REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

Third Division

COL FINANCIAL GROUP, INC.,
Petitioner,

-*versus*-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 8454

Members:
Bautista, *Chairperson*
Fabon-Victorino, *and*
Ringpis-Liban, JJ.

Promulgated:
APR 15 2014 4:08 p.m.

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DECISION

BAUTISTA, J.:

The Case

This is a petition ("Petition") filed pursuant to Section 229 of the 1997 National Internal Revenue Code (the "Tax Code"), as amended, in order to preserve the right of COL Financial Group, Inc. ("COL"), to claim a refund or secure a tax credit certificate for erroneously paid or illegally collected income taxes to the Bureau of Internal Revenue ("BIR") in the amount of Eight Million Nine Hundred Sixty Thousand Two Hundred Forty Five Pesos (Php8,960,245.00) for taxable year 2009.[1]

The Parties[2]

Petitioner COL Financial Group, Inc. (formerly CitisecOnline.Com, Inc.) is a corporation duly organized and existing under Philippine laws, with business address at 2401B East Tower,

[1] *Records*, Petition for Review, pp. 8-22.
[2] *Id.*, Joint Stipulation of Facts and Issues, p. 148.

Philippine Stock Exchange Centre, Exchange Road, Ortigas Center, Pasig City.

Respondent Commissioner of Internal Revenue ("CIR") is the head of the Bureau of Internal Revenue ("BIR"), holding office at the BIR National Office Building, BIR Road, Diliman, Quezon City.

The Facts

COL alleges that during the first three quarters of taxable year 2009, it used the itemized method of deduction in determining its income tax payable in accordance with Section 7 of Revenue Regulations No. 16-2008 ("RR No. 16-2008"), dated November 26, 2008.[3]

On February 18, 2010, respondent issued RR No. 2-2010 amending Section 7 of RR No. 16-2008, requiring taxpayers to choose a method of deduction during the first quarter, which will be applied during the next three quarters of the taxable year; the same was reiterated through Revenue Memorandum Circular ("RMC") No. 16-2010 dated February 26, 2010.

On April 12, 2010, COL filed its Annual Income Tax Return ("ITR") for taxable year 2009 using the Optional Standard Deduction ("OSD") method and paid the corresponding income tax due.[4]

On April 15, 2010, COL paid under protest an additional income tax amounting to Eight Million Nine Hundred Sixty Thousand Two Hundred and Forty Five Pesos (Php8,960,245.00),[5] in order to avoid the imposition of interests, penalties, surcharges, and other increments should respondent require COL to use the itemized method of deduction for its Annual ITR.[6]

On October 11, 2011, COL filed an application for the refund of and/or the issuance of TCCs for the excess income tax paid during the taxable year 2009 amounting to Eight Million Nine Hundred Sixty Thousand Two Hundred and Forty Five Pesos (Php8,960,245.00).[7]

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[3] *Id.*, p. 10.
[4] *Exhibit* "F."
[5] *Exhibit* "G."
[6] *Id.*, p. 11.
[7] *Exhibits* "I" and "J."

As the prescriptive period to file a judicial claim was about to lapse, and the claim still pending with the BIR, petitioner filed its Petition for Review on April 3, 2012.[8]

Respondent, in response to the Petition for Review, filed her Answer on June 13, 2012,[9] stating the following Special and Affirmative Defenses:

"**<u>SPECIAL AND AFFIRMATIVE DEFENSES</u>**

On the basis of the foregoing allegations and in further support of the Specific Denials herein set forth, respondent respectfully alleges as her affirmative defense that:

4. Taxes collected are presumed to be in accordance with laws and regulations.

5. Petitioner's alleged claim for refund is subject to administrative routinary investigation/examination by the Bureau of Internal Revenue. A claim for refund is not *ipso facto* granted because respondent CIR still has to investigate and ascertain the validity of the claim.

6. Taxes are essential to government's very existence; **(CIR v. Solidbank Corporation, G.R. No. 148191, November 25, 2003)** hence, the dictum that 'taxes are the lifeblood of the government.' For this reason, the right of taxation cannot easily be surrendered, statutes granting tax exemptions are considered as a derogation of the sovereign authority. **(CIR v. Fortune Tobacco Corporation, G.R. Nos. 167274-75, July 21, 2008)** Since tax refunds are regarded as tax exemptions therefore, these are to be construed ***strictissimi juris*** against the person or entity claiming the exemption. **(Philippine Phosp[h]ate Fertilizer Corporation vs. Commissioner of Internal Revenue G.R 141973, June 28, 2005)**

[8] *Id.*, pp. 8-22.
[9] *Id.*, pp. 95-106.

7. In an action for refund, the burden of proof is on the taxpayer who claims the exemption and he must justify his claim by the clearest grant under the Constitutional or statutory law and cannot be permitted by vague implications **(BPI Leasing Corporation vs. Honorable Court of Appeals, G.R 127624, November 18, 2003)** The taxpayer is charged with the heavy burden of proving that he has complied with and satisfied all the statutory and administrative requirements to be entitled to the tax refund. **(Commissioner of Internal Revenue vs. Eastern Telecommunications Philippines, Inc. G.R. 163835 July 7, 2010).**

8. The alleged written claim for refund or tax credit for the calendar year 2009 prepared by petitioner is unverified and at its best is self-serving. The computations prepared by petitioner in the income tax payable are mere assertions without substantiation as to the contents or entries therein.

9. Furthermore, petitioner's reliance on Section 7 of Revenue Regulations No. 16-2008 regarding the option to use either itemized deduction or optional standard deduction is misplaced.

10. The provision of Revenue Regulations No. 16-2008 provides:

> 'SEC.7. OTHER IMPLICATIONS OF THE OPTIONAL STANDARD DEDUCTION. A taxpayer who elected to avail of the OSD not exceeding forty percent (40%) of gross sales or gross receipts, in case of an individual taxable under Secs. 24(A) and 25(A)(1) of the Tax Code, or forty percent (40%) of gross income, in case of a corporation subject to tax under Sec. 27(A) or 28(A)(1) of the same Code shall signify in his/its return such intention, otherwise he/it shall be considered as having availed himself of the itemized deductions allowed under Sec. 34 of the Code. Once the election to avail the OSD is signified in the return, it shall be

> irrevocable for the taxable year for which the return is made. This means that a taxpayer who initially filed a return availing OSD is precluded from amending said return in order to shift to the itemized deductions. An individual taxpayer who is entitled to and claimed the OSD shall not be required to submit with his tax return such financial statements otherwise required under the Code, *Provided,* that, except when the Commissioner otherwise permits, the said individual shall keep such records pertaining to his gross sales or gross receipts. In the case of a corporation, however, said corporation is still required to submit its financial statements when it files its annual income tax return and to keep such records pertaining to its gross income as herein defined.
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> In the filing of the quarterly income tax returns, the taxpayer may opt to use either the itemized deduction or OSD. However, in filing the final adjustment income tax return, the taxpayer must make a choice as to what method of deduction it or he shall employ for the purpose of determining its/his taxable net income for the entire year. The taxpayer is, thus, not allowed to use a hybrid method of claiming its/his deduction for one taxable year.'

11. The abovementioned provision which grants the taxpayer the option to use either the itemized deduction or optional standard deduction (OSD) in the filing of quarterly income tax return and the subsequent choice as to what method of deduction shall be employed in the final adjustment income tax applies only to transition period of the taxable year 2008. In the succeeding year 2009, once the taxpayer already use[d] a method of deduction for the first quarter of the taxable year, the same method shall be applied to the subsequent quarterly income tax return as well as the final income tax return.

12. Moreover, Section 246 of the NIRC pertaining to Non-Retroactivity of Rulings is inapplicable to Revenue Memorandum Circular No. 16-2010 and Revenue Regulation No. 2-2010 which merely clarified Revenue Regulation No. 16-2008 and did not revoke, modify or reversed *(sic)* the aforesaid regulation.

13. Revenue Memorandum Circular No. 16-2010 applicable to this case, provides:

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> Taxpayers who are electing to avail of the OSD are required to check the appropriate box in the income tax return filed for the first quarter of the taxable year 2009, regardless of whether such taxpayer is adopting the calendar or fiscal year. Once the election is made, the same type of deduction must be consistently applied for all the succeeding quarterly returns and in the final income tax returns for the taxable year. The failure to indicate the election to avail of the OSD shall be considered as having availed of the itemized deductions allowed under Section 34 of the Tax Code. Any taxpayer who is required but fails to file the income tax return for the first quarter shall be considered as having availed of the itemized deductions option for the taxable year 2009: *Provided*, however, That newly registered taxpayers shall disclose their election to avail the OSD in their initial quarterly income tax return which is required to be filed for the taxable year 2009.

14. Since petitioner already used the itemized method of deduction in its quarterly income tax return for the first quarter of the year, the same type of deduction must be consistently applied for the succeeding quarterly returns and in the final income tax return for the taxable year 2009.

15. In claiming a refund a claimant must first file a written claim for refund, categorically demanding recovery of overpaid taxes with the Commissioner of Internal Revenue, before resorting to an action in court, first, to afford the CIR an opportunity to correct the action of the subordinate officers; and second to notify the government that such taxes have been questioned, and the notice should then be borne in mind in estimating the revenue available for expenditure **(CIR vs. Rosemarie Acosta, G.R No. 154068, Aug. 3, 2007)** In the foregoing case, it should be noted that nowhere in the petition did petitioner aver the required submission of supposing documents to justify its claim for refund. With that, the intendment of the law was not served.

16. The amount of eight million nine hundred sixty thousand two hundred forty five (P8,960,245[.00]) being claimed by petitioner representing alleged income tax erroneously or illegally collected for the calendar year 2009 is not properly documented.

17. The petitioner must also prove that it filed the corresponding administrative and judicial claim[s] for refund within the two-year prescriptive period pursuant to Section 204(C) in relation to Section 229 of the NIRC of 1997.

18. For ease of reference, Section 204(C) of the NIRC provides:

> '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 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 refund within the 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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19. In relation thereto, Section 229 of the NIRC is quoted as follows:

> 'SEC. 229. Recovery of Tax Erroneously or [I]llegally Collected. - [N]o suit or proceeding shall be maintained in any court for the recovery of any 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, 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 such tax, penalty, or sum has been paid under protest or duress.
>
> 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 therefore, refund or credit any tax, where on the face of the return upon which payments was made, such payment appears clearly to have been erroneously paid.'

20. Following the premise above-mentioned, petitioner has the burden of proving that the right to such tax refund indubitably exists and well-founded doubt is fatal to the claim."

Petitioner filed its corresponding Reply on July 16, 2012.[10]

After submitting their respective Pre-Trial Briefs, the Court ordered, in open court, that the parties file their Joint Stipulation of Facts and Issues within twenty (20) days, or until September 12, 2012. On September 11, 2012, the parties filed their Joint Stipulation of Facts and Issues.[11]

On September 20, 2012, the Court issued the Pre-Trial Order.[12]

On October 17, 2012, petitioner filed its Formal Offer of Evidence,[13] while respondent filed her Comment (Re: Formal Offer of Evidence received on October 17, 2012) on October 25, 2012.[14] This was resolved by the Court on November 13, 2012.[15]

On November 20, 2012, petitioner filed a "Motion for Reconsideration," praying that the Court admit several exhibits,[16] while respondent filed her "Comment (Re: Petitioner's Motion for Reconsideration of the Resolution dated November 13, 2012)"[17] on November 27, 2012. On December 5, 2012, the Court issued a Resolution admitting all but one exhibit.[18]

Petitioner then filed a "Motion for Reconsideration" on December 12, 2012 over the Resolution dated December 5, 2012, praying that Exhibit "I" be admitted.[19] On January 7, 2013, respondent filed her "Comment (Re: Motion for Reconsideration received on December 12, 2012."[20] On January 23, 2013, the Court issued a Resolution denying the admission of Exhibit "I."[21]

Not satisfied, petitioner filed another "Motion for Reconsideration" on February 11, 2013,[22] with respondent filing a

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[10] *Id.*, pp. 110-115.
[11] *Id.*, pp. 148-153.
[12] *Id.*, pp. 155-160.
[13] *Id.*, pp. 209-213.
[14] *Id.*, pp. 214-216.
[15] *Id.*, pp. 219-220.
[16] *Id.*, pp. 221-224, with *Annexes*.
[17] *Id.*, pp. 272-276.
[18] *Id.*, pp. 279-281.
[19] *Id.*, pp. 283-288.
[20] *Id.*, pp. 296-301.
[21] *Id.*, pp. 310-315.
[22] *Id.*, pp. 316-319.

"Comment (Re: Motion for Reconsideration dated February 8, 2013) with Motion to Expunge" on February 21, 2013.[23]

On March 18, 2013, the Court issued a Resolution, which denied respondent's Motion to Expunge, while placing petitioner's Motion for Reconsideration in abeyance.[24] Finally, on May 2, 2013, the Court issued a Resolution admitting Exhibit "I."[25]

On June 5, 2013, in open court, respondent manifested that she will no longer present evidence.[26] Thus, the Court ordered both parties to file their respective Memoranda within thirty (30) days.[27]

On July 5, 2013, petitioner filed its "Memorandum."[28] However, respondent failed to file her Memorandum, thus the Court promulgated a Resolution dated September 18, 2013, submitting the case for decision.[29]

Hence, this Decision.

The Issues

Based on the Joint Stipulation of Facts and Issues[30] filed by the parties on September 11, 2012, the issues are:

> "1. WHETHER THE AMENDMENTS TO SECTION 7 OF RR NO. 16-2008 INTRODUCED BY RR [NO.] 2-2010 AND RMC [NO.] 16-2010, WHICH EFFECTIVELY MOVED THE PERIOD WITHIN WHICH THE TAXPAYER MUST CHOOSE THE METHOD OF DEDUCTION TO BE APPLIED FOR THE WHOLE TAXABLE YEAR TO THE FIRST QUARTER OF SAID YEAR, MAY BE APPLIED FOR THE TAXABLE YEAR 2009 CONSIDERING THAT SAID AMENDMENTS WERE ISSUED IN 2010;

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[23] *Id.*, pp. 325-329.
[24] *Id.*, pp. 333-337.
[25] *Id.*, pp. 342-343.
[26] *Id.*, p. 344.
[27] *Id.*, p. 346.
[28] *Id.*, pp. 354-371.
[29] *Id.*, p. 378.
[30] *Id.*, p. 150.

2. WHETHER COL IS ENTITLED TO A TAX REFUND OR A TAX CREDIT CERTIFICATE AMOUNTING TO EIGHT MILLION NINE HUNDRED SIXTY THOUSAND TWO HUNDRED AND FORTY FIVE PESOS (PHP 8,960,245[.00]);

3. WHETHER PETITIONER HAS COMPLIED WITH THE SUBMISSION OF COMPLETE DOCUMENTS IN SUPPORT OF ITS ADMINISTRATIVE CLAIM FOR REFUND; and

4. WHETHER PETITIONER'S CLAIM FOR TAX REFUND OR THE ISSUANCE OF A TAX CREDIT CERTIFICATE FOR ALLEGED EXCESS INCOME TAX PAID FOR THE CALENDAR YEAR 2009 WAS FILED WITHIN THE PERIOD PRESCRIBED BY LAW."

The Ruling of the Court

RR No. 16-2008 applies to filings made for taxable year 2009

The fundamental issue to be resolved in the present case is whether or not the amendments made by RR No. 2-2010, which was issued on February 24, 2010, should be applied to petitioner's filings for taxable year 2009. To do so, the Court shall examine and analyze the factual circumstances leading up to the amendment.

On June 17, 2008, then President Gloria Arroyo, signed into law Republic Act No. 9504 (RA 9504),[31] which introduced several amendments to Republic Act No. 8284 (RA 8284).[32] One of the significant amendments introduced by RA 9504 was the increase in the rate for the Optional Standard Deduction (OSD) from 10% to 40%, as found in Section 34(L) of the 1997 NIRC, as amended. The said section now states that:

"SEC. 3. Section 34(L) of Republic Act No. 8424, as amended, otherwise known as the National Internal

[31] An Act Amending Sections 22, 24, 34, 35, 51, and 79 of Republic Act No. 8424, As Amended Otherwise Known as the National Internal Revenue Code of 1997.
[32] An Act Amending the National Internal Revenue Code, As Amended, and for Other Purposes, dated December 11, 1997.

Revenue Code of 1997, is hereby amended to read as follows:

> 'SEC. 34. *Deductions from Gross Income.* - Except for taxpayers earning compensation income arising from personal services rendered under an employer-employee relationship where no deductions shall be allowed under this Section other than under Subsection (M) hereof, in computing taxable income subject to income tax under Sections 24(A); 25(A); 26; 27(A), (B), (C); and 28(A)(1), there shall be allowed the following deductions from the gross income:
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> '(A) *Expenses.* -
>
> 'x x x.
>
> '(L) *Optional Standard Deduction.* - In lieu of the deductions allowed under the preceding Subsections, an individual subject to tax under Section 24, other than a nonresident alien, may elect a standard deduction in an amount not exceeding **forty percent (40%)** of his gross sales or gross receipts, as the case may be. In the case of a corporation subject to tax under Sections 27(A) and 28(A)(1), it may elect a standard deduction in an amount not exceeding forty percent (40%) of its gross income as defined in Section 32 of this Code. Unless the taxpayer signifies in his return his intention to elect the optional standard deduction, he shall be considered as having availed himself of the deductions allowed in the preceding Subsections. Such election when made in the return shall be irrevocable for the taxable year for which the return is made: *Provided,* That an individual who is entitled to and claimed for the optional standard shall not be required to submit with his tax return such financial statements otherwise required under this Code: *Provided, further,* That except when the Commissioner otherwise permits, the said

individual shall keep such records pertaining to his gross sales or gross receipts, or the said corporation shall keep such records pertaining to his gross income as defined in Section 32 of this Code during the taxable year, as may be required by the rules and regulations promulgated by the Secretary of Finance, upon recommendation of the Commissioner.

'(M) x x x.'

'x x x." *(Emphasis ours)*

In response to the amendment, the BIR, on November 26, 2008 issued RR No. 16-2008,[33] implementing Section 3 of RA 9504. Under the said regulation, taxpayers had the option of using either Itemized or OSD method in preparing their quarterly ITRs, provided only one method shall be applied in preparing the annual ITR. This regulation allowed the taxpayers to shift from the two deduction options from quarter to quarter.

On February 24, 2010, BIR issued Revenue Regulations No. 2-2010 (RR No. 2-2010),[34] which amended Sections 6 and 7 of RR No. 16-2008.

To clarify the period of applicability of the new regulation, BIR issued Revenue Memorandum Circular No. 016-10[35] on February 26, 2010, stating that the RR 2-2010 will also apply to taxable year 2009.[36]

Under these two issuances, BIR curtailed the taxpayer's option to choose the deduction method from quarter to quarter, which was previously allowed under RR No. 16-2008. Instead, the BIR required taxpayers to choose during its first quarterly filing, by indicating on the form whether it will opt for the Itemized or OSD Deduction. The choice of deduction method during the 1st quarter obligates the

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[33] Implementing the Provisions of Section 34(L) of the Tax Code of 1997, as Amended by Section 3 of Republic Act No. 9504, Dealing on the Optional Standard Deduction (OSD) Allowed to Individuals and Corporations in Computing Their Taxable Income.
[34] Amendment to Sections 6 and 7 of Revenue Regulations No. 16-2008 with Respect to the Determination of the Optional Standard Deduction (OSD) of General Professional Partnerships (GPPs) and the Partners Thereof, as well as the Manner and Period for Making the Election to Claim OSD in the Income Tax Returns.
[35] Disclosure of Election to Use the Optional Standard Deduction for Taxable Year 2009.
[36] *See* p. 17.

taxpayer to use the same method throughout the taxable year, as well as in preparation of the annual ITR.

In the present case, it is undeniable that during the period wherein petitioner was required to file its quarterly income tax return for the taxable year 2009, the regulation which was in effect was RR No. 16-2008. Thus taxpayers could shift from the two deduction methods from quarter to quarter, and only during the filing of the final adjustment income tax return is the taxpayer required to make a choice as to what method of deduction it or he shall employ for the purpose of determining its/his taxable net income for the entire year.

Petitioner bases its claim for refund on the fact that the new issuances cannot apply retroactively to its returns filed for taxable year 2009, as it would be prejudicial to its interest, which the 1997 NIRC, as amended, prohibits.

On the other hand, respondent posits the theory that with the issuance of RR No. 2-2010 and RMC No. 16-2010, the taxpayer's choice of deduction during the first quarter VAT returns for taxable year 2009, shall be applied to all subsequent quarterly returns, as well as the final adjustment return. Respondent states that there is no retroactive application of RR No. 2-2010 and RMC No. 16-2010, as both these issuances merely clarified the rules under RR No. 16-2008. Also, respondent claims that Section 7 of RR No. 16-2008 applies only to the transition period of taxable year 2008.

Therefore, under respondent's stance, petitioner paid the correct amount of taxes when it paid under protest the difference between the tax due using the OSD method and the Itemized method.

After careful consideration of the issue, the Court hereby finds for the petitioner.

Section 7 of RR No. 16-2008 and RR No. 2-2010, compared:

Revenue Regulation No. 16-2008	Revenue Regulation No. 2-2010
SECTION 7. *Other Implications of the Optional*	SECTION 7. *Other Implications of the Optional*

Standard Deduction. — A taxpayer who elected to avail of the OSD not exceeding forty percent (40%) of gross sales or gross receipts, in case of an individual taxable under Secs. 24(A) and 25(A)(1) of the Tax Code, or forty percent (40%) of gross income, in case of a corporation subject to tax under Sec. 27(A) or 28(A)(1) of the same Code shall signify in his/its return such intention, otherwise he/it shall be considered as having availed himself of the itemized deductions allowed under Sec. 34 of the Code. Once the election to avail the OSD is signified in the return, it shall be irrevocable for the taxable year for which the return is made. <u>This means that a taxpayer who initially filed a return availing OSD is precluded from amending said return in order to shift to the itemized deductions.</u> An individual taxpayer who is entitled to and claimed the OSD shall not be required to submit with his tax return such financial statements otherwise required under the Code. *Provided*, that, except when the Commissioner otherwise permits, the said individual shall keep such records pertaining to his gross sales or gross receipts. In the case of a corporation, however, said corporation is still required to submit its financial statements when it files its annual income tax return and to keep such records pertaining to its gross income as herein defined.	*Standard Deduction.* — A taxpayer who elected to avail of the OSD not exceeding forty percent (40%) of gross sales or gross receipts, in case of an individual taxable under Secs. 24(A) and 25(A)(1) of the Tax Code, or forty percent (40%) of gross income, in case of a corporation subject to tax under Sec. 27(A) or 28(A)(1) of the same Code shall signify in his/its return such intention, otherwise he/it shall be considered as having availed himself of the itemized deductions allowed under Sec. 34 of the Code. Once the election to avail of the OSD <u>or itemized deduction</u> is signified in the return, it shall be irrevocable for the taxable year for which the return is made. <u>The election to claim either the OSD or the itemized deduction for the taxable year must be signified by checking the appropriate box in the income tax return filed for the first quarter of the taxable year adopted by the taxpayer. Once the election is made, the same type of deduction must be consistently applied for all the succeeding quarterly returns and in the final income tax return for the taxable year. Any taxpayer who is required but fails to file the quarterly income tax return for the first quarter shall be considered as having availed of the itemized deductions option for the taxable year.</u> <u>Thus, a taxpayer who avails of</u>

<u>In the filing of the quarterly income tax returns, the taxpayer may opt to use either the itemized deduction or OSD. However, in filing the final adjustment income tax return, the taxpayer must make a choice as to what method of deduction it or he shall employ for the purpose of determining its/his taxable net income for the entire year. The taxpayer is, thus, not allowed to use a hybrid method of claiming its/his deduction for one taxable year.</u>	<u>the OSD in the first quarter of its/his taxable year shall have to claim the same OSD in determining its/his taxable income for the rest of the year, including the final income tax return which is due to be filed on or before the 15th day of the fourth month, following the close of the taxable year. Likewise, a taxpayer who avails of the itemized deduction in the first quarter of its/his taxable year or fails to file an income tax return for the first quarter of the taxable year, shall have to claim the itemized deduction in determining the taxable income for the rest of the year, including the final income tax return which is due to be filed on or before the 15th day of the fourth month, following the close of the taxable year.</u> An individual taxpayer who is entitled to and claimed the OSD shall not be required to submit with his tax return such financial statements otherwise required under the Code. *Provided*, that, except when the Commissioner otherwise permits, the said individual shall keep such records pertaining to his gross sales or gross receipts. In the case of a corporation, however, said corporation is still required to submit its financial statements when it files its annual income tax return and to keep such records pertaining to its gross income as herein defined.

(Emphasis Ours)

It is clear from the comparison chart above that the provision covering the filing of quarterly income tax returns, as well as the final adjustment return, was radically changed. Unlike the claim by respondent, this is not merely a clarification. By definition, a clarification is an interpretation that removes ambiguity. What we have here is a fundamental shift in policy.

Again, to emphasize, the new regulation requires the taxpayer to explicitly state the method of choice, which becomes irrevocable during the taxable year.

There is no question that for all the quarterly filings for taxable year 2010, RR No. 2-2010 must be fully enforced. However, the pivotal issue in the present case is whether or not petitioner is bound by RR No. 2-2010 for its quarterly returns and final adjustment return for taxable year 2009, when the new regulation was issued after the quarterly filings, but before the final adjustment return.

Considering the two issuances, RR No. 2-2010 and RMC No. 16-2010, dated February 24 and 26, 2010, respectively, respondent's stance is to apply the new regulation starting taxable year 2009. This is evidenced by RMC No. 16-2010, which states that:

> "This Circular is issued to remind taxpayers of the requirement for them to disclose their election to avail the Optional Standard Deduction (OSD) for the taxable year 2009.
>
> Taxpayers who are electing to avail of the OSD are required to check the appropriate box in the income tax return filed for the first quarter of the taxable year 2009, regardless of whether such taxpayer is adopting the calendar or fiscal year. Once the election is made, the same type of deduction must be consistently applied for all the succeeding quarterly returns and in the final income tax return for the taxable year. The failure to indicate the election to avail of the OSD shall be considered as having availed of the itemized deductions allowed under Section 34 of the Tax Code. Any taxpayer who is required but fails to file the income tax return for the first quarter shall be considered as having availed of

> the itemized deductions option for the taxable year 2009: *Provided*, however, That newly registered taxpayers shall disclose their election to avail the OSD in their initial quarterly income tax return which is required to be filed for the taxable year 2009."

The Court finds that the stance taken by respondent to be in direct contravention of Section 246[37] of the 1997 NIRC, as amended, which protects taxpayers from the retroactive application of a regulation if it is prejudicial to its interest.[38]

While it is true that when petitioner filed its final adjustment return on April 12, 2010, when RR No. 2-2010 had already been in effect, thus applying the new regulation for the filings done almost a year prior to its effectivity would result in an undue prejudice against the taxpayer. As such, RMC No. 16-2010 cannot be applied in this specific case. Section 246 of the 1997 NIRC, as amended, states that:

> "Section 246. *Non-Retroactivity of Rulings.* - Any revocation, modification or reversal of any of the rules and regulations promulgated in accordance with the preceding Sections or any of the rulings or circulars promulgated by the Commissioner shall not be given retroactive application if the revocation, modification or reversal will be prejudicial to the taxpayers, except in the following cases:
>
> (a) Where the taxpayer deliberately misstates or omits material facts from his return or any document required of him by the Bureau of Internal Revenue;
>
> (b) Where the facts subsequently gathered by the Bureau of Internal Revenue are materially different from the facts on which the ruling is based; or

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[37] Section 246. *Non-Retroactivity of Rulings.* - Any revocation, modification or reversal of any of the rules and regulations promulgated in accordance with the preceding Sections or any of the rulings or circulars promulgated by the Commissioner shall not be given retroactive application if the revocation, modification or reversal will be prejudicial to the taxpayers, except in the following cases:

(a) Where the taxpayer deliberately misstates or omits material facts from his return or any document required of him by the Bureau of Internal Revenue;

(b) Where the facts subsequently gathered by the Bureau of Internal Revenue are materially different from the facts on which the ruling is based; or

(c) Where the taxpayer acted in bad faith.

[38] *Records*, pp. 14-17.

(c) Where the taxpayer acted in bad faith."

As correctly pointed out by petitioner, to apply RR No. 2-2010 and RMC No. 16-2010, would effectively move the deadline given to the taxpayer for electing a deduction to an earlier date.[39] In this case, instead of having until April 15, 2010 to decide on the deduction method, petitioner will only have until May 30, 2009, or when the first quarterly income tax return was due. It is also important to point out that when petitioner filed its first quarterly return, no such policy to commit to a deduction method at the first quarter filing existed. The Court cannot support a stance wherein a taxpayer shall be penalized for merely complying with the effective regulation at that time, simply because a new regulation was issued after.

The principle is well entrenched that statutes, including administrative rules and regulations, operate prospectively only, unless the legislative intent to the contrary is manifest by express terms or by necessary implication.[40] Even then, there can be no retroactive application if it will prejudice the interest of the taxpayer, as stated in Section 246 of the 1997 NIRC, as amended. This principle is based on the familiar legal maxim "*lex prospicit, non respicit.*" The rationale is simple, the retroactive application of a law usually divests rights that have already become vested or impairs the obligations of contract and hence, is unconstitutional.[41] To rule otherwise would be contrary to the tenets of good faith, equity, and fair play.

As applied to this case, the application of RR No. 2-2010, in relation to RR No. 16-2010, clearly shows a prejudice in the case of petitioner. In fact, petitioner has paid under protest the additional income tax due, which if the Court allows respondent's stance, will cost it a total of Php8,960,245.00. The detrimental effect it will have on petitioner cannot be any clearer.

In addition, the Court must point out that respondent's theory that Section 7 of RR No. 16-2008 is merely transitory in nature has no ground to stand upon. There is nothing in the provision to support such a claim. In fact, to further disprove this theory, the same

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[39] *Id.*, p. 17.
[40] *BPI Leasing Corporation v. Court of Appeals, Court of Tax Appeals and Commissioner of Internal Revenue*, G.R. No. 127624, November 18, 2003, 416 SCRA 4, citing *Republic v. Sandiganbayan*, G.R. No. 113420, March 7, 1997, 269 SCRA 316.
[41] *Land Bank of the Philippines v. Arlene De Leon and Bernardo De Leon*, G.R. No. 143275, March 20, 2003, 388 SCRA 537, citing *Jose S. Francisco, et. al. v. Timoteo Certeza and Conchita Certeza*, G.R. No. L-16849, November 29, 1961, 3 SCRA 565.

regulation contains a separate provision dealing with the transitory period. Section 8 of the regulation states that:

> "Section 8. *Transitory Provisions.* — For taxable period 2008 which is the initial year of the implementation of the 40% OSD under RA 9504 which modified the OSD for individuals from 10% of gross income to 40% of gross sales/gross receipts and introduced the OSD as an alternative deduction for corporations, the 40% maximum deduction shall only cover the period beginning the effectivity of RA 9504. RA 9504 became effective July 06, 2008. However, in order to simplify and provide ease of administration during the transition period, July 1, 2008 shall be considered as the start of the period when the 40% OSD may be allowed.
>
> In the case of an individual taxpayer, he is given the option to either use the itemized method of deduction or the 40% OSD in the filing of his quarterly income tax return covering the third quarter ending September 30, 2008. However, if in the filing of his annual income tax return and he chooses OSD to be his method of deduction, the rate of OSD to be applied for the period covering January 2008 to June 30, 2008 shall only be 10% of gross income (i.e., where gross income is determined by deducting cost of sales from the gross sales or gross receipts) while the rate of OSD for the period covering July 01, 2008 to December 31, 2008 shall be 40% of gross sales/gross receipts. "

Reading the above provision, it is clear that the transitory provision only covers the period ending December 31, 2008. Also, the transitory provision only deals with the shift from 10% to 40%, in order to make it easier for both taxpayer and BIR to compute the correct taxes due. Further, the mere fact that the BIR has chosen to simply amend some of the provisions of RR No. 16-2008 shows that this regulation is not transitory at all, since the BIR has manifested its intent to apply the regulation with some modification for the foreseeable future.

Petitioner is entitled to a tax refund or a tax credit certificate amounting to Php 8,960,245

To begin with, it bears stressing that tax refunds are in the nature of tax exemptions. As such, they are regarded as in derogation of sovereign authority and to be construed in *strictissimi juris* against the person or entity claiming the exemption.[42] Thus, the claimant must be able to establish clearly and convincingly that it is entitled to such exemption.[43]

Given the circumstances, petitioner's reliance and subsequent application of Section 7 of RR No. 16-2008 is correct. As stated, the regulations allowed petitioner to file quarterly income tax returns using either deduction method, and choose the final deduction method for its Annual Income Tax Return. How petitioner chooses is a business/financial decision.

In this instance, petitioner chose the OSD method to file their final adjustment return, which is within their right to do so. Any additional payments, like the payment made under protest, are clearly in excess of what is legally due from petitioner, and is therefore refundable.

Respondent also alleges that petitioner did not comply with the submission of complete documents in support of its administrative claim for refund. However, a simple review of the administrative claim filed by petitioner to respondent reveals that the necessary documents and corresponding explanation was already included.[44] While there is no actual revenue regulation that enumerates what documents are required to support an administrative claim in a case such as this, it is in the Court's opinion that so long as the documentation presented by petitioner would already enable respondent to determine completely whether or not petitioner's claim is valid and the amount to be refunded, such will be sufficient.[45]

In this case, petitioner filed a letter explanation,[46] explaining the circumstances leading up to the claim for refund. Included was a

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[42] *Commissioner of Internal Revenue v. Procter and Gamble Phil. Mfg. Corp.*, G.R. No. 66838, December 2, 1991, 204 SCRA 377.
[43] *Commissioner of Internal Revenue v. S.C. Johnson and Son, Inc., et al.*, G.R. No. 127105, June 25, 1999, 309 SCRA 87
[44] *Exhibit* "I."
[45] *Acquire Asia Pacific Philippines, Inc. v. Commissioner of Internal Revenue*, CTA Case No. 8465, December 13, 2013.
[46] *See* Note 43.

computation table detailing how the amount of Php8,960,245.00, the total payment under protest, was reached:

> "In 2009, COL earned a total gross income of PhP199,412,292. Using the OSD method, COL's resulting income tax due is PhP35,895,113. On the other hand, under the itemized deduction method, COL's income tax payable is PhP44,855,258. Below are the details of the computation:

	Total Gross Income	Deduction	Taxable Income	Tax Rate	Income Tax Due
Itemized Deduction	199,417,292	49,899,434	149,517,858	30%	44,855,358
OSD	199,417,292	79,766,917	119,650,375	30%	35,895,113
Difference	**-**	**(29,867,483)**	**29,867,483**	**-**	**8,960,245**

> As such, should COL be required to use the itemized deduction method, it will be made to pay an additional PhP8,960,245 in income taxes."

Also attached was a copy of the Application for Tax Credits/Refunds (BIR Form No. 1914) showing the claim amount of Php8,960,245.

The Court deems this sufficient for respondent to determine if petitioner was entitled to the refund. Thus, there is no merit to respondent's assertion that that petitioner did not comply with the submission of complete documents in support of its administrative claim for refund.

Thus, the last issue to be determine by this Court is whether or not petitioner filed both its administrative and judicial claim within the reglementary period allowed by law.

The pertinent provisions of the 1997 NIRC, as amended, are:

> "SEC. 204. *Authority of the Commissioner to Compromise, Abate and Refund or Credit Taxes.* - The Commissioner may -

xxx xxx xxx

(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.

xxx xxx xxx

"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 such tax, penalty, or sum has been paid under protest or duress.

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."

Also significant are the cases of *ACCRA Investments Corporation v. The Honorable Court of Appeals, et al.;*[47] *Commissioner of Internal Revenue v. Philippine American Life Insurance Co.,*[48] and *Philippine Bank of Communications v. Commissioner of Internal Revenue, Court of Tax Appeals and Court of Appeals,*[49] which all state that the reckoning of the two-year prescriptive period for filing a claim for refund or tax credit of excess income tax paid/withheld should commence from the date of filing of the final adjustment return, as the refund can only be ascertained from this point.

The Final Adjustment Return for Corporate Annual Income Tax Returns must be filed on or before April 15, or on or before the fifteenth (15th) day of the fourth (4th) month following the close of the fiscal year, as the case may be.[50] Since petitioner paid under protest on April 15, 2010,[51] the date specified by the law and regulations wherein the taxpayers must file and pay income tax returns, the two (2)-year period wherein it is within petitioner's right to file for a refund or a claim for issuance of tax credit certificate begins on April 15, 2010.

The administrative claim was filed on October 11, 2011, while the judicial claim was filed on April 3, 2012. Thus, it is clear that both the administrative and judicial claim were filed within the two (2)-year period allowed under the law.

To deny the claim for refund or issuance of a tax credit certificate in this case would be an unjust enrichment on the part of the Government.

In *Commissioner of Internal Revenue v. Acesite (Philippines) Hotel Corporation,* the Supreme Court held that:

> "Tax refunds are based on the principle of quasi-contract or *solutio indebiti* and the pertinent laws governing this principle are found in Arts. 2142 and 2154 of the Civil Code, which provide, thus:

[47] G.R. No. 96322, December 20, 1991, 204 SCRA 957.
[48] G.R. No. 105208, May 29, 1995, 244 SCRA 446.
[49] G.R. No. 112024, January 28, 1999, 302 SCRA 250.
[50] Sec. 77(B) of the NIRC of 1997, as amended.
[51] *Exhibit* "G."

> Art. 2142. Certain lawful, voluntary, and unilateral acts give rise to the juridical relation of quasi-contract to the end that no one shall be unjustly enriched or benefited at the expense of another.
>
> Art. 2154. If something is received when there is no right to demand it, and it was unduly delivered through mistake, the obligation to return it arises.

When money is paid to another under the influence of a mistake of fact, that is to say, on the mistaken supposition of the existence of a specific fact, where it would not have been known that the fact was otherwise, it may be recovered. The ground upon which the right of recovery rests is that money paid through misapprehension of facts belongs in equity and in good conscience to the person who paid it.

The Government comes within the scope of *solutio indebiti* principle as elucidated in *Commissioner of Internal Revenue v. Fireman's Fund Insurance Company*, where we held that: 'Enshrined in the basic legal principles is the time-honored doctrine that no person shall unjustly enrich himself at the expense of another. It goes without saying that the Government is not exempted from the application of this doctrine."[52]

Thus, the Court finds that the claim for refund or issuance of tax credit certificate to be meritorious. Petitioner was able to substantiate the claim that it paid an additional Php8,960,245.00, through its submission of the Payment Form (BIR Form No. 0605)[53] and a copy of the bank deposit, reflecting the said amount.[54]

In addition, petitioner was able to present the Annual Income Tax Return (BIR Form No. 1702),[55] computed under the OSD method, showing that the total income tax due is Php35,895,113.00, as well as the EFPS print-outs,[56] showing that petitioner paid the full amount of

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[52] G.R. No. 147295, February 16, 2007, 516 SCRA 93, citing *Commissioner of Internal Revenue v. Fireman's Fund Insurance Company* G.R. No. L-30644, March 9, 1987, 148 SCRA 315, 324-325.
[53] *Exhibit* "G."
[54] *Exhibit* "G-1" and "G-1-a."
[55] *Exhibit* "F."
[56] *Exhibits* "C," "D," "E," and "F."

income tax due for taxable year 2009. Clearly, it shows that Php8,960,245.00 should be refunded.

WHEREFORE, in view of the foregoing, the Court hereby **GRANTS** the Petition for Review. Accordingly respondent is hereby **ORDERED** to **ISSUE** a **TAX CREDIT CERTIFICATE** in favor of petitioner **COL Financial Group, Inc.** in the amount of **Eight Million Nine Hundred Sixty Thousand Two Hundred Forty Five Pesos (Php8,960,245.00)**, representing the additional income tax paid under protest.

SO ORDERED.

LOVELL R. BAUTISTA
Associate Justice

WE CONCUR:

ESPERANZA R. FABON-VICTORINO
Associate Justice

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
Associate Justice
Chairperson

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