REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

SECOND DIVISION

CHAILEASE FINANCE CORPORATION, Petitioner,	**C.T.A. CASE NO. 7021**
	Members:
- versus -	**CASTAÑEDA, JR.,** *Chairperson* **UY,** *and* **PALANCA-ENRIQUEZ,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	**Promulgated:** JUN 0 5 2008 2:00 p.m.

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RESOLUTION

This resolves petitioner's **"Motion to Resolve Issue of Prescription"** filed on July 14, 2006; without any comment/opposition from respondent despite due notice.

In its Motion, petitioner prays for the Court to resolve the issue of prescription, cancel the subject assessments, and declare/absolve petitioner from any tax liability.

A perusal of the records shows the following:

On September 12, 2003, the Bureau of Internal Revenue (BIR) Revenue Region No. 8, Makati City, issued the following Final Assessment Notices (FANs) for taxable year 1999 against petitioner:

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Exhibits	Assessment Notice No.	Tax Assessed	Amount of Deficiency Tax
A	IT-4760-99-03-384	Income Tax	30,855,560.45
B	PT-4760-99-03-384	Percentage Tax	1,300,379.45
C	WE-4760-99-03-384	Expanded Withholding Tax	407,220.69
D	DS-4760-99-03-384	Documentary Stamp Tax	4,503,099.03

For the following internal revenue taxes, petitioner filed the corresponding returns:

INCOME TAX		
Exhibit	**Period Covered**	**Date Filed**
J	Calendar Year 1999	April 28, 2000
PERCENTAGE TAX		
Exhibit	**Period Covered**	**Date Filed**
K	1^{st} Quarter 1999	April 26, 1999
L	2^{nd} Quarter 1999	July 20, 1999
M	3^{rd} Quarter 1999	October 25, 1999
N	4^{th} Quarter 1999	January 14, 2000
WITHHOLDING TAX		
Exhibit	**Period Covered**	**Date Filed**
O	January 1999	February 10, 1999
P	February 1999	March 4, 1999
Q	March 1999	April 12, 1999
R	April 1999	May 7, 1999
S	May 1999	June 3, 1999
T	June 1999	July 7, 1999
U	July 1999	August 6, 1999
V	August 1999	September 9, 1999
W	September 1999	October 8, 1999
X	October 1999	November 8, 1999
Y	November 1999	December 8, 1999
Z	December 1999	January 10, 2000
AA		January 25, 2000
DOCUMENTARY STAMP TAX		
Exhibit	**Period Covered**	**Date Filed**
CC, DD, EE	January 1999	January 7, 1999
FF, GG, HH		February 1, 1999
II		March 11, 1999
KK, LL	February 1999	February 1, 1999
MM, SS		February 12, 1999
PP, QQ		February 18, 1999
TT		February 18, 1999
BBB		February 24, 1999
VV		February 26, 1999
WW		July 15, 1999
YY, ZZ, AAA		March 11, 1999
DDD, EEE, GGG, HHH	March 1999	March 2, 1999
JJJ		March 25, 1999
MMM, NNN, OOO		March 17, 1999
PPP, UUU, VVV		March 23, 1999
QQQ, WWW		March 24, 1999

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KKK, SSS, TTT		March 25, 1999
RRR		May 5, 1999
DDDD		April 6, 1999
YYY, ZZZ		April 21, 1999
AAAA	April 1999	April 27, 1999
EEEE, FFFF, HHHH		May 5, 1999
GGGG		May 13, 1999
IIII		May 25, 1999
GGGGG		May 5, 1999
KKKK, LLLL		May 7, 1999
NNNNN		May 13, 1999
NNNN, OOOO, JJJJJ		May 14, 1999
QQQQ, RRRR		May 18, 1999
TTTT, UUUU	May 1999	May 19, 1999
WWWW, XXXX		May 21, 1999
ZZZZ, AAAAA, HHHHH, IIIII, KKKKK		May 25, 1999
SDDDD		May 26, 1999
FFFFF, MMMMM		May 27, 1999
LLLLL		June 3, 1999

In addition to the foregoing exhibits, petitioner likewise presented the following exhibits of the independent certified public accountant (CPA) representing petitioner's documentary stamp tax payments, as follows:

a. For Documentary Stamp Tax Returns and Payments covering June 1999 up to and including December 1999 –

Summaries on petitioner's monthly loan releases for purposes of the documentary stamp taxes on loan releases:

CPA Exhibits Nos. "B" – "B-5" – January 1999
CPA Exhibits Nos. "C" – "C-8" – February 1999
CPA Exhibits Nos. "D" to "D-10" – March 1999
CPA Exhibits Nos. "E" to "E-7" – April 1999
CPA Exhibits Nos. "F" to "F-15" – May 1999
CPA Exhibits Nos. "G" to "G-9" – June 1999
CPA Exhibits Nos. "H" to "H-17" – July 1999
CPA Exhibits Nos. "I" to "I-12" – August 1999
CPA Exhibits Nos. "J" to "J-15" – September 1999
CPA Exhibits Nos. "K" to "K-11" – October 1999
CPA Exhibits Nos. "L" to "L-5" – November 1999
CPA Exhibits Nos. "M" to "M-14" – December 1999

(as detailed out and specifically described in the List entitled "Loan Releases, **Annex "A"** of petitioner's "Motion to Adopt Certain Exhibits of the Independent CPA" dated 14 July 2006)

Summaries on the petitioner's monthly DST payments on its loan releases:

CPA Exhibits Nos. "V" – "V-47" and "G-0-1" – June 1999
CPA Exhibits Nos. "W" to "W-79", "H-0-1" to "H-2-1" and "H-6-1" to "H-9-1" – July 1999
CPA Exhibits Nos. "X" to "X-62" and "I-0-1" to "I-8-1" – August 1999

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CPA Exhibits Nos. "Y" to "Y-73", "J-9-1", "J-11-1" to "J-14-1" – September 1999
CPA Exhibits Nos. "Z" to "Z-56", "K-0-1" to "K-1-1", "K-3-1" to "K-6-1" – October 1999
CPA Exhibits Nos. "AA" to "AA-53", "AA-56" to "AA-74", "L-0-1", "L-2-2", and "L-3-1" – November 1999
CPA Exhibits Nos. "BB" to "BB-94", "M-5-1" to "M-10-1" and "M-12-1" to "M-14-1" – December 1999

(as detailed out and specifically described in the List entitled "Loan Releases, **Annex "B"** of petitioner's "Motion to Adopt Certain Exhibits of the Independent CPA" dated 14 July 2006)

b. DST Returns and Payments regarding the petitioner's Real and Other Personal Property Owned and Acquired ("ROPOA") Accounts –

For the period 1999

CPA Exhibits Nos. "TTT" to "TTT-1" and "XXX" to "XXX-1" – BMG Trading
CPA Exhibits Nos. "UUU" and "YYY" – Gene Urbano de Leon
CPA Exhibits Nos. "VVV" and "ZZZ" to "ZZZ-2" – Metro Tours/Huang, Margaret Tee
CPA Exhibits Nos. "WWW" and "AAAA" to "AAAA-4" – Federal Builders

(as detailed out and specifically described in the List entitled Real and Other Personal Property Owned and Acquired ("ROPOA") for the period 1999, **Annex "C"** of petitioner's "Motion to Adopt Certain Exhibits of the Independent CPA" dated 14 July 2006)

For the period prior to 1999

CPA Exhibits Nos. "ZZ" to "ZZ-1" and "JJJ" to "JJJ-1" – A. Paguio Junk Shop
CPA Exhibits Nos. "AAA" to "AAA-1" and "KKK" to "KKK-1" – Citybook Supply
CPA Exhibits Nos. "BBB" and "LLL" to "LLL-1" –Energym Fitness Club
CPA Exhibits Nos. "CCC" to "CCC-4" and "MMM" to "MMM-3" – Jessan Metal Works
CPA Exhibits Nos. "DDD" and "NNN" – Jorge Vistan
CPA Exhibits Nos. "EEE" to "EEE-2" and "OOO" – Larew International Trade and Manufacturing, Inc.
CPA Exhibits Nos. "FFF" to "FFF-1" and "PPP" – Miracle Air-Sea International Corporation
CPA Exhibits Nos. "GGG" to "GGG-1" and "QQQ" – R.U. Transport Forwarders
CPA Exhibits Nos. "HHH" and "RRR" – AMV Enterprises
CPA Exhibits Nos. "III" and "SSS" to "SSS-1" – Kaung Shaing Lin

(as detailed out and specifically described in the List entitled Real and Other Personal Property Owned and Acquired ("ROPOA") for the period prior to 1999, **Annex "D"** of petitioner's "Motion to Adopt Certain Exhibits of the Independent CPA" dated 14 July 2006)

c. DST filing of returns and payment on petitioner's original issuance of shares – Exhibit Nos. "VV", "WW", and "XX" (as detailed out and specifically

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described in the List entitled "DST on Original Issuance of Shares, **Annex "E"** of petitioner's "Motion to Adopt Certain Exhibits of the Independent CPA" dated 14 July 2006)

Upon a careful examination and evaluation of the foregoing exhibits, the Court agrees with petitioner that the disputed assessments were issued beyond the three (3)-year prescriptive period, provided under Section 203 of the Tax Reform Act of 1997 ("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 a case where a 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 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."

In the case at bar, petitioner filed its Annual Income Tax Return, the last return for taxable year 1999, on April 28, 2000. All other returns were filed earlier than the said date. Thus, the last day to assess petitioner of income tax deficiency falls on April 28, 2003; while the last day to assess petitioner of percentage, withholding and documentary stamp taxes is earlier than the said date. Since respondent issued the disputed assessments on September 12, 2003, it is clear that all the assessments issued against petitioner had already prescribed.

Respondent does not deny that the disputed assessments were issued beyond the three (3)-year prescriptive period, but argues that the period to assess was extended to September 30, 2003 when petitioner's Assistant Vice-President executed a *Waiver of the Defense of Prescription under the*

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Statute of Limitations of the National Internal Revenue Code (Waiver) on August 26, 2002.[1]

On rebuttal, petitioner presented the testimony of its witness, Ms. Feliciana C. Servidad, Records Officer II of the Regional Trial Court - Office of the Clerk of Court (RTC-OCC) Notarial Section of Makati City, and a certified true copy of the Waiver from the Notary Public, Atty. Albert C. Arpon.[2]

To resolve the issue of whether or not the prescriptive period was extended by the waiver, We deem it necessary to examine the following documents:

Exhibit "PPPPP" – petitioner's copy of the Waiver which extended the period to assess until September 30, 2002. It was not signed or accepted by the Commissioner of Internal Revenue or his duly authorized representative, Simplicio A. Madulara.

Exhibit "1" – respondent's copy of the Waiver which extended the period to assess until September 30, 2003. It was signed/accepted by Simplicio A. Madulara.

Exhibit "Y5" – certified true copy of the Waiver submitted by the Notary Public, Atty. Albert C. Arpon, to the RTC-OCC, Notarial Section of Makati City. It does not contain the date when the period to assess is extended. Neither does it contain any signature by the Commissioner of Internal Revenue or his duly authorized representative, Simplicio A. Madulara.

The Court shall use **Exhibit "Y-5"** as basis considering that the same is the official copy of the Notary Public, Atty. Albert C. Arpon, who notarized the same.

Upon a careful examination of **Exhibit "Y5"**, the Court finds that the same is defective due to the following grounds:

a) The waiver did not contain the date when the period to

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[1] Exhibit "1", "1-a", "1-b", "1-c", and "1-d"; Docket, page 1270.
[2] Exhibit "Y5"; Docket, page 1316.

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assess is extended; and

b) The waiver was not signed by the Commissioner of Internal Revenue considering that the assessed amount exceeds P1,000,000.00.

In *Bank of the Philippine Islands vs. Commissioner of Internal Revenue*[3], the Supreme Court laid down the requisites for a valid waiver, as follows:

> "A valid waiver of the statute of limitations under paragraphs (b) and (d) of Section 223 of the Tax Code of 1977, as amended, must be: (1) in writing; (2) agreed to by both the Commissioner and the taxpayer; (3) before the expiration of the ordinary prescriptive periods for assessment and collection; and (4) for a definite period beyond the ordinary prescriptive periods for assessment and collection. The period agreed upon can still be extended by subsequent written agreement, provided that it is executed prior to the expiration of the first period agreed upon. The BIR had issued Revenue Memorandum Order (RMO) No. 20-90 on 04 April 1990 to lay down an even more detailed procedure for the proper execution of such a waiver. RMO No. 20-90 mandates that the procedure for execution of the waiver shall be strictly followed, and any revenue official who fails to comply therewith resulting in the prescription of the right to assess and collect shall be administratively dealt with."

Corollary thereto, pertinent portion of Paragraph 3 (A) of Revenue Memorandum Order (RMO) No. 20-1990 issued on April 4, 1990 provides:

> "3. The following revenue officials are authorized to sign the waiver.
>
> A. In the National Office

1. ACIRS for Collection, Special Operations, National Assessment, Excise and Legal on tax cases pending before their respective offices. In the absence of the ACIR, the Head Executive Assistant may sign the waiver.	For tax cases involving not more than P500,000.00
2. Deputy Commissioner	For tax cases

[3] G.R. No. 139736, October 17, 2005, 473 SCRA 205.

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	involving not more than P500,000.00 but not more than P1M
3. Commissioner	**For tax cases involving more than P1M**

x x x [Emphasis supplied]"

In *Philippine Journalists, Inc. vs. Commissioner of Internal Revenue*,[4] the Supreme Court ruled:

> "The waiver is defective from the government side because it was signed only by a revenue district officer, not the Commissioner, as mandated by the NIRC and RMO No. 20-90. The waiver is not a unilateral act by the taxpayer or the BIR, but is a bilateral agreement between two parties to extend the period to a date certain. The conformity of the BIR must be made by either the Commissioner or the Revenue District Officer. This case involves taxes amounting to more than One Million Pesos (P1,000,000.00) and executed almost seven months before the expiration of the three-year prescriptive period. For this, RMO No. 20-90 requires the Commissioner of Internal Revenue to sign for the BIR."

The instant case involves an assessment of deficiency income, percentage, withholding and documentary stamp taxes in the aggregate amount of P37,066,259.62. Considering that the case involves more than P1,000,000.00 pursuant to the above-quoted Supreme Court's ruling, the Waiver should be signed by the Commissioner. Since the Waiver was not signed, it is clear that the same is null and void.

The Court further finds that the Waiver does not contain the date when the period to assess is extended. Hence, this Court cannot determine the extended prescriptive period of limitation within which the Bureau of Internal Revenue may validly assess and collect the deficiency taxes.

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[4] G.R. No. 162852, December 16, 2004, 447 SCRA 214.

WHEREFORE, premises considered, the petitioner's motion is hereby **GRANTED.** Accordingly, the instant Assessments for deficiency income, percentage, withholding and documentary stamp taxes for taxable year 1999 are hereby **CANCELLED** for having been issued beyond the prescriptive period.

SO ORDERED.

JUANITO C. CASTAÑEDA, JR.
Associate Justice

ERLINDA P. UY
Associate Justice

OLGA PALANCA-ENRIQUEZ
Associate Justice

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