REPUBLIC OF THE PHILIPPINES
Court Of Tax Appeals
QUEZON CITY

THIRD DIVISION

CHEVRON HOLDINGS, INC. [Formerly: CALTEX (ASIA) LIMITED],
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

C.T.A. CASE NO. 7624

Members:

BAUTISTA, Chairperson,
PALANCA-ENRIQUEZ, and
COTANGCO-MANALASTAS, JJ.

Promulgated:
JUN 2 2011
10:35 a.m.

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D E C I S I O N

PALANCA-ENRIQUEZ, J.:

THE CASE

This is a Petition for Review filed by Chevron Holdings, Inc. (hereafter "petitioner") praying for the refund or issuance of a tax credit certificate (TCC) for its unutilized input value-added taxes (hereafter "input VAT") in the aggregate amount of P26,933,760.40, representing unutilized input VAT for taxable year 2005.

THE PARTIES

Petitioner is a domestic corporation duly organized and existing under the laws of the State of Delaware, United States of America. It is licensed by the Securities and Exchange Commission (SEC) to transact business in the Philippines as a regional operating headquarters (ROHQ) under SEC Registration No. A199802486 dated June 3, 1998, with office address at 33/Floor, Yuchengco Tower I, RCBC Plaza, 6819 Ayala Avenue, Makati City.

Respondent, on the other hand, is the duly appointed Commissioner of Internal Revenue, vested with authority to act as such, including, among others, the power to decide, approve and grant refunds or tax credits of erroneously or excessively paid taxes. She may be served with summons, pleadings and other legal processes at her office at the BIR National Office Building, BIR Road, Diliman, Quezon City.

THE FACTS

The facts of the case are as follows:

As a regional operating headquarters, petitioner's purposes are limited to general administration and planning, business planning and coordination, sourcing and procurement of raw materials and components; corporate finance advisory services, marketing control and

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sales promotion, training and personnel management, logistic services, research and development, technical support and maintenance, data processing and communication, and business development.

Petitioner is registered with the BIR, as a VAT taxpayer, as evidenced by its BIR Certificate of Registration OCN 9RC0000136077, bearing Taxpayer Identification Number 201-056-391-000.

On the following dates, petitioner filed with the BIR its Original Quarterly VAT Returns for the four quarters of 2005, respectively:

Taxable Quarter	**Date of Filing of Original Return**
1st	April 22, 2005
2nd	July 22, 2005
3rd	January 25, 2006
4th	April 25, 2006

For the four quarters of 2005, petitioner incurred unutilized input VAT credits from its domestic purchases of capital goods, non-capital goods and services in the total amount of P31,183,668.49:

2005 Taxable Quarter	Unutilized Input VAT Credits				Total
	Domestic Purchases-Capital Goods	Domestic Purchases-Goods Other than Capital Goods	Domestic Purchases-Services	On purchases of Capital Goods Exceeding P1 Million	
1st	P2,490,335.83	379,200.67	4,955,679.55		7,825,216.05
2nd	319,395.14	206,687.43	2,837,338.75		3,363,421.32
3rd	2,939,734.37	197,836.39	6,029,948.19		9,167,518.95
4th		602,594.22	4,505,396.07	5,719,521.88	10,827,512.17
Total					P31,183,668.49

Of the total accumulated input VAT of P31,183,668.49, petitioner is claiming a refund of P26,933,760.40, allegedly attributable to its zero-rated sales for the four quarters of 2005.

On May 17, 2006, petitioner filed its administrative claim for refund of unutilized input VAT for the four quarters of taxable year 2005.

In view of respondent's inaction, on April 20, 2007, petitioner filed the present Petition For Review.

In her Answer, respondent alleged by way of special and affirmative defenses:

> "4. Petitioner failed to demonstrate that the tax subject of the case at bar was erroneously or illegally collected.
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> 5. Taxes paid and collected are presumed to have been made in accordance with law and regulations; hence, not refundable.
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> 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.
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> 7. 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)."

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Petitioner presented Ruben Rubio (Independent CPA), Ma. Geraldine S. Solis, Roberto D. Secular, Jr., and Belen Bergantin, as witnesses, and documentary evidence, marked as *Exhibits "A"* to *"B"*, *"F" to "G", "I" to J", "L", "M", "O", "P", "R" to "BB", and "GG to M 4-1"*, inclusive of their sub-markings, which were all admitted by the Court in the Resolution dated June 4, 2009.

Upon oral motion of counsel for petitioner during the September 1, 2009 hearing, and without objection from respondent's counsel, the Court allowed petitioner to present Editha Marquez, as additional witness.

On December 21, 2009, petitioner filed its Formal Offer of Evidence, submitting *Exhibits "N4" to "Q4"*, inclusive of their sub-markings, which were admitted in the Resolutions dated March 12, 2010 and May 21, 2010.

On the other hand, counsel for respondent did not present any witness and documentary evidence.

Thereafter, both parties were ordered to file their simultaneous memoranda, within thirty (30) days from notice; afterwhich the case shall be deemed submitted for decision.

On July 26, 2010, petitioner filed its "Memorandum". Respondent failed to file her memorandum within the prescribed period; hence, this Court, in a Resolution dated July 28, 2010, considered the petition submitted for decision.

On August 10, 2010, this case was originally raffled for completion to Associate Justice Lovell R. Bautista. During the deliberation of the case, Associate Justice Lovell R. Bautista voted to partially grant the petition; however, Associate Justice Olga Palanca- Enriquez registered her dissent, and voted to deny the petition, to which Associate Justice Amelia Cotangco-Manalastas concurred. Hence, on May 3, 2011, this case was re-assigned to Associate Justice Olga Palanca- Enriquez to write the majority opinion.

ISSUES

As stipulated by the parties, the following are the issues for this Court's consideration:

I

WHETHER CHEVRON HOLDINGS' SALES OF SERVICES QUALIFY AS ZERO-RATED.

II

WHETHER CHEVRON HOLDINGS' EXPORT PROCEEDS WERE INWARDLY REMITTED AND ACCOUNTED FOR IN ACCORDANCE WITH RULES

AND REGULATIONS OF THE BANGKO SENTRAL NG PILIPINAS.

III

WHETHER CHEVRON HOLDINGS HAS UNUTILIZED INPUT VAT IN THE AMOUNT OF PHP26,933,760.40 FOR TAXABLE YEAR 2005.

IV

WHETHER CHEVRON HOLDINGS' UNUTILIZED INPUT VAT ON DOMESTIC PURCHASES OF GOODS AND SERVICES FOR TAXABLE YEAR 2005 HAVE BEEN APPLIED AGAINST ITS OUTPUT TAXES FOR THE SUCCEEDING TAXABLE QUARTERS/YEARS.

V

WHETHER CHEVRON HOLDINGS' CLAIM FOR REFUND OR ISSUANCE OF TCC ON ITS UNUTILIZED INPUT VAT ATTRIBUTABLE TO ITS ZERO-RATED SALES FOR TAXABLE YEAR 2005 IS SUBSTANTIATED BY DOCUMENTARY EVIDENCE.

VI

WHETHER CHEVRON HOLDINGS IS ENTITLED TO ITS CLAIM FOR REFUND AND/OR THE ISSUANCE OF TAX CREDIT CERTIFICATE FOR THE AMOUNT OF PHP26,933,760.40 REPRESENTING ITS UNUTILIZED AND/OR UNAPPLIED INPUT VAT FOR THE PERIOD COVERING JANUARY 1, 2005 TO DECEMBER 31, 2005.

Principal Issue

The foregoing issues raised by both parties boil down to the principal issue of whether or not petitioner is entitled to a refund or the issuance of a TCC for its excess and unutilized input VAT for the four quarters of taxable year 2005 in the aggregate amount of P26,933,760.40.

THE COURT'S RULING

The petition has no merit.

Section 112 of the NIRC of 1997, as amended, provides:

"SEC. 112. *Refunds or Tax Credits of Input Tax. –*

(A) *Zero-rated or Effectively Zero-rated Sales.* – Any VAT-registered person, whose sales are zero-rated or effectively zero-rated may, **within two (2) years after the close of the taxable quarter when the sales were made,** apply for the issuance of a tax credit certificate or refund of creditable input tax due or paid attributable to such sales, except transitional input tax, to the extent that such input tax has not been applied against output tax: Provided, however, That in the case of zero-rated sales under Section 106(A)(2)(a)(1), (2) and (b) and Section 108(B)(1) and (2), the acceptable foreign currency exchange proceeds thereof had been duly accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP): Provided, further, That where the taxpayer is engaged in zero-rated or effectively zero-rated sale and also in taxable or exempt sale of goods or properties or services, and the amount of creditable input tax due or paid cannot be directly and entirely attributed to any one of the transactions, it shall be allocated proportionately on the basis of the volume of sales: Provided, finally, That for a person making sales that are zero-rated under Section 108(B)(6), the input taxes shall be allocated ratably between his zero-rated and non-zero-rated sales.

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> *(C)Period within which Refund or Tax Credit of Input Taxes shall be Made.* – In proper cases, the Commissioner shall grant a refund or issue the tax credit certificate for creditable input taxes within one hundred twenty (120) days from the date of submission of complete documents in support of the application filed in accordance with Subsection (A) hereof.
>
> In case of full or partial denial of the claim for tax refund or tax credit, or the failure on the part of the Commissioner to act on the application within the period prescribed above, the taxpayer affected may, within thirty (30) days from the receipt of the decision denying the claim or after the expiration of the one hundred twenty-day period, appeal the decision or the unacted claim with the Court of Tax Appeals."

In the recent case of Commissioner of Internal Revenue vs. Aichi Forging Company of Asia, Inc., G.R. No. 184823, October 6, 2010, the Supreme Court ruled that the second paragraph of *Section 112(C) of the NIRC of 1997, as amended,* envisions two scenarios: (1) when a decision is issued by the CIR before the lapse of the 120-day period; and (2) when no decision is made after the 120-day period. In both instances, the taxpayer has 30 days within which to file an appeal with the CTA.

In the case at bench, records show that on May 17, 2006, petitioner filed its administrative claim for refund for the four quarters of 2005, which is within the two (2) year prescriptive period.

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From May 17, 2006, which is also presumably the date petitioner submitted supporting documents, together with the aforesaid application for refund, the Commissioner of Internal Revenue has one hundred twenty (120) days or until September 14, 2006 within which to decide the administrative claim for refund. Within thirty (30) days from the lapse of the 120-day period or from September 15, 2006 to October 15, 2006, petitioner should have elevated its claim for refund to this Court, pursuant to *Section 112 (C) of the NIRC of 1997, as amended.*

Records show that petitioner filed the present Petition for Review, on April 20, 2007 only, which is 187 days way beyond the prescribed 30-day period to appeal to this Court.

In the case of *Ker and Company, Ltd. vs. Court of Tax Appeals, 4 SCRA 163; also cited in Rizal Commercial Banking Corporation vs. Commissioner of Internal Revenue, 491 SCRA 221,* the Supreme Court ruled that while the right to appeal a decision of the Commissioner to the CTA is merely a statutory remedy, nevertheless, the requirement that it must be brought within 30 days is jurisdictional.

For all the foregoing, the Court has no alternative, but to dismiss the instant Petition for Review for having been filed late.

In view of the above conclusion, we find no need to resolve the other issues raised by petitioner for being moot and academic.

WHEREFORE, premises considered, the present Petition for Review is hereby **DENIED DUE COURSE,** and, accordingly **DISMISSED** for having been filed late.

SO ORDERED.

OLGA PALANCA-ENRIQUEZ
Associate Justice

WE CONCUR:

(With Dissenting Opinion)
LOVELL R. BAUTISTA
Associate Justice

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

A T T E S T A T I O N

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, Third Division

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

Pursuant to Article VIII, Section 13 of the Constitution, and the Division 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.

ERNESTO D. ACOSTA
Presiding Justice

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

THIRD DIVISION

CHEVRON HOLDINGS, INC. [Formerly: CALTEX (ASIA) LIMITED], Petitioner,	**CTA Case No. 7624**
	Members:
-versus-	***Bautista,*** *Chairperson* ***Palanca-Enriquez,*** *and* ***Cotangco-Manalastas,*** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: JUN 2 2011 DBFernando 10:35 a.m.

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DISSENTING OPINION

BAUTISTA, J.:

In keeping with my stand that the judicial recourse to this Court by a taxpayer-claimant within thirty (30) days, either from the lapse of the one hundred twenty (120)-day period within which the Commissioner of Internal Revenue shall decide on the claim, or after the receipt of the decision denying the same, pursuant to Section 112(C)[1] of the 1997 National Internal Revenue Code ("NIRC"), as amended, is directory and permissive, and not mandatory nor jurisdictional, as long as it is made within the two (2)-year prescriptive period

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[1] As amended by Republic Act No. 9337.

prescribed under Sections 112 and 229 of the same Code,[2] I must dissent from the dismissal of the present Petition for Review.

With all due respect to the members of the Court *En Banc*, I maintain that the word "may" when used in a statute is permissive only and operates to confer discretion.[3] It denotes that the provision indicates a mere possibility, an opportunity or an option.[4]

A taxpayer-claimant *may* file an appeal within thirty (30) days, either from the lapse of the one hundred twenty (120)-day period within which the CIR shall decide on the claim, or after the receipt of the decision denying the same, so long as it is within the two (2)-year prescriptive period.

Section 112 (C) of the 1997 NIRC states that:

> SEC. 112. *Refunds or Tax Credits of Input Tax.* -
>
> xxx xxx xxx
>
> (C) *Period within which Refund or Tax Credit of Input Taxes shall be Made.* - In proper cases, the Commissioner shall grant a refund or issue the tax credit certificate for creditable input taxes within one hundred twenty (120) days from the date of submission of complete documents in support of the application filed in accordance with Subsection (A) hereof.
>
> In case of full or partial denial of the claim for tax refund or tax credit, or the failure on the part of the Commissioner to act on the application within the period prescribed above, the taxpayer affected may, within thirty (30) days from the receipt of the decision denying

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[2] Commissioner of Internal Revenue *v.* Aichi Forging Company of Asia, Inc., CTA EB No. 416, February 4, 2009.
[3] Bersabal *v.* Salvador, G.R. No. L-35910, July 21, 1978, 84 SCRA 176, *citing Dizon v. Encarnacion, G.R. No. L-18615, December 24, 1963, 9 SCRA 714.*
[4] De Ocampo *v.* Secretary of Justice, G.R. No. 147932, January 25, 2006, 480 SCRA 71; Melchor *v.* Gironella, G.R. No. 151138, February 16, 2005, 451 SCRA 476; Social Security Commission *v.* Court of Appeals, G.R. No. 152058, September 27, 2004, 439 SCRA 239.

> the claim or after the expiration of the one hundred twenty-day period, appeal the decision or the unacted claim with the Court of Tax Appeals.

The cited provision will show that it contains the word "may," thus indicating that it is merely permissive and operates to confer discretion.[5] It gives the taxpayer-claimant an option to pursue the claim with this Court, provided that the claim is filed within the prescriptive period.

This issue had been thoroughly addressed in the case of *Commissioner of Internal Revenue v. San Roque Power Corporation*,[6] to wit:

> **It bears stressing that the use of the word "may" in the afore-quoted provision indicates that judicial recourse within thirty days after the lapse of the 120-day period is directory and permissive and not mandatory nor jurisdictional as long as the said period is within the 2-year prescriptive period under Section 229 of the NIRC**. It is a well-settled doctrine in statutory construction that the word "may" when used in a statute, is permissive and operates to confer discretion; it cannot be construed as having a mandatory effect.
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> Corollary thereto, the Honorable Court of Appeals has ruled that when the 2-year prescriptive period is about to prescribe and the claim for refund with the Commissioner of Internal Revenue has not been acted upon by him, for the protection of the interest of the taxpayer, the latter should file a Petition for Review with the Court of Tax Appeals within the said 2-year period; otherwise, if the decision of the Commissioner is adverse to the taxpayer and it was made after the 2-year period, he can no longer appeal the same to the Court of Tax Appeals. The Court of Appeals ratiocinated in this wise:
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>> "It appears therefore, **that it is not necessary for the Commissioner of Internal Revenue to first act unfavorably on the claim for refund before the Court of Tax Appeals could validly take cognizance of the**

[5] Bersabal *v.* Salvador, G.R. No. L-35910, July 21, 1978, 84 SCRA 176, *citing Dizon v. Encarnacion, G.R. No. L-18615, December 24, 1963, 9 SCRA 714.*
[6] CTA EB No. 408 (CTA Case No. 6647), March 25, 2009.

> **case**. This is so because of the positive mandate of Section 230 of the Tax Code and also by virtue of the doctrine that the delay of the Commissioner in rendering his decision does not extend the reglementary period prescribed by statute.
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> Incidentally, **the taxpayer could not be faulted for taking advantage of the full two-year period set by law for filing his claim for refund. Indeed, no provision in the tax code requires that the claim for refund be filed at the earliest instance in order to give the Commissioner an opportunity to rule on it and the court to review the ruling of the Commissioner of Internal Revenue on appeal.** The law fixed the same period — two years — for filing a claim for refund with the Commissioner (Sec. 204, par. 3), and for filing of suit in court (Sec. 230), unlike in protests of assessment under Sec. 229 which fixed the period (thirty days from receipt of the decision) before an appeal could be made in court. Indeed, only the latter case presupposes the existence of a prior decision of the Commissioner which could be subjected to review by the court. In fact, the Court of Tax Appeals itself acknowledges that the claim for refund with the Commissioner could be pending simultaneously with a suit for refund filed before the former (*Commissioner of Internal Revenue vs. Bank of the Philippine Islands as Liquidator of Paramount Acceptance Corporation and the Court of Tax Appeals, CA-G.R. SP No. 34102, September 19, 1994*)." (*Boldfacing supplied*)

Therefore, there is no need to wait for the denial of the claim by the CIR or even his inaction after the expiration of the 120-day period before the taxpayer can lodge its appeal with this Court,[7] for claims for refund or tax credit, both in the administrative and judicial fora must be filed within the 2-year period.[8] Beyond that period, the taxpayer can no longer appeal to this Court.[9]

[7] Commissioner of Internal Revenue *v.* CE Cebu Geothermal Power Company, Inc., CTA EB No. 426, May 29, 2009.
[8] Commissioner of Internal Revenue *v.* Victorias Milling Co., Inc., No. L-24108, January 3, 1968, 22 SCRA 12.
[9] Commissioner of Internal Revenue *v.* Accenture, Inc., CTA EB No. 410 (CTA Case No. 7387), March 18, 2009.

In the present case, at the filing of the instant Petition for Review, the prevailing ruling of the Supreme Court was the case of *Atlas Consolidated Mining and Development Corporation v. Commissioner of Internal Revenue ("Atlas case')*,[10] where it was held that the reckoning of the two-year prescriptive period is from the date of filing of the Quarterly VAT Return.

The earliest quarter covered by the instant claim is the first quarter of 2005 for which the petitioner filed its original Quarterly VAT Return on April 22, 2005.[11] Applying the *Atlas case*, it is therefore clear that both the administrative claim filed on May 17, 2006 and the judicial claim filed on April 20, 2007 fall within the prescriptive two (2)-year period.

Accordingly, I vote that the Petition for Review filed by Chevron Holdings, Inc. [Formerly: Caltex (Asia) Limited], be given due course, subject to the verification of petitioner's unutilized input VAT attributable to its zero-rated sales.

LOVELL R. BAUTISTA
Associate Justice

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[10] G.R. Nos. 141104 and 148763, June 8, 2007, 524 *SCRA* 73.
[11] Exhibit "R"