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REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

BANK OF THE PHILIPPINE ISLANDS,
Petitioner,

- versus -

C.T.A. CASE NO. 4214

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

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7/19/94

# DECISION

Suit brought by petitioner Bank of Philippine Islands (BPI) is a claim for refund of an alleged overpaid creditable withholding taxes of Family Bank and Trust Company (FBTC) in the amount of ₱174,065.77 for the six month period, January to June 1985.

The right to pursue the claim arose when petitioner became the successor-in-interest of FBTC by virtue of an Articles of Merger duly approved by the Security and Exchange Commission on July 1, 1985 (Exh. "D").

During the six month period ended June 30, 1985, FBTC received rental income from leasing office spaces and interest income from treasury notes purchased from Central Bank. On these income, petitioner alleged that a

5% creditable withholding tax was deducted by various lessees and a 15% withholding tax by the Central Bank.

Petitioner further alleged that FBTC at the end of its corporate existence on June 30, 1985 filed its final income tax return with the Bureau of Internal Revenue on April 10, 1986 showing a net loss of P64,502,935.00 and a refundable amount of P174,065.77, representing creditable income tax withheld at source for the period January to June 1985 (Exh. "A").

On October 17, 1986, petitioner filed a letter claim for refund dated October 10, 1986 with respondent's Chief Appellate Division asking for the refund of P174,065.77 (Exh. "C"). Since respondent has not acted on the matter, petitioner on December 29, 1987 filed the instant case. Hence, this petition for review.

Respondent in his answer and by way of special defenses, alleges among others, that:

a. petitioner's right to claim the refund/tax credit had already prescribed;

b. it is incumbent upon petitioner to show that it has complied with the provision of Sec. 292 of the Tax Code; and

c. claims for refund are construed strictly against claimants since a claim for refund partakes the nature of tax exemption.

The issues to be resolved, by this Court, are:

1. Whether or not the petition for review is barred by prescription; and

2. Whether or not petitioner is entitled to the refund of P174,065.66.

Anent the first issue, the provision of the law is very clear on the matter. In fact, it is a well settled rule that a claim for refund of a tax alleged to have been erroneously or illegally collected must be filed with the Commissioner of Internal Revenue within two years from the date of payment of the tax and no suit or proceeding for refund shall be begun after the expiration of the two-year period. This is provided under Section 292 of the National Internal Revenue Code, as amended, which reads:

> Sec. 292. **Recovery of tax erroneously or illegally collected.** <u>No suit or proceeding shall be maintained in any court for the recovery of any national internal revenue tax</u> hereafter alleged to have been erroneously or illegally collected, or of any penalty claimed to have been collected without authority, or of any sum alleged to have been excessive or in any manner wrongfully collected, <u>until a claim for refund or credit has been duly filed with the Commissioner</u>; but such suit or proceeding may be maintained, whether or not such tax, penalty, or sum has been paid under protest or duress.
>
> In any case, <u>no such suit or proceeding shall be begun after the expiration of two years from the date of payment of the tax</u> 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 face of the return upon which payment was made, such payment appears clearly to have been erroneously paid. (Underlining supplied).

Respondent contends that the instant case is barred by prescription. For the alleged amount of tax withheld and paid was for the fiscal year ending June 30, 1985. The petition for review was filed with this Court only December 29, 1987, which is clearly beyond the two year period allowed by law.

Before this Court can rule on the issue of prescription, it is noteworthy to point out that based on the financial statements of FBTC and the independent auditor's opinion (Exhs. "A-7" to "A-17"), FBTC operates on a calendar year basis. Its twelve (12) months accounting period was shortened at the time it was merged with BPI. Thereby, losing its corporate existence on July 1, 1985 when the Articles of Merger was approved by the Security and Exchange Commission. Thus, respondent stand that FBTC operates on a fiscal year basis, based on its income tax return, holds no ground. This Court believes that FBTC is operating on a calendar year period based on the audited financial statements and the opinion thereof. The fiscal period ending June 30, 1985 on the upper left corner of the income tax return can be concluded as an error on the part of FBTC. It should have been for the six month period ending June 30, 1985. It should also be emphasized that "where one corporation succeeds another both are separate entities and the income earned by the precedecessor corporation before organization of its successor is not income to the successor" (Mertens, Law of Federal Income Taxation, Vol. 7 S 38.36).

Ruling now on the issue of prescription, this Court finds that the petition for review is filed out of time. FBTC, after the end of its corporate life on June 30, 1985, should have filed its income tax return within thirty days after the cessation of its business or thirty days after the approval of the Articles of Merger. This is bolstered by Sec. 78 of the Tax Code and under Sec. 244 of Revenue Regulations No. 2. Pertinent provisions of said laws are hereby quoted as:

> Sec. 78. **Return of corporation contemplating dissolution.** - Every corporation shall, within thirty days after the adoption by the corporation of a resolution or plan for the dissolution of the corporation or for the liquidation of the whole or any part of its capital stock, render a correct return to the Commissioner of Internal Revenue, verified under oath, setting forth the terms of such resolution or plan and such other information as the Minister of Finance shall by regulations, prescribe.

> Sec. 244. **Return of corporation contemplating dissolution or retiring from**

> **business.** - All corporations, partnership, joint accounts and associations, contemplating dissolution, shall within 30 days after the approval of such resolution authorizing their dissolution, and within the same period after their retirement from business, file their income tax return covering the profit earned or business done by them from the beginning of the year up to the date of such dissolution or retirement and pay the corresponding income tax due thereon upon demand by the Commissioner of Internal Revenue. xxx. (Underscoring supplied)

Based on the record, FBTC filed its income tax return on April 10, 1986 whereas the law provides that the same should be filed within thirty days after the approval of the Articles of Merger or from July 2, 1985 to July 31, 1985. And the claim for refund should be filed within two years from the date of payment of the tax or from July 31, 1985 to July 30, 1987 pursuant to Sec. 292 of the Tax Code, as amended.

However, this case was filed on December 29, 1987 which is 152 days late from July 30, 1987, the last day allowed by law for petitioner to file judicial claim for refund with this Court.

Therefore, respondent's contention that the petition is barred by prescription is hereby upheld. Not on ground that FBTC is on fiscal period rather FBTC ceased to operate as a juridical person on July 1, 1985.

In view of Our finding that the period to file the claim for refund has in deed prescribed, the question of whether or not petitioner is entitled to the refund of the amount of P174,065.66 becomes moot and academic.

**WHEREFORE**, finding the petition for review without merit, the *case* is DISMISSED and the *refund sought* is hereby DENIED.

With costs against petitioner.

**SO ORDERED.**

Quezon City, Metro Manila, July 19, 1994.

**ERNESTO D. ACOSTA**
**Presiding Judge**

**WE CONCUR:**

**MANUEL K. GRUBA**
**Associate Judge**

**RAMON O. DE VEYRA**
**Associate Judge**

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

I hereby certify that the decision was reached after due consultation among the members of the Court of Tax Appeals in accordance with Section 13, Article VIII of the Constitution.

ERNESTO D. ACOSTA
Presiding Judge
Court of Tax Appeals