REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

BA SAVINGS BANK,
Petitioner,

- versus -

C.T.A. CASE NO. 5529

THE COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
FEB 12 1999

x - x

DECISION

This is a petition seeking for the refund of the sum of ₱2,149,625.24 allegedly representing erroneously paid gross receipts tax for the period March 18 to March 31, 1995.

The facts of the case are simple:

Petitioner is a corporation duly organized and existing under Philippine laws. It was authorized to operate as a savings and mortgage bank on March 14, 1994 by the Bangko Sentral ng Pilipinas (Exh. E). As such, under Section 119 of the Tax Code, it was liable to pay gross receipts tax (GRT) on interest, commission and discounts from lending activities as well as income from financial leasing, on the basis of remaining maturities of instruments from which such receipts are derived, as follows:

Short term maturity - not in excess of two (2) years - 5%

Medium term maturity - over two (2) years but not exceeding four (4) years - 3%

Long term maturity - (I) Over four (4) years but not exceeding seven (7) years - 1% x x x"

On March 18, 1995, Republic Act No. 7906, also known as the Thrift Banks Act of 1995, took effect. Under Section 17 of the said Act, all thrift banks shall be exempt from payment of all taxes, fees and charges of whatever nature and description, except the corporate income taxes and local taxes, fees and charges for a period of five (5) years counted from the date of commencement of operations for thrift banks created under this Act and from the date of effectivity of this Act for existing thrift banks.

The scope and extent of the exemption granted to thrift banks under the aforesaid Section of the Thrift Banks Act of 1995 as well as the effective date of the said Act was clarified by the Respondent upon her issuance of Revenue Regulations No. 4-95, dated June 15, 1995. Section 2 of the said regulations provides:

"Section 2. *Taxes covered by the exemption* -

A. All thrift banks created and organized under the provisions of the Act and thrift banks already in operation as of the date of effectivity thereof on March 18, 1995 shall be exempt from the payment of all taxes, fees and charges of whatever nature and description, except the corporate income taxes

> and local taxes, fees and charges. (Sec. 17. R.A. 7906).
>
> xxx xxx xxx
>
> B. Exemption from gross receipts tax. - All Thrift banks are exempt from the tax (GRT) imposed under Section 119 of the NIRC on the gross receipts derived from sources within the Philippines.

In view, however, of the fact that petitioner had already filed its Quarterly Percentage Tax Return for the first quarter of 1995 and had paid the corresponding tax amounting to ₱.4,272,728.00 (Exh. A), it filed a claim for refund on February 28, 1996 in the amount of ₱2,149,625.24, allegedly pertaining to gross receipts tax paid from March 18, 1995 to March 31, 1995. Petitioner arrived at ₱2,149,625.24 by multiplying the income for the whole month of March by the percentage of the number of days included in the said period (14 days) over the total number of days in March (31 days). Thus, according to petitioner, 45% (14 days/31 days) of the income subject to GRT for the month of March is allocable to the period March 18 to March 31 1995, computed as follows:

Tax Rate	March 1 to March 31	March 18 to March 31	Tax Paid Refundable
5%	₱ 71,441,918.95	₱32,264,092.43	₱1,613,204.62
3%	38,739,274.50	17,495,156.23	524,854.69
1%	2,561,028.28	1,156,593.42	4,067.30
Total	₱112,742,221.79	₱50,915,842.07	₱2.149,625.24

No action was undertaken by respondent on petitioner's claim for refund and so on May 30, 1997, the instant petition was filed.

To support its case, petitioner presented the following in evidence:

Exh.	Nature and Description	Purpose
A	Quarterly Percentage tax Return for the 1st Quarter of Taxable Year 1995	1. To prove that petitioner filed its quarterly percentage tax return for the 1st quarter of 1995; 2. To prove that petitioner paid the amount of ₱14,272,728.00 as gross receipts tax for the 1st quarter of 1995
B	SEC Certificate of Amendment of Article of Incorporation dated May 17, 1997	To prove that petitioner is authorized to operate as a Savings or Thrift Bank
C	Amended Articles of Incorporation	Same as "B"
D	Letter claim for refund dated February 26, 1996 and filed with the Bureau of Internal Revenue on February 28, 1996	To prove that petitioner filed a claim for refund with the BIR for erroneously paid Gross Receipts Tax (GRT) on February 28, 1996
E	Bangko Sentral ng Pilipinas Certificate of Authority dated March 14, 1994	Same as "B"
F	Letter dated October 27, 1993 from the Bangko Sentral ng Pilipinas Supervision and Examination Sector	Same as "B"

Respondent, on her part, manifested that since there are no BIR records in the instant case, she is submitting the same for decision. She, however, filed a Memorandum on May 28, 1998 while petitioner failed to do so.

The lone issue We are tasked to resolve is whether or not petitioner has fully substantiated its claim so as to be entitled to the refund sought.

After an examination of the evidence presented, We rule in favor of respondent on two grounds:

First, there is no dispute that petitioner, by being a savings and mortgage bank, is a thrift bank as defined under Section 3 of Republic Act No. 7906. Likewise, there is no question that by being a thrift bank, it enjoys the tax exemption granted under the said Act.

The problem lies on the evidence submitted by petitioner to prove the gross receipts tax paid from March 18 to March 31, 1995 or the period wherein it was exempt from GRT under R.A. No. 7906. Petitioner's computation was merely based on allocation. Not a single document was shown as to how the figures supposedly representing petitioner's gross receipts for the period covered was arrived at. Only the incomplete returns (Annex A, Petition for Review & Exhibit A) which reflected unverifiable amounts of gross receipts and taxes were submitted. The Court certainly will not grant a refund on the basis of mere allocation if there is no reason to do so as when there is a showing that the income being earned by petitioner is fixed for every month. As correctly pointed out by respondent, for petitioner to be entitled to the refund of its gross receipts tax for the period in question, it must be able to present competent evidence to establish its claim in the exact amount. The amount sought to be refunded by petitioner in this case was not established as having been earned by it during the period of exemption, considering that the allocation made by petitioner was not substantiated by evidence. Petitioner, in this case, has utterly failed to convince this Court of its entitlement to the refund sought.

Second, assuming that petitioner was able to present sufficient evidence to establish its claim, still its claim for refund cannot be given due course as the same has already prescribed.

Under Section 125 of the 1995 Tax Code, "every person subject to the percentage taxes imposed under this Title shall file a quarterly return of the amount of his gross sales, receipts or earnings and pay the tax due thereon within twenty (20) days after the end of each taxable quarter."

Petitioner paid the gross receipts tax corresponding to the months of January to March 1995 on April 20, 1995 (Exh. A). Section 204 in relation to Section 230 of the

Tax Code, provide the periods within which to file claims for refund, thus:

> "Sec. 204. ***Authority of the Commissioner to compromise, abate, and refund/credit taxes.*** - x x x
>
> (3) Credit or refund taxes erroneously or illegally received, penalties imposed without authority, refund the value of internal revenue stamps when they are returned in good condition by the purchaser, and, in his discretion, redeem or change unused stamps that have been rendered unfit for use and refund their value upon proof of destruction. No credit or refund of taxes or penalties shall be allowed unless the taxpayer files in writing with the Commissioner a claim for credit or refund within two years after the payment of the tax or penalty. (As amended by PD 1773.)"
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> "SEC. 230. ***Recovery of tax erroneously or illegally collected.*** - No suit or proceeding shall be maintained in any court for the recovery of any national internal revenue tax hereafter alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority or of any sum alleged to have been excessive or in any manner wrongfully collected, until a claim for refund or credit has been duly filed with the Commissioner; but such suit or proceeding may be maintained, whether or not such tax, penalty, or sum has been paid under protest or duress.
>
> In any case, no such suit or proceeding shall be begun after the expiration of two years from the date of payment of the tax or penalty regardless of any supervening cause that may arise after payment: x x x."

Hence, while the claim for refund filed with the Bureau of Internal Revenue on February 28, 1996, was well within the two-year period prescribed under the above-cited

Section 204, petitioner's claim for refund before this Court on May 30, 1997 was already filed out of time under Section 230 as petitioner only had until April 20, 1997 within which to elevate its case before us.

WHEREFORE, in view of the foregoing, the instant petition is hereby **DISMISSED** for insufficiency of evidence and prescription.

SO ORDERED.

AMANCIO Q. SAGA
Associate Judge

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Judge

RAMON O. DE VEYRA
Associate Judge

CERTIFICATION

I hereby certify that the above decision was reached after due consultation with the members of the Court of Tax Appeals in accordance with Section 13, Article VIII of the Constitution.

ERNESTO D. ACOSTA
Presiding Judge