REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

PHILIPPINE REALTY & HOLDINGS CORPORATION,
Petitioner,

- versus -

C.T.A. CASE NO. 6435

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
APR 28 2004

x - x

DECISION

This Petition for Review seeks for an issuance of tax credit certificate allegedly representing petitioner's overpaid income tax arising from the unutilized creditable withholding taxes in the total amount of P13,074,668.00 for the year ended December 31, 1999.

Petitioner is a corporation duly organized and existing by virtue of the laws of the Philippines, with principal office and business address at the 33rd Floor, Philippine Stock Exchange Center, Exchange Road, Ortigas Center, Pasig City, Metro Manila. It is classified by the Bureau of Internal Revenue as Large Taxpayer pursuant to the criteria prescribed in Republic Act No. 7646 and its implementing regulations *(Exhibit A)*.

On April 15, 2000, petitioner filed its 1999 Corporation Annual Income Tax Return reflecting, among others, a Minimum Corporate Income Tax (MCIT) due in the amount of P1,869,550.00 but with a total creditable taxes withheld in the sum of P14,944,218.00, thereby resulting in an excess income tax payment in the amount of P13,074,668.00. Petitioner indicated in the 1999 income tax return its intention for the said excess payment "To be issued a Tax Credit Certificate" (*Exhibit B, inclusive of submarkings*).

On December 26, 2000, petitioner, through its Executive Vice President, Amador C. Bacani, filed with the Large Taxpayer Assistance Division of the Bureau of Internal Revenue, a letter of equal date seeking the issuance of a tax credit certificate in the amount of P13,074,668.00 representing unutilized creditable withholding taxes for the taxable year 1999 pursuant to the provisions of Section 204(c) of the Tax Code (*Exhibits E and E-1*).

Consequently, on August 13, 2001, Deputy Commissioner (Operations Group) Lilian B. Hefti issued a Letter of Authority to Revenue Officers J. Tabboga, Z. Paz, M. Ramirez, E. Dayacap, F. Liamson and Ma. S. Maddela, to be supervised by Group Supervisor Ramoncito Ona, all of the Large Taxpayers Audit & Investigation Division I, to examine petitioner's books of accounts and other accounting records pertaining to petitioner's claim for income tax refund for the year 1999 *(Exhibit F)*. The examiners started their examination but were not able to complete their audit. Hence, petitioner was left with no alternative but to file the instant petition for review on April 11, 2002 in order to toll the running of the two-year prescriptive period provided under Section 229 of the Tax Code, as amended.

On May 15, 2002, respondent filed his Answer raising the following as Special and Affirmative Defenses:

> "4. He reiterates and repleads the preceding paragraphs of this answer as part of his Special and Affirmative Defenses;
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> 5. Petitioner's alleged claim for refund is subject to administrative investigation/examination by herein respondent;
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> 6. It has been well-settled in previous cases decided by the Tax Court and affirmed by the Supreme Court in the case of **Citibank N.A. vs. Court of Appeals and Commissioner of Internal Revenue,** *G.R. No. 1074334, 10 October 1997,* that the following requirements must be complied with before a claim for refund of creditable withholding taxes is sustained, to wit:
>
> a. The claim for refund was filed within the two year period prescribed under Section 230 of the National Internal Revenue Code;

b. The income upon which the taxes were withheld were included in the return of the recipient;

c. The fact of withholding is established by a copy of statement (BIR Form 1743.1) duly issued by the payor (withholding agent) to the payee, showing the amount paid and the amount of tax withheld therefrom.

7. Lastly and consistent with the well settled principle in taxation, claims for refund are construed strictly against the claimant as they partake the nature of an exemption from tax and it is incumbent upon petitioner to prove that it is entitled thereto under the law. Failure to prove the same is fatal to its claim for tax refund. Exemptions from taxation are highly disfavored in law and he who claims exemption must be able to justify his claim by the clearest grant of organic or statutory law. And exemption from common burden cannot be permitted to exist upon the vague implications. *(Asia Petroleum Co., vs. Llamas, 49 Phil. 466).*

To strengthen its entitlement to the claim for refund, petitioner presented the following documentary evidence:

a. Letter classifying petitioner as large taxpayer *(Exhibit A);*

b. Annual Income Tax Return for the year 1999 together with the corresponding Account Information Form and audited financial statements (*Exhibits B, inclusive of submarkings, C and D)*;

c. Letter claim for refund with the respondent (*Exhibits E and E-1)*;

d. Letter of Authority No. 2000 00002273 *(Exhibit F);*

e. Letters of communication of petitioner relative to the examination of its 1999 claim for refund *(Exhibits G and H)*;

f. Quarterly Income Tax Returns for the first, second and third quarters of 1999 and the corresponding quarterly Schedules of Creditable Withholding Taxes *(Exhibits I, J, K, L, inclusive of submarkings, M, M-1, N, N-1, O and O-1)*; and

g. Various 1999 Certificates of Creditable Withholding Taxes *(Exhibits M-2 to M-25, N-2 to N-24 and O-2 to O-30, P-2 to P-32, Q and R, inclusive of submarkings).*

This case was submitted for decision on February 17, 2004 without the evidence and memorandum of the respondent.

The jointly stipulated issues to be resolved by the court are as follows:

1. Whether or not petitioner overpaid its creditable withholding taxes for the taxable year 1999 in the amount of PhP13,074,668.00;

2. Whether or not the income upon which the taxes were withheld for the taxable year 1999 were included in the income tax return of petitioner for the year 1999;

3. Whether or not the fact of withholding is established 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;

4. Whether or not petitioner's overpaid creditable withholding tax in the amount of PhP13,074,668.00 is substantiated by documentary evidence; and

5. Whether or not petitioner is entitled to the issuance of a tax credit certificate representing its overpaid creditable withholding tax for the taxable year 1999.

Petitioner's legal anchor is Section 76 of the Tax Code, which provides:

Section 76. ***Final Adjustment Return.*** - Every corporation liable to tax under Section 27 shall file a final adjustment return covering the total taxable income for the preceding calendar or fiscal year. If the sum of the quarterly tax payments made during the said taxable year is not equal to the total tax due on the entire taxable income of that year the corporation shall either:

(a) Pay the balance of tax still due; or
(b) Carry-over the excess credit; or
(c) Be credited or refunded with the excess amount paid, as the case may be.

In case the corporation is entitled to a tax credit or refund of the excess estimated quarterly income taxes paid, the excess amount shown on its final adjustment return may be carried over and credited against the estimated quarterly income tax liabilities for the taxable quarters of the succeeding taxable years. Once the option to carry-over and apply the excess quarterly income tax against income tax due for the taxable quarters of the succeeding taxable years has been made, such option shall be considered irrevocable for that taxable period and no application for cash refund or issuance of a tax credit certificate shall be allowed therefor.

Under the aforequoted law, a corporation has the option to *either* carry-over the excess credit *or* be credited or refunded with the excess amount paid.

In the present case, petitioner suffered net loss from its business operations. It has a minimum corporate income tax due of P1,869,550.00 which was offset against the 1999 creditable taxes withheld of P14,944,218.00 leaving an excess income tax payment in the amount of P13,074,668.00 which was opted by petitioner "To be issued a Tax Credit Certificate" *(Exhibit B, inclusive of submarkings)*. Based on the 1999 income tax return, petitioner appears to be legally entitled to the refund of 1999 unapplied income tax payment. However, the same is not absolute. Petitioner must still comply with the three basic requisites as enunciated by the Supreme Court in the case of **Citibank, N.A. vs. Court of Appeals and Commissioner of Internal Revenue, 280 SCRA 459,** to wit:

1. The claim for refund was filed within two years as prescribed under Section 230 (now 229) of the Tax Code;

2. The income upon which the taxes were withheld were included in the return of the recipient;

3. The fact of withholding is established by a copy of a statement (BIR Form 1743.1) duly issued by the payor (withholding agent) to the payee showing the amount paid and the amount of tax withheld therefrom.

For easy reference, Section 229 of the Tax Code is hereby quoted as follows:

Section 229. ***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; 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 (2) years from the date of payment of the tax or penalty regardless of any supervening cause that may arise after payment: *Provided*, however, That the Commissioner may, even without written claim therefor, refund or credit any tax, where on the face of the return upon which payment was made, such payment appears clearly to have been erroneously paid.

Petitioner was able to comply with requirement number one. The claim for refund with the Bureau of Internal Revenue was filed on December 26, 2000 (*Exhibits E and E-1)* while the instant petition for review was filed with this court on April 11, 2002. Both dates of filing were within the two-year period reckoned from April 15, 2000, the date when petitioner filed its 1999 final adjustment return ***(Commissioner of Internal Revenue vs. The Philippine American Life Insurance Co., The Court of Tax Appeals and The Court of Appeals, G.R. No. 105208, May 29, 1995; Commissioner of Internal Revenue vs. TMX Sales, Inc. and The Court of Tax Appeals, G.R. No. 83736, January 15, 1992; ACCRA Investment Corp. vs. The Honorable Court of Appeals, Commissioner of Internal Revenue and The Court of Tax Appeals, G.R. No. 96322, December 20, 1991; and Commissioner of Internal Revenue vs. Asia Australia Express Ltd., represented by Soriamont Steamship Agencies, Inc. and Court of Tax Appeals, G.R. No. 85956, April 10, 1989)***.

The fact of withholding was also established through the presentation of various certificates of creditable withholding taxes at source *(Exhibits M-2 to M-25, N-2 to N-24 and O-2 to O-30, P-2 to P-32, Q, and R inclusive of submarkings).* Out of the total amount of P14,944,218.00 declared by the petitioner in the 1999 annual income tax return, only the sum of P14,719,925.41 was validly supported by certificate of withholding tax at source because some of the certificates presented were denied admission by the court *(see Resolution dated*

August 20, 2003, pages 527 to 531, CTA records). Below is a tabulation of the verified 1999 creditable withholding taxes of petitioner:

JANUARY TO MARCH 1999 (EXHIBIT M)

WITHHOLDING AGENT	EXHIBIT	AMOUNT
A TASTE OF COUNTRY, INC.	M-2, M-2-b	P 7,500.00
BELLE CORPORATION	M-3, M-3-b	75.00
CHOPSTIX EXPRESS FOOD CORP.	M-4, M-4-b	9,810.00
CONCRETE AGGREGATES CORP	M-5, M-5-b	636,818.18
CONCRETE AGGREGATES CORP	M-6, M-6-b	6,818.18
DELA ROSA, TEJEROS & NOGRALES	M-7, M-7-b	2,100.00
GOLDEN DONUTS, INC.	M-8, M-8-b	2,160.57
HARTSDALE DEVELOPMENT CORP	M-9, M-9-b	285,000.00
HONGKONG BANK	M-10, M-10-b	12,654.55
SMS FOODS	M-11, M-11-b	3,750.00
INDAY-INDAY/GAMMOX FOODS	M-12, M-12-b	4,562.16
MAE CHOW LINE/MAYO'S INC.	M-13, M-13-b	2,736.00
FIRST PHIL INFRASTRUCTURE DEV.	M-14, M-14-b	80,280.00
OLIVERS SUPER SANDWICHES	M-15, M-15-b	3,750.00
PRHC PROPERTY MANAGERS, INC.	M-16, M-16-b	42,992.14
SECAUCUS DEVELOPMENT CORP.	M-17, M-17-b	142,500.00
SPS. ALFREDO & LORETA PASCUAL	M-19, M-19-b	62,992.17
SPS. EDWARD & SOFIA MACAIBAY	M-20, M-20-b	30,000.00
SUGBAAN	M-22, M-22-b	1,008.00
VIA MARE CATERING SERVICES, INC.	M-24, M-24-b	83,328.58
WEST LAKE GARDEN	M-25, M-25-b	4,599.86
SUB TOTAL		P 1,425,435.39

APRIL TO JUNE 1999 (EXHIBIT N)

A TASTE OF COUNTRY, INC,	N-2, N-2-b	P 7,500.00
BELLE CORPORATION	N-3, N-3-b	450.00
CHOPSTIX EXPRESS FOOD CORP.	N-4, N-4-b	9,810.00
CRUMBS	N-5, N-5-b	2,941.00
LINKMAN, INC./CUCINA BACOLOD	N-6, N-6-b	502.52
ILL KYOUNG PARK	N-8, N-8-b	26,250.00
LA TAVOLA VENTURES, INC.	N-9, N-9-b	1,691.47
LIMEX PHILIPPINES, INC.	N-10, N-10-b	97,518.75
MAYO'S INC.	N-13, N-13-b	2,791.02
MERIDIAN SECURITIES, INC.	N-14, N-14-b	658.28
FIRST PHILIPPINE INFRASTRUCTURE	N-15, N-15-b	80,280.00
OLIVERS SUPER SANDWICHES	N-16, N-16-b	3,986.75
PATRICK BACANI	N-17, N-17-b	207,973.75
ROBERTO HOA TAN	N-20, N-20-b	278,556.41
SMS FOOD CORP.	N-11, N-11-b	3,750.00
VIRGINIA GO	N-23, N-23-b	190,825.00
WEST LAKE GARDEN	N-24, N-24-b	4,589.39
SUB TOTAL		P 920,074.34

JULY TO SEPTEMBER 1999 (EXHIBIT O)

A TASTE OF COUNTRY, INC.	O-2, O-2-b	P	10,127.65
ARCADIA NETWORK SYSTEMS CO.	O-30, O-30-b		2,800.00
ARNOLD CO	O-3, O-3-b		7,125.00
BAKERS NINE REALTY, INC.	O-4, O-4-b		230,517.50
BELLE CORPORATION	O-5, O-5-b		375.00
CHOPSTIX EXPRESS FOOD CORP	O-6, O-6-b		9,810.00
CMG LIFE INSURANCE CO., INC.	O-7, O-7-b		525.00
COMPLETE PROVIDERS	O-8, O-8-b		642.00
FIRST PHILIPPINE INFRASTRUCTURE	O-18, O-18-b		80,280.00
FIRST UNION DIRECT CORPORATION	O-10, O-10-b		2,392.63
FITNESS CORPORATION OF THE PHILS.	O-26, O-26-b		8,066.00
GAMMOX, INC.	O-14, O-14-b		5,391.20
GOLDEN DONUTS, INC.	O-11, O-11-b		2,424.13
LA TAVOLA	O-12, O-12-b		2,406.95
LINKMAN, INC./CUCINA BACOLOD	O-9, O-9-b		2,400.00
MA. SOCORRO HONORIO	O-15, O-15-b		235,775.00
MAYO, INC./MAE CHOW LINE	O-16, O-16-b		4,560.00
MERIDIAN SECURITIES, INC.	O-17, O-17-b		987.42
OLIVERS SUPER SANDWICHES	O-19, O-19-b		5,041.33
OLIVERS SUPER SANDWICHES	O-20, O-20-b		7,125.00
PLATINUM PLANS, INC.	O-21, O-21-b		3,426.00
PLO SHARES, INC.	O-22, O-22-b		230,517.50
PRHC PROPERTY MANAGERS, INC	O-23, O-23-b		58,063.50
QUORUM INTERNATIONAL, INC.	O-31, O-31-b		20,493.81
SINOPHIL CORPORATION	O-25, O-25-b		75.50
SMS FOOD CORP	O-13, O-13-b		3,750.00
SPS. ANTONIO & MA. ELENA VALDEZ	O-27, O-27-b		228,100.00
VIA MARE CATERING SERVICES, INC.	O-28, O-28-b		88,350.00
WEST LAKE GARDEN	O-29, O-29-b		4,958.78
SUB TOTAL		P	1,256,506.90

OCTOBER TO DECEMBER 1999 (EXHIBITS B-6 & P)

A TASTE OF COUNTRY, INC.	P-2, P-2-b	P	7,888.17
ANDALUCIA/MEDITERRANEAN INC.	P-3, P-3-b		13,239.91
LANDBANK OF THE PHILS.	P-18, P-18-b		7,852,009.05
BELLE CORPORATION	P-30, P-30-b		300.00
BELLE CORPORATION	P-31, P-31-b		150,000.00
BROWN FORMAN WORLWIDE LLC	P-4, P-4-b		1,284.00
CMG LIFE INSURANCE CO., INC.	P-5, P-5-b		1,050.00
COMPLETE PROVIDERS, INC.	P-6, P-6-b		1,077.63
LINKMAN, INC./CUCINA BACOLOD	P-19, P-19-b		2,400.00
CRUMBS	P-7, P-7-b		5,416.40
SHARON FILIPINAS IBE	P-8, P-8-b		46,920.00
FIRST UNION DIRECT CORPORATION	P-9, P-9-b		1,986.93
FRANCISCO ABALOS	P-11, P-11-b		339,500.00
GOLDEN DONUTS, INC.	P-13, P-13-b		2,503.33
GREENHILLS PROPERTIES, INC.	P-14, P-14-b		73,359.38
GAMMOX INC./INDAY-INDAY	P-12, P-12-b		4,002.36
JORIS SPANHOFF	P-15, P-15-b		489,068.75
KATHERINE CHENG-CHUA	P-16, P-16-b		488,665.00

LA TAVOLA VENTURES, INC.	P-17, P-17-b	3,024.00
MAE CHOW LINE/VIRGINIA MAYO ROXAS	P-20, P-20-b	4,560.00
MERIDIAN SECURITIES, INC.	P-21, P-21-b	987.42
FIRST PHILIPPINE INFRASTRUCTURE	P-32, P-32-b	80,280.00
OLIVERS SUPER SANDWICHES	P-22, P-22-b	3,886.94
PERPETUA MANALO	P-23, P-23-b	67,101.21
PLATINUM PLANS PHILS., INC.	P-24, P-24-b	4,000.00
FITNESS CORPORATION OF THE PHILS.	P-10, P-10-b	10,202.49
USUYAKI/BETTY YU	P-26, P-26-b	5,624.62
VIA MARE CATERING SERVICES, INC.	P-27, P-27-b	99,941.84
WEST LAKE GARDEN/PAULINO CHENG	P-28, P-28-b	6,100.51
YIN ENTERPRISES & DEV'T CORP.	P-29, P-29-b	1,369,727.27
SUB TOTAL		P11,136,107.21
T O T A L		P14,738,123.84
LESS: ADJUSTMENTS MADE BY PETITIONER		
2nd Qtr. (see Exh. N)	P 12,572.34	
3rd Qtr. (see Exh. O)	3,143.09	
4th Qtr. (see Exh. P)	2,483.00	18,198.43
VALIDLY SUPPORTED CREDITABLE WITHHOLDING TAXES		P14,719,925.41

We are further convinced that the income upon which the creditable taxes were withheld was included as part of the gross income declared by petitioner in its income tax return. This finding is based on the presumption that there was no falsity in the preparation of income tax return of petitioner.

In the case of **Citibank, N.A. vs. Court of Appeals and Commssioner of Internal Revenue,** *supra,* the Supreme Court relied on the accuracy of income tax return of the petitioner and therein ruled:

> In general, there is no disagreement that a claimant has the burden of proof to establish the factual basis of his or her claim for tax credit or refund. Tax refunds, like tax exemptions, are construed strictly against the taxpayer. The mechanics of a tax refund is provided in Rev. Reg. No. 13-78:
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> > "Section 8. *Claims for tax credit or refund.* — Claims for tax credit or refund of income tax deducted and withheld on income payments shall be given due course only when it is shown on the return that the income payment received was declared as part of the gross income and the fact of withholding is established by a copy of the statement, duly issued by the payor to the payee (BIR Form No. 1743-A) showing the amount paid and the amount of tax withheld therefrom."

A refund claimant is required to prove the inclusion of the income payments which were the basis of the withholding taxes and the fact of withholding. However, detailed proof of the truthfulness of each and every item in the income tax return is not required. That function is lodged in the commissioner of internal revenue by the NIRC which requires the commissioner to assess internal revenue taxes within three years after the last day prescribed by law for the filing of the return. In *San Carlos Milling Co., Inc. vs. Commissioner of Internal Revenue*, the Court held that the internal revenue branch of government must investigate and confirm the claims for tax refund or credit before taxpayers may avail themselves of this option. The grant of a refund is founded on the assumption that the tax return is valid; that is, the facts stated therein are true and correct. In fact, even without petitioner's tax claim, the commissioner can proceed to examine the books, records of the petitioner-bank, or any data which may be relevant or material in accordance with Section 16 of the present NIRC.

In the case in hand, Respondent Commissioner examined petitioner's income tax returns and presumably found no false declaration in them, because he did not allege any such false declaration before Respondent Court and the Court of Tax Appeals (CTA). In the CTA, Respondent Commissioner's refusal to refund was based on the argument that the claim filed on October 31, 1981 was time-barred. It bears stressing that this issue was not raised in the appeal before us. The issue of operational losses was not raised until the appeal before Respondent Court was filed on February 5, 1992. By such time, at least a decade had already passed since the pertinent books and accounting records of petitioner-bank were closed. Section 235 of the Tax Code requires the preservation of the books of account and records only "for a period beginning from the last entry in each book until the last day prescribed by Section 203." Section 203 provides that internal revenue taxes shall be assessed within three years after the last day prescribed by law for the filing of the return, and no proceeding in Court without an assessment for the collection of such taxes shall begin after the expiration of such period. To expect petitioner to have its books and records on hand during the appeal was obviously unreasonable and violative of Section 235 in relation to Section 203 of the Tax Code.

In addition, the Tax Code has placed several safety measures to prevent falsification of income tax returns which the Court recognized in Commissioner vs. TMX Sales, Inc.:

> "Furthermore, Section 321 (now Section 232) of the National Internal Revenue Code requires that the books of accounts of companies or persons with gross quarterly sales or earnings exceeding Twenty Five Thousand Pesos (P25,000.00) be audited and examined yearly by an independent Certified Public Accountant and their income tax returns be accompanied by certified balance sheets, profit and loss statements, schedules listing income producing properties and the corresponding incomes therefrom and other related statements.

It is generally recognized that before an accountant can make a certification on the financial statements or render an auditor's opinion, an audit of the books of accounts has to be conducted in accordance with generally accepted auditing standards.

Since the audit, as required by Section 321 (now Section 232) of the Tax Code is to be conducted yearly, then it is the Final Adjustment Return, where the figures of the gross receipts and deductions have been audited and adjusted, that is truly reflective of the results of the operations of a business enterprise. Thus, it is only when the Adjustment Return covering the whole year is filed that the taxpayer would know whether a tax is still due or a refund can be claimed based on the adjusted and audited figures."

Therefore, the alleged irregularity in the declared operational losses is a matter which must be proven by competent evidence. In resisting the claims of petitioner, Respondent Commissioner set up the defense of the legality of the collection of the creditable withholding tax as well as prescription, instead of presenting an assessment of the proper tax liability of the petitioner. This fact leads us to the conclusion that the income tax returns were accepted as accurate and regular by the BIR.

Likewise, respondent in the present case is already barred by prescription pursuant to the provisions of Section of 203 of the Tax Code, to wit:

Section 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 case where the 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 the 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.

Records show that the 1999 income tax return of petitioner was filed on April 15, 2000. Therefore, respondent had only up to April 15, 2003 to examine petitioner's accounting records. Obviously, respondent is barred by law to examine petitioner's books of accounts because more than three years had already lapsed since petitioner filed its income tax return for the year 1999. Inasmuch as there was no report of investigation with respect to the 1999 final adjustment return of petitioner, we can presume that the business operation of petitioner was accurately presented therein.

In sum, petitioner is entitled to the claim for refund in a reduced amount of P12,850,653.41, computed as follows:

Verified Creditable Withholding Taxes	P 14,719,925.41
Less: 1999 Minimum Corporate Income Tax	1,869,272.00
Amount Refundable	P 12,850,653.41

WHEREFORE, the instant Petition for Review is hereby **PARTIALLY GRANTED.** Respondent is **ORDERED to ISSUE a TAX CREDIT CERTIFICATE** in favor of the petitioner in the amount of P12,850,653.41 representing unutilized creditable withholding taxes for the calendar year ended December 31, 1999.

SO ORDERED.

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Justice

LOVELL R. BAUTISTA
Associate Justice

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 Justice