REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

SECOND DIVISION

HEIRS OF LOURDES D. JAKIHACA, as represented by JESUS D. JAKIHACA IV, Petitioner,	**CTA CASE NO. 8102**
	Members:
- versus -	**CASTAÑEDA, JR.,** *Chairperson* **CASANOVA,** *and* **MINDARO-GRULLA,** *JJ.*
HONORABLE JOEL L. TAN-TORRES, in his capacity as COMMISSIONER OF INTERNAL REVENUE, Respondent.	**Promulgated:** JUN 03 2011 4:06 p.m.

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DECISION

CASTAÑEDA, JR., *J.*:

This Petition for Review seeks the review of the decision of the Commissioner of Internal Revenue involving a denial of the claim for refund of the estate tax allegedly overpaid by petitioner in view of petitioners' availment of the tax amnesty program under Republic Act (R.A.) No. 9480.

Petitioners are the legitimate heirs of Lourdes D. Jakihaca. They are all of legal age and residents of 214 Daan Bakal St., Ampid I, San Mateo, Rizal.[1]

[1] Par. 2, Joint Stipulation of Facts and Issues (JSFI), docket, p. 87

Respondent Joel L. Tan-Torres, on the other hand, is the duly appointed Commissioner of the Bureau of Internal Revenue (BIR) empowered to perform the duties of said office including, among others, the power to decide, approve, and grant refunds of erroneously or excessively paid taxes. He holds office at the BIR National Office Building, BIR Road, Diliman, Quezon City.

On February 28, 2002, Lourdes D. Jakihaca died. However, it was only in 2008 that petitioners extra-judicially settled the estate of the late Lourdes D. Jakihaca. On account thereof, the administrator of the estate of the late Lourdes D. Jakihaca paid estate taxes in the amount of P337,157.40 on May 6, 2008.[2]

On August 8, 2008, petitioners sought a refund of the estate taxes that they paid.[3]

Petitioners argue that pursuant to R.A. No. 9480, they are entitled to a refund of P174,425.80 from the amount of P337,157.40 they paid on May 6, 2008. However, the claim for refund was denied on the ground that the payment of the amnesty tax for the estate of the late Lourdes D. Jakihaca was made only on May 6, 2008.[4] On the pretext that the amnesty tax due was filed late, petitioners were denied the benefit of R.A. No. 9480; thus, the tax due on the estate of the late Lourdes D. Jakihaca was computed based on the regular rates of the National Internal Revenue Code.

[2] Pars. 4 and 5, JSFI, docket, p. 88
[3] Par. 6, JSFI, docket, p. 88
[4] Pars. 5 and 6, JSFI, docket, p. 88

Petitioners counter-argue that the amnesty tax payment that was made on May 6, 2008 was within the six (6)-month period provided for by R.A. No. 9480.

Hence, the instant Petition for Review filed on May 4, 2010.

In his Answer[5] filed on June 16, 2010, respondent interposed the following Special and Affirmative Defenses:

> "6. He reiterates and re-pleads the preceding paragraphs of this Answer as part of his Special and Affirmative Defenses.
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> 7. Taxes paid and collected are presumed to have been paid in accordance with law and regulations, hence, not refundable.
>
> 8. The machine validation in the Tax Amnesty Payment Form (0617) and UCPB BTR-BIR Deposit Slip showed that the payment of amnesty tax for the estate of Lourdes D. Jakihaca in the amount of P337,157.40 was only made on May 6, 2008. Therefore, the payment was beyond the period provided by Sections 2 and 7 of Republic Act No. 9480, otherwise known as, Tax Amnesty Act of 2007, which provides:
>
> > '**Sec. 2. Availment of the Amnesty.** — Any person, natural or juridical, who wishes to avail himself of the tax amnesty authorized and granted under this Act shall file with the Bureau of Internal Revenue (BIR) a notice and Tax Amnesty Return accompanied by a Statement of Assets, Liabilities and Networth (SALN) as of December 31, 2005, in such form as may be prescribed in the implementing rules and regulations (IRR) of this Act, and **pay the applicable amnesty tax within six months from the effectivity of the IRR.**
> >
> > '**Sec. 7. When and Where to File and Pay.** — The filing of the Tax Amnesty Return and the **payment of the amnesty tax for those availing themselves of the**

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[5] Docket, pp. 56-61

> **tax amnesty shall be made within six months starting from the effectivity of the IRR.** It shall be filed at the office of the Revenue District Officer which has jurisdiction over the legal residence or principal place of business of the filer. The Revenue District Officer shall issue an acceptance of payment form authorizing an authorized agent bank, or in the absence thereof, the collection agent or municipal treasurer concerned, to accept the amnesty tax payment.' (Emphasis supplied)

According to Department Order No. 11-08 dated March 18, 2008, DOF Department Order No. 29-07 dated August 15, 2007 implementing the provisions of Republic Act No. 9480, became effective on November 7, 2007. Since the effectivity of DOF Department Order No. 29-07 commenced on November 7, 2007, it follows that the last day for availing of the benefits of the amnesty shall be six (6) months from November 7, 2007 or on May 5, 2008.

After all, tax amnesty is a general pardon or intentional overlooking by the State of its authority to impose penalties on persons otherwise guilty of evasion or violation of a revenue or tax law. It partakes of an absolute forgiveness or waiver by the government of its right to collect what is due it and to give tax evaders who wish to relent a chance to start with a clean slate. Hence, the provisions and requisites under Republic Act No. 9480 must be strictly complied with by the taxpayer-applicant.

9. In an action for tax refund, the burden of proof rests upon the taxpayer to establish by sufficient and competent evidence its entitlement to a claim for refund.

10. Finally, basic is the rule that tax refunds are in the nature of tax exemptions and are to be construed *strictissimi juris* against the entity claiming the same *(Philippine Geothermal, Inc., vs. Commissioner of Internal Revenue, G.R. No. 154028, July 27, 2005).* Moreover, statutes in derogation of sovereignty such as those containing exemption from taxation should be strictly construed in favor of the State. In this regard, taxation is the rule and exemption is the exception. The law does not look with favor on tax exemptions and that he who would seek to be thus privileged must justify it by words too plain to be

> mistaken and too categorical to be misinterpreted *(Sea-Land Service, Inc. vs. Court of Appeals, 357 SCRA 444).*"

During the hearing held on July 22, 2010, counsels for both parties manifested that this case involved only questions of law.[6]

On October 18, 2010, the case was submitted for decision, after petitioners filed their Memorandum[7] on October 8, 2010 and respondent filed his Memorandum[8] on October 13, 2010.[9]

The parties raised the following issues[10] for this Court's resolution:

"1. Whether the last day for availing of the benefits of R.A. 9480 falls on May 5, 2008; and

2. Whether or not the petitioners are entitled to the benefits of R.A. 9480."

Petitioner's claim must be denied.

Sections 2 and 7 of Republic Act No. 9480, otherwise known as the Tax Amnesty Act of 2007, provide:

> "SECTION 2. *Availment of the Amnesty.* — Any person, natural or juridical, who wishes to avail himself of the tax amnesty authorized and granted under this Act shall file with the Bureau of Internal Revenue (BIR) a notice and Tax Amnesty Return accompanied by a Statement of Assets, Liabilities and Networth (SALN) as of December 31, 2005, in such form as may be prescribed in the implementing rules and regulations (IRR) of this Act, and pay the applicable amnesty tax **within six months from the effectivity of the IRR**.
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> xxx xxx xxx
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> SECTION 7. *When and Where to File and Pay.* — The filing of the Tax Amnesty Return and the payment of the amnesty tax for those availing themselves of the tax amnesty shall be made **within six months starting from the effectivity**

[6] Minutes of the hearing dated July 22, 2010, docket, p. 77
[7] Docket, pp. 92-101
[8] Docket, pp. 102-108
[9] Resolution promulgated October 18, 2010, docket, p. 109
[10] Stipulation of Issues, JSFI, docket, p. 88

of the IRR. It shall be filed at the office of the Revenue District Officer which has jurisdiction over the legal residence or principal place of business of the filer. The Revenue District Officer shall issue an acceptance of payment form authorizing an authorized agent bank, or in the absence thereof, the collection agent or municipal treasurer concerned, to accept the amnesty tax payment." (*Emphasis supplied*)

Sections 6, paragraph 4 of the Implementing Rules and Regulations[11] (IRR) of Republic Act No. 9480 states as follows:

"SECTION. 6. *Method of Availment of Tax Amnesty.* –

xxx xxx xxx

4. *Time for Filing and Payment of Amnesty Tax.* – The filing of the Tax Amnesty Return, together with the SALN, and the payment of the amnesty tax shall be made **within six (6) months from the effectivity of these Rules**." (*Emphasis supplied*)

On the other hand, the pertinent portions of Department of Finance (DOF) Department Order No. 11-08 dated March 18, 2008 provides:

"CLARIFICATION ON THE LAST DAY FOR AVAILING OF THE BENEFITS UNDER REPUBLIC ACT NO. 9480, OTHERWISE KNOWN AS, THE TAX AMNESTY ACT OF 2007

Section 2 of Republic Act No. 9480, otherwise known as, The Tax Amnesty Act of 2007 provides that the amnesty tax shall be paid 'within six months from the effectivity of the IRR'.

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Based on the certification by the UP Law Center, Office of the National Administrative Register (UPLC-ONAR), the Bureau has learned that the copy of **DOF Department Order No. 29-07**, dated August 15, 2007, **implementing the provisions of R.A. No. 9480**, was filed with the UPLC-ONAR only last October 23, 2007. Thus, D.O. No. 29-07 became effective 15 days from October 23 or on November 7, 2007.

In view of all the foregoing, it is hereby clarified that the effectivity of DOF Department Order No. 29-07 commenced

[11] DOF Department Order No. 29-07

on November 7, 2007 and **the last day for availing of the benefits of the amnesty shall be six (6) months from November 7, 2007 or on May 5, 2008**." (*Emphasis supplied*)

In *Commissioner of Internal Revenue, et al. vs. Primetown Property Group, Inc.*[12], the Supreme Court ruled:

> "However, in 1987, EO 292 or the Administrative Code of 1987 was enacted. Section 31, Chapter VIII, Book I thereof provides:
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> > Sec. 31. *Legal Periods.* — **'Year' shall be understood to be twelve calendar months; 'month' of thirty days**, unless it refers to a specific calendar month in which case it shall be computed according to the number of days the specific month contains; 'day', to a day of twenty-four hours and; 'night' from sunrise to sunset. (emphasis supplied)
>
> A calendar month is 'a month designated in the calendar without regard to the number of days it may contain.' It is the 'period of time running from the beginning of a certain numbered day up to, but not including, the corresponding numbered day of the next month, and if there is not a sufficient number of days in the next month, then up to and including the last day of that month.' To illustrate, one calendar month from December 31, 2007 will be from January 1, 2008 to January 31, 2008; one calendar month from January 31, 2008 will be from February 1, 2008 until February 29, 2008." (*Emphasis supplied*)

Petitioners contend that the definition of a calendar month in the above-mentioned case is applicable to the instant case. Such contention is invalid.

In the instant case, the issue involved is the counting of six months. Therefore, the applicable legal principle is that a month shall be understood to be thirty days.

[12] G.R. No. 162155, August 28, 2007

Consequently, the last day to avail of the benefits of the tax amnesty shall be six (6) months or one hundred eighty (180) days from November 7, 2007 or on May 5, 2008 as clarified by DOF Department Order No. 11-08.

The payment of amnesty tax for the estate of Lourdes D. Jakihaca was only made on May 6, 2008.[13] Clearly, the payment was made beyond the period provided by law. Hence, petitioners are not entitled to the benefits of R.A. No. 9480.

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

SO ORDERED.

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice

WE CONCUR:

CAESAR A. CASANOVA
Associate Justice

Cielito N. Mindaro-Grulla
CIELITO MINDARO-GRULLA
Associate Justice

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[13] Par. 5, JSFI, docket, p. 88

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.

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice
Chairperson

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, and the Division Chairperson's Attestation, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.

ERNESTO D. ACOSTA
Presiding Justice