REPUBLIC OF THE PHILIPPINES
Court Of Tax Appeals
QUEZON CITY

SECOND DIVISION

SYSTEMS AND ENCODING CORPORATION, *Petitioner,*	**C.T.A. CASE NO. 6999**
	Members:
-versus-	CASTAÑEDA, JR., Chairperson UY, and PALANCA-ENRIQUEZ, JJ.
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	**Promulgated:** DEC 16 2008 11:00 a.m.

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DECISION

PALANCA-ENRIQUEZ, J.:

THE CASE

This is a Petition for Review filed by Systems and Encoding Corporation (hereafter "petitioner"), which seeks to declare null and void the following deficiency assessments: income tax, including interest and penalty in the amount of P7,791,568.37; surcharge on withholding tax on compensation in the amount of P2,398,122.08; interest on withholding tax on compensation in the amount of P2,530,804.13; basic expanded withholding tax in the amount of P95,516.09; surcharge for expanded withholding tax in the amount of P47,758.04; and interest for expanded withholding tax in the amount of P63,765.82 against petitioner for taxable year 2000.

THE PARTIES

Petitioner is a corporation duly organized and existing under the laws of the Philippines with principal office at 3rd Floor, Wardley Bldg., 1991 Taft Avenue, Pasay City. Petitioner is a providing data encoding services.

Respondent Commissioner of Internal Revenue is the duly appointed Commissioner of Internal Revenue vested by law to decide disputed assessments and to enforce the provisions of the National Internal Revenue Code ("NIRC"), with office address at the Bureau of Internal Revenue ("BIR"), BIR Building, Agham Road, Quezon City.

THE FACTS

The facts, as culled from the records, are as follows:

On April 18, 2001, petitioner filed its Income Tax Return ("ITR") for taxable year 2000, attaching thereto its audited financial statement and notes.

Respondent conducted an audit investigation on petitioner for its failure to remit withholding taxes for taxable year 2000.

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Petitioner did not conceal, but disclosed its failure to remit withholding taxes for taxable year 2000 in the attachments to its ITR, more particularly in the balance sheet, as a current liability and under note 8 to the financial statement.

Petitioner offered to execute a waiver of the Bank Secrecy Law thru a Letter dated January 30, 2003 of its Chairman. In the Letters dated September 6, 2002 and July 18, 2003, petitioner invoked Section 204 of the 1997 Tax Code, authorizing respondent to compromise the payment of any internal revenue tax when the taxpayer's financial position demonstrates clear inability to pay the assessed tax.

On September 16, 2003, petitioner received the Formal Assessment Notices and Demand Letters dated September 16, 2003 for deficiency income tax, withholding tax on compensation and expanded withholding tax for taxable year 2000, together with the details of discrepancies thereof.

The assessment for deficiency income tax came out as a result of the BIR's disallowance of deductions amounting to P91,418,997.30, consisting of:

A. Salaries, wages and bonuses	P76,085,176.80
B. Overtime/night shift premiums	3,787,011.20
C. Rental Expense	6,588,565.54

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D. Management fee	2,078,000.00
E. Repairs and Maintenance	741,892.04
F. Subcontractors expense	139,833.46
G. Professional fee	287,161.10
H. Equipment rental	411,879.59
I. Commission expense	790,432.57
J. Guard Services	345,960.00
K. Advertising and promotion	163,085.00

Petitioner was assessed 50% surcharge and 20% penalty each for deficiency withholding tax on compensation and deficiency expanded withholding tax, pursuant to *Sections 248 (B) and 249 of the 1997 Tax Code*.

On October 10, 2003, petitioner protested the assessment by filing a request for reconsideration or reinvestigation, which was granted by the RDO 51-Pasay City on November 17, 2003.

Thereafter, petitioner submitted to the RDO 51-Pasay City its detailed summary schedules of its ordinary and necessary expenses.

On May 4, 2003, petitioner received a letter from the Revenue District Officer of RDO 51 denying with finality its protest against the questioned assessment and finding petitioner liable for deficiency income tax in the amount of P7,791,568.37, deficiency withholding tax on compensation in the amount of P9,750,180.37 and deficiency expanded withholding tax in the amount of P223,039.95. Petitioner's claimed

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deduction of P56,067,409.59 for salaries and wages was disallowed for the reason that the withholding taxes due thereon was not remitted by petitioner to the BIR. Also, petitioner's claimed deduction for rental expense of P5,246,432.62 was disallowed by the BIR in its final decision on the ground that no receipts/invoices were issued by the lessor.

In his "Answer" filed on September 22, 2004, respondent, by way of special and affirmative defenses, averred the following: the investigation of petitioner's internal revenue tax liabilities for the year 2000 revealed a tax obligation of P21,545,247.33 as deficiency income tax, P10,143,582.22 as deficiency withholding tax, and P116,575.37 as deficiency expanded withholding tax, all inclusive of surcharges and interests; the deficiency assessments were issued in accordance with law and pertinent regulations; the taxpayer was informed in writing of the facts and laws in which the assessment is based, the same is contained in the "Details of Discrepancies" dated September 16, 2003; petitioner was found to be liable for deficiency withholding tax on compensation in the amount of P9,750,270.37, even if petitioner paid the amount of P1,000,000.00 on December 30, 2003, the same is not enough to cancel said assessment. Petitioner is still liable to pay the amount of P8,750,270.37, as balance of the deficiency tax liability. Rental expense

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in the amount of P5,246,432.62 was disallowed for failure to present receipts/invoices issued by the lessor, required by *Section 34 (A) (1) (b) of the 1997 Tax Code*. For failure of petitioner to withhold and remit withholding tax on compensation, the salaries and allowances claimed as expense was disallowed, therefore increasing the tax base of the petitioner that resulted to the deficiency income tax. Even if petitioner is said to be suffering from serious financial reverses, it is not enough justification not to withhold and remit withholding tax on compensation because such amount will not be deducted from their cash reserves, but it will come from the compensation of the employees. Petitioner is only an agent of the BIR in withholding part of its employees' compensation. All presumptions are in favor of the correctness of tax assessments and the burden of proof to prove otherwise is upon the petitioner.

Petitioner presented its Comptroller, Alberto Matabang, Wilfredo Cereno, the Court-Commissioned Independent CPA, and documentary evidence, marked as *Exhibits "A" to "N[4]"*, inclusive of their submarkings, which were all admitted by the Court, except for *Exhibits "C", "C-1", "K", "K-1", "L", "L-1" "M"* to *"M-6"*, which were denied admission for failure to present their originals, in a Resolution dated June 19, 2006.

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On the other hand, counsel for respondent presented Revenue Officer Milan Madarang, as witness, and documentary evidence, marked as *Exhibits "1" to "12"*, inclusive of their submarkings, which were all admitted by the Court in a Resolution dated September 19, 2007, after respondent filed a "Motion for Reconsideration (Of the Honorable Court's Resolution dated May 28, 2007), and "Motion to Admit Formal Offer of Evidence".

On May 28, 2007, petitioner filed a "Manifestation" stating that it availed of the BIR's Voluntary Assessment and Abatement Program under Revenue Regulations 15-2006 and 3-2007 on March 26, 2007.

Petitioner having filed its memorandum, without respondent's filing the same, on December 18, 2007, the case was deemed submitted for decision.

ISSUES

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

I

WHETHER BIR'S DISALLOWANCE OF PETITIONER'S CLAIMED DEDUCTION OF SALARIES AND WAGES IS VALID AND LEGAL.

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II

WHETHER PETITIONER IS LIABLE FOR SURCHARGE OR WITHHOLDING TAX ON COMPENSATION AMOUNTING TO P2,398,122.08.

III

WHETHER PETITIONER IS LIABLE FOR INTEREST ON THE WITHHOLDING TAX ON COMPENSATION AMOUNTING TO P2,530,804.13.

IV

WHETHER PETITIONER IS LIABLE FOR BASIC EXPANDED WITHHOLDING TAX DEFICIENCY OF P95,516.09.

V

WHETHER PETITIONER IS LIABLE FOR SURCHARGE OF P47,758.04 AND INTEREST OF P63,765.82 BOTH FOR BASIC EXPANDED WITHHOLDING TAX DEFICIENCY.

VI

WHETHER PETITIONER INCURRED A NET LOSS FOR TAXABLE YEAR 2000.

VII

WHETHER PETITIONER SUBSTANTIATED ITS CLAIMED DEDUCTION FOR RENTAL EXPENSES.

The above issues can be summed up into three main issues:

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WHETHER OR NOT PETITIONER IS LIABLE FOR DEFICIENCY INCOME TAX, INCLUDING SURCHARGE AND INTEREST FOR PETITIONER'S FAILURE TO COMPLY WITH THE PROCEDURAL REQUIREMENT OF SECTION 34(K) OF THE NIRC OF 1997, AS AMENDED.

II

WHETHER OR NOT PETITIONER IS LIABLE FOR WITHHOLDING TAX ON COMPENSATION, INCLUDING SURCHARGE AND INTEREST.

III

WHETHER OR NOT PETITIONER IS LIABLE FOR DEFICIENCY EXPANDED WITHHOLDING TAX, INCLUDING SURCHARGE AND INTEREST.

THE COURT'S RULING

The petition is partly meritorious.

First Issue: Whether or not Petitioner is Liable for Deficiency Income Tax

In the Revised Findings per Reinvestigation *(Attachment to Exhibit "11")*, respondent found petitioner liable for deficiency income tax in the amount of P7,791,568.37, computed as follows:

Income Tax		
Net Loss per Income Tax Return		(P46,378,133.81)
Add: Adjustments per Reinvestigation		
a) Salaries and Wages - Phils	P56,067,409.59	
b) Rental Expense	5,246,432.62	

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Total Adjustments per Reinvestigation		P61,313,842.21
Total Adjusted Income per Reinvestigation		14,935,708.40
x rate of Corporate Income Tax		0.32
Tax Due per Reinvestigation		P4,779,426.69
Less: Tax Payments per Return		0.00
Basic Income Tax Deficiency per Reinvestigation		P4,779,426.69
Add: Statutory Increments		
a) Surcharge	0.00	
b) Interest fr. 4-16-01 to 5-30-04 (.625)	2,987,141.68	
c) Penalty pursuant to RMO 1-90	25,000.00	
Total Statutory Increments		3,012,141.68
Total Amount Still Due and Payable		P7,791,568.37

a) Disallowed Salaries and Wages in the amount of P56,067,409.59

Out of the total "Salaries, wages and bonuses" and "Overtime/night shift premium" of P79,872,188.00 (P76,085,176.08 + P3,787,011.20) claimed expense of petitioner, respondent disallowed the amount of P56,067,409.59 on the ground that petitioner failed to remit to the BIR the corresponding withholding tax thereof.

Record shows that the claimed salaries, wages, bonuses and overtime/night shift premium of P79,872,188.00 is composed of the following:

Salaries and wages – Philippines	P56,067,409.59
Salaries and wages – Non-resident citizens	10,887,550.00
Salaries and wages – USA Employees	12,917,228.54
Total	P79,872,188.13

(BIR Records, pp. 359-361, Exhibit "I-1")

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As regards the salaries and wages paid to resident employees in the amount of P56,067,409.59, petitioner is required to withhold and remit the corresponding creditable withholding tax thereof, pursuant to *Section 57 (B) of the NIRC of 1997, as amended*, which provides:

> "SEC. 57. Withholding of Tax at Source. –
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> xxx xxx
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> (b) Withholding of Creditable Tax at Source – The Secretary of Finance may, upon the recommendation of the Commissioner, require the withholding of a tax on the items of income payable to natural or juridical persons, residing in the Philippines, by payor – corporation/persons as provided for by law, at the rate of not less than one percent (1%) but not more than thirty-two percent (32%) thereof, which shall be credited against the income tax liability of the taxpayer for the taxable year."

However, as regards the salaries, wages, bonuses, and overtime/night shift premium paid to non-resident citizens in the amount of P10,887,550.00, and USA employees in the amount of P12,917,228.54, or in the total amount of P23,804,778.54, they are not subject to withholding tax, pursuant to *Section 57 (B) of the NIRC of 1997, as amended*, being income payment to non-resident.

A careful examination of the evidence on record reveals that as to the salaries, wages, bonuses and overtime/night shift premium –

Philippines of P56,067,409.50, petitioner withheld the amount of P4,796,244.16 *(Exhibits "N-1" to "N-21", BIR Records, pp. 50-63)*. However, petitioner did not remit the amount of P4,796,244.16 to the BIR, as shown by the following documentary evidence: (1) Petitioner's own admission in a Letter dated January 30, 2003 to the BIR *(Exhibits "B" and "8")*; (2) duly authenticated BIR Form 1601C for the months of January to December 2000, which were not filed with the BIR *(BIR Records, pp. 50-63)*; (3) Financial Statements and Note 8 of the Financial Statement of petitioner for the period December 31, 2000, acknowledging that the amount of P16,342,052.41 represents unpaid withholding taxes payable by petitioner on compensation and services for the years 1997 to 2000 *(Exhibits "A-8" and "A-12")*; and (4) Memorandum dated August 28, 2002 of Revenue Officer Ofelia Dolina-De Jesus of RDO 51, Pasig City, stating that petitioner did not have any record of BIR Forms 1601E and 1601C *(Exhibit "6")*.

In this regard, *Section 34 (K) of the NIRC of 1997, as amended*, provides:

> "SEC. 34. Deductions from Gross Income. – xxx
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> (K) Additional Requirements for Deductibility of Certain Payments. – Any amount paid or payable which is otherwise deductible from, or taken into account in computing gross income or for which depreciation or amortization may be allowed under this Section, shall be allowed as a deduction only if its is shown that the tax required to be deducted and withheld therefrom has been paid to the Bureau of Internal Revenue in accordance with this Section, Section 58 and 81 of this Code."

Corollary therefore, *Section 2.58.5 of Revenue Regulations 2-98*, provides:

> "SEC. 2.58.5. Requirement for Deductibility. – Any income payment which is otherwise deductible under the Code shall be allowed as a deduction from the payor's gross income only if it is shown that the income tax required to be withheld has been paid to the Bureau in accordance with Secs. 57 and 58 of this Code.
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> xxx xxx."

Pursuant to the aforequoted provisions, an amount claimed as an expense is allowed as a deduction from gross income if the tax required to be withheld therefrom has been paid to the BIR.

The purpose of this requirement is to insure the collection of the income tax on these payments which constitute income to the recipients thereof and, therefore, includible in their gross income *(NIRC, Annotated, 2000 ed., De Leon, p. 292)*. Thus, when one engaged in trade or business makes payments that are deductible from his gross income for tax

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purposes it is not enough that he proves that such payments have been made. He must also show proof that he withheld the tax and remitted it to the BIR before he can deduct the same as business expense *(NIRC, Annotated, De Leon, supra)*.

Considering that in the instant case petitioner failed to remit the corresponding creditable withholding taxes of the salaries, wages, bonuses and overtime/night shift premium – Philippines of P56,067,409.50, petitioner cannot deduct the same as valid expense from its gross income, pursuant to *Section 34 (K) of the NIRC of 1997, as amended*, in relation to *Section 2.58.5 of Revenue Regulations 2-98*.

Petitioner cannot find solace in the fact that it suffered a net loss, hence its obligation to withhold and remit taxes can be disregarded, such that notwithstanding its non-remittance of creditable withholding taxes on salary, wages, bonuses and overtime/night shift premium, said expense can be allowed as deduction from its gross income. *Section 2.58.5 of Revenue Regulation 2-98* allows only three instances when an expense can be allowed as a deduction even if no withholding of tax was made, to wit:

1) The payee reported the income and the withholding agent/taxpayer pays the tax, including the interest incident to the failure to withhold the tax, and surcharges, if applicable, at the time of the original audit and investigation;

2) The recipient/payee failed to report the income on the due date thereof, but the withholding agent/taxpayer pays the tax, including the interest incident to the failure to withhold the tax and surcharges, if applicable, at the time of the original audit and investigation; and

3) The withholding agent erroneously underwithheld the tax but pays the difference between the correct amount and the amount of tax withheld, including the interest, incident to such error, and surcharges, if applicable, at the time of the original audit and investigation.

Petitioner does not fall in any of the above three enumerated instances. During the original audit and investigation, petitioner, as a withholding agent, did not pay the unremitted tax, interest and surcharge. At most, petitioner paid only the amount of P1,000,000.00, out of the unremitted basic withholding tax of P4,796,244.16 on December 30, 2003. The same, however, does not amount to complete payment contemplated in *paragraphs (A), (B), and (C) of Section 2.58.5*, which mandates the payment not only of the tax due, but also of interest incident to the failure to withhold and surcharge, if applicable.

Moreover, the creditable withholding tax withheld by petitioner from its resident employees is a trust fund held for the government until they are remitted, which should be maintained by petitioner in separate accounts and should not be commingled with any of its funds *(Section 2.58.4, Revenue Regulations 2-98)*. Petitioner, therefore, is merely an agent of the government, such that it has no authority to use the funds withheld for its own account. Otherwise, petitioner breaches its obligation to its principal, the government. Moreover, such amount will not be taken from petitioner's cash reserves, but it will come from the income, in the form of compensation received by its employees. Hence, petitioner cannot find justification from its financial distress in non-remittance of said creditable withholding tax held in trust for the government.

Respondent, therefore, correctly disallowed the amount of P56,067,409.59, as salaries, wages, bonuses and overtime/night shift premium expense.

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b) Disallowed Rental Expense in the amount of P5,246,432.62.

In the Final Decision on Disputed Assessment *(Attachment to Exhibit "11")*, the rental expense was disallowed as a deduction by respondent on the ground that verification disclosed that no receipts/invoices were issued by the lessor.

Contrary to respondent's findings, the Court finds that the amount of P5,246,432.62 is duly supported with invoices and receipts. Respondent's witness, Revenue Officer Milan Madarang, on cross examination testified that he examined pieces of documentary evidence in support of the rental expense submitted to him by petitioner *(TSN, February 7, 2007, p. 44 and March 19, 2007, pp. 27-28)*.

However, notwithstanding that the rental expense of P5,246,432.62 is duly supported with invoices and receipts, the Court hereby disallows said amount as a deduction from petitioner's gross income for the following reasons:

(1) The Rental Expense of P5,246,432.62 paid by petitioner to Wardley Commercial Development Corporation for the period January to December 2000 consists of the following:

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Office Space Rental for the total amount of	P4,883,432.62
Canteen Space Rental for the total amount of	363,000.00
Total	P5,246,432.62

(Schedule of Ordinary and Necessary Expenses, Exhibit "I-2").

A perusal of petitioner's Monthly Remittance of Creditable Income Taxes Withheld (Expanded) BIR Form 1601E *(BIR Records, pp. 64-79)*, Annual Information Return on Creditable Income Taxes Withheld (Expanded)/Income Payments Exempt from Withholding Tax) (BIR Form 1604E) *(Exhibit "O")* and Alphalist of Payments Subject to Expanded Withholding Tax *(Exhibits "O-1" and "O-2")* shows that petitioner only withheld the amount of P21,175.00, corresponding to the rental payment of P423,500.00. Accordingly, the withholding tax of P241,146.63 (P4,822,932.62 x 5%) corresponding to the rental expense of P4,822,932.62 (P5,246,432.62–P423,500.00), was not withheld by petitioner.

(2) Even if petitioner withheld the amount of P21,175.00 corresponding to rental payment of P423,500.00, petitioner did not remit the expanded withholding tax thereof, as evidenced by the following documents: 1) Petitioner's own admission in a Letter dated January 30, 2003 to the BIR, admitting its inability to remit the withholding taxes and acknowledging its liability to the BIR *(Exhibits "B" and "8")*; (2) duly

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authenticated BIR Form 1601E for the months of January to December 2000, which were not filed with the BIR *(BIR Records, pp. 64-79)*; (3) Financial Statements and Note 8 to the Financial Statement of petitioner for the period December 31, 2000, acknowledging that the amount of P16,342,052.41 represents unpaid withholding taxes payable by petitioner on compensation and services for the years 1997 to 2000 *(Exhibits "A-8" and "A-12")*; and (4) Memorandum dated August 28, 2002 of Revenue Officer Ofelia Dolina-De Jesus of RDO 51, Pasig City, stating that petitioner did not have any record of BIR Forms 1601E and 1601C *(Exhibit "6")*.

As heretofore discussed, pursuant to *Section 34 (K) of the NIRC of 1997, as amended,* and *Section 2.58.5 of Revenue Regulations 2-98*, in relation to *Section 2.57.2 (C)*, which requires petitioner to withhold 5% of the gross rental, petitioner cannot claim as a deduction from its gross income, an expense on which the corresponding withholding tax thereof was not remitted to the BIR.

Thus, We uphold the result of respondent's findings in disallowing the amount of P56,067,409.50, as deduction from petitioner's gross income.

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We also sustain respondent's findings in imposing deficiency interest against petitioner, pursuant to *Section 249(B) of the NIRC of 1997, as amended*, in relation to *Section 2.80(C)(3) of Revenue Regulations 2-98*. Though, petitioner may have a reason why it failed to remit the creditable withholding tax, yet We have no alternative, but to apply the law. Strong reasons of the policy support a strict observance of the rule regarding the payment of tax. The laws imposing penalties for delinquencies are clearly intended to hasten tax payments or punish evasions or neglect of duty in respect thereof. If delays in tax payments are to be condoned for light reasons, the law imposing penalties for delinquencies would be rendered nugatory and maintenance of the government and its multifarious activities would be as precarious as taxpayers are willing or unwilling to pay their obligations to the state on time *(Jamora vs. Meer, 74 Phil. 22)*.

However, with respect to the compromise penalty of P25,000.00, settled is the rule that penalties cannot be imposed in the absence of showing that petitioner consented thereto. A compromise implies agreement. Such being the case, in the absence of a showing that petitioner consented thereto, the compromise penalty cannot be validly imposed *(Commissioner of Internal Revenue vs. Abad, 23 SCRA 1140)*.

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For all the foregoing, the Court finds petitioner liable for deficiency income tax in the reduced amount of P7,766,568.37, computed as follows:

Income Tax		
Net Loss per Income Tax Return		(P46,378,133.81)
Add: Adjustments per Reinvestigation		
a) Salaries and Wages - Phils	P56,067,409.59	
b) Rental Expense	5,246,432.62	
Total Adjustments per Reinvestigation		P61,313,842.21
Total Adjusted Income per Reinvestigation		14,935,708.40
x rate of Corporate Income Tax		0.32
Tax Due per Reinvestigation		P4,779,426.69
Less: Tax Payments per Return		0.00
Basic Income Tax Deficiency per Reinvestigation		P4,779,426.69
Add: Statutory Increments		
a) Interest fr. 4-16-01 to 5-30-04 (.625)		2,987,141.68
Total Amount Still Due and Payable		**P7,766,568.37**

Second Issue: Deficiency Creditable Withholding Tax on Compensation, including Surcharge and Interest

In the Revised Findings per Reinvestigation *(Attachment to Exhibit "11")*, petitioner was assessed by respondent of basic deficiency tax of P3,796,244.16, surcharge of P2,398,122.08, interest of P2,530,804.13 and penalty of P25,000.00, or in the total amount of P9,750,170.37.

The basic withholding tax of P3,796,244.16 is the balance of the original unremitted withholding tax on compensation for the year 2000 in

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the original amount of P4,796,244.16, petitioner having voluntarily paid only the amount of P1,000,000.00 on December 30, 2003.

As heretofore discussed in the deficiency income tax assessment, the Court found that petitioner failed to remit the creditable withholding tax on compensation in the amount of P4,796,244.16 to the BIR, except for the voluntary payment of P1,000,000.00, as above mentioned.

Section 2.80 of Revenue Regulations 2-98 provides: "the employer shall be responsible for the withholding and remittance of the correct amount of tax required to be deducted and withheld from the compensation income of his employees. If the employer fails to withhold and remit the correct amount of tax, such tax shall be collected from the employer together with the penalties or additions to the tax otherwise applicable".

Thus, respondent correctly assessed petitioner of basic deficiency withholding tax liability of P3,796,244.16.

However, as to the 50% surcharge for non-filing, the Court finds respondent's imposition without factual and legal basis. *Section 2.80 (C)(1)(e) of Revenue Regulations 2-98* imposes a 50% penalty on the

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deficiency tax in case of willful neglect to file return, or in case of a false or fraudulent return. Although in the instant case, petitioner failed to file its Monthly Remittance Return of Income Taxes Withheld on Compensation (BIR Form No. 1601C) for the calendar year 2000 *(BIR Records, pp. 50-63)*, the same is not willfully nor fraudulently made. In its Letters dated January 30, 2008 and October 10, 2003 *(Exhibits "B"* and *"8"* and *"F"* to *"F-2")*, petitioner recognized its liability to the BIR as regards its withholding taxes on compensation. Also, in its Financial Statements for the period December 31, 2000 and Note 8 to the Financial Statements, petitioner declared and acknowledged its unpaid withholding tax liability *(Exhibits "A-8"* and *"A-12")*. Petitioner, therefore, cannot be made liable to pay the 50% surcharge.

Instead, the surcharge to be imposed against petitioner is only 25% of the amount due, pursuant to *Section 2.80 (C)(1)(d) of Revenue Regulations 2-98*, which states:

"SEC. 2.80. Liability for Tax. -

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(C) Additions to Tax. –

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(1) There shall be imposed, in addition to the tax required to be paid a penalty equivalent to twenty five percent (25%) of the amount due in the following cases:

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(d) Failure to pay the full or part of the amount of tax shown on any return required to be filed under the provisions of the Code or these regulations, or the full amount of tax due for which no return is required to be filed, or before the date prescribed for its payment; or"

As regards the compromise penalty of P25,000.00, the same is hereby cancelled. As heretofore discussed, compromise implies mutual agreement. Although petitioner is willing to compromise its withholding tax liability on compensation, there is no showing on the part of the respondent that it consented thereto. Such being the case, respondent cannot validly impose the compromise penalty against petitioner.

On the basis of the foregoing, We find petitioner liable for deficiency withholding tax on compensation in the reduced amount of P7,276,109.33, computed as follows:

Withholding Tax on Compensation		
Basic Deficiency Tax per Assessment		P4,796,244.16
Less: Voluntary Payment, December 30, 2003		1,000,000.00
Balance, Basic Deficiency tax per Reinvestigation		P3,796,244.16
Add: Statutory Increments -		
a) Surcharge (25%) non-filing of returns and non-payment	P949,061.04	
b) Interest from 1.26.01 to 12.30.03	2,530,804.13	
Total Statutory Increments		P3,479,865.17
Total Amount Still Due and Payable		**P7,276,109.33**

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Third Issue: Deficiency Expanded Withholding Tax, Surcharge and Interest

In the Revised Findings per Reinvestigation *(Attachment to Exhibit "11")*, petitioner was assessed by respondent of Expanded Withholding Tax in the amount of P223,039.95, computed as follows:

Expanded Withholding Tax		
Basic Expanded Withholding Tax		P54,523.12
Add: Adjustments per Reinvestigation		
a) Repairs and Maintenance – 1%	P741,892.04	7,418.92
b) Subcontractor Fees – 1%	139,833.46	1,398.33
c) Professional fees – 10%	287,161.10	28,716.11
d) Security Services – 1%	345,960.00	3,459.60
Basic Expanded Withholding Tax Deficiency		P95,516.09
Add: Statutory Increments		
a) Surcharge (50%) for non-filing of returns	47,758.04	
b) Interest fr. 1.11.01 to 5.30.04 (.6675925)	63,765.82	
c) Penalty per RMO 1-90	16,000.00	
Total Statutory Increments		127,523.86
Total Amount Still Due and Payable		P223,039.95

A careful examination of the evidence on record shows that the Expanded Withholding Tax in the amount of P54,523.16 was not remitted by petitioner to the BIR *(BIR Records, pp. 64-79, Exhibits "O" to "O-2", and "6").* Thus, We uphold respondent's finding in assessing petitioner of basic deficiency Expanded Withholding Tax of P54,523.16.

However, as regards the additional deficiency Expanded Withholding Tax assessment per Reinvestigation, consisting of (1) Repairs and Maintenance in the amount of P7,418.92; (2) Subcontractor

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Fees in the amount of P1,398.33; (3) Professional Fees in the amount of P28,716.11; and (4) Security Services in the amount of P3,459.60, upon examination of the documentary evidence on record, We cannot sustain *in toto* respondent's findings, as discussed hereunder:

(1) Repairs and Maintenance of P7,418.92.

The Repairs and Maintenance Expanded Withholding Tax Assessment of P7,418.92 (P741,892.04 x 1%) arose from the Repairs and Maintenance payments of P741,892.04 to the following:

1) Atlas Specialist Inc.	P16,928.00
2) First Communications Services, Inc.	11,540.00
3) Seasonaire Industrial Works	89,573.00
4) Dave Montoya	22,200.00
5) R.V. Austria Trading	55,250.00
6) Advance Solutions, Inc.	73,328.00
7) Ecoline IT Corp.	5,000.00
8) L J Furniture and Home Shop	16,336.75
9) Contronics Computer Center, Inc.	12,707.00
10) Pioneer Industries	18,000.00
11) Markmaster Trading & Electrical	5,680.00
12) Sammy's Merchandising & Radiator Shop, Inc.	45,000.00
13) Mighty Formation, Inc.	1,500.00
14) Virgilio Beltran	10,400.00
15) Estanislao Aniban	46,549.50
16) Marlon Valiente	52,266.00
17) Rams Hardware	18,562.50
18) Amor Esquerra	19,470.00
19) Ernings Antenae Services	38,075.00
20) Materials and Supplies	54,235.59
21)USA office repairs	129,291.00
Total	P741,892.04

(Exhibit "I-2")

A comparison of the foregoing schedule with the Alphalist of Payees Subject to Expanded Withholding Tax *(Exhibits "O-1" to "O-2",* and

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BIR Records, pp. 65-67), We partly agree with petitioner that part of the additional assessment for Repairs and Maintenance consisting of the following expenses was already declared in the Alphalist and included in the basic deficiency Expanded Withholding Tax Assessment of P54,523.16: First Communications Services, Inc., Seasonaire Industrial Works, R.V. Austrial Trading, Ecoline IT Corp., LJ Furniture and Home Shop, Contronics Computer Center, Inc., Markmaster Trading & Electrical, Sammy's Merchandising & Radiator Shop, Inc., and Mighty Formation, Inc. Hence, these repairs and maintenance payments should not be subjected to another expanded withholding tax.

Moreover, the amount of P129, 291.00 pertaining to USA office repairs, being payment in the US to a non-resident person, the same is not subject to Expanded Withholding Tax, pursuant to *Section 57 of the NIRC of 1997, as amended,* in relation to *Section 2.57.2 of Revenue Regulations 2-98.*

However, as to the repairs and maintenance payments to Atlas Specialist, Inc. and Advance Solutions, Inc., record shows that there were underwithholding of Expanded Withholding Taxes in the amounts of P41.58, and P8.05, respectively, or a total of P49.63. A copy of the

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detailed computation is made part and parcel of this Decision, as *Annex "A-1"*.

Also, the Court finds that repairs and maintenance payments to: Dave Montoya for P22,200.00, Pioneer Industries for P18,000.00, Virgilio Beltran for P10,400.00, Estanislao Aniban for P46,549.50, Marlon Valiente for P52,266.00, Rams Hardware for P18,562.50, Amor Esquerra for P19,470.00, Ernings Antenae Services for P38,075.00, and an aggregate of materials and supplies payments of P54,235.59, or for a total amount of P279,758.59 repairs and maintenance payments, were not subjected to Expanded Withholding Tax. Hence, a total of P2,797.58 Expanded Withholding Tax from the foregoing expenses was not withheld and remitted by petitioner to the BIR. A copy of the detailed computation is hereby made part and parcel of this Decision, as *Annex "A-1"*.

Considering that petitioner failed to prove that the foregoing additional repairs and maintenance payments are exempt from the imposition of Expanded Withholding Tax, the Court finds that petitioner is liable for additional deficiency Expanded Withholding Tax on its repairs and maintenance payments in the total reduced amount of P2,847.21 (P49.63 + P2,797.58) *(detailed computation is made part and* *parcel of this Decision, as Annex "A-1")*, in addition to the original unremitted basic deficiency Expanded Withholding Tax of P54,523.16.

(2) Subcontractor Fees of P1,398.33.

The Subcontractor Fee Expanded Withholding Tax Assessment of P1,398.33 (P139,833.46 x 1%) arose from the Subcontractor Fee payments of P139,833.46 to the following:

1) Rodel Anthony Ramirez	P8,721.80
2) Compstation Encoding Services	19,866.46
3) Floreste Data Center & Services	5,343.26
4) Megacode Enterprises	74,829.74
5) Renato D. Angara	31,072.20
Total	P139,833.46

(Exhibit "I-3")

Upon a comparison of the foregoing schedule with the Alphalist of Payees Subject to Expanded Withholding Tax *(Exhibits "O-1" to "O-2",* and *BIR Records, pp. 65-67)*, We partly agree with petitioner that part of the additional assessment for Subcontractor Fee consisting of the following expenses was already declared in the Alphalist and included in the basic deficiency Expanded Withholding Tax Assessment of P54,523.16: Computation Encoding Services for P19,866.46, Floreste Data Center & Services for P5,343.26 and Megacode Enterprises for P74,829.74, or a total of P100,039.46 repairs and maintenance expense. Hence, these repairs and maintenance payments should not be subjected anew to another expanded withholding tax. The additional deficiency Expanded

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Withholding Tax assessment for Subcontractor Fee of P1,398.33 should therefore, be reduced by P1,000.39 (P100,039.46 x 1%) pertaining to the foregoing payments.

However, We find petitioner liable for additional basic Expanded Withholding Tax deficiency from Subcontractor Fee of P397.94, consisting of the following: payments to Rodel Anthony Ramirez, P87.22 (P8,721.80 x 1%), and Renato D. Angara, P310.72 (P31,072.20 x 1%), petitioner having failed to prove that said Subcontractor Fees are exempt from Expanded Withholding Tax. A copy of the detailed computation is hereby made part and parcel of this Decision, as *Annex "A-2"*.

(3) Professional Fee of P28,716.11.

The Professional Fee Expanded Withholding Tax Assessment of P28,716.11 (P287,161.10 x 10%) arose from the Professional Fee payments of P287,161.10 to the following:

1) Atty. Herminio Liwanag	P60,000.00
2) Clemente J. Celso	25,000.00
3) Razel A. Rio	7,300.00
4) Cuervo Appraisers, Inc.	8,000.00
5) Eduardo Araullo	10,000.00
6) Gaetona G D'Antona (USA)	176,861.10
Total	P287,161.11

(Exhibit "I-3")

Upon a comparison of the foregoing schedule with the Alphalist of Payees Subject to Expanded Withholding Tax *(Exhibits "O-1" to "O-2",* and

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BIR Records, pp. 65-67), We partly agree with petitioner that part of the additional assessment for Professional Fee consisting of payment to Atty. Herminio Liwanag was already declared in the Alphalist and included in the basic deficiency Expanded Withholding Tax Assessment of P54,523.16. Hence, the professional fee to Atty. Herminio Liwanag in the amount of P60,000.00 should not be subjected to another Expanded Withholding Tax. Moreover, the professional fee paid to Gaetona G D'Antona in the amount of P176,861.10, being payment made in the US to a non-resident person, the same is not subject to Expanded Withholding Tax, pursuant to *Section 57 of the NIRC of 1997, as amended*, in relation to *Section 2.57.2 of Revenue Regulations 2-98*. Therefore, a total of P236,861.10 (P60,000.00 + P176,861.10) professional fee payment should not be subjected to Expanded Withholding Tax.

Thus, the additional deficiency Expanded Withholding Tax assessment for professional fee of P28,716.11 should, therefore, be reduced by the Expanded Withholding Tax pertaining to the foregoing professional fee expense in the amount of P23,686.11 (P236,861.10 x 10%).

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However, We find that petitioner did not withhold the Expanded Withholding Taxes on the following Professional Fees payments: Clemente J. Celso, P25,000.00, Razel A. Rio, P7,300.00, Cuervo Appraisers, Inc., P8,000.00 and Eduardo Araullo, P10,000.00, or for the total amount of P50,300.00. Failure on the part of petitioner to prove that said professional fees are not subject to Expanded Withholding Tax, petitioner is, therefore, liable for the deficiency Expanded Withholding Tax on the above-mentioned expenses, in the total amount of P4,630.00. A copy of the detailed computation of the same is hereby made part and parcel of this Decision, as *Annex "A-2"*. It must be pointed out, however, that professional fee payment to Cuervo Appraisers, Inc., being payment to a juridical person, the tax rate is only 5%, and not 10%, pursuant to *Section 2.57.2 (B) of Revenue Regulations 2-98.*

(4) Security Services of P3,459.60.

Petitioner was assessed of additional Expanded Withholding Tax by respondent on its Security Services expense of P345,960.00.

Upon a comparison of petitioner's Schedule of Ordinary and Necessary Expenses for Calendar Year 2000 *(Exhibit "I-3")* with the Alphalist of Payees Subject to Expanded Withholding Tax *(Exhibits "O-1" to "O-2"*, and *BIR Records, pp. 65-67)*, We agree with petitioner that the

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additional assessment for security services was already declared in the Alphalist and included in the basic deficiency Expanded Withholding Tax Assessment of P54,523.16. The additional Expanded Withholding Tax assessment on security services of P3,459.60 consists of payment to Citizen Protective Agency in the amount of P345,960.00 *(Exhibits "O-1" to "O-2"* and *BIR Records, pp. 65-67)*. Having been included already in the original deficiency Expanded Withholding Tax Assessment of P54,523.16, the security services payment to Citizen Protective Agency in the amount of P345,960.00 should not be subjected to another Expanded Withholding Tax. A copy of the detailed computation is made part and parcel of this Decision as *Annex "A-3"*. Thus, the additional deficiency Expanded Withholding Tax assessment for security services of P3,459.60 is hereby cancelled.

As regards the compromise penalty of P16,000.00, the same is likewise cancelled. As heretofore discussed, compromise implies mutual agreement. Although petitioner is willing to compromise its Expanded Withholding Tax liability, there is no showing on the part of the respondent that it consented thereto. Such being the case, respondent cannot validly impose the compromise penalty against petitioner.

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The Court, therefore, finds petitioner liable for deficiency Expanded Withholding Tax in the reduced amount of P119,654.46, computed as follows:

Expanded Withholding Tax	Amount	EWT
Basic Expanded Withholding Tax		P54,523.12
Add: Adjustments per Court's Findings		
a) Repairs and Maintenance – 1%	P284,721.09	2,847.21
b) Subcontractor Fees – 1%	39,794.92	397.94
c) Professional fees – 10%	42,300.00	4,230.00
- 5%	8,000.00	400.00
Sub-total of Adjustments per Court's Findings		P7,875.15
Basic Expanded Withholding Tax Deficiency		P62,398.27
Add: Statutory Increments		
a) Surcharge (25%) for non-payment	P15,599.57	
b) Interest fr. 1.11.01 to 5.30.04 (.6675925)	41,656.62	
Total Statutory Increments		57,256.19
Total Amount Still Due and Payable		P119,654.46

As to petitioner's allegation that on March 26, 2007, it availed and was granted of the BIR's Voluntary Assessment and Abatement Program under Revenue Regulations 15-2006 and 3-2007, regarding its basic Withholding Tax on Compensation of P3,796,244.16, and basic Expanded Withholding Tax of P54,523.12 *(petitioner's Memorandum, p. 2 and Manifestation filed on May 28, 2007)*, the Court holds that the deficiency assessments for Withholding Tax on Compensation and Expanded Withholding Tax cannot be cancelled by mere averment of tax payment.

Both *Sections 6 of Revenue Regulations 15-06 and 03-07* provide, as follows:

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> "SEC. 6. Mode of Payment. – xxx
>
> Staggered payments of the amounts payable under this Abatement Program may be considered on a case to case basis in accordance with the existing regulations of the Bureau upon approval of the Regional Director for regional cases, and concerned ACIR (LTS, Collection, Legal, or Enforcement) for National Office cases. Nonetheless, cases pending in courts shall not be withdrawn unless the concerned taxpayer shall fully pay one hundred percent of the basic tax.
>
> If the amount, as abated, is not paid as required herein, the approved staggered payment is automatically nullified and the delinquent account or the assessment shall be reverted to the original amount which includes the statutory increments incident to delinquency, which shall be collected thru the summary remedies and/or judicial processes provided for by law."

Pursuant to the aforequoted provision, staggered payments of the amounts payable under the Abatement Program may be considered on a case to case basis and upon approval of the appropriate officials of the BIR. Considering that petitioner's application for Abatement Program was made thru staggered payments of the amount payable *(Annex "B", Manifestation filed on May 28, 2007)*, the same is subject to consideration and approval of the appropriate Bureau's official. Petitioner, however, failed to prove that the Bureau approved its Application for Abatement on a staggered basis of payment. More importantly, *Section 6* of the same

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Revenue Regulations expressly provides that cases pending in courts shall not be withdrawn unless the concerned taxpayer shall fully pay one hundred percent of the basic tax. Here, petitioner failed to prove that it has fully paid the basic Withholding Tax on Compensation assessment of P3,796,244.16, and the basic Expanded Withholding Tax assessment of P54,523.12. Finally, *Revenue Memorandum Order 23-06* requires the taxpayer to submit Termination Letter and Authority to Cancel Assessment. Both documents are wanting in this case.

In sum, the Court finds petitioner liable for deficiency Income Tax in the reduced amount of P7,766,568.37, deficiency Withholding Tax on Compensation in the reduced amount of P7,276,109.33, and deficiency Expanded Withholding Tax in the reduced amount of P119,654.46, all for taxable year 2000, or in the aggregate amount of P15,162,332.16, computed as follows:

	Income Tax	Withholding Tax on Compensation	Expanded Withholding Tax	Total
Basic	P4,779,426.69	P3,796,244.16	P62,398.27	P8,638,069.12
Surcharge	-	949,061.04	15,599.57	964,660.61
Interest	2,987,141.68	2,530,804.13	41,656.62	5,559,602.43
TOTAL	**P7,766,568.37**	**P7,276,109.33**	**P119,654.46**	**P15,162,332.16**

WHEREFORE, premises considered, the present Petition For Review is **PARTIALLY GRANTED**. Accordingly, petitioner is hereby

ORDERED to pay respondent Commissioner of Internal Revenue the reduced amounts of SEVEN MILLION SEVEN HUNDRED SIXTY SIX THOUSAND FIVE HUNDRED SIXTY EIGHT AND 37/100 PESOS (**P7,766,568.37**), representing deficiency Income Tax, SEVEN MILLION TWO HUNDRED SEVENTY SIX THOUSAND ONE HUNDRED NINE AND 33/100 PESOS (**P7,276,109.33**), representing deficiency Withholding Tax on Compensation, and ONE HUNDRED NINETEEN THOUSAND SIX HUNDRED FIFTY FOUR AND 46/100 PESOS (**P119,654.46**), representing deficiency Expanded Withholding Tax, all for taxable year 2000, or the total amount of FIFTEEN MILLION ONE HUNDRED SIXTY TWO THOUSAND THREE HUNDRED THIRTY TWO AND 16/100 PESOS (**P15,162,332.16**).

In addition, petitioner is hereby **ORDERED** to pay respondent 20% delinquency interest per annum on the total amount of **P15,162,332.16** counted from May 3, 2004 until full payment thereof, pursuant to *Section 249(C) of the NIRC of 1997, as amended.*

SO ORDERED.

OLGA PALANCA-ENRIQUEZ
Associate Justice

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WE CONCUR:

JUANITO C. CASTAÑEDA, JR.
Associate Justice

ERLINDA P. UY
Associate Justice

A T T E S T A T I O N

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
Chairperson, Second Division

C E R T I F I C A T I O N

Pursuant to Article VIII, Section 13 of the Constitution, and the Division Chairperson'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

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ANNEX "A-1"

a) Repairs and Maintenance Expense

						Expense	**EWT**
Total Repairs and Maintenance as found by the Court-Commissioned Independent CPA						**P741,892.04**	
Total Repairs and Maintenance Expense and EWT per BIR's Assessment						**P741,892.04**	**P7,418.92**
Per this Court's Findings							
Payee/Recipient	**Rate**	**Per Books**		**Per Alphalist**		**Difference**	
		Amount Paid (Expense)	**EWT**	**Amount Paid**	**EWT**	**Repairs & Maintenance Expense Not Declared in BIR Form 1601-E**	**EWT Not Withheld**
1) First Communications Services, Inc.	1%	11,540.00	115.40	11,540.00	115.40		-
2) Seasonaire Industrial Works	1%	89,573.00	895.73	89,573.00	895.73		-
3) R.V. Austria Trading	1%	55,250.00	552.50	P1,280,782 .00	P12,807.82		-
Ecoline IT Corp.	1%	5,000.00	50.00	16,500.00	165.00		-
5) L J Furniture and Home Shop	1%	16,336.75	163.37	32,350	323.50		-
6) Contronics Computer Center, Inc.	1%	12,707.00	127.07	12,707.00	127.07		-
7) Markmaster Trading & Electrical	1%	5,680.00	56.80	5,680.00	56.80		-
8) Sammy's Merchandising & Radiator Shop, Inc.	1%	45,000.00	450.00	45,000.00	450.00		-
9) Mighty Formation, Inc.	1%	1,500.00	15.00	1,500.00	15.00		-
Sub-total		**P242,586.75**	**P2,425.86**				
10) USA office repairs	-	129,291.00	Not subject to EWT	-	-		
11) Atlas Specialist Inc.	1%	P16,928.00	P169.28	P12,770.00	P127.70	P4,158.00	P41.58
12) Advance Solutions, Inc.	1%	73,328.00	733.28	72,523.00	725.23	805.00	8.05
Sub-total		P90,256.00	P902.56			**P4,963.00**	**P49.63**
13) Dave Montoya	1%	22,200.00	222.00	-	-	22,200.00	222.00
14) Pioneer Industries	1%	18,000.00	180.00	-	-	18,000.00	180.00
Virgilio Beltran	1%	10,400.00	104.00	-	-	10,400.00	104.00
16) Estanislao Aniban	1%	46,549.50	465.50	-	-	46,549.00	465.49
17) Marlon Valiente	1%	52,266.00	522.66	-	-	52,266.00	522.66
18) Rams Hardware	1%	18,562.50	185.63	-	-	18,562.50	185.63
19) Amor Esquerra	1%	19,470.00	194.70	-	-	19,470.00	194.70
20) Ernings Antenae Services	1%	38,075.00	380.75	-	-	38,075.00	380.75
21) Materials and Supplies	1%	54,235.59	542.35	-	-	54,235.59	542.35
Sub-total		**P279,758.59**	**P2,797.58**			**P279,758.59**	**P2,797.59**
Total		**P741,892.34**	P6,126.00				
Total Repairs & Maintenance Expense Not Declared in BIR Form 1601-E and EWT not Withheld per this Court's Findings						**P284,721.09**	**P2,847.21**

ANNEX "A-2"

b) Subcontractor Fee/Expense

						Expense	**EWT**
Total Subcontractor Fee/Expense as found by the Court-Commissioned Independent CPA						**P139,833.46**	
Total Subcontractor Fee/Expense and EWT per BIR's Assessment						**P139,833.46**	**P1,398.33**
Per this Court's Findings							
Payee/Recipient	**Rate**	**Per Books**		**Per Alphalist**		**Difference**	
		Amount Paid (Expense)	**EWT**	**Amount Paid**	**EWT**	**Subcontractor Fee/Expense Not Declared in BIR Form 1601-E**	**EWT Not Withheld**
1) Compstation Encoding Services	1%	19,866.46	198.66	P19,866.00	P198.66	.66	-
2) Floreste Data Center & Services	1%	5,343.26	53.43	5,343.00	53.43	.26	-
3) Megacode Enterprises	1%	74,829.74	748.30	74,830.00	748.30	-	-
Sub-total		**P100,039.46**	**P1,000.39**				
4) Rodel Anthony Ramirez	1%	P8,721.80	P87.22	-	-	P8,721.80	P87.22
5) Renato D. Angara	1%	31,072.20	310.72	-	-	31,072.20	310.72
Sub-total		**P39,794.00**	**P397.94**			**P39,794.00**	**P397.94**
Total		**P139,833.46**	P1,398.33				
Total Subcontractor Fee/Expense Not Declared in BIR Form 1601-E and EWT not Withheld per this Court's Findings						**P39,794.92**	**P397.94**

c) Professional Fee

						Expense	**EWT**
Total Professional Fees/Expense as found by the Court-Commissioned Independent CPA						**P287,161.10**	
Total Professional Fees/Expense and EWT per BIR's Assessment						**P287,161.10**	**P28,716.11**
Per this Court's Findings							
Payee/Recipient	**Rate**	**Per Books**		**Per Alphalist**		**Difference**	
		Amount Paid (Expense)	EWT	Amount Paid	EWT	Amount Paid	EWT Not Withheld
1) Atty. Herminio Liwanag	10%	P60,000.00	P6,000.00	P60,000.00	P6,000.00	-	-
2) Gaetona G D'Antona (USA)	-	176,861.10	Not subject to EWT	-	-		
Sub-total		**P236,861.10**					
3) Clemente J. Celso	10%	25,000.00	2,500.00	-	-	P25,000.00	P2,500.00
4) Razel A. Rio	10%	7,300.00	730.00	-	-	7,300.00	730.00
5) Eduardo Araullo	10%	10,000.00	1,000.00	-	-	10,000.00	1,000.00
Sub-total		P42,300.00	P4,230.00			P42,300.00	P4,230.00
5) Cuervo Appraisers, Inc.	5%	8,000.00	400.00	-	-	8,000.00	400.00
Sub-total		P50,300.00	P4,630.00			P50,300.00	P4,630.00
Sub-total		**P287,161.11**					
Total Professional Fees/Expense Not Declared in BIR Form 1601-E and EWT not Withheld per this Court's Findings						**P50,300.00**	**P4,630.00**

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ANNEX "A-3"

d) Security Services

						Expense	EWT
Total Guard Services /Expense as found by the Court-Commissioned Independent CPA						**P345,960.00**	
Total Guard Services /Expense and EWT per BIR's Assessment						**P345,960.00**	**P3,459.60**
Per this Court's Findings							
Payee/Recipient	**Rate**	**Per Books**		**Per Alphalist**		**Difference**	
		Amount Paid (Expense)	EWT	Amount Paid	EWT	Amount Paid	EWT Not Withheld
1) Citizen Protective Agency	1%	P345,960.00	P3,459.60	P345,960.00	P3,459.60	-	-
Sub-total		P345,960.00	P3,459.60	P345,960.00	P3,459.60		
Total Professional Fees/Expense Not Declared in BIR Form 1601-E and EWT not Withheld per this Court's Findings						-	-

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