REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

MAKATI SUPERMART CORPORATION,
Petitioner,

- versus - C.T.A. CASE NO. 3985

COMMISSIONER OF INTERNAL REVENUE,
Respondent.
x - - - - - - - - - - - - - x

1/19/91

# D E C I S I O N

This is an action to enforce a claim for refund or tax credit alleged as erroneously paid corporate development tax imposed under Section 24(e) of the 1977 Tax Code.

Petitioner filed its annual corporate income tax return for its fiscal year ended June 30, 1983 with the revenue district office of Makati showing a net income of P2,812,410 and a total tax due therein of P1,222,451 broken down into P974,343 as regular corporate income tax, and P248,108 as corporate development tax (Exh. B). Petitioner paid its income tax liability in quarterly installments, the last payment being on October 17, 1983, the day it filed its income tax return. (Exh. A-1, D-1, F-1 and H-1.)

On May 19, 1983, Batas Pambansa Blg. 399 was approved, effective immediately, repealing the corporate development tax under Section 24(e) of the 1977 Tax Code. The respondent, in implementing said law, issued Revenue Memorandum Circular No. 1-84 dated January 9, 1984, which provides as follows:

> "Accordingly, corporations otherwise qualifying as 'closely held corporations' whose taxable year ends after May 19, 1983 are no longer subject to the provisions of Section 24(e) of the Tax Code. Corporations otherwise qualifying as 'closely held corporations' whose fiscal year ends before May 19, 1983 are still liable to pay the corporate development tax."

On October 16, 1985, pursuant to the above circular, petitioner filed in the respondent's office, a formal claim for refund or tax credit in the amount of P248,108 representing the erroneously paid corporate development tax, and, simultaneously instituted this petition for review to stop the running of the two year prescriptive period under Section 292 of the 1977 Tax Code.

Respondent anchors his argument on two grounds:

(1) That the petitioner's claim for refund is time barred; and,

(2) Petitioner has not satisfactorily

established a valid claim to the refund or tax credit.

A suit or proceeding to enforce a claim for a refund must comply with Section 292 of the Tax Code which requires that a formal written claim for a refund must first be filed in the Revenue Office and that in no case may such suit or proceeding be filed beyond two (2) years from date of payment of the tax. This two-year period is mandatory. The Tax Code, however, does not prescribe how said period shall be computed. Consistent with prior rulings of this Court, for failure of the Tax Code to provide for a mode of computing a period, the Civil Code will govern. Following the prescript of Article 18 of the said Code, in matters which are governed by special law, their deficiency shall be supplied by the provisions of the Civil Code, In relation thereto, Article 13 states that "when the law speaks of years, it shall be understood that years are of 365 days," and that "in computing a period, the first day shall be excluded and the last day included." The two-year period then consists of 730 days such that any suit or proceeding begun after the expiration of this 730 day period shall no longer prosper.

Taking note of the rulings of the Supreme

Court in *Prieto v. Collector, L-11976, August 29, 1961, 2 SCRA 1007,* and *Commissioner of Internal Revenue v. Asia Australia Express, G.R. No. 85956, April 10, 1989*, if the tax is paid in installments the two year period is counted from the date of final payment. Accordingly, from the time petitioner paid its last installment on October 17, 1983 until the time the claim for refund and this petition was filed on October 16, 1985, exactly 730 days have elapsed, which is within the 2-year period contemplated by the Tax Code. Hence, petitioner's right to file a claim for refund has not yet prescribed.

Regarding the validity of the claim itself, this Court finds that the petitioner has satisfactorily established its right to a refund. Petitioner had been paying the corporate development tax since 1979. Batas Pambansa Blg. 399 repealed Section 24(e) of the Tax Code which provided for the payment of the corporate development tax for closely held corporations not later than May 19, 1983. This repealing law is unambiguous, The last installment payment having been made on October 17, 1983, or later than May 19, 1983, when it is no longer liable to pay the corporate development tax, petitioner is therefore entitled to the refund of the sum of P248,108.00 as erroneously paid corporate development tax. Moreover, petitioner's fiscal year ended June 30, 1983, it is thus clear that BP Blg. 399 covers petitioner. (*Unimart, Inc. vs. Comm. of Int. Rev., C.T.A. Case No. 3986, Sept. 28, 1990; Unibake, Inc. vs. Comm. of Int. Rev., C.T.A. Case No. 3987, July 31, 1989.*)

**WHEREFORE, respondent Commissioner of Internal Revenue is hereby ordered to refund or credit to petitioner the amount of P248,108.00 representing erroneously paid corporate development tax for the fiscal year ended June 30, 1983.**

**SO ORDERED.**

Quezon City, Metro Manila, January 14, 1991.

**CONSTANTE C. ROAQUIN**
Associate Judge

**I CONCUR:**

**ALEX Z. REYES**
Presiding Judge

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

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

ALEX Z. REYES
Presiding Judge
Court of Tax Appeals