REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

FRANKLIN BAKER COMPANY OF THE PHILIPPINES, Petitioner,	**CTA EB NO. 3025** (CTA Case No. 10407)
- versus -	Present: **RINGPIS-LIBAN,** *P.J.*, **BACORRO-VILLENA, MODESTO-SAN PEDRO, REYES-FAJARDO, CUI-DAVID, FERRER-FLORES,** *and* **ANGELES,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: FEB 10 2026 3:15pm

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DECISION

RINGPIS-LIBAN, *J.*:

The Case

Before the Court is a Petition for Review praying for (a) the reversal of the Decision[1] dated April 23, 2024 ("Assailed Decision") and Resolution[2] dated October 08, 2024 ("Assailed Resolution") of the Court of Tax Appeals Special First Division ("Special First Division") dismissing the case for lack of jurisdiction.

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1 Penned by Associate Justice Catherine T. Manahan, with Associate Justice Marian Ivy F. Reyes-Fajardo concurring and Presiding Justice Roman G. Del Rosario with Dissenting Opinion. Docket, pp. 944-957.

2 Penned by Associate Justice Catherine T. Manahan, with Associate Justice Marian Ivy F. Reyes-Fajardo concurring and Presiding Justice Roman G. Del Rosario reiterating his Dissenting Opinion. Docket, pp. 981-993.

The Parties

Petitioner is a domestic corporation duly organized and existing under Philippine Laws, with principal office address at 39 Plaza Drive, Rockwell Center, 4th Floor Phinma Plaza, Brgy. Poblacion, Makati City 1210.[3]

Respondent is vested under the Tax Code with the authority to decide, approve and grant tax refunds. He may be served with summons and other court processes at the Bureau of Internal Revenue ("BIR"), National Office Building, Agham Road, Diliman, Quezon City.[4]

The Facts

On July 15, 2020, Franklin Baker filed an Application for Tax Credits/Refunds before the BIR in the amount of Php87,865,477.31.[5]

On October 21, 2020, Franklin Baker received a Value-Added Notice ("VAT") Refund Notice dated October 2, 2020 from BIR VAT Credit and Audit Division (VCAD), approving a portion of its VAT refund claim in the amount of Php28,739,024.78 and denying the rest of its VAT refund claim of its unutilized excess input tax for the 1st to 4th quarters of taxable year 2018 in the amount of Php59,126,452.53.[6]

On November 20, 2020, Petitioner filed a Petition for Review (With Motion for Commissioning of Independent Certified Public Accountant)[7] which was eventually raffled to the Special First Division.

The Ruling of the Special First Division

On April 23, 2024, the Special First Division promulgated the Assailed Decision, the dispositive portion of which reads:

> "Accordingly, the instant Petition for Review is **DISMISSED**, for lack of jurisdiction.
>
> **SO ORDERED.**"[8]

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[3] Rollo, Petition for Review, Parties, p. 2.
[4] *Id.*
[5] Docket, Decision dated April 23, 2024, Facts, p. 945.
[6] *Id.*
[7] *Id.*, pp. 7-19.
[8] *Id.*, Decision dated April 23, 2024, p. 953.

Aggrieved, Petitioner filed a "Motion for Reconsideration"[9] on May 21, 2024, which the Special First Division denied in the Resolution dated October 08, 2024, to wit:

> "**FOR THESE REASONS**, the instant Motion for Reconsideration is **DENIED**, for lack of merit.
>
> **SO ORDERED.**"[10]

The Proceedings in the Court of Tax Appeals En Banc

On November 13, 2024, the instant "Petition for Review"[11] was filed.

On February 03, 2025, the Court issued a Minute Resolution[12] directing Respondent to file his comment, not a motion to dismiss, within ten (10) days of notice.

On February 11, 2025, Petitioner filed its "Comment (Re: Petition for Review)"[13], with attached Affidavit of Service.

On February 28, 2025, a Minute Resolution[14] was issued:

1) Noting the "Comment (Re: Petition for Review)"; and

2) Submitting the instant case for decision.

Assignment of Errors

Petitioner raises the following grounds in support of its petition:

> I. The Honorable Court erred in ruling that it has no jurisdiction over the case allegedly due to the Petition for Review having been filed beyond the mandatory 30-day period;

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9 *Id.*, pp. 958-971.
10 *Id.*, Resolution dated October 08, 2024, pp. 981-993.
11 Rollo, pp. 1-17. Record shows that the Resolution dated October 08, 2024 was sent to Petitioner *via* LBC Express with Tracking Number 127354485600, Docket, p. 980. Upon review of LBC Track & Trace, Petitioner received the Resolution on October 29, 2024.
12 *Id.*, p. 47.
13 *Id.*, pp. 48-65.
14 *Id.*, p. 66.

II. The Honorable Court erred in not granting Petitioner's claim for input VAT refund amounting to Php59,126,452.53.[15]

The Arguments of the Parties

Petitioner avers that under the amendment introduced by Republic Act ("R.A.") No. 10963 or the Tax Reform for Acceleration and Inclusion Law ("TRAIN Law) to Section 112 of the National Internal Revenue Code ("NIRC"), the thirty (30)-day period to appeal to the Court of Tax Appeals ("CTA") from a full or partial denial of a refund of input VAT claim is upon receipt of the decision of the Commissioner of Internal Revenue ("CIR").

Petitioner maintains that as currently worded, the Tax Code does not give the taxpayer the privilege to appeal the inaction of the CIR to act on the administrative claim within the prescribed period.

Also, Petitioner asserts that even assuming R.A. No. 1125 provides for an avenue for claimants of refund to elevate to the CTA inaction by the CIR, the same does not preclude the taxpayer from waiting until it receives the decision of the CIR. According to Petitioner, the option when to elevate the matter is left to the discretion of the taxpayer.

Additionally, Petitioner alleges that the decision of the court *a quo*, insofar as its interpretation of Section 112(D) of the NIRC of 1997, as amended by TRAIN Law, contravenes the plain meaning or *verba legis* rule in Statutory Construction.

Moreover, nowhere it is stated in Revenue Regulations ("RR") No. 26-2018 that the taxpayer has the option of filing an appeal before the CTA after the lapse of the ninety (90)-day period from the filing of the administrative claim for refund without a decision being issued by the CIR.

Lastly, Petitioner points out that it complied with all the requirements for a valid claim for input VAT refund under Section 112(A) of the NIRC of 1997, as amended, to wit: (a) it is a VAT registered entity, (b) it is engaged in zero-rated transactions, (c) the input taxes due from the purchases of goods and services directly attributable to its zero-rated sales were duly supported by VAT invoices or official receipts, (d) its unutilized input taxes are not transitional input taxes, (e) its claimed input VAT payments were not applied against any output tax in the succeeding periods, (f) its input taxes claimed are attributable to Petitioner's zero-rated or effectively zero-rated sales, (g) for zero-rated sales under Section 106(A)(2)(1) and (2), 106(B) and 108(B)(1) and (2), the acceptable foreign currency exchange proceeds have been duly accounted for in accordance with

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15 *Id.*, Petition for Review, Assignment of Errors, pp. 2-3.

Bangko Sentral ng Pilipinas (BSP) rules and regulations, and (h) its administrative and judicial claims were filed within the prescriptive period.

On the other hand, Respondent states that Petitioner's contentions are utterly misplaced.

The Ruling of the Court

Timeliness of Petition

The Court in Division issued the Resolution denying Petitioner's "Motion for Reconsideration" on October 08, 2024. Petitioner received said Resolution on October 29, 2024.[16] Pursuant to Rule 4, Section 2(a)(1)[17] in relation to Rule 8, Section 3(b)[18] of the Revised Rules of the Court of Tax Appeals[19] (RRCTA), Petitioner had fifteen (15) days from date of receipt of the resolution or until November 13, 2024 within which to file his petition for review.

On November 13, 2024, Petitioner timely filed the present "Petition for Review". Hence, the Court *En Banc* validly acquired jurisdiction.

We now proceed to the merits of the case.

CTA's jurisdiction on the refund of unutilized excess input VAT

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[16] Record shows that the Resolution dated October 08, 2024 was sent to Petitioner *via* LBC Express with Tracking Number 127354485600, Docket, p. 980. Upon review of LBC Track & Trace, Petitioner received the Resolution on October 29, 2024.

[17] **Sec. 2.** *Cases within the jurisdiction of the Court en banc.* — The Court *en banc* shall exercise exclusive appellate jurisdiction to review by appeal the following:

(a) Decisions or resolutions on motions for reconsideration or new trial of the Court in Divisions in the exercise of its exclusive appellate jurisdiction over:

xxx xxx xxx

(1) Cases arising from administrative agencies – Bureau of Internal Revenue, Bureau of Customs, Department of Finance, Department of Trade and Industry, Department of Agriculture; x x x

[18] **Sec. 3.** *Who may appeal; period to file petition.* — x x x

(b) A party adversely affected by a decision or resolution of a Division of the Court on a motion for reconsideration or new trial may appeal to the Court by filing before it a petition for review within fifteen days from receipt of a copy of the questioned decision or resolution. Upon proper motion and the payment of the full amount of the docket and other lawful fees and deposit for costs before the expiration of the reglementary period herein fixed, the Court may grant an additional period not exceeding fifteen days from the expiration of the original period within which to file the petition for review. (Rules of Court, Rule 42, sec. 1a)

[19] A.M. No. 05-11-07-CTA, November 22, 2005.

The crux of the controversy is whether the CTA Special First Division has jurisdiction over Petitioner's claim for refund of its alleged unutilized excess input VAT for the 1st to 4th quarters of taxable year 2018.

The tax credit or refund of unutilized excess input VAT by the BIR is governed by Section 112 of the NIRC of 1997, as amended by Republic Act ("R.A.") No. 10963[20]. This was the applicable Tax Code then prevailing at the time when Petitioner's claim was filed, before the further amendment of the Code by R.A No. 11534[21] and R.A. No. 11976[22].

The provision reads:

> "**SEC. 112. *Refunds or Tax Credits of Input Tax.* —**
>
> (A) *Zero-rated or Effectively Zero-rated Sales.* — Any VAT-registered person, whose sales are zero-rated or effectively zero-rated may, within two (2) years after the close of the taxable quarter when the sales were made, apply for the issuance of a tax credit certificate or refund of creditable input tax due or paid attributable to such sales, except transitional input tax, to the extent that such input tax has not been applied against output tax: *Provided, however,* That in the case of zero-rated sales under Section 106(A)(2)(a)(1), (2) and (b) and Section 108 (B)(1) and (2), the acceptable foreign currency exchange proceeds thereof had been duly accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP): *Provided, further,* That where the taxpayer is engaged in zero-rated or effectively zero-rated sale and also in taxable or exempt sale of goods of properties or services, and the amount of creditable input tax due or paid cannot be directly and entirely attributed to any one of the transactions, it shall be allocated proportionately on the basis of the volume of sales. *Provided, finally,* That for a person making sales that are zero-rated under Section 108(B) (6), the input taxes shall be allocated ratably between his zero-rated and non-zero-rated sales.
>
> xxx xxx xxx
>
> (C) *Period within which Refund of Input Taxes shall be Made.* — In proper cases, the Commissioner shall grant a refund for creditable input taxes within ninety (90) days from the date of submission of

[20] Also known as the Tax Reform for Acceleration and Inclusion (TRAIN) Law, December 19, 2017.
[21] Also known as the Corporate Recovery and Tax Incentives for Enterprises Act or CREATE Law, March 26, 2021.
[22] Also known as the Ease of Paying Taxes Act, January 05, 2024.

> the official receipts or invoices and other documents in support of the application filed in accordance with Subsections (A) and (B) hereof: *Provided*, That should the Commissioner find that the grant of refund is not proper, the Commissioner must state in writing the legal and factual basis for the denial.
>
> In case of full or partial denial of the claim for tax refund, the taxpayer affected may, within thirty (30) days from the receipt of the decision denying the claim, appeal the decision with the Court of Tax Appeals: *Provided, however*, That failure on the part of any official, agent, or employee of the BIR to act on the application within the ninety (90)-day period shall be punishable under Section 269 of this Code."

Based on the foregoing, the jurisdictional requisites for unutilized excess input VAT are as follows:

1) the taxpayer files a written administrative claim for refund with the BIR within two (2) years after the close of the taxable quarter when the sales were made;

2) the CIR has ninety (90) days from the taxpayer's date of submission of the documents in support of the administrative claim within which to decide thereon;

3) the filing of a judicial claim for refund with the CTA is preceded by the filing of an administrative claim for refund; and,

4) the filing of the judicial claim must be made within the prescriptive period of thirty (30) days.

The point of consideration is the date from which the thirty (30)-day period should be counted.

The NIRC of 1997, as amended by the TRAIN Law cannot be read in isolation but must be interpreted in conjunction with RA No. 1125[23], as amended by RA No. 9282[24], the **special law** providing for the jurisdiction of the CTA.

Sections 7(a)1) and 7(a)(2) enumerate the reviewable actions of the CIR, to wit:

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[23] An Act Creating the Court of Tax Appeals.

[24] An Act Expanding the Jurisdiction of the Court of Tax Appeals (CTA), Elevating its Rank to the Level of a Collegiate Court with Special Jurisdiction and Enlarging its Membership, amending for the Purpose Certain Sections or Republic Act No. 1125, As Amended, Otherwise Known as the Law Creating the Court of Tax Appeals, and for Other Purposes.

"**SEC.** 7. *Jurisdiction.* – The CTA shall exercise:

(a) Exclusive appellate jurisdiction to review by appeal, as herein provided:

(1) Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue or other laws administered by the Bureau of Internal Revenue;

(2) Inaction by the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relations thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue, where the National Internal Revenue Code provides a specific period of action, in which case the inaction shall be deemed a denial[.]"

Meanwhile, Section 11 provides that "[a]ny party adversely affected by a decision, ruling or inaction of the Commissioner of Internal Revenue...may file an appeal with the CTA within thirty (30) days after the receipt of such decision or ruling or after the expiration of the period fixed by law for action as referred to in Section 7(a)(2) herein."

Since the law vests the CTA with jurisdiction over cases involving both the decisions and the inaction of the CIR on claims for refund of internal revenue taxes, fees and other charges, it follows that the thirty (30)-day period provided under the Tax Code refers to the same thirty (30)-day period prescribed under R.A. 9282, as amended, which applies to both such decisions and inaction.

More importantly, Section 7(a)(2) underscores the "deemed denied" principle, *i.e.*, where the NIRC of 1997 provides a specific period of action for the CIR, the latter's inaction shall be deemed a denial by operation of law.

Considering that Section 112(C) of the amendment in the TRAIN Law provides for a specific period of action or "within ninety (90) days from the date of submission", the CIR's inaction during the said period shall be deemed a decision of denial which can be elevated to the CTA. This doctrine was upheld in the landmark case of *Commissioner of Internal Revenue v. San Roque Power Corporation*[25], and has been the prevailing jurisprudence[26] ever since.

In the case at bar, We agree with the court *a quo* that while Petitioner's administrative claim was timely filed, its judicial claim was filed beyond the allowable period, as shown below:

<table>
<tr><td rowspan="6">Taxable year 2018</td><td colspan="3">2-year prescriptive period</td><td rowspan="2">Administrative Claim</td></tr>
<tr><td>close of the taxable quarter when the sales were made (START)</td><td>2-years</td><td>END</td></tr>
<tr><td>March 31, 2018</td><td>March 31, 2020</td><td>July 15, 2020[27]</td><td>July 15, 2020[28]</td></tr>
<tr><td colspan="2">CIR's Inaction</td><td rowspan="2">30 days from the expiration of the 90-day period</td><td rowspan="2">Judicial Claim</td></tr>
<tr><td>90-day period within which to decide (START)</td><td>END</td></tr>
<tr><td>July 15, 2020</td><td>October 13, 2020</td><td>November 12, 2020</td><td>November 20, 2020[29]</td></tr>
</table>

Although Petitioner allegedly receive the VAT Refund Notice dated October 2, 2020 from BIR VAT Credit and Audit Division (VCAD) on October 21, 2020[30], approving a portion of its VAT refund claim, such notice was issued beyond the ninety (90)-day period and is therefore deemed an inaction for purposes of reckoning the thirty (30)-day period to appeal to the CTA. As such, the "Petition for Review" should have been filed on or before November 12, 2020.

Petitioner nonetheless contends that the recent amendments to the NIRC of 1997 have removed the taxpayer's right to seek judicial recourse from the inaction of the CIR.

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[25] G.R. Nos. 187485, 196113 and 197156, February 12, 2013.

[26] Commissioner of Internal Revenue v. Mindanao II Geothermal Partnership, G.R. No. 191498, January 15, 2014; Rohm Apollo Semiconductor Philippines v. Commissioner of Internal Revenue, G.R. No. 168950, January 14, 2015; Silicon Philippines, Inc. v. Commissioner of Internal Revenue, G.R. No. 182737, March 02, 2016; Aichi Forging Company of Asia, Inc. v. Court of Tax Appeals - En Banc, Et. Al., G.R. No. 193625, August 30, 2017; Steag State Power, Inc. v. Commissioner of Internal Revenue, G.R. No. 205282 (Resolution), January 14, 2019; Energy Development Corp. v. Commissioner of Internal Revenue, G.R. No. 203367, March 17, 2021.

[27] BIR Revenue Regulations No. 16-2020, Regulations Further Suspending the Due Dates in the Application of the Ninety (90)-Day Period to Process Value Added Tax (VAT) Refund/Claim Pursuant to Section 112 of the Tax Code of 1997, as Amended by Republic Act (R.A.) No. 10963 (TRAIN Law) for Taxable Quarters Affected by the Declaration of the National State of Emergency, June 19, 2020.

[28] Docket, Application for Tax Credits/Refunds (Exhibit "P-8"), p. 124.

[29] *Id.*, Petition for Review, Nature and Timeliness of the Petition, Par. 4, p. 8.

[30] *Id.*, pp. 7-17.

We do not agree.

Special laws prevail over general laws. *Generalia specialibus non derogant.*[31]

It is a basic rule in statutory construction that a special law cannot be repealed or modified by a subsequently enacted general law in the absence of any express provision in the latter law to that effect.

The jurisdiction of the CTA, as conferred by special law, cannot be repealed or modified by a general law such as the NIRC of 1997, as amended, in the absence of an express legislative intent. Nowhere in Section 86 of the TRAIN Law does it state that Section 7(a)(2) of R.A. No. 9282 was amended.

Moreover, treating the deletion of the phrase "or after the expiration of the 120-day [now 90-day] period, whichever is sooner" in the TRAIN Law as an express repeal of the deemed denial provision of the old law, will reduce the amended Tax Code to absurdity.

The law must protect both the interests of the government and taxpayer. Congress could not have intended for a taxpayer who administratively filed a claim for refund to stand at the mercy of the government, to wait forever for the CIR to issue a denial thereon for the former has no other judicial relief.

Considering all these pronouncements, We find no error with the CTA Special First Division's ruling that it has no jurisdiction to take cognizance of the "Petition for Review" filed before it.

WHEREFORE, premises considered, the instant "Petition for Review" is **DENIED** for lack of merit. The Decision dated April 23, 2024 and Resolution dated October 08, 2024 issued by the Court of Tax Appeals Special First Division are **AFFIRMED**.

SO ORDERED.

MA. BELEN M. RINGPIS-LIBAN
Presiding Justice

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[31] The Department of Energy v. Court of Tax Appeals, G.R. No. 260912, August 12, 2022.

WE CONCUR:

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

With due respect, please see Dissenting Opinion
MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

Marian Ivy F. Reyes-Fajardo
MARIAN IVY F. REYES-FAJARDO
Associate Justice

With due respect, please see Dissenting Opinion
LANEE S. CUI-DAVID
Associate Justice

CORAZON G. FERRER-FLORES
Associate Justice

I join the Dissenting Opinion of Justice Lanee S. Cui-David
HENRY S. ANGELES
Associate Justice

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.

MA. BELEN M. RINGPIS-LIBAN
Presiding Justice

REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

EN BANC

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Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
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CTA EB NO. 3025
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Present:
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MANAHAN,
BACORRO-VILLENA,
MODESTO-SAN PEDRO,
REYES-FAJARDO,
CUI-DAVID,
FERRER-FLORES, *and*
ANGELES, *JJ.*

Promulgated:
FEB 10 2026 3:15pm

x -- x

DISSENTING OPINION

MODESTO-SAN PEDRO, J.:

With all due respect to my esteemed colleague, Presiding Justice Ma. Belen M. Ringpis-Liban, I disagree with the finding that the Court in Division did not gain jurisdiction over petitioner's case before it.

The issue mostly stems from a single provision: the second paragraph of *Section 112(c) of the NIRC*. It arises specifically from the various versions of the provision produced by relatively recent amendments to the *NIRC*. Particularly relevant here are the amendments made by *TRAIN* and *EOPTA*.

The three relevant versions of the paragraph are quoted below:

NIRC	*TRAIN*	*EOPTA*
In case of full or partial denial of the claim for tax refund or tax credit, or the failure on the part of the Commissioner to act on the application within the period prescribed above, the taxpayer affected may, within thirty (30) days from receipt of the decision denying the claim or after the expiration of the one hundred twenty-day period, appeal the decision or the unacted claim with the Court of Tax Appeals.	In case of full or partial denial of the claim for tax refund, the taxpayer affected may, within thirty (30) days from the receipt of the decision denying the claim, appeal the decision with the Court of Tax Appeals: Provided, however, That failure on the part of any official, agent or employee of the Bureau of Internal Revenue to act on the application within the ninety (90)-day period shall be punishable under Section 269 of this Code.	In case of full or partial denial of the claim for tax refund, or the failure on the part of the Commissioner to act on the application within the period prescribed above, the taxpayer affected may, within thirty (30) days from the receipt of the decision denying the claim or after the expiration of the ninety (90)-day period, appeal the decision with the Court of Tax Appeals: Provided, however, That failure on the part of any official, agent, or employee of the Bureau of Internal Revenue to act on the application within the ninety (90)-day period shall be punishable under Section 269 of this Code.

Significantly, *TRAIN* removed (i) the phrase "or the failure on the part of the Commissioner of Internal Revenue ("CIR") to act on the application within the period prescribed above" as a condition for raising an appeal to this Court; and (ii) the phrase "or after the expiration of the one hundred twenty day-period" as a reckoning point for the 30-day period for filing such an appeal. It instead added a new provision instituting administrative punishment for such failures to act on claims for refund. *EOPTA*, meanwhile, reinserted the deleted phrases into the provision, while retaining the part about administrative punishment.

An amendment to a law that removes certain provisions must be treated as important. Drawing from the book *Statutory Construction* by Ruben E. Agpalo, the Supreme Court has decreed that "the deliberate selection of language differing from that of the earlier act on the subject indicates that a change in the meaning of the law was intended"[1] and that an amendment to a statute should not be treated as "mere semantic exercise" but must instead be seen as expressing some purpose, which must be given effect.[2] In other words, a change made to the language used in a law must be understood as a change in the law itself.

To be even more specific, the High Court has held that "an amendment by the deletion of certain words or phrases indicates an intention to change its meaning."[3] Clearly, then, the removal of a course of action previously provided by law must be understood as the law being modified to no longer allow such.

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[1] *Oceanmarine Resources Corporation v. Nedic*, G.R. No. 236263, July 19, 2022.
[2] *Akbayan v. Commission on Elections*, G.R. Nos. 147066 & 147179, March 26, 2001.
[3] *Republic of the Philippines v. St. Vincent de Paul Colleges, Inc.*, G.R. No. 192908, August 22, 2012, citing *Laguna Metts Corporation v. Court of Appeals*, G.R. No. 185220 (Resolution), July 27, 2009.

Furthermore, "when there is a reasonable certainty that a particular person, object, or thing has been omitted from a legislative enumeration," such omission must be taken as intentional.[4] The provision in question must consequently be treated as inapplicable to the entity omitted from the enumeration.

Finally, as often emphasized, when the laws do not distinguish, neither should the Courts.[5]

Considering the above, *TRAIN*'s explicit removal of the CIR's inaction as either a condition of raising an appeal or the reckoning point of the 30-day prescriptive period cannot be brushed aside. To treat the old option, of raising a judicial claim for refund from the CIR's inaction, as still available even after said removal would be to treat *TRAIN*'s amendments to *Section 112(c)* as meaningless, effectively nullifying said changes. It would conflict with the explicit deletion of said option from the *NIRC*. It would ignore the provision's telling omission of appeals from inaction. It would distinguish (between cases where the CIR does and does not act on an administrative claim within the 90-day period) when the law does not. It would thus contradict the law itself.

This is further supported by the fact that the contentious passages were reinserted by *EOPTA*. Had legislators intended for the "deemed denied" provision to simply by treated as included in *TRAIN*, then there would be no need to explicitly reinclude it in the *NIRC* through *EOPTA*. Why would they need to add a provision if it was already considered as included in the law, after all? This reinsertion only makes sense if inactions from the CIR on refund claims for input taxes were *not* appealable to this Court under *TRAIN*. As such, treating such inaction as appealable both ignores the clear amendments made by *TRAIN* and the specific changes enacted by *EOPTA*.

This belies the majority opinion's pronouncement that treating *TRAIN*'s deletion of the relevant passage would reduce to law "to absurdity", an opinion expressed with little explanation or cited jurisprudential support. There is nothing absurd about ascribing to acts of Congress the full significance that they deserve.

I am not unaware that statutory construction frowns upon repeals by implication, as stated in *The United Harbor Pilots' Association of the Philippines, Inc. v. Association of International Shipping Laws, Inc.*[6] However, repeals by implication are accepted when "it is manifest that the legislative authority so intended" such repeal. And as discussed above, deletions and omissions from legislative enumerations must be understood as expressions of intent to leave out what was deleted or omitted. The deletion

[4] *Maibarara Geothermal, Inc. v. Commissioner of Internal Revenue*, G.R. No. 256720, August 7, 2024.
[5] See, for example, *Philippine Contractors Accreditation Board v. Central Mindanao Construction Multi-Purpose Cooperative*, G.R. No. 242296, July 31, 2024.
[6] G.R. No. 133763, November 12, 2002.

and omission of the "deemed denied" provision from *Section 112(c) of the NIRC* by *TRAIN* must therefore be treated as intentional and thus as an *exception* to the general rule against repeals by implication.

In my opinion, neither can the priority of special laws over general laws be used to introduce the "deemed denial" provision to *TRAIN*. *Section 7(a)(2) of Republic Act No. 1125, as amended* ("*CTA Law*"), is itself a *general* provision as it covers not just "refunds of internal revenue taxes, fees, or other charges" but also disputed assessments, penalties, and other matters arising from the *NIRC* and other laws administered by the Bureau of Internal Revenue. Its scope is thus broad. Compare this to *Section 112(c) of the NIRC*, as specifically amended by *TRAIN*, which *exclusively* covers claims for refund or tax credit for input taxes *only*. It governs a *specific* power of the CIR (to grant refunds and tax credits) involving a *specific* type of tax (input taxes), whereas *Section 7(a)(2) of the CTA Law* covers the inaction of the CIR on *all kinds of controversies appealable to this Court*. As such, *Section 112(c) of the NIRC*, as amended by *TRAIN*, must be considered the specific *special* law that prevails over the broad *general* provision of *Section 7(a)(2) of the CTA Law*.

In any event, even if the Court were to consider the *CTA Law* as a special law that takes priority over *TRAIN*, the repeal of the former by the latter is allowed when legislative intent is present, as observed in the majority opinion itself. And as already discussed in the preceding pages, *TRAIN*'s deletion of the relevant passage (paired with *EOPTA*'s reintroduction of the same) already show such intent. *Section 112(c) of the NIRC*, as specifically amended by *TRAIN*, consequently still prevails over *Section 7(a)(2) of the CTA Law*.

TRAIN's removal of the relevant phrases must consequently be construed as the explicit removal of the option to raise an appeal from the CIR's inaction. Under *TRAIN*, a judicial claim could *not* be raised based on the CIR's inaction. A taxpayer's only option, as far as raising a judicial claim goes, was to await the CIR's decision.

As an aside, I note that conflicts of interpretations of the law can be resolved by reference to the legislation's intent, when available. There may thus be need for this Court to independently consult the actual Senate hearings and meetings held for the drafting of *TRAIN* and *EOPTA*, to base Our presumptions of intent on the words of the legislators themselves and to finally put this issue to rest.

ALL TOLD, I vote that the instant Petition for Review be **GRANTED** and that the case be remanded to the Court in Division for the conduct of a trial on the merits.

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

FRANKLIN BAKER COMPANY OF THE PHILIPPINES,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA *EB* No. 3025
(CTA Case No. 10407)

Members:

RINGPIS-LIBAN, *P.J.*,
BACORRO-VILLENA,
MODESTO-SAN PEDRO,
REYES-FAJARDO,
CUI-DAVID,
FERRER-FLORES, *and*
ANGELES, *JJ.*

Promulgated:
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DISSENTING OPINION

CUI-DAVID, J.:

With due respect, I dissent from the opinion of the majority affirming the *Decision* of the Court's Special First Division (**Court in Division**) dismissing petitioner's *Petition for Review* for lack of jurisdiction. It is my considered view that the Court in Division should have taken cognizance of the *Petition for Review* and resolved petitioner's claim for refund on the merits.

A summarized timeline of the case is presented below:

Date	Details
July 15, 2020	Petitioner filed its administrative claim for value-added tax (VAT) refund with the BIR VAT Credit Audit Division.
October 13, 2020	Expiration of the 90-day period for the BIR to act on the claim.
October 21, 2020	Petitioner received the decision of the BIR denying the claim for refund.

November 20, 2020	Petitioner filed its Petition for Review before the Court in Division

As the records show, the *Petition for Review* was filed on November 20, 2020, beyond the 90+30-day period. The 90-day period for respondent to act on the refund claim expired on **October 13, 2020**. Petitioner neither received a decision on the claim by that date nor filed a *Petition for Review* within the subsequent 30-day period, which ended on November 12, 2020. On this basis, the Court in Division dismissed the *Petition for Review* for lack of jurisdiction, finding that it was filed on November 20, 2020, **eight (8) days beyond the 30-day window following the expiration of the 90-day period**.

I respectfully disagree with the *ponencia* that the dismissal should be sustained. I explain my reasons below.

Section 112 (C) of the NIRC of 1997, as amended, governs the filing of judicial claims for refund or tax credit of input VAT.

Before the enactment of the TRAIN Law, Section 112(C) provided:

> SEC. 112. *Refunds or Tax Credits of Input Tax.* —
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> . . . .
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> (C) *Period within which Refund or Tax Credit of Input Taxes shall be Made.* — In proper cases, the Commissioner shall grant a refund or issue the tax credit certificate for creditable input taxes within **one hundred twenty (120) days** from the date of submission of complete documents in support of the application filed in accordance with Subsection (A) hereof.
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> In case of full or partial denial of the claim for tax refund or tax credit, **<u>or the failure on the part of the Commissioner to act on the application within the period prescribed above</u>**, the taxpayer affected may, within thirty (30) days from the receipt of the decision denying the claim **<u>or after the expiration of the one hundred twenty day-period</u>**, appeal the decision or the unacted claim with the Court of Tax Appeals. (Emphasis supplied)

Interpreting this provision, the Supreme Court in *Taihei Alltech Construction (Phil.), Inc. v. Commissioner of Internal*

Revenue (Taihei),[1] held that a taxpayer may appeal in either of **two (2) ways**:

(1) File a judicial claim within 30 days after the Commissioner denies the claim within the 120-day period; **or**

(2) File a judicial claim within 30 days from the expiration of the 120-day period if the Commissioner of Internal Revenue (CIR) does not act within the 120 days.

In other words, a taxpayer whose claim for VAT refund is denied or left unresolved by the CIR may pursue judicial remedies under **two (2) scenarios**:

1. If the CIR issues a decision within 120 days denying the claim, the taxpayer has 30 days from receipt of the decision to file a judicial claim with the CTA; or

2. If the CIR fails to act within the 120-day period, such inaction is deemed a denial, and the taxpayer must file a judicial claim within 30 days from the expiration of the 120-day period.

In *Taihei*, the Supreme Court clarified that once the 120-day period lapses without any action from the CIR, the taxpayer should no longer wait for a decision. The CIR's inaction within this period is deemed a denial of the administrative claim for refund. If the taxpayer fails to file a timely appeal, this "deemed denial" becomes final and unappealable.[2] Thus, the taxpayer **must** file an appeal within 30 days from the lapse of the 120-day waiting period.[3] | | |

In *Silicon Philippines, Inc. v. Commissioner of Internal Revenue* (*Silicon*)[4] cited in the *Taihei* case, the Supreme Court emphasized that the judicial claim for refund must be filed within 30 days either from the receipt of the CIR's decision/ruling **OR** from the expiration of the 120-day period, "**whichever is sooner**."

After the enactment of the TRAIN Law, Section 112(C), was amended to read as follows:

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1 G.R. No. 258791, December 7, 2022 [Per J. Lazaro-Javier, Second Division].

2 *Id.*

3 *Taihei Alltech Construction (Phil.), Inc. v. Commissioner of Internal Revenue*, G.R. No. 258791, December 7, 2022 [Per J. Lazaro-Javier, Second Division], citing *Rohm Apollo Semiconductor Phils. v. Commissioner of Internal Revenue* G.R. No. 168950, January 14, 2015 [Per C.J. Sereno, First Division].

4 G.R. No. 182737, March 2, 2016 [Per C. J. Sereno, First Division].

> SEC. 112. *Refunds or Tax Credits of Input Tax.* —
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> . . . .
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> (C) *Period within which Refund of Input Taxes shall be Made.* — In proper cases, the Commissioner shall grant a refund for creditable input taxes within **ninety (90) days from the date of submission of the official receipts or invoices and other documents in support of the application filed in accordance with Subsections (A) and (B) hereof: Provided, That should the Commissioner find that the grant of refund is not proper, the Commissioner must state in writing the legal and factual basis for the denial.**
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> In case of full or partial denial of the claim for tax refund, **the taxpayer affected may, within thirty (30) days from the receipt of the decision denying the claim, appeal the decision with the Court of Tax Appeals**: *Provided, however,* That failure on the part of any official, agent, or employee of the BIR to act on the application within the ninety (90)-day period shall be punishable under Section 269 of this Code. (Emphasis supplied)

A comparison of the pre- and post-TRAIN versions of Section 112(C) shows that the amended law shortened the CIR's period to act from 120 days to 90 days. The phraseology of Section 112(C) **before** and **after** the effectivity of TRAIN Law are presented below:

Before TRAIN Law	After TRAIN Law
In case of full or partial denial of the claim for tax refund or tax credit, **or the failure on the part of the Commissioner to act on the application within the period prescribed above**, the taxpayer affected may, within thirty (30) days from the receipt of the decision denying the claim **or after the expiration of the one hundred twenty day-period,** appeal the decision or the unacted claim with the Court of Tax Appeals.	In case of full or partial denial of the claim for tax refund, the taxpayer affected may, within thirty (30) days from the receipt of the decision denying the claim, appeal the decision with the Court of Tax Appeals: **Provided, however, That failure on the part of any official, agent, or employee of the BIR to act on the application within the ninety (90)-day period shall be punishable under Section 269 of this Code.**

Notably, the amended provision deleted specific phrases that previously recognized the CIR's inaction as a "deemed denial" that could be appealed within a 30-day period, phrases such as "*or the failure on the part of the Commissioner to act on* *the application within the period prescribed above*" and "*or after the expiration of the one hundred twenty day-period.*"

The deletion of these phrases indicates a departure from the previous doctrine of "deemed denial." Under the amended Section 112(C), judicial recourse or appeal to the CTA pursuant to the TRAIN Law appears to arise **only in <u>one</u> scenario:** within 30 days from **receipt** of the CIR's decision or ruling denying the refund claim – whether the receipt was before or after the lapse of the 90-day waiting period.

The implementing rules support this reading. Section 4.112-1(d) of Revenue Regulations (**RR**) No. 16-2005,[5] as amended by RR No. 26-2018,[6] explicitly provides that a taxpayer may appeal to the CTA within 30 days from **receipt** of the decision denying the refund claim. The regulation also allows **the BIR to continue processing claims beyond the 90-day period,** implicitly recognizing that a decision may be rendered even after the lapse of said period.

The pertinent provision of Section 4.112-1(d) states:

> SEC. 4.112-1. Claims for Refund/Credit of Input Tax. —
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> xxx xxx xxx
>
> (d) Period within which refund/credit of input taxes shall be made
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> xxx xxx xxx
>
> The 90-day period to process and decide shall start from the filing of the claim up to the release of the payment of the VAT refund: Provided, That, the claim/application is considered to have been filed only upon submission of the official receipts or invoices and other documents in support of the application as prescribed under pertinent revenue issuances.
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> In case of full or partial denial of the claim for tax refund, **the taxpayer affected, may, within <u>thirty (30) days from the *receipt* of the decision</u> denying the claim, appeal the decision with the Court of Tax Appeals (CTA)**: Provided, that failure on the part of any official, agent or employee of the BIR to act on the application within the ninety (90)-day period shall be punishable under Section 269 of the Tax Code, as

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[5] SUBJECT: Consolidated Value-Added Tax Regulations of 2005.

[6] SUBJECT: Amends Certain Provisions of Revenue Regulations No. 13-2018 to Implement the 90-Day Processing of Claim for VAT Refund Under Section 112 (C) of the Tax Code of 1997, as amended by Republic Act (R.A.) No. 10963, Otherwise Known as the Tax Reform for Acceleration and Inclusion or TRAIN.

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> amended. Provided, further, That, **in the event that the 90-day period has lapsed without having the refund released to the taxpayer-claimant, <u>the VAT refund claim may still continue to be processed administratively</u>.** Provided however, That the BIR official, agent or employee who was found to have deliberately caused the delay in the processing of the VAT refund claim may be subjected to penalties imposed under said section.
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> xxx xxx xxx (Emphasis supplied)

The Court must therefore recognize that a judicial claim filed within 30 days from receipt of a denial—regardless of whether the decision was issued before or after the lapse of the 90-day period—is valid. To underscore, the inaction of the BIR should not prejudice the taxpayer with the loss of one of its judicial remedies. It is the BIR and its officers who are subject to penalties for inaction, not the taxpayer.

Accordingly, when petitioner received the CIR's decision on October 21, 2020 and filed its *Petition for Review* on November 20, 2020, the *Petition* was filed within the 30-day window and was therefore timely. **The Court in Division should have exercised jurisdiction over the *Petition*.**

This opinion does not contradict Section 11 of RA No. 1125,[7] as amended by RA No. 9282 (the **CTA Charter**).[8]

Despite the amendments introduced by the TRAIN Law, the CTA's appellate jurisdiction over the CIR's inaction remains valid under Section 7(a)(2), in relation to Section 11 of the CTA Charter. These provisions expressly grant upon the CTA jurisdiction not only over decisions of the CIR but also over his **inaction** in refund claims where the law prescribes a specific period for action.

Moreover, Section 86 of the TRAIN Law,[9] the repealing clause, which provides a comprehensive list of laws repealed by its enactment, does not include RA No. 1125 or RA No. 9282. The mere silence of the TRAIN Law on the CIR's **inaction** does

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7 AN ACT CREATING THE COURT OF TAX APPEALS.

8 AN ACT EXPANDING THE JURISDICTION OF THE COURT OF TAX APPEALS (CTA), ELEVATING ITS RANK TO THE LEVEL OF A COLLEGIATE COURT WITH SPECIAL JURISDICTION AND ENLARGING ITS MEMBERSHIP, AMENDING FOR THE PURPOSE CERTAIN SECTIONS OR REPUBLIC ACT NO. 1125, AS AMENDED, OTHERWISE KNOWN AS THE LAW CREATING THE COURT OF TAX APPEALS, AND FOR OTHER PURPOSES.

9 SEC. 86. Repealing Clause. — The following laws or provisions of laws are hereby repealed, and the persons and/or transactions affected herein are made subject to the VAT provision of Title IV of the NIRC, as amended: ...Tax Reform for Acceleration and Inclusion (TRAIN), Republic Act No. 10963, December 19, 2017.

not amount to an implied repeal of Section 7(a)(2) of RA No. 1125, as amended.

The Supreme Court has consistently held that "on the presumption that whenever the legislature enacts a provision it has in mind the previous statutes relating to the same subject matter, it is held that *in the absence of any* ***express repeal or amendment*** therein, the new provision was enacted in accord with the legislative policy embodied in those prior statutes, and they all should be construed together."[10]

Applying this principle, it must be presumed that in enacting the TRAIN Law, Congress was aware of the provisions of RA No. 9282 concerning the CTA's jurisdiction to review the CIR's **inaction** in cases involving disputed assessments, **refunds,** or other matters arising under the National Internal Revenue Code (NIRC). In the absence of an express repeal, the TRAIN Law must be interpreted as consistent with the legislative policy embodied in those prior statutes.

Section 7(a)(2) and Section 11 of RA No. 1125, as amended by RA No. 9282, which remain unrepealed by the TRAIN Law, are quoted as follows:

> SEC. 7. *Jurisdiction.* – **The CTA shall exercise:**
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> (a) **Exclusive appellate jurisdiction to review by appeal, as herein provided:**
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> . . . .
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> (2) **Inaction by the Commissioner of Internal Revenue** in cases involving disputed assessments, **refunds** of internal revenue taxes, fees or other charges, penalties in relations thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue, where the National Internal Revenue Code provides a **specific period of action**, in which case the inaction shall be deemed a **denial**;
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> . . . .
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> SEC. 11. *Who May Appeal; Mode of Appeal; Effect of Appeal.* – **Any party adversely affected by a decision, ruling, or inaction** of the Commissioner of Internal Revenue . . . may file an appeal with the CTA **within thirty (30) days after the receipt of such decision** or ruling or after the

[10] *Garcia v. Tolentino*, G.R. Nos. 153810 & 167297, August 12, 2015 [Per J. Jardeleza, Third Division].

> expiration of the period fixed by law for action as referred to in Section 7(a)(2) herein.
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> Appeal shall be made by filing a petition for review under a procedure analogous to that provided for under Rule 42 of the 1997 Rules of Civil Procedure with the CTA **within thirty (30) days** from the receipt of the **decision** or ruling or in the case of **inaction as herein provided, from the expiration of the period fixed by law to act thereon**. A Division of the CTA shall hear the appeal: . . . (Emphasis supplied)

This jurisdictional framework is echoed in Section 3(a)(2), Rule 4 of the Revised Rules of the Court of Tax Appeals (**RRCTA**), which affirms the CTA's authority to review the CIR's **inaction** where a specific period for action is provided by law, *viz.*:

> **RULE 4**
> Jurisdiction of the Court
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> . . . .
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> SECTION 3. Cases within the jurisdiction of the Court in Division. — The Court in Division shall exercise:
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> (a) Exclusive original over or appellate jurisdiction to review by appeal the following:
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> . . . .
>
> (2) **Inaction by the Commissioner of Internal Revenue in cases involving** disputed assessments, **refunds of internal revenue taxes**, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue, **where the National Internal Revenue Code or other applicable law provides a specific period for action**: . . . (Emphasis supplied)

Indeed, despite the amendments introduced by the TRAIN Law, the CTA retains its appellate jurisdiction over the **inaction** of the CIR. Regarding the **decision** of the CIR, it is not required that it be received within the 90-day period. A judicial claim filed within 30 days from receipt of a decision rendered beyond the 90-day period remains valid.

Taxpayers should not be penalized for relying on the provisions of the law that establish and expand the jurisdiction of the very court to which they seek recourse.

MV

In summary, under Section 112(C) of the NIRC of 1997, as amended by the TRAIN Law, and Sections 7(a)(2) and 11 of RA No. 1125, as amended by RA No. 9282, and reiterated in the RRCTA, a taxpayer adversely affected by a decision, ruling or inaction of the CIR may appeal to the CTA as follows:

1. **If the CIR denies the claim within the 90-day period**, the affected taxpayer may appeal to the CTA within 30 days from receipt of the decision denying the claim.

2. **If the CIR fails to act within the 90-day period**, the affected taxpayer may, under Section 7(a)(2) of RA No. 1125, as amended by RA No. 9282, treat the inaction as a denial and may appeal to the CTA within 30 days from the lapse of the 90-day "specific period of action."

3. **If the taxpayer chooses to wait and receives a denial after the 90-day period**, the affected taxpayer may still appeal to the CTA within 30 days from receipt of the decision, pursuant to Section 112(C) of the NIRC of 1997, as amended by the TRAIN Law.

These remedies are not inconsistent or irreconcilable. The TRAIN Law's amendment of Section 112(C) of the NIRC does not repeal Section 7(a)(2) of RA No. 1125, as amended by RA No. 9282, particularly with respect to claims for refund of input VAT attributable to zero-rated sales.

As a rule of statutory construction, courts must strive to harmonize laws so that each may be given effect. **Repeals by implication** are not favored as laws are presumed to be passed with deliberation and full knowledge of all laws existing on the subject, the congruent application of which the courts must generally presume.[11] In order that one law may operate to repeal another law, the two laws must actually be inconsistent. The former must be so repugnant as to be irreconcilable with the latter act. Merely because a later enactment may relate to the same subject matter as that of an earlier statute is not of itself sufficient to cause an implied repeal of the latter, since the new law may be cumulative or a continuation of the old one.[12]

[11] *Philippine International Trading Corporation v. Commission on Audit*, G.R. No. 183517, June 22, 2010 [Per J. Perez, *En Banc*], citing Spouses *Recaña. v. Court of Appeals*, G.R. No. 123850, January 5, 2001 [Per J. Quisimbing, Second Division]; *Republic v. Marcopper Mining Corporation*, G.R. No. 137174, July 10, 2000 [Per J. Gonzaga-Reyes, Third Division].

[12] *Valera v. Tuason, Jr.*, G.R. No. L-1276, April 30, 1948 [Per J. Tuason, Second Division].

All told, I vote to reverse the *Decision* of the Court's Special First Division dismissing petitioner's *Petition for Review* for lack of jurisdiction and to remand of the case to the said Division for the determination of the merits of petitioner's claim for refund.

LANEE S. CUI-DAVID
Associate Justice