REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

TELECOMMUNICATIONS TECHNOLOGIES PHILIPPINES, INC.,
Petitioner,

- versus -

C.T.A. CASE NO. 6168

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
JUL 17 2003

x - x

D E C I S I O N

This is a judicial claim for refund or issuance of a tax credit certificate in the amount of P62,435,511.02 allegedly representing excess input value-added taxes (VAT) paid on domestic purchases and importation of capital goods for the period July 1998 to June 1999.

Petitioner is a corporation duly organized and existing under and by virtue of the laws of the Republic of the Philippines, with offices at the Telecoms Plaza Building, 316 Sen. Gil Puyat Avenue, Salcedo Village, Makati City, Metro Manila (*par 1.a, Joint Stipulation of Facts and Issues*). It is a wholly-owned subsidiary of Eastern Telecommunications Philippines, Inc. and was incorporated on October 31, 1991 primarily to own, design, manufacture, install, purchase, rent, manage, regulate, and to generally deal in and with telecommunications facitlities, and other services related thereto. It was granted a legislative franchise under Republic Act (RA) No. 7617, as amended by RA No. 7674, to install, operate and maintain telecommunication systems throughout the Philippines with international services and for other purposes (*Notes to 1998 Financial Statements under item number 1 captioned as "General", Exhibit J*)

Pursuant to Executive Order No. 109 dated July 12, 1993, otherwise known as the "Policy To Improve the Provision of Local Exchange Carrier Service", petitioner was required to construct and operate a three hundred thousand (300,000) line local exchange carrier network within NCR-A Manila and Region II in Luzon. To carry out said purpose, petitioner had to build and construct its telecommunications infrastructure for the local exchange carrier network (*pages 7 and 8, TSN, March 26, 2001*).

Accordingly, on April 28, 1997, petitioner entered into a contract with Alcatel Philippines, Inc. (Alcatel) for the supply and construction of said telecommunications infrastructure, denominated as "Contract No. 250-009 for Local Supply and Installation Related to 300,000 Lines Project in NCR.A Part of Manila, and Region II Part of Luzon" (*Exhibit I*).

As a VAT-registered entity (*par.1.c, Joint Stipulation of Facts and Issues*), petitioner timely filed its VAT returns for the third quarter of 1998 to the second quarter of 1999 reflecting excess input taxes of P66,108,777.60 as follows (*Annexes B to E, Petition for Review, pages 9-16, CTA records*):

		Input VAT			
Period	Output	Carried-over from	This quarter		Excess
Covered	VAT Due	previous quarter	Domestic	Importation	Input VAT
1998	(a)	(b)	(c)	(d)	(b)+(c)+(d)-(a)
3rd qtr	P 1,491.26	P 3,673,266.02	P 1,670,631.81	P 59.10	P 5,342,465.67
4th qtr	45,801.02	5,342,465.67	753,423.93	13,146.89	6,063,235.47
1999					
1st qtr	11,893.49	6,063,235.47	3,192,123.75		9,243,465.73
2nd qtr	7,909.61	9,243,465.73	318,257.27	56,554,964.21	66,108,777.60

The aforesaid excess input taxes were allegedly paid by petitioner on capital goods purchased in connection with its contract with Alcatel.

On February 26, 2001, petitioner filed amended returns for the third quarter of 1998 to the second quarter of 1999, reducing its excess input taxes of P66,108,777.60 to P62,435,511.58 as follows:

			Input VAT			
	Period	Output	Carried-over	This quarter		Excess
Exh.	Covered	VAT Due	from prev. qtr.	Domestic	Importation	Input VAT
	1998					
B	3rd qtr	P 1,491.26	P -	P 1,670,631.81	P 59.10	P 1,669,199.65
C	4th qtr	45,801.02	1,669,199.65	753,423.93	13,146.89	2,389,969.45
	1999					
D	1st qtr	11,893.49	2,389,969.45	3,192,123.75		5,570,199.71
E	2nd qtr	7,909.61	5,570,199.71	318,257.27	56,554,964.21	62,435,511.58

On March 1, 2000, petitioner filed a letter with the Bureau of Internal Revenue requesting for the tax refund/credit of P62,435,511.02 representing alleged excess input VAT paid on domestic purchases and importation of capital goods for the period July 1998 to June 1999 (*Exhibit H*).

Due to the inaction of the respondent and in order to suspend the running of the two-year prescriptive period for availing the judicial remedy for claiming refund/tax credit, petitioner elevated its claim before this court via a Petition for Review filed on September 29, 2000.

Respondent, in his Answer filed on November 14, 2000, interposed the following Special and Affirmative Defenses:

> "4. Assuming without admitting that petitioner filed a written claim for refund, the same is subject to investigation by the Bureau of Internal Revenue;

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 Tax Code, as amended as well as the requirements provided for in Revenue Regulations No. 5-87, as amended;

8. Claims for refund are construed strictly against the claimant for the same partakes (*sic*) 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**)."

To support its claim, petitioner presented testimonial and documentary evidence. Respondent, on the other hand, submitted this case for decision without presenting any controverting evidence (*page 177, CTA Records*).

On April 28, 2003, the case was submitted for decision without the respondent's memorandum.

As jointly stipulated by the parties, the issues to be resolved by this court are:

a. Whether or not the petitioner has an unutilized input VAT paid on domestic purchases and importation of capital goods for the period July 1998 to June 1999 in the amount of P62,435,511.02;

b. Whether or not the petitioner's alleged unutilized input VAT on domestic purchases and importation of capital goods for the period July 1998 to June 1999 have been applied against its output taxes;

c. Whether or not the purchases and importation on which the P62,502,606.96 (should be P62,435,511.02) input VAT was paid are considered as domestic purchases and importation of capital goods;

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d. Whether or not the domestic purchases and importation on which the above P62,502,606.96 (should be P62,435,511.02) input VAT was paid are used by petitioner in its VAT taxable business;

e. Whether or not the petitioner's claim for refund of alleged unutilized input VAT on domestic purchases and importation of capital goods for the period July 1998 to June 1999 are substantiated by documentary evidence; and

f. Whether or not petitioner filed an administrative claim for refund of the subject excess input VAT with the Bureau of Internal Revenue at its Revenue District Office No. 49 at Makati City.

Simply put, the main issue to be resolved in the case at bar is: Whether or not petitioner, based on the evidence presented, is entitled to a refund or issuance of a tax credit certificate in the amount of P62,435,511.02 representing excess unutilized input VAT payments on capital goods purchased for the period starting July 1998 and ending June 1999.

Petitioner anchors its claim for refund/tax credit on Section 112 (B) of the Tax Code, which we quote as follows:

> "**Sec. 112.** ***Refunds or Tax Credits of Input Tax.*** - x x x
>
> "(B) ***Capital goods.*** — A VAT-registered person may apply for the issuance of a tax credit certificate or refund of input taxes paid on capital goods imported or locally purchased, to the extent that such input taxes have not been applied against output taxes. The application may be made only within two (2) years after the close of the taxable quarter when the importation or purchase was made.

Relative thereto, Sections 4.106-1 and 4.104-5 of Revenue Regulations No. 7-95 state thus:

> "**SEC. 4.106-1. Refunds or tax credits of input tax**. — (a) x x x
>
> (b) **Capital Goods**. - x x x

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> *"Capital goods or properties" refer to goods or properties with estimated useful life greater than one year and which are treated as depreciable assets under Section 29 (f), used directly or indirectly in the production or sale of taxable goods or services.*
>
> **"SEC. 4.104-5. Substantiation of claims for input tax credit**. — (a) Input taxes shall be allowed only if the domestic purchase of goods, properties or services is made in the course of trade or business. The input tax should be supported by an invoice or receipt showing the information as required under Section 108 (a) and 238 of the Code. x x x"

Plainly, from the above provisions, in order to be entitled to a refund/tax credit of input VAT paid on capital goods purchased, petitioner must prove that:

1) it is a VAT registered entity;

2) it paid input VAT on capital goods purchased;

3) its input VAT payments on capital goods are duly supported by VAT invoices and/or official receipts;

4) it did not offset or apply the claimed input VAT payments on capital goods against any output VAT liability; and

5) the claim for refund was filed within the two-year prescriptive period both in the administrative and judicial levels.

Records reveal that petitioner complied with all the aforementioned requirements but only to the extent of P9,423,722.81 out of the total claim of P62,435,511.02.

The fact that petitioner is duly registered as a VAT taxpayer is not disputed (*par. 1.c, Joint Stipulation of Facts*).

As to the second and third requisites, the commissioned independent certified public accountant (CPA), Mr. Nicanor N. Bacsal, in his report dated November 22, 2001 (*Exhibit N*), stated that only the input taxes of P61,881,782.39 (*as summarized in Exhibit N-1*) were properly substantiated and that all relate to petitioner's purchases of capital

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goods in US dollars from Alcatel Philippines, Inc. in pursuance of Contract No. 250-009 for the local supply and installation related to petitioner's 300,000 Lines Local Exchange Carrier Network. In computing for the input taxes of P61,881,782.39, Mr. Nicanor N. Bacsal, used the applicable monthly average peso-dollar rates provided by the Bangko Sentral ng Pilipinas (*Exhibit N-2*). However, the CPA should have used the exchange rates indicated in the Certification issued by Alcatel (*Exhibit O*) because these were used in determining the VAT that will finally be remitted to the Bureau of Internal Revenue. Therefore, the total input taxes charged by Alcatel to petitioner of P61,881,782.39 as found by the CPA should have only been P60,435,151.93 after applying the exchange rates indicated in Alcatel's Certification, as shown below:

Exh.	Inv. No.	Inv. Date	Total Inv. Amount (in US$)	Input VAT (in US$)	Peso Rate	Input VAT (in Phil Peso)
M-1	33520	2/23/98	118,256.49	10,750.59	42.66	458,620.17
M-2	33521	2/23/98	651,454.03	59,223.09	42.66	2,526,457.19
M-3	33522	3/23/98	899,665.22	81,787.75	40.41	3,305,042.86
M-4	33523	3/23/98	34,692.57	3,153.87	40.41	127,447.89
M-5	33524	3/23/98	151,911.65	13,810.15	40.41	558,068.16
M-6	33525	3/23/98	379,211.53	34,473.78	40.41	1,393,085.25
M-7	33527	3/31/98	273,214.43	24,837.68	40.41	1,003,690.47
M-8	33529	3/31/98	687,937.82	62,539.80	40.41	2,527,233.40
M-9	33530	3/31/98	128,717.33	11,701.58	40.41	472,860.66
M-10	33532	4/13/98	1,252,086.66	113,826.06	39.00	4,439,216.34
M-11	33533	4/30/98	137,308.88	12,482.63	39.00	486,822.38
M-12	33534	4/30/98	603,628.59	54,875.33	39.00	2,140,137.71
M-13	33535	4/30/98	433,225.93	39,384.18	39.00	1,535,982.83
M-14	33542	7/2/98	348,796.48	32,078.22	40.35	1,294,356.18
M-15	33543	7/2/98	24,608.84	2,263.35	40.35	91,326.17
M-16	33536	5/18/98	1,056,005.77	96,000.52	38.44	3,690,259.99
M-17	33537	5/18/98	414,584.54	37,689.50	38.44	1,448,784.38
M-18	33538	5/18/98	472,303.98	42,936.73	39.00	1,674,532.28
M-19	33539	6/1/98	540,270.90	49,115.54	39.30	1,930,240.72
M-20	33540	6/1/98	856,663.05	77,878.46	39.30	3,060,623.44
M-21	33541	6/1/98	356,096.74	32,372.43	39.30	1,272,236.54
M-22	33548	8/14/98	581,827.79	53,512.59	41.78	2,235,755.97
M-23	33549	8/14/98	24,608.84	2,263.35	41.78	94,562.76
M-24	33550	8/14/98	348,796.48	32,078.22	41.78	1,340,228.03

M-25	33551	9/21/98	348,796.48	32,078.22	43.04	1,380,646.59
M-26	33552	9/21/98	24,608.84	2,263.35	43.04	97,414.58
M-27	33553	9/21/98	273,907.55	25,192.17	43.04	1,084,270.78
M-28	33555	10/26/98	24,608.84	2,263.35	43.78	99,089.46
M-29	33557	10/26/98	356,316.35	32,771.57	43.78	1,434,739.38
M-30	33559	11/17/98	184,909.88	17,006.68	42.89	729,416.33
M-31	33560	11/17/98	24,608.84	2,263.35	42.89	97,075.08
M-32	33561	11/17/98	194,249.76	17,865.78	42.89	766,263.30
M-33	33563	12/9/98	50,643.01	4,657.80	39.94	186,032.65
M-34	33565	12/9/98	30,177.47	2,775.52	39.34	109,188.96
M-35	33566	12/9/98	327,269.23	30,024.70	39.94	1,199,186.52
M-36	33567	12/9/98	560,040.25	51,379.84	39.94	2,052,110.81
M-37	33571	12/9/98	706,826.55	65,007.41	39.94	2,596,395.84
M-38	33554	10/26/98	512,683.09	47,149.76	43.78	2,064,216.62
M-39	33556	10/26/98	174,096.54	16,012.22	43.78	701,015.12
M-40	33572	1/14/99	257,137.57	23,648.05	39.07	923,929.39
M-41	33574	1/14/99	277,725.90	25,479.44	39.07	995,481.72
M-42	33575	1/14/99	174,066.68	15,969.42	39.07	623,925.24
M-43	33577	1/14/99	19,464.87	1,790.25	39.07	69,944.95
M-44	33578	2/12/99	82,423.08	7,578.99	38.40	291,033.37
M-45	33579	2/12/99	3,718.37	341.99	38.40	13,132.45
M-46	33581	2/12/99	109,473.06	10,043.40	38.40	385,666.56
M-47	33583	2/12/99	85,796.95	7,871.28	38.40	302,257.15
M-48	33584	2/26/99	119,900.00	11,000.00	38.40	422,400.00
M-49	33586	2/26/99	473,619.63	43,451.34	38.40	1,668,531.53
M-50	33587	2/26/99	293,566.45	26,932.70	38.40	1,034,215.76
			16,466,509.78	1,503,853.95		60,435,151.93

A scrutiny of the invoices issued by Alcatel (*Exhibits M-1 to M-50, inclusive of sub-markings*) and Contract No. 250-009 (*Exhibit I*) reveals that all of the purchases corresponding to the above input taxes of P60,435,151.93 conform with the definition of capital goods under Section 4.106-1 of Revenue Regulations No. 7-95. These purchases consisted of the outside plant, building, telecommunication equipment, installation commissioning cost including the project management cost for the local supply and installation of petitioner's 300,000 Lines Local Exchange Carrier Network. Nevertheless, this court disallows the following input taxes of P45,893,745.66

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corresponding to the services supplied by Alcatel for petitioner's failure to substantiate such input taxes by VAT official receipts:

Exh.	Inv. No.	Inv. Date	Total Inv. Amount (in US$)	Input VAT (in US$)	Peso Rate	Input VAT (in Phil Peso)
M-2	33521	2/23/98	651,454.03	59,223.09	42.66	2,526,457.19
M-3	33522	3/23/98	899,665.22	81,787.75	40.41	3,305,042.86
M-6	33525	3/23/98	379,211.53	34,473.78	40.41	1,393,085.25
M-7	33527	3/31/98	273,214.43	24,837.68	40.41	1,003,690.47
M-8	33529	3/31/98	687,937.82	62,539.80	40.41	2,527,233.40
M-10	33532	4/13/98	1,252,086.66	113,826.06	39.00	4,439,216.34
M-12	33534	4/30/98	603,628.59	54,875.33	39.00	2,140,137.71
M-13	33535	4/30/98	433,225.93	39,384.18	39.00	1,535,982.83
M-14	33542	7/2/98	348,796.48	32,078.22	40.35	1,294,356.18
M-15	33543	7/2/98	24,608.84	2,263.35	40.35	91,326.17
M-16	33536	5/18/98	1,056,005.77	96,000.52	38.44	3,690,259.99
M-17	33537	5/18/98	414,584.54	37,689.50	38.44	1,448,784.38
M-19	33539	6/1/98	540,270.90	49,115.54	39.30	1,930,240.72
M-20	33540	6/1/98	856,663.05	77,878.46	39.30	3,060,623.44
M-23	33549	8/14/98	24,608.84	2,263.35	41.78	94,562.76
M-24	33550	8/14/98	348,796.48	32,078.22	41.78	1,340,228.03
M-25	33551	9/21/98	348,796.48	32,078.22	43.04	1,380,646.59
M-26	33552	9/21/98	24,608.84	2,263.35	43.04	97,414.58
M-28	33555	10/26/98	24,608.84	2,263.35	43.78	99,089.46
M-30	33559	11/17/98	184,909.88	17,006.68	42.89	729,416.33
M-31	33560	11/17/98	24,608.84	2,263.35	42.89	97,075.08
M-33	33563	12/9/98	50,643.01	4,657.80	39.94	186,032.65
M-36	33567	12/9/98	560,040.25	51,379.84	39.94	2,052,110.81
M-37	33571	12/9/98	706,826.55	65,007.41	39.94	2,596,395.84
M-38	33554	10/26/98	512,683.09	47,149.76	43.78	2,064,216.62
M-40	33572	1/14/99	257,137.57	23,648.05	39.07	923,929.39
M-41	33574	1/14/99	277,725.90	25,479.44	39.07	995,481.72
M-43	33577	1/14/99	19,464.87	1,790.25	39.07	69,944.95
M-44	33578	2/12/99	82,423.08	7,578.99	38.40	291,033.37
M-45	33579	2/12/99	3,718.37	341.99	38.40	13,132.45
M-46	33581	2/12/99	109,473.06	10,043.40	38.40	385,666.56
M-48	33584	2/26/99	119,900.00	11,000.00	38.40	422,400.00
M-49	33586	2/26/99	473,619.63	43,451.34	38.40	1,668,531.53
			12,575,947.37	1,147,718.04		45,893,745.66

The various bank credit advices/memos issued by Citibank N.A. showing Alcatel's receipt of payment remittances from petitioner through ING N.V. (Manila Branch) as well as the certified true copies of various internal memoranda of Alcatel acknowledging receipt of payments (*Exhibits P-2 to P-20*) cannot be considered as valid substantiation of input VAT payments on purchases of services. The output or input VAT on sales/purchases of **services** is determined based on the amount shown in the official receipt as provided under Section 108(C) of the Tax Code, to wit:

> "(C) *Determination of the Tax.* — The tax shall be computed by multiplying the total amount indicated in the official receipt by one-eleventh (1/11)." (*Emphasis supplied*)

We now proceed to the remaining input VAT pertaining to **goods** supplied by Alcatel to petitioner in the amount of P14,541,406.27, broken down as follows:

Exh.	Inv. No.	Inv. Date	Total Inv. Amount (in US$)	Input VAT (in US$)	Peso Rate	Input VAT (in Phil Peso)
M-1	33520	2/23/98	118,256.49	10,750.59	42.66	458,620.17
M-4	33523	3/23/98	34,692.57	3,153.87	40.41	127,447.89
M-5	33524	3/23/98	151,911.65	13,810.15	40.41	558,068.16
M-9	33530	3/31/98	128,717.33	11,701.58	40.41	472,860.66
M-11	33533	4/30/98	137,308.88	12,482.63	39.00	486,822.38
M-18	33538	5/18/98	472,303.98	42,936.73	39.00	1,674,532.28
M-21	33541	6/1/98	356,096.74	32,372.43	39.30	1,272,236.54
M-22	33548	8/14/98	581,827.79	53,512.59	41.78	2,235,755.97
M-27	33553	9/21/98	273,907.55	25,192.17	43.04	1,084,270.78
M-29	33557	10/26/98	356,316.35	32,771.57	43.78	1,434,739.38
M-32	33561	11/17/98	194,249.76	17,865.78	42.89	766,263.30
M-34	33565	12/9/98	30,177.47	2,775.52	39.34	109,188.96
M-35	33566	12/9/98	327,269.23	30,024.70	39.94	1,199,186.52
M-39	33556	10/26/98	174,096.54	16,012.22	43.78	701,015.12
M-42	33575	1/14/99	174,066.68	15,969.42	39.07	623,925.24
M-47	33583	2/12/99	85,796.95	7,871.28	38.40	302,257.15
M-50	33587	2/26/99	293,566.45	26,932.70	38.40	1,034,215.76
			3,890,562.41	356,135.92		14,541,406.27

While the above input taxes of P14,541,406.27 were properly supported by invoices in accordance with Section 106(D) of the Tax Code which reads as follows:

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> "(D) *Determination of the Tax.* — The tax shall be computed by multiplying the total amount indicated in the invoice by one-eleventh (1/11)." (*Emphasis supplied*)

nonetheless, the following input taxes of P5,050,588.08 shall be disallowed because the corresponding invoices were dated outside of the subject period of claim:

Exh.	Inv. No.	Inv. Date	Total Inv. Amount (in US$)	Input VAT (in US$)	Peso Rate	Input VAT (in Phil Peso)
M-1	33520	2/23/98	118,256.49	10,750.59	42.66	458,620.17
M-4	33523	3/23/98	34,692.57	3,153.87	40.41	127,447.89
M-5	33524	3/23/98	151,911.65	13,810.15	40.41	558,068.16
M-9	33530	3/31/98	128,717.33	11,701.58	40.41	472,860.66
M-11	33533	4/30/98	137,308.88	12,482.63	39.00	486,822.38
M-18	33538	5/18/98	472,303.98	42,936.73	39.00	1,674,532.28
M-21	33541	6/1/98	356,096.74	32,372.43	39.30	1,272,236.54
			1,399,287.64	127,207.98		5,050,588.08

Anent the fourth requisite, petitioner's total output VAT liability of P67,095.38 as reflected in its amended VAT returns for the third quarter of 1998 to the second quarter of 1999 (*Exhibits B to E*) shall be deducted from the properly substantiated input taxes of P9,490,818.19 (P14,541,406.27 less P5,050,588.08). Only the resulting amount of P9,423,722.81 represents petitioner's unutilized substantiated input taxes. Inasmuch as petitioner proved that no amount of the claimed input taxes were carried over in its amended succeeding VAT returns for the third and fourth quarters of 1999 *(Exhibits F & G)*, the substantiated excess input taxes of P9,423,722.81 appears to be refundable.

Finally, as to the fifth requirement, it was established that the subject claim was filed by petitioner within the two-year prescriptive period both in the administrative and judicial levels. In this court's ***Resolution dated July 20, 1998*** in the case of ***Atlas Consolidated Mining and Development Corporation vs. Commissioner of Internal Revenue, CTA Case No. 5296***, the reckoning of the two-year prescriptive period starts

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from the date of filing of the quarterly VAT return. It is to be noted that the earliest quarter covered by the subject claim is the third quarter of 1998 for which petitioner originally filed its return on October 30, 1998 (*par. 1.d, Joint Stipulation of Facts and Issues*). Counting from this date, both the administrative claim filed on March 1, 2000 (*Exhibit H*) and the Petition for Review filed on September 29, 2000 fall within the two-year prescriptive period.

WHEREFORE, respondent is hereby **ORDERED** to **REFUND** or, in the alternative, **ISSUE A TAX CREDIT CERTIFICATE** to petitioner in the amount of P9,423,722.81 representing unutilized excess input VAT paid on capital goods purchased for the period July 1, 1998 to June 30, 1999.

SO ORDERED.

ERNESTO D. ACOSTA
Presiding Judge

WE CONCUR:

JUANITO C. CASTAÑEDA, JR.
Associate Judge

LOVELL R. BAUTISTA
Associate Judge

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

I hereby certify that the above decision was reached after due consultation with the members of the Court of Tax Appeals in accordance with Section 13, Article VIII of the Constitution.

ERNESTO D. ACOSTA
Presiding Judge

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