REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

BOGO-MEDELLIN MILLING CO., INC.,
Petitioner,

- versus -

C.T.A. CASE NO. 5579

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:

MAY 18 1999

x - x

DECISION

This is a simple case of claim for refund of overpaid income tax for the fiscal year ended September 30, 1996 in the amount of ₱1,605,671.00.

Petitioner is a domestic corporation with principal office at Luy-a, Medellin, Cebu City.

On February 28, 1996, petitioner filed its first Quarterly Income Tax Return for the fiscal year ended September 30, 1996 (Exh. A), declaring a net taxable income in the amount of ₱2,502,120.83. The tax due thereon was ₱875,742.00 (Exh. A-2) which petitioner paid on the same date to the Bureau of Internal Revenue (BIR) as evidenced by Official Receipt No. 5966570 (Exh. B).

Subsequently, petitioner filed its second Corporate Quarterly Income Tax Return (Exh. C) on May 29, 1996 thereby reflecting a cumulative taxable income in the sum of ₱10,328,896.43 and a tax due thereon amounting to ₱3,615,114.00. The tax paid for the quarter was ₱2,631,098.34 as evinced by Official Receipt No. 7139237 (Exh. D).

For the third quarter, petitioner filed the corresponding Corporate Quarterly Income Tax Return (Exh. E) on August 23, 1996 and declared a cumulative taxable income of ₱6,152,210.85 and the tax due thereon in the amount of ₱2,153,273.80. Said return showed a refundable amount of ₱1,533,533.32 (Exh. E-2).

Petitioner then filed its Corporate Annual Income Tax Return for the fiscal year ended September 30, 1996 (Exh. F) on January 6, 1997 which declared a refundable amount of ₱1,605,671.00 (Exh. F-2).

Consequently, petitioner sent a letter to the respondent's Bureau requesting for the refund of overpaid income tax in the amount of ₱1,605,671.00 on February 20, 1997 (Exh. G). The instant petition for review was filed on February 27, 1998 in an effort to toll the running of the prescriptive period in claiming for a refund.

Respondent, by way of Special and Affirmative Defenses, states that:

> 1) Petitioner's claim for tax refund is still undergoing administrative routinary investigation/ examination by the respondent's Bureau;
>
> 2) The amount of tax sought by the petitioner to be refunded/credited was colllected and paid

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pursuant to law and BIR implementing rules and regulations, hence the same is not refundable;

3) Petitioner must likewise prove that the alleged refundable taxes were neither automatically applied as tax credit against its tax liability for the succeeding quarter/s of the suceeding year nor included as creditable taxes declared and applied to the succeeding taxable years;

4) Claims for tax refund are construed strictly against the claimant as it partakes of the nature of an exemption from tax and it is incumbent upon the petitioner to prove that it is entitled thereto under the law. Failure on the part of the petitioner to prove the same is fatal to its claim for tax refund;

5) Moreover, petitioner must prove that it has complied with the provision of Section 230 of the Tax Code, as amended.

To bolster its claim, herein petitioner submitted the following documents:

	Exhibits
Quarterly Income Tax Returns	A, C, E
Annual Income Tax Returns	F & L
Official Receipts	B & D
Letter Claim for Refund	G
Certificates of Creditable Income Tax Withheld at Source	H, I, J, K

It also presented a witness to testify and identify the above-mentioned documents.

Respondent, on the other hand, manifested that there was no need for him to present any evidence on the ground that there was a recommendation from the examiner to grant the refund of petitioner (TSN, December 10, 1998, p. 2). As a result, respondent also saw no need to submit a memorandum.

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The sole issue to be resolved in this case is whether or not petitioner is entitled to the refund of overpaid income tax for the fiscal year ended September 30, 1996 in the sum of P1,605,671.00.

We peremptorily rule in favor of the petitioner.

Section 69 of the Tax Code, as amended, provides:

> **SEC. 69.** ***Final Adjustment Return.*** - Every corporation liable to tax under Section 24 shall file a final adjustment return covering the total net income for the preceding calendar or fiscal year. <u>If the sum of the quarterly tax payments made during the said taxable year is not equal to the total tax due on the entire taxable net income of that year the corporation shall either:</u>
>
> (a) Pay the excess tax still due; or
>
> (b) <u>Be refunded the excess amount paid, as the case may be</u>.
>
> In case the corporation is entitled to a refund of the excess estimated quarterly income taxes paid, the refundable amount shown on its final adjustment return may be credited against the estimated quarterly income tax liabilities for the taxable quarters of the succeeding taxable year. (Underscoring supplied.)

In relation thereto, Sections 230 and 70(b) are also hereunder quoted:

> **SEC. 230.** ***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 of any penalty claimed to have been collected without authority, or of any sum alleged to have been excessive or in any manner wrongfully collected, until a claim for refund or credit

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> 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 begun after the expiration of two 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 Comissioner may, even without a written claim therefor, 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.
>
> **SEC. 70. (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 quarters of the taxable year. The final adjustment return shall be filed on or before the 15th day of April or on or before the 15th day of the 4th month following the close of the fiscal year, as the case may be.

Records will disclose that the petitioner filed its quarterly as well as annual income tax returns within the period allowed by law, *viz*:

Quarters	Date Filed	Exhibits
I (Oct.-Dec. 1995)	February 28, 1996	A-1
II (Jan.-Mar. 1996)	May 29, 1996	C-1
III (Apr.-June 1996)	August 23, 1996	E-1
Annual		
FY ended September 30, 1996	January 6, 1997	F-1
FY ended September 30, 1997	December 29, 1997	L

Moreover, petitioner has two years from January 6, 1997 to file a claim for refund of overpaid income tax. The administrative claim for refund was filed on February 20, 1997 while the instant petition was filed on February

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27, 1998. Hence, both claims for refund were filed within the two-year reglementary period provided for by law.

The fact that herein petitioner has established its entitlement to the refund of overpaid income tax with clear evidence was never controverted. It paid a total income tax of ₱3,506,840.00 (Exhs. B & D) for the first and second quarters of the fiscal year involved in this case. The total creditable withheld taxes for the said fiscal year amounted to ₱202,598.00, detailed as follows:

Withholding Agent/Payor	**Amount**	**Exhibit**
San Miguel Corporation	₱ 71,693.12	H
San Miguel Corporation	108,273.66	I
San Miguel Brewing Group	21,915.36	J
San Miguel Brewing Group	715.47	K
T o t a l	₱202,597.61	

The total tax due for the fiscal year ended September 30, 1996 was ₱2,103,767.00 (Exh. F). However, there were several tax payments made during the period amounting to ₱3,709,438.00. Indubitably, an overpayment of ₱1,605,671.00 resulted. The same amount was not credited nor carried over to the succeeding fiscal year as shown by the 1997 Corporate Annual Income Tax Return of the petitioner (Exh. L). Besides, as manifested by the respondent, there was already a recommendation by the examiner for the refund of the overpaid income tax.

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WHEREFORE, in view of all the foregoing, the instant claim for refund is hereby **GRANTED.** Respondent Commissioner of Internal Revenue is **ORDERED** to **REFUND** to the petitioner or in the alternative, **ISSUE** a TAX CREDIT CERTIFICATE in the amount of ₱1,605,671.00 representing overpaid income tax for the fiscal year ended September 30, 1996.

SO ORDERED.

ERNESTO D. ACOSTA
Presiding Judge

WE CONCUR:

(On leave)
RAMON O. DE VEYRA
Associate Judge

AMANCIO Q. SAGA
Associate Judge

CERTIFICATION

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

ERNESTO D. ACOSTA
Presiding Judge

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