpayment that is to be refunded by petitioner.⁴⁵

Nevertheless, it must be said that where the corporation **permanently ceases its operation** before full utilization of the tax credits it opted to carry over, it may then be allowed to claim the refund of the remaining tax credits. In such a case, the remaining tax credits can no longer be carried over and the *irrevocability rule* ceases to apply. *Cessante ratione legis, cessat ipse lex*.⁴⁶

Considering that the corporate existence of petitioner expired on March 31, 2008,⁴⁷ it must have shown during trial that it has indeed ceased its operations in order to exclude it from the application of the *irrevocability rule*. Unfortunately for petitioner, it failed to do so.

Pertinent provisions of Corporation Code of the Philippines⁴⁸ provide as follows:

“Sec. 120. *Dissolution by shortening corporate term.*— A voluntary dissolution may be effected by amending the articles of incorporation to shorten the corporate term pursuant to the provisions of this Code. A copy of the amended articles of incorporation shall be submitted to the Securities and

⁴⁴ Exhibits “G-4” and H, Docket, pp. 327 and 354.

⁴⁵ Refer to Exhibit “E”, Docket, p. 280.

⁴⁶ Footnote no. 23, *Systra Phils., Inc. vs. Commissioner of Internal Revenue*, G.R. No. 176290, September 21, 2007.

⁴⁷ Par. 2, JSFI, Docket, p. 133. Exhibit “B-3”, Docket, p. 220.

⁴⁸ Batas Pambansa Bilang 68.



Exchange Commission in accordance with this Code. Upon approval of the amended articles of incorporation of the expiration of the shortened term, as the case may be, the corporation shall be deemed dissolved without any further proceedings, **subject to the provisions of this Code on liquidation.**" (*Emphasis supplied*)

"Sec. 122. *Corporate liquidation.*— **Every corporation whose charter expire by its own limitation** or is annulled by forfeiture or otherwise, or whose corporate existence for other purposes is terminated in any other manner, shall nevertheless be continued as a body corporate for three (3) years after the time when it would have been so dissolved, for the purpose of prosecuting and defending suits by or against it and **enabling it to settle and close its affairs**, to dispose of and convey its property and to distribute its assets, but not for the purpose of continuing the business for which it was established.

At any time during said three (3) years, the corporation is authorized and empowered to convey all of its property to trustees for the benefit of stockholders, members, creditors, and other persons in interest. From and after any such conveyance by the corporation of its property in trust for the benefit of its stockholders, members, creditors and others in interest, all interest which the corporation had in the property terminates, the legal interest vests in the trustee, and the beneficial interest in the stockholders, members, creditors or other persons in interest.

Upon the winding up of the corporate affairs, any asset distributable to any creditor or stockholder or member who is unknown or cannot be found shall be escheated to the city or municipality where such assets are located.

Except by decrease of capital stock and as otherwise allowed by this Code, no corporation shall distribute any of its assets or property **except upon lawful dissolution and after payment of all its debts and liabilities.**" (*Emphases supplied*)

In relation to the foregoing provisions, the NIRC of 1997 requires that corporations contemplating dissolution must notify the Commissioner of Internal Revenue and shall not be dissolved until cleared of any tax liability.⁴⁹

While it may be considered that petitioner was able to notify respondent of the expiration of its corporate term on March 31, 2008,⁵⁰ there is no indication that it has

⁴⁹ Section 235(e), NIRC of 1997.

been already cleared of, and/or has settled, any of its tax liability as it failed to present or offer a certificate of tax clearance. Thus, We cannot consider petitioner as already dissolved or has permanently ceased its operations to remove it from the application of the *irrevocability rule* under Section 76 of the NIRC of 1997. Especially so that the winding up period has not terminated.

Section 52(C) of the NIRC of 1997 provides as follows:

“SEC. 52. *Corporation Returns.*—

xxx xxx xxx

(C) *Return of Corporation Contemplating Dissolution or Reorganization.* — Every corporation shall, within thirty (30) days after the adoption by the corporation of a resolution or plan for its dissolution, or for the liquidation of the whole or any part of its capital stock, including a corporation which has been notified of possible involuntary dissolution by the Securities and Exchange Commission, or for its reorganization, render a correct return to the Commissioner, verified under oath, setting forth the terms of such resolution or plan and such other information as the Secretary of Finance, upon recommendation of the Commissioner, shall, by rules and regulations, prescribe.

The dissolving or reorganizing corporation shall, prior to the issuance by the Securities and Exchange Commission of the Certificate of Dissolution or Reorganization, as may be defined by rules and regulations prescribed by the Secretary of Finance, upon recommendation of the Commissioner, secure a certificate of tax clearance from the Bureau of Internal Revenue which certificate shall be submitted to the Securities and Exchange Commission.” (*Emphasis supplied*)

In this connection, Section 3 of BIR-SEC Regulations No. 1 states that the Securities and Exchange Commission (SEC) “*shall issue the final order of dissolution only after a certificate of tax clearance has been submitted by the dissolving corporation*”.

⁵⁰ Exhibits “EE” and “FF”, Docket, pp. 383 to 384.



Thus, the law and said Regulations make a certificate of tax clearance a prior requirement before the SEC could approve the dissolution of a corporation.⁵¹ Corollarily, the Bureau of Internal Revenue (BIR) can only issue a certificate of tax clearance when the corporate taxpayer had completely paid off its tax liabilities.⁵² This must be so because a certificate of tax clearance attests that the taxpayer no longer has any outstanding tax obligations to the Government.⁵³

Apparently, securing a tax clearance from the BIR is a device to ensure that no corporation escapes taxes and liabilities merely through dissolution. Absent a certificate of tax clearance, We cannot ascertain if indeed petitioner has paid all its tax liabilities, nor can We accordingly conclude that it is already dissolved or has permanently ceased operations.

Since an action for a tax refund partakes of the nature of an exemption, it is strictly construed against the claimant who must discharge such burden convincingly.⁵⁴

WHEREFORE, the instant Petition for Review is hereby **DENIED**.

SO ORDERED.


ERLINDA P. UY
Associate Justice

WE CONCUR:


JUANITO C. CASTAÑEDA, JR.
Associate Justice


OLGA PALANCA-ENRIQUEZ
Associate Justice

⁵¹ *In Re: Petition for Assistance in the Liquidation of the Rural Bank of Bokod (Benguet), Inc., Philippine Deposit Insurance Corporation vs. Bureau of Internal Revenue*, G.R. No. 158261, December 18, 2006.

⁵² *Id.*

⁵³ *Id.*

⁵⁴ *Commissioner of Internal Revenue vs. Acesite (Phils.) Hotel Corp.*, G.R. No. 147295, February 16, 2007.

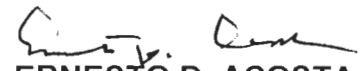
ATTESTATION

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