Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

SPECIAL FIRST DIVISION

BAHAY BONDS 2 SPECIAL PURPOSE TRUST administered by Land Bank of the Philippines through its Trust Banking Group, Petitioner,	**CTA Case No. 9444** For: Refund
	Members:
	DEL ROSARIO, P.J., *Chairperson* **UY, and**
-versus-	**MINDARO-GRULLA, JJ.**
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: JUN 11 2019 1:32 pm

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DECISION

MINDARO-GRULLA, J.:

Submitted for decision on July 5, 2018, is a claim for refund through a Petition for Review[1], filed on August 25, 2016 by Bahay Bonds 2 Special Purpose Trust, administered by Land Bank of the Philippines through its Trust Banking Group, in the amount of Eight Million Six Hundred Forty Thousand Pesos (₱8,640,000.00), representing erroneously collected Final Withholding Tax (FWT) covering the period August 26, 2014 to May 25, 2016.

Petitioner Bahay Bonds 2 Special Purpose Trust is a special purpose trust (SPT) formed under Philippine laws, with special purpose vehicle status under Republic Act (RA) No. 9267[2], otherwise known as *"The Securitization Act of 2004"*, which is duly registered and qualified as such by the Bangko Sentral ng Pilipinas under the General Banking Law and administered by the Land Bank of the Philippines (LBP), a government-owned and controlled financial institution duly authorized to engage in trust business through its Trust Banking Group, with

[1] Docket, pp. 10-24.
[2] "AN ACT PROVIDING THE REGULATORY FRAMEWORK FOR SECURITIZATION AND GRANTING FOR THE PURPOSE EXEMPTIONS FROM THE OPERATION OF CERTAIN LAWS", March 19, 2004.

address at 21/F Landbank Plaza, 1598 M.H. Del Pilar corner Dr. J. Quintos Sts., Malate, Manila. It is a registered taxpayer of the Bureau of Internal Revenue (BIR), Revenue Region No. 6-Manila, Revenue District Office (RDO) No. 33.

Respondent is the duly appointed Commissioner of Internal Revenue (CIR), vested under the appropriate laws with the authority to carry out the functions, duties and responsibilities of said office, including, *inter alia,* the power to issue rulings, memorandum circulars, and other tax laws, rules and regulations, and is empowered to act upon and approve claims for refund or tax credit.

The National Home Mortgage Finance Corporation (NHMFC), is a body corporate created by virtue of Presidential Decree (PD) No. 1267[3], with the primary purpose of developing and providing for a secondary market for home mortgages granted by public and/or private home financing institutions.[4] In line with its objective, the NHMFC has provided financing for various low-cost housing projects and acquired various mortgage-loan accounts of buyers of houses and lots from their originators.[5]

Petitioner claims that in a letter dated August 16, 2012 by the Securities and Exchange Commission (SEC), the SEC Commission En Banc resolved to confirm NHMFC's transfer to petitioner, on a true sale at book value and on a without recourse basis, a select pool of long-term secured residential loans in accordance with its Unified Home Loan Program (UHLP).

As such, in order to fund the purchase of the residential loans, petitioner issued Asset-Backed Securities (ABS), consisting of the following:[6]

Classification	**Amount**	**Target Investors**
Class A Senior Notes	Up to (300) Million	Retail
Class B Senior Notes	Up to (120) Million	Primary Institutional Lenders
Class C Subordinated Notes	Up to (180) Million	Originators/NHMFC

[3] "CREATING A NATIONAL HOME MORTGAGE FINANCE CORPORATION DEFINING ITS POWERS AND FUNCTIONS, AND FOR OTHER PURPOSES", December 21, 1977.
[4] Section 4, *ibid.*
[5] Petitioner's Memorandum, Docket, p. 368.
[6] *Ibid.*

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Collections from the residential loans held by petitioner are the main source of funds to meet its obligations to make payments on the Senior Subordinated Notes and to pay all its expenses. Accordingly, each residential loan account sold by NHMFC to petitioner under the securitization plan has a principal loan amount of not exceeding Four Hundred Thousand Pesos (₱400,000.00).[7]

On December 23, 2011, Secretary General Cecilia S. Alba of the Housing and Urban Development Coordinating Council (HUDCC) issued a Memorandum[8], confirming that the NHMFC's UHLP loan portfolio packages are deemed within the loan ceiling/packages that constitutes a loan portfolio of low-cost and socialized housing package since the principal loans therein does not exceed ₱400,000.00.

Pursuant to the Securitization Plan, the Home Guaranty Corporation (HGC) issued a cash flow guarantee for each residential loan sold by NHMFC to the petitioner, covering the full outstanding principal amount of all defaulted residential loans and up to eleven percent (11%) per annum of the interest amount due or the actual interest rate stipulated in the residential loan agreement, whichever is lower. The HGC guaranty may be invoked when the size of the subordinated notes has been reduced to zero due to absorption of losses from defaulted residential loans. The payment from HGC shall be in the form of an (a) Initial Cash Payment equivalent to up to twelve (12) monthly installments to cover the preceding unpaid fourteen (14) monthly amortizations by borrowers and unpaid monthly amortizations from the processing period required to receive the claims; and (b) HGC Amortizing Bonds for the remaining scheduled monthly installments covering the outstanding principal and guaranteed interest for each of the defaulted residential loans.[9]

On July 9, 2012, the NHMFC filed with the Bureau of Internal Revenue (BIR) a request for ruling on the tax consequence of the issuance, offer and sale of petitioner's ABS.

In response, the BIR issued a BIR Ruling No. 516-2012 dated August 3, 2012 stating that the subject ABS are deemed "deposit substitutes" as defined in Section 22(Y) of the National Internal Revenue Code (NIRC) of 1997, as amended, and interest income derived from said securities are not exempt from the following:

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[7] Petitioner's Memorandum, Docket, pp. 368-369.
[8] Exhibit "P-1".
[9] Petitioner's Memorandum, Docket, p.371.

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> "a) 20% final withholding tax imposed under Sections 24(b)(1) and 25(A)(2) of the NIRC of 1997, if the bondholder is an individual citizen or a resident alien, respectively;
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> b) 25% tax imposed under Section 25(B) of the NIRC of 1997, as amended, if the bondholder is a non-resident alien individual not engaged in trade or business within the Philippines;
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> c) 20% final tax imposed under Section 27(D)(1) and 28 (A)(7)(a) of the NIRC of 1997, as amended, if the bondholders are domestic and resident foreign corporations, respectively;
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> d) 32% final withholding tax under Section 28(B)(1) of the NIRC of 1997, as amended, if the bondholder is a non-resident foreign corporation; and
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> e) Such other rate that may be imposed under the appropriate tax treaty to which the Philippines is a signatory."

Undaunted by the above ruling, NHMFC filed a Request for Reconsideration on August 14, 2012, primarily arguing that ABS are not deposit substitutes and that tax exemption privileges to those ABS issued pursuant to *The Securitization Act of 2004*, as further guaranteed by HGC, are likewise applicable to the subject ABS.[10]

While awaiting the ruling on NHMFC's request, petitioner paid, through the Development Bank of the Philippines (DBP), final withholding taxes were remitted to the BIR on the interest income derived from the ABS starting from November of 2012 in accordance with the assailed BIR Ruling No. 516-2012.

As such, from August 26, 2014 to May 25, 2016, the subject period of the present claim for refund, a total of Eight Million Six Hundred Forty Thousand Pesos (₱8,640,000.00) have been duly remitted to the BIR, which is broken down as follows:

Taxable Period	**Date of Payment**	**Amount**
August 2014[11]	August 26, 2014[12]	₱1,080,000.00

[10] *Ibid*, p. 372.
[11] Exhibit "P-5".
[12] Exhibit "P-5-A".

November 2014[13]	November 18, 2014[14]	1,080,000.00
February 2015[15]	February 20, 2015[16]	1,080,000.00
May 2015[17]	May 19, 2015[18]	1,080,000.00
August 2015[19]	September 1, 2015[20]	1,080,000.00
November 2015[21]	November 27, 2015[22]	1,080,000.00
February 2016[23]	February 26, 2016[24]	1,080,000.00
May 2016[25]	May 25, 2016[26]	1,080,000.00
	TOTAL	**₱8,640,000.00**

On August 10, 2016, petitioner filed an administrative claim for refund[27] with respondent.

Subsequently, on August 25, 2016, petitioner filed its judicial claim via the instant Petition for Review.

On September 30, 2016, respondent filed his Answer[28] raising the following special and affirmative defenses:

> "5. Petitioner's alleged claim for refund is subject to administrative routinary investigation/examination by the Bureau.
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> 6. The amount of ₱8,640,000.00 being claimed by petitioner as final withholding taxes allegedly remitted to the BIR from August 26, 2014 to May 25, 2016, was not properly documented.
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> 7. Petitioner must prove that the amount sought to be refunded are erroneously paid taxes within the purview of

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[13] Exhibit "P-5-B".
[14] Exhibit "P-5-C".
[15] Exhibit "P-5-D".
[16] Exhibit "P-5-E".
[17] Exhibit "P-5-F".
[18] Exhibit "P-5-G".
[19] Exhibit "P-5-H".
[20] Exhibit "P-5-I".
[21] Exhibit "P-5-J".
[22] Exhibit "P-5-K".
[23] Exhibit "P-5-L".
[24] Exhibit "P-5-M".
[25] Exhibit "P-5-N".
[26] Exhibit "P-5-O".
[27] Exhibit "P-4".
[28] Docket pp. 135-142.

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Section 204 and 229 of the National Internal Revenue Code of 1997 (NIRC of 1997).

8. The Bahay Bonds of National Home Mortgage and Finance Corporation (NHMFC) are deemed to be 'deposit substitutes' as defined in Section 22(Y) of the NIRC of 1997, to wit:

> 'The term [*'deposit substitutes'*] shall mean an alternative from of obtaining funds from the public (the term 'public' means borrowing from twenty (20) or more individual or corporate lenders at any one time) other than deposits, through the issuance, endorsement, or acceptance of debt instruments for the borrowers own account, for the purpose of relending or purchasing of receivables and other obligations, or financing their own needs or the needs of their agent or dealer.
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> These instruments may include, but need not be limited to bankers' acceptances, promissory notes, repurchase agreements, including reverse repurchase agreements entered into by and between the Bangko Sentral ng Pilipinas (BSP) and any authorized agent bank, certificates of assignment or participation and similar instruments with recourse: Provided, however, That debt instruments issued for interbank call loans with maturity of not more than five (5) days to cover deficiency in reserves against deposit liabilities, including those between or among banks and quasi-banks, shall not be considered as deposit substitute debt instruments.'

Since the object of the issuance is to obtain the required government funding, the issuance and subsequent distribution (exchange and trading) of debt instruments and securities in the secondary market to other market participants, specifically, the investors, is in itself a public borrowing of the government. The financial assets (i.e., debt instruments and securities) in the hands of the investors represent a claim to future case for which the borrowing entity, at maturity date, must have to pay.

Section 27(D)(1) of the NIRC of 1997, as amended, imposes a final tax of 20% on such deposit substitutes, to wit:

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'(1) Interest from Deposits and Yield or any other Monetary Benefit from Deposit Substitutes and from Trust Funds and Similar Arrangements, and Royalties. - A final tax at the rate of twenty percent (20%) is hereby imposed upon the amount of interest on currency bank deposit and yield or any other monetary benefit from deposit substitutes and from trust funds and similar arrangements received by domestic corporations, and royalties, derived from sources within the Philippines: *x x x*.'

Hence, the mere issuance of government debt instruments and securities is deemed as falling within the coverage of 'deposit substitutes' irrespective of the number of lenders at the time of origination. Accordingly, since government debt instruments and securities are not exempt from taxes, interest income derived therefrom shall be subject to the following:

a) 20% final withholding tax imposed under Sections 24(b)(1) and 25(A)(2) of the NIRC of 1997, if the bondholder is an individual citizen or a resident alien, respectively;

b) 25% tax imposed under Section 25(B) of the NIRC of 1997, as amended, if the bondholder is a non-resident alien individual not engaged in trade or business within the Philippines;

c) 20% final tax imposed under Section 27(D)(1) and 28 (A)(7)(a) of the NIRC of 1997, as amended, if the bondholders are domestic and resident foreign corporations, respectively;

d) 32% final withholding tax under Section 28(B)(1) of the NIRC of 1997, as amended, if the bondholder is a non-resident foreign corporation; and

e) Such other rate that may be imposed under the appropriate tax treaty to which the Philippines is a signatory.

9. Moreover, petitioner filed the administrative claim for refund on August 10, 2016 before the Office of the Commissioner. Then on August 25, 2016, or barely 15 days after, it filed the instant petition for review before the

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Honorable Court. It must be pointed out that petitioner's claim for refund is subject to administrative investigation/examination by respondent. Pending the closure of this investigation, no grant of refund may be given to petitioner based on the filed claim. Hence, the honorable Supreme Court held:

> '*x x x* a claim for refund is not ipso facto granted because the Commissioner of Internal Revenue still has to investigate and ascertain the veracity of the claim.'

Well to consider, taxes paid and collected by the Bureau of Internal Revenue (BIR) are presumed to have been made in accordance with law, rules and regulations and the burden to prove otherwise is upon the petitioner.

The administrative agency concerned must be given the opportunity to ascertain the veracity and validity of the claim. This is the very essence, the very substance of the doctrine of exhaustion of administrative remedies. The doctrine rests upon the presumption that the administrative body, board, or officer, if given the chance to correct its mistake or error, may amend its decision on a given matter and decide it properly. Thus, non-compliance with a condition precedent renders the Petition for Review dismissible.

As a matter of course, a claim for refund is subject to investigation, as it involves removal of accrued revenue from the coffers of the Government. Pending closure of this investigation, no grant of refund or issuance of a tax credit certificate may be given to respondent based on the filed claim. It has been held by the Supreme Court that a claim for refund is not ipso facto granted because the Commissioner of Internal Revenue still has to investigate and ascertain the veracity of the claim.

Basic as a hornbook principle, taxes are essential to government's very existence, hence, the dictum that "taxes are the lifeblood of the nation, the court has always applied the doctrine of strict interpretation in construing tax exemptions. A claim for exemption from tax payments must be clearly shown and be based on language in the law too plain to be mistaken. Else wise stated, taxation is the rule, exemption is the exception. For this reason, the right of taxation cannot easily be surrendered, statutes granting tax

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exemptions are considered as a derogation of the sovereign authority. Since tax refunds are regarded as tax exemptions, therefore, these are to construed *strictissimi juris* against the person or entity claiming the exemption.

10. The claimant has the burden of proof to establish factual basis of its claim for tax credit or refund. After all tax refunds, like tax exemptions, are construed strictly against the taxpayer.

Partaking of the nature of exemptions, claims for refund are strictly construed against the claimant and cannot be allowed unless granted in the most explicit and categorical language. Being in the nature of tax exemptions, these claims are regarded as in derogation of sovereign authority and to be construed strictissimi juris against the claimant and liberally in favor of the taxing authority.

Claims for refund are construed strictly against the claimant for the same partake the nature of exemption from taxation and such, they are looked upon with disfavor." *(Citations Omitted)*

On October 7, 2016, a Notice of Pre-Trial Conference[29] was issued by this Court, setting the pre-trial conference on January 26, 2017 at 9:00 a.m. Thereafter, respondent filed his Respondent's Pre-Trial Brief[30] on October 20, 2016, while petitioner, on the other hand, filed its Petitioner's Pre-Trial Brief[31] on January 20, 2017.

Then, on July 21, 2017, the parties filed their Joint Stipulation of Facts and Issue/s[32], which was approved by this Court in the Resolution[33] dated August 4, 2017. Consequently, a Pre-Trial Order[34] was issued on October 25, 2017 thereby deeming the pre-trial as terminated.

During the trial, petitioner offered as testimonial evidence the statements of LBP's Senior Vice President/Trust Officer Josephine G. Cervero, who testified by way of judicial affidavit[35] dated January 19,

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[29] *Ibid*, pp. 143-144.
[30] *Id.*, pp. 147-151.
[31] *Id.*, pp. 160-165.
[32] *Id.*, pp. 242-246.
[33] *Id.*, p. 251.
[34] *Id.*, pp. 263-269.
[35] *Id.*, pp. 168-175.

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2017, and NHMFC's Head of Structuring and Packaging Department (*formerly* Securitization and liquidity Support Department) Maria Luisa Favila, who, likewise, testified by way of judicial affidavit[36] dated January 12, 2017.

On February 14, 2018 petitioner filed its Formal Offer of Evidence[37], offering Exhibits "P-1" to "P-11-A", inclusive of sub-markings. Hence, in the Resolution[38] dated March 27, 2018, the Court admitted petitioner's documentary evidence except for Exhibits "P-7", "P-8, and "P-9" for petitioner's failure to present original copies of the said exhibits for comparison.

The admitted documentary exhibits are as follows.:

Exhibit:	Particulars:
P-1	HUDCC Memorandum dated 23 December 2011
P-2	HUDCC Memorandum dated August 1, 2012
P-3	Latest Certificate of Renewal of Guaranty from the Home Guaranty Corporation (HGC) dated August 23, 2016
P-4	Request for Tax Refund for SPT Bahay Bonds 2 dated 9 August 2016 (including its Annexes)
P-5	BIR Form 1602 (Monthly Remittance Return) dated August 2014
P-5-A	BIR Tax Payment Deposit Slip dated August 26, 2014 in the amount Php1,080,000.00
P-5-B	BIR Form 1602 (Monthly Remittance Return) dated November 11, 2014
P-5-C	BIR Tax Payment Deposit Slip dated November 18, 2014 in the amount of Php1,080,000.00
P-5-D	BIR Form 1602 (Monthly Remittance Return) dated February 02, 2015
P-5-E	BIR Tax Payment Deposit Slip dated February 20, 2015 in the amount of Php1,080,000.00
P-5-F	BIR Form 1602 (Monthly Remittance Return) dated May 05, 2015
P-5-G	BIR Tax Payment Deposit Slip dated May 19, 2015 in the amount of Php1,080,000.00
P-5-H	BIR Form 1602 (Monthly Remittance Return) dated August 08, 2015
P-5-I	BIR Tax Payment Deposit Slip dated September 01, 2015 in the amount of Php1,080,000.00
P-5-J	BIR Form 1602 (Monthly Remittance Return) dated November 11, 2015
P-5-K	BIR Tax Payment Deposit Slip dated November 27, 2015 in the amount of Php1,080,000.00

[36] *Id.*, pp. 209-213.
[37] *Id.*, pp. 292-297.
[38] *Id.*, pp. 360-361.

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P-5-L	BIR Form 1602 (Monthly Remittance Return) dated February 02, 2016
P-5-M	BIR Tax Payment Deposit Slip dated February 26, 2016 in the amount of Php1,080,000.00
P-5-N	BIR Form 1602 (Monthly Remittance Return) dated May 05, 2016
P-5-O	BIR Tax Payment Deposit Slip dated May 25, 2016 in the amount of Php1,080,000.00
P-6	Letter from the SEC dated August 16, 2012 Re: Request for Confirmation that the Proposed issuance by a Special Purpose Trust of Residential Mortgage Backed Securities ("Notes") Guaranteed by the Home Guaranty Corporation under the Securitization Law of 2004 is Exempt from Registration Requirements under the Securities Regulation Code
P-10	Judicial Affidavit of Petitioner's first witness, Josephine G. Cervero, dated January 19, 2017
P-10-A	Signature of Petitioner's first witness, Josephine G. Cervero, on page 7 of her Judicial Affidavit dated January 19, 2017
P-11	Judicial Affidavit of Petitioner's second witness, Maria Luisa Favila, dated January 12, 2017
P-11-A	Signature of Petitioner's second witness, Maria Luisa Favila, on page 5 of her Judicial Affidavit dated January 12, 2017

Thereafter, petitioner was deemed to have rested its case.

Meanwhile, in the Order[39] dated May 22, 2018, this Court noted respondent counsel's manifestation that since no investigation report has been submitted, she will no longer be presenting any evidence. Thus, the parties were given a period of thirty (30) days within which to submit their respective memoranda.

In compliance with the said Order, the parties respectively submitted their Memorandum[40] on June 21, 2018. Accordingly, with the filing of the parties' respective Memoranda, the case was deemed submitted for decision on July 5, 2018.[41]

The parties submitted the sole issue[42] of whether or not petitioner is entitled to refund in the amount of ₱8,640,000.00 representing final withholding taxes remitted from August 26, 2014 to May 25, 2016.

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[39] *Id.*, p. 364.
[40] Petitioner's Memorandum, Docket, pp. 367-378; Respondent's Memorandum, Docket, pp. 392-399.
[41] As per Resolution, Docket, p. 402.
[42] Issue, Joint Stipulation of Facts and Issue/s, Docket, p. 243.

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Petitioner primarily claims that the interest income earned on the Asset-Backed Securities is exempt from income and withholding taxes. In fact, Section 33 of RA No. 9267 states that income from a low cost and socialized housing-related ABS, is exempt from income and withholding tax. To prove its claim, petitioner submitted the HUDCC's Memoranda respectively dated December 23, 2011[43] and August 1, 2013[44], confirming that the issued ABS are within the low-cost and socialized housing package.

More so, petitioner also insists that considering the issued ABS are further guaranteed by the HGC, the interest and yields of the ABS therefore shall be exempt from all taxation as provided under Sections 15(a) and 19 of RA No. 8763[45], otherwise known as the "*Home Guaranty Corporation Act of 2000*".

Lastly, petitioner cites the CTA En Banc Decision dated May 3, 2018 (CTA EB No. 1630), which affirmed the Decision dated November 25, 2016 and Resolution dated March 23, 2017 of the CTA First Division in CTA Case No. 8944, involving the same parties herein, and granting therein petitioner's claim for refund for erroneously paid final withholding tax.

On the other hand, respondent maintains that the Bahay Bonds of NHMFC are deemed "deposit substitutes" as defined in Section 22(Y) of the NIRC of 1997, as amended. This is for the reason that since the object of the issuance is to obtain the required government funding, the issuance and subsequent distribution (exchange and trading) of debt instruments and securities in the secondary market to other market participants, specifically the investors, is in itself a public borrowing of the government. Thus, the financial assets in the hands of the investors represent a claim to future cash for which the borrowing entity must have to pay. As such, since government debt instruments and securities are not exempt from taxes, interest income derived therefrom shall also be subject to final withholding taxes.

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[43] Exhibit P-1, Docket p. 298.
[44] Exhibit P-2, Docket p. 299.
[45] "ACT CONSOLIDATING AND AMENDING REPUBLIC ACT NOS. 580, 1557, 5488, AND 7835 AND EXECUTIVE ORDER NOS. 535 AND 90, AS THEY APPLY TO THE HOME INSURANCE AND GUARANTY CORPORATION WHICH SHALL BE RENAMED AS HOME GUARANTY CORPORATION, AND FOR OTHER PURPOSES", dated March 7, 2000.

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Furthermore, respondent claims that since tax refunds are regarded as tax exemptions, they are therefore construed *strictissimi juris* against the person or entity claiming the exemption.

After due consideration, this Court finds merit in the present Petition.

This Court shall first determine the timeliness of petitioner's claim for refund. Perforce, the administrative and judicial claims for refund must be filed within two (2) years from the date the tax was paid pursuant to Sections 204(C) and 229 of NIRC of 1997, as amended, to wit:

> "**SEC. 204.** *Authority of the Commissioner to Compromise, Abate, and Refund or Credit Taxes.* – The Commissioner may
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> (C) Credit or refund taxes erroneously or illegally received or penalties imposed without authority, refund the value of internal revenue stamps when they are returned in good condition by the purchaser, and, in his discretion, redeem or change unused stamps that have been rendered unfit for use and refund their value upon proof of destruction. **No credit or refund of taxes or penalties shall be allowed unless the taxpayer files in writing with the Commissioner a claim for credit or refund within two (2) years after the payment of the tax or penalty**: *Provided, however,* That a return filed showing an overpayment shall be considered as a written claim for credit or refund.
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> x x x."

> "**SEC. 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

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> such tax, penalty, or sum has been paid under protest or duress.
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> **In any case, no such suit or proceeding shall be filed 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 a 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." *(Emphases Supplied)*

Verily, Section 204 of the NIRC of 1997, as amended, applies to administrative claims filed with the BIR, while Section 229 of the same code refers to judicial actions filed with this Court. However, settled is the rule that both claims for refund, filed with the BIR and thereafter to this Court, must be filed within the two (2) years from the date of payment of the tax or penalty. This requirement is mandatory and non-compliance therewith would be fatal to the claimant's action for refund or tax credit.

In the present case, records show the following pertinent dates:

Taxable Period	Date of Payment of Tax	Last Day to File Claim for Refund	Date the Administrative Claim was filed	Date the Judicial Claim was filed
August 2014	August 26, 2014[46]	August 26, 2016	August 10, 2016[47]	August 25, 2016[48]
November 2014	November 18, 2014[49]	November 18, 2016		
February 2015	February 20, 2015[50]	February 20, 2017		
May 2015	May 19, 2015[51]	May 19, 2017		
August 2015	September 1, 2015[52]	September 1, 2017		

[46] Supra No. 13.
[47] Exhibit "P-4".
[48] Supra No. 1.
[49] Supra No. 15.
[50] Supra No. 17.
[51] Supra No. 19.
[52] Supra No. 21.

November 2015	November 27, 2015[53]	November 27, 2017		
February 2016	February 26, 2016[54]	February 26, 2018		
May 2016	May 25, 2016[55]	May 25, 2018		

Evidently, it is clear from the above that petitioner's administrative and judicial claims for refund were seasonably filed within the two-year prescriptive period as provided for by law.

That having been settled, this Court shall now proceed to the main issue.

RA No. 9267 or "The Securitization Act of 2004"

Parenthetically, the main purpose of this RA No. 9267 is to promote the development of the capital market by supporting securitization, by providing a legal and regulatory framework for securitization and by creating a favorable market environment for a range of ABS.[56]

Under the said Act, "securitization" means the process by which assets are sold on a without recourse basis by the seller to a special purpose entity (SPE) and the issuance of asset-backed securities (ABS) by the SPE which depend, for their payment, on the cash flow from the assets so sold and in accordance with the plan for securitizations as approved by the SEC.[57]

In the present case, petitioner claims that under its SEC-approved Securitization Plan, the seller/originator of assets *(i.e.* residential loans under the UHLP) is NHMFC. Land Bank of the Philippines – Trust Banking Group (LBPTrust) administers the SPT, petitioner herein, to whom the assets were sold, and who subsequently issued the ABS. Development Bank of the Philippines (DBP) is the trustee for the holders of the ABS. Pursuant to the approved Securitization Plan, petitioner issued ABS, in the aggregate amount of ₱600,000,000.00, consisting of the following:

[53] Supra No. 23.
[54] Supra No. 25.
[55] Supra No. 27.
[56] *See* Section 2, RA No. 9267.
[57] Section 3(a), (h), and (e), *ibid.*

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Classification	**Amount**
Class A Senior Notes	Up to (300) Million
Class B Senior Notes	Up to (120) Million
Class C Subordinated Notes	Up to (180) Million

Notably, issuance of the foregoing security notes is backed up by the residential loans under the UHLP of NHMFC and are also further guaranteed by the HGC.

Generally, an SPE (SPC or SPT) is subject to income tax under Section 27 of RA No. 9267 in relation to Section 61 of the NIRC of 1997, as amended, to wit:

> "**SECTION 27.** *Income Taxation of Special Purpose Entity.* – The SPE in the form of an SPC shall be subject to income tax under Section 27(a), Chapter IV of the National Internal Revenue Code of 1997. An SPE constituted as an SPT shall be subject to income tax in accordance with the provisions of Section 61, Chapter X of the same Code."
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> "**SECTION 61.** *Taxable Income.* – Taxable income of the estate or trust shall be computed in the same manner and on the same basis as in the case of an individual, xxx."

However, as earlier stated, since RA No. 9267 was enacted to promote the development of the capital market by supporting securitization, Section 33 of the same law provides an exception to the general rule, viz.:

> "**SECTION 33.** *Incentives for Securitization.* – In order to promote the securitization of the mortgage and housing-related receivables of the government housing agencies as may be determined by the Housing and Urban Development Coordinating Council (HUDCC) and the Department of Finance (DOF), the yield or income of the investor from any low-cost or socialized housing-related ABS shall be exempt from income tax."

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Clearly, any income or yield generated by an SPE, such as herein petitioner, shall be exempt from income tax if the income or yield is earned by an investor from any low-cost or socialized housing-related ABS.

RA No. 8763 or "Home Guaranty Act of 2000"

Ostensibly, RA No. 8763 was enacted in line with the State's policy to undertake, in cooperation with the private sector, a continuing nationwide housing program which will make available at affordable cost decent housing.[58] As such a Home Guaranty Corporation was repackaged and established to, among others, to guaranty the payment in favor of any natural or juridical person, of any and all forms of mortgages, loans and other forms of credit facilities and receivables arising from financial contracts exclusively for residential purposes and the necessary support facilities thereto.[59]

To better achieve its purpose, Section 19 of RA No. 8763 expressly exempts, to a certain extent, from all taxation interests and yields earned or accumulated on mortgage, debentures, bonds, notes, mortgage and asset-backed securities, interest under a lease, and other credit instruments, whether issued by HGC or covered by its guaranty in favor of natural or juridical person, thus:

> "**SECTION 19.** *Tax Exemption.* – Interest and yields earned or accumulated on mortgage, debentures, bonds, notes, mortgage and asset-backed securities, interest under a lease, and other credit instruments, whether issued by the Corporation or **covered by its guaranty in favor of natural or juridical person, in cash or in bonds, shall be exempt from all taxation** to the same extent provided in Section 15(a) hereof: x x x." *(Emphasis Supplied)*

In relation thereto, Section 15(a) of RA No. 8763 further provides that:

> "**SECTION 15.** *Guaranty Coverage and Composition of Guaranteed Accounts.* –

[58] Section 2, RA No. 8763.
[59] See Section 5, *ibid.*

(a) The Corporation shall guarantee payment of the balance outstanding and due on the guaranteed principal obligation, plus interest and yields thereon up to eleven percent (11 %) per annum for socialized housing packages; ten percent (10%) per annum for low-cost housing packages; nine and one-half percent (9.5%) per annum for medium-cost housing packages; and eight and one-half percent (8.5%) per annum for open housing packages;"

Consequently, since petitioner's security notes carries with it the guaranty of HGC, the interests and yields of its ABS shall be exempt from all taxation.

With regard to respondent's contention that the issued security notes of NHMFC are deemed as "deposit substitutes" as defined in Section 22(Y) of the NIRC of 1997, as amended, this Court finds the same untenable.

Incidentally, the same have already been addressed by this Court in a similar case involving the same parties, thus:

"RA 9267 expressly declares that ABS issued by an SPT pursuant to an SEC-approved securitization plan shall not be considered as deposit substitutes as defined under the NIRC of 1997, as amended, to wit:

'SECTION 30. Non-Classification of SPE as a Bank, Quasi-Bank or Financial Intermediary. — The SPE, created pursuant to a Plan, shall not be classified as a bank, quasi-bank or financial intermediary under the provisions of the New Central Bank Act, the General Banking Law and **the National Internal Revenue Code of 1997**, and shall not be subject to the gross receipts tax (GRT) or any other tax imposed in lieu thereof.

SECTION 31. Securities not be Categorized as Deposit Substitutes. — **The ABS issued by an SPE pursuant to the Plan approved by the Commission shall not be considered as deposit substitutes under the laws mentioned in Section 30 hereof**: Provided, however, That for

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> purposes of taxation, the yield from the ABS shall be subject to a twenty percent (20%) final withholding tax, except those held by tax-exempt investors.' (Boldfacing supplied)

The express declaration in RA 9267 which is a more recent law than the NIRC of 1997, as amended, shows that Congress clearly carved out an exception with respect to ABS, irrespective of the then existing definitions of 'deposit substitutes' under the NIRC of 1997, as amended. Basic is the rule that when the law is clear and free from any doubt or ambiguity, there is no room for construction or interpretation. There is only room for application.

In addition, whenever there is a conflict between two laws, one special and particular and the other general, the special law must be taken as intended to constitute an exception to the general act.

In this regard, the NIRC of 1997, as amended is the general law on internal revenue taxes while RA 9267 is the special law on securitization. Thus, between the two laws, RA 9267 prevails.

Conspicuously, BIR Ruling No. 516-2012 dated August 3, 2012 did not squarely refute petitioner's invocation of the exempting provisions of RA 9627 and RA 8763 and confined the discussion to Sections 22 (Y) and 27 (D) (1) of the NIRC of 1997, as amended, in holding that the Bahay Bonds are deposit substitutes subject to tax.

While the interpretation of the CIR who is in charge of executing the NIRC of 1997, as amended, is an authoritative construction of great weight, the principle is not absolute and may be overcome by strong reasons to the contrary. If through a misapprehension of law an officer has issued an erroneous interpretation, the error must be corrected when the true construction is ascertained.

Considering that petitioner is an SPT that issued the Bahay Bonds pursuant to an SEC-approved Securitization Plan, the Bahay Bonds shall not be considered as deposit

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substitutes consistent with Section 31 of RA 9267."[60] *(Citations Omitted)*

Worthy to note that, the basis for the rule on strict construction to statutory provisions granting tax exemptions or deductions is to minimize differential treatment and foster impartiality, fairness and equality of treatment among taxpayers.[61] He who claims an exemption from his share of common burden must justify his claim that the legislature intended to exempt him by unmistakable terms. For exemptions from taxation are not favored in law, nor are they presumed. They must be expressed in the clearest and most unambiguous language and not left to mere implications.[62]

In the present case, petitioner was able to establish its right to the refund claimed by providing the applicable provisions of law conferring in clear and plain terms income tax exemption on the income derived from the ABS.

In view of the foregoing, the income or yield derived by the investors or bondholders from petitioner's security notes, which are low-cost or socialized housing-related ABS and guaranteed by HGC, are exempt from income tax and consequently, from final withholding tax. Thus, petitioner is entitled to a refund in the amount of ₱8,640,000.00 representing final withholding taxes remitted from August 26, 2014 to May 25, 2016.

WHEREFORE, premises considered, the instant Petition for Review is **GRANTED**. Accordingly, respondent is hereby **ORDERED TO REFUND or ISSUE A TAX CREDIT CERTIFICATE** to petitioner in the aggregate amount of **Eight Million Six Hundred Forty Thousand Pesos (₱8,640,000.00)**, representing petitioner's erroneous payment of final withholding taxes on the interest earned from the asset-backed securities covering the period from August 26, 2014 to May 25, 2016.

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[60] Bahay Bonds 2 Special Purpose Trust, administered by Land Bank of the Philippines through its Trust Banking Group vs. Commissioner of Internal Revenue, CTA Case No. 8944, November 25, 2016.
[61] Ernesto M. Maceda vs. Hon. Catalino Macaraeg, Jr. et. al., G.R. No. 88291, May 31, 1991.
[62] Quezon City and the City Treasurer of Quezon City v. ABS-CBN Broadcasting Corporation, G.R No. 166408, October 6, 2008.

SO ORDERED.

Cielito N. Mindaro-Grulla
CIELITO N. MINDARO-GRULLA
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

ERLINDA P. UY
Associate Justice

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

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's Division.

ROMAN G. DEL ROSARIO
Presiding Justice
Chairperson, Special 1st Division