REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

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CONTINENTAL MICRONESIA, INC. – PHILIPPINE BRANCH,
Petitioner,

C.T.A. CASE NO. 6191

Members:

- versus -

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

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
MAR 2 2 2006

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DECISION

CASANOVA, C., J.:

This Petition for Review seeks the cancellation of two (2) internal revenue tax assessments for deficiency expanded withholding tax and withholding tax on compensation in the gross amount of P2,594,717.30 for the taxable year ended December 31, 1995.

The facts as established by the records and pleadings of the case are as follows:

Petitioner is a Philippine branch of a non-resident foreign corporation incorporated in the State of Delaware, U.S.A., engaged in the operation of air transportation in international

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traffic. It is duly licensed to do business in the Philippines with office address at the Ground Floor, SGV II Bldg., 6760 Ayala Avenue, Makati City.[1]

On December 12, 1996, petitioner received Letter of Authority No. 137419 dated December 5, 1996 from Revenue District Officer Hernani S. Arboleda[2] of Revenue District Office No. 47 authorizing Revenue Officer Leticia Lorna Dosado, and Group Supervisor Julita Batoon, to examine petitioner's books of accounts and other accounting records for all internal revenue taxes for the period January 1995 to December 1995.[3]

On March 17, 1998, an invitation for informal conference was sent to petitioner by Revenue District Officer Gerardo R. Florendo[4] requesting it to submit whatever documentary evidence in its possession that may support any objection against the proposed assessments[5] as follows:

	Amount
Deficiency Gross Phil. Billings	P 1,868,048.45
Deficiency Common Carrier's Tax	183,042.09
Deficiency Withholding Tax on Compensation	79,643.25
Deficiency Expanded Withholding Tax	2,152,508.68
Total	P 4,283,242.47[6]

On March 27, 1998, a conference with the representative of petitioner was held. The proposed deficiency tax assessments were tackled. Petitioner expressed its willingness to settle the deficiency gross Philippine billings and common carrier's tax but would protest the remaining deficiency taxes upon receipt of the assessment notice.[7]

On May 5, 1998, petitioner paid the deficiency gross Philippine billings and common carrier's tax in the recomputed amounts of P1,843,048.45 and P167,042.09 as evidenced by corresponding machine validated Authority to Accept Payment Nos. 0378169 and 0378168 from the Bank of the Philippine Islands.[8]

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[1] Paragraph 1, Joint Stipulation of Facts and Issues, p. 62, Records.
[2] Revenue Region No. 8 Makati, Bureau of Internal Revenue.
[3] Exhibits 1 and 1-a, p. 522 BIR Records.
[4] Of the same Revenue District Office No. 47.
[5] Page 525, BIR Records.
[6] Exhibit 2, pp. 562-567, BIR Records
[7] Ibid.
[8] Pages 531 to 536, BIR Records.

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On May 15, 1998, the examining Revenue Officer Ms. Dosado recommended that an assessment notice for deficiency withholding tax on compensation and deficiency expanded withholding tax be issued against petitioner.[9] On September 10, 1998, the Chief of the Assessment Division, Ma. Nieva A. Guerrero, of Revenue Region No. 8, Makati issued (instead) a Preliminary Assessment Notice (PAN) for the said remaining deficiency taxes.[10] This was received by petitioner on October 8, 1998. In the said PAN, petitioner was invited to a conference to hear its side or to present its evidence within fifteen (15) days from receipt thereof. Petitioner, however, opted to file its objection to the PAN on October 15, 1998.[11] Thus, it resulted to a reinvestigation of the case.

Eventually, on December 10, 1999, another PAN was issued based on the report of reinvestigation. Petitioner was still held to be liable for deficiency expanded withholding tax and withholding tax on compensation in the respective amounts of P2,486,931.49 and P93,081.26.[12] Shortly thereafter, respondent, through Regional Director Antonio I. Ortega, issued Assessment Notices on December 29, 1999 covering the aforementioned deficiency taxes in the increased amounts of P2,501,523.64 and P93,193.66, respectively. This was received by petitioner on January 5, 2000[13] together with their corresponding demand letters.[14]

On February 4, 2000, petitioner, through its external auditors, Sycip, Gorres Velayo and Company, filed its administrative protest on the above assessments seeking the cancellation and withdrawal thereof due to prescription and lack of factual and legal bases.[15] On April 4, 2000, petitioner filed a supplemental protest reiterating its disagreement with the

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[9] Exhibit 2.
[10] Pages 576 to 577, BIR Records.
[11] Exhibit 3.
[12] Pages 586 to 588, BIR Records.
[13] Supposed to be January 6, 2000 as reflected in Annex C, Petition for Review.
[14] Paragraph 3, Joint Stipulation of Facts and Issues, p. 63, Records. See also Annexes A, B, C, and D, Petition for Review & pp. 587 to 594, BIR Records.
[15] Paragraph 4, Joint Stipulation of Facts and Issues, p. 63, Records. See also Annex E, Petition for Review.

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subject withholding tax assessments and submitting thereto all relevant documents to support its position against the merit of the assessments.[16]

On October 31, 2000, within thirty (30) days from the lapse of one hundred eighty (180) days from the submission of the aforementioned supporting documents, petitioner filed the instant Petition for Review with this Court pursuant to Section 228 of the National Internal Revenue Code of 1997.

On January 8, 2001, respondent filed his Answer, maintaining his position that petitioner is liable to the 1995 assessed deficiency taxes and therein raised the following Special and Affirmative Defenses:

> "4. The assessments in question were made and issued in accordance with existing laws, rules and regulations.
>
> 5. The petitioner failed to withhold withholding tax from compensation on the payments for expatriates housing dues amounting to P240,640.97 in violation to Section 71 (now Section 78) of the Tax Code, as amended, which provides, thus:
>
>> "The term *'wages'* means all remuneration (other than fees paid to a public official) for services performed by an employee for his employer, including the cash value of all remuneration paid in any medium other than cash..... xxx xxxx"
>
> 6. Petitioner failed to withhold correct amount of creditable income tax from its income payments in violation of Revenue Regulations No. 6-85.
>
> 7. In a protest-letter dated October 15, 1998, the petitioner requested for a reinvestigation of the deficiency assessments on expanded withholding tax and withholding tax on compensation.
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> 8. On October 28, 1998, the entire docket of the case was forwarded to the Revenue District Office No. 47, East Makati for reinvestigation.
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> 9. Under Section 224 (now Section 223) of the Tax Code, as amended, the running of the statute of limitations is suspended when the taxpayer requests for a reinvestigation which is granted by the Commissioner.
>
> 10. Prescription being a matter of defense, the burden is on the taxpayer to prove that the full period of limitation has expired (**Querol vs. Coll., L-16705, Oct. 30, 1962**).

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[16] Paragraph 5, Joint Stipulation of Facts and Issues, page 63, Records. See also Annex F, Petition for Review.

11. All presumptions are in favor of the correctness of the tax assessment (**Interprovincial Autobus, Inc. vs. Collector of Internal Revenue, 98 Phil. 290**)."

The issues to be resolved by the Court were jointly stipulated by the parties as follows:

"1. Whether or not the assessments were made and issued in accordance with existing laws, rules and regulations;

2. Whether or not Petitioner failed to withhold withholding tax on compensation from the payments for expatriates' housing dues amounting to P240,640.97 in violation of Section 71 (now Section 78) of the National Internal Revenue Code, as amended.

3. Whether or not Petitioner failed to withhold correct creditable expanded withholding tax from its income payments in violation of Revenue Regulations No. 6-85;

4. Whether or not the assessments are barred by prescription; and

5. Whether or not Petitioner is liable for the amounts of P2,501,523.64 and P93,193.66 as deficiency expanded withholding tax and withholding tax on compensation, respectively, for calendar year 1995."

This Court finds it wise to first resolve the issue of prescription, the resolution of which determines the necessity of discussing the rest of the issues posed by the parties.

Petitioner insists that the present assessments were already barred by prescription, the same having been issued beyond the three-year period provided for by law. Petitioner cites as legal basis, Section 203 of the National Internal Revenue Code of 1997, which provides:

"SEC. 203. *Period of Limitation Upon Assessment and Collection.* — **Except as provided in Section 222**, internal revenue taxes shall be assessed within three (3) years after the last day prescribed by law for the filing of the return, and no proceeding in court without assessment for the collection of such taxes shall be begun after the expiration of such period: *Provided*, That in a case where a return is filed beyond the period prescribed by law, the three (3)-year period shall be counted from the day the return was filed. For purposes of this Section, a return filed before the last day prescribed by law for the filing thereof shall be considered as filed on such last day." *(Underlining supplied).*

Petitioner points out that under Section 5 of Revenue Regulations No. 12-94 [actually Section 5 of Revenue Regulations No. 6-85], the filing of the annual return of income tax

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withheld at source shall be made on or before the 1st day of March of the following year in which the payments were made. However, petitioner filed its annual information returns of income tax withheld on compensation and expanded withholding taxes paid for the year 1995 on earlier dates of January 30, 1996 *(Exhibit C)* and February 26, 1996 *(Exhibit B)*, respectively. Applying the above-quoted law, the counting of the three-year period commences on the last day prescribed by law for the filing of return, that is, March 1, 1996 in this case, because the information returns were filed before the last day prescribed by law for its payment. Accordingly, respondent had three (3) years from March 1, 1996 or up to March 1, 1999 within which to assess the withholding tax liability of petitioner for the year 1995. Respondent issued the subject Assessment Notices and Formal Letters of Demand all on December 29, 1999, which petitioner received on January 5, 2000. Therefore, the formal deficiency assessments were made and issued beyond the three-year prescriptive period prescribed by law within which respondent can legally assess the petitioner of deficiency withholding taxes. Thus, the assessments are barred by prescription.

On the other hand, respondent argues that under Section 224 (now Section 223) of the Tax Code, as amended, the running of the statute of limitations is suspended when the taxpayer requests for a reinvestigation which is granted by the Commissioner. Respondent refers to petitioner's protest letter to the PAN dated October 15, 1998 which requested the cancellation of the said assessments and which request was granted in the letter dated November 9, 1998 of the Revenue District Officer Gerardo R. Florendo.[17]

At this juncture, We would like to correct the notion of petitioner with respect to prescriptive period. According to it, prescriptive period to assess, both the deficiency withholding tax on compensation and expanded withholding tax, the three-year period commences to run on the last day required by law for filing of the annual return of income tax withheld at source which is on or before the 1st day of March following the year in which the payments were made.

[17] Exhibit 6, p. 555, BIR Records.

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Based on the law, rules and regulations[18] and jurisprudence, the counting of the prescriptive period is reckoned from the last day required by law for the filing of the a monthly remittance return, which is ten (10) days after the end of each calendar month (save December) and twenty-five (25) days after the end of December for taxes withheld from the last compensation/income payment for the said month.[19]

Below is a table which shows the dates when petitioner filed its Monthly Remittance Returns of Income Taxes Withheld (covering withholding tax on compensation and expanded withholding tax) for the months of January to December 1995[20] as well as the corresponding dates within which respondent is allowed to assess petitioner:

Period 1995	Exh.	Date Filed	Last Day to File Return	Last Day to Assess[21]
January	D	02/07/95	02/10/95	02/09/98
February	E	03/07/95	03/10/95	03/09/98
March	F	04/05/95	04/10/95	04/09/98
April	G	05/04/95	05/10/95	05/11/98[22]
May	H	06/09/95	06/12/95[23]	06/11/98
June	I	07/07/95	07/10/95	07/09/98
July	J	08/07/95	08/10/95	08/10/98[24]
August	K	09/06/95	09/11/95[25]	09/10/98
September	L	10/05/95	10/10/95	10/09/98
October	M	11/09/95	11/10/95	11/09/98
November	N	12/06/95	12/11/95[26]	12/10/98
December	O	01/09/96	01/25/96	01/24/99

Applying now the rule on prescription, the final assessment notice should be issuec on the above respective last days to assess. Inasmuch as the assessment notices for both deficiency withholding tax on compensation and expanded withholding tax were issued onl on December 29, 1999, it would appear that both subject deficiency assessments are time barred. However, since petitioner requested for a reinvestigation on October 15, 1998, anc

[18] Then Section 51(a) of the National Internal Revenue Code of 1993 as implemented by Revenue Regulations No. 3 93.
[19] HPCO Agridev Corporation vs. Commissioner of Internal Revenue, CTA Case No. 6355, July 18, 2002.
[20] Exhibits D to O.
[21] The taxable year 1996 is a leap year.
[22] May 9, 1998 was a Saturday.
[23] June 10, 1995 was a Saturday.
[24] August 9, 1998 was a Saturday.
[25] September 10, 1995 was a Sunday.
[26] December 10, 1995 was a Sunday.

which request was granted by respondent in the letter dated November 9, 1998,[27] the running of the three-year period to assess was suspended pursuant to the Section 223 of the Code. To quote:

> SEC. 223. *Suspension of Running of Statute of Limitations.* — The running of the Statute of Limitations provided in Sections 203 and 222 on the making of assessment and the beginning of distraint or levy or a proceeding in court for collection, in respect of any deficiency, shall be suspended for the period during which the Commissioner is prohibited from making the assessment or beginning distraint or levy or a proceeding in court and for sixty (60) days thereafter; when the taxpayer requests for a reinvestigation which is granted by the Commissioner; when the taxpayer cannot be located in the address given by him in the return filed upon which a tax is being assessed or collected: *Provided*, That, if the taxpayer informs the Commissioner of any change in address, the running of the Statute of Limitations will not be suspended; when the warrant of distraint or levy is duly served upon the taxpayer, his authorized representative, or a member of his household with sufficient discretion, and no property could be located; and when the taxpayer is out of the Philippines. *(Underlining supplied).*

Settled is the rule that when the taxpayer requests for a reinvestigation of an *assessment* which is granted by respondent, the running of the period to assess under Section 203 and 222 is suspended.[28]

While We have noted that the request for reinvestigation which was granted by the respondent in the case at bar was on the Preliminary Assessment Notice and not on the Final Assessment Notice or Assessment Notice, still, Section 223 applies.

Section 223 of the Code makes no distinction as to whether the request for reinvestigation of an assessment against the taxpayer is on a preliminary assessment notice or final assessment notice. It is a well-known maxim in statutory construction that where the law does not distinguish, We should not distinguish.[29] Thus, for as long as the request for reinvestigation is granted by the respondent, the running of statute of limitations to issue an assessment under Section 203 and 223 is suspended.

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[27] Received by petitioner on equal date.

[28] Commissioner of Internal Revenue vs. Wyeth Suaco Laboratories, Inc., G.R. No. 76281, September 30, 1991.

[29] Robles vs. Zambales Chromite Mining Company, et al., 104 Phil. 688; Colgate-Palmolive (Phils.), Inc. vs. Gimenez, 1 SCRA 267 and La Suerte Cigar and Cigarette Factory, Bataan Cigar and Cigarette Factory, Inc., et al. vs. Court of Tax Appeals and Hon. Misael P. Vera, Nos. L-36130 & 36131, January 17, 1985.

It is further worthy to stress that the suspension of the running of Statute of Limitations provided in Sections 203 and 222 refers to the phrase *"on the making of assessment"* which phrase refers to the three-year or ten year period, as the case may be, which includes the issuance of a preliminary assessment notice.[30] Hence, when petitioner requested for a reinvestigation on the PAN, the making of the assessment was tolled.

As interpreted by the Supreme Court in several cases, requests for investigation which had the effect of suspending the period of limitation refers to reinvestigation of a ***prior assessment*** paving the way for a new or revised assessment. Such period spent reinvestigating is deducted from the total period prescribed by law. In the case of ***Commissioner of Internal Revenue vs. Sison, 7 SCRA 884***, the Supreme Court declared:

> The five-year [now three years] period of prescription fixed by Section 332(c) of the NIRC is to be counted from the last revised assessment resulting from a reinvestigation asked for by the taxpayer. **The time employed in reinvestigating should be deducted from the total period of limitation.** *(Emphasis supplied)*

Similarly, in the case of ***Querol vs. Collector of Internal Revenue, 6 SCRA 304***, the Supreme Court ruled, thus:

> It is true that the Collector revised the original assessment on February 9, 1955; and Appellant avers that this revision was invalid in that it was not made within the five-year prescriptive period fixed by law . . . But the fact is that the revised assessment was merely a result of petitioner Querol's requests for reconsideration of the original assessment, contained in his letters of December 14, 1951 and May 25, 1953. . . .
>
> ...Consequently, **the period between the petition for reconsideration and the revised assessment should be subtracted from the total prescriptive period** (Republic vs. Ablaza, L-14519, 26 July 1960). *(Emphasis supplied).*

The above pronouncements are clear, the period spent for reinvestigation should be deducted from the three-year period to issue another assessment. It would not be amiss to

[30] Except in certain instances when a preassessment notice is no longer required under Sections 228(a) to 228(e) of the Code.

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state that our National Internal Revenue Code provides a number of mechanisms that protects not only the taxpayers' right but also that of the government.

Based on the foregoing, the following deficiency withholding tax on compensation and expanded withholding taxes for the months of January 1995 to September of 1995 are time-barred, to wit:

Period 1995	Last Day to Assess	Suspension Date of Issuance of Assessment	Date of Issuance of Assessment Notice
January	02/09/1998	10/15/1998	12/29/1999
February	03/09/1998	10/15/1998	12/29/1999
March	04/09/1998	10/15/1998	12/29/1999
April	05/11/1998	10/15/1998	12/29/1999
May	06/11/1998	10/15/1998	12/29/1999
June	07/09/1998	10/15/1998	12/29/1999
July	08/10/1998	10/15/1998	12/29/1999
August	09/10/1998	10/15/1998	12/29/1999
September	10/09/1998	10/15/1998	12/29/1999

What remains for review by the Court are the deficiency assessments for the months of October, November and December of 1995. Accordingly, We will limit Our discussion to said months.

DEFICIENCY WITHHOLDING TAX ON COMPENSATION

The deficiency withholding tax on compensation allegedly arose from petitioner's failure to withhold income tax on its payments for housing rentals of its expatriate in the gross amount of P240,640.97 for the year 1995. However, as discussed above, We will tackle only the validity of the assessment for the months of October, November and December of 1995 in the amount of P61,482.43,[31] detailed as follows:

Period (1995)	Amount
October	P20,445.50
November	22,345.41
December	18,691.52
Total	P61,482.43

[31] Page 471, BIR Records.

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Petitioner however maintains that it is not liable to the said deficiency. It advances the view that under the "benefit-of-the-employer" rule, housing and other benefits granted to employees are not taxable compensation if the benefits granted are for the benefit and/or convenience of the employer. It elaborates that the housing facilities extended to its expatriates are for its benefits and convenience. Instead of billeting expatriates in expensive hotels and lodgings appropriate to the employees' position and standard of living, petitioner effectively cuts down its expenses by paying the annual housing rentals rather than the exorbitant hotel billings. Moreover, it uses the rented housing facilities in entertaining guests and in holding official gatherings.[32] Likewise, petitioner believes that the same should not be considered as additional compensation of the expatriates because it does not exceed the personal needs of such employees.[33]

Petitioner also points out that assuming *arguendo* that the housing accommodations are subject to withholding tax on wages, it is erroneous for the respondent to consider its total (100%) as tax base. Under Section 2.5 of Revenue Audit Memorandum Order (RAMO) 1-87, only fifty percent (50%) of the rental expense should be subject to withholding tax on compensation if such house or living quarter is used for the benefit of the petitioner such as entertaining and putting up houseguests and guests of the employer-company.

We do not agree with petitioner that the rental value of the house should not form part of the compensation of its expatriates under the "benefit-of-the-employer" rule. In order for the rental value not to form part of compensation income of an employee under the benefit of the employer or convenience of the employer, it should conform with the standard stated under Section 2.33(B)(1)(g) of Revenue Regulations No. 3-98 which provides:

> (g) A housing unit which is situated inside or adjacent to the premises of a business/factory shall not be considered as a taxable fringe benefit. A housing unit is considered adjacent to the premises of the business if it is

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[32] TSN, 11 July 2001, pp. 16-17.
[33] Collector vs. Henderson, Nos. L-12954 &13049, February 28, 1961.

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located within the maximum of fifty-(50) meters from the perimeter of the business premises." *(Underlining supplied).*

Inasmuch as petitioner failed to show proof that the rented house of its expatriate is located within the maximum fifty (50) meter-perimeter of petitioner's business premises, the rental value thereof should form part of the employees compensation subject to withholding tax on wages. Under the said regulations, only those located within the required area are not subject to withholding tax on wages and fringe benefit tax.[34]

However, We agree with petitioner that for purposes of computing withholding tax on the housing rental, the tax based should be 50% of the rental value pursuant to RAMO 1-87, pertinent portions of which read as follows:

2. Housing and Meals

2.1 If an employee receives a remuneration for services salaries and/or allowances and in addition thereto living quarters and/or meals, the value to such person of the quarters and meals so furnished shall be added to the remuneration otherwise paid for the purpose of determining the amount of compensation subject to withholding tax.

2.2 The value of lodging furnished to an employee by or on behalf of the employer shall be excluded from the employee's gross income, if the lodging is furnished in the business premises of the employer; and the employee is required to accept such lodging as a condition of his employment.

xxx xxx xxx

2.5 Notwithstanding the provisions of the preceding paragraphs, if an employee is provided by his employer with company housing or living quarters **outside** the business premises, and such employee, because of his position in the employer-company, also uses said house or living quarters for the benefit of the **latter**, like entertaining and putting up houseguests and guest of the employer-company, then **fifty percent (50%)** of such allowance, **rental value**, or depreciation if the living quarters are owned by the employer, **shall be added to the compensation paid to such employee and be subject to the withholding tax on wages**. The employer may deduct the said housing expense as a business expense. *(Emphasis supplied).*

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[34] BIR Ruling No. 055-99 dated April 23, 1999, BIR Ruling DA-635-04, dated December 15, 2004.

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Notwithstanding the fact that petitioner was able to prove that its expatriate, Mr. Joseph A. Basso, reported 50% of the rental value as his compensation subjected to income tax,[35] still, petitioner is liable to the said tax for failure to withhold.

Records show that Mr. Basso was not among the employees that petitioner subjected to withholding tax on compensation.[36] Its failure to withhold and remit the income tax due on compensation has the consequence of paying the tax under Section 51 in relation with Section 251 of the National Internal Revenue Code of 1977.[37] Hence, petitioner is liable to pay the amount of P21,949.24 for failure to withhold, computed as follows:

Expat Housing:	Amount
October	P20,445.50
November	22,345.41
December	18,691.52
Total	P61,482.43
Multiply by	50%
Taxable Compensation	P30,741.22
Tax Due (P30,741.22 x 35%)[38]	P10,759.43
Add: Interest (P10,759.43 x .79)	8,499.95
Surcharge (P10,759.43 x 25%)	2,689.86
Deficiency Withholding Tax on Compensation	P21,949.24

DEFICIENCY EXPANDED WITHHOLDING TAX

Petitioner was assessed of basic deficiency expanded withholding tax in the amount of P288,701.44,[39] for its alleged failure to withhold taxes on certain income payments for the months of October, November and December 1995, to wit:

	Oct.	Nov.	Dec.	Total	Tax Rate	Tax Due
Commission	P2,335,588.88	P2,177,617.10	P2,351,952.51	P 6,865,158.49	5%	P343,257.92
Rental	25,691.60	33,802.80	51,383.20	110,877.60	5%	5,543.88

[35] Please see Exhibits "P" and "Q".
[36] Schedule B 1.1 of Exhibit "C".
[37] Commissioner of Internal Revenue vs. The Court of Appeals, Court of Tax Appeals and A. Soriano Corp., G.R. No. 108576, January 20, 1999 cited in Amkor/Anam Pilipinas, Inc. vs. Commissioner of Internal Revenue, C.T.A. CASE NO. 5953, December 28, 2004.
[38] Income tax rate of Mr. Basso per his income tax return *(Exhibits "P" and "Q")*.
[39] The amount pertains only to November and December 1995 (pp. 470-471, BIR Records).

Management Fees	32,670.00	0.00	0.00	32,670.00	10%	3,267.00
Ground Handling	1,940,948.92	1,940,948.92	1,940,948.92	5,822,846.76	1%	58,228.47
Aircraft Maintenance	727,740.75	727,740.75	727,740.75	2,183,222.25	1%	21,832.22
Freight & Brokerage	38,326.98	36,683.33	20,072.88	95,083.19	1%	950.83
Security Services	302,836.89	273,089.31	296,112.78	872,038.98	1%	8,720.39
Misc. Services	2,334.06	23,739.00	19,760.00	45,833.06	1%	458.33
Handling Fees	76,066.00	70,091.00	69,037.00	215,194.00	1%	2,151.94
Total EWT Due	P5,482,204.08	P5,283,712.21	P5,477,008.04	P16,242,924.33		P444,410.99
Less: EWT Paid Per Alphalist						155,709.55
Deficiency EWT						P288,701.44

From the above listed deficiency Expanded Withholding Tax, petitioner questions, by way of the instant Petition for Review, the validity of the assessment on commission income, security services and aircraft maintenance. However, We noted that in its protest letter to the respondent, petitioner did not pose any objection to the alleged deficiency withholding except on commission income.

In the case of ***3M Philippines vs. Commissioner of Internal Revenue, C.T.A. Case No. 3856, August 14, 1987***, the Court held:

> "Since petitioner did not protest or dispute administratively the disallowance of this pre-operational expense as capital expenditure, petitioner cannot raise this issue for the first time on appeal in this Court. This cannot be permitted, for the same reason that underlies the requirement of prior exhaustion of administrative remedies to give administrative authorities the prior opportunity to decide controversies within their competence, and in much the same way that, on the judicial level issues not raised in the lower court cannot be raised for the first time on appeal. To sanction such a procedure whereby the court — which is supposed to review administrative determinations — would not review, but determine and decide for the first time, a question not raised at the administrative forum. ***(citing Aguinaldo Industries Corporation vs. Commissioner of Internal Revenue and the Court of Tax Appeals, L-29790, February 25, 1982, 112 SCRA 136.)***

In the absence of proof of any irregularities in the performance of duties, an assessment duly made by a Bureau of Internal Revenue examiner and approved by his superior officers will not be disturbed. All presumptions are in favor of the correctness of tax assessments.[40] Failure to present proof of error in the assessment will justify judicial

[40] Bonifacio Sy Po vs. Court of Tax Appeals and Commissioner, 164 SCRA 524.

affirmance of said assessment.[41] Hence, except for deficiency expanded withholding tax on commission income, the rest of the deficiency withholding taxes are presumed to be proper.

The deficiency in withholding tax on commission income stemmed from petitioner's failure to withhold 5% creditable withholding tax from its sales agents and travel agencies' commissions in selling its airplane tickets. Petitioner posits that it is not liable to said deficiency for the simple reason that it is not the payor of the said income. Petitioner further explains the sale transaction as follows:

> In selling airline tickets, the customers buy their tickets directly from their International Air Transport Association ("IATA") accredited travel agent or ticket agent at a certain price. The ticket agent merely remits to the airline the revenues on the sold tickets based on their stipulated IATA price per ticket. The airline cannot accurately determine the amount in excess of that remitted to it by the ticket agents representing the spread or profit that these agents derive from their buyers. Given this industry practice, it is clear that the travel and ticket sales agents are, in effect, engaged in the buying-and-selling of the airline tickets and that their income, their alleged "commissions", is derived from their spread or profit margin in their selling price to their customers over the IATA-fixed amount for which they purchased the ticket from the airline company *(TSN, May 16, 2002, pp. 6-9; and TSN, October 24, 2002, pp. 4-12).*

We are not swayed.

It is not correct that petitioner is not the payor of the commission earned by its sales agents because the commission is derived by the agents from their spread or profit margin in selling price of airplane tickets. Petitioner should be reminded that the agents will not earn their commission had it not been for petitioner's plane tickets. True, what is remitted to petitioner is the net of the agents' commissions but this fact should not hinder the withholding of income tax due therefrom. Neither will the implied difficulty of determining the cost of commission be a sufficient basis for liberating it from not withholding.

Thus, We remain firm that commission on sales of airline tickets through agents or broker is subject to expanded withholding tax at 5%. As We ruled in ***Singapore Airlines, Ltd. vs. The Commissioner of Internal Revenue, CTA Case No. 5325, November 5, 2001***:

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[41] Delta Motors Co. vs. Commissioner of Internal Revenue, CTA Case No. 3782, May 21, 1986.

"[A]ll persons xxx, who for profit or compensation, sell or bring about sales or purchase of merchandise for other persons or bring proposed buyers and sellers together xxx" shall be considered as commercial broker. And it is of general acceptance that travel agencies sold Petitioner's tickets with the aim in view of receiving commissions therefrom. Thus, We sustain Respondent's findings that Petitioner is subject to the 5% withholding tax on gross commissions paid by it to travel agencies."

The Court however strikes down the compromise penalties imposed by the respondent on both deficiency assessments for withholding tax on compensation and expanded withholding tax since a compromise implies mutual agreement. Such being the case, in the absence of a showing that petitioner consented thereto, the compromise penalties cannot be validly imposed.[42]

Finally, We do not concur with petitioner's position that respondent failed to support the subject deficiency assessments with factual evidence. While it is true that respondent did not formally offer his entire marked documentary exhibits, however, what We have considered in the disposition of the case were all found in the BIR records. In the case of ***Dionisio Lazaro, owner of M/B Elizabeth & Divina I vs. Commissioner of Customs, CTA Case No. 3035, dated June 28, 1982,*** the Court ruled that the documents found in the BIR records, although not formally offered, forms part of the official records of the case pursuant to Section 2 Rule 7 of the Rules of the Court of Tax Appeals.

After considering the above premises, petitioner is liable to pay deficiency expanded withholding taxes in the gross amount of P588,950.93, computed as follows:

	Tax Due
Commission	P 343,257.92
Rental	5,543.88
Management Fees	3,267.00
Ground Handling	58,228.47
Aircraft Maintenance	21,832.22
Freight & Brokerage	950.83
Security Services	8,720.39
Misc. Services	458.33
Handling Fees	2,151.94
Total EWT Due	P 444,410.99
Less: EWT Paid Per Alphalist	155,709.55
Deficiency EWT	P 288,701.44

[42] UST vs. Collector, 104 Phil 1962.

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Add: Interest (P288,701.44 x 0.79)	228,074.14
Surcharge (P288,701.44 x 25%)	72,175.36
Deficiency Expanded Withholding Tax	P 588,950.94

WHEREFORE, the Petition for Review is ***PARTIALLY GRANTED***. The assessments for deficiency withholding tax on compensation and expanded withholding tax for the months of January 1995 to September 1995 are hereby declared **VOID** for having been issued out of time. However, the deficiency assessments for the months of October, November and December 1995 are ***UPHELD*** in the following amounts:

Particulars	Basic	Interest	Surcharge	Total
Deficiency Withholding Tax on Compensation	P 10,759.43	P 8,499.95	P 2,689.86	P 21,949.24
Deficiency Expanded Withholding	288,701.44	228,074.14	72,175.36	588,950.94
TOTALS	P 299,460.87	P236,574.09	P74,865.22	P610,900.18

Accordingly, petitioner is **ORDERED** to **PAY** the respondent the aggregate amount of P610,900.18 plus 20% delinquency interest per annum from February 1, 2000 until fully paid pursuant to Section 249(C) of the National Internal Revenue Code of 1997.

SO ORDERED.

CAESAR A. CASANOVA
Associate Justice

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Justice

LOVELL R. BAUTISTA
Associate Justice

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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
Chairman, First Division