REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

THE CITY GOVERNMENT OF MAKATI AND THE CITY TREASURER OF MAKATI, Petitioners,	CTA EB No. 1928 (CTA AC No. 187)
	Present:
-versus-	DEL ROSARIO, *PJ*, CASTAÑEDA, JR., UY, FABON-VICTORINO, MINDARO-GRULLA, RINGPIS-LIBAN, MANAHAN, BACORRO-VILLENA, and MODESTO-SAN PEDRO, *JJ*.
SOUTH LUZON TOLLWAY CORPORATION, Respondent.	Promulgated: MAR 11 2020 11:33 a.m.

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DECISION

Fabon-Victorino, J.:

This Petition for Review[1] dated September 11, 2018, filed by petitioners City Government of Makati and City Treasurer of Makati challenges the Decision dated May 9, 2018[2] and the Resolution dated August 15, 2018,[3] both rendered by the Court in Division in CTA AC No. 187. The challenged Decision and Resolution affirmed the ruling of the Regional Trial Court[4] (RTC) of Calamba City granting the claim for refund of respondent South Luzon Tollways

1 *Rollo,* pp. 1-15.
2 Ibid. at pp. 19-37.
3 Id. at pp. 38-40.
4 Branch 36.

Corporation in the amount of ₱20,585,603.19, representing erroneously paid local business taxes (LBT) covering the periods January 1, 2011 to September 30, 2011, with costs of suit.

The facts are as follows:

Petitioner City of Makati is a local government unit empowered under the Local Government Code (LGC) to assess and collect local business taxes through petitioner City Treasurer. Both may be served with notices and judicial processes at Makati City Hall, J.P. Rizal Street, Makati City.

Respondent South Luzon Tollway Corporation, on the other hand, is a domestic corporation engaged in the rehabilitation, construction, and expansion of the South Luzon Expressway (SLEX). It holds office at Km 44 South Luzon Expressway, Sitio Latian, Barangay Mapagong, Calamba City, Laguna.

Sometime in 2011, respondent transferred its principal office from 6/F 104 Rada Street, Legaspi Village, Makati City to Sitio Latian, Barangay Mapagong, Calamba City, Laguna.

On August 3, 2011, respondent applied for a Certificate of Business Retirement with petitioners. Pending any action on its application, respondent was assessed for LBT for the period January 1 to September 30, 2011.

On January 31, 2012, respondent paid the assessed LBT[5] in the amount of Twenty Million Five Hundred Eighty-Five Thousand Six Hundred Three Pesos and Nineteen Centavos (₱20,585,603.19). On the same day, respondent was issued a Certificate of Business Retirement.

On December 13, 2013, respondent sent a letter to the City of Makati, through then City Treasurer Nelia A. Barlis, requesting for the refund of LBT it paid, claiming that it was registered as a pioneer enterprise with the Board of

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[5] Described in the official receipt as Municipal License Ret. Service. See pp. 2-3, challenged Decision.

Investments (BOI) on March 3, 2010, hence, it was exempt from paying LBT from March 3, 2010 to March 3, 2016.

On February 3, 2014, respondent filed a Petition before the RTC-Calamba praying that it be declared exempt from LBT imposition from March 3, 2010 until March 3, 2016 and be refunded of the amount of ₱20,585,603.19 corresponding to LBT for periods January 1, 2011 to September 30, 2011 previously collected by petitioners. This case was docketed as Civil Case No. 4749-2014-C.

On January 6, 2017, the RTC-Calamba rendered a Decision, the *fallo* of which reads as follows:

> **WHEREFORE**, in light of the foregoing, judgment is hereby rendered in favor of the (respondent) and against (petitioners) who are directed to refund (respondent) of the total amount of Twenty Million Five Hundred Eighty Five Thousand Six Hundred Three Pesos and Nineteen Centavos (P20,585,603.19), Attorney's Fees of P10,000.00; and Cost of suit represented by the docket fees.
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> SO ORDERED.

The RTC ruled that respondent was able to satisfy all the requisites for a LBT refund under Section 196 of the LGC. Specifically, it filed with petitioners a written administrative claim for refund of the subject LBT on December 13, 2013. It also seasonably lodged its judicial claim for refund on February 3, 2014,[6] or within 2 years from payment of the subject tax on January 31, 2012. The RTC also found petitioners to have erroneously or illegally collected from respondent LBT relating to the periods January 1, 2011 to September 30, 2011 since the latter was exempt from LBT imposition from March 3, 2010 until March 3, 2016, or six years from its registration as pioneer enterprise with BOI. Respondent was as well awarded attorney's fees of ₱10,000.00, and costs of suit representing the amount of docket fees it paid.

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6 The last day of the two-year period to seek judicial recourse with the RTC under Section 196 of the LGC fell on a January 31, 2014, which was officially declared non-working holiday. Further, February 1 and 2, 2014 were a Saturday and Sunday respectively.

On February 27, 2017, petitioners filed a Motion for Reconsideration (Re: Decision dated 06 January 2017), but it was denied by the RTC in the Order dated May 11, 2017.

On June 16, 2017, petitioners elevated their case with the Court in Division by way of a Petition for Review dated June 14, 2017.

On May 9, 2018, the Court in Division rendered the challenged Decision, disposing the case in the following fashion:

> **WHEREFORE**, premises considered, the instant Petition for Review is hereby **PARTIALLY GRANTED**. Accordingly, the Decision dated January 6, 2017 and the Order dated May 11, 2017 of the Regional Trial Court, Branch 36, Calamba City, Laguna in Civil Case No. 4749-2014-C entitled *"South Luzon Tollway Corporation vs. The City Government of Makati and Nelia A. Barlis in her capacity as City Treasurer"* are **AFFIRMED** with **MODIFICATION**. The award of Attorney's Fees in the amount of Ten Thousand Pesos (₱10,000.00) is **DELETED**.
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> **SO ORDERED**.

In essence, the Court in Division agrees with the conclusion reached by the RTC that respondent is legally entitled to: 1) a cash refund in the sum of ₱20,585,603.19, representing LBT erroneously collected by petitioners covering the periods January 1, 2011 to September 30, 2011 pursuant to Section 196 of the LGC; and 2) costs of suit. However, the Court in Division modified the assailed Decision by deleting the award for attorney's fees of ₱10,000.00 as the RTC failed to state the factual and legal basis justifying the grant thereof.

Unperturbed, petitioners sought a reconsideration of the impugned Decision[7], but failed[8] to secure a ruling in its favor, hence, this Appeal.

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[7] Petitioners' Motion for Reconsideration dated May 28, 2018, docket (CTA AC No. 187), pp. 144-150.

[8] Resolution dated August 15, 2018, id. at pp. 164-166.

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Petitioners maintain that under Section 196 of the LGC, judicial claim for refund of local taxes must be brought with a court of competent jurisdiction within 2 years from the date of payment of LBT. For them, the 2-year period is equivalent to seven hundred thirty (730) days, following Article 13 of the Civil Code. Since respondent paid the LBT subject of the refund on January 31, 2012, it had 730 days, or until January 30, 2014 within which to seek judicial review of its claim for refund. Hence, its Petition for Refund was belatedly instituted with the RTC on February 3, 2014.

Even granting that respondent's judicial claim for refund was seasonably instituted, respondent's failure to present its purported BOI Certificate of Registration at the time it paid the subject LBT on January 31, 2012, rendered their rejection of its claim for cash refund under Section 133(g) of the LGC, in order and justified.

Besides, even if their collection of LBT against respondent was erroneous or illegal, Section 7B.14 of Revised Makati Revenue Code (RMRC) only permits a grant of a tax credit, and not a tax refund, as prayed for by respondent.

Finally, petitioners invoke the principle that tax refunds, being in the nature of tax exemptions are to be strictly construed against the taxpayer such as respondent. For respondent's failure to convincingly show that it was able to comply with all the conditions under Section 196 of the LGC, the denial of its refund claim was correct.

In refutation,[9] respondent argues that in computing the years for purposes of prescription, the Revised Administrative Code should govern. Under Section 31 thereof, one (1) year means twelve (12) calendar months, the number of days being irrelevant. Counting two years from its payment of the subject LBT on January 31, 2012, it had until January 31, 2014 to file its judicial claim for refund. Given that January 31, 2014 was declared as a special non-working day, it had until the next succeeding business day, or until February 3, 2014 to file its judicial

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[9] Respondent's *Comment [Re: Petitioners' Petition for Review (En Banc) dated September 11, 2018]*, *rollo*, pp. 44-57.

claim for refund. Thus, its judicial claim for cash refund was timely instituted with the RTC on February 3, 2014.

Respondent further states that non-presentation of its BOI Certificate of Registration at the moment it paid the LBT to petitioners was not fatal to its cause. Under Section 133(g) of the LGC, as interpreted by jurisprudence, BOI-Registered Pioneer Enterprise enjoys immunity from local taxes for 6 years from date of registration. Since it was issued a BOI Certificate of Registration on March 3, 2010, it was exempted from levy of local taxes until March 3, 2016. In other words, the LBT it paid pertaining to the periods January 1, 2011 to September 30, 2011 was illegally or erroneously collected by petitioners.

In addition, by express provision of both Section 196 of the LGC, and Section 7B.14(d) of the RMRC, it is legally allowed to claim a cash refund on the subject LBT erroneously collected by petitioners.

Section 10, Rule 43 of the Rules of Court also provides that the findings of fact by a lower court, when supported by substantial evidence shall be binding upon the Court of Appeals. By analogy, given that the RTC found that respondent possessed a valid BOI Certificate of Registration dated March 3, 2010, such finding is binding with the Court in Division and consequently, with the Court *En Banc,* says respondent.

To cap its discussion, respondent asserts that the instant petition should not be given due course as petitioners failed to show that the Court in Division committed errors of fact and law, citing Section 10, Rule 43 of the Rules of Court as its authority.

THE RULING OF THE COURT

The instant petition must fail.

For claim for refund of local taxes to prosper, faithful adherence with Section 196 of the LGC is imperative. It states:

> **Section 196.** *Claim for Refund of Tax Credit.* - No case or proceeding shall be maintained in any court for the recovery of any tax, fee, or charge erroneously or illegally collected until a written claim for refund or credit has been filed with the local treasurer. No case or proceeding shall be entertained in any court after the expiration of two (2) years from the date of the payment of such tax, fee, or charge, or from the date the taxpayer is entitled to a refund or credit.

Thus, to be entitled to a claim for cash refund of local taxes, the following conditions must be complied with: *first,* a written claim for refund or credit is filed with the local treasurer; *second,* court action for refund should be instituted within two (2) years, either from date of payment of tax, or from the date the taxpayer is entitled to a refund or credit; and *third,* the local taxes subject of the refund were illegally or erroneously collected from the taxpayer.

Petitioners argue that with respondent's payment of the LBT on January 31, 2012, it had 730 days therefrom, or until January 30, 2014 to file a judicial claim for refund following Article 13 of the Civil Code. In other words, respondent's Petition before the RTC-Calamba was filed out of time on February 3, 2014.

We are not persuaded.

Indeed, Article 13[10] of the Civil Code states that a year is comprised of three hundred sixty-five (365) days. However, in Section 31, Chapter VIII, Book I of the Administrative Code of 1987,[11] a year is defined as twelve (12) calendar months, *irrespective of the number of days in a year.* Given the palpable incongruity between the two (2) statutes, the legal definition of a year under the Administrative Code, being the latest expression of legislative will shall prevail. This conclusion finds solace in *Philippine Health Insurance Corporation vs. Commission on*

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10 **Article 13.** When the laws speak of years, months, days or nights, it shall be understood that years are of three hundred sixty-five days each; months, of thirty days; days, of twenty-four hours; and nights from sunset to sunrise.

11 **Section 31.** *Legal Periods.* - "Year" shall be understood to be twelve calendar months; xxx.

Audit[12] where the Supreme Court *En Banc* has this to say on the matter:

> xxx there was a manifest incompatibility with regard to the manner of computing legal periods, particularly as to what constitutes a year, under Article 13 of the Civil Code and Section 31, Chapter VIII, Book I of the Administrative Code of 1987. Under the Civil Code, a year is equivalent to 365 days, whether it be a regular year or a leap year. Under the Administrative Code of 1987, however, a year is composed of 12 calendar months, with the number of days being irrelevant. To address this incompatibility, the Court held that Section 31, Chapter VIII, Book I of the Administrative Code of 1987, being the more recent law, governs the computation of legal periods.

In this case, respondent paid[13] the subject LBT on January 31, 2012. Counting two (2) years, or twenty-four (24) months therefrom, it had until January 31, 2014[14] to file its judicial claim with the RTC. Considering that January 31, 2014[15] was officially declared as a special non-working holiday, respondent had the succeeding business day, or until February 3, 2014[16] to seek judicial refund of such LBT. Clearly, its Petition for refund was seasonably lodged before the RTC on February 3, 2014.

Petitioners submit that respondent's presentation of a valid BOI Certificate of Registration at the time it paid the subject LBT is indispensible for it to be exempt from local taxes under the LGC.

The submission is specious.

Section 133(g) of the LGC decrees *inter alia* that cities and municipalities are explicitly proscribed to impose local taxes within their territorial jurisdictions on businesses

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12 G.R. No. 222838, September 4, 2018. This principle was likewise discussed in the cases of *Co vs. New Prosperity Plastic Products,* G.R. No. 183994, June 30, 2014; *Commissioner of Internal Revenue vs. Aichi Forging Company of Asia, Inc.,* G.R. No. 184823, October 6, 2010; and *Commissioner of Internal Revenue vs. Primetown Property Group, Inc.,* G.R. No. 162155, August 28, 2007.

13 Exhibit A, RTC Record, p. 214.

14 Chinese New Year.

15 Proclamation No. 655 Declaring Regular Holidays, Special (Non-Working) Days, And Special Holiday (for All Schools) for the year 2014.

16 February 1 and 2, 2014 fell on a Saturday and Sunday respectively.

certified by the BOI as pioneer or non-pioneer enterprise for the period of six (6) or four (4) years respectively, reckoned from the date of registration, thus:

> **Section 133.** *Common Limitations on the Taxing Powers of Local Government Units.* - Unless otherwise provided herein, the exercise of the taxing powers of provinces, cities, municipalities, and barangays shall not extend to the levy of the following:
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> (g) Taxes on business enterprises certified to by the Board of Investments as pioneer or non-pioneer for a period of six (6) and four (4) years, respectively from the date of registration;

En contra with petitioners' pretense, nowhere in Section 133(g) of the LGC does it even hint that presentation of a BOI Certificate of Registration as pioneer or non-pioneer enterprise at the time of payment of local tax is a prerequisite for the taxpayer to reap the benefits of such provision. It simply requires an entity to be a BOI-registered pioneer or non-pioneer enterprise to be exempt from local taxes, spanning six (6) years for pioneer enterprise, or four (4) years for non-pioneer enterprise, both reckoned from the moment of its registration, no more, no less.

Per its BOI Certificate of Registration issued on March 3, 2010,[17] respondent was granted a status of a pioneer enterprise. Thus, it had six (6) years to enjoy local tax exemption. Counting six (6) years from March 3, 2010, respondent was exempt from paying LBT until March 3, 2016. *A fortiori*, petitioners traversed the statutory impediment encapsulated in Section 133(g) of the LGC by collecting from respondent LBT for the period January 1, 2011 to September 30, 2011, which was within the period of exemption from local taxes, thereby entitling respondent to the refund sought in the amount of ₱20,585,603.19.[18]

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[17] Exhibit H, RTC Record, p. 261.

[18] Illegal or erroneous taxes are one levied without statutory authority. See *Commissioner of Internal Revenue vs. Philippine National Bank,* G.R. No. 161997, October 25, 2005, citing *Black's Law Dictionary*, 8th Ed, pp. 1496-1497.

In a last-ditch effort to ward-off defeat, petitioners posit that in cases where the local taxes were found to be erroneously or illegally collected, paragraph (d) of Section 7B.14 of the RMRC only allows tax credit, and not cash refund in favor of the taxpayer.

This is misleading.

For easy reference, paragraph (d) of Section 7B.14 of RMRC is hereby reproduced *verbatim*, *viz.*:

> SECTION 7B.14. *Taxpayer's Remedies.* –
>
> (d) *Claim for Refund or Tax Credit.* – No case or proceeding shall be maintained in any court for the recovery of any tax, fee, or charge erroneously or illegally collected until a written claim of **refund or credit** has been filed with the City Treasurer. No case or proceeding shall be entertained in any court after the expiration of two (2) years from the date of the payment of such tax, fee, or charge, or from the date the taxpayer is entitled to a refund or credit.
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> The tax credit granted a taxpayer shall not be refundable in cash but shall only be applied to future tax obligations of the same taxpayer for the same business. If a taxpayer has paid in full the tax due for the entire year and he shall no other tax obligations payable to the Local Government of City of Makati during the year, his tax credit, if any, shall be applied in full during the first quarter of the next calendar year or the tax due from him for the same business of said calendar year. (boldfacing supplied)

In legal hermeneutics, "or" is a disjunctive that expresses an alternative or gives a choice of one among two or more things.[19] The word "or" is a disjunctive term signifying dissociation and independence of one thing from other things enumerated. It should, as a rule, be construed in the sense which it ordinarily implies.[20]

Consistent with the above jurisprudential teachings, where local tax was illegally or erroneously collected from the taxpayer, Section 196 of the LGC, side by side with

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[19] *Guzman vs. Commission on Elections,* G.R. No. 182380, August 28, 2009, citing *Dotty v. State,* Fla. App., 197 So. 2d 315, 317.

[20] *Patulot vs. People of the Philippines,* G.R. No. 235071, January 7, 2019.

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paragraph (d), Section 7B.14 of RMRC, confer upon the taxpayer the option to recover the amount illegally or erroneously collected through tax refund *or* tax credit. Hence, respondent may not be legally faulted in seeking a cash refund in lieu of a tax credit on the LBT erroneously or illegally collected from it by petitioners.

The second paragraph of the provision however states that once the tax credit is granted, the taxpayer may no longer opt for a refund as the amount shall be applied to future tax liabilities of the taxpayer.

WHEREFORE, the Petition for Review dated September 11, 2018, filed by the City Government of Makati and the City Treasurer of Makati is **DENIED**. The challenged Decision and Resolution dated May 9, 2018 and August 15, 2018 respectively, both rendered by the Court in Division are **AFFIRMED**.

SO ORDERED.

ESPERANZA R. FABON-VICTORINO
Associate Justice

We Concur:

ROMAN G. DEL ROSARIO
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

ERLINDA P. UY
Associate Justice

CIELITO N. MINDARO-GRULLA
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

CERTIFICATION

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.

ROMAN G. DEL ROSARIO
Presiding Justice