REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

THIRD DIVISION

3M PHILIPPINES, INC., *Petitioner,*	**CTA CASE NO. 8147** Re: *Claim for Refund* Members:
-versus-	**Bautista**, Chairperson, **Fabon-Victorino**, and **Ringpis-Liban** *JJ.*
COMMISSIONER OF INTERNAL REVENUE *Respondent.*	Promulgated: OCT 22 2014 3:29 p.m.

x- x

DECISION

RINGPIS-LIBAN, J.:

This is a Petition for Review [1] filed by petitioner 3M Philippines, Inc., praying for the refund or the issuance of tax credit certificate pursuant to Section 229 [2] of the National Internal Revenue Code of 1997 ("Tax Code"), as amended, in the amount of ₱13,250,152.55 representing erroneously collected deficiency taxes for the taxable year 2002 which petitioner paid on August 14, 2008.

THE PARTIES

Petitioner is a corporation duly organized and existing under Philippine laws with principal office and business address at the 9th Floor, Three World

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[1] Petition for Review dated August 10, 2010; Docket, pp. 1 to 238, inclusive of Annexes.

[2] **SEC. 229. *Recovery of Tax Erroneously or Illegally Collected.*** – No suit or proceeding shall be maintained in any court for the recovery of any national internal revenue tax hereafter alleged to have been erroneously or illegally assessed or collected, or any penalty claimed to have been collected without authority, or of any sum alleged to have been collected, or any penalty claimed to have been collected, or of any penalty claimed to have been excessively or in any manner wrongfully collected until a claim for refund or credit has been duly filed with the Commissioner; but such suit or proceeding may be maintained, whether or not such tax, penalty, or sum has been paid under protest or duress.

In any case, no such suit or proceeding shall be filed after the expiration of two (2) years from the date of payment of the tax or penalty regardless of any supervening cause that may arise after payment: Provided, however, That the Commissioner may, even without the written claim therefore, refund or credit any tax, where on the face of the return upon which payment was made, such payment appears clearly to have been erroneously paid.

Square Building, No. 22 Upper McKinley Road, McKinley Hill Park, Fort Bonifacio, Taguig City, Philippines.[3]

Respondent is vested by law in general to implement and enforce the provisions of the Tax Code, as amended and other tax laws, and in particular, decide claims for refund of internal revenue taxes.[4]

THE FACTS

On the following dates, petitioner filed its Annual Income Tax Return (AITR) [5] and Quarterly Value-added Tax (VAT) Returns for taxable year 2002;[6]

Type of Return	Date of Filing
Annual Income Tax Return	April 15, 2003
1st Quarter VAT Return	April 10, 2002
2nd Quarter VAT Return	July 24, 2002
3rd Quarter VAT Return	October 25, 2002
4th Quarter VAT Return	January 20, 2003

Pursuant to Letter of Authority (LOA) No. 200000002637 dated October 8, 2003, respondent examined petitioner's books of accounts and other accounting records for the period January 1, 2002 to December 31, 2002. The said LOA was received by petitioner on October 9, 2003.[7]

On the following dates, petitioner executed and respondent received, petitioner's "Waiver of the Defense of Prescription Under the Statute of Limitations of the National Internal Revenue Code":

WAIVER	Date Executed	Date Received
1st	April 4, 2005	July 15, 2005
2nd	April 10, 2006	Undated
3rd	April 4, 2007	April 11, 2007
4th	December 10, 2007	December 28, 2007

The first waiver dated April 4, 2005 was signed by Bernardo M. Isaac, petitioner's Operational Accounting Manager, who also received a copy of the same. Respondent accepted the waiver through Deputy Commissioner for Special Concerns OIC-LTS Kim S. Jacinto-Henares who was an authorized signatory under RMO 20-90 and RDAO 05-01. This waiver was duly notarized and, by virtue of this waiver, the period to assess the internal tax liabilities of petitioner for taxable year 2002 was extended until April 15, 2006.

[3] *Rollo,* p. 430.
[4] *Id.*
[5] Exhibit "U".
[6] Exhibits "V, V-1, V-2, W, W-1, W-2, X, X-1, X-2, Y, Y-1 and Y-2".
[7] Exhibits "1 and 1-A".

The second waiver was executed on April 10, 2006 signed by Gregorio B. Serrano, petitioner's Finance Manager who also received a copy thereof. It was accepted on behalf of respondent by OIC-Large Taxpayers Service Merlinda L. Ordoyo, an authorized signatory under RMO 20-90 and RDAO 05-01 on May 24, 2006. The second waiver was also duly notarized. This waiver was executed within the period of validity provided in the first waiver or before April 15, 2006. By virtue of this second waiver, the period to issue an assessment for petitioner's internal tax liabilities for taxable year 2002 was extended until April 15, 2007.

The third waiver dated April 4, 2007 was signed by Gregorio B. Serrano, petitioner's Finance Manager. It was accepted on behalf of respondent by Nestor S. Valeroso, OIC-Assistant Commissioner Large Taxpayers Service who was authorized to sign the same under RDAO 05-01. Moreover, this waiver was duly notarized. By virtue of this waiver, the period to issue an assessment for the internal tax liabilities of petitioner for taxable year 2002 was extended until December 31, 2007.

The fourth waiver dated December 10, 2007 was also signed by Gregorio B. Serrano, Finance Manager. The accomplished waiver was sent to taxpayer as born by the acceptance of Emi C. Castillo, petitioner's Operational Accounting Manager, on December 28, 2007. On the part of respondent, the waiver was accepted by OIC-Head Revenue Executive Assistant Romulo L. Aguila, Jr. who was authorized to sign the same under RDAO 04-2007 on December 27, 2007. The waiver was duly notarized and the period for respondent to issue an assessment for the internal tax liabilities of petitioner for taxable year 2002 was extended until December 31, 2008.

On July 14, 2008, a Notice of Informal Conference dated June 23, 2008 was received by petitioner. The said notice requested petitioner to come to respondent's office to go over the latter's findings and present objections thereto, if any, as well as to submit whatever evidence in support thereof.[8]

On August 4, 2008, the Large Taxpayer's Audit and Investigation Division (LTAID) of the Bureau of Internal Revenue (BIR) issued a Preliminary Assessment Notice (PAN) [9] finding petitioner liable for deficiency income tax, withholding tax on compensation, expanded withholding tax, final withholding tax and value added tax in the aggregate amount of ₱13,250,152.55, inclusive of interest and compromise penalties. The details of the assessment [10] are as follows:

[8] Exhibits "11 and 11-A".
[9] Exhibits "I and 13".
[10] *Ibid.*

Kind of Tax	Basic	Interest	Compromise	Total
Income Tax	2,675,355.02	2,853,712.03	25,000.00	5,554,067.05
Withholding Tax	-	-	25,000.00	25,000.00
Expanded Withholding Tax	2,600,468.38	2,958,169.57	25,000.00	5,583,637.95
Final Tax – Royalties	34.10	38.20	200.00	272.30
Final Tax – Withholding Tax on VAT		216,701.20	16,000.00	232,701.20
Fringe Benefit Tax	100,137.52	112,094.68	16,000.00	228,232.20
Value-added Tax	760,906.26	845,335.59	20,000.00	1,626,241.85
TOTAL	**6,136,901.28**	**6,986,051.27**	**127,200.00**	**13,250,152.55**

Petitioner received an advanced copy of the PAN through fax on August 14, 2008 [11]. The hard copy thereof was received by petitioner on September 24, 2008.[12]

In order to stop the continuous accrual of interest charges, petitioner paid the alleged deficiency tax stated in the PAN on August 14, 2008, as evidenced by BIR-Electronic Filing and Payment System (EFPS) confirmation receipts. [13]

The following day though, in a letter dated August 15, 2008, petitioner informed respondent that the payment made on August 14, 2008 was made without prejudice to petitioner's right to file a formal administrative protest upon receipt of the Formal Letter Demand (FLD)/ Final Assessment Notice (FAN). [14]

On October 9, 2008, respondent received a letter-request [15] from petitioner dated October 8, 2008 seeking for additional time of thirty (30) days from receipt or until November 8, 2008 within which to file its reply to the PAN. The LTAID-BIR granted the said request through a letter [16] dated October 13, 2008 which was received by petitioner on October 21, 2008.

On November 10, 2008, respondent received another letter-request [17] from petitioner requesting an additional ten (10) days from November 8, 2008 or until November 18, 2008 within which to file a reply.

Petitioner filed its reply to the PAN [18] on November 18, 2008.

On February 1, 2010, petitioner received a Letter-Reply [19] from respondent stating that petitioner's right to submit additional documents in

[11] Exhibit "HH" and TSN dated November 17, 2011 p. 12.
[12] Exhibit "HH".
[13] Exhibits "J, K, L, M, O, P, 15 to 15-F and ZZ".
[14] Exhibits "14, Q and Q-1".
[15] Exhibits "BB and 16".
[16] Exhibit s "CC, 17 and 17-A".
[17] Dated November 7, 2008; Exhibits "18, DD and EE".
[18] Reply to PAN dated November 17, 2008; Exhibits "R,R-1, 19 and 19-A".

support of its reply to PAN had already lapsed pursuant to Section 228 of the Tax Code.[20] As a result, petitioner was directed to settle all outstanding liabilities with the BIR.

The BIR neither acted on the reply to PAN nor did they issue a FAN. Petitioner then filed its administrative Claim for Refund[21] on June 25, 2010 in the amount of ₱13,250,152.55 representing the amount previously paid by petitioner on August 14, 2008 for the alleged-deficiency tax assessments for taxable year 2002 stated in the PAN.

In addition, petitioner raised the following grounds[22] in support of its claim for refund:

A. The period for assessment had already prescribed and therefore the subject taxes were erroneously or illegally collected;

B. 3M submitted a reply to the PAN issued by the BIR on August 4, 2008. However, the PAN is invalid and defective for its non-compliance with Revenue Regulation (RR) No. 12-99;

C. The BIR failed to issue a Final Assessment Notice within the prescriptive period; and

D. 3M filed this claim for refund with the BIR within the two-year prescriptive period.

Alleging failure of respondent to act on petitioner's administrative claim for refund or issuance of tax credit certificate and in order to comply with the two-year prescriptive period within which to file such claim pursuant to Section 299 of the Tax Code, as amended, petitioner filed to this Court on August 13, 2010 its Judicial Claim for Refund.[23]

On September 20, 2010, respondent filed her Answer[24] alleging the following Special and Affirmative Defenses, to wit:

1. The taxes were assessed within the period allowed by law in accordance with Section 203 of the Tax Code of 1997 which states that internal revenue taxes shall be assessed within

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[19] Dated January 8, 2010; Exhibits "20 and 21-A".
[20] **SEC. 228. – *Protesting an Assessment.* –**
(a.) xxx
Within sixty (60) days from filing of the protest, all relevant supporting documents shall have been submitted; otherwise, the assessment shall become final."
[21] Dated June 15, 2010; Exhibits "S and S-1".
[22] Claim for Refund, Exhibit "S".
[23] *Rollo*, pp. 1-238.
[24] *Rollo*, pp. 248-268

three(3) years after the last day prescribed by law for the filing of the return.[25] Further, this period to assess was validly extended beyond the three (3) year period due to the execution of a waiver in accordance with Section 222(b).

2. The validity of the four (4) waivers executed by petitioner cannot be impugned as they were executed in compliance with Revenue Memorandum Order (RMO) No. 20-90 as amended by Revenue Delegation Authority Order (RDAO) Nos. 05-01 and 04-2007. The waivers were executed prior to the lapse of the prescriptive period provided for under the law and effectively extended until December 31, 2008 respondent's right to assess petitioner for its internal revenue tax liabilities for taxable year 2002.

3. Respondent issued the Preliminary Assessment Notice (PAN) on August 4, 2008, informing petitioner of her finding for deficiency Income, Withholding on Compensation, Expanded Withholding, Final Withholding and Value Added taxes for taxable year 2002 well within the period to assess pursuant to the valid and duly executed fourth waiver which was set to expire on December 31, 2008.

4. The persons who signed the four (4) waivers in behalf of the corporate taxpayer were duly authorized corporate officials as petitioner's organizational chart of top management considered those occupying manager positions as such. Bernardo M. Isaac was petitioner's Treasurer/Operational Accounting Manager and Gregorio B. Serrano was petitioner's Finance Manager. Both individuals were responsible officers of the petitioner who had been acting on petitioner's behalf by signing correspondences to respondent and filing petitioner's tax returns.

5. Respondent faithfully complied with the due process procedures for assessments outlined in Revenue Regulations (RR) No. 12-99.

6. Petitioner failed to validly reply to the PAN dated August 4, 2008. Upon receipt of the PAN on August 14, 2008, petitioner had fifteen (15) days within which to file a reply or until August 29, 2008 in accordance with Section 3.1.2 of RR 12-99. Petitioner's letter dated August 15, 2008 is not the proper response to the PAN contemplated by RR 12-99.

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[25] Except as provided in Section 222.

7. Respondent also granted petitioner's request for a thirty (30) day extension of the period within which to file its reply or to file the same on or before November 8, 2008. Respondent gave petitioner a total of seventy (70) days in addition to the fifteen (15) day period given under RR 12-99 reckoning from receipt of PAN on August 14, 2008 or an additional thirty (30) days on top of the fifteen (15) day period given reckoned from the September 24, 2008 receipt of PAN within which to file reply. Despite this, petitioner's 'Reply to Preliminary Assessment Notice 3M Phils. Inc. for taxable year 2002' was filed out of time, beyond the thirty (30) day period granted by respondent.

8. Petitioner did not timely invoke the defense of prescription and should be considered waived.

9. The PAN dated August 4, 2008 had already been admitted as valid and discharged with petitioner's voluntary payment of the same. Consequently, respondent's receipt of petitioner's payment in the amounts indicated in PAN is unquestionably valid and legal.

10. Respondent did not need to issue a Final Assessment Notice, Formal Letter of Demand and Assessment Notice for the assessment to be binding on petitioner. Petitioner's cited case, *United International Pictures AB vs. Commissioner of Internal Revenue*[26], finds no application here because here payment was voluntarily made prior to the issuance of an assessment.

11. Petitioner's payment made on August 14, 2008 in response to respondent's PAN dispensed of the need for respondent to issue a FAN. The function of issuing a FAN is to compel payment of the deficiency taxes and the corresponding penalties, surcharges and interests thereon. Thus, when there is payment, the issuance of FAN, Formal Letter of Demand and Assessment Notice is unnecessary as there is already nothing to demand by way of deficiency tax assessments.

12. Petitioner's actions after the issuance of the PAN support the view that it recognized and treated the August 4, 2008 PAN as a FAN. Petitioner did not properly protest the assessment made by respondent in the manner required by Section 228 of the Tax Code of 1997, failing to submit all relevant documents within the sixty (60) day period from receipt of protest by respondent. Consequently, the assessments had long become

[26] CTA Case No. 5884, June 5, 2002.

final and executory after the lapse of the sixty (60) day period for petitioner to submit all relevant documents.

13. The petition for review was filed out of time. To reckon the date from August 29, 2008 (15 days after receipt of petitioner of the PAN[27]) plus 30 days would mean that petitioner ought to have appealed the assessment before the Court of Tax Appeals on September 29, 2009. On the other hand, to reckon the date from November 17, 2008 counting 180 days plus 30 days, means that petitioner ought to have appealed the assessment before the Court of Tax Appeals on June 15, 2009.[28] On the other hand, counting from the outright denial of petitioner's protest in respondent's letter dated March 25, 2010, which petitioner received on April 12, 2010, it had thirty (30) days to appeal to the Court of Tax Appeals or until May 12, 2010.[29] The recourse to the Court of Appeals in any of these instances had already lapsed since the petition for review was only filed on August 13, 2010.

14. Petitioner should not be permitted to use a petition for refund under Section 229 when it clearly lost the right to contest the assessment, and should not be permitted to raise prescription due to laches for having unreasonable delay in raising the issue before respondent on multiple occasions.

15. Petitioner is estopped from questioning the validity of the waivers. Its act in paying the assessed taxes covered by the same waivers is conclusive that the assessments were valid.

16. Finally, taxes are the lifeblood of the government and should be collected without unnecessary hindrance.

During trial, both parties presented and formally offered their respective pieces of testimonial and documentary evidence.

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[27] Petitioner received the PAN via facsimile on this date.

[28] Respondent used the 180-day period from submission of documents provided for in **Section 228** of the Tax Code of 1997 regarding "Protesting an Assessment" to arrive at the date the Petition for Review should have been filed by petitioner.

[29] Respondent's letter dated March 25, 2010 referred to in their Answer with Special Affirmative Defenses **does not exist in the record**. Instead, the March 25, 2010 letter is a transmittal letter sent by the petitioner to the respondent for the transmission of alpha summary lists of purchases for the months of December 2001 to November 2002 and documents relating to income tax withheld for January 2002 to December 2002. This was received by the BIR on April 12, 2010.

After petitioner filed its "Memorandum" on September 16, 2013 and respondent posted its "Memorandum (For Respondent)" on November 4, 2013, the case was then submitted for decision.[30]

On December 2, 2013, petitioner filed its "Motion for Leave to File and Admit Attached Reply-Memorandum". The Court granted petitioner's motion in a Resolution dated December 10, 2013 and admitted the attached "Reply-Memorandum".

ISSUE

The issues as stated in the Joint Stipulation of Issues [31] are the following:

1. Whether or not the right of the government to assess and collect deficiency tax for taxable year 2002 had already prescribed;

2. Whether or not the waivers executed were valid and binding;

3. Whether or not the petitioner is guilty of laches for the waivers executed by its employees;

4. Whether or not the amount of ₱13,250,152.55 paid under protest was erroneously paid or illegally collected;

5. Whether or not the Tax Code, as amended, allows for payment of deficiency taxes under protest;

6. Whether or not petitioner filed its claim for refund within the period provided for in Sections 204 and 229 of the National Internal Revenue Code of 1997 as amended; and

7. Whether or not petitioner is entitled to the refund or issuance of a tax credit certificate in the aggregate amount of ₱13,250,152.55

RULING OF THE COURT

[30] *Rollo*, p. 1160.
[31] *Rollo*, p. 431.

Judicial and Administrative Claims Were Timely Filed

On the issue of timeliness in filing the Petition for Review on petitioner's claim for refund, we find that both the administrative and judicial claims for refund were filed on time within two (2) years from the date of payment of the alleged erroneously collected tax.

Section 7(a)(1) and (2) of Republic Act (RA) No. 1125 as amended provides:

> "SEC. 7. *Jurisdiction.* – The CTA shall exercise:
>
> (a) Exclusive appellate jurisdiction to review by appeal, as herein provided:
>
> (1) Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue;
>
> (2) <u>Inaction by the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relations thereto</u>, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue, where the National Internal Revenue Code provides a specific period of action, <u>in which case the inaction shall be deemed a denial</u>;" *(Underscoring supplied)*

The aforestated rule shall be considered in relation to taxes erroneously or illegally collected by the BIR under Section 229 of the Tax Code, as amended, which provides:

> "**SEC. 229. *Recovery of Tax Erroneously or Illegally Collected.*** – <u>No suit or proceeding shall be maintained in any court for the recovery of any national internal revenue tax hereafter alleged to have been erroneously or illegally assessed or collected</u>, or any penalty claimed to have been collected without authority, or of any sum alleged to have been collected, or any penalty claimed to have been collected, or of any penalty claimed

> to have been excessively or in any manner wrongfully collected **until a claim for refund or credit has been duly filed with the Commissioner**; but such suit or proceeding may be maintained, whether or not such tax, penalty, or sum has been paid under protest or duress.
>
> In any case, **no such suit or proceeding shall be filed after the expiration of two (2) years from the date of payment of the tax or penalty regardless of any supervening cause that may arise after payment**: ***Provided***, however, That the Commissioner may, even without the written claim therefore, refund or credit any tax, where on the face of the return upon which payment was made, such payment appears clearly to have been erroneously paid." *(Emphasis supplied)*

As may be deemed in the foregoing provision and jurisprudence, the requirements for the refund of taxes erroneously paid or illegally paid are as follows:

1. That the taxpayer should file a written claim for refund or tax credit with the BIR Commissioner within two (2) years from the date of payment of the tax or penalty;

2. That in case of denial or inaction on the part of the BIR Commissioner within the said period, the petition for refund shall be filed with the Court of Tax Appeals (CTA) within thirty (30) days from receipt of the denial and within said two (2) year period from the date of payment of the tax regardless of any supervening cause;

3. The claim for refund must be a categorical demand for reimbursement [32];

4. There must be proof of payment of the erroneously or illegally collected taxes; [33] and

5. No refund shall be given resulting from availment of incentives granted pursuant to special laws for which no actual payment was made.

Records show that on August 14, 2008, petitioner received the PAN through fax and paid[34] the assessed deficiency taxes stated therein amounting

[32] *Bermejo vs. Collector of Internal Revenue*, 87 Phil. 96, 97 (1950).
[33] *Aguilar vs. Commissioner of Internal Revenue*, CA-GR SP-16432, March 30, 1990.
[34] Exhibits "J, K, L, M, O, P, 15 to 15-F and ZZ".

to ₱13,250,152.55 for the limited purpose of stopping the accrual of interest and stating definitively that it was without prejudice to the filing of an administrative protest against a FAN.

Since no FLD or FAN was issued by respondent in which the PAN was adopted or upheld, petitioner argued that there can be no final and executory assessment which could be protested and then appealed. Petitioner therefore argues that the collection by respondent of its deficiency tax was erroneous and without statutory basis. Consequently, petitioner filed its administrative and judicial claims for refund.

Counting two (2) years from August 14, 2008, the period within which petitioner could validly file a claim for refund would have expired on August 14, 2010.

Based on records of the case, petitioner filed its administrative claim for refund with respondent on June 25, 2010. Since the claim remained unacted upon by respondent and in order to comply with the prescribed time in Section 229, petitioner filed its Petition for Review[35] on its claim for refund on August 13, 2010. In fine, both the administrative and judicial claims for refund were filed on time within two (2) years from the date of payment of the alleged erroneously collected tax.

Payment Pending Issuance of FAN to Toll Interest Alone May Be Recovered Under Section 229 if No FAN was Subsequently Issued

Respondent raised the issue that petitioner should not be allowed to circumvent the law and that an appeal before this Court should be pursuant to Section 228[36] not Section 229 of the Tax Code, as amended. Respondent

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[35] *Rollo,* pp. 1-238.

[36] **SEC. 228. *Protesting of Assessment.*** – x x x

The taxpayer shall be informed in writing of the law and the facts on which the assessment is made; otherwise, the assessment shall be void.

Within a period to be prescribed by implementing rules and regulations, the taxpayer shall be required to respond to said notice. If the taxpayer fails to respond to said notice. If the taxpayer fails to respond, the Commissioner or his duly authorized representatives shall issue an assessment based on his findings.

Such assessment may be protested administratively by filing a request for reconsideration or reinvestigation within thirty (30) days from receipt of the assessment is such form and manner as may be prescribed by implementing rules and regulations. Within sixty (60) days form filing of the protest, all relevant supporting documents shall have been submitted; otherwise, the assessment shall become final.

If the protest is denied in whole or in part, or is not acted upon within one hundred eighty (180) days from submission of documents, the taxpayer adversely affected by the decision or inaction ay appeal to the Court of Tax Appeals within thirty (30) days from receipt of the said decision, or from the lapse of the one hundred eighty (180)-day period; otherwise, the decision shall become final, executory and demandable.

argued that petitioner, in phrasing the present petition as a claim for refund, is in effect trying to revive a prescribed action which this Court should not allow.

The allegations in the complaint and the reliefs prayed for are the determinants of the nature of the action and of which court has jurisdiction over the matter.[37] In this regard, we examine the pertinent portions[38] of the Petition for Review, to wit:

> "9. Considering that the BIR neither acted on the *Reply* to the PAN nor issued a Final Assessment Notice, hence, the deficiency taxes that Petitioner paid under protest on August 14, 2008 were erroneously collected, Petitioner on June 25, 2010, filed a *Letter* dated June 15, 2010 with the BIR's Large Taxpayer's Service, requesting for the refund or issuance of a tax credit certificate (TCC) of the amount of ***Thirteen Million Two Hundred Fifty Thousand One Hundred Fifty-Two Pesos and Fifty-Five Centavos (PhP13,250,152.55)*** representing the amount paid for deficiency tax assessments for the taxable year 2002 in the Preliminary Assessment Notice. *(A copy of the Letter dated June 15, 2010 is attached as **Annex 'M'** hereof.)*
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> 10. Together with the *Letter,* Petitioner filed an Application for Tax Credits/Refunds (BIR Form No. 1914). *(A copy of Petitioner's BIR Form No. 1914 is attached as **Annex 'N'** hereof).*
>
> 11. However, Respondent has not taken any action on Petitioner's administrative claim for refund and has not yet also received a final assessment notice/formal demand letter from the BIR. In the meantime, the two-year prescriptive period for filing a judicial claim for refund provided under Sections 204(C) and 229 of the NIRC is *(sic)* about to lapse. Sections 204(C) and 229 provides as follows:
>
> xxx xxx xxx
>
> 12. Under the above-quoted NIRC provisions, a claim for refund or tax credit must be filed within two (2) years after payment of tax or penalty; otherwise, the claim shall forever be barred.

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[37] *Del Rosario v. Gerry Roxas Foundation, Inc.*, G.R. No. 170575, June 8, 2011, 651 SCRA 414, 416-417, citing *Spouses Huguete v. Spouses Embudo*, 453 Phil. 170, 176-177 (2003); and *Co Tiamco v. Diaz*, 75 Phil. 672, 683-684 (1946).

[38] *Rollo,* pp. 4-6 and 14.

> 13. The instant *Petition* is being filed due to the failure of Respondent to act on Petitioner's request for issuance of a tax credit certificate in the amount of ***Thirteen Million Two Hundred Fifty Thousand One Hundred Fifty-Two Pesos and Fifty-Five Centavos (PhP13,250,152.55)*** representing Petitioner's payment under protest of its alleged deficiency internal revenue liabilities for the taxable year 2002 pursuant to the *Preliminary Assessment Notice* dated August 4, 2008 and in order to comply with the two-year prescriptive period within which a claim for refund or issuance of a tax credit certificate must be filed.
>
> xxx xxx xxx
>
> **PRAYER**
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> WHEREFORE, premises considered, it is respectfully prayed that judgment be rendered ordering Respondent to refund or, in the alternative, to issue a tax credit certificate, to the Petitioner in the amount of ***Thirteen Million Two Hundred Fifty Thousand One Hundred Fifty-Two Pesos and Fifty-Five Centavos (PhP13,250,152.55)*** representing erroneously collected deficiency taxes for taxable year 2002 which the Petitioner paid under protest on August 14, 2008."

The term **"erroneous or illegal tax"** has been defined in the case of ***Commissioner of Internal Revenue v. Pilipinas Shell Petroleum Corporation***[39], as: "one levied without statutory authority, or upon property not subject to taxation or by some officer having no authority to levy the tax, or one which in some other similar respect is illegal."

A cursory reading of these allegations leads to no other conclusion than that **the Petition for Review is a claim for refund under Section 229 and not a protest of an assessment under Section 228**. What was appealed before this Court is the inaction of respondent regarding petitioner's administrative claim for refund due to the alleged respondent's erroneous collection of taxes. Consequently, Section 229 of the Tax Code, as amended, applies to the instant case.

To this Court, it is undisputed that no FAN was issued by respondent against petitioner within the three-year prescriptive period. It is also indubitably clear that only the PAN was issued to petitioner. The assessment, therefore, never achieved finality and the deficiency taxes stated in the PAN were erroneously collected.

[39] G.R. No. 188497, April 25, 2012.

Due process requires that the FAN must be served on and received by the taxpayer and it is the FAN that must be served within the three-year prescriptive period.[40]

A FAN is a declaration of deficiency taxes issued to a taxpayer who fails to respond to a PAN within the prescribed period[41] or whose reply to the PAN was found to be without merit. The FAN shall inform the taxpayer of this fact, and that the report of investigation submitted by the Revenue Officer conducting the audit shall be given due course.[42]

Respondent maintains that the subsequent actions of petitioner asking for an extension to file a protest after receiving the PAN is to be construed that petitioner recognized and treated the PAN as the FAN. Hence, failure to file a timely protest makes the PAN final and executory.

We disagree.

First of all, the letter[43] sent by petitioner to respondent dated August 15, 2008 specifically stated that the payment of said deficiency taxes was "without prejudice to [petitioner's] right to file a formal protest on the said [PAN] **upon receipt of the Final Assessment Notice/Formal Letter of Demand"**. Clearly, petitioner had not conceded respondent's assessment as valid and final.

Second, regardless of whether or not petitioner treated the PAN as a FAN, since this case is not one where the PAN can be dispensed with under Section 228, this does not discharge the obligation of respondent to issue a FAN -- otherwise known as a Notice of Assessment --together with a Formal Letter of Demand to petitioner.

In ***CIR v. Enron Subic Power Corporation***, the Supreme Court clarifies what is required in a Notice of Assessment under the NIRC and RR No. 12-99, thus:

> "The CIR errs in insisting that the notice of assessment in question complied with the requirements of the NIRC and RR No. 12-99.
>
> A notice of assessment is:

[40] *Laquigang Philippines Corporation v. Commissioner of Internal Revenue*, CTA Case No. 8149, June 24, 2013.
[41] *Ibid.*
[42] *Commissioner of Internal Revenue v. Enron Subic Power Corp.*; G.R. No. 166387, June 19, 2009.
[43] Exhibit "Q".

> [A] declaration of deficiency taxes issued to a [t]axpayer who fails to respond to a Pre-Assessment Notice (PAN) within the prescribed period of time, or whose reply to the PAN was found to be without merit. The Notice of Assessment shall inform the [t]axpayer of this fact, and that the report of investigation submitted by the Revenue Officer conducting the audit shall be given due course.
>
> The formal letter of demand calling for payment of the taxpayer's deficiency tax or taxes shall **state the fact, the law, rules and regulations or jurisprudence on which the assessment is based, otherwise the formal letter of demand and the notice of assessment shall be void**. (emphasis supplied)[44]

Section 228 of the NIRC provides that the taxpayer shall be informed in writing of the law and the facts on which the assessment is made. Otherwise, the assessment is void. To implement the provisions of Section 228 of the NIRC, RR No. 12-99 was enacted. Section 3.1.4 of the revenue regulation reads:

> 3.1.4. *Formal Letter of Demand and Assessment Notice.* – The formal letter of demand and assessment notice shall be issued by the Commissioner or his duly authorized representative. **The letter of demand calling for payment of the taxpayer's deficiency tax or taxes shall state the facts, the law, rules and regulations, or jurisprudence on which the assessment is based, otherwise, the formal letter of demand and assessment notice shall be void.** The same shall be sent to the taxpayer only by registered mail or by personal delivery. xxx (emphasis supplied)

It is clear from the foregoing that **<u>a taxpayer must be informed in writing of the legal and factual bases of the tax assessment made against him. The use of the word "shall" in these legal provisions indicates the mandatory nature of the requirements laid down therein.</u>** We note the CTA's findings:

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[44] As of the date of the promulgation of the *Enron Case*, this definition of Notice of Assessment was found in the BIR's website with this link: http://www.bir.gov.ph/taxpayerrights/taxpayerrights.htm, *cf: Note 12 of the Enron Case.* As of the date of promulgation of this decision, the same definition obtains in the BIR's Taxpayer Bill of Rights webpage with this link: http://www.bir.gov.ph/index.php/taxpayer-bill-of-rights.html.

In [this] case, [the CIR] merely issued a formal assessment and indicated therein the supposed tax, surcharge, interest and compromise penalty due thereon. The Revenue Officers of the [the CIR] in the issuance of the Final Assessment Notice did not provide Enron with the written bases of the law and facts on which the subject assessment is based. [The CIR] did not bother to explain how it arrived at such an assessment. Moreso, he failed to mention the specific provision of the Tax Code or rules and regulations which were not complied with by Enron.

Both the CTA and the CA concluded that the deficiency tax assessment merely itemized the deductions disallowed and included these in the gross income. It also imposed the preferential rate of 5% on some items categorized by Enron as costs. The legal and factual bases were, however, not indicated.

The CIR insists that an examination of the facts shows that Enron was properly apprised of its tax deficiency. During the pre-assessment stage, the CIR advised Enron's representative of the tax deficiency, informed it of the proposed tax deficiency assessment through a preliminary five-day letter and furnished Enron a copy of the audit working paper allegedly showing in detail the legal and factual bases of the assessment. The CIR argues that these steps sufficed to inform Enron of the laws and facts on which the deficiency tax assessment was based.

We disagree. **<u>The advice of tax deficiency</u>**, given by the CIR to an employee of Enron, **<u>as well as the preliminary five-day letter, were not valid substitutes for the mandatory notice in writing of the legal and factual bases of the assessment</u>**. **<u>These steps were mere perfunctory discharges of the CIR's duties in correctly assessing a taxpayer</u>**. The requirement for issuing a preliminary or final notice, as the case may be, informing a taxpayer of the existence of a deficiency tax assessment is markedly different from the requirement of what such notice must contain. **<u>Just because the CIR issued an advice, a preliminary letter during the pre-assessment stage and a final notice, in the order required by law</u>**, does

> not necessarily mean that Enron was informed of the law and facts on which the deficiency tax assessment was made.
>
> The law requires that the legal and factual bases of the assessment be stated in the formal letter of demand and assessment notice. Thus, such cannot be presumed. Otherwise, the express provisions of Article 228 of the NIRC and RR No. 12-99 would be rendered nugatory. The alleged "factual bases" in the advice, preliminary letter and "audit working papers" did not suffice. There was no going around the mandate of the law that the legal and factual bases of the assessment be stated in writing in the formal letter of demand accompanying the assessment notice.
>
> We note that the old law merely required that the taxpayer be notified of the assessment made by the CIR. This was changed in 1998 and the taxpayer must now be informed not only of the law but also of the facts on which the assessment is made. Such amendment is in keeping with the constitutional principle that no person shall be deprived of property without due process. In view of the absence of a fair opportunity for Enron to be informed of the legal and factual bases of the assessment against it, the assessment in question was void." *(Emphasis ours)*

The ***Enron Case*** brings home three points: First, that the issuance of a PAN, and subsequently, a FAN, is part of the duties of the CIR in correctly assessing a taxpayer; Second, that the mere issuance of a FAN is insufficient if it fails to state the facts and the law on which the assessment is based; and Third, the collection of taxes must comply with the Due Process Clause of the Constitution.

It cannot be stressed enough that in this case, there was no FAN or Notice of Assessment issued by respondent. If jurisprudence and the law have stringent requirements as regards the form in which the FAN is to be issued for due process to be followed, **the omission of the FAN itself, especially when it has been specifically requested by petitioner**, is an obvious indication that the tax collected was without basis.

Furthermore, in ***IDS Logistics (Phils), Inc. v. Commissioner of Internal Revenue***[45], this Court held that although a PAN is required to be issued to petitioner, the issuance of a PAN is not indispensable because **a taxpayer is not obliged to protest a PAN**. Furthermore, the failure of the taxpayer to protest a PAN does not result in the finality of the assessment against it.

This Court, in the case of ***Security Bank Corporation v. Commissioner of Internal Revenue***[46]**,** explained the significance and effects of a PAN vis-à-vis a FAN, in the following manner:

> "It must be emphasized that **a protest to the preliminary assessment notice is not the same as the protest required to be filed as an answer to the final assessment notice**. In fact, a preliminary assessment notice may or may not even be protested to by the taxpayer, and the fact of non-payment shall not in any way make the preliminary assessment notice final and unappealable. What is clear from Section 319-A of the Tax Code of 1997, as amended, is that **failure on the part of the taxpayer to protest or reply to a preliminary assessment notice paves way for the issuance of a final assessment notice**. However, evident under the said Section is that failure on the part of the taxpayer to file a valid administrative protest through a request for reconsideration or reinvestigation on the final assessment notice, shall result in the finality of the FAN." *(Underscoring supplied)*

What the law demands, therefore, is the issuance of the FAN which should be formally protested to by petitioner; otherwise the same shall become final and executory. However, no such FAN was issued by respondent.

In fact, respondent would have this Court ignore, as she herself has done, petitioner's letter of August 15, 2008 which reserved its right to file a formal administrative protest and virtually reminded respondent to issue an FLD/FAN so that it could do so. What is worse is that respondent would have this Court punish petitioner for taking the initiative in availing of the obvious remedy of immediate payment in order to limit its liability for interest charges while the finality of the assessment was still pending.

Unfortunately for respondent, she deemed the fact of payment alone sufficient all the while disregarding petitioner's reservations to a timely protest once it was issued the FLD/FAN.

While we recognize that taxes are the lifeblood of the government and so should be collected without unnecessary hindrance, such collection should

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[45] CTA Case No. 7540, May 20, 2010.
[46] CTA Case No. 6564, November 28, 2006.

be made in accordance with law as any arbitrariness will negate the very reason for government itself. It is therefore necessary to reconcile the apparently conflicting interests of the authorities and the taxpayers so that the real purpose of taxation, which is the promotion of the common good, may be achieved.[47] Thus, even as we concede the inevitability and indispensability of taxation, it is a requirement in all democratic regimes that it be exercised reasonably and in accordance with the prescribed procedure.[48]

Defective Waivers Make PAN Issued by Respondent Time-Barred

Since petitioner filed its Annual Income Tax Return for taxable year 2002 on April 15, 2003, respondent only had until April 15, 2006 to assess petitioner for deficiency taxes.

Petitioner argues that the PAN it received on August 14, 2008 through fax was served erroneously because according to Section 3.1.2 of Revenue Regulations No. 12-99, the PAN should be issued to petitioner by registered mail. Considering that petitioner received an actual copy of the PAN on September 24, 2008, petitioner maintains that the PAN was issued beyond the prescriptive period provided by law and that the PAN for deficiency income tax for the year 2002 was issued after the lapse of the 3-year prescriptive period as admitted by respondent's witness, Ms. Mariesol Girang during her testimony on May 23, 2013.

With respect to petitioner's deficiency VAT for taxable year 2002, petitioner filed its Quarterly VAT Returns on April 10, 2002, July 24, 2002, October 25, 2002, and January 20, 2003, respectively. Counting three years from the said dates, petitioner posits that respondent had until April 25, 2005, July 25, 2005, October 25, 2005, and January 25, 2006 to assess for deficiency VAT. Since the actual copy of the PAN was issued to petitioner only on September 24, 2008, petitioner argues that the right of respondent to assess has already expired.

While petitioner executed Waivers of Defense of Prescription, petitioner points out that the said waivers suffer several infirmities. According to petitioner, the first waiver was not accompanied by a Board Resolution authorizing the signatory thereof to sign the said waiver for and in behalf of the company. It also failed to specify the subject taxes.

The second waiver also suffers from the same defects with an addition that the acceptance of the said waiver was made beyond the period of three (3) years from the filing of petitioner's Income Tax Return. In as much as the first

[47] *Lascona Land Co., Inc. v. CIR*, G.R. No. 171251, citing *Commissioner v. Algue, Inc.*, 241 Phil. 829, 830 (1988).
[48] *Id.* at 836.

two waivers are void for being defective, petitioner argues that the other two waivers are without force and effect since there is no period to extend.

Respondent counter-argues that the act of petitioner in paying the deficiency tax instead of replying to the PAN constitutes an assent and acquiescence to the PAN and that petitioner wanted to extinguish its tax liability. She also contends that there is no "payment under protest" under the NIRC of 1997 and that the waivers petitioner executed are valid and binding which would, in effect, allow her assessment to fall within the prescriptive period. In addition, the execution of the said waivers would estop petitioner from assailing the said waivers. Finally, citing the cases of ***Bank of Commerce v. Commissioner of Internal Revenue***[49] (Bank of Commerce Case) and ***Rizal Commercial Banking Corporation v. Commissioner of Internal Revenue***[50] (RCBC Case), respondent asserts that the payment of the deficiency taxes by petitioner constitutes an admission on its part that the waivers were valid.

At issue, therefore, is whether or not respondent is already barred by prescription in assessing petitioner for deficiency taxes. Should it be proven that the right of respondent to assess petitioner for deficiency taxes has already lapsed, the collection of the said taxes would have been without statutory authority, making the same erroneous and subject to refund.

Internal revenue taxes shall be assessed within three (3) years after the last day prescribed by law for the filing of the return or at the time of the filing of the return whichever comes later. Section 203 of the NIRC provides:

> "**SEC. 203.** ***Period of Limitation Upon Assessment and Collection.*** – Except as provided in Section 222, internal revenue taxes shall be assessed within three (3) years after the last day prescribed by law for the filing of the return, and no proceeding in court without assessment for the collection of such taxes shall be begun after the expiration of such period: *Provided,* That in a case where a return is filed beyond the period prescribed by law, the three-year period shall be counted from the day the return was filed. For purposes of this Section, a return filed before the last day prescribed by law for the filing thereof shall be considered as filed on such last day."

In the PAN, petitioner was assessed to be liable for deficiency income tax, compromise penalty on withholding tax, expanded withholding tax, final tax on royalties, final withholding on VAT, fringe benefit tax and VAT in the aggregate amount of ₱13,250,152.55.

[49] CTA E.B. No. 160, August 30, 2006.
[50] CTA E.B. Case No. 83, July 27, 2005.

Records disclose that petitioner submitted before this Court its Annual Income Tax Return (ITR) [51] and Quarterly VAT Returns for taxable year 2002[52] as evidence in support of its claim that respondent's right to make an assessment for deficiency income tax and deficiency VAT for the same taxable year had already been barred by prescription.

Incidentally, no evidence was offered to this Court to support the same in connection with deficiency fringe benefit taxes. Tax returns concerning deficiency withholding taxes on compensation income and deficiency final taxes were denied admission by this Court because petitioner failed to present the originals for comparison in a Resolution dated November 9, 2012.

Therefore, due to petitioner's failure to present before this Court all relevant documents, only the amounts of ₱5,554,067.05 and ₱1,626,241.85 representing assessments for deficiency Income Tax and VAT shall be considered in determining whether the statute of limitations set forth in Section 203 of the NIRC, as amended, has set in.

Section 77(B) of the Tax Code, as amended, mandates the period wherein a taxpayer's income tax return should be filed, to wit:

> "**SEC. 77.** ***Place and Time of Filing and Payment of Quarterly Corporate Income Tax.*** **-**
>
> xxx xxx xxx
>
> (B) ***Time of Filing the Income Tax Return.*** – The corporate quarterly declaration shall be filed within sixty (60) days following the close of each of the first three (3) quarters of the taxable year. The final adjustment return shall be filed on or before the fifteenth (15th) day of April, or on or before the fifteenth (15th) day of the fourth (4th) month following the close of the fiscal year, as the case may be." *(Underscoring ours)*

On the other hand, Section 114(A) of the same code states the period wherein VAT returns should be filed, to wit:

> "**SEC. 114.** ***Return and Payment of Value-Added Tax*** **–**
>
> (A) *In General.* – Every person liable to pay the value-added tax imposed under this Title shall file a quarterly return of the amount of his gross sales or receipts within twenty-five (25) days following the close of each taxable quarter prescribed for

[51] Exhibit "U".
[52] Exhibits "V, V-1, V-2, W, W-1, W-2, X, X-1, X-2, Y, Y-1 and Y-2".

each taxpayer: *Provided, however,* That VAT-registered persons shall pay the value-added tax on a monthly basis.

Any person, whose registration has been cancelled in accordance with Section 236, shall file a return and pay the tax due thereon within twenty-five (25) days from the date of cancellation of registration: *Provided,* That only one consolidated return shall be filed by the taxpayer for his principal place of business or head office and all branches." *(Underscoring ours)*

Applying the foregoing provisions in relation to Section 203 of the Tax Code, and considering the dates wherein petitioner filed its Annual ITR and Quarterly VAT Returns for taxable year 2002, respondent should have issued the corresponding assessments on the following dates:

Deficiency Income Tax

Period Covered	Date of Filing	Last Day to File Return	Last Day to Issue Assessment
2002 [53]	April 15, 2003	April 15, 2003	April 15, 2006

Deficiency Value-added Tax

Period Covered	Date of Filing	Last Day to File Return	Last Day to Issue Assessment
1st Quarter [54]	April 10, 2002	April 25, 2002	April 25, 2005
2nd Quarter [55]	July 24, 2002	July 25, 2002	July 25, 2005
3rd Quarter [56]	October 25, 2002	October 25, 2002	October 25, 2005
4th Quarter [57]	January 20, 2003	January 25, 2003	January 25, 2006

Petitioner claims that the PAN was received through facsimile on August 14, 2008 [58] and that the actual copy thereof was received on September 24, 2008 [59] through Cristina Panopio, petitioner's Finance Specialist.

From the tables above determining the last day to issue the respective assessments, we find that the PAN was already barred by prescription at the time it was issued to petitioner. However, records show that petitioner

[53] Exhibit "U".
[54] Exhibits "V, V-1 and V-2".
[55] Exhibits "W, W-1 and W-2".
[56] Exhibits "X, X-1 and X-2".
[57] Exhibits "Y, Y-1 and Y-2".
[58] Judicial Affidavit of Gregorio B. Serrano, Exhibit "HH", p. 832; TSN dated November 17, 2011, p. 12.
[59] *Ibid*, p. 833.

executed several waivers [60] requesting respondent to extend the period to make an assessment not later than the following dates:

WAIVER	Date to which Period to Assess is extended
1st	April 15, 2006
2nd	April 15, 2007
3rd	December 31, 2007
4ths	December 31, 2008

Respondent argues that the PAN was issued by her and received by petitioner well within the prescribed period to assess, relying on the waivers executed by petitioner. Further, the validity of the waiver cannot be impugned because the same was executed in accordance with RMO No. 20-90 as amended by RDAO Nos. 05-01 and 04-2007.

We determine the evidence to show otherwise.

Section 203 of the Tax Code provides the period within which internal revenue taxes may be assessed.[61] Corollarily, it also governs the prescription period of the government's right to assess internal revenue taxes, primarily to safeguard the interests of taxpayers from unreasonable investigation. Accordingly, the government must assess internal revenue taxes on time so as not to extend indefinitely the period of assessment and deprive the taxpayer of the assurance that it will no longer be subjected to further investigation for taxes after the expiration of reasonable period of time.[62]

By way of exception, Section 222(b) of the Tax Code authorizes that the prescribed period under Section 203 may be extended to a later date by an agreement in writing between the taxpayer and the Commissioner of Internal Revenue, as follows:

> "**SEC. 222** ***Exceptions as to Period of Limitation of Assessment and Collection of Taxes. –***
>
> xxx xxx xxx
>
> (b) **<u>If before the expiration of the time prescribed in Section 203 for the assessment of the tax,</u>** <u>both the Commissioner and the taxpayer have agreed in writing to its assessment after such time, the tax may be assessed within the period agreed upon.</u> The period so agreed upon may be extended

[60] Waiver of the Defense of Prescription, *ibid*.
[61] *Ibid*.
[62] *Philippine Journalists, Inc. v. Commissioner of Internal Revenue*, G.R. No. 162852, December 16, 2004, 447 SCRA 214.

by subsequent written agreement made before the expiration of the period previously agreed upon." *(Emphasis ours)*

The agreement in writing as stated in Section 222 refers to a "Waiver of the Defense of Prescription" to be executed by the taxpayer strictly in accordance with the provisions of RMO No. 20-90 as amended by RDAO No. 05-01. Thus, it is necessary to determine the validity of the waivers executed by petitioner to determine whether or not the PAN issued by respondent is barred by the statute of limitations.

In the case of ***Commissioner of Internal Revenue vs. Kudos Metal Corporation***[63], the Supreme Court, in applying RMO No. 20-90 and RDAO No. 05-01 laid down the procedure for the proper execution of the waiver, to wit:

1. The waiver must be in the proper form prescribed by RMO 20-90. The phrase "but not after _______ 19___", which indicates the expiry date of the period agreed upon to assess/collect the tax after the regular three-year period or prescription, should be filled up.

2. The waiver must be signed by the taxpayer himself or his duly authorized representative. In the case of a corporation, the waiver must be signed by any of its responsible officials. In case the authority is delegated by the taxpayer to a representative, such delegation should be in writing and duly notarized.

3. The waiver should be duly notarized.

4. The CIR or the revenue official authorized by him must sign the waiver indicating that the BIR has accepted and agreed to the waiver. The date of such acceptance by the BIR should be indicated. However, before signing the waiver, the CIR or the revenue official authorized by him must make sure that the waiver is in the prescribed form, duly notarized, and executed by the taxpayer or his duly authorized representative.

5. Both the date of execution by the taxpayer and date of acceptance by the Bureau should be before the expiration of the period of prescription or before the lapse of the period agreed upon in case a subsequent agreement is executed.

[63] 620 SCRA 232.

> 6. The waiver must be executed in three copies, the original copy to be attached to the docket of the case, the second copy for the taxpayer and the third copy for the Office accepting the waiver. The fact of receipt by the taxpayer of his/her file copy must be indicated in the original copy to show that the taxpayer was notified of the acceptance of the BIR and the perfection of the agreement. *(Emphasis supplied)*

The Supreme Court in the case of ***Philippine Journalist, Inc. v. Commissioner of Internal Revenue*** [64] provides:

> "**A waiver of the statute of limitations under the NIRC, to a certain extent, is a derogation of the taxpayers' right to security against prolonged and unscrupulous investigations and must therefore be carefully and strictly construed**. The waiver of the statute of limitations is not a waiver of the right to invoke the defense of prescription as erroneously held by the Court of Appeals. It is an agreement between the taxpayer and the BIR that the period to issue an assessment and collect the taxes due is extended to a date certain. **The waiver does not mean that the taxpayer relinquishes the right to invoke prescription unequivocally particularly where the language of the document is equivocal**. For the purpose of safeguarding taxpayers from any unreasonable examination, investigation or assessment, our tax law provides a statute of limitations in the collection of taxes. Thus, the law on prescription, being a remedial measure, should be liberally construed in order to afford such protection. As a corollary, the exceptions to the law on prescription should perforce be strictly construed." *(Emphasis ours)*

As correctly pointed out by petitioner, this Court finds the first [65] and second [66] waivers to be defective. The individuals signing the said waivers on behalf of petitioner were without a notarized written authority of petitioner to sign the same, contrary to the requirements of RMO No. 20-90 and RDAO No. 05-01. Furthermore, the acceptance of the second waiver by respondent on May 24, 2006 was made after the period of prescription expired. Lastly, the date of acceptance of the second waiver by respondent was not indicated.

Considering that the said waivers were defective, it is immaterial to discuss the validity of the third [67] and fourth [68] waivers since at the time they were executed, there were no more periods to extend. Thus, the execution of

[64] *Ibid.*
[65] Exhibits "7 and 7-A".
[66] Exhibits "8 and 8-A".
[67] Exhibits "9 and 9-A".
[68] Exhibits "10 and 10-A".

the waivers, defective as they were, did not extend the period to assess petitioner for the said deficiency taxes which makes the PAN issued against petitioner time-barred.

Respondent's view that the execution of the waivers in question bars petitioner from assailing the validity of the same deserves scant consideration from this Court.

CIR v. Kudos Metal Corporation[69] provides that the mere execution of a waiver by a taxpayer does not estop him from disputing an action by the CIR beyond the statutory 3-year period, to wit:

> "The doctrine of estoppel cannot be applied in this case as an exception to the statute of limitations on the assessment of taxes considering that there is a detailed procedure for the proper execution of the waiver, which the BIR must strictly follow. As we have often said, the doctrine of estoppel is predicated on, and has its origin in equity which, broadly defined, is justice according to natural law and right. **As such, the doctrine of estoppel cannot give validity to an act that is prohibited by law or one that is against public policy**. It should be resorted to solely as a means of preventing injustice and should not be permitted to defeat the administration of the law, or to accomplish a wrong to secure an undue advantage, or to extend beyond them requirements of the transactions in which they originate. Simply put, the doctrine of estoppel must be sparingly applied." *(Emphasis ours)*

In order for estoppel by conduct to apply, the following requisites must be present, as held in ***Maneclang v. Baun***[70]: (a) there must have been a representation or concealment of material facts; (b) the representation must have been with knowledge of the facts; (c) the party to whom it was made must have been ignorant of the truth of the matter; and (d) it must have been with the intention that the other party would act upon it.

Based on all of the foregoing, the waivers executed by petitioner did not comply with RMO No. 20-90 and RDAO No. 05-01 and, hence, did not extend the period in which respondent could validly assess petitioner for deficiency taxes. Consequently, since the last days to issue assessments for deficiency income tax and deficiency VAT fell on the years 2005 and 2006, the PAN issued to petitioner in 2008[71] was indeed issued beyond the prescriptive period.

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[69] G.R. No. 178087, May 5, 2010.
[70] 208 SCRA 179, 192.
[71] Through facsimile on August 14, 2008 (Exhibit "HH" and TSN dated November 17, 2011 p. 12) and through personal service on September 24, 2008 (Exhibit "HH").

Accordingly, the collection of petitioner's deficiency taxes on August 14, 2008 is determined to be without statutory authority and the payment thereof by petitioner is deemed erroneous. However, insofar as petitioner was able to substantiate its claim only in the case of deficiency income tax and deficiency VAT, the amount to be refunded to petitioner is to be limited to that extent.

WHEREFORE, premises considered, the instant Petition for Review is hereby **PARTIALLY GRANTED.** Accordingly, let a tax refund or a tax credit certificate be issued in favor of petitioner in the amount of ₱5,554,067.05 and ₱1,626,241.85 representing its erroneous payment of its deficiency Income Tax and deficiency VAT for taxable year 2002, or total amount of ₱7,180.308.90.

SO ORDERED.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

WE CONCUR:

LOVELL R. BAUTISTA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

ATTESTATION

I attest that the conclusions in the above decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

LOVELL R. BAUTISTA
Associate Justice
Chairperson

CERTIFICATION

Pursuant to Section 13 of Article VIII of the Constitution, it is hereby certified that the above Decision has been reached in consultation with the members of the Court in Division before the case was assigned to the writer of the opinion of this Court.

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Acting Presiding Justice