

**REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY**

SPECIAL FIRST DIVISION

**COLLIERS INTERNATIONAL
PHILS., INC.,**

Petitioner,

- versus -

C.T.A. CASE NO. 7768

Members:

**ACOSTA, Chairperson
BAUTISTA, and
CASANOVA, JJ.**

**COMMISSIONER OF INTERNAL
REVENUE,**

Respondent.

Promulgated:

MAY 31, 2010 ; 2:19pm

X-----

DECISION

CASANOVA, J.:

This is a Petition for Review filed on April 16, 2008 by Colliers International Philippines, Inc. (petitioner), pursuant to the Revised Rules of the Court of Tax Appeals, Rule 8, Section 4(a), in relation to Rule 4 thereof, to review by appeal the inaction of the Commissioner of Internal Revenue over petitioner's administrative claim for the issuance of a Tax Credit Certificate in the amount of FIVE MILLION FIVE HUNDRED FOURTEEN THOUSAND SEVEN HUNDRED FIFTEEN PESOS (P5,514,715.00), representing alleged unutilized creditable withholding tax for taxable year 2005. 

The facts of the case, based on joint stipulations and evidence on record, are as follows:

Colliers International Phils., Inc. is a corporation duly organized and existing under the laws of the Philippines with principal office address at 10th Floor, Tower 2 RCBC Plaza, Ayala Avenue, Makati City¹.

Respondent is the duly appointed Commissioner of Internal Revenue with office address at Bureau of Internal Revenue National Office Building, Diliman, Quezon City².

Petitioner is registered with the Bureau of Internal Revenue in Makati City with Tax Identification No. 000-174-107-000, as shown by its BIR Certificate of Registration No. 9RC0000066514³.

On May 2, 2006, petitioner filed an Amended Income Tax Return (BIR Form 1702) for the taxable year 2005. It also marked the box "To be issued a Tax Credit Certificate" in Line 31 of the abovementioned Return, indicating its intention to choose the issuance of tax credit certificate for its excess/unutilized CWT for the year ended 2005 in the amount of P5,514,715.00, and not to carry over the said amount⁴.

On April 16, 2008, petitioner filed an administrative claim for the issuance of tax credit certificate (TCC) with Revenue District Office No. 50 of the Bureau of Internal Revenue, Makati City, representing alleged excess creditable withholding taxes (CWT) for the taxable year 2005 amounting to P5,514,715.00⁵. On the same day, petitioner filed the instant Petition for Review. 

¹ Motion to Admit Joint Stipulation of Facts and Issues (JSFI), Par. 1(a), Docket p. 116; Exhibit "A", SEC Certificate of Registration No. 177201

² JSFI, Par. 1(b), Docket, p. 116

³ Exhibit "B", BIR Cert. of Registration (BIR Form No. 2303)

⁴ Exhibits "C" and "C-1", Annual Income Tax Return (BIR Form 1702)

⁵ JSFI, Par. 1(c), Docket, p. 116, Exhibits "D" to "D-4";

The claim by petitioner for refund was filed within the two (2) year reglementary period pursuant to Section 204(C) of the Tax Reform Act of 1997⁶.

In his Answer⁷, respondent interposed the following Special and Affirmative Defenses:

- "4. Petitioner failed to demonstrate that the tax subject of the case at bar was erroneously or illegally collected.
5. Taxes paid and collected are presumed to have been made in accordance with law and regulations, hence, not refundable.
6. In an action for tax refund/credit, the burden of proof is on the taxpayer to establish its right to refund and failure to adduce sufficient proof is fatal to the action for tax refund/credit.
7. It is incumbent upon the petitioner to show that it has complied with the provisions of Section 204 in relation to Section 229 of the 1997 Tax Code.
8. Claims for refund are construed strictly against the claimant for the same partakes the nature of exemption from taxation **(Commissioner of Internal Revenue vs. Ledesma, G.R. No. L-13509, January 30, 1970, 31 SCRA 95)** and as such, they are looked upon with disfavor **(Western Minolco Corp. vs. Commissioner of Internal Revenue, 124 SCRA 121).**"

During trial, petitioner presented its witnesses Mr. Emmanuel Y. Mendoza of Mendoza Querido & Co.⁸, the Court's duly commissioned Independent Certified Public Accountant⁹ and Ms. Dolores C. Aguirre, petitioner's Office Manager.¹⁰ Thereafter, petitioner filed its Formal Offer of Evidence on January 28, 2009, offering Exhibits "A" to "KKKKKKKK" and "MMMMMMMM" to "V⁸-4", inclusive of sub-markings in support of its claim, which this Court resolved their admissibility in the Resolutions¹¹ 

⁶ JSFI, Par. 1(d), Docket, p. 116

⁷ Answer, Docket, pp. 82-83

⁸ Minutes, Docket, p. 223; TSN, November 27, 2008

⁹ Minutes, Docket, p. 177; TSN, September 23, 2008

¹⁰ Minutes, Docket, p. 224; TSN, January 13, 2009

¹¹ Docket, pp. 251-252 & 295-296

dated March 3, 2009 and July 23, 2009. On the other hand, respondent submitted this case for decision without presenting any evidence.¹²

On September 17, 2009, this case was submitted for decision, considering petitioner's Memorandum filed on August 28, 2009, *sans* respondent's memorandum.¹³

The following are the parties' jointly stipulated issues¹⁴ submitted for this Court's consideration:

- "(a) Whether or not petitioner is entitled to the refund of Five Million Five Hundred Fourteen Thousand Seven Hundred Fifteen and 00/100 Pesos (P5,514,715.00) for unutilized creditable withholding tax for the calendar year 2005;
- (b) Whether or not petitioner has an unutilized/excess creditable withholding tax in the amount of P5,514,715.00 for calendar year ending December 31, 2005;
- (c) Whether or not the said unutilized creditable withholding taxes for calendar year 2005 were carried-over and applied as tax credit to the succeeding taxable years;
- (d) Whether or not the income from which the taxes were withheld was included as part of the gross income of the petitioner's 2005 income tax return; and
- (e) Whether or not the petitioner's claim for refund/tax credit allegedly representing unutilized/excess creditable withholding tax for calendar year ending December 31, 2005 in the amount of P5,514,715.00 is substantiated by documentary evidence."

The above stipulated issues boil down to the sole issue of whether petitioner is entitled to the issuance of tax credit certificate in the amount of P5,514,715.00, representing unutilized creditable withholding taxes for taxable year 2005.

The petition has no merit.

Under Section 76 of the National Internal Revenue Code (NIRC) of 1997, as amended, the corporate taxpayer's excess tax credits or overpaid income tax in a

¹² Minutes, Docket, p. 269; TSN, May 12, 2009

¹³ Docket, p. 310

¹⁴ Docket, pp. 116-117

given taxable year may either be refunded (either in the form of cash or tax credit certificate) or carried-over/applied to the succeeding taxable years. However, once the option to carry-over has been made, the same becomes irrevocable for that taxable period. Section 76 of the said law provides:

"SEC. 76. Final Adjustment Return. - Every corporation liable to tax under Section 27 shall file a final adjustment return covering the total taxable income for the preceding calendar or fiscal year. If the sum of the quarterly tax payments made during the said taxable year is not equal to the total tax due on the entire taxable income of that year, the corporation shall either:

- (A) Pay the balance of tax still due; or
- (B) Carry-over the excess credit; or
- (C) **Be credited or refunded with the excess amount paid, as the case may be.**

In case the corporation is entitled to a tax credit or refund of the excess estimated quarterly income taxes paid, the excess amount shown on its final adjustment return may be carried over and credited against the estimated quarterly income tax liabilities for the taxable quarters of the succeeding taxable years. **Once the option to carry-over and apply the excess quarterly income tax against income tax due for the taxable quarters of the succeeding taxable years has been made, such option shall be considered irrevocable for that taxable period and no application for cash refund or issuance of a tax credit certificate shall be allowed therefor.**" (Emphasis supplied)

Based on the above-quoted provision, a taxpayer, being entitled to a tax credit or refund, is allowed two (2) options, namely: (a) to carry-over the excess credit; or (b) to be credited or refunded with the excess amount paid (either in the form of cash or credit certificate).

In the case of *Paseo Realty & Development Corporation vs. Court of Appeals, Court of Tax Appeals and Commissioner of Internal Revenue*¹⁵, the Supreme Court held:

"As clearly seen from this provision, the taxpayer is allowed three (3) options if the sum of its quarterly tax payments made

¹⁵G.R. No. 119286. October 13, 2004 (440 SCRA 235)

during the taxable year is not equal to the total tax due for that year: (a) pay the balance of the tax still due; (b) carry-over the excess credit; or (c) be credited or refunded the amount paid. If the taxpayer has paid excess quarterly income taxes, it may be entitled to a tax credit or refund as shown in its final adjustment return which may be carried over and applied against the estimated quarterly income tax liabilities for the taxable quarters of the succeeding taxable years. **However, once the taxpayer has exercised the option to carry-over and to apply the excess quarterly income tax against income tax due for the taxable quarters of the succeeding taxable years, such option is irrevocable for that taxable period and no application for cash refund or issuance of a tax credit certificate shall be allowed.**" (Emphasis supplied)

In a recent case of *Commissioner of Internal Revenue vs. Bank of the Philippine Islands*,¹⁶ the Supreme Court ruled that the two options under Section 76 are alternative in nature and the choice of one precludes the other. It further stressed that Section 76 remains clear and unequivocal. Once the carry-over option is taken, actually or constructively, it becomes irrevocable. It mentioned no exception or qualification to the irrevocability rule. Thus, in the said *Bank of the Philippine Islands* case the Supreme Court held, as follows:

"The Court, in *Philam* recognized the two options offered by Section 76 of the NIRC of 1997 to a taxable corporation whose total quarterly income tax payments in a given taxable year exceeds its total income tax due. These options are: (1) filing for a tax refund or (2) availing of a tax credit. The Court further explained:

The first option is relatively simple. Any tax on income that is paid in excess of the amount due the government may be refunded, provided that a taxpayer properly applies for the refund.

The second option works by applying the refundable amount, as shown on the [Final Adjustment Return (FAR)] of a given taxable year, against the estimated quarterly income tax liabilities of the succeeding taxable year.

These two options under Section 76 are alternative in nature. The choice of one precludes the other. Indeed, in *Philippine Bank of Communications v. Commissioner of Internal Revenue*, the Court ruled that a

¹⁶ G.R. No. 178490. July 7, 2009 (592 SCRA 219)

corporation must signify its intention — whether to request a tax refund or claim a tax credit — by marking the corresponding option box provided in the FAR. While a taxpayer is required to mark its choice in the form provided by the BIR, this requirement is only for the purpose of facilitating tax collection.

One cannot get a tax refund and a tax credit at the same time for the same excess income taxes paid. x x x

The Court categorically declared in *Philam* that: "**Section 76 remains clear and unequivocal. Once the carry-over option is taken, actually or constructively, it becomes irrevocable.**" It mentioned no exception or qualification to the irrevocability rule.

Hence, the controlling factor for the operation of the irrevocability rule is that the taxpayer chose an option; and once it had already done so, it could no longer make another one. Consequently, after the taxpayer opts to carry-over its excess tax credit to the following taxable period, the question of whether or not it actually gets to apply said tax credit is irrelevant. Section 76 of the NIRC of 1997 is explicit in stating that once the option to carry over has been made, "no application for tax refund or issuance of a tax credit certificate shall be allowed therefor".

The last sentence of Section 76 of the NIRC of 1997 reads: "Once the option to carry-over and apply the excess quarterly income tax against income tax due for the taxable quarters of the succeeding taxable years has been made, such option **shall be considered irrevocable for that taxable period** and no application for tax refund or issuance of a tax credit certificate shall be allowed therefor." The phrase "for that taxable period" merely identifies the excess income tax, subject of the option, by referring to the taxable period when it was acquired by the taxpayer. xxx"

In the instant case, petitioner presented in evidence its Amended Income Tax Return (BIR Form 1702)¹⁷ for the taxable year **2005**. In the said Return, petitioner marked the box "**To be issued a Tax Credit Certificate**" in Line 31, indicating its intention to choose the issuance of tax credit certificate for its excess/unutilized CWT for the year ended 2005 in the amount of P5,514,715.00, **and not to carry over the said amount.**¹⁸ However, it also showed that its excess tax credits as of *a*

¹⁷ Exhibit "C"

¹⁸ Exhibit "C-1"

December 31, 2005 is in the amount of P11,506,612.00 consisting of **prior year's (2004) excess credits** in the amount of P5,991,897.00 and creditable taxes withheld for the year 2005 in the amount of P5,514,715.00, broken down as follows:

Minimum Corporate Income Tax	P	408,399.00
Less: Creditable Taxes Withheld During the Year		5,923,114.00
Balance of Creditable Taxes Withheld During the Year	P	5,514,715.00
Add: Prior Year's Excess Credits		5,991,897.00
Excess Tax Credits		P 11,506,612.00

Petitioner also presented in evidence its amended Annual Income Tax Return¹⁹ for taxable year **2006**. In the said return it showed that only the 2004 excess credits in the amount of P5,991,897.00 was carried-over by petitioner, without including the 2005 excess tax credits in the amount of P5,514,715.00, which amount may apparently be considered the subject of a separate claim for refund or issuance of tax credit certificate. Otherwise, the same amount of P5,514,715.00 should have been claimed as a carry over in the year 2006.

However, petitioner failed to present in evidence its originally filed Annual Income Tax Return for the taxable year 2005. What were presented in evidence were only the amended Annual Income Tax Returns of 2005 and 2006. Thus, this Court could not determine with certainty whether petitioner consistently opted to claim for tax refund/credit in 2005. The said Original Annual Income Tax Return should have been presented as evidence in Court to prove that indeed petitioner opted to claim for tax refund/issuance of tax credit certificate pertinent to the said 2005 excess tax credit.

As held in the above-quoted case of *Commissioner of Internal Revenue vs. Bank of the Philippine Islands* the option to carry-over has become irrevocable for that taxable period. Therefore, if petitioner has originally elected the option "To be carried over as tax credit next year/quarter", it will be precluded from claiming for

¹⁹ Exhibit "SSSSSSS-4"

the refund of the same excess tax credits. Petitioner cannot simply amend its Annual Income Tax Return, changing its original option of carry over to claim for refund/issuance of tax credit certificate.

Petitioner, thus, failed to discharge its burden of proof that it is entitled to the claim for refund/issuance of tax credit certificate in the amount of P5,514,715.00, representing unutilized creditable withholding tax for 2005.

It is well settled that petitioner, as taxpayer claimant, has the burden of proof to show that it is entitled to the refund of the amount claimed as refundable because taxes are presumed to have been collected in accordance with laws and regulations on the matter. The burden of proof rests upon the taxpayer to establish by sufficient and competent evidence its entitlement to a claim for refund.²⁰

For failure of petitioner to establish the factual basis of its claim for issuance of tax credit certificate, this Court has to deny its claim. Settled is the rule that a claim for tax refund is in the nature of tax exemption. Laws granting exemption from tax are construed in *strictissimi juris* against the taxpayer and liberally in favor of the taxing power. Taxation is the rule and exemption is the exception. The law does not look with favor on tax exemptions and he who thus seeks to be privileged must justify it by words too plain to be mistaken and too categorical to be misinterpreted.²¹

Based on the foregoing, this Court deems it no longer necessary to resolve the other issues in this case. 

²⁰ Commissioner of Internal Revenue vs. Tokyo Shipping Co., Ltd., G.R. No. 68252, May 26, 1995 (244 SCRA 336)

²¹ Sea-Land Services Inc. vs. Court of Appeals, G.R. No. 122605, April 30, 2001 (223 SCRA 31)

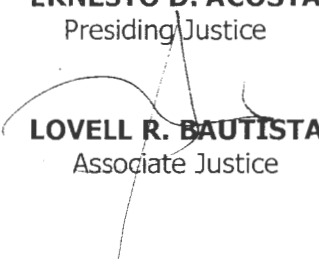
WHEREFORE, premises considered, the *Petition for Review* is hereby
DENIED for lack of merit.

SO ORDERED.


CAESAR A. CASANOVA
Associate Justice

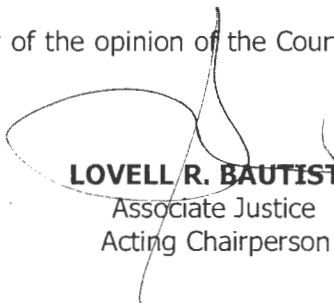
WE CONCUR:

(On Leave)
ERNESTO D. ACOSTA
Presiding Justice


LOVELL R. BAUTISTA
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
Acting Chairperson

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's Division.


JUANITO C. CASTAÑEDA, JR.
Acting Presiding Justice