REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

AMERICAN HOME ASSURANCE CORPORATION, represented by American International Underwriters (Phils.) Inc.,
Petitioner,

- versus - C.T.A. CASE NO. 4015

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

12/17/93

NEW HAMPSHIRE INSURANCE COMPANY, represented by American International Underwriters (Phils.) Inc.,

Petitioner,

- versus - C.T.A. CASE NO. 4016

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

AMERICAN INTERNATIONAL UNDERWRITERS (PHILS.) INC.,
Petitioner,

- versus - C.T.A. CASE NO. 4017

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

DECISION

These cases involve claims for the refund of overpaid creditable income tax for the calendar year ending December 31, 1983.

Petitioners are corporations licensed to do business of insurance in the Philippines. On April 1984, these corporations filed their respective 1983 income tax return each claiming an excess payment or refundable amount computed as follows:

1) AMERICAN HOME ASSURANCE CORPORATION

INCOME:

Sch.3 Premiums earned	P49,737,937.00
Miscellaneous	584,812.00
Sch.5 Interests	63,644.00
	P50,386,393.00
DEDUCTIONS:	50,923,493.00
NET INCOME/(NET LOSS)	(537,100.00)
TAX DUE	nil
LESS: TAX CREDIT	
Prior year's credits	625,747.00
TAX DUE/(TAX REFUND)	(P 625,747.00)

2) NEW HAMPSHIRE INSURANCE CO., INC.

INCOME:

Sch.3 Premiums earned	P49,737,937.00
Sch.5 Interests	17,727.00
	P49,755,664.00
DEDUCTIONS:	49,492,960.00

NET INCOME/(NET LOSS)	(262,704.00)
TAX DUE	81,946.00
LESS: TAX CREDIT	
Prior year's credits	756,523.00
TAX DUE/(TAX REFUND)	(P 674,577.00)

3) AMERICAN INTERNATIONAL UNDERWRITERS (PHILS.), INC.

INCOME:	
Sch.2 Services	P18,963,830.00
Sch.4 Rents/Leases	1,047,157.00
Sch.5 Interest	201,266.00
Sch.6 Other Sources	572,972.00
	P20,875,225.00
DEDUCTIONS:	21,475,952.00
NET INCOME/(NET LOSS)	(690,727.00)
TAX DUE	nil
LESS: TAX CREDIT	
Prior year's credits	797,116.00
Domestic tax credits - creditable with-holding tax	58,601.00
	855,717.00
TAX DUE/(TAX REFUND)	(P 855,717.00)*

A comparative analysis of the evidence presented by the petitioners would easily reveal that with the exception of the American International Underwriters (Phil.) Inc. which had claims of overpaid taxes that were incurred during the calendar years 1982 and 1983 amounting to P58,601.00, the alleged refundable amounts being claimed herein were all carried over from creditable taxes from the years 1977 to 1981, which are

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* See attached Annexes A,B and C for a comparative analysis of the returns filed by the petitioner.

being claimed by the petitioners for the first time by virtue of this petition (See attached annexes)

On the other hand, the respondent chose not to present any rebutting evidence and submitted the case based on the pleadings filed and the evidence submitted by the petitioners.

Thus, the only issue to be resolved in these cases is whether the petitioners herein are entitled to their individual claims for refund.

The pertinent provisions of Section 87 of the 1977 National Internal Revenue Code regarding this matter specifically provides:

> "**Sec.87. Filing of adjustment returns and final payment of income tax.** - On or before the fifteenth day of April or on or before the fifteenth day of the fourth month following the fiscal year, every taxpayer covered by this Chapter shall file an adjustment return covering the total net taxable income of the preceding calendar or fiscal year and if the sum of the quarterly tax payments made during that year is not equal to the total tax due on the entire net taxable income of that year, the corporation shall either (a) pay the excess tax still due or (b) be refunded the excess amount paid, as the case may be. In case the corporation is entitled to a refund of excess estimated quarterly income taxes paid, the refundable amount shown in its final and adjustment return may be credited against the estimated quarterly income tax liabilities for the taxable quarters of the succeeding taxable year" (Underscoring supplied)

The above-quoted provision clearly states that a taxpayer may only credit or carry over any overpaid quarterly income tax only in the succeeding year it was paid. The law simply uses the word "succeeding year" and not "succeeding years." This Court had the occasion to rule on this matter:

> "If the remaining balance of P36,970.00, representing excess creditable taxes paid in 1988, were to be applied to the 1990 income tax liability, that would mean application for two successive years, that is, 1989 and 1990. To allow the application of excess taxes paid for two successive years would run counter to the specific provision of law above-mentioned." (Paseo Realty and Development Corp. vs. Commissioner of Internal Revenue, CTA Case No. 4528; April 30, 1993;)

This could only be interpreted to mean that for the year 1983, the petitioners may only carry over the excess tax credits that were paid from the year immediately preceding, or the year 1982. Consequently, of the P855,717.00 sought to be refunded by the American International Underwriters (Phil.) Inc., only the amount of P58,601.00 can possibly be considered in its present claim for refund. In the case of petitioners New Hampshire Insurance Co. and American Home Assurance Co., a close look at their returns readily show that the two corporations did not even incur any tax overpayment for the year 1982. They merely carried over whatever excess tax payments it allegedly made during the years 1977 to 1981, which, as earlier mentioned, has prescribed.

Moreover, it has been an equally unaltered rule in this jurisdiction that any claim or suit for the refund or credit of excessively collected taxes shall be made within two (2) years from the date of their payment. Sec.292 (now Section 230) of the National Internal Revenue Code provides:

> "**SEC.292. 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 excessively or in any manner wrongfully collected, until a claim for refund or credit has been duly filed with the Commissioner of Internal Revenue; but such suit or proceeding may be maintained, whether or not such tax, penalty or sum has been 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."

In this connection, it has been held that the two (2) year prescriptive period should be counted from the time of filing the Adjustment Return or Annual Income

Tax Return and final payment of Income Tax (**Commissioner of Internal Revenue vs. TMX Sales, Inc.**, 205 SCRA 184; **ACCRA International Corp. vs. The Honorable Court of Appeals** - GR No. 96322, December 20, 1991; **Commissioner of Internal Revenue vs. Citytrust Banking Corporation**, CA - GRSP No. 26829, July 21, 1992; **Servicewide Specialist Inc. vs. Commissioner of Internal Revenue and Court of Tax Appeals** - GRSP NO. 25893, November 9, 1992.)

A perusal of the records confirms that the annual returns of the petitioners for the calendar years 1977 to 1982 which were filed and paid prior to December 27 1983. Therefore, inasmuch as the petitions herein were filed with this Court only on December 27, 1985, the petitioner's claim for the refund of any excessively or erroneously paid taxes during the said period should be considered barred for having been filed beyond the prescriptive period.

Finally, with respect to the above-mentioned amount of P58,601.00 representing alleged creditable withholding taxes for the calendar year 1983, We find that the evidence submitted by the petitioner American International Underwriters Inc. is devoid of competent proof to establish the fact of withholding. The said petitioner has failed to comply with the consistent ruling of this Court that claims for refund of excess withholding taxes must be proven by a copy of the statement duly issued by the payor (withholding agent) to the payee, showing the amount paid and the amount of tax withheld therefrom (Citytrust Finance Corp. vs. Commissioner of Internal Revenue, CTA case no. 413, November 11, 1991)

WHEREFORE, judgement is hereby rendered denying the instant claims for refund of alleged creditable taxes for the year 1983.

SO ORDERED.

Quezon City, Metro Manila, December 17, 1993

ERNESTO D. ACOSTA
Presiding Judge

WE CONCUR:

MANUEL K. GRUBA
Associate Judge

RAMON O DE VEYRA
Associate Judge

CERTIFICATION

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

ERNESTO D. ACOSTA
Presiding Judge
Court of Tax Appeals