

REPUBLIC OF THE PHILIPPINES
Court Of Tax Appeals
QUEZON CITY

SECOND DIVISION

SHELL SERVICES
INTERNATIONAL SENDIRIAN
BERHAD,

Petitioner,

-versus-

COMMISSIONER OF INTERNAL
REVENUE,

Respondent.

C.T.A. CASE NO. 6658

Members:

CASTAÑEDA, JR., Chairman
UY, and
PALANCA-ENRIQUEZ, JJ.

Promulgated:

MAR 14 2006

X ----- X

D E C I S I O N

PALANCA-ENRIQUEZ, JJ:

Legal Principle Involved:

Pursuant to *Section 76 of the National Internal Revenue Code* (hereafter "NIRC") of 1997, as amended, 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

gpc

(431)

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.

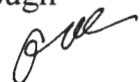
THE CASE

This is a Petition For Review filed by Shell Services International Sendirian Berhad (hereafter “petitioner”) praying for a refund or tax credit in the amount of P4,022,685.00, representing excess creditable income taxes withheld at source for the taxable year 2000.

THE FACTS

In their “Joint Stipulation of Facts and Issues”, the parties agreed on the following facts:

Petitioner is a corporation organized and existing under the laws of Malaysia and is licensed to do business in the Philippines through a branch office located at 156 Valero Street, Salcedo Village, 1227 Makati City. It may be served with pleadings and other legal processes through



undersigned counsel with address at Suite 803, 8th Floor, Jollibee Centre, San Miguel Avenue, Pasig City 1605.

Respondent is the duly appointed Commissioner of Internal Revenue who holds office at the 5th Floor of the BIR National Office Building located at Agham Road, Diliman, Quezon City, where he may be served with summons and other legal processes.

In the event of an income tax overpayment, the taxpayer can either carry-over the excess tax credit, be credited or refunded with the excess amount of tax paid by marking the appropriate box in Item 31 of the Annual Income Tax Return. Pursuant to *Section 76 of the 1997 NIRC, as amended*, once the election to carry-over is made, the option chosen is irrevocable.

Petitioner is authorized to do business in the Philippines primarily to provide the operating units of Shell Companies in the Philippines with source of information technology best practice advice and to act as business consultants, as well as to act as intermediaries in the introduction of sellers and purchasers of information technology products and services.



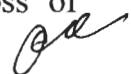
On April 17, 2000, petitioner filed its Annual Income Tax Return (BIR Form No. 1702) for the taxable year 1999 showing a taxable income of P231,229.00 and a tax due of P76,306.00 (*Exhibit "TT"*).

On April 18, 2001, petitioner filed a Tentative Annual Income Tax Return (BIR Form No. 1702) for the taxable year 2000 showing a net loss of P2,816,419.00 and showing an income tax overpayment of P4,022,685.00 (*Exhibit "A"*).

On May 30, 2001, petitioner filed its Final Annual Income Tax Return for the taxable year 2000, this time showing a net loss of P628,620.00 and showing an income tax overpayment of P4,022,685.00, which is the same amount as that shown in its Tentative Annual Income Tax Return (*supra*).

In both the Tentative and Final Annual Income Tax Returns for 2000, petitioner opted for the refund of the P4,022,685.00 representing excess creditable income taxes withheld at source during taxable year 2000 as shown under Item 31 of both tax returns.

On April 15, 2002, petitioner filed its Annual Income Tax Return (BIR Form No. 1702) for taxable year 2001 showing a net loss of



P14,863,822.00 and showing an income tax overpayment of P4,563,963.00 (*Exhibit "F"*).

Effective November 30, 2002, petitioner ceased commercial operations and formally retired from business as a result of the reorganization of petitioner's head office in Malaysia.

On April 15, 2003, petitioner filed a Final Short Period Return for the period January 1, 2002 to November 30, 2002, which it amended on May 15, 2003. Petitioner's Amended Final Short Period Return for the period January 1, 2002 to November 30, 2002 reported a net loss of P38,325,568.30 and an income tax overpayment of P1,762,013.54 (*Exhibit "G"*).

On December 16, 2002, petitioner filed a letter-petition dated December 9, 2002 with the Securities and Exchange Commission for the withdrawal of petitioner's license to do business in the Philippines (*Annex "E"*).

On April 4, 2003, petitioner timely filed a formal claim for refund with respondent, through Revenue District Office No. 50 of the Bureau of Internal Revenue, for the refund of the amount of P4,022,685.00



representing excess creditable income taxes withheld at source during taxable year 2000 (*Annex "F"*).

However, respondent has not finally acted upon petitioner's claim for refund. Meanwhile, the statutory period of two (2) years within which to file a judicial action for the recovery of internal revenue taxes that have been erroneously, wrongfully, illegally or excessively assessed or collected, such as the P4,022,685.00 excess creditable withholding tax, is about to prescribe.

Hence, petitioner timely filed the Petition for Review on April 14, 2003.

Respondent admits the genuineness and due execution of the documents attached to the Petition for Review as Annexes "A" to "F", inclusive.

In his answer, respondent alleged by way of special and affirmative defenses, as follows:

- "5. Assuming without admitting that petitioner filed a claim for refund, the same is subject to investigation by the Bureau of Internal Revenue;
6. Petitioner failed to demonstrate that the tax subject of the case at bar was erroneously or illegally collected;



7. In an action for tax refund/credit, the burden of proof is on the taxpayer to establish its right to refund and failure to adduce sufficient proof is fatal to the action for tax refund/credit;
8. It is incumbent upon petitioner to show that it has complied with the requirement provisions provided for in Revenue Regulations No. 5-87 as amended by Revenue Regulations No. 3-88.
9. The instant petition failed to state a cause of action for it violated the provisions of Section 76 of the 1997 Tax Code.
10. Claims for refund are strictly construed against the claimant for the same partake the nature of exemption from taxation (Commissioner of Internal Revenue vs. Ledesma, G.R. No. L-13509, January 30, 1970, 31 SCRA 95) and as such, they are looked upon with disfavor (Western Minolco Corporation vs. Commissioner of Internal Revenue, 124 SCRA 121)."

Petitioner presented Mr. Joseph Libo-on, as witness, and submitted documentary evidence, marked as Exhibits "A" to "VV", together with their sub-markings, which was admitted by the Court, subject to a final evaluation as regards their probative value.

On the other hand, respondent submitted the case for decision without presenting any evidence. Both parties were granted thirty (30)



days from August 8, 2005 within which to file their simultaneous memoranda, after which the case shall be deemed submitted for decision.

Both parties having complied thereto, the case was deemed submitted for decision on October 12, 2005.

ISSUES

As stipulated upon by both parties, the following are the issues for this Court's consideration:

I

WHETHER OR NOT PETITIONER HAS AN UNUTILIZED CREDITABLE WITHHOLDING TAX IN THE AMOUNT OF P4,022,685.00 FOR THE CALENDAR YEAR ENDING DECEMBER 31, 2000.

II

WHETHER OR NOT THE INCOME FROM WHICH THE TAXES WERE WITHHELD WERE INCLUDED AS PART OF THE GROSS INCOME IN PETITIONER'S INCOME TAX RETURN.

III

WHETHER OR NOT THE ALLEGED UNUTILIZED CREDITABLE WITHHOLDING TAX FOR TAXABLE YEAR 2000 IN THE AMOUNT OF P4,022,685.00 WAS CARRIED OVER AND APPLIED BY PETITIONER AGAINST ITS TAX LIABILITY IN THE SUCCEEDING TAXABLE YEARS.



IV

WHETHER OR NOT PETITIONER'S CLAIM FOR
REFUND OF ALLEGED UNUTILIZED CREDITABLE
WITHHOLDING TAX IS SUBSTANTIATED BY
DOCUMENTARY EVIDENCE.

The above stipulated issues boil down to the principal issue of whether or not petitioner is entitled to a refund or tax credit in the amount of P4,022,685.00, representing the excess creditable withholding taxes for the taxable year 2000.

THE COURT'S RULING

The petition has no merit.

Petitioner avers that it has P4,022,685.00 excess creditable withholding tax for the taxable year 2000, as evidenced by certificates of creditable tax withheld at source issued by its withholding agent (*Exhibits "B", "C", "D" and "E"*). Petitioner further claims that the income payments from which the taxes were withheld, were declared as part of its gross income in its Corporate Annual Income Tax Return for the calendar year 2000 (*Exhibit "A"*).



Excess Creditable Withholding Taxes

In order to be entitled to the refund/issuance of tax credit certificate of the claimed unutilized creditable withholding taxes for the taxable year 2000, petitioner must comply with the following requirements prescribed under *Section 2.58.3 of Revenue Regulations No. 2-98*, otherwise known as the *Withholding Tax Regulations*:

- 1) That the claim for refund was filed within the two-year prescriptive period prescribed under *Section 204(C)*, in relation to *Section 229 of the NIRC of 1997, as amended*;
- 2) That the fact of withholding is established by a copy of a statement duly issued by the payor (withholding agent) to the payee (*BIR Form No. 1743-A*), showing the amount paid and the amount of tax withheld therefrom; and
- 3) That it is shown on the return of the recipient that the income payment received was declared as part of the gross income (*Citybank N.A. vs. Court of Appeals and Commissioner of Internal Revenue, 280 SCRA 459; ACCRA Investments Corporation vs. Court of Appeals, 204 SCRA 963*).



Thus, it is imperative that petitioner should be able to prove the foregoing requirements.

*Claim For Refund Was
Filed Within the Two-year
Prescriptive Period*

As shown by the evidence on record, the first requisite was met by the petitioner. It timely filed its administrative and judicial claims for refund.

The two-year prescriptive period for the filing of a claim for refund commences from the date of filing of the final adjustment return (*ACCRA Investments Corporation vs. Court of Appeals, 204 SCRA 957*).

The subject withholding taxes pertain to taxable year 2000, to which petitioner filed its Tentative Annual Income Tax Return on April 18, 2001 (*Exhibit "A"*). Counting from this date, petitioner had until April 18, 2003 within which to file a claim for refund/tax credit certificate both in the administrative and judicial levels. Petitioner filed its administrative claim on April 4, 2003, while the instant Petition for Review before this Court was filed on April 14, 2003. Clearly, petitioner has complied with



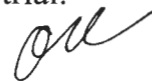
the two-year prescriptive period under *Section 204 (C)*, in relation to *Section 229 of the NIRC of 1997, as amended*.

*Taxes Withheld Are Duly
Supported by Certificates
of Withholding Tax*

Petitioner has complied with the second requirement. Petitioner has proven the fact of withholding on its income payments received for services rendered for taxable year 2000 by presenting the corresponding certificates of creditable tax withheld at source, showing the amount of income paid and the amount of tax withheld therefrom, to wit:

<u>Exhibit</u>	<u>Period Covered</u>	<u>Income Payments</u>	<u>Tax Withheld</u>
B	1 st Quarter	5,859,015.18	292,950.76
C	2 nd Quarter	58,034,544.48	2,901,727.21
D	3 rd Quarter	17,994,819.01	662,053.43
E	4 th Quarter	<u>16,595,494.76</u>	<u>165,954.93</u>
		P98,483,873.43	P4,022,686.33
		=====	=====

As to the discrepancy between the tax overpayment of P4,022,685.00, as reported by the petitioner, and the amount of P4,022,686.33, as reflected in the certificates of creditable tax withheld at source, this was explained by petitioner's witness during the trial.



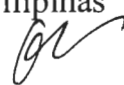
On direct examination, petitioner's witness, Joseph Libo-on identified the certificates of income taxes withheld at source issued to petitioner in the year 2000 and explained that the discrepancy is only the result of rounding off (*Exhibit "RR"; TSN, May 25, 2004, pp. 16-20*).

Thus, the fact of withholding by petitioner was duly substantiated by various certificates of creditable tax withheld at source on income payments derived from services rendered in the amount of P98,483,873.43.

*The Income
Withheld Made Part of
Petitioner's Gross Income*

With regard to the third requirement, petitioner was able to establish that the income corresponding to the creditable withholding taxes had been declared as part of its gross income in its Annual Income Tax Returns for the taxable years 1999 and 2000 (*Exhibits "A" and "TT"*).

As clearly shown in petitioner's Reconciliation of Income per Certificates of Creditable Withholding Tax (CWT) and Income per Income Tax Return (ITR) with attached supporting Schedules (*Exhibits "SS", "SS-1", "SS-2"*), and sales invoices issued by petitioner to Pilipinas



Shell Petroleum Corp. (PSPC) (*Exhibits "J" to "QQ"*), of the total income payment of P98,483,873.43, the amount of P41,013,106.08 formed part of petitioner's declared income in its 1999 Income Tax Return (*Exhibit "TT"*). The remaining income payment of P57,470,767.35 was included in petitioner's reported income of P76,522,139.00 in its year 2000 Income Tax Return. To illustrate:

Year	<u>Income Per</u> <u>Annual Income</u> <u>Tax Return</u>	<u>Amount of</u> <u>Income Payment</u> <u>Subjected</u> <u>CWT</u>	<u>Applicable</u> <u>CWT</u>
1999	43,271,748.00	41,013,106.08	2,050,655.38
2000	<u>76,522,139.00</u>	<u>57,470,767.35</u>	<u>1,972,030.95</u>
	119,793,887.00	98,483,873.43	4,022,686.33

Thus, on direct examination, petitioner's witness, Joseph Libo-on, categorically declared:

Q. Why was a portion of the income covered by these Creditable Withholding Tax Certificate for the year 2000 declared by Shell Services in its 1999 Annual Income Tax Return?

A. Because while Shell Services received the income payment in the year 2000, the services for which the income was paid were rendered in 1999. Hence, Shell Services properly reported the income in its 1999 Annual Income Tax Return.



- Q. If a portion of the income covered by these Certificates was for services rendered in 1999, why didn't PSPC issue Creditable Withholding Tax Certificates in 1999, if you know?
- A. Because PSPC paid Shell Services for services rendered in 1999 only in the year 2000. Since PSPC paid Shell Services in 2000, taxes were withheld only in the year 2000. Hence, PSPC issued the Creditable Withholding Tax Certificates only in 2000.
- Q. And why did PSPC pay, and Shell Services receive, the income only in the year 2000?
- A. PSPC paid Shell Services in the year 2000 for services rendered in 1999 because PSPC could not pay Shell Services without invoices from the latter. In 1999, Shell Services was still awaiting the BIR permit to Use Computer Generated Sales Invoice and Debit/Credit Note without which it could not issue invoices. Since the approval was issued only in the year 2000, it started issuing invoices only in that year. Hence, while Shell Services accrued the income from services rendered in 1999 in its books for that year, income payments for such services were received only in the following year 2000 and withholding tax credits pertinent thereto were accordingly recorded in its books only in 2000." (*Exhibit "RR"*)

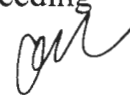
Carry-Over of Excess
Creditable Withholding
Taxes as Prior Year's Credits:
Effect Thereof



Finally, with regard to the last requirement, petitioner alleges that it opted for the refund of the P4,022,685.00 representing excess creditable income taxes withheld at source for the calendar year 2000. This fact is evidenced by an “x” mark in the box corresponding to the choice “To be refunded” in both the Tentative and Annual Income Tax Returns for 2000 (*Exhibit “A”*).

Petitioner alleges, however, that it inadvertently carried over the P4,022,685.00 income tax overpayment as a tax credit in 2001, as shown in its 2001 Annual Income Tax Return (*Exhibit “F”*).

It is the contention of petitioner that it already exercised the option “To be refunded” when it filed its Annual Income Tax Return for 2000, but through inadvertence, it carried over the excess tax credit accumulated in 2000 to the succeeding year. Thus, when petitioner exercised the option “To be refunded” when it filed its Annual Income Tax Return for 2000, the option became irrevocable, in accordance with *Section 76 of the NIRC of 1997, as amended*. While allegedly petitioner, by mistake, carried over the year 2000 excess credits to the succeeding



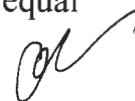
year, it did not utilize the said excess tax credits since it again suffered a net loss in 2001.

Once the Option to
Carry Over Has Been
Made, Such
Option Becomes
Irrevocable

Section 76 of the NIRC of 1997, as amended, provides that the corporate taxpayer's excess credits or overpaid income tax in a given taxable year may either be refunded or claimed as a tax credit or applied against its income tax liabilities in the succeeding taxable year. However, once the option to carry-over has been made, such option becomes irrevocable for that taxable year, and no application for cash refund or issuance of a tax credit certificate shall be allowed therefor.

Section 76 of the NIRC of 1997, as amended, reveals the effect of the choice made by petitioner in the matter of its tax refund pertaining to its year 2000 excess creditable withholding tax, to wit:

“SEC. 76. Final Adjustment Return — Every corporation liable to tax under Section 27 shall file a final adjustment return covering the total taxable income for the preceding calendar or fiscal year. If the sum of the quarterly tax payments made during the said taxable year is not equal



to the total tax due on the entire taxable income of that year, the corporation shall either:

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

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

Pursuant to the aforequoted *Section 76 of the NIRC of 1997, as amended*, the taxpayer's excess tax credit in a given taxable year may be refunded or applied against its income tax liabilities for the succeeding 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 year and no application for cash refund or issuance of a tax credit certificate shall be allowed.

These two options under *Section 76* are alternative in nature (*San Carlos Milling Co., Inc. vs. Commissioner of Internal Revenue*, 228 SCRA 135, 142). The choice of one precludes the other (*Philam Asset Management, Inc. vs. Commissioner of Internal Revenue*, G.R. Nos. 156637/162004, December 14, 2005).

In this case, while petitioner marked with an “x” the box corresponding to the phrase “to be refunded” in its 2000 income tax return, petitioner had actually exercised the option to carry-over its 2000 excess creditable withholding tax to 2001, and in fact, it had already carried over to the succeeding year its unutilized creditable taxes withheld for 2000. By express mandate of *Section 76*, once the option to carry-over has been made, such option is irrevocable for that taxable period and no application for cash refund or issuance of tax credit certificate shall be allowed therefore.

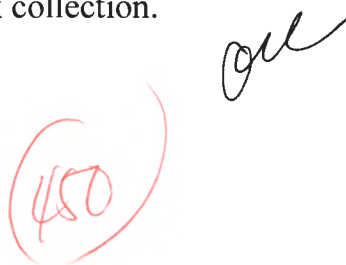
In the case of *Paseo Realty & Development Corporation vs. Court of Appeals, Court of Tax Appeals and Commissioner of Internal Revenue*, 440 SCRA 235, the Supreme Court held:



“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.”

In the recent case of *Philam Asset Management, Inc., vs. Commissioner of Internal Revenue*, G.R. No. 156637/162004, December 14, 2005, the Supreme Court reiterated said ruling, and said:

“These two options under Section 76 are alternative in nature. The choice of one precludes the other. Indeed, in *Philippine Bank of Communications vs. Commissioner of Internal Revenue*, the Court ruled that a corporation must signify its intention – whether to request a tax refund or claim a tax credit – by marking the corresponding option box provided in the FAR. While a taxpayer is required to mark its choice in the form provided by the BIR, this requirement is only for the purpose of facilitating tax collection.



xxx

xxx

The carry-over option under Section 76 is permissive. A corporation that is entitled to a tax refund or a tax credit for excess payment of quarterly income taxes may carry over and credit the excess income taxes paid in a given taxable year against the estimated income tax liabilities of the succeeding quarters. Once chosen, the carry-over option shall be considered irrevocable for that taxable period, and no application for a tax refund or issuance of a tax credit certificate shall then be allowed.

xxx

xxx

Whether the FIFO principle is applied or not, Section 76 remains clear and unequivocal. Once the carry-over option is taken, actually or constructively, it becomes irrevocable. Petitioner has chosen that option for its 1998 creditable withholding taxes. Thus, it is no longer entitled to a tax refund of P459,756.07, which corresponds to its 1998 excess tax credit. x x x”

Pursuant to the aforequoted rulings of the Supreme Court, applying *Section 76 of the Tax Code*, since petitioner had opted to carry-over and apply its 2000 excess tax credits against its 2001 tax liability, such option to carry-over is now irrevocable. Therefore, petitioner’s alleged 2000 unutilized/excess tax credits cannot anymore be refunded or be applied as a tax credit certificate.



Petitioner's contention that the cessation of its business operations will not allow it to utilize its year 2000 excess creditable withholding tax to 2001 cannot be sustained.

In support of its claim, petitioner presented the following documents:

- 1) Audited Financial Statements for 1999 and 2000 (*Exhibits "G" and "TT-3"*);
- 2) Letter-petition for withdrawal of petitioner's license to do business in the Philippines to the Securities and Exchange Commission (*Annex "E"*); and
- 3) Judicial affidavit of witness Joseph Libo-on (*Exhibit "RR"*).

This Court finds the above documents insufficient to prove that petitioner had actually ceased operation.

In this regard, *Section 52 (C) and 235 of the NIRC of 1997, as amended*, provide:

"SEC. 52. Corporation Returns. —

xxx

xxx

(C) Return of Corporation Contemplating
Dissolution or Reorganization. — Every corporation shall,

452



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.”

“SEC. 235. Preservation of Books of Accounts and Other Accounting Records. —

xxx

xxx

(e) x x x All corporations, partnerships or persons that retire from business shall, within ten (10) days from the date of retirement or within such period of time as may be allowed by the Commissioner in special cases, submit their books of accounts, including the subsidiary books and other accounting records to the Commissioner or any of his deputies for examination, after which they shall be returned. Corporations and partnerships contemplating dissolution must notify the Commissioner and shall not be dissolved until cleared of any tax liability.”



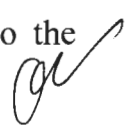
Furthermore, *Section 136 of the Corporation Code* provides:

“SEC. 136. ***Withdrawal of foreign corporations.-*** Subject to existing laws and regulations, foreign corporation licensed to transact business in the Philippines may be allowed to withdraw from the Philippines by filing a petition for withdrawal of license. No certificate of withdrawal shall be issued by the Securities and Exchange Commission unless all the following requirements are met:

1. All claims which have accrued in the Philippines have been paid, compromised or settled;
2. All taxes, imposts, assessments, and penalties, if any, lawfully due to the Philippine Government or any of its agencies or political subdivisions have been paid; and
3. The petition for withdrawal of license has been published once a week for three (3) consecutive weeks in a newspaper of general circulation in the Philippines.”

The rationale behind these provisions is to insure that no corporation may escape payment of taxes and other liabilities to the government simply by opting to dissolve the corporation and retire from business or reorganize its business.

In the case at bench, petitioner failed to prove that it was cleared of any tax liability, as mandated by *Section 235 of the NIRC of 1997, as amended*, in relation to *Section 136 of the Corporation Code of the Philippines*. Petitioner failed to present any BIR tax clearance to the



Securities and Exchange Commission (hereafter “SEC”). It is only upon submission of the BIR tax clearance to the SEC will it then issue a certificate of withdrawal of license to transact business in the Philippines. Absent a certificate of withdrawal of license issued by the SEC, this Court cannot ascertain if indeed petitioner has paid all its tax liabilities as to entitle it to the refund being claimed in this case. To grant the refund being claimed by petitioner would put the government in a most disadvantageous position considering that it can no longer run after a non-existing corporation.

Laws Granting Tax Exemption
Are Construed Strictissimi Juris
Against The Taxpayer And Liberally
In Favor Of The Taxing Authority

Settled is the rule that a claim for tax refund is in the nature of tax exemption. Laws granting exemption from tax are construed *strictissimi juris* against the taxpayer and liberally in favor of the taxing authority (*Tax Principles and Remedies*, 2nd ed. 2005, p. 111, by Justice Japar B. Dimaampao). Taxation is the rule and exemption is the exception. The law does not look with favor on tax exemptions and that he who would seek to be thus privileged must justify it by words too plain to be mistaken and too



categorical to be misinterpreted (*Sea-land Service, Inc. vs. Court of Appeals*, 357 SCRA 444; *BPI-Family Savings Bank vs. Court of Appeals, et al.*, 330 SCRA 507).
Petitioner has failed to meet the burden of proof required in order to establish the factual basis of its claim for tax refund (*Philam Asset Management, Inc. vs. Commissioner of Internal Revenue*, G.R. Nos. 156637/162004, December 14, 2005).

WHEREFORE, premises considered, the present Petition for Review is **DENIED DUE COURSE**, and accordingly, **DISMISSED**.

SO ORDERED.


OLGA PALANCA-ENRIQUEZ
Associate Justice

WE CONCUR:


JUANITO C. CASTAÑEDA, JR.
Associate Justice


ERLINDA P. UY
Associate Justice



ATTESTATION

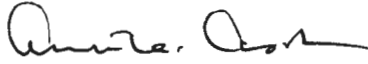
I attest that the conclusions in the above Decision were reached in consultation before the cases were assigned to the writer of the opinion of the Court's Division.


JUANITO C. CASTAÑEDA, JR.

Associate Justice
Chairman, Second Division

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, and the Division Chairman's Attestation, it is hereby certified that the conclusions in the above Decision were reached in consultation before the cases were assigned to the writer of the opinion of the Court's Division.


ERNESTO D. ACOSTA
Presiding Justice

