REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

PHILEX MINING CORPORATION, *Petitioner,*	**CTA EB No. 1434** (CTA Case Nos. 8676 & 8687)
	Present: Del Rosario, P.J. Castañeda, Jr., Bautista, Uy, Casanova, Fabon-Victorino, Mindaro-Grulla, Ringpis-Liban, and Manahan, JJ.
- *versus* –	
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	Promulgated: FEB 28 2017 2:03 p.m.

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DECISION

CASTAÑEDA, JR., J.:

This is a Petition for Review[1] filed by Philex Mining Corporation (Philex) on March 3, 2016 which seeks the reversal of the Decision dated October 12, 2015,[2] (assailed Decision) as well as the Resolution dated February 3, 2016[3] (assailed Resolution) of the Third Division (Court in Division)[4] of this Court in CTA Case Nos. 8676 & 8687, entitled *Philex Mining Corporation v. Commissioner of Internal Revenue.*

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[1] Court *En Banc's* Docket, pp.1-12.
[2] *Id.*, pp. 17-27.
[3] *Id.*, pp. 29-34.
[4] Composed of Associate Justice Lovell R. Bautista as Chairperson, Associate Justice Esperanza R. Fabon-Victorino and Associate Justice Ma. Belen M. Ringpis-Liban as members.

The respective dispositive portions of the Assailed Decision and Resolution are quoted hereunder:

Assailed Decision:

"**WHEREFORE**, the consolidated Petitions for Review filed by Philex Mining Corporation on July 26, 2013 and August 8, 2013, are hereby **DENIED**, for insufficiency of evidence.

SO ORDERED."

Assailed Resolution:

"**WHEREFORE**, petitioner's Motion for Reconsideration (of Decision dated 12 October 2015) filed on November 2, 2015, is hereby **DENIED**, for lack of merit.

SO ORDERED."

THE FACTS

The facts of the present case, as found by the Court in Division in its Decision dated October 12, 2015, are as follows:[5]

"On different dates, petitioner Philex Mining Corporation filed two (2) Petitions for Review for the refund or issuance of tax credit certificate (TCC) of its alleged unutilized input value-added tax (VAT) paid on purchases of goods and services attributable to its zero-rated sales for the first (1st) and second (2nd) quarters of 2011, broken down as follows:

CTA Case No.	Period Covered (2011)	Amount involved
8676	First Quarter	₱39,541,253.78
8687	Second Quarter	₱23,569,534.98

[5] Court *En Banc's* Docket, pp. 17-22 (Citations omitted).

Petitioner is a domestic corporation with principal office address at 27 Brixton Street, Pasig City. It is engaged in mining business, including exploration and operation of mine properties and the commercial production and marketing of mine products.

Respondent, on the other hand, is Commissioner of the Bureau of Internal Revenue (BIR), vested with authority to act on claims for refund or issuance of TCC in accordance with law. She holds office at the BIR National Office Building, Agham Road, Diliman, Quezon City.

Petitioner avers that on March 11, 2004, it executed a 'Long Term Gold and Copper Concentrates Sales Agreement' with Pan Pacific Copper Co., Ltd. of Tokyo, Japan (Pan Pacific), for the sale of its copper concentrates starting April 1, 2004. On August 16, 2007, it entered into a similar contract with Louis Dreyfus Metals of Switzerland for the sale of its copper concentrates.

On April 25, 2011, petitioner allegedly filed its original VAT Return for the 1st quarter of 2011. Subsequently, or on February 14, 2012, it filed an amended VAT Return, reflecting zero-rated sales in the amount of ₱2,462,434,322.14, and VATable sales/receipts in the amount of ₱107,142.92.

On July 25, 2011, petitioner allegedly filed its original VAT Return for the 2nd quarter of 2011 which it amended on August 2, 2012, reflecting zero-rated sales in the amount of ₱4,617,138,651.34 and VATable sales/receipts in the amount of ₱16,163,651.34.

Petitioner further posits that for the 1st and 2nd quarters of 2011, it imported goods other than capital goods in the total amount of ₱369,487,604.58 and ₱191,859,633.34, respectively, and purchased domestic services in the respective amount[s] of ₱53,575,498.17 and ₱20,716,809.50, all to be used in its mining operations, production and sale of its mine products.

Petitioner paid input taxes on such importations of goods other than capital goods and domestic purchases of services in the amounts of ₱44,338,512.55 and ₱6,429,059.78, respectively, or the total amount of ₱50,767,572.33 for the 1st quarter and the amount of ₱23,023,156.00 for the importation of goods other than capital goods and the amount of

₱2,486,017.14 for domestic purchase of services or the total amount of ₱25,509,173.14 for the 2nd quarter of 2011.

On March 27, 2013, petitioner filed its claims for refund/tax credit for the 1st and 2nd quarters of 2011 with the One-Stop Shop Center of the Department of Finance (DOF-OSS) in the respective amounts of ₱50,767,572.33 and ₱25,509,173.14. However, the amount of ₱50,767,572.33 was decreased to ₱39,541,253.78 since it already claimed refund for the amount of ₱11,226,318.58; while the amount of ₱25,509,173.14 was decreased to ₱23,569,534.98 as the difference had been applied against its output tax liability for the 2nd quarter of 2011.

Respondent failed to act on the foregoing applications for refund/tax credit. Consequently, petitioner filed two (2) separate Petitions for Review on July 26, 2013 and on August 8, 2013 for the refund/tax credit of its alleged unutilized input VAT paid on purchases of goods and services attributable to zero-rated sales for 1st and 2nd quarters of 2011.

On October 8, 2013 and October 14, 2013, respondent filed her respective Answers to the two (2) Petitions for Review. She basically argued that petitioner's claim was subject to routinary examination; that taxes paid and collected were presumed to have been paid in accordance with law and regulations, hence, not refundable; that petitioner failed to comply with the requirements provided by the NIRC of 1997, as amended, as well as its implementing rules and regulations; and petitioner needed to prove the merit of its claim for refund/tax credit. She further stressed that tax refunds are in the nature of tax exemptions and are to be construed *strictissimi juris* against the entity claiming the same but strictly construed in favor of the State.

In the Resolution dated November 22, 2013, the two (2) Petitions for Review docketed as CTA Case No. 8676 and CTA Case No. 8687 were consolidated.

On May 26, 2014, a Pre-Trial Order was issued based on the parties' Joint Stipulation of Facts and Issues filed on May 7, 2014.

During the trial, petitioner presented Eileen C. Rodriguez and Mr. Albert G. Alba.

By way of Judicial Affidavit, **Eileen C. Rodriguez** testified that as petitioner's Accounting Manager[,] she supervised the preparation and filing of petitioner's VAT Returns for the 1st and 2nd quarters of 2011 and the filing of its claims for refund of excess input VAT for the same quarters with the One Stop Shop Center of the DOF on March 27, 2013 as indicated in the Claim Information Sheet No. 65485 for the 1st quarter of 2011 and Claim Information Sheet No. 65484 for the 2nd quarter of 2011, together with the supporting documents.

Petitioner is engaged in the mining industry with copper concentrates and gold bullions as its main products. During the 1st and 2nd quarters of 2011, petitioner sold copper concentrates to Pan Pacific Copper Co., Ltd., a Japanese company based in Tokyo, Japan, and to Louis Dreyfus Commodities Metals (LD Metals), a Swiss company, which also acted as a broker for other foreign buyers.

On March 27, 2013, she filed with the DOF One Stop Shop petitioner's claims for refund/tax credit for the 1st and 2nd quarters of 2011, together with the supporting documents. The transmittal letters for the supporting documents attached to the claims for refund were signed by petitioner's Senior Vice-President Renato Miguel.

On the other hand, the Long Term Gold and Copper Concentrates Sales Agreements were signed by petitioner's then Chairperson, Walter Brown in the presence of petitioner's top officers.

Independent Certified Public Accountant (ICPA) **Albert G. Alba**, declared in his Judicial Affidavit that his examination, audit and evaluation of petitioner's documents pertinent to its claim for refund of excess input taxes for the 1st and 2nd quarters of 2011 revealed that out of the total input taxes claimed for the 1st and 2nd quarters of 2011 in the amounts of ₱50,767,572.33 and ₱25,509,173.14, respectively, the amounts of ₱12,857.15 and ₱1,939,638.16 were used to pay petitioner's tax liabilities for the same quarters. Hence, petitioner's unutilized input VAT amounts only to ₱50,754,715.18 and ₱23,569,534.98 for the 1st and 2nd quarters of 2011, respectively.

On July 11, 2014, petitioner rested [its case] after filing its Formal Offer of Evidence, per Resolution dated August 14, 2014.

Respondent presented her sole witness, Revenue Officer (RO) **Jovelyn L. Borromeo** who declared in her Judicial Affidavit that as part of the VAT Credit Audit Division of the BIR, she handled the examination of petitioner's claim for VAT refund for the 1st and 2nd quarters of 2011. The audit is still on-going as they are still waiting for the additional documents indicated in the First Notice dated March 13, 2013 sent to petitioner.

After the parties filed their respective memoranda on September 18, 2014 and November 10, 2014, the case was submitted for decision on November 12, 2014."

On October 12, 2015, the Court in Division rendered the assailed Decision denying both Petitions for Review for insufficiency of evidence. The Court in Division held that Philex failed to establish that it is a VAT-registered entity.

Aggrieved, Philex filed a Motion for Reconsideration on November 2, 2015 which the Court in Division denied in the assailed Resolution.

On March 3, 2016, Philex filed the subject Petition for Review before the Court *En Banc* on the basis of the following grounds:

"**GROUNDS FOR GRANTING THE PETITION**

I

THE THIRD DIVISION ERRED IN NOT GIVING EVIDENTIARY VALUE TO THE VAT CERTIFICATE OF REGISTRATION THAT PETITIONER ATTACHED TO ITS PETITION FOR REVIEW AS ANNEXES "A" AND "A-1"

II

THE THIRD DIVISION ERRED IN NOT TAKING JUDICIAL NOTICE OF THE FACT THAT IN NUMEROUS EARLIER DECISIONS ON PETITIONER'S OTHER SIMILAR CLAIMS FOR REFUND OF INPUT VAT, THE HONORABLE COURT OF TAX APPEALS HAS

CONSISTENTLY FOUND AS A FACT THAT PETITIONER IS A VAT-REGISTERED TAXPAYER.

III

THE THIRD DIVISION ERRED IN NOT CONSIDERING THE FACT THAT RESPONDENT (CIR) HAD SUBMITTED TO THE COURT A CERTIFIED TRUE COPY OF PETITIONER'S CERTIFICATE OF REGISTRATION (BIR FORM 2303)

IV

THE ASSAILED DECISION AND RESOLUTION MUST BE REVERSED AND THE REFUND MUST BE GRANTED IN THE INTEREST OF JUSTICE, EQUITY AND FAIRPLAY."[6]

In a Resolution dated April 21, 2016,[7] the Court *En Banc* required the respondent (CIR) to file her Comment to the Petition for Review within ten (10) days from receipt thereof. However, the CIR failed to file her Comment as per Records Verification Report dated August 1, 2016 issued by the Judicial Records Division of this Court.[8] In a Resolution dated August 15, 2016,[9] the Court *En Banc* required the parties to submit their respective memoranda within thirty (30) days from receipt thereof. Accordingly, the CIR filed her Memorandum on November 4, 2016.[10] On the other hand, Philex manifested on September 9, 2016 that it is adopting the arguments it has already advanced in its Petition for Review as its Memorandum.[11] Thus, the Court *En Banc* submitted the case for decision in a Resolution dated November 28, 2016.[12]

THE COURT *EN BANC*'S RULING

The Petition for Review lacks merit.

Under Section 8 of Republic Act (RA) No. 1125, as amended,[13] the Court of Tax Appeals (CTA) is categorically described as a court of

[6] *Id.*, p. 3.
[7] *Id.*, pp. 37-38.
[8] *Id.*, p. 39.
[9] *Id.*, pp. 41-42.
[10] *Id.*, pp. 51-63.
[11] *Id.*, pp. 43-44.
[12] *Id.*, pp. 65-66.
[13] As amended by RA No. 9282.

record.[14] Cases filed before the CTA are litigated *de novo*, party-litigants must prove every minute aspect of their cases.[15] In doing so, party-litigants must comply with the relevant rules on evidence provided under the Rules of Court.

One of these rules is Rule 132, Section 34 of the Rules of Court which explicitly requires that evidence must be formally offered before the same can be considered by the court. The said provision reads as follows:

> "SEC. 34. *Offer of evidence.* — The court shall consider no evidence which has not been formally offered. The purpose for which the evidence is offered must be specified."

The rationale for the foregoing rule was lucidly explained by the Supreme Court in *Heirs of Pedro Pasag v. Parocha*,[16] in this wise:

> "**A formal offer is necessary because judges are mandated to rest their findings of facts and their judgment only and strictly upon the evidence offered by the parties at the trial.** Its function is to enable the trial judge to know the purpose or purposes for which the proponent is presenting the evidence. On the other hand, this allows opposing parties to examine the evidence and object to its admissibility. Moreover, it facilitates review as the appellate court will not be required to review documents not previously scrutinized by the trial court.
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> **Strict adherence to the said rule is not a trivial matter.** The Court in *Constantino v. Court of Appeals* ruled that the formal offer of one's evidence is deemed waived after failing to submit it within a considerable period of time. It explained that the court cannot admit an offer of evidence made after a lapse of three (3) months because to do so would condone an inexcusable laxity if not non-compliance with a court order which, in effect, would encourage needless delays and derail the speedy administration of justice." *(Emphasis supplied)*

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[14] *Dizon v. Court of Tax Appeals et. al.*, G.R. No. 140944, April 30, 2008, 576 Phil. 111, 128 ("*Dizon*"); *Commissioner of Internal Revenue v. United Salvage and Towage (Phils.), Inc.*, G.R. No. 197515, July 2, 2014, 729 SCRA 113;

[15] *Commissioner of Internal Revenue v. Philippine National Bank*, G.R. No. 180290, September 29, 2014, 736 SCRA 621-622; *Atlas Consolidated Mining and Development Corporation v. Commissioner of Internal Revenue*, G.R. No. 145526, March 16, 2007, 547 Phil. 332, 339; *Commissioner of Internal Revenue v. Manila Mining Corporation*, G.R. No. 153204, August 31, 2005, 505 Phil. 650, 664.

[16] G.R. No. 155483, April 27, 2007, 522 SCRA 410, 416 as cited in *Dizon*, supra at Note 14.

More recently, in *Laborte et. al. v. Pagsanjan Tourism Consumers Cooperative et. al.*,[17] the Supreme Court emphasized that:

> "A piece of document will remain a scrap of paper without probative value unless and until admitted by the court in evidence for the purpose or purposes for which it is offered. The formal offer of evidence allows the parties the chance to object to the presentation of an evidence which may not be admissible for the purpose it is being offered." *(Citations omitted)*

In a number of cases, [18] however, the Supreme Court had established the exception to the rule requiring formal offer of evidence. In *Vda. De Oñate v. Court of Appeals*,[19] the Supreme Court held that evidence not formally offered may still be admitted and considered by the trial court provided the following requirements are met: (1) the evidence must have been duly identified by testimony duly recorded; and (2) such evidence must have been incorporated in the records of the case. In *Dizon*,[20] the Supreme Court emphasized that "being an exception, it may be applied only when there is strict compliance with the requisites mentioned therein; otherwise, the general rule in Section 34 of Rule 132 of the Rules of Court should prevail."

In the present case, an examination of the case records shows that the copies of Philex's VAT Registration Certificate and BIR Certificate of Registration (BIR Form 2303), attached to its Petitions for Review in CTA Case Nos. 8676 & 8687 as Annex "A" and Annex "A-1", respectively, were not formally offered as evidence before the Court in Division, in violation of Rule 132, Section 34 of the Rules of Court. In addition, the Court *En Banc* finds that the requirements for the application of the aforesaid exception to the general rule on formal offer of evidence have not been satisfied. The alleged VAT Registration Certificate and BIR Certificate of Registration were neither identified by testimony of any of Philex's witnesses nor were they incorporated in the records of the case since these documents were not duly marked as exhibits during the pre-trial of the case.[21] Accordingly, no evidentiary value can be given thereto. As aptly stated by the Supreme Court in the recent case of *Pilipinas Shell*,[22] viz.:

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[17] G.R. No. 183860, January 15, 2014, 713 SCRA 546.
[18] *Pilipinas Shell Petroleum Corporation v. Commissioner of Customs*, G.R. No. 195876, December 5, 2016 ("*Pilipinas Shell*"); *Commissioner of Internal Revenue v. United Salvage and Towage (Phils.), Inc.*, supra at Note 14; *Dizon v. Court of Tax Appeals*, supra at Note 14; *Far East Bank & Trust Company v. Commissioner of Internal Revenue*, G.R. No. 149589, September 15, 2006, 502 SCRA 91.
[19] G.R. No. 116149, November 23, 1995, 320 Phil. 344.
[20] Supra at Note 14.
[21] See *Dizon v. Court of Appeals*, supra at Note 14.
[22] Supra at Note 18.

> "x x x [E]vidence not formally offered during the trial cannot be used for or against a party litigant by the trial court in deciding the merits of the case. Neither may it be taken into account on appeal. Since the rule on formal offer of evidence is not a trivial matter, failure to make a formal offer within a considerable period of time shall be deemed a waiver to submit it. Consequently, any evidence that has not been offered and admitted thereafter shall be excluded and rejected."

In its Petition, Philex contends that the Court in Division erred in not considering the fact that the CIR had submitted to this Court a certified true copy of Philex's Certificate of Registration (BIR Form 2303) in compliance with the Court in Division's Resolution dated January 2, 2014 and Section 5(b), Rule 6 of the Revised Rules of the Court of Tax Appeals (RRCTA). Such document, according to Philex, indubitably proves that it is a VAT-registered taxpayer.

Philex's contention is untenable.

Granting that the aforesaid document was included as part of the records submitted by the BIR before the Court in Division, in compliance with the latter's Resolution and Section 5(b), Rule 6 of the RRCTA, it does not necessarily follow that this Court should, as a matter of course, admit the said document as evidence. It is still imperative that the said document be formally offered as evidence before the same can be considered by this Court.

By way of analogy, the following pronouncement of the Supreme Court in *Pilipinas Shell*[23] is enlightening, to wit:

> **"As a matter of fact, even if the aforesaid documentary evidence was included as part of the BOC Records submitted before the CTA in compliance with a lawful order of the court, this does not permit the trial court to consider the same in view of the fact that the Rules prohibit it.** The reasoning forwarded by the CTA in Division in its Resolution dated 24 February 2009, that the apparent purpose of transmittal of the records is to enable it to appreciate and properly review the proceedings and findings before an administrative agency, is misplaced. **Unless any of the party formally offered in evidence said Memorandum, and accordingly, admitted by the court *a quo*, it cannot be considered as among the legal and factual bases in resolving**

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[23] *Id.*

the controversy presented before it." *(Emphasis supplied and citations omitted)*

While it is true the CTA is not governed *strictly* by technical rules of evidence,[24] as rules of procedure are not ends in themselves and are primarily intended as tools in the administration of justice, Philex's presentation of evidence to prove that it is a VAT-registered entity is not a mere procedural technicality which may be easily disregarded considering that being a VAT-registered entity is one of the essential requisites that need to be proven to be entitled to a VAT refund/tax credit.

Philex likewise posits that the Court in Division erred in not taking judicial notice of the earlier decisions on Philex's other similar claims for VAT refund wherein it was found that Philex is a VAT-registered entity. On the other hand, the CIR counter-argues that it is not mandatory for this Court to take judicial notice that Philex is a VAT-registered entity.

Philex's position is unmeritorious.

As earlier pointed out, cases filed before the CTA are litigated *de novo* and as such, party-litigants must prove every minute aspect of their cases. In this regard, the Court *En Banc* finds that the Court in Division cannot be faulted for its refusal to take judicial notice of the alleged consistent finding of this Court in earlier cases involving the same parties that Philex is a VAT-registered entity.

Generally, courts are not authorized to take judicial notice, in the adjudication of cases brought before them, of the contents of the records of other cases.[25] The same holds true even when such other cases have been tried or are pending in the same court, and that both cases have been heard or actually pending before the same judge.[26] As an exception to the foregoing general rule, however, jurisprudence recognizes that "in the absence of objection and as a matter of convenience to all parties, a court may properly treat all or any part of the original record of a case filed in its archives as read into the records of a case pending before it, when with the knowledge of the opposing party, reference is made to it, by name and number or in some other manner by which it is sufficiently designated."[27] In other words, before a court may take judicial notice of records of other cases, the parties should be informed and be given opportunity to be heard

[24] *Commissioner of Internal Revenue v. United Salvage and Towage (Phils.), Inc.*, supra at Note 14; Section 8, RA No. 1125, as amended.
[25] *Pilipinas Shell Petroleum Corporation v. Commissioner of Customs*, supra at Note 18 citing *Tabuena v. CA*, 194 Phil. 476, 495 (1981).
[26] *Id.*
[27] *Id.*

and to object thereon. These conditions are not established in the present case.

In light of the foregoing, the Court *En Banc* finds no compelling reason to set aside the assailed Decision and Resolution of the Court in Division.

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

SO ORDERED.

JUANITO C. CASTAÑEDA, JR.
Associate Justice

WE CONCUR:

(With Dissenting Opinion)
ROMAN G. DEL ROSARIO
Presiding Justice

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

CIELITO N. MINDARO-GRULLA
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

(I concur with PJ Del Rosario's Dissenting Opinion)
CATHERINE T. MANAHAN
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in above decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.

ROMAN G. DEL ROSARIO
Presiding Justice

REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

EN BANC

PHILEX MINING CORPORATION, *Petitioner,*	**CTA EB NO. 1434** (CTA Case Nos. 8676 & 8687)
- *versus* -	*Present:* Del Rosario, *P.J.*, Castañeda, Jr., Bautista, Uy, Casanova, Fabon-Victorino, Mindaro-Grulla, Ringpis-Liban, and Manahan, *JJ.*
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	Promulgated: FEB 28 2017 2:03 p.m.

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DISSENTING OPINION

DEL ROSARIO, P.J.:

With due respect, I dissent with the *ponencia* in denying the Petition for Review filed by petitioner Philex Mining Corporation thereby affirming the assailed Decision and Resolution of the Court in Division which denied petitioner's claim for refund of unutilized input tax paid on purchases of goods and services attributable to zero-rated sales for the first and second quarters of 2011 on the sole ground that petitioner failed to prove that it is a VAT registered entity.

In affirming the Court in Division's assailed Decision and Resolution, the *ponencia* reiterates that the VAT Registration Certificate and BIR Certificate of Registration (collectively referred as "Registration Certificates"), attached as annexes to the Petitions for Review filed before the Court in Division, cannot be given probative or evidentiary value for the same were not formally offered as evidence in violation of Sec. 34, Rule 132 of the Rules of Court. The *ponencia* holds that the requisites for the application of the exception to the general rule on formal offer of evidence, that is, a document although not formally offered in evidence may still be admitted by the Court, *namely: (i) the evidence must have been duly identified by testimony duly recorded, and (ii) such evidence must have been incorporated in the case records,* have not been satisfied. The *ponencia* further states that even if the Certificate of Registration of petitioner was included as part of the records submitted by the Bureau of Internal Revenue (BIR) before the Court in Division, said document cannot be admitted as a matter of course as it should have been offered as evidence before the Court can consider the same.

I am not unaware of the recent decision of the Supreme Court in ***Pilipinas Shell Petroleum Corporation vs. Commissioner of Customs***[1] which holds that for evidence to be considered by the court, the same must be formally offered; and that even if a documentary evidence was included as part of the Bureau of Customs (BOC) Records submitted before the Court of Tax Appeals (CTA) in compliance with a lawful order of the court, it does not permit the trial court to consider the same as the Rules prohibit it. Interestingly, in the *Shell case*, Pilipinas Shell Petroleum Corporation (PSPC) did not request for a re-opening of the case after a judgment has been rendered for the purpose of presenting additional documents. Truth to tell, the CTA, in making a pronouncement that fraud was committed by PSPC, relied on the factual finding contained in the Memorandum dated 2 February 2001 issued by the officials of the CIIS-IPD of the BOC. Since said Memorandum was not presented, identified, testified to or offered in evidence by either party before the trial court, albeit the same was found in the BOC Records, the Supreme Court ruled that no evidentiary value can be given to the said Memorandum.

I submit that the pronouncement in the *Shell case* is not on all fours applicable to the present controversy owing to differing factual milieu. Unlike in the *Shell case*, petitioner herein prayed, in its Motion for Reconsideration of the assailed Decision, that it be allowed to present its Registration Certificates for marking in a commissioner's hearing and to formally offer the same in evidence. Petitioner also attached copies of said Registration Certificates to its Motion for Reconsideration. As events turned out, the Motion for Reconsideration was denied thereby precluding petitioner to present

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[1] G.R. No. 195876, December 5, 2016.

the Registration Ceritificates and the Court from considering the same.

To my mind, the more applicable doctrine is that laid down by the Supreme Court in ***BPI-Family Savings Bank vs. Court of Appeals***[2] ***and the more recent case of Commissioner of Internal Revenue vs. De La Salle University, Inc.***[3]

In the ***BPI-Family Savings Bank case***,[4] the CTA dismissed the petition on the ground that petitioner failed to present as evidence its Annual Income Tax Return (ITR) for 1990 to establish the fact that petitioner had not yet credited the amount being claimed for refund to its 1990 tax liability. Petitioner filed a motion for reconsideration attaching thereto a copy of the ITR for 1990 but the same was ignored by the CTA. The Court of Appeals (CA) affirmed the decision of the CTA. The Supreme Court, however, reversed the CA and held the following:

> "More important, a copy of the Final Adjustment Return for 1990 was attached to petitioner's Motion for Reconsideration filed before the CTA. A final adjustment return shows whether a corporation incurred a loss or gained a profit during the taxable year. In this case, that Return clearly showed that petitioner incurred P52,480,173 as net loss in 1990. Clearly, it could not have applied the amount in dispute as a tax credit. Again, the BIR did not controvert the veracity of the said return. It did not even file an opposition to petitioner's Motion and the 1990 Final Adjustment Return attached thereto. In denying the Motion for Reconsideration, however, the CTA ignored the said Return. In the same vein, the CA did not pass upon that significant document.
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> **True, strict procedural rules generally frown upon the submission of the Return after the trial. The law creating the Court of Tax Appeals, however, specifically provides that proceedings before it shall not be governed strictly by the technical rules of evidence. The paramount consideration remains the ascertainment of truth**. Verily, the quest for orderly presentation of issues is not an absolute. It should not bar courts from considering undisputed facts to arrive at a just determination of a controversy.
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> In the present case, the Return attached to the Motion for Reconsideration clearly showed that petitioner suffered a net loss in 1990. Contrary to the holding of the CA and the CTA, petitioner could not have applied the amount as a tax credit. In failing to

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[2] G.R. No. 122480, April 12, 2000.

[3] G.R. Nos. 196596, 198841, 198941, November 9, 2016.

[4] *Supra*, Note 2.

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consider the said Return, as well as the other documentary evidence presented during the trial, the appellate court committed a reversible error.

It should be stressed that the rationale of the rules of procedure is to secure a just determination of every action. They are tools designed to facilitate the attainment of justice. But there can be no just determination of the present action if we ignore, on grounds of strict technicality, the Return submitted before the CTA and even before this Court. To repeat, the undisputed fact is that petitioner suffered a net loss in 1990; accordingly, it incurred no tax liability to which the tax credit could be applied. Consequently, there is no reason for the BIR and this Court to withhold the tax refund which rightfully belongs to the petitioner." *(Boldfacing supplied)*

More recently, in the ***De La Salle University, Inc. case***,[5] the Supreme Court upheld the CTA's admission of the supplemental evidence made upon filing of petitioner's motion for reconsideration in this wise:

"III. CTA correctly admitted
the supplemental evidence
formally offereby DLSU.

The Commissioner objects to the CTA Decision's admission of DLSU's supplemental pieces of documentary evidence.

To recall, **DLSU formally offered its supplemental evidence upon filing its motion for reconsideration with the CTA Division**. The CTA Division admitted the supplemental evidence, which proved that a portion of DLSU's rental income was used actually, directly and exclusively for educational purposes. Consequently, the CTA Division reduced DLSU's tax liabilities.

We uphold the CTA Division's admission of the supplemental evidence on distinct but mutually reinforcing grounds, to wit: (1) *the Commissioner failed to timely object to the formal offer of supplemental evidence;* and (2) *the CTA is not governed strictly by the technical rules of evidence*.

First, the failure to object to the offered evidence renders it admissible, and the court cannot, on its own, disregard such evidence.

The Court has held that if a party desires the court to reject the evidence offered, it must so state in the form of a timely objection and it cannot raise the objection to the evidence for the first time on appeal. Because of a party's failure to timely object, the evidence offered becomes part of the evidence in the case. As

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[5] *Supra*, Note 3.

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a consequence, all the parties are considered bound by any outcome arising from the offer of evidence properly presented.

As disclosed by DLSU, the Commissioner did not oppose the supplemental formal offer of evidence despite notice. The Commissioner objected to the admission of the supplemental evidence only when the case was on appeal to the CTA *En Banc*. By the time the Commissioner raised her objection, it was too late; the *formal offer, admission,* and *evaluation* of the supplemental evidence were all *fait accompli.*

We clarify that while the Commissioner's failure to promptly object had no bearing on the materiality or sufficiency of the supplemental evidence admitted, she was bound by the outcome of the CTA Division's assessment of the evidence.

Second, the CTA is not governed strictly by the technical rules of evidence. The CTA Division's admission of the formal offer of supplemental evidence, *without prompt objection* from the Commissioner, was thus justified.

Notably, this Court had in the past admitted and considered evidence attached to the taxpayer's motion for reconsideration.

In the case of BPI-Family Savings Bank v. Court of Appeals, the tax refund claimant attached to its motion for reconsideration with the CTA its *Final Adjustment Return*. The Commissioner, <u>as in the present case</u>, did not oppose the taxpayer's motion for reconsideration and <u>the admission of the *Final Adjustment Return*</u>. We thus admitted and gave weight to the *Final Adjustment Return* although it was only submitted upon motion for reconsideration.

We held that **while it is true that strict procedural rules generally frown upon the submission of documents after the trial, the law creating the CTA specifically provides that proceedings before it shall not be governed strictly by the technical rules of evidence and that the paramount consideration remains the ascertainment of truth**. We ruled that procedural rules should not bar courts from considering *undisputed facts* to arrive at a just determination of a controversy.

We applied the same reasoning in the subsequent cases of *Filinvest Development Corporation v. Commissioner of Internal Revenue* and *Commissioner of Internal Revenue v. PERF Realty Corporation*, where the taxpayers also submitted the supplemental supporting document only upon filing their motions for reconsideration.

Although the cited cases involved claims for *tax refunds*, we also dispense with the strict application of the technical rules of evidence in the present *assessment case*. If anything, the liberal application of the rules assumes greater force and significance in

> the case of a taxpayer who claims a constitutionally granted tax exemption. While the taxpayers in the cited cases claimed *refund* of excess tax payments based on the Tax Code, DLSU is claiming tax *exemption* based on the Constitution. If liberality is afforded to taxpayers who paid more than they should have under a statute, then with more reason that we should allow a taxpayer to prove its exemption from tax based on the Constitution.
>
> Hence, we sustain the CTA's admission of DLSU's supplemental offer of evidence not only becuase the Commissioner failed to promptly object, but more so because the strict application of the technical rules of evidence may defeat the intent of the Constitution." *(Boldfacing & underscoring supplied)*

Notably, in a number of cases, the CTA already exercised liberality in allowing the presentation of evidence after decisions were rendered, upon attachment of the documents sought to be presented to the litigants' motions for reconsideration. In said cases, the CTA considered the additional documents presented and offered in evidence in resolving the motions for reconsideration.

In ***PRHC Property Managers, Inc. vs. Commissioner of Internal Revenue***,[6] the Court in Division observed that there was a discrepancy between the amount of income per ITR and that which was reflected in the Certificates of Creditable Tax Withheld. While the Court in Division found that the amount of P62,995.70 complied with the requisites for refund of excess Creditable Withholding Tax (CWT) out of the total claimed CWT of P1,928,458.00 for taxable year 2007, the said amount was not considered as an excess CWT since there was income tax due for the year and PRHC failed to substantiate the "prior year's excess credits". On February 1, 2012, PRHC filed its Motion for Reconsideration asking the Court to consider Annexes "A" to "N" attached thereto in re-evaluating its entitlement to the claim for refund and for it to be allowed to present its witness for the purpose of identifying the said documents. CIR did not file a comment thereon despite notice. **In a Resolution dated April 16, 2012,[7] the Court in Division allowed the marking and presentation of Annexes "A" to "N", in the interest of justice and, following the ruling in *BPI* case**, held in abeyance the resolution on the motion pending submission and formal offer of said documents. **After considering the additional evidence offered by PRHC, the Court in Division promulgated on October 9, 2012 an**

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[6] CTA Case No. 8071, January 6, 2012 Decision; penned by Associate Justice Cielito N. Mindaro-Grulla and concurred by Associate Justice Juanito C. Castañeda, Jr. and Caesar A. Casanova.

[7] Penned by Associate Justice Cielito N. Mindaro-Grulla and concurred by Associate Justice Juanito C. Castañeda, Jr. and Caesar A. Casanova.

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Amended Decision[8] ordering the Commissioner of Internal Revenue to refund in favor of PRHC the amount of P1,898,655.14, representing its excess CWT for 2007.

Similarly, in ***Crescent Park 6-24 Property Holdings, Inc. vs. Commissioner of Internal Revenue***,[9] the Court in Division initally denied the claim for refund of input tax attributable to zero-rated sales due to Crescent's failure to establish that the alleged sale of services to 6-24 PHI is subject to zero-rating, particularly for failure to present a Certification by PEZA that would prove that 6-24 PHI was a duly registered PEZA enterprise for the year 2009. On November 29, 2013, Crescent filed its Motion for Reconsideration, attaching thereto the PEZA Certification of 6-24 PHI for taxable year 2009, to which the CIR did not file its comment despite notice. **In its February 27, 2014 Resolution,[10] the Court in Division allowed Crescent to present the document for marking and thereafter, for formal offer.** After giving probative value to the additional document offered by Crescent, the Court in Division issued an Amended Decision on June 18, 2014 granting Crescent's claim for refund.

In ***Jardine Lloyd Thompson Insurance Brokers, Inc. vs. Commissioner of Internal Revenue***, [11] the Court in Division finds in its Decision that Jardine has proven that the income payments of P96,184,699.30 upon which the valid creditable taxes of P8,825,150.89 were withheld were declared in its 2007 and 2008 Annual Income Tax Returns except for the amount of P58,332,023.13, the corresponding creditable tax withheld of which amounts to P5,309,498.52. The Court was not able to trace from the production report, general ledger and Annual ITR, the income payments of P58,332,023.13 as the Annual ITR merely provides summarized data without the supporting schedule or notes that will enlighten the Court as to the detailed items included therein. On February 28, 2014, Jardine filed its Motion for Reconsideration (With Motion to Reopen Trial of the Case and Request for Leave to Submit Details of General Ledgers), to which respondent filed his Opposition on March 27, 2014 claiming that the additional evidence sought to be presented are not newly discovered nor were they failed to be presented due to fraud, accident, mistake or excusable negligence

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[8] Penned by Associate Justice Cielito N. Mindaro-Grulla and concurred by Associate Justice Juanito C. Castañeda, Jr. and Caesar A. Casanova.
[9] CTA Case No. 8202
[10] Penned by Associate Justice Esperanza R. Fabon-Victorino and concurred by Associate Justice Erlinda P. Uy.
[11] CTA Case No. 8273, February 11, 2014; penned by Associate Justice Caesar A. Casanova and concurred by Associate Justice Juanito C. Castañeda, Jr.

which would merit a new trial or additional hearing dates for the presentation of additional evidence. **In a Resolution dated April 30, 2014,[12] the Court in Division granted the motion in the interest of justice and pointed out that proceedings before this Court is not governed strictly by technical rules of evidence, citing the *BPI* case.** As a result, the Court in Division increased Jardine's entitlement for refund in its Amended Decision dated September 28, 2015.[13]

In addition to the afore-cited ***PRCH, Crescent and Jardine cases***, the Court in Division also allowed the re-opening of the following cases for presentation of evidence after initial judgments or decisions have been rendered, and eventually issued Amended Decisions after considering the additional evidence presented and offered:

Case	Original Decision	Resolution allowing presentation of documents	Amended Decision
CTA Case No. 8610 *Filminera Resources Corporation vs. Commissioner of Internal Revenue*	The March 6, 2015 Decision of the Court in Division **denied the claim for refund** of unutilized input tax for petitioner's failure to offer the Board of Investments' (BOI) certification confirming that PGPRC (to which petitioner exclusively sold its product) is a 100% exporter[14]	The May 17, 2015 Resolution allowed the presentation of document attached to the motion for reconsideration. The Court in Division highlighted, among others, the *BPI case* as justification for its action.	The August 27, 2015 Amended Decision **ordered the refund** of unutilized input tax in petitioner's favor.[15]
CTA Case No. 8374 *Sumisetsu*	The September 22, 2014 Decision **partially granted** petitioner's claim for	The December 19, 2014 Resolution allowed petitioner to present the	The October 6, 2015 Amended Decision **increased amount of input**

[12] Penned by Associate Justice Caesar A. Casanova and concurred by Associate Justice Juanito C. Castañeda, Jr. and Associate Justice Cielito N. Mindaro-Grulla.
[13] Penned by Associate Justice Caesar A. Casanova and concurred by Associate Justice Juanito C. Castañeda, Jr. and Associate Justice Cielito N. Mindaro-Grulla.
[14] Penned by Associate Justice Amelia R. Cotangco-Manalastas and concurred by Associate Justice Juanito C. Castañeda, Jr. and Associate Justice Caesar A. Casanova.
[15] Penned by Associate Justice Amelia R. Cotangco-Manalastas and concurred by Associate Justice Juanito C. Castañeda, Jr.

Case	Original Decision	Resolution allowing presentation of documents	Amended Decision
Philippines, Inc. vs. Commissioner of Internal Revenue	refund of input tax attributable to zero-rated sales. The entire claim was not granted due to the claimant's failure to substantiate certain amount of zero-rated sales with official receipts. Moreover, certain amount of input tax payments were either unsubstantiated or has failed to meet the substantiation requirements.[16]	documents attached to its *Omnibus Motion (1. For Partial Reconsideration of the Decision; 2. To Permit Presentation of Evidence with Respect to the Attached Documents; and 3. To Admit into Evidence and Consider for Purposes of Resolving this Motion the Attached Documents)*	**tax refundable** to petitioner.[17]
CTA Case No. 8576 *Filminera Resources Corporation vs. Commissioner of Internal Revenue*	The September 25, 2014 Decision **denied the claim for refund** of input tax attributable to zero-rated sales due to insufficiency of evidence.[18]	The December 9, 2014 Resolution allowed the presentation of documents attached to petitioner's Motion for Reconsideration citing *BPI case.*	The May 25, 2015 Amended Decision **partially granted** the Petition for Review and **ordered the refund** of unutilized input tax in petitioner's favor.[19]
CTA Case Nos. 8056 & 8163 *Total (Philippines) Corporation vs.*	The January 28, 2014 Decision denied the claim for refund of input tax attributable to zero-rated sales.[20]	May 26, 2014 Resolution allowing presentation of documents cited and attached to the Motion for	December 19, 2014 Amended Decision ordered the refund of input tax attributable to zero-rated sales.[21]

[16] Penned by Associate Justice Lovell R. Bautista and concurred by Associate Justice Esperanza R. Fabon-Victorino.
[17] Penned by Associate Justice Lovell R. Bautista and concurred by Associate Justice Esperanza R. Fabon-Victorino and Associate Justice Ma. Belen M. Ringpis-Liban.
[18] Penned by Associate Justice Juanito C. Castañeda, Jr. and concurred by Associate Justice Caesar A. Casanova and Associate Justice Amelia R. Cotangco-Manalastas.
[19] Penned by Associate Justice Juanito C. Castañeda, Jr. and concurred by Associate Justice Caesar A. Casanova and Associate Justice Amelia R. Cotangco-Manalastas.
[20] Penned by Associate Justice Esperanza R. Fabon-Victorino and concurred by Associate Justice Lovell R. Bautista and Ma. Belen M. Ringpis-Liban.
[21] Penned by Associate Justice Esperanza R. Fabon-Victorino and concurred by Associate Justice Lovell R. Bautista and Ma. Belen M. Ringpis-Liban.

Case	Original Decision	Resolution allowing presentation of documents	Amended Decision
Commissioner of Internal Revenue		Reconsideration/ New Trial citing BPI case. As mentioned in the resolution, attached petitioner's motion were an Affidavit of Merit and originals of IEIRDs.	
CTA Case No. 8007 *San Roque Power Corporation vs. Commissioner of* Internal Revenue	The May 7, 2012 Decision **denied the Petition for Review for the refund** of input tax due to insufficiency of evidence.[22]	The July 13, 2012 Resolution allowing presentation of documents attached to petitioner's Motion for Reconsideration on the strength of *BPI case*.	The December 6, 2012 Amended Decision **ordered the refund** of unutilized excess input tax.[23]
CTA Case No. 7550 *Pilipinas Total Gas, Inc. vs. Commissioner of Internal Revenue*	The March 26, 2010 Decision **denied the claim for refund** of input tax for petitioner's failure to fully substantiate the zero-rated sales and for failure to present the Quarterly VAT Return for the subsequent period.[24]	The May 19, 2010 Resolution granted the Motion to Re-Open the Case and held in abeyance the Resolution on petitioner's Motion for Reconsideration of the Court's Decision pending presentation of additional evidence.	The September 20, 2011 Amended Decision **ordered the refund** of unutilized input tax attributable to zero-rated sales.[25]
CTA Case No. 7751 *Technopeak Corporation vs. Commissioner of Internal Revenue*	The February 26, 2010 Decision **denying the Petition for Review** concerning the tax assessment issued against petitioner. The Court in Division noted that petitioner failed to present evidence in support of its availment of	The June 1, 2010 Resolution granted the re-opening of the case for the reception of additional evidence to establish petitioner's compliance with the requirements of the Tax Amnesty Program.	The June 28, 2011 Amended Decision **cancelled and set aside the assessment** in view of petitioner's availment of the Amnesty Program.[27]

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[22] Penned by Associate Justice Esperanza R. Fabon-Victorino and concurred by former Presiding Justice Ernesto D. Acosta and Associate Justice Erlinda P. Uy.
[23] Penned by Associate Justice Esperanza R. Fabon-Victorino and concurred by former Presiding Justice Ernesto D. Acosta and Associate Justice Erlinda P. Uy.
[24] Penned by Associate Justice Lovell R. Bautista and concurred by Associate Justice Caesar A. Casanova.
[25] Penned by former Presiding Justice Ernesto D. Acosta and concurred by Associate Justice Caesar A. Casanova, with Separate Opinion of Associate Justice Lovell R. Bautista.

Case	Original Decision	Resolution allowing presentation of documents	Amended Decision
	the Tax Amnesty Program.[26]		

Applying the pronouncement of the Supreme Court in the ***BPI case***[28] and ***De La Salle case***,[29] I am of the humble view that the Court in Division should have **granted petitioner's motion to present its VAT Registration Certificate and Certificate of Registration and to formally offer said documents in evidence as prayed for in its *Motion for Reconsideration of the assailed Decision,***[30] **especially since the CIR**[31] **did not object to said motion of the petitioner**. The grant of petitioner's motion is more consistent with the position taken by the CTA in the above-mentioned cases when it liberally applied the technical rules of evidence.

One of the requisites for the refund or issuance of tax credits of unutilized/excess input VAT is that the claimant must be VAT-registered. Thus, the presentation of petitioner's VAT Registration Certificate is vital in proving its entitlement to the claim for refund. Needless to state, if petitioner was allowed to offer the same in evidence and the same was admitted by the Court in Division, the assailed Decision could have been altered. Given the importance of the VAT Registration Certificate in this case, I submit that the denial of petitioner's motion for reconsideration with prayer to present and offer the Registration Certificates in evidence is unjustified.

Section 8 of Republic Act (RA) No. 1125, as amended by RA No. 9282, explicity provides that proceedings in the CTA shall not be governed strictly by technical rules of evidence. Thus, petitioner should not have been precluded from substantiating the fact that it is a VAT-registered entity by strict application of the technical rules of evidence, specially since in a number of cases, the CTA has allowed the presentation of additional evidence after decisions have been rendered. Indeed, prudence dictates that the same standards should

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[27] Penned by Associate Justice Caesar A. Casanova and concurred by former Presiding Justice Ernesto D. Acosta and Associate Justice Lovell R. Bautista.
[26] Penned by Associate Justice Caesar A. Casanova and concurred by former Presiding Justice Ernesto D. Acosta and Associate Justice Lovell R. Bautista.
[28] *Supra*, Note 2.
[29] *Supra*, Note 3.
[30] CTA Division Docket, p. 1014.
[31] *Comment/Opposition (Petitioner's Motion for Reconsideration),* CTA Division Docket, pp. 1051-1054.

be observed in settling similar controversy in order to maintain stability and fairness in the judicial system.

In addition, no prejudice to the government would have ensued had the presentation of the Registration Certificates been allowed by the Court in Division. After all, in the event that the assailed Decision is altered, as when it is found that petitioner is indeed entitled to the refund sought, the government shall refund said amount to petitioner without corresponding interest.

Finally, in the ***BPI-Family Savings Bank case***,[32] the Supreme Court emphasized that:

> "Substantial justice, equity and fair play are on the side of petitioner. Technicalities and legalisms, however exalted, should not be misused by the government to keep money not belonging to it and thereby enrich itself at the expense of its law-abiding citizens. If the State expects its taxpayers to observe fairness and honesty in paying their taxes, so must it apply the same standard against itself in refunding excess payments of such taxes. Indeed, the State must lead by its own example of honor, dignity and uprightness."

All told, I **VOTE** to **GRANT** the Petition for Review filed by petitioner Philex Mining Corporation. Accordingly, the assailed Decision and Resolution of the Court in Division in CTA Case Nos. 8676 and 8687 should be **SET ASIDE**. The cases should be **REMANDED** to the Court in Division to allow petitioner Philex Mining Corporation to present and offer in evidence its VAT Registration Certificate and BIR Certificate of Registration, and thereafter, for the Court in Division to make a complete determination on whether petitioner Philex Mining Corporation complied with the other requirements for refund of unutilized input tax paid on purchases of goods and services attributable to zero-rated sales for the first and second quarters of 2011.

ROMAN G. DEL ROSARIO
Presiding Justice

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[32] *Supra*, Note 2.