REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

SECOND DIVISION

BURMEISTER & WAIN SCANDINAVIAN CONTRACTOR MINDANAO, INC., Petitioner,	**C.T.A. CASE NO. 7143**
	Members:
- versus -	**CASTAÑEDA, JR.,** *Chairperson* **UY,** *and* **PALANCA-ENRIQUEZ,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	**Promulgated:** NOV 27 2008 4:00 p.m.

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RESOLUTION

For resolution is petitioner's availment of the tax amnesty, as stated in its **"Amended Supplemental Petition for Review"** filed on August 26, 2008 and opposed by respondent in his Supplemental Answer filed on September 8, 2008.

In its **"Supplemental Petition for Review"**, petitioner alleges that it availed of the tax amnesty on December 20, 2007 in accordance with the provision of RA 9480, and prays that judgment be rendered reversing, setting aside and canceling the following: (1) the assessment subject of the final assessment notice dated April 15, 2004 for deficiency income taxes, interests and surcharge thereon in the amount of P199,863,158.62 for the taxable year

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2000; and (2) the assessment subject of the final assessment notice dated April 15, 2004 for deficiency income taxes, interests and surcharge thereon in the amount of P227,991,572.84 for taxable year 2001.

In compliance with this Court's Resolution dated June 24, 2008, petitioner submitted certified true copies of the following documents, to wit:

Notice of Availment of Tax Amnesty;

a) Tax Amnesty Return (BIR Form No. 2116);
b) Statement of Assets, Liabilities and Networth as of December 31, 2005 (SALN);
c) Tax Amnesty Payment Form (BIR Form No. 0167); and
d) PNB's BTR-BIR Deposit/Payment Slip dated December 20, 2007 showing the amount of P1,602,479 as having been paid.

On the other hand, respondent in her "Opposition" filed on July 16, 2008, prays that petitioner's motion be denied for lack merit and raises the following Special and Affirmative Defenses:

> "4. The availment of Tax Amnesty *per se* does not extinguish all the liabilities of petitioner arising from the assessment, rather, it is faithful compliance with the requirements thereof. xxx
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> While it is true that amnesty is an act of forgiveness, the proviso under Section 4 of R.A. No. 9480 qualifies this act of forgiveness via an investigation to determine whether or not the taxpayer is a penitent errant worthy of compassion. To ignore this proviso would result in an absurd situation where the State-purveyor of compassion and mercy, would be made a fool, if later on it discovers that the taxpayer has duped its benefactor. Hence, total extinguishment of liabilities should not ensue after the availment of Tax Amnesty *per se.*
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> 5. Furthermore, pursuant to Section 6 of R.A. No. 9480 in relation to Department Order NO. 29-07 dated 15 August 2007, it is incumbent upon petitioner to submit the original or certified true copies of the following documents:
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> 6. Petitioner cannot invoke the jurisdiction of the Honorable Court in the case at bar. It is incumbent upon the taxpayer to wait for the lapse of the one-year period under Section 4 of R.A. No. 9480 before the matter can be considered closed and terminated. The taxpayer must not merely initiate the prescribed administrative relief, but must also pursue it to its appropriate conclusion before seeking judicial intervention in order to give that administrative agency an opportunity to decide the matter by itself correctly and prevent unnecessary and premature resort to the court. Furthermore, the taxpayer cannot ask for the cancellation of the assessment and extinguishment of all liabilities arising from tax because the Court itself is inhibited from entertaining such prayers under the doctrine of exhaustion of administrative remedies."

A taxpayer, desiring to avail of the benefits granted in RA 9480, must comply with the requirements presented under Section 2 of RA 9480, which provides;

> **"SEC. 2. *Availment of the Amnesty.*** Any person, natural or juridical, who wishes to avail himself of the tax amnesty authorized and granted under this Act shall file with the Bureau of Internal Revenue (BIR) a notice and Tax Amnesty Return accompanied by a Statement of Assets, Liabilities and Networth (SALN) as of December 31, 2005, in such form as may be prescribed in the implementing rules and regulations (IRR) of this Act, and pay the applicable amnesty tax within six months from the effectivity of the IRR."

In addition, under Section 6 of the IRR, a taxpayer availing of the program must present the following:

a. Notice of Availment of Tax Amnesty;
b. Statement of Assets, Liabilities and Networth (SALN);
c. Tax Amnesty Return (BIR Form No. 2116)
d. Payment Form (BIR Form No. 0617)

WHEREFORE, considering that petitioner has availed of the tax amnesty, paid the amnesty tax, and submitted the necessary documents, as provided in RA 9480, the Court has no alternative but to consider the Petition

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as deemed **WITHDRAWN** and the case as **CLOSED** and **TERMINATED**, subject to the provisions of RA 9480.

SO ORDERED.

JUANITO C. CASTAÑEDA, JR.
Associate Justice

ERLINDA P. UY
Associate Justice

OLGA PALANCA-ENRIQUEZ
Associate Justice

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