REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

ATLANTA LAND CORPORATION,
Petitioner,

- versus -

C.T.A. CASE NO. 6987

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
SEP 24 2004

x - x

RESOLUTION

For resolution are respondent's Motion to Dismiss filed on June 8, 2004 and petitioner's Opposition thereto filed on August 3, 2004.

In moving for the dismissal of the above-entitled case, respondent alleges that the claim for refund is barred by prescription. Under Sections 204 (C) and 229 of the National Internal Revenue Code of 1997, a claim for refund should be made within two (2) years from date of payment of tax regardless of any supervening cause that may arise thereafter. As provided in Article 13 of the Civil Code of the Philippines and consistent with settled jurisprudence, the term "year" is to be understood as "three hundred sixty five days" (365). Petitioner alleged that it paid taxes for the transfer of property in the amount of P4,100,512,97 on May 17, 2002. Thus, it has only until May 16, 2004 within which to file the claim for refund since 2004 is a leap year. The latter has no longer cause of action as it has failed to claim for refund and the period to file the same has already prescribed.

Opposing the motion, petitioner argues that its claim for refund and the petition for review were filed before the 2-year period lapsed. There is no dispute that a year is understood as 365 days and that a tax refund should be filed within two (2) years. However, the reckoning period for claiming a refund starts from the day the right to a refund or credit arises and not from the time the taxes were actually paid. Applying the Supreme Court's ruling in **Citibank, N.A. vs. C.A.** (G.R. No. 107434, October 10, 1997), Petitioner submits that its right to a tax refund or credit commenced "only after ['the Deed of Dacion En Pago'] was rescinded [by Lank Bank of the Philippines] in August 05, 2002 and on the assumption that the petitioner agreed to the rescission."

In the alternative, Petitioner posits that it has a right to claim for refund as Republic Act (R.A.) No. 9182 known as "The Special Purpose Vehicle Act of 2002" exempts the subject transaction (*dacion en pago*) from payment of taxes which include documentary stamp tax, capital gains tax, creditable withholding tax and value-added tax.

The court agrees with the respondent. Petitioner failed to file its written claim for refund and, likewise, to file its appeal within the 2-year period from date it paid taxes. Based on the documents attached to the Petition for Review, Petitioner has only until February 28, 2004 within which

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to file its claim for refund of taxes paid for the first transfer of property and it has only until May 16, 2004 within which to file its claim for refund of taxes paid for the second transfer of property. The present petition was filed in this Court on May 18, 2004 which was beyond the reglementary period. Consequently, any attempt to recover the amount paid as taxes for the two transfers of properties, however erroneous or illegal the assessment or collection thereof, must necessarily fail. (**Philippine Acetylene Co., Inc. vs. Commissioner**, CTA Case No. 1331, November 7, 1965)

There is also no merit to petitioner's argument that the 2-year period should be counted from the date the bank rescinded the "*dacion en pago*". As admitted by petitioner, it filed a case (docketed as Civil Case No. 02-1137) against the Land Bank of the Philippines disputing the latter's unilateral act of rescinding the "*dacion en pago*" which is still pending before the Regional Trial Court of Makati City, Branch 178. As the rescission is still subject to judicial determination by the trial court (**Philippine National Construction Corp. vs. Mars Construction Enterprises, Inc.**, G.R. No. 133909. February 15, 2000), it is premature to treat the taxes paid as "erroneous payment" which entitles petitioner to rightfully claim for refund.

Further, there is no basis to countenance the petitioner's position that it has a right to claim for refund under R.A. 9182. The subsequent enactment of "The Special Purpose Vehicle Act of 2002" is a supervening cause which has no bearing in determining when the prescriptive period commenced to run within which the Petitioner should have filed its claim for refund under the National Internal Revenue Code of 1997. It emphatically states that a claim for refund must be filed within 2-years from date of payment **"regardless of any supervening cause that may arise after payment."**

Basic is the postulate that it is upon taxation that the government chiefly relies to obtain the means to carry on its operations. As payment of taxes is admittedly a burden, taxpayers are not left without recourse when they feel aggrieved due to erroneous and burdensome assessments made by Bureau of Internal Revenue agents or by the Commissioner. (**Dayrit vs. Hon. Cruz**, G.R. No. L-39910, September 26, 1988) However, the right to claim for refund may be waived or lost. In the present case, petitioner failed to assert its right before prescription sets in.

IN VIEW OF ALL THE FOREGOING, respondent's Motion to Dismiss is hereby **GRANTED.**

SO ORDERED.

ERNESTO D. ACOSTA
Presiding Justice

LOVELL R. BAUTISTA
Associate Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice