REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

THIRD DIVISION

MAXICARE HEALTHCARE CORPORATION, Petitioner,	C.T.A. CASE NO. 8441
	Members:
-versus-	BAUTISTA, *Chairperson*; FABON-VICTORINO, *and* RINGPIS LIBAN, *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: APR 21 2014 4:19 p.m.

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DECISION

***Fabon-Victorino, J.*:**

This Petition for Review, petitioner Maxicare Healthcare Corporation challenges the assessment for deficiency value-added tax (VAT) in the amount of Three Hundred Thirty Seven Million Nine Hundred Eleven Thousand Nine Hundred Seventy and 96/100 (P337,911,970.96), inclusive of penalties and surcharges for calendar year (CY) 2008, issued by respondent Commissioner of Internal Revenue (CIR) through Revenue Region No. 8, RDO No. 47, East Makati, as contained in the Assessment Notice No. VT-LA12161-08-11-0517[1] and the Formal Assessment Notice dated May 17, 2011.[2]

Petitioner is a domestic corporation with principal office located at Maxicare Tower, 203 Salcedo Street, Legaspi Village, Makati City. Its primary purpose is to establish, maintain, conduct, and operate a prepaid group practice

[1] Exhibit "H".
[2] Exhibit "H-1".

health care delivery system or a health maintenance organization ("HMO") to take care of the sick, diseased, and disabled persons who are enrolled in a health care plan and to provide for the administrative, legal and financial responsibilities of the organization.[3]

On the other hand, respondent is the Commissioner of Internal Revenue with authority to decide disputed assessment and to enforce the provisions of the NIRC, and other tax laws, with office address at BIR National Office Building, Diliman, Quezon City.

On February 1, 2009, respondent issued Letter of Authority (LOA) No. 00012161[4] authorizing the audit of the internal revenue tax liabilities of petitioner for calendar year 2008.[5]

Sometime in 2010, respondent issued Revenue Memorandum Circular No. 39-2010 declaring that the tax base of HMOs for VAT purposes shall be the gross receipts without any deduction for medical utilization such as medical and dental fees, hospital bills, laboratory fees, professional fees, etc.[6]

On February 4, 2011, petitioner received BIR Notice of Informal Conference[7] dated February 1, 2011 in connection with petitioner's deficiency VAT assessment for CY 2008 in the amount of P305,192,043.58.[8]

In a letter-reply dated March 19, 2011,[9] petitioner contested the assessment indicated in the Notice of Informal Conference.[10] The challenge was however dismissed by virtue of BIR letter dated April 5, 2011.[11]

[3] Par. 1 (iii), Joint Stipulation of Facts (JSF), docket, p. 295.
[4] Exhibit "A".
[5] Par. 1 (vi), JSF, docket, p. 296.
[6] Par. 1 (vii), JSF, docket, pp. 296-297.
[7] Exhibit "D".
[8] Par. 1 (viii), JSF, docket, p. 297.
[9] Exhibit "E".
[10] Par. 1 (ix), JSF, *Ibid.*
[11] Exhibit "F.

On April 18, 2011, petitioner received from respondent a Preliminary Assessment Notice (PAN) for deficiency VAT for calendar year 2008 in the amount of P332,449,309.85, inclusive of penalties and surcharges.[12]

Subsequently or on May 18, 2011, petitioner received another assessment from respondent for deficiency VAT in the amount of P337,911,970.96, inclusive of surcharges and interest.[13] The said assessment was based on respondent's position that the tax base of HMOs for VAT purposes shall be the gross receipts without any deduction for medical utilization, viz., medical and dental fees, hospital bills, laboratory fees, professional fees, etc.[14] The assessment based on purported gross receipts not subjected to VAT or exempts sales per VAT returns pertains to petitioner's deductions or exclusions from its gross receipts of medical utilization expenses like medical and dental fees, hospital bills, laboratory fees, professional fees, etc.[15]

On June 17, 2011, petitioner filed its protest[16] against the subject assessment issued pursuant to Section 228 of the Tax Code.[17]

On July 7, 2011, petitioner received respondent's letter dated June 28, 2011 informing it that its protest as well as the case docket would be forwarded to Revenue District Office (RDO) No. 47 for further evaluation and action.[18]

On August 8, 2011, petitioner received from respondent, through BIR RDO No. 47, a letter dated August 3, 2011 on the indorsement of the case to certain revenue officers for further evaluation.[19]

On August 16, 2011, petitioner submitted the pertinent documents to substantiate its protest.[20]

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[12] Par. 1 (xi), JSF, docket, p. 297.
[13] Par. 1 (xii), JSF, docket, pp. 297-298.
[14] Par. 1 (xvi), JSF, docket, p. 298.
[15] Par. 1 (xvii), JSF, docket, p. 299.
[16] Exhibit "I".
[17] Par. 1 (xiii), JSF, docket, p. 298.
[18] Par. 1 (xiv), *ibid*.
[19] Par. 1 (xv), docket, p. 298.
[20] Par. 11, Petition for Review, docket, p. 11; Exhibit "J".

On March 2, 2012, petitioner received a copy of the letter dated February 21, 2012[21] denying its protest and reiterating the assessment.[22]

Hence, this Petition for Review filed on March 13, 2012.

On March 27, 2012, respondent issued a Final Decision on Disputed Assessment (FDDA).[23]

On May 25, 2012, respondent filed her Answer[24] with the following special and affirmative defenses:

> 5. The assessments in question were made and issued in accordance with law, rules and regulations;
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> 6. The Honorable Court has no jurisdiction over the instant petition for review. The Letter dated February 21, 2012 made by Revenue District Officer Gerry O. Dumayas is not the respondent's final decision on petitioner's protest that is appealable to the Honorable Court.
>
> 7. In the case of **Philippine Health Care Providers, Inc. vs. Commissioner of Internal Revenue, CTA Case No. 6166, April 5, 2002**, this Honorable Court already settled that gross receipts of HMOs in computing the VAT shall be the payments for medical plans and application fees actually received from the members, undiminished by any amount paid or payable to owners/operators of hospitals, clinics and medical and dental practitioners.
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> 8. Petitioner paid only the other proposed deficiency taxes under the Post Reporting Notice but contested the

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[21] Exhibit "K".
[22] Par. 1 (xviii), docket, p. 299.
[23] Exhibit "L".
[24] Docket, pp. 250-252.

> deficiency VAT on the gross receipts previously classified and claimed by petitioner as tax-exempt, which resulted to the issuance of preliminary and final assessment notices, subject of the present petition.
>
> 9. All presumptions are in favor of the correctness of the tax assessment **(Interprovincial Autobus vs. Collector of Internal Revenue, 98 Phil. 290)**.

After the Pre-trial Conference,[25] the parties filed their Joint Stipulation of Facts[26] (JSF) on the basis of which a Pre-Trial Order was issued on September 13, 2012.[27]

During the trial, petitioner presented its Assistant Treasurer and Vice President for Finance, **Jean Paul I. Gines**, who executed a judicial affidavit[28] for his direct testimony.

He declared that petitioner assails the Assessment Notice No. VT-LA12161-08-11-0517 and Formal Assessment Notice dated May 17, 2011 issued by respondent for deficiency VAT in the amount of P337,911,970.96, inclusive of charges and interests on the following grounds, to wit: inconsistency with BIR Revenue Regulation No. 4-2007; violation of BIR Ruling DA-(VAT-026)-375-08 and other related tax rulings; erroneous reliance on a Revenue Memorandum Circular; incorrect retroactive application of RMC No. 39-2010; double auditing and lack of factual and legal bases.

The assessment sprung from the tax audit and investigation of petitioner's books and accounts for CY ending December 31, 2008 pursuant to Letter of Authority (LOA) dated May 26, 2009 issued by respondent.[29] Subsequently, respondent issued Post Reporting Notice[30]

[25] Docket, p. 278.
[26] Docket, pp. 269-303.
[27] Docket, pp. 306-312.
[28] Exhibits "M" and "M-1".
[29] Exhibit "A".
[30] Exhibit "B".

informing petitioner that the audit/investigation of its internal revenue tax liabilities for CY 2008 had been completed and the following tax deficiencies were found to be due, to wit: Income Tax (IT) (P525,905.10), Expanded Withholding Tax (EWT) (P446,765.35) and VAT (P1,513,726.13). Petitioner paid the foregoing deficiency tax liabilities for 2008, including VAT deficiency in the amount of P1,513,726.13, as evidenced by BIR Filing Reference No. BIR Form No. 0605 and Acknowledgement Receipts for payments of VAT, Income Tax and Withholding Tax deficiencies.[31]

Despite such payment, petitioner received from respondent a Notice of Informal Conference dated February 1, 2011[32] pertaining to the same VAT deficiency liability for the same CY 2008. This suggested a change in respondent's position regarding the tax base of HMOs for VAT purposes such that their gross receipts shall no longer be subject to any deduction of amounts earmarked for medical utilization expenses as provided under RMC No. 39-2010.

The witness elaborated that prior to the issuance of RMC No. 39-2010, the tax base for VAT purposes of HMOs such as petitioner, comprised only of twenty percent (20%) of their actual gross receipts or total enrollment fees/premiums as the eighty percent (80%) of such gross receipts was earmarked for medical/hospital utilization expenses. The witness claimed that this is consistent with Section 11 of BIR RR No. 4-2007, which provides that the gross receipts for VAT purposes do not include amounts earmarked for payment to unrelated third (3rd) party or received as reimbursement for advance payment on behalf of another which do not redound to the benefit of the payor. This view likewise finds support in BIR Ruling Nos. DA-(VAT-019) 121-08, DA-(C-032) 122-08 and DA-(VAT-026) 375-08 which provide that only twenty percent (20%) of the enrollment fees or premiums shall be considered as gross receipts for purposes of computing VAT considering that HMOs act only as intermediaries between the purchaser of health care services known as members and the healthcare providers for a fee like hospitals and clinics.

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[31] Exhibits "C", "C-1", "C-1-A", "C-2", "C-2-A", "C-2-B", "C-3", "C-3-A" and "C-3-B".
[32] Exhibit "D".

Despite exchange of correspondences[33] and communications,[34] respondent still issued the assailed assessment for deficiency VAT for CY 2008 in the amount of P337,911,970.96, inclusive of surcharges and interests as of May 17, 2011.[35]

The witness surmised that the assessment was the result of the variance in the determination of gross receipts for purposes of VAT. Specifically, respondent disallowed most of petitioner's exempt sales for CY 2008 since respondent no longer considers as exclusion to gross receipts of HMOs the amounts earmarked or allocated for payment to unrelated third party such as those for medical utilization pursuant to RMC No. 39-2010.

The witness confirmed that petitioner filed a protest on June 17, 2011[36] with respondent and submitted all the supporting documents on August 16, 2011.[37] Despite compliance with the requirements, respondent failed to act on the protest within the one hundred eighty (180)-day period, the last day of which was on February 12, 2012. In the letters dated February 21, 2012 and March 27, 2012, respondent reiterated her previous assessment against petitioner.

Witness Gines admitted that his knowledge about the assessment for 2008 issued against petitioner was based merely on financial records in his possession as he started his employment as Assistant Treasurer and Vice President for Finance with petitioner, previously known as Philippine Healthcare Provider, Inc., only on September 16, 2010. He confirmed that after petitioner paid the deficiency assessment for income tax, VAT and EWT in the amount of P1,513,726.30, petitioner received another assessment on VAT for the same period in the amount of P189,949,913.06. The Court had previously ruled that petitioner's gross receipts are subject to VAT, specifically, the premiums.

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[33] Exhibit "E".
[34] Exhibits "F" and "G".
[35] Exhibits "H" and "H-1".
[36] Exhibit "I".
[37] Exhibit "J".

The witness further clarified that gross receipts according to the BIR ruling represents gross receipts from customers net of the amount earmarked from medical services, which according to industry practice is eighty percent (80%) of all premiums. Respondent based its assessment against petitioner on the total premium without any deduction ignoring BIR ruling that it should only be twenty percent (20%) of the total amount of premium.

Only petitioner presented evidence.[38] Respondent opted not to present any.[39] On May 6, 2013, the case was submitted for decision with petitioner's memorandum,[40] *sans* any from respondent, despite the opportunity granted.

On August 13, 2013, petitioner filed an Omnibus Motion (to Re-open Trial and to Appoint an ICPA)[41] to which respondent filed Comment/Opposition on October 1, 2013. The Court denied the motion for lack of merit on October 30, 2013.

STATEMENT OF ISSUES

The parties raise both factual and legal issues which were reduced into the following main issues as defined in the Pre-Trial Order, to wit:[42]

> 1. Whether or not the subject tax assessment, especially anent the VAT assessment on gross receipts not subjected to VAT or exempts sales per VAT returns which refers to deductions or exclusions to gross receipts for medical utilization expenses such as medical and dental fees, et., is invalid for violation of the relevant provisions on VAT of the Tax Code and other related tax issuances/authorities;

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[38] Docket, pp. 518-519.
[39] Minutes of Hearing dated March 18, 2013, docket, p. 525.
[40] Docket, pp. 529-562.
[41] Docket, pp. 567-572.
[42] Issues Defined by the Court, Pre-Trial Order, docket, p. 309.

> 2. Whether or not HMOs gross receipts for purposes of VAT computation shall be the total amount of money or its equivalent representing the service fee actually or constructively received during the taxable period, undiminished by any amount paid or payable to owners/operators of hospitals, clinics and medical and dental practitioners.

RULING OF THE COURT

As in other assessment cases, the timeliness of the filing of the petition for review must first be ascertained.

Section 228 of the National Internal Revenue Code (NIRC) of 1997, relevantly states, thus:

> Sec. 228. *Protesting Assessment*. – When the Commissioner or his duly authorized representative finds that proper taxes should be assessed, he shall first notify the taxpayer of his findings: *Provided, however*, That a preassessment notice shall not be required in the following cases:
>
> xxx xxx xxx
>
> The taxpayers shall be informed in writing of the law and the facts on which the assessment is made; otherwise, the assessment shall be void.
>
> Within a period to be prescribed by implementing rules and regulations, the taxpayer shall be required to respond to said notice. If the taxpayer fails to respond, the Commissioner or his duly authorized representative shall issue an assessment based on his findings.

> Such assessment may be protested administratively by filing a request for reconsideration or reinvestigation within thirty (30) days from receipt of the assessment in such form and manner as may be prescribed by implementing rules and regulations. Within sixty (60) days from filing of the protest, all relevant supporting documents shall have been submitted; otherwise, the assessment shall become final.
>
> If the protest is denied in whole or in part, or is not acted upon within one hundred eighty (180) days from submission of documents, the taxpayer adversely affected by the decision or inaction may appeal to the Court of Tax Appeals within thirty (30) days from receipt of the said decision, or from the lapse of the one hundred eighty (180)-day period; otherwise, the decision shall become final, executory and demandable.

It was stipulated that petitioner received the Formal Assessment Notice on May 18, 2011.[43] Petitioner filed its protest with BIR Revenue Region No. 8, RDO No. 47[44] on June 17, 2011, or within thirty (30) days from such receipt in compliance with the above provision.

On August 16, 2011,[45] or within the 60-day period prescribed under Section 228, petitioner submitted documents to substantiate its protest. From August 16, 2011, respondent had 180 days or until February 12, 2012, to act on petitioner's protest. On March 2, 2012, petitioner received respondent's letter dated February 21, 2012 denying its protest and reiterating the assailed assessment. From receipt of such denial, petitioner had 30 days or until April 1, 2012, within which to appeal to the CTA. Thus, the instant Petition for Review was seasonably filed with the Court on March 13, 2012.

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[43] Exhibit "H-1".
[44] Exhibit "I".
[45] Exhibit "J".

On the alleged prescription of the assessment, Section 203 of the NIRC, as amended, is instructive, viz.,:

> Sec. 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 relation thereto, Section 114 (A) of the NIRC, amended, provides:

> Sec. 114. *Return and Payment of Value-added Tax.* –
>
> *(A) In General.* – Every person liable to pay the value-added tax imposed under this Title shall file a quarterly return of the amount of his gross sales or receipts within twenty-five (25) days following the close of each taxable quarter prescribed for each taxpayer: *Provided, however*, That VAT-registered persons shall pay the value-added tax on a monthly basis.

Based on the foregoing provisions, respondent has three (3) years within which to issue an assessment against a registered VAT taxpayer such as petitioner. The said 3-year period is reckoned from the period fixed by law for the filing of the tax return, which is twenty five (25) days following the close of each taxable quarter. Hence, if the return is filed earlier than the last day allowed by law, the period to assess shall still be counted from the last day prescribed by law for filing of the return. However, if the return is filed beyond the prescribed period, the 3-year period commences from the day the return is filed.[46]

The BIR record shows that petitioner filed its quarterly VAT return on the following dates:

VAT Returns	Date of Filing	Last Day to Assess
1st Quarter	April 24, 2008[47]	April 25, 2011
2nd Quarter	July 25, 2008[48]	July 25, 2011
3rd Quarter	October 27, 2008[49]	October 27, 2011
4th Quarter	January 26, 2009[50]	March 29, 2012

Clear from the foregoing that the right of the respondent to assess petitioner for deficiency VAT had prescribed with respect to the 1st quarter of CY 2008 since the Formal Assessment Notice was received by petitioner only on May 18, 2011. However, the assessment for deficiency VAT for the 2nd to 4th quarters of CY 2008 were timely issued by respondent.

On the first main issue, respondent assessed petitioner of deficiency VAT for CY 2008 in the aggregate amount of ₱337,911,970.96, inclusive of interest and compromise penalty.

Respondent claims that petitioner's receipts, amounting to P1,536,175,623.10, should be subject to VAT as prescribed under Section 108 of the NIRC, as amended, in relation to Section 4. 108-3 (k) of Revenue Regulations (RR) 16-05 which states as follows:

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[46] *Commissioner of Internal Revenue vs. FMF Development Corporation*, G.R. No. 167765, June 30, 2008.
[47] BIR records, p. 544.
[48] BIR records, p. 550.
[49] BIR records, p. 556.
[50] BIR records, p. 562.

> xxx HMO's gross receipts shall be the total amount of money or its equivalent representing the service fee actually or constructively received during the taxable period for the services performed or to be performed for another person, excluding the value added tax. The compensation for their services representing their service fee, is presumed to be the total amount received as enrollment fee from their members plus other charges received.

Petitioner however contends that the assessment is patently inconsistent with Revenue Regulation No. 4-2007 and in defiance of BIR Ruling DA-(VAT-026)-375-08 and other relevant revenue issuances on the determination of gross receipts of HMOs for purposes of VAT, which allows the exclusion of the amounts earmarked for payment to unrelated third party or received as reimbursement for advance payment on behalf of another which do not redound to the benefit of the payor, such as those allotted by the HMO as payment for their medical utilization expenses. In other words, the assessment should not have considered the eighty percent (80%) of its enrollment fees or premiums part of its gross receipts for purposes of VAT as it was earmarked for unrelated third parties as payment for medical utilization expenses.

The Court is not convinced.

Note the definition of **gross receipts** in the last paragraph of Section 108 (A)(8) of the National Internal Revenue Code of 1997, as amended. **Gross receipts** is defined therein as "the total amount of money or its equivalent representing the contract price, compensation, service fee, rental or royalty, including the amount charged for materials supplied with the services and deposits and advance payments actually or constructively received during the taxable quarter for the services performed or to be performed for another person, excluding value-added tax."

Similarly, under Revenue Regulations No. 16-2005 implementing Title IV (Value-Added Tax) of the Tax Code, the term **gross receipts** is defined as "the total amount of money or its equivalent representing the contract price, compensation, service fee, rental or royalty, including the amount charged for materials supplied with the services and deposits applied as payments for services rendered and advance payments actually or constructively received during the taxable period for the services performed or to be performed for another person, excluding the VAT."

Subsequently, Revenue Regulations No. 4-2007 amended certain provisions of Revenue Regulations No. 16-2005, defining gross receipts[51] as follows:

> **SEC. 4.108-4.** ***Definition of Gross Receipts.*** – ***'Gross receipts'*** refers to the total amount of money or its equivalent representing the contract price, compensation, service fee, rental or royalty, including the amount charged for materials supplied with the services and deposits applied as payments for services rendered and advance payments actually or constructively received during the taxable period for the services performed or to be performed for another person, excluding the VAT, except those amounts earmarked for payment to unrelated third (3rd) party or received as reimbursement for advance payment on behalf of another which do not redound to the benefit of the payor.
>
> A payment is a payment to a third (3rd) party if the same is made to settle an obligation of another person, e.g., customer or client, to the said third party, which obligation is evidenced by the sales invoice/official receipt issued by said third party to the obligor/debtor (e.g., customer or client of the payor of the obligation).

[51] Section 11 of Revenue Regulations No. 4-2007.

> An advance payment is an advance payment on behalf of another if the same is paid to a third (3rd) party for a present or future obligation of said another party which obligation is evidenced by a sales invoice/official receipt issued by the obligee/creditor to the obligor/debtor (i.e., the aforementioned "another party") for the sale of goods or services by the former to the latter.
>
> For this purpose 'unrelated party' shall not include taxpayer's employees, partners, affiliates (parent, subsidiary and other related companies), relatives by consanguinity or affinity within the fourth (4th) civil degree, and trust fund where the taxpayer is the trustor, trustee or beneficiary, even if covered by an agreement to the contrary.

Further, the second paragraph of Section 4.108-3(k) of Revenue Regulations No. 16-2005 defines HMOs gross receipts as:

> **SEC. 4.108-3.** ***<u>Definitions and Specific Rules on Selected Services.</u>*** –
>
> xxx xxx xxx
>
> (k) xxx
>
> **<u>HMOs gross receipts</u> shall be the total amount of money or its equivalent representing the service fee actually or constructively received during the taxable period for the services performed or to be performed for another person, excluding the value-added tax**. The compensation for their services representing their service fee, is presumed to be the total amount received as enrollment fee from their

members plus other charges received. *(Emphasis and underscoring supplied.)*

The definition of **gross receipts** provided under Section 4.108-4 of Revenue Regulations No. 16-2005, which was amended by Section 10 of Revenue Regulations No. 4-2007, applies to all sales of services, except those specifically provided under Section 4.108-3 of the same. It is also clear that Section 10 of Revenue Regulations No. 4-2007 has amended Section 4.108-3(e),(f),(h) and (i) of Revenue Regulations No. 16-2005, but not Section 4.108-3(k) of the latter. Thus, the definitions of health maintenance organizations and their gross receipts stated in Revenue Regulations No. 16-2005 still stands and remain operative. Hence, considering that Revenue Memorandum Circular No. 039-10 was issued in accordance with Revenue Regulations No. 16-2005, the same is valid and applicable to the instant case.

Therefore, **petitioner's gross receipts shall be the total amount of money or its equivalent representing the service fee actually or constructively received during the taxable period for the services performed or to be performed for another person, excluding the value-added tax**.

Having determined what constitutes petitioner's gross receipts for purposes of VAT, the Court will now resolve the issue of whether petitioner is liable to pay the alleged deficiency VAT for Taxable Year 2008.

Respondent assessed petitioner for alleged deficiency VAT for Taxable Year 2008, in the aggregate amount of ₱337,911,970.96 inclusive of interest and compromise penalty, computed as follows[52]:

Vatable Sales per Return			₱ 394,909,726.40
Sales to Government			28,070,121.99
Total Vatable Sales per Return			₱ 422,979,848.39
Add:Gross Receipts not subjected to VAT(Sch 1)			1,536,175,623.10

[52] Exhibit "H-1", Docket, p. 471.

Vatable Sales per Audit				₱ 1,959,155,471.49
Output Tax				₱ 235,098,656.58
Less:	Creditable Input Tax			
	Current Input Tax		₱ 34,928,804.59	
	Input tax on Capital Goods exceeding 1M deferred from previous period		195,528.71	
	Total		35,124,333.30	
	Less: Deductions from Input Tax			
	Input tax on Sales to Government closed to expense	₱ 396,524.20		
	Input tax on Capital Goods exceeding 1M deferred to succeeding period	270,870.50	667,394.70	34,456,938.60
VAT Payable/(Excess Input Tax)				₱ 200,641,717.98
Less:	Tax Payments		₱ 40,490,600.53	
	Creditable Tax Withheld		92,377.01	40,582,977.54
Basic Deficiency Value-Added tax				₱ 160,058,740.44
Add: Interest (01/26/09 to 12/29/09)				29,556,052.34
Total Tax Due				₱ 189,614,792.78
Less:	Tax paid per audit (12/29/09)			1,513,726.13
Total Amount Due				₱ 188,101,066.65
Add: Penalties				
	50% Surcharge		₱ 94,050,533.32	
	Interest (12/30/09 to 06/24/11)		55,760,370.99	149,810,904.31
TOTAL AMOUNT STILL DUE				**₱ 337,911,970.96**

From the records, respondent based her assessment on the following:

Vatable Sales erroneously classified as zero-rated sales			₱ 9,841,685.67
Proceeds from sale of assets			616,071.00
Exempt sales per VAT Returns (Cost to render service not subjected to VAT)			1,525,717,866.43
Total Gross Receipts not subjected to VAT			**₱1,536,175,623.10**
Output VAT			₱ 184,341,074.77
Less: Input VAT allocated to exempt sales *(now allowed as input tax[53])*			(22,966,701.82)

[53] BIR Records, p. 651.

Output VAT Due			**₱ 161,374,372.95**
Additional Tax Credit (due to amortization of input VAT on capital goods)	**Per Return**	**Per BIR**	
Input tax on capital goods exceeding ₱1Million	3,034,058.29	3,034,058.29	
Input tax on capital goods exceeding ₱1M deferred from previous period	1,462,813.37	195,528.71	
Input tax on capital goods exceeding P1M deferred to succeeding period	(2,853,787.66)	(270,870.50)	
Amortization of Input VAT on Capital goods	***₱1,643,084.00***	***₱2,958,716.50***	(1,315,632.50)
Basic Deficiency VAT			**₱ 160,058,740.45**

As earlier discussed, the assessment for VAT deficiency pertaining to the 1st quarter of 2008 had already prescribed. Thus, petitioner may be assessed only for its VAT deficiency for the 2nd to 4th quarters of CY2008.

Basically, the assessment is hinged on respondent's findings that some of petitioner's receipts, in the aggregate amount of ₱1,536,175,623.10, were not subjected to VAT, to wit:

Vatable Sales erroneously classified as zero rated sales	₱ 9,841,685.67
Proceeds from Sale of Assets	616,071.00
Exempt Sales per VAT Returns (Cost to render service not subjected to VAT)	1,525,717,866.43
Gross Receipts not Subjected to VAT	**₱ 1,536,175,623.10**

A. Vatable sales erroneously classified as zero-rated sales (₱9,841,685.67) and Proceeds from sale of assets (₱616,071.00)

Petitioner argues that the deficiency based on vatable sales erroneously classified as zero-rated sales and proceeds from sale of assets under the VAT deficiency assessment had already been settled when it paid the VAT deficiency reflected in respondent's Post Reporting Notice.[54]

[54] Exhibit "B".

Evidence show that prior to the issuance of the Final Assessment Notice, petitioner was already subjected to investigation for which a total deficiency VAT of ₱191,463,639.69 was assessed against it, computed as follows:[55]

Vatable Sales		₱ 394,909,726.40
Sales to Government		28,070,121.99
Zero-Rated Sales		258,413,793.61
Exempt Sales		1,525,717,866.43
Gross Receipts per VAT Returns		₱ 2,207,111,508.43
Add: Findings		
Vatable Sales erroneously classified as zero-rated sales	₱ 9,841,685.67	
Proceeds from sale of assets	616,071.00	
Exempt sales which represent the Cost to render the service	1,525,717,866.43	1,536,175,623.10
Total		₱ 3,743,287,131.53
Less: Gross Receipts per VAT Returns		2,207,111,508.43
Amount of Gross Receipts still subject to VAT		₱ 1,536,175,623.10
Output Tax Still Due		₱ 184,341,074.77
Less: Input tax attributable to Exempt Sales - now allowed as input tax		22,966,701.82
Basic VAT Deficiency		161,374,372.95
20% Interest		30,064,266.74
Compromise Penalty		25,000.00
Total VAT Deficiency		**₱191,463,639.69**

However, out of the previously assessed total VAT deficiency of ₱191,463,639.69, petitioner conformed only to the assessment on its alleged VAT deficiency on vatable sales erroneously classified as zero-rated sales and on the proceeds from the sale of assets in the aggregate amount of ₱1,513,726.13, inclusive of interest and compromise penalties, and paid the same as evidenced by BIR Form 0605,[56] BIR Filing Reference No. 290900003435516[57] and BIR EFPS Payment Details,[58] as computed below:

Vatable Sales erroneously classified as zero-rated sales	₱ 9,841,685.67
Proceeds from sale of assets	616,071.00
Total	₱ 10,457,756.67

[55] BIR Records, p. 651.
[56] Exhibit "C-1"
[57] Exhibit "C"
[58] Exhibit "C-1-a"

Deficiency Output VAT	₱ 1,254,930.80
Add: Interest	233,795.33
Compromise penalty	25,000.00
Total Deficiency VAT	**₱ 1,513,726.13**

Since the present assessment also pertains to one and the same subject which had already been settled by petitioner, the subject assessment insofar as petitioner's deficiency VAT assessment corresponding to its vatable sales erroneously classified as zero-rated sales and on the proceeds from sale of assets in the amount of ₱1,513,726.13, inclusive of interest and compromise penalties, should be cancelled.

B. Exempt Sales per VAT Returns – ₱ 1,525,717,866.43

Respondent assessed petitioner on its gross receipts of ₱1,525,717,866.43, which petitioner treated as sales exempt from VAT and declared in its Quarterly VAT Returns, as follows:

VAT Returns	Amount
1st Quarter[59]	₱ 330,063,761.96
2nd Quarter[60]	247,386,731.43
3rd Quarter[61]	376,254,627.49
4th Quarter[62]	572,012,745.55
Total	**₱ 1,525,717,866.43**

Respondent insists that petitioner's gross receipts in the amount of ₱1,525,717,866.43 should be subjected to VAT as prescribed under Section 108 of the National Internal Revenue Code (NIRC) in relation to Section 4. 108-3 (k) of Revenue Regulations (RR) 16-05 which states that:

> xxx HMO's gross receipts shall be the total amount of money or its

[59] BIR Records, pp. 541-544.
[60] BIR Records, pp. 549-550.
[61] BIR Records, pp. 555-556.
[62] BIR Records, pp. 561-562.

> equivalent representing the service fee actually or constructively received during the taxable period for the services performed or to be performed for another person, excluding the value added tax. The compensation for their services representing their service fee, is presumed to be the total amount received as enrollment fee from their members plus other charges received

On the other hand, petitioner, in its Protest Letter[63] dated June 17, 2011, argues that as an HMO, it merely arranges for coverage of designated managed care services needed by plan members for fixed prepaid membership fees, and for a specified period of time. Invoking RR No. 4-2007, petitioner argues that gross receipts earmarked for payment to unrelated third party or received as reimbursement for advance payment on behalf of another which does not redound to the benefit of the payor, should not be subjected to VAT.

The Court is not persuaded.

It is settled that the provision of Section 4.108-3(k) of the Revenue Regulations 16-2005 should be applied in this case, which states that petitioner's gross receipts shall be the total amount of money or its equivalent representing the service fee actually or constructively received during the taxable period for the services performed or to be performed for another person, excluding the value-added tax. The Court emphasizes that Section 10 of RR No. 4-2007 has amended Section 4.108-3(e), (f), (h), (i) of RR No. 16-2005, but not Section 4.108-3(k) of the latter. Thus, the definitions of health maintenance organizations and their gross receipts stated in RR No. 16-2005 shall be applied. Consequently, petitioner's sales treated as VAT exempt shall be subjected to VAT at 12% rate.

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[63] Exhibit "I", Docket, pp. 474-491.

However, not all the amount of ₱1,525,717,866.43 shall be subjected to deficiency VAT as the assessment for the 1st quarter had prescribed. Accordingly, only the cost to render service (exempt sales per VAT Returns) pertaining to the 2nd to 4th quarters of 2008 shall be subjected to deficiency VAT, diminished by input tax attributable to exempt sales now allowed as input tax, computed as follows:

	2nd Qtr	3rd Qtr	4th Qtr	Total
Cost to render service (Exempt Sales per VAT Returns)	₱ 247,386,731.43	₱ 376,254,627.49	₱ 572,012,745.55	₱ 1,195,654,104.47
Output Tax Due Thereon	₱ 29,686,407.77	₱ 45,150,555.30	₱ 68,641,529.47	₱ 143,478,492.54
Less: Input tax attributable to Exempt Sales - now allowed as input tax	5,209,895.00	5,402,589.96	7,139,804.00	17,752,288.96
Basic Deficiency VAT	**₱24,476,512.77**	**₱39,747,965.34**	**₱61,501,725.47**	**₱125,726,203.58**
Add: 25% Surcharge				31,431,550.89
Total Amount Due				**₱157,157,754.47**

WHEREFORE, the instant Petition for Review dated March 13, 2012 filed by petitioner Maxicare Healthcare, is hereby **PARTIALLY GRANTED**. Consequently, the assessment issued by respondent Commissioner of Internal Revenue against petitioner Maxicare Healthcare Corporation for calendar year 2008 covering deficiency Value-Added Tax is **UPHELD IN PART**. Accordingly, petitioner is **DIRECTED TO PAY** respondent basic deficiency VAT in the amount of P125,726,203.58 and the corresponding twenty-five percent (25%) surcharge in the amount of P31,431,550.89 as imposed under Section 248(A)(3) of the NIRC of 1997, as amended, or in the sum of ₱157,157,754.47, computed as follows:

	2nd Qtr	3rd Qtr	4th Qtr	Total
Cost to render service (Exempt Sales per VAT Returns)	₱ 247,386,731.43	₱ 376,254,627.49	₱ 572,012,745.55	₱ 1,195,654,104.47
Output Tax Due Thereon	₱ 29,686,407.77	₱ 45,150,555.30	₱ 68,641,529.47	₱ 143,478,492.54
Less: Input tax attributable to Exempt Sales - now allowed as input tax	5,209,895.00	5,402,589.96	7,139,804.00	17,752,288.96
Basic Deficiency VAT	**₱24,476,512.77**	**₱39,747,965.34**	**₱61,501,725.47**	**₱125,726,203.58**
Add: 25% Surcharge				31,431,550.89
Total Amount Due				**₱157,157,754.47**

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In addition, petitioner is **ORDERED TO PAY** (a) Deficiency interest at the rate of twenty percent (20%) per annum on the basic deficiency VAT of ₱24,476,512.77, ₱39,747,965.34, and ₱61,501,725.47 for the 2nd, 3rd and 4th quarters, respectively, computed from July 25, 2008, October 25, 2008 and January 25, 2009, respectively, until full payment thereof pursuant to Section 249(B) of the NIRC of 1997, as amended; (b) Delinquency interest at the rate of twenty percent (20%) per annum on the total deficiency taxes of ₱157,157,754.47 representing basic deficiency VAT of ₱125,726,203.58 and 25% surcharge of ₱31,431,550.89 computed from April 30, 2012[64] until full payment thereof pursuant to Section 249(C)(3) of the NIRC of 1997, as amended.

SO ORDERED.

ESPERANZA R. FABON-VICTORINO
Associate Justice

We Concur:

LOVELL R. BAUTISTA
Associate Justice

(ON LEAVE)
MA. BELEN M. RINGPIS-LIBAN
Associate Justice

ATTESTATION

I attest 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.

LOVELL R. BAUTISTA
Chairperson

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[64] Due date per FDDA, Exhibit "L".

CERTIFICATION

Pursuant to Section 13 of Article VIII of the Constitution, and the Division's Chairperson's Attestation, 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