

**REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY**

SPECIAL FIRST DIVISION

**PACIFIC EAST ASIA CARGO AIRLINES,
INC. and PETRON CORPORATION,**
Petitioners,

C.T.A. CASE NO. 7716

Members:

- versus -

**ACOSTA, Chairperson
BAUTISTA, and
CASANOVA, JJ.**

**COMMISSIONER OF INTERNAL
REVENUE,**

Respondent.

Promulgated:

APR 29 2010 3:46 pm

x ----- x

DECISION

BAUTISTA, J.:

This is a Petition for Review filed by petitioners Pacific East Asia Cargo Airlines, Inc. ("PEAC" for brevity) and Petron Corporation ("Petron" for brevity) to seek the refund or tax credit of excise taxes on Jet A-1 aviation turbo jet fuel they allegedly erroneously paid to respondent Bureau of Internal Revenue in the total amount of P6,705,695.55, arising from the sale of Jet A-1 fuel by petitioner Petron to petitioner PEAC for the period covering January 5, 2006 to July 7, 2006.

Petitioner PEAC is a corporation organized and existing under Philippine laws, with principal office at the 2nd Floor International Cargo Terminal Building,

NAIA Complex, Pasay City.¹ It is engaged in the business of international aircraft carriage.

Petitioner Petron is a corporation organized and existing under Philippine laws, with principal office at Petron Megaplaza Building, 358 Sen. Gil Puyat Ave., Makati City.² It is engaged in the manufacture and sale of petroleum products.

Respondent, on the other hand, is the duly appointed Commissioner of the Bureau of Internal Revenue (BIR) empowered to perform the duties of said office including, among others, the power to decide, approve, and grant refunds or tax credits of erroneously or excessively paid taxes. He holds office at the BIR National Office Building, BIR Road, Diliman, Quezon City.

Petitioner PEAC has international cargo flights from Laoag City to Taipei and Pudong, Shanghai. In connection with the said flights, it purchased Jet A-1 fuel³ solely from petitioner Petron in Laoag, which was sourced from Pandacan, Metro Manila. The excise taxes for said fuels withdrawn from Petron Pandacan for delivery to Petron Laoag were paid by petitioner Petron, together with the excise taxes for other petroleum products withdrawn on that particular day.

From January 5, 2006 to July 7, 2006, petitioner Petron sold and delivered to petitioner PEAC 1,827,165 liters of Jet A-1 fuel.

Pursuant to Section 130(A)(2) of the National Internal Revenue Code (NIRC) of 1997, petitioner Petron paid to respondent excise taxes in the amount of P6,705,695.55 for the Jet A-1 petroleum products it sold to petitioner PEAC.

On August 9, 2007, petitioner PEAC filed a written claim for refund of the amount of P10,842,075.48 with the BIR Revenue District Office (RDO) No. 51.

¹ Par. 2, Stipulation of Facts, Joint Stipulation of Facts and Issues, (JSFI), docket, p. 829

² Par. 3, Stipulation of Facts, JSFI, docket, p. 829

³ A kind of aviation turbo jet fuel and a petroleum product



The said amount included the amount of this claim, *viz.*, P6,705,695.55. The claim was based on the allegation that petitioner PEAC erroneously paid taxes to petitioner Petron since the latter's sale of petroleum products to the former is exempt from excise taxes, pursuant to Section 135(a) of the NIRC of 1997.

On the same date, petitioner Petron filed its written claim for tax refund of the excise taxes it had paid on the petroleum products it had sold to petitioner PEAC. The claim was filed with BIR RDO No. 121 or the Excise Large Taxpayers Office.

In order to stop the running of the two-year prescriptive period granted by law for the filing of refund claims, petitioners filed before this Court the instant Petition for Review on January 3, 2008.

In his Answer filed on February 29, 2008, respondent raised the following Special and Affirmative Defenses⁴:

- "1. Excise tax is an indirect tax, hence it becomes the direct liability of the manufacturers which, in the above entitled case, is Petron Corporation. The incidence of taxation falls on Petron Corporation though the impact of taxation, or the burden of taxation, falls on another person, Pacific East Asia Cargo Airlines, Inc. (hereafter PEAC) in this case. The excise tax on petroleum products is the direct liability of the manufacturer/producer, and when added to the cost of goods sold to the buyer, it is no longer a tax but part of the price which the buyer has to pay to obtain the article (**PHILIPPINE ACETYLENE vs. COMMISSIONER OF INTERNAL REVENUE, 20 SCRA 1056**). In the instant case, the excise tax imposable under Section 148 of the NIRC of 1997 is a direct liability of Petron Corporation and PEAC merely paid the added cost of Jet A-1 fuel, not the excise tax, the entity being subject thereto being Petron Corporation (**CEBU PORTLAND CEMENT CO. vs. COLLECTOR OF INTERNAL REVENUE, 25 SCRA 789**).

⁴ Docket, pp. 100-108

2. PEAC's reliance on Section 135(a) of the NIRC of 1997 is misplaced. It is only the manufacturer of the petroleum products sold, being the taxpayer, which has the legal personality to claim for the refund of excise taxes paid on petroleum products sold to international carriers. This is based on Section 130 (A)(2) and 204 (C) of the NIRC of 1997 in relation to Section 135(a) of the same code which provides that petroleum (sic) products sold to international carriers are exempt from excise tax. Said Sections 130(A)(2) and 204 (C) of the NIRC of 1997 are quoted hereunder, to wit:

'Section 130. Filing of Return and Payment of Excise Tax on Domestic Products. –

(A) Persons Liable to File a Return, Filing of Return on Removal and Payment of Tax. –

(1) **Persons Liable to File a Return, Filing of Return on Removal and Payment of Tax.** – Every person liable to pay excise tax imposed under this Title shall file a separate return for each place of production setting forth, among others, the description and quantity or volume of products to be removed, the applicable tax base and the amount of tax due thereon: provided, however, That in the case of indigenous petroleum, natural gas or natural liquefied natural gas, the excise tax shall be paid by the first buyer, purchaser or transferee for local sale, barter or transfer, while the excise tax on exported products shall be paid by the owner, lessee, concessionaire or operator of the mining claim.

Should domestic products be removed from the place of production without the payment of the tax, the owner or person having possession thereof shall be liable for the tax due thereon.

(2) Time for Filing of Return and Payment of the Tax. – Unless otherwise specifically allowed, the return **shall be filed and the excise tax paid by the manufacturer or producer** before removal of domestic products from place of production: **Provided,**



That the excise tax on locally manufactured petroleum gas products and indigenous petroleum levied under **Sections 148 and 15 (A)(4)**, respectively, of this Title shall be paid within ten (10) days from the date of removal of such products for the period from January 1, 1998 to June 30, 1998; within five (5) days from the date of removal of such products for the period from July 1, 1998 to December 31, 1998; and before removal from the place of production of such products from January 1, 1999 and thereafter; **Provided, further,** That the excise tax on nonmetallic mineral or mineral products, or quarry resources shall be due and payable upon removal of such products from the locality where mined or extracted, but with respect to the excise tax on locally produced or extracted metallic mineral or mineral products, the person liable shall file a return and pay the tax within fifteen (15) days after the end of the calendar quarter when such products were removed subject to such conditions as may be prescribed by the rules and regulations to be promulgated by the Secretary of Finance, upon recommendation of the Commissioner. For this purpose, the taxpayer shall file a bond in an amount which approximates the amount of excise tax due on the removals for the said quarter. The foregoing rules notwithstanding, for imported mineral or mineral products, whether metallic or non-metallic, the excise tax due thereon shall be paid before their removal from customs custody (emphasis supplied).'

'Section 204. Authority of the Commissioner to Compromise, Abate, and Refund or Credit Taxes. –

(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.

A Tax Credit Certificate validly issued under the provisions of this Code may be applied against any internal revenue tax, excluding withholding taxes, for which **the taxpayer is directly liable**. Any request for conversion into refund of unutilized (sic) tax credits may be allowed, subject to the provisions of Section 230 of this Code; Provided, That the original copy of the Tax Credit Certificate showing a creditable balance is surrendered to the appropriate revenue officer for verification and cancellation: Provided, further, That in no case shall a tax refund be given resulting from availment of incentives granted pursuant to special laws for which no actual payment was made.' (Emphasis supplied)

3. It is clear therefore, that the person or entity liable to pay the excise tax is Petron Corporation and the excise tax imposable under Section 148 of the NIRC of 1997 is a direct liability of Petron Corporation and, as emphasized earlier, PEAC merely paid the added cost of Jet A-1 fuel, not the excise tax.
4. The instant Petition for Review filed by petitioners PEAC and Petron Corporation is an inofficious filing of a claim for refund there being failure on their part to exhaust administrative remedies. The evaluation by respondent of said claim for refund/tax credit is still in progress. As the jurisdiction of this Honorable is merely appellate, there is yet no action on the part of the Commissioner which is the proper subject of judicial review. Hence, this Honorable Court is wont of jurisdiction to entertain the instant Petition.
5. In an action for refund/tax credit, the burden of proof is on the taxpayer to establish its right to refund/tax credit and the failure to sustain the burden is fatal to its claim. It is well settled in this jurisdiction that claims for refund/tax credit are construed in *strictissimi juris* against the claimant for the

same partakes the nature of exemption from taxation (Commissioner of Internal Revenue vs. Ledesma, 31 SCRA 95) and as such, they are looked upon the disfavor (Western Minolco Corp. vs. Commissioner of Internal Revenue, 124 SCRA 1211). In the language of the Supreme Court, 'the power of taxation is a high prerogative of sovereignty, the relinquishment is never presumed and every reduction or diminution thereof with respect to its mode or its rate must be strictly construed, and the same must be couched in clear and unmistakable terms so that it may be applied.' (Luzon Stevedoring Corporation vs. Court of Tax Appeals, 163 SCRA 647).

6. Petitioners must likewise show that it has complied with the provisions of Section 205 (C) and 229 of the NIRC of 1997 on the prescriptive period for filing and/or claiming tax refund/credit.
7. A refund, if any, erroneously paid taxes shall only be granted to the taxpayer. The determination of who is the taxpayer plays a pivotal role in claims for refund because Section 204 (C) of the NIRC of 1997 provides that it is only the taxpayer who has the legal personality to ask for a refund in case of erroneous payment of taxes, in this case, Petron Corporation. The excise tax imposed on the manufacturers upon the removal of petroleum products by the oil companies is an indirect tax. The Supreme Court in Philippines Acetylene Co., Inc. vs. Commissioner of Internal Revenue, G.R. No. L-19707, August 7, 1967 (20 SCRA 1056) explained that although the burden of an indirect tax can be shifted or passed on to the purchaser of goods, nevertheless, the liability for the indirect tax still remains with the manufacturer, Petron Corporation, thus:

'It may indeed be that the economic burden of the tax finally falls on the purchaser, when it does the tax becomes a part of the price which the purchaser must pay. It does not matter that an additional amount is billed as tax to the purchaser. The method of listing the price and the tax separately and defining taxable gross receipts as the amount received less the amount of the tax added, merely avoids payment by the seller of a tax on the amount of the tax. **The effect is still the same, namely, that the purchaser does not pay the tax.** He pays or may pay the seller more for the goods because of seller's



obligation, but that is all and the amount added because of the tax is paid to get the goods and for nothing else.' (Emphasis supplied)

8. The aforecited ruling has been reiterated by the Supreme Court in the cases of *Contex Corporation vs. Honorable Commissioner on Internal Revenue*, G.R. No. 151135, July 2, 2004 (433 SCRA 377) and in *Commissioner of Internal Revenue vs. Philippine Long Distance Telephone Company*, G.R. No. 140230, December 15, 2005 (478 SCRA 61), thus:

'Further, in indirect taxation, there is need to distinguish between the liability for the tax and the burden of the tax. As earlier pointed out, the amount of tax paid may be shifted or passed on by the seller to the buyer. What is transferred in such instances is not the liability for the tax, but the tax burden. In adding or including the VAT due to the selling price, the seller remains the person primarily and legally liable for the payment of the tax. **What is shifted only to the intermediate buyer and ultimately to the final purchaser is the burden of the tax.** Stated differently, a seller who is directly and legally liable for payment of an indirect tax, such as the VAT on goods and services, is not necessarily the person who ultimately bears the burden of the same tax. It (sic) is the final purchaser or consumer of such goods or services who, although not directly and legally liable for the payment thereof, ultimately bears the burden of the tax.' (Emphasis supplied)

'On the other hand, indirect taxes are those that are demanded, in the first instance, from, or are paid by, one person in the expectation and intention that he can shift the burden to someone else. Stated otherwise, indirect taxes are taxes wherein the liability for the payment of the tax falls on one person but the burden thereof can be shifted or passed on to another person, such as when the tax is imposed upon goods before reaching the consumer who ultimately pays for it. **When the seller passes on the**



tax to his buyer, he, in effect, shifts the tax burden, not the liability to pay it, to the purchaser as part of the price of goods sold or services rendered.'
(Emphasis supplied)

9. As explained in the aforecited rulings, the manufacturer has the option whether or not to shift the burden of the tax to the purchaser. Thus, when shifted, the amount added by the manufacturer becomes a part of the price, therefore, the purchaser does not really pay the tax per se but only the price of the commodity.
10. PEAC is not entitled to claim for the refund/tax credit of the subject excise taxes. Even though the burden of an indirect tax, such as the excise tax in the present case, is shifted to the purchaser PEAC by Petron Corporation, still, the liability for the indirect tax remains with the manufacturer as the **taxpayer**. Necessarily, a refund of erroneously paid or illegally received internal revenue tax can only be made in favor of the taxpayer pursuant to Section 204 (C) of the 1997 NIRC, which provides that '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) year after the payment of the tax or penalty.' Section 204 C applies to both direct and indirect taxes.
11. Neither is Petron Corporation entitled to claim for tax refund/tax credit. It may be a party in interest in the instant case but it has miserably failed to state a cause of action. Section 2, Rule 3 of the 1997 Revised Rules of Procedure defines parties in interest, thus, 'A real party in interest is the party who stands to be benefited or injured by the judgment in the suit, or the party entitled to the avails of the suit. Unless otherwise authorized by law or these Rules, every action must be prosecuted or defended in the name of the real party in interest.' A cause of action, upon the other hand, is 'the delict or wrong by which the defendant violates the right or rights of the plaintiff' (Ma-ao Sugar Central vs. Barrios, 76 Phil. 666). Its essence is based upon the existence of a legal right in favor of petitioner, the correlative duty of respondent to respect such right, and an act or omission of respondent in violation of such right. That facts alleged, therefore, in the Petition fails to state of a cause of action which negates a right of action in favor of Petron Corporation to obtain the relief sought. The excise taxes paid by Petron Corporation to the BIR was in accordance with the provisions of the NIRC of 1997, hence, there was neither a violation of its rights nor a wrong committed by respondent. Section 130



(A) of the NIRC of 1997 imposes the excise tax on the manufacturer or producer before removal of the petroleum products from the place of production. The excise tax imposed on the manufacturers upon the removal of petroleum products is an indirect tax and, such being the case, the liability therefore remains with the manufacturer, Petron. Respondent therefore maintains that Petron Corporation cannot ask, nor be entitled to claim, for tax refund/tax credit for excise taxes paid since it is the entity statutorily liable to pay the tax, hence, no erroneous payment of the tax to speak of. Neither was there a violation of the exemption from payment of excise taxes provided under Section 135 (a) of the NIRC of 1997 for international carriers. At the point of sale, the international carries are free to invoke the exemption from excise taxes of the petroleum products sold to them. Thus, as the petition fails to state a cause of action in the part of Petron Corporation, as plainly none (sic) exists under the law, the petition as regards Petron should also be dismissed.

12. Finally, the ruling of the Supreme Court in the case of Citibank N.A. vs. Court of Appeals, G.R. No. 107434, October 10, 1997, 280 SCRA 459, 475 invoking the principle of *solutio indebiti* as cited by petitioners cannot be made to apply. There was no wrongly held excise taxes since Petron Corporation (sic) is the one statutorily liable for the payment of the excise tax pursuant to Section 130 (A) (2) of the NIRC of 1997. The principle of *solutio indebiti* is based on the provisions of the Civil Code which is a general law and the case involves excise taxes which are covered by the NIRC of 1997, a special that was created especially for internal revenue taxes, hence, the latter being a special law prevails over the former. It is well settled that a special law shall prevail over a general law (The Commissioner of Internal Revenue vs. Ilagan Electric and Ice Plant Inc., 29 SCRA 634; The Guagua Electric Light Co., Inc. vs. CIR, 19 SCRA 790)."

In order to counter respondent's arguments, petitioners filed their Reply⁵ on March 12, 2008, stating among others their legal personality to file the instant claim for refund.



⁵ Docket, pp. 115-125

After trial on the merits, this case was submitted for decision on May 6, 2009, taking into consideration petitioners' Memorandum filed on April 1, 2009 and respondent's Memorandum filed on April 30, 2009.⁶

The sole issue for this Court's resolution is as follows:

"Whether or not petitioners are entitled to a refund or tax credit of erroneously paid excise taxes on Jet A-1 fuels sold and delivered by petitioner Petron to petitioner PEAC for the latter's international air cargo flights from Laoag City to Taipei and Pudong, Shanghai from January 5, 2006 to July 7, 2006 in the amount of P6,705,695.55."

Section 229 of the NIRC of 1997, as amended, lays down the requisites for refund of tax erroneously collected, to wit:

"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 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."

This is congruent with the authority of respondent to refund erroneously collected taxes as stated in Section 204(C) of the NIRC of 1997, which reads:

⁶ Docket, p. 1113

"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."

Based on the afore-quoted provisions, a tax erroneously paid or illegally collected may be a proper subject of a claim for tax refund. However, the Court must first determine who the "taxpayer" is in this case.

The Supreme Court made the following declarations in the case of **Silkair (Singapore) Pte. Ltd. vs. Commissioner of Internal Revenue**⁷:

"The person entitled to claim a tax refund is the statutory taxpayer. Section 22(N) of the NIRC defines a taxpayer as 'any person subject to tax.' In *Commissioner of Internal Revenue v. Procter and Gamble Phil. Mfg. Corp.*, the Court ruled that:

A 'person liable for tax' has been held to be a 'person subject to tax' and properly considered a 'taxpayer'. The terms 'liable for tax' and 'subject to tax' both connote a legal obligation or duty to pay a tax."

In the instant case, both petitioners PEAC and Petron seek the refund of the excise taxes the latter paid to respondent.

Pursuant to Section 129 of the NIRC of 1997, excise taxes refer to taxes imposed on specified goods manufactured or produced in the Philippines for

⁷ G.R. Nos. 171383 and 172379, November 14, 2008



domestic sale or consumption or for any other disposition and to things imported. The said excise taxes are collected from manufacturers or producers before removal of the domestic products from the place of production.

The subject of the Petition is the excise tax on the Jet A-1 fuel that petitioner Petron sold to petitioner PEAC, and imposed pursuant to Section 148(g) of the NIRC. Petitioner Petron, as the manufacturer or producer of the Jet A-1 fuel, was liable for the payment of excise taxes before the removal of said fuels from the place of production in Pandacan.

Accordingly, petitioner Petron is the taxpayer as contemplated in Section 22(N) of the NIRC of 1997; the one that has legal obligation or duty to pay a tax and the proper person to seek tax refund in case of an erroneous payment.

Petitioner PEAC's purported payment of excise taxes on the Jet A-1 fuels it purchased from petitioner Petron and its reliance on its exemption as provided in Section 135 of the NIRC of 1997 cannot serve as basis of tax refund, since it was not the "taxpayer" or the one legally obligated to pay the said excise taxes. Petitioner PEAC should have invoked its tax exemption under Section 135 of the NIRC before buying the Jet A-1 fuels from petitioner Petron. Since petitioner PEAC failed to do so, petitioner Petron passed on the burden of paying its excise taxes to petitioner PEAC. This exercise of petitioner Petron of passing on the burden of paying the excise tax to its purchasers is valid. The subject excise tax, as ruled by the High Court in **Maceda vs. Macaraig Jr., et al.**⁸ is in the nature of indirect tax, wherein it is paid by persons who can shift the burden upon someone else. For example, the excise and *ad valorem* taxes that oil companies pay to the Bureau of Internal Revenue upon removal of petroleum

⁸ G.R. No. 88291, May 31, 1991



products from their refinery can be shifted to their buyers, who in this case is petitioner PEAC, by adding them to the cash and/or selling price. What petitioner PEAC paid to petitioner Petron was treated by the latter as part of the cost of the Jet A-1 fuels and tacked it on to the selling price.

From the foregoing, it is clear that petitioner PEAC did not go to the proper forum to seek refund or reimbursement. Since the impact of the excise taxes fell on petitioner PEAC, it should claim reimbursement from petitioner Petron rather than file a claim for refund with respondent.

Having determined that petitioner Petron is the proper party to a refund claim anchored on Section 229 of the NIRC of 1997, this Court will now determine if petitioner Petron actually sold and delivered Jet A-1 fuels to petitioner PEAC and paid the corresponding excise taxes thereof.

In order to meet its Jet A-1 fuel requirements, petitioner PEAC entered into a supply agreement⁹ with petitioner Petron on August 4, 2005, effective August 10, 2005. Based on the Aviation Delivery Receipts¹⁰, petitioner Petron delivered a total of 1,827,165 liters of Jet A-1 fuel to petitioner PEAC for its international flights from Laoag to Pudong, Shanghai and Taipei from January 5, 2006 to July 7, 2006. Such delivery was corroborated by the judicial affidavit¹¹ of petitioners' witness Reizer V. Vizconde, who personally supervised and monitored the actual refueling by petitioner Petron of petitioner PEAC's aircraft in Laoag bound for Taipei or Pudong, Shanghai. In addition thereto, petitioners presented Withdrawal Certificates¹² stating therein the exact quantities of Jet A-1 fuel

⁹ Exhibit "L"

¹⁰ Exhibits "J" to "J-169"

¹¹ Exhibit "Y"

¹² Exhibits "E" to "E-75"



actually withdrawn from Petron Pandacan and delivered to Petron Laoag for the period covering January 5, 2006 to July 7, 2006.

On various dates from January 3, 2006 to June 30, 2006, petitioner Petron made advance payments to the BIR on its petroleum products estimated to be removed from its Pandacan Terminal to ensure that the balance of already paid excise taxes will not be less than the excise taxes due for petroleum products actually removed. The details of the said payments are as follows:

Exhibit	Date	Advance Payment of Excise Taxes
"G"	1/3/2006	P 160,000.00
"G-1"	1/5/2006	40,000.00
"G-2"	1/6/2006	80,000.00
"G-3"	1/9/2006	400,000.00
"G-4"	1/10/2006	90,000.00
"G-5"	1/11/2006	220,000.00
"G-6"	1/12/2006	90,000.00
"G-7"	1/13/2006	449,000.00
"G-8"	1/16/2006	230,000.00
"G-9"	1/17/2006	70,000.00
"G-10"	1/18/2006	30,000.00
"G-11"	1/19/2006	150,000.00
"G-12"	1/20/2006	400,000.00
"G-13"	1/23/2006	410,000.00
"G-14"	1/24/2006	130,000.00
"G-15"	1/26/2006	60,000.00
"G-16"	1/26/2006	260,000.00
"G-17"	1/27/2006	276,000.00
"G-18"	1/30/2006	2,540,000.00
"G-19"	2/3/2006	120,000.00
"G-20"	2/6/2006	90,000.00
"G-21"	2/7/2006	100,000.00
"G-22"	2/8/2006	130,000.00
"G-23"	2/9/2006	150,000.00
"G-24"	2/10/2006	490,000.00
"G-25"	2/13/2006	30,000.00
"G-26"	2/14/2006	170,000.00
"G-27"	2/15/2006	180,000.00
"G-28"	2/16/2006	250,000.00
"G-29"	2/17/2006	380,000.00
"G-30"	2/20/2006	140,000.00
"G-31"	2/21/2006	229,000.00

"G-32"	2/22/2006	380,000.00
"G-33"	2/23/2006	200,000.00
"G-34"	2/24/2006	190,000.00
"G-35"	2/27/2006	540,000.00
"G-36"	2/28/2006	200,000.00
"G-37"	3/13/2006	290,000.00
"G-38"	3/16/2006	180,000.00
"G-39"	3/17/2006	330,000.00
"G-40"	3/20/2006	70,000.00
"G-41"	3/21/2006	220,000.00
"G-42"	3/22/2006	120,000.00
"G-43"	3/23/2006	260,000.00
"G-44"	3/24/2006	410,000.00
"G-45"	3/27/2006	210,000.00
"G-46"	3/28/2006	300,000.00
"G-47"	3/29/2006	200,000.00
"G-48"	3/30/2006	100,000.00
"F-49-a"	2/28/2006	5,000,000.00
"F-50-a"	3/31/2006	6,000,000.00
"F-51-a"	4/28/2006	4,500,000.00
"F-52-a"	5/31/2006	2,500,000.00
"F-53-a"	6/30/2006	2,300,000.00
Total		P 33,044,000.00

Upon the withdrawal of petitioner Petron's petroleum products from its Pandacan Terminal, it filed excise tax returns to liquidate the advance payments made, detailed as follows:

Excise Tax Return		EXCISE TAXES PAID
Exhibit No.	Date of Filing with the BIR (Year 2006)	
"H"	Jan. 6	P 206,421.75
"H-1"	Jan. 9	271,795.32
"H-2"	Jan. 11	220,290.27
"H-3"	Jan. 13	272,858.68
"H-4"	Jan. 16	108,477.92
"H-5"	Jan. 16	237,656.36
"H-6"	Jan. 18	142,536.58
"H-7"	Jan. 19	110,640.22
"H-8"	Jan. 20	297,998.94
"H-9"	Jan. 23	275,984.00
"H-10"	Jan. 23	134,248.60
"H-11"	Jan. 24	167,427.00
"H-12"	Jan. 26	190,762.98
"H-13"	Jan. 27	105,851.78
"H-14"	Jan. 30	147,080.90

"H-15"	Feb. 6	95,619.86
"H-16"	Feb. 10	232,071.77
"H-17"	Feb. 15	218,736.28
"H-18"	Feb. 16	242,627.37
"H-19"	Feb. 17	325,879.90
"H-20"	Feb. 20	110,114.26
"H-21"	Feb. 22	243,020.05
"H-22"	Feb. 23	227,976.73
"H-23"	Feb. 27	374,797.92
"H-25"	Feb. 27	252,646.47
"H-26"	Mar. 1	228,098.88
"H-27"	Mar. 2	242,362.33
"H-28"	Mar. 6	267,924.57
"H-29"	Mar. 9	818,948.84
"H-30"	Mar. 13	993,971.79
"H-31"	Mar. 13	250,576.59
"H-32"	Mar. 13	149,185.50
"H-33"	Mar. 15	238,271.33
"H-34"	Mar. 16	214,642.43
"H-35"	Mar. 17	224,974.67
"H-36"	Mar. 20	110,782.62
"H-37"	Mar. 21	187,170.00
"H-38"	Mar. 23	192,237.71
"H-39"	Mar. 24	154,239.93
"H-40"	Mar. 27	165,861.02
"H-41"	Mar. 27	200,243.30
"H-42"	Mar. 27	73,400.00
"H-43"	Mar. 28	300,051.86
"H-44"	Mar. 31	233,962.50
"H-45"	Apr. 3	390,307.07
"H-46"	Apr. 4	106,452.33
"H-47"	Apr. 10	93,588.04
"H-48"	Apr. 10	73,400.00
"H-49"	Apr. 17	246,774.47
"H-50"	Apr. 17	88,116.70
"H-51"	Apr. 17	143,508.01
"H-52"	Apr. 19	252,893.56
"H-53"	Apr. 21	235,306.78
"H-54"	Apr. 24	87,871.37
"H-55"	Apr. 25	130,119.85
"H-56"	Apr. 26	325,292.07
"H-57"	Apr. 27	132,934.74
"H-58"	May 2	321,791.26
"H-59"	May 8	87,026.71
"H-60"	May 11	254,386.05
"H-61"	May 15	73,400.00
"H-62"	May 18	183,529.43
"H-63"	May 22	154,767.57
"H-64"	May 24	309,428.35
"H-65"	May 25	266,254.41



"H-66"	June 2	219,956.80
"H-67"	June 6	140,622.57
"H-68"	June 13	234,333.17
"H-69"	June 14	129,125.28
"H-70"	June 21	84,891.20
"H-71"	June 26	216,008.86
"H-72"	June 28	152,481.16
"H-73"	July 5	231,898.80
"H-74"	July 10	P 226,754.64

As shown in the summaries of removals attached to the returns, the said excise tax payments pertained to the following petroleum products locally manufactured and removed by petitioner Petron from its Pandacan Terminal starting January 5, 2006 to July 7, 2006:

Exhibit Number	Date Withdrawn (Year 2006)	Removals						Total Excise Taxes Paid
		Aviation Turbo Jet Fuel		Lubricating Oils		Unleaded Premium Gasoline		
		No. of liters	Excise Tax Paid (P3.67/liter)	No. of liters	Excise Tax Paid (P4.50/liter)	No. of liters	Excise Tax Paid (P4.35/liter)	
"H-a"	Jan. 5	51,500	P 189,005.00	3,870	P 17,416.76			P206,421.75
"H-1-a"	Jan. 6	62,078	227,826.26	660	2,970.32	9,425	P40,998.75	271,795.32
"H-2-a"	Jan. 10	58,767	215,674.89	1,026	4,615.38			220,290.27
"H-3-a"	Jan. 12	74,272	272,578.24	62	280.44			272,858.68
"H-4-a"	Jan. 13	27,206	99,846.02	1,918	8,631.90			108,477.92
"H-5-a"	Jan. 14	63,980	234,806.60	633	2,849.76			237,656.36
"H-6-a"	Jan. 17	38,818	142,462.06	17	74.52			142,536.58
"H-7-a"	Jan. 18	30,000	110,100.00	120	540.23			110,640.22
"H-8-a"	Jan. 19	80,339	294,844.13	701	3,154.82			297,998.94
"H-9-a"	Jan. 20	75,200	275,984.00					275,984.00
"H-10-a"	Jan. 22	36,580	134,248.60					134,248.60
"H-11-a"	Jan. 23	45,200	165,884.00	343	1,543.01			167,427.00
"H-12-a"	Jan. 25	51,000	187,170.00	798	3,592.98			190,762.98
"H-13-a"	Jan. 26	27,313	100,238.71	1,247	5,613.08			105,851.78
"H-14-a"	Jan. 28	39,266	144,106.22	661	2,974.68			147,080.90
"H-15-a"	Feb. 4	25,358	93,063.86	568	2,556.00			95,619.86
"H-16-a"	Feb. 9	62,216	228,332.72	831	3,739.05			232,071.77
"H-17-a"	Feb. 14	58,749	215,608.83	695	3,127.46			218,736.28
"H-18-a"	Feb. 15	66,111	242,627.37					242,627.37
"H-19-a"	Feb. 16	63,492	233,015.64	4,324	64,458.77	6,530	28,405.50	325,879.90
"H-20-a"	Feb. 18	30,000	110,100.00	3	14.27			110,114.26
"H-21-a"	Feb. 21	63,561	233,268.87	2,167	9,751.19			243,020.05
"H-22-a"	Feb. 22	62,119	227,976.73					227,976.73
"H-23-a"	Feb. 24	102,117	374,769.39	6	28.53			374,797.92
"H-25-a"	Feb. 25	68,841	252,646.47					252,646.47
"H-26-a"	Feb. 28	57,402	210,665.34	3,874	17,433.54			228,098.88


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"H-27-a"	Mar. 1	65,800	241,486.00	195	876.33			242,362.33
"H-28-a"	Mar.3	70,962	260,430.54	1,665	7,494.03			267,924.57
"H-29-a"	Mar. 8	220,000	807,400.00	2,566	11,548.85			818,948.84
"H-30-a"	Mar. 10	270,837	993,971.79					993,971.79
"H-31-a"	Mar. 11	68,277	250,576.59					250,576.59
"H-32-a"	Mar. 12	40,650	149,185.50					149,185.50
"H-33-a"	Mar. 14	64,871	238,076.57	43	194.76			238,271.33
"H-34-a"	Mar. 15	57,668	211,641.56	667	3,000.87			214,642.43
"H-35-a"	Mar. 16	61,301	224,974.67					224,974.67
"H-36-a"	Mar. 18	30,186	110,782.62					110,782.62
"H-37-a"	Mar. 20	51,000	187,170.00					187,170.00
"H-38-a"	Mar. 22	51,500	189,005.00	718	3,232.71			192,237.71
"H-39-a"	Mar. 22	40,500	148,635.00	1,246	5,604.93			154,239.93
"H-40-a"	Mar.24	43,651	160,199.17	1,258	5,661.86			165,861.02
"H-41-a"	Mar. 25	54,544	200,176.48	15	66.83			200,243.30
"H-42-a"	Mar. 26	20,000	73,400.00					73,400.00
"H-43-a"	Mar. 27	81,758	300,051.86					300,051.86
"H-44-a"	Mar. 30	63,750	233,962.50					233,962.50
"H-45-a"	Mar. 31	86,455	317,289.85	4,295	19,329.53	12,342	53,687.70	390,307.07
"H-46-a"	Apr. 3	25,271	92,744.57	3,046	13,707.77			106,452.33
"H-48-a"	Apr. 9	20,000	73,400.00					73,400.00
"H-49-a"	Apr. 12	67,241	246,774.47					246,774.47
"H-50-a"	Apr. 14	24,010	88,116.70					88,116.70
"H-51-a"	Apr. 16	39,103	143,508.01					143,508.01
"H-52-a"	Apr. 18	68,101	249,930.67	658	2,962.89			252,893.56
"H-53-a"	Apr. 20	61,500	225,705.00	2,134	9,601.79			235,306.78
"H-54-a"	Apr. 21	23,933	87,834.11	8	37.26			87,871.37
"H-55-a"	Apr. 23	35,455	130,119.85					130,119.85
"H-56-a"	Apr. 25	68,408	251,057.36	7,386	33,235.97	9,425	40,998.75	325,292.07
"H-57-a"	Apr. 26	36,222	132,934.74					132,934.74
"H-58-a"	Apr. 29	87,408	320,787.36	223	1,003.91			321,791.26
"H-59-a"	May 7	23,713	87,026.71					87,026.71
"H-60-a"	May 10	69,315	254,386.05					254,386.05
"H-61-a"	May 13	20,000	73,400.00					73,400.00
"H-62-a"	May 17	50,000	183,500.00	7	29.43			183,529.43
"H-63-a"	May 20	42,171	154,767.57					154,767.57
"H-64-a"	May 23	67,477	247,640.59	7,882	35,470.26	6,050	26,317.50	309,428.35
"H-65-a"	May 24	72,545	266,240.15	3	14.27			266,254.41
"H-66-a"	June 1	58,417	214,390.39	1,237	5,566.41			219,956.80
"H-67-a"	June 5	37,098	136,149.66	994	4,472.91			140,622.57
"H-68-a"	June 9	63,851	234,333.17					234,333.17
"H-69-a"	June 13	35,184	129,125.28					129,125.28
"H-70-a"	June 20	20,000	73,400.00	2,554	11,491.20			84,891.20
"H-71-a"	June 23	58,858	216,008.86					216,008.86
"H-72-a"	June 27	41,548	152,481.16					152,481.16
"H-73-a"	July 4	57,604	211,406.68	8	34.38	4,703	20,457.75	231,898.80
"H-74-a"	July 7	56,880	208,749.60	4,001	18,005.04			226,754.64



A portion of the removals of Jet A-1 fuel, for which excise taxes were already paid at P3.67 per liter, pertained to the deliveries from Petron Pandacan to Petron Laoag, as evidenced by Withdrawal Certificates which all bear the remark "TAX PAID", detailed as follows:

Withdrawal Certificate Exhibit Number	Date Withdrawn (Year 2006)	Volume (in liters)
"E"	Jan. 5	20,000
"E-1"	Jan. 6	30,000
"E-2"	Jan. 10	20,000
"E-3"	Jan. 12	30,000
"E-4"	Jan. 13	20,000
"E-5"	Jan. 14	30,000
"E-6"	Jan. 14	28,000
"E-7"	Jan. 17	20,000
"E-8"	Jan. 18	30,000
"E-9"	Jan. 19	20,000
"E-10"	Jan. 20	20,000
"E-11"	Jan. 22	30,000
"E-12"	Jan. 23	20,000
"E-13"	Jan. 25	30,000
"E-14"	Jan. 26	20,000
"E-15"	Jan. 28	30,000
"E-16"	Feb. 4	20,000
"E-17"	Feb. 9	30,000
"E-18"	Feb. 14	20,000
"E-19"	Feb. 15	30,000
"E-20"	Feb. 16	20,000
"E-21"	Feb. 18	30,000
"E-22"	Feb. 21	20,000
"E-23"	Feb. 22	30,000
"E-24"	Feb. 24	20,000
"E-25"	Feb. 25	30,000
"E-26"	Feb. 28	20,000
"E-27"	Mar. 1	30,000
"E-28"	Mar. 3	30,000
"E-29"	Mar. 3	20,000
"E-30"	Mar. 8	20,000
"E-31"	Mar. 10	30,000
"E-32"	Mar. 11	20,000
"E-33"	Mar. 12	30,000
"E-34"	Mar. 14	20,000
"E-35"	Mar. 15	30,000
"E-36"	Mar. 16	30,000
"E-37"	Mar. 18	28,000
"E-38"	Mar. 20	30,000

"E-39"	Mar. 22	20,000
"E-40"	Mar. 23	30,000
"E-41"	Mar. 24	20,000
"E-42"	Mar. 25	30,000
"E-43"	Mar. 26	20,000
"E-44"	Mar. 27	30,000
"E-45"	Mar. 30	20,000
"E-46"	Mar. 31	30,000
"E-47"	Apr. 3	20,000
"E-48"	Apr. 9	20,000
"E-49"	Apr. 12	30,000
"E-50"	Apr. 14	20,000
"E-51"	Apr. 16	30,000
"E-52"	Apr. 18	20,000
"E-53"	Apr. 20	30,000
"E-54"	Apr. 21	20,000
"E-55"	Apr. 23	30,000
"E-56"	Apr. 25	20,000
"E-57"	Apr. 26	30,000
"E-58"	Apr. 29	20,000
"E-59"	Apr. 29	30,000
"E-60"	May 7	20,000
"E-61"	May 10	30,000
"E-62"	May 13	20,000
"E-63"	May 17	30,000
"E-64"	May 20	30,000
"E-65"	May 23	20,000
"E-66"	May 24	30,000
"E-67"	June 1	30,000
"E-68"	June 5	20,000
"E-69"	June 9	30,000
"E-70"	June 13	30,000
"E-71"	June 20	20,000
"E-72"	June 23	30,000
"E-73"	June 27	30,000
"E-74"	July 4	20,000
"E-75"	July 7	30,000
TOTAL		1,956,000

Subsequently, petitioner Petron, through Petron Laoag, sold and delivered a total of 1,827,165 liters of Jet A-1 fuel to petitioner PEAC for its international air cargo flights from Laoag to Pudong, Shanghai and Taipei, detailed as follows:

Sales Invoice Exh. No.	Aviation Delivery Receipt Exh. No.	Date Delivered/ Sold to PEAC	PEAC's Flight Destination	Volume (in liters)	Excise Taxes Paid (P3.67/liter)
"I"	"J"	1/5/2006	Pudong, Shanghai	14,127	P 51,846.09
"I"	"J-1"	1/6/2006	Pudong, Shanghai	16,620	60,995.40

"I"	"J-2"	1/6/2006	Taipei	12,181	44,704.27
"I"	"J-3"	1/7/2006	Pudong, Shanghai	18,506	67,917.02
"I-1"	"J-4"	1/8/2006	Taipei	10,415	38,223.05
"I-1"	"J-5"	1/11/2006	Pudong, Shanghai	17,516	64,283.72
"I-1"	"J-6"	1/12/2006	Pudong, Shanghai	14,640	53,728.80
"I-1"	"J-7"	1/12/2006	Taipei	16,305	59,839.35
"I-1"	"J-8"	1/13/2006	Pudong, Shanghai	17,993	66,034.31
"I-1"	"J-9"	1/14/2006	Pudong, Shanghai	18,365	67,399.55
"I-1"	"J-10"	1/14/2006	Pudong, Shanghai	10,231	37,547.77
"I-2"	"J-11"	1/15/2006	Pudong, Shanghai	13,853	50,840.51
"I-2"	"J-12"	1/17/2006	Pudong, Shanghai	18,511	67,935.37
"I-2"	"J-13"	1/17/2006	Pudong, Shanghai	2,753	10,103.51
"I-2"	"J-14"	1/17/2006	Taipei	6,609	24,255.03
"I-2"	"J-15"	1/18/2006	Pudong, Shanghai	18,617	68,324.39
"I-2"	"J-16"	1/18/2006	Pudong, Shanghai	3,079	11,299.93
"I-2"	"J-17"	1/19/2006	Taipei	9,611	35,272.37
"I-2"	"J-18"	1/19/2006	Pudong, Shanghai	18,654	68,460.18
"I-2"	"J-19"	1/19/2006	Pudong, Shanghai	6,098	22,379.66
"I-3"	"J-20"	1/20/2006	Pudong, Shanghai	18,119	66,496.73
"I-3"	"J-21"	1/20/2006	Pudong, Shanghai	4,563	16,746.21
"I-3"	"J-22"	1/20/2006	Pudong, Shanghai	3,380	12,404.60
"I-3"	"J-23"	1/21/2006	Pudong, Shanghai	15,945	58,518.15
"I-4"	"J-24"	1/22/2006	Taipei	11,978	43,959.26
"I-4"	"J-25"	1/24/2006	Pudong, Shanghai	18,392	67,498.64
"I-4"	"J-26"	1/24/2006	Pudong, Shanghai	2,002	7,347.34
"I-4"	"J-27"	1/25/2006	Pudong, Shanghai	18,322	67,241.74
"I-4"	"J-28"	1/25/2006	Pudong, Shanghai	3,103	11,388.01
"I-5"	"J-29"	1/26/2006	Taipei	4,557	16,724.19
"I-5"	"J-30"	1/26/2006	Pudong, Shanghai	12,928	47,445.76
"I-5"	"J-31"	1/26/2006	Pudong, Shanghai	3,934	14,437.78
"I-5"	"J-32"	1/27/2006	Pudong, Shanghai	12,075	44,315.25
"I-6"	"J-33"	2/9/2006	Pudong, Shanghai	16,662	61,149.54
"I-6"	"J-34"	2/9/2006	Pudong, Shanghai	2,980	10,936.60
"I-6"	"J-35"	2/10/2006	Pudong, Shanghai	12,378	45,427.26
"I-7"	"J-36"	2/12/2006	Pudong, Shanghai	2,859	10,492.53
"I-7"	"J-37"	2/14/2006	Pudong, Shanghai	18,034	66,184.78
"I-7"	"J-38"	2/14/2006	Pudong, Shanghai	2,694	9,886.98
"I-7"	"J-39"	2/15/2006	Pudong, Shanghai	18,017	66,122.39
"I-7"	"J-40"	2/16/2006	Pudong, Shanghai	18,229	66,900.43
"I-7"	"J-41"	2/17/2006	Pudong, Shanghai	18,291	67,127.97
"I-7"	"J-42"	2/17/2006	Pudong, Shanghai	2,819	10,345.73
"I-7"	"J-43"	2/18/2006	Pudong, Shanghai	15,444	56,679.48
"I-7"	"J-44"	2/18/2006	Pudong, Shanghai	6,119	22,456.73
"I-8"	"J-45"	2/21/2006	Pudong, Shanghai	17,332	63,608.44
"I-8"	"J-46"	2/21/2006	Pudong, Shanghai	2,511	9,215.37
"I-8"	"J-47"	2/22/2006	Pudong, Shanghai	16,453	60,382.51
"I-8"	"J-48"	2/22/2006	Pudong, Shanghai	3,365	12,349.55
"I-8"	"J-49"	2/23/2006	Pudong, Shanghai	15,104	55,431.68
"I-8"	"J-50"	2/23/2006	Pudong, Shanghai	4,058	14,892.86
"I-9"	"J-51"	2/23/2006	Taipei	2,788	10,231.96

"I-9"	"J-52"	2/24/2006	Pudong, Shanghai	14,764	54,183.88
"I-9"	"J-53"	2/25/2006	Pudong, Shanghai	15,789	57,945.63
"I-9"	"J-54"	2/25/2006	Pudong, Shanghai	9,073	33,297.91
"I-9"	"J-55"	2/26/2006	Taipei	9,105	33,415.35
"I-9"	"J-56"	2/26/2006	Taipei	2,353	8,635.51
"I-9"	"J-57"	2/28/2006	Pudong, Shanghai	15,940	58,499.80
"I-9"	"J-58"	2/28/2006	Pudong, Shanghai	6,013	22,067.71
"I-11"	"J-59"	3/2/2006	Pudong, Shanghai	18,767	68,874.89
"I-11"	"J-60"	3/2/2006	Pudong, Shanghai	2,910	10,679.70
"I-12"	"J-61"	3/3/2006	Pudong, Shanghai	18,510	67,931.70
"I-12"	"J-62"	3/3/2006	Pudong, Shanghai	2,272	8,338.24
"I-12"	"J-63"	3/4/2006	Pudong, Shanghai	16,164	59,321.88
"I-13"	"J-64"	3/4/2006	Pudong, Shanghai	6,361	23,344.87
"I-13"	"J-65"	3/7/2006	Pudong, Shanghai	17,528	64,327.76
"I-14"	"J-66"	3/7/2006	Taipei	6,866	25,198.22
"I-14"	"J-67"	3/8/2006	Pudong, Shanghai	18,370	67,417.90
"I-14"	"J-68"	3/8/2006	Pudong, Shanghai	4,258	15,626.86
"I-14"	"J-69"	3/9/2006	Taipei	4,983	18,287.61
"I-14"	"J-70"	3/9/2006	Pudong, Shanghai	9,715	35,654.05
"I-14"	"J-71"	3/10/2006	Pudong, Shanghai	14,244	52,275.48
"I-14"	"J-72"	3/11/2006	Pudong, Shanghai	8,580	31,488.60
"I-14"	"J-73"	3/11/2006	Pudong, Shanghai	14,604	53,596.68
"I-15"	"J-74"	3/12/2006	Taipei	10,629	39,008.43
"I-16"	"J-75"	3/14/2006	Pudong, Shanghai	18,514	67,946.38
"I-16"	"J-76"	3/15/2006	Taipei	8,370	30,717.90
"I-16"	"J-77"	3/15/2006	Pudong, Shanghai	18,218	66,860.06
"I-16"	"J-78"	3/16/2006	Pudong, Shanghai	18,224	66,882.08
"I-16"	"J-79"	3/16/2006	Pudong, Shanghai	5,544	20,346.48
"I-16"	"J-80"	3/17/2006	Pudong, Shanghai	18,307	67,186.69
"I-16"	"J-81"	3/17/2006	Pudong, Shanghai	2,622	9,622.74
"I-17"	"J-82"	3/18/2006	Pudong, Shanghai	18,770	68,885.90
"I-17"	"J-83"	3/18/2006	Pudong, Shanghai	3,437	12,613.79
"I-17"	"J-84"	3/19/2006	Taipei	8,105	29,745.35
"I-17"	"J-85"	3/21/2006	Pudong, Shanghai	18,419	67,597.73
"I-17"	"J-86"	3/21/2006	Pudong, Shanghai	4,102	15,054.34
"I-18"	"J-87"	3/21/2006	Taipei	8,522	31,275.74
"I-18"	"J-88"	3/22/2006	Pudong, Shanghai	18,000	66,060.00
"I-18"	"J-89"	3/22/2006	Pudong, Shanghai	1,175	4,312.25
"I-18"	"J-90"	3/22/2006	Taipei	12,441	45,658.47
"I-18"	"J-91"	3/23/2006	Pudong, Shanghai	12,347	45,313.49
"I-18"	"J-92"	3/23/2006	Taipei	12,618	46,308.06
"I-18"	"J-93"	3/24/2006	Pudong, Shanghai	13,232	48,561.44
"I-19"	"J-94"	3/25/2006	Taipei	6,113	22,434.71
"I-19"	"J-95"	3/25/2006	Pudong, Shanghai	10,837	39,771.79
"I-19"	"J-96"	3/26/2006	Taipei	13,591	49,878.97
"I-19"	"J-97"	03/29/069	Pudong, Shanghai	18,881	69,293.27
"I-19"	"J-98"	3/29/2006	Taipei	7,638	28,031.46
"I-19"	"J-99"	3/30/2006	Pudong, Shanghai	8,781	32,226.27
"I-19"	"J-100"	3/30/2006	Taipei	6,875	25,231.25
"I-20"	"J-101"	4/1/2006	Pudong, Shanghai	18,857	69,205.19

"I-20"	"J-102"	4/1/2006	Pudong, Shanghai	2,253	8,268.51
"I-21"	"J-105"	4/2/2006	Taipei	9,875	36,241.25
"I-21"	"J-104"	4/5/2006	Pudong, Shanghai	18,426	67,623.42
"I-21"	"J-103"	4/5/2006	Pudong, Shanghai	3,970	14,569.90
"I-21"	"J-107"	4/8/2006	Pudong, Shanghai	14,482	53,148.94
"I-21"	"J-106"	4/8/2006	Pudong, Shanghai	6,936	25,455.12
"I-22"	"J-108"	4/9/2006	Taipei	2,104	7,721.68
"I-22"	"J-109"	4/11/2006	Pudong, Shanghai	3,107	11,402.69
"I-22"	"J-110"	4/12/2006	Pudong, Shanghai	13,307	48,836.69
"I-22"	"J-111"	4/12/2006	Pudong, Shanghai	11,692	42,909.64
"I-22"	"J-112"	4/13/2006	Pudong, Shanghai	6,448	23,664.16
"I-23"	"J-114"	4/14/2006	Pudong, Shanghai	4,128	15,149.76
"I-23"	"J-113"	4/14/2006	Pudong, Shanghai	18,035	66,188.45
"I-23"	"J-115"	4/15/2006	Pudong, Shanghai	18,756	68,834.52
"I-23"	"J-116"	4/15/2006	Pudong, Shanghai	3,502	12,852.34
"I-23"	"J-117"	4/15/2006	Pudong, Shanghai	18,361	67,384.87
"I-24"	"J-118"	4/19/2006	Pudong, Shanghai	18,525	67,986.75
"I-24"	"J-119"	4/19/2006	Pudong, Shanghai	1,004	3,684.68
"I-24"	"J-120"	4/20/2006	Pudong, Shanghai	17,179	63,046.93
"I-24"	"J-121"	4/21/2006	Pudong, Shanghai	18,858	69,208.86
"I-24"	"J-122"	4/21/2006	Pudong, Shanghai	2,017	7,402.39
"I-25"	"J-123"	4/22/2006	Pudong, Shanghai	17,705	64,977.35
"I-25"	"J-124"	4/23/2006	Taipei	3,018	11,076.06
"I-25"	"J-125"	4/25/2006	Pudong, Shanghai	7,843	28,783.81
"I-25"	"J-126"	4/25/2006	Taipei	7,760	28,479.20
"I-25"	"J-127"	4/26/2006	Pudong, Shanghai	18,716	68,687.72
"I-26"	"J-128"	4/26/2006	Taipei	1,533	5,626.11
"I-26"	"J-129"	4/27/2006	Pudong, Shanghai	15,941	58,503.47
"I-26"	"J-130"	4/27/2006	Pudong, Shanghai	5,613	20,599.71
"I-26"	"J-131"	4/28/2006	Pudong, Shanghai	12,828	47,078.76
"I-27"	"J-132"	5/6/2006	Pudong, Shanghai	18,482	67,828.94
"I-27"	"J-133"	5/6/2006	Pudong, Shanghai	2,406	8,830.02
"I-27"	"J-134"	5/9/2006	Taipei	2,192	8,044.64
"I-27"	"J-135"	5/10/2006	Pudong, Shanghai	18,404	67,542.68
"I-27"	"J-136"	5/10/2006	Pudong, Shanghai	1,677	6,154.59
"I-27"	"J-137"	5/11/2006	Pudong, Shanghai	7,598	27,884.66
"I-28"	"J-138"	5/13/2006	Pudong, Shanghai	21,903	80,384.01
"I-28"	"J-139"	5/13/2006	Pudong, Shanghai	1,457	5,347.19
"I-28"	"J-140"	5/14/2006	Taipei	5,528	20,287.76
"I-28"	"J-141"	5/17/2006	Pudong, Shanghai	16,558	60,767.86
"I-28"	"J-142"	5/18/2006	Pudong, Shanghai	14,348	52,657.16
"I-29"	"J-143"	5/20/2006	Pudong, Shanghai	17,313	63,538.71
"I-29"	"J-144"	5/23/2006	Taipei	9,380	34,424.60
"I-29"	"J-145"	5/24/2006	Pudong, Shanghai	10,210	37,470.70
"I-30"	"J-146"	5/25/2006	Pudong, Shanghai	2,736	10,041.12
"I-30"	"J-147"	5/27/2006	Pudong, Shanghai	18,177	66,709.59
"I-31"	"J-148"	5/30/2006	Pudong, Shanghai	3,009	11,043.03
"I-32"	"J-149"	5/31/2006	Pudong, Shanghai	17,597	64,580.99
"I-32"	"J-150"	5/31/2006	Pudong, Shanghai	3,900	14,313.00
"I-33"	"J-151"	6/3/2006	Pudong, Shanghai	11,350	41,654.50

"I-33"	"J-152"	6/7/2006	Pudong, Shanghai	6,047	22,192.49
"I-33"	"J-153"	6/8/2006	Pudong, Shanghai	7,838	28,765.46
"I-34"	"J-154"	6/11/2006	Taipei	11,130	40,847.10
"I-34"	"J-155"	6/14/2006	Taipei	2,428	8,910.76
"I-34"	"J-156"	6/14/2006	Pudong, Shanghai	13,030	47,820.10
"I-35"	"J-157"	6/17/2006	Pudong, Shanghai	6,811	24,996.37
"I-35"	"J-158"	6/21/2006	Pudong, Shanghai	2,298	8,433.66
"I-35"	"J-159"	6/22/2006	Pudong, Shanghai	12,804	46,990.68
"I-35"	"J-160"	6/22/2006	Pudong, Shanghai	7,151	26,244.17
"I-36"	"J-161"	6/24/2006	Pudong, Shanghai	14,944	54,844.48
"I-36"	"J-162"	6/25/2006	Taipei	6,133	22,508.11
"I-36"	"J-163"	6/27/2006	Taipei	2,611	9,582.37
"I-37"	"J-164"	6/30/2006	Pudong, Shanghai	12,441	45,658.47
"I-38"	"J-165"	7/2/2006	Pudong, Shanghai	19,126	70,192.42
"I-39"	"J-166"	7/2/2006	Taipei	13,537	49,680.79
"I-39"	"J-167"	7/4/2006	Pudong, Shanghai	6,998	25,682.66
"I-39"	"J-168"	7/5/2006	Pudong, Shanghai	8,876	32,574.92
"I-40"	"J-169"	07/07/06	Pudong, Shanghai	14,358	52,693.86
			Total	1,827,165	P 6,705,695.55

Evidently, petitioner Petron sold and delivered Jet A-1 fuels to petitioner PEAC and paid the corresponding excise taxes thereon. The Court will now resolve whether or not there was an erroneous payment made by petitioner Petron on the said transactions.

In **U.S.T. Cooperative Store vs. The City of Manila, *et al.***¹³, the Supreme Court explained that "there is erroneous payment of taxes when a taxpayer pays under a mistake of fact, as for the instance in a case where he is not aware of an existing exemption in his favor at the time the payment was made." Such payment is held to be not voluntary and, therefore, can be recovered or refunded.¹⁴

¹³ G.R. No. L-17133, December 31, 1965

¹⁴ The Commissioner of Internal Revenue vs. Acesite (Philippines) Hotel Corporation, G.R. No. 147295, February 16, 2007

The tax subject of this case is excise tax on petroleum products. Section 135 of the NIRC of 1997 exempts the following entities from paying excise taxes on petroleum products sold to them:

1. International carriers of Philippine or foreign registry on their use or consumption outside the Philippines, provided the petroleum products sold to these international carriers must be stored in a bonded storage tank and may be disposed of only in accordance with the rules and regulations to be prescribed by the Secretary of Finance, upon recommendation of the BIR Commissioner;
2. Exempt entities or agencies covered by tax treaties, conventions, and other international agreements for their use or consumption, provided the country of said foreign international carrier or exempt entities or agencies exempts from similar taxes petroleum products sold to Philippine carriers, entities or agencies; and
3. Entities which are by law exempt from direct and indirect taxes.

Petitioner Petron is not among the above-mentioned exempt entities. Even though it is settled that petitioner Petron had sold and delivered petroleum products to petitioner PEAC, petitioner Petron's entitlement to tax refund will depend on whether petitioner PEAC will qualify as one of the exempt entities referred to in Section 135 of the NIRC of 1997.

The fact that petitioner PEAC is an international carrier with authorized international flights from Laoag to Taipei and Pudong, Shanghai are duly established by the following documents:

1. Letters from the Civil Aeronautics Board of the Philippines authorizing petitioner PEAC to operate its air cargo flights from Laoag to Taipei and Pudong, Shanghai effective October 31, 2005 to October 30, 2006;¹⁵
2. License of Operation issued by the Civil Aviation Administration of China (CAAC) allowing petitioner PEAC to operate regular

¹⁵ Exhibits "M" and "N"



round trip cargo flights between Laoag and Pudong, Shanghai;¹⁶ and

3. Civil Aeronautics Administration Ministry of Transportation and Communications Air Route Certificate issued by the Chinese Government authorizing petitioner PEAC to operate air service with route of Laoag to Taipei and vice versa.¹⁷

Clearly, petitioner PEAC is exempt from excise taxes on the petroleum products sold to it by petitioner Petron, pursuant to Section 135 of the NIRC of 1997.

The excise taxes paid by petitioner Petron on the Jet A-1 fuels sold and delivered to petitioner PEAC, an exempt entity, partake the nature of erroneously or illegally collected taxes. Hence, it is refundable pursuant to Section 229 of the NIRC of 1997, subject to the two-year prescriptive period reckoned from the date of payment of the excise tax.

Records show that the earliest withdrawal of Jet A-1 fuel covered by the instant case was made on January 5, 2006¹⁸. Petitioners PEAC¹⁹ and Petron²⁰ filed their respective administrative claim for refund on August 9, 2007 and the instant Petition for Review on January 3, 2008. *Ergo*, the claims for refund were seasonably filed.

In recapitulation, upon examination of the documentary evidence²¹ presented, the Court finds that petitioner Petron has duly substantiated its refund claim and is therefore entitled to tax refund in the total amount of P6,705,695.50 for its sale of Jet A-1 fuels to petitioner PEAC for the latter's international air

¹⁶ Exhibits "O" to "O-10"

¹⁷ Exhibits "P" to "P-2"

¹⁸ Exhibit "E"

¹⁹ Exhibits "C" to "C-3"

²⁰ Exhibits "D" to "D-3"

²¹ Exhibits "J" to "J-129", "P" to "P-2", "F" to "F-48", "F-49" to "F-53", "G" to "G-48", "E" to "E-75", and "H" to "H-74-a"

cargo flights from Laoag City to Taipei and Pudong, Shanghai from January 5, 2006 to July 7, 2006.

WHEREFORE, premises considered, the instant Petition for Review is hereby **PARTIALLY GRANTED**.

Petitioner PEAC is hereby declared not entitled to a tax refund for not being the "taxpayer" contemplated in Section 22(N) of the NIRC of 1997. While petitioner Petron is hereby found as the proper party to file a claim for refund and entitled to a refund of the excise taxes it erroneously paid on the petroleum products sold to petitioner PEAC.

Accordingly, respondent Commissioner of Internal Revenue is hereby **ORDERED TO REFUND** or **TO ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner Petron in the amount of **SIX MILLION SEVEN HUNDRED FIVE THOUSAND SIX HUNDRED NINETY-FIVE PESOS AND 55/100 (P6,705,695.55)**, representing erroneously paid excise taxes for the period covering January 5, 2006 to July 7, 2006.

SO ORDERED.


LOVELL R. BAUTISTA
Associate Justice

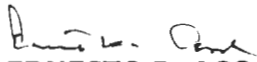
WE CONCUR:


ERNESTO D. ACOSTA
Presiding Justice


CAESAR A. CASANOVA
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified 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.


ERNESTO D. ACOSTA
Presiding Justice
Chairperson, First Division