CTA Form No. 8

22-000164-0060

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRSTDIVISION

CTA CASE NO. 10835

NORCONSULT MANAGEMENT SERVICES PHILS., INC.,
Petitioner,

- versus -

NOTICE OF DECISION

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

To:

OFFICE OF THE SOLICITOR GENERAL
134 Amorsolo Street, Legazpi Village
Makati City

ATTY. LEONARDO B. USITA
Bureau of Internal Revenue
Legal Division Revenue Region No. 7B
25th Floor, The Podium West Tower
ADB Avenue, Ortigas Center, Mandaluyong City

LIGAN & UY LAW OFFICE
Unit 905, High Street, South Corporate Plaza, Tower I
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Bonifacio Global City
Taguig City

GREETINGS:

You are hereby notified by these presents that on **June 30, 2025,** a Decision was rendered in the above-entitled case, copy of which is attached hereto.

Quezon City, Philippines, **July 1, 2025.**

Atty. Margarette Y. Guzman
Executive Clerk of Court III

REPUBLIC OF THE PHILIPPINES
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NORCONSULT MANAGEMENT SERVICES PHILS., INC.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 10835

Members:

DEL ROSARIO, *P.J., Chairperson,*
BACORRO-VILLENA, *and*
CUI-DAVID, *JJ.*

Promulgated:
JUN 30 2025, 4:05PM

x - x

DECISION

BACORRO-VILLENA, J.:

At bar is a Petition for Review[1] filed by petitioner Norconsult Management Services Phils., Inc., (**petitioner**), on 12 April 2022, against respondent Commissioner of Internal Revenue (**respondent/CIR**) pursuant to Section 3(a)[2], Rule 8 in relation to Section 3(a)(1)[3], Rule 4 of

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1 Division Docket, Volume I, pp. 7-44.

2 **SEC. 3.** *Who may appeal; period to file petition.*—
(a) A party adversely affected by a decision, ruling or the inaction of the Commissioner of Internal Revenue on disputed assessments or claims for refund of internal revenue taxes, or by a decision or ruling of the Commissioner of Customs, the Secretary of Finance, the Secretary of Trade and Industry, the Secretary of Agriculture, or a Regional Trial Court in the exercise of its original jurisdiction may appeal to the Court by petition for review filed within thirty days after receipt of a copy of such decision or ruling, or expiration of the period fixed by law for the Commissioner of Internal Revenue to act on the disputed assessments. In case of inaction of the Commissioner of Internal Revenue on claims for refund of internal revenue taxes erroneously or illegally collected, the taxpayer must file a petition for review within the two-year period prescribed by law from payment or collection of the taxes.

3 **SEC. 3.** *Cases within the jurisdiction of the Court in Division.* – The Court in Division shall exercise:
(a) Exclusive original over or appellate jurisdiction to review by appeal the following:

the Revised Rules of the Court of Tax Appeals (**RRCTA**). In this recourse, petitioner asks the Court to render judgment directing respondent to refund the amount of ₱11,717,431.36.00, representing alleged petitioner's excess and unutilized creditable withholding taxes (**CWTs**) for the year ended 31 December 2019 or calendar year (**CY**) 2019.[4]

PARTIES OF THE CASE

Petitioner is a domestic corporation duly organized and existing under the Philippine laws and is a registered taxpayer of the Bureau of Internal Revenue (**BIR**), Revenue Region No. 7B, Revenue District Office No. 43 with Taxpayer Identification No. (**TIN**) 201-397-516-000[5], with address at Unit 506 East Tower, Philippine Stock Exchange Centre (**PSEC**) Exchange Rd., Ortigas Ctr., San Antonio, Pasig City.[6] It is primarily engaged in the business of consultancy projects, feasibility studies, researches, management consultation, information and high technology works and development involving local and foreign projects.[7]

Respondent, on the other hand, is the duly appointed CIR tasked to perform the duties of his or her office, including, *inter alia*, the power to decide claims for tax refund or tax credit subject to the exclusive appellate jurisdiction of this Court, pursuant to Section 4[8] of the

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(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[.]

4 Summary of the Case, Pre-Trial Order dated 06 March 2023, Division Docket, Volume II, p. 608.

5 Paragraph 1.1, Stipulated Facts, Joint Stipulation of Facts (With Issue and List of Evidence) (JSFI), id., p. 452.

6 Exhibit "P-1", id., Volume III, p. 1017.

7 See Corporate Information, Exhibit "P-7", id., p. 1138.

8 **SEC. 4.** *Power of the Commissioner to Interpret Tax Laws and to Decide Tax Cases.* - The power to interpret the provisions of this Code and other tax laws shall be under the exclusive and original jurisdiction of the Commissioner, subject to review by the Secretary of Finance.

The power to decide disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto, or other matters arising under this Code or other laws or portions thereof administered by the Bureau of Internal Revenue is vested in the Commissioner, subject to the exclusive appellate jurisdiction of the Court of Tax Appeals.

National Internal Revenue Code (**NIRC**) of 1997, as amended, and Section 7[9] of Republic Act (**RA**) No. 1125[10], as amended by RA 9282.[11]

FACTS OF THE CASE

On 15 April 2020, petitioner filed, through the BIR's Electronic Filing and Payment System (**eFPS**) its 2019 Annual Income Tax Return or BIR Form No. 1702-RT (**AITR**)[12], which declared, among others, Net Revenues of ₱99,156,515.00[13] and the following Tax Credits/Payments:

Schedule 7 - Tax Credits/Payments	
Prior Year's Excess Credits Other Than Minimum Corporate Income Tax (MCIT)	₱36,501,562.00
Creditable Tax Withheld from Previous Quarter/s per BIR Form No. 2307	8,866,118.00
Creditable Tax Withheld per BIR Form No. 2307 for the 4th Quarter	2,862,553.00
Total Tax Credits/Payments	**₱48,230,233.00**

Petitioner's 2019 AITR also reflected an overpayment of ₱44,881,216.00, computed as follows:[14]

Part II – Total Tax Payable	
Total Income Tax Due (Overpayment)	₱3,349,017.00
Less: Total Tax Credits/Payments	48,230,233.00
Total Amount Payable (Overpayment)	**(₱44,881,216.00)**

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9 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 imposed in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue[.]

10 AN ACT CREATING THE COURT OF TAX APPEALS.

11 AN ACT EXPANDING THE JURISDICTION OF THE COURT OF TAX APPEALS (CTA), ELEVATING ITS RANK TO THE LEVEL OF A COLLEGIATE COURT WITH SPECIAL JURISDICTION AND ENLARGING ITS MEMBERSHIP, AMENDING FOR THE PURPOSE CERTAIN SECTIONS OF REPUBLIC ACT NO. 1125, AS AMENDED, OTHERWISE KNOWN AS THE LAW CREATING THE COURT OF TAX APPEALS, AND FOR OTHER PURPOSES.

12 Exhibit "P-3", Division Docket, Volume III, pp. 1073, 1076-1082; Exhibit "P-144-1", USB (Exhibit "P-182").

13 Par. 1.2, Stipulated Facts, JSFI, id., Volume II, p. 452.

14 Exhibit "P-3", supra at note 12.

As indicated in its 2019 AITR, petitioner opted to claim its overpayment through a tax refund.[15]

On 07 February 2022, petitioner, through the letter request dated 04 February 2022, filed an administrative claim for a tax refund of the excess and unutilized CWTs for CY 2019 with the BIR, in the amount of ₱11,728,671.00.[16]

The BIR, however, did not act on petitioner's claim. Due to the BIR's inaction, it filed the present petition on 12 April 2022.[17] The case was initially raffled to this Court's Second Division.[18]

PROCEEDINGS BEFORE THIS COURT

In the petition filed before Us, petitioner asserted its entitlement to a refund of excess and unutilized CWTs for CY 2019, claiming that all the requisites for a successful claim for refund have been duly satisfied, it alleged that: (1) it filed its claim for refund within the two (2)-year prescriptive period; (2) its CWTs are duly supported by Certificates of Creditable Tax Withheld at Source or BIR Form No. 2307 (**CWT certificates**); and (3) the related income payments that gave rise to the CWTs were properly declared as part of its taxable income for income tax purposes. Thus, petitioner prayed that the amount of ₱11,717,431.36 representing its CWTs for CY 2019 be refunded.

On 18 April 2022, the Court issued Summons[19] on respondent. In compliance therewith, respondent filed his or her Answer[20] through registered mail on 20 June 2022.

In the Answer, respondent's only counter-argument is that petitioner's judicial claim for refund before the Court was prematurely filed considering that only sixty-three (63) days had passed between petitioner's filing of the administrative claim for refund on 07 February

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15 Par. 1.3, Stipulated Facts, JSFI, id., Volume II, p. 453.
16 Exhibit "P-6", id., Volume III, pp. 1110-1122; Par. 1.4, Stipulated Facts, JSFI, id., p. 453.
17 Supra at note 1.
18 Composed of Associate Justice Erlinda P. Uy (Ret.), as Chairperson, Associate Justice Jean Marie A. Bacorro-Villena and Associate Justice Lanee S. Cui-David as Members.
19 Division Docket, Volume I, p. 155.
20 Id., pp. 161-164.

2022, and the filing of the present petition with this Court, short of the ninety (90)-day period within which the CIR must act. Citing Section 7[21] of RA 9282[22], respondent argued that this Court acquires appellate jurisdiction only in cases of an actual decision or when the CIR's inaction after the lapse of the prescribed period (which inaction is deemed a denial). As there was allegedly no such decision or inaction yet, respondent concluded that this Court could not have successfully acquired jurisdiction over the present controversy.

In the Pre-Trial Conference that proceeded on 13 October 2022[23], respondent manifested that he or she would not present countervailing evidence. Prior to the Pre-Trial Conference, respondent filed his or her Pre-Trial Brief[24] on 07 October 2022, while petitioner filed its Pre-Trial Brief[25] on 10 October 2022.

On 11 November 2022, the parties jointly filed their "Joint Stipulation of Facts (With Issue and List of Evidence)"[26], which the Court duly admitted and approved through a Resolution dated 22 November 2022[27], thereby concluding the pre-trial proceedings. The corresponding Pre-Trial Order[28] was later issued on 06 March 2023.

Thereafter, in a Resolution dated 17 July 2023[29], the Court, noting the failure of respondent's counsel to comply with its Order dated 24 May 2022[30], directed him or her to show cause why he or she should not be cited for indirect contempt, pursuant to Section 5(b)[31], Rule 6 of the

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21 Section 7. Section 7 of the same Act is hereby amended to read as follows:
"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...
2. Inaction by the Commissioner of Internal Revenue...

22 Supra at note 11.

23 Notice of Hearing dated 31 August 2022, Division Docket, Volume I, p. 173; Minutes of the hearing held on, and Order dated 13 October 2022, id., Volume II, pp. 443-445. The Pre-Trial was originally scheduled on 10 October 2022.

24 Id., Volume I, pp. 175-177.

25 Id., pp. 178-214.

26 Id., Volume II, pp. 452-489.

27 Id., p. 491.

28 Id., pp. 608-619.

29 Id., p. 761.

30 Id., Volume I, p. 159. Refer to the Records Verification dated 10 July 2023 issued by the Judicial Records Division of this Court, id., Volume II, p. 758.

31 RULE 6
PLEADINGS WITH THE COURT
...

RRCTA. He or she was likewise ordered to submit the complete BIR Records relative to the instant case.

In his or her "Compliance with Manifestation and Explanation"[32] filed on 04 August 2023, respondent's counsel transmitted the BIR Records and explained that the delay in submission stemmed from the pendency of the audit report by the assigned revenue officers. Thereafter, through a "Manifestation with Supplemental Submission"[33] filed on 07 August 2023, respondent submitted pages 1 to 318 of the BIR Records, which had been inadvertently omitted.

When trial ensued, petitioner presented its witnesses, namely: (1) Rosanna Aquino-Vergara (**Vergara**), petitioner's Finance Manager; (2) Atty. Adrian M. Dela Cruz (**Atty. Dela Cruz**), Associate Director at SyCip Gorres Velayo & Co. (**SGV**), who provides tax advisory services to petitioner; and (3) Rovelyn Q. Olaya (**Olaya**), the Court-commissioned Independent Certified Public Accountant (**ICPA**), who all testified *via* their respective judicial affidavits.

On the witness stand, Vergara declared essentially that: (1) during CY 2019, petitioner entered into various transactions with third parties to provide and render, among others, consultancy services; (2) the withholding agents withheld the aggregate amount of ₱11,717,431.36 from petitioner's income, as supported by CWT certificates; (3) petitioner filed its 2019 AITR, which declared an income tax due of ₱3,349,017.00, CY 2019 CWTs of ₱11,728,671.00 and a total overpayment of ₱44,881,216.00, on 15 April 2020; (4) petitioner's income subjected to CWT was declared as part of its gross income for CY 2019; and (5) in its 2019 AITR, petitioner unequivocally opted to claim a refund for the excess and unutilized CWTs.[34]

No cross-examination followed.[35]

Sec. 5. *Answer* –

...

(b) *Transmittal of records.*

[32] Division Docket, Volume II, pp. 766-767.

[33] Id., pp. 768-769.

[34] Exhibit "P-12", id., Volume I, pp. 50-64; Minutes of the Hearing held on, and Order dated 15 March 2023, id., Volume II, pp. 648-650.

[35] TSN dated 15 March 2023, p. 5.

In the Resolution issued on 29 May 2023, the present case was transferred to the Court's First Division pursuant to Administrative Circular No. 01-2023 (Reorganizing the Divisions of the Court) dated 23 May 2023.[36]

Atty. Dela Cruz took the witness stand next and recounted that: (1) petitioner filed an administrative claim for refund of its excess and unutilized CWTs for CY 2019 with respondent through a letter dated 04 February 2022 on 07 February 2022 within the two (2)-year reglementary period; and (2) respondent had not acted upon petitioner's administrative claim.[37]

No cross-examination followed.[38]

On 16 October 2023, ICPA Olaya initially submitted her ICPA Report[39], with attachments and one (1) USB containing soft copies of the ICPA Report and schedules and scanned copies of the exhibits.

On 03 November 2023, petitioner filed a "Motion (To Reset the Presentation of the [ICPA] on 07 November 2023)"[40], which the Court granted on even date.[41] Consequently, the presentation of ICPA Olaya, previously set on 07 November 2023, was reset to 23 November 2023.[42]

However, during the hearing held on 23 November 2023, ICPA Olaya informed the Court of her intent to submit an amended ICPA Report, explaining that the initial report submitted was incomplete.[43] Petitioner cited ICPA Olaya's preparation for her midterm examinations in law school as reason for the incomplete ICPA Report.[44] Accordingly, the Court rescheduled ICPA Olaya's testimony to 23 January 2024 and ordered her to submit the amended ICPA Report on or before 13 December 2023, without extension.[45]

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36 Division Docket, Volume II, p. 757.
37 Exhibit "P-16", id., pp. 497-503; Minutes of the Hearing held on, and Order dated 17 August 2023, id., pp. 773-776, and 778-780, respectively.
38 TSN dated 17 August 2023, p. 32.
39 Division Docket, Volume II, pp. 789-798.
40 Id., pp. 803-805.
41 See Order dated 03 November 2023, id., p. 808.
42 Id.
43 TSN dated 23 November 2023, pp. 4-6.
44 Id.
45 See Order dated 23 November 2023, Division Docket, Volume II, pp. 814-815.

On 13 December 2023, ICPA Olaya submitted the Amended ICPA Report dated on even date *via* LBC.[46]

During ICPA Olaya's testimony, she declared that: (1) petitioner's subject CWTs for CY 2019 were duly supported with original CWT certificates; (2) petitioner properly ticked the option box "*To be refunded*" in its 2019 AITR; (3) petitioner did not carry-over the subject claim for refund to CY 2020; and (4) the documents she vouched and examined are all faithful reproductions of the originals.[47]

Likewise, no cross-examination followed.[48]

On 02 February 2024, petitioner filed its Formal Offer of Exhibits (**FOE**).[49] Respondent failed to file his or her comment thereto.[50] In the Resolution dated 06 May 2024[51], the Court admitted petitioner's offered exhibits, *except* Exhibits "P-132", "P-133", "P-134", "P-135", "P-136", "P-137", "P-138", "P-139", "P-140", "P-141", "P-142", "P-143", "P-144-2", and "P-177"[52], for not being found in the records. Moreover, in the same Resolution, after respondent reiterated that he or she would be waiving his or her right to present any documentary or testimonial evidence, the

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46 Exhibit "P-181", id., pp. 817-840.
47 Exhibit "P-183", id., pp. 846-903; Order dated 23 January 2024, id., pp. 930-932.
48 TSN dated 23 January 2024, p. 35.
49 Division Docket, Volume III, pp. 939-1014.
50 Records Verification dated 16 February 2024, id., p. 1304.
51 Id., pp. 1309-1313.
52

Exhibit No.	Description
"P-132"	Norconsult's Invoice No. 69027835 in the amount of [₱]168,030.00
"P-133"	Norconsult's Invoice No. 69028356 in the amount of [₱]110,777.53
"P-134"	Norconsult's Invoice No. 69028357 in the amount of [₱]18,904.00
"P-135"	Norconsult's Invoice No. 69028358 in the amount of [₱]23,352.00
"P-136"	Norconsult's Invoice No. 69034227 in the amount of [₱]115,460.00
"P-137"	Norconsult's Invoice No. 69041232 in the amount of [₱]75,151.00
"P-138"	Norconsult's Invoice No. 69052947 in the amount of [₱]7,040.00
"P-139"	Norconsult's Invoice No. 69060689 in the amount of [₱]107,735.00
"P-140"	Norconsult's Invoice No. 69060675 in the amount of [₱]25,870.00
"P-141"	Norconsult's Invoice No. 69046989 in the amount of [₱]89,098.33
"P-142"	Norconsult's Invoice No. 69036469 in the amount of [₱]37,647.76
"P-143"	Norconsult's Invoice No. 69034035 in the amount of [₱]30,616.00
"P-144-2"	Statement of Financial Management's Responsibility for Financial Statements dated 11 March 2020
"P-177"	Schedule 3.2 – Accounts Receivable of 2019

Court then directed the parties to file their respective memoranda within 30 days from notice.[53]

On 18 June 2024, petitioner filed its Memorandum.[54] Respondent, however, failed to file his or her memorandum.[55]

On 17 July 2024, the Court submitted the case for decision.[56]

ISSUE

As the parties so stipulated in the JSFI, the following issue is submitted for this Court's determination —

> WHETHER PETITIONER NORCONSULT MANAGEMENT SERVICES PHILS., INC. IS ENTITLED TO ITS CLAIM FOR REFUND OR ISSUANCE OF TAX CREDIT CERTIFICATE (TCC) OF ITS EXCESS AND UNUTILIZED CREDITABLE WITHHOLDING TAXES (CWTs) FOR CALENDAR YEAR (CY) 2019 IN THE AMOUNT OF ₱11,717.431.36.[57]

ARGUMENTS

In support of its petition, petitioner argues that: (1) it filed the claim for refund within the two (2)-year prescriptive period; (2) the fact of withholding is proved by CWT certificates issued by the withholding agents (or petitioner's clients); and (3) it was shown through petitioner's AITR that the income payments upon which the taxes were withheld were included and declared as part of petitioner's gross income.

Respondent, on the other hand, counters essentially that petitioner prematurely filed the instant petition, as only 63 days had passed since the administrative claim was filed. Citing Section 7[58] of RA 9282, he or

53 Division Docket, Volume III, p. 1312.
54 Id., pp. 1314-1340.
55 Records Verification dated 01 July 2024, id., p. 1342.
56 Notice of Resolution dated 17 July 2024, id., p. 1343.
57 See Issues, JSFI, id., Volume II, p. 453.
58 Supra at note 21.

she argues that the Court acquires jurisdiction only after a decision or inaction beyond the 90-day period, which had not yet occurred.

RULING OF THE COURT

Before We proceed with a discussion of the substantive issue raised, We find it propitious to first rule on the timeliness of the filing of the present case.

At the outset, respondent's sole contention is that since only 63 days had elapsed from the filing of the application for refund until the filing of the present Petition for Review, there was yet no inaction on respondent's part which could be construed or deemed as a denial on petitioner's application for refund. Without such inaction, nothing was brought to this Court for appeal and over which its jurisdiction may be exercised.

Respondent's argument is bereft of merit.

Sections 204(C) and 229 of the NIRC of 1997, as amended, read:

> ...
>
> SEC. 204. *Authority of the Commissioner to Compromise, Abate and Refund or Credit Taxes.* — The Commissioner may —
>
> ...
>
> (C) Credit or refund taxes erroneously or illegally received or penalties imposed without authority, refund the value of internal revenue stamps when they are returned in good condition by the purchaser, and, in his discretion, redeem or change unused stamps that have been rendered unfit for use and refund their value upon proof of destruction. **No credit or refund of taxes or penalties shall be allowed unless the taxpayer files in writing with the Commissioner a claim for credit or refund within two (2) years <u>after the payment of the tax</u> or penalty**: *Provided, however,* That a return filed showing an overpayment shall be considered as a written claim for credit or refund.
>
> ...
>
> 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 of any penalty claimed to have been collected without authority, or of any sum alleged 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 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.
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> ...

In the seminal case of *Commissioner of Internal Revenue v. Carrier Air Conditioning Philippines, Inc.*[59], the Supreme Court held as follows:

> ...
>
> A closer reading of Sections 204 and 229 of the 1997 National Internal Revenue Code, in conjunction with Section 7 of Republic Act No. 9282, reveals a problem of what is considered a "reasonable period" for the Commissioner of Internal Revenue to act on a claim for refund of taxes.
>
> **Section 229, which requires a prior administrative claim before a judicial claim is filed, recognizes the Commissioner of Internal Revenue's primary jurisdiction to decide refunds of internal revenue taxes.** It gives the Commissioner "an opportunity to consider [their] mistake, if mistake has been committed," or to investigate and ascertain the veracity of the claim, before they are sued. This Court in *CBK Power Company*, citing *P.J. Kiener*, held that **the primary purpose of filing an administrative claim is to serve as a *notice or warning* to the Commissioner that *court action would follow unless the tax or penalty is refunded*. This necessarily implies that the Commissioner has sufficient time to examine, evaluate, and act on the matter within their jurisdiction.**
>
> On the other hand, Section 7 of Republic Act No. 9282 grants the Court of Tax Appeals exclusive appellate jurisdiction over a decision or "inaction deemed denial" of the Commissioner in a claim

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[59] G.R. No. 226592, 27 July 2021; Citations omitted, italics in the original text, emphasis and underscoring supplied.

for refund. Under its clear wording, the Court of Tax Appeals can take cognizance of appeals in cases of the Commissioner's "inaction" only where the 1997 National Internal Revenue Code specifically provides a period for the Commissioner to act on a claim for refund. However, unlike in claims for refund of input value-added tax, **the 1997 National Internal Revenue Code does not prescribe a specific period within which the Commissioner must resolve the claim for refund or credit of erroneously paid taxes.**

Sections 204 and 229 fixed the same period of two years for filing an administrative claim for refund before the Bureau of Internal Revenue and to sue before the Court of Tax Appeals. *CBK Power Company* explained that as long as these two acts fall within the two-year period, there is no legal impediment to the judicial claim for refund.

Consequently, from the plain language of the law, <u>it does not matter how far apart the administrative and judicial claims were filed</u>, or whether the Commissioner of Internal Revenue was actually able to rule on the administrative claim, <u>so long as both claims were filed within the two-year prescriptive period</u>.

Thus, in *CBK Power Company*, as with subsequent cases, this Court upheld the propriety of the taxpayer's judicial claim instituted as early as five and 13 days after the administrative claim had been filed, on the ground that both claims were filed within the two-year prescriptive period.

The Court of Tax Appeals likewise allowed judicial claims filed simultaneously, or one to 28 days from the administrative claim's filing, on the same ground that both claims were filed within the two-year prescriptive period.

In much earlier cases, however, it was the Commissioner who was considered long delayed in resolving the administrative claims. Hence, this Court has held that the taxpayer need not wait for the Commissioner's decision, and may file its judicial claim when the two-year prescriptive period is about to lapse.

For instance, in *P.J. Kiener*, the taxpayer filed its administrative claim for refund four months after the last payment of the tax sought to be refunded. Yet, the then Collector of Internal Revenue took their time—*more than two years*—to decide on the claim, so much so that when the taxpayer filed its appeal, its action had already prescribed. This Court held: "*Having filed his claim* ***and the Collector of Internal Revenue having had ample time to study it****, the claimant may, indeed should, within the statutory period of two years proceed with his suit without waiting for the Collector's decision.*"

In *Collector of Internal Revenue v. Court of Tax Appeals and Hume Pipe & Asbestos Co., Inc.*, this Court deemed *two months* as ample time for the Collector to have decided the claim for refund of overpaid income tax. Hence, in that case, it upheld the taxpayer's filing of a petition for review before the Court of Tax Appeals without waiting for the Collector's decision, since the two-year prescriptive period was already about to expire.

In *Commissioner of Customs and Commissioner of Internal Revenue v. The Honorable Court of Tax Appeals and Planters Products, Inc.*, *eight months and 10 days* had lapsed from the taxpayer's filing of an administrative claim, but the Commissioner had not acted on it. Ruling in the taxpayer's favor, this Court, quoting a ruling of the tax court, said:

> **The taxpayer need not wait indefinitely for a decision or ruling which may or may not be forthcoming and which he has no legal right to expect.**
>
> ...
>
> **It is disheartening enough to a taxpayer to keep him waiting for an indefinite period of time for a ruling or decision of the Collector [(now Commissioner)] of Internal Revenue on his claim for refund. It would make matters more exasperating for the taxpayer if we were to close the doors of the courts of justice for such a relief until after the [Commissioner], would have, at his personal convenience, given his go signal.**

In these cases, the written claim for refund was duly filed at the administrative level, but the claim had not been acted upon by the Commissioner (then Collector) of Internal Revenue. Since the two-year period was about to lapse, the taxpayer was held justified in filing its judicial claim, without waiting for the Commissioner's decision, to protect its interest. Otherwise, should the Commissioner render an adverse decision after the two-year period, the taxpayer would be barred, to its prejudice, from pursuing its appeal to the Court of Tax Appeals.

These cases show that the lack of a specific period fixed by the law within which the Commissioner must decide the claim has led to delays, to the taxpayer's prejudice. On the other hand, there were instances when the Commissioner was deprived of the opportunity to act on the matter within their jurisdiction because of the short interval between the filing of the administrative claim and the filing of the judicial claim. This is so because the law merely provides two years for a taxpayer to file the administrative claim and judicial claim, with the former required to be filed first.

...

As can be gleaned from the foregoing, Section 229, in relation to Section 204 of the NIRC of 1997, as amended, only demands the concurrence of two (2) conditions: (1) the administrative claim for refund must precede the filing of a judicial claim; and (2) that both administrative and judicial claims must be filed within the two (2) years from the payment of the tax. Hence, as long as the filing of both administrative and judicial claims fall within the two (2)-year prescriptive period, there is no legal impediment to the judicial claim for refund. To be sure, it is of no moment that there is only a short interval between the filing of the two (2) claims.

At the risk of being repetitive, the law merely requires that both claims are filed within the two (2)-year period.[60]

Moreover, settled is the rule that the two (2)-year prescriptive period for claiming a refund of excess CWTs commences to run from the date of filing of the final adjustment return (or AITR).[61] This is because it is only upon the filing of the final adjustment return covering the entire taxable year that a taxpayer determines whether an income tax remains due or a refund may be claimed based on the adjusted and audited figures.[62] Simply put, it is logical to reckon the two (2)-year prescriptive period from the filing of the AITR, as it is only then that the taxpayer can ascertain whether it paid more than its total income tax liability for the year.[63]

Here, petitioner filed its 2019 AITR *via* eFPS on 15 April 2020.[64] Counting from the said date, petitioner, thus, had until **15 April 2022**, within which to file both its administrative and judicial claims.

Considering that petitioner filed its administrative claim for refund with the BIR on **07 February 2022**[65], while the present judicial claim was

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60 *Commissioner of Internal Revenue v. Estate of Mr. Charles Marvin Romig, Represented by its Sole Heir Mrs. Maricel Narciso Romig*, G.R. No. 262092, 09 October 2024.

61 See *Commissioner of Internal Revenue v. The Philippine American Life Insurance Co., et al.*, G.R. No. 105208, 29 May 1995; *Commissioner of Internal Revenue v. TMX Sales, Inc., et al.*, G.R. No. 83736, 15 January 1992; *ACCRA Investments Corporation v. The Honorable Court of Appeals, et al.*, G.R. No. 96322, 20 December 1991.

62 *Commissioner of Internal Revenue v. TMX Sales Inc., et al.*, id.

63 See *Metropolitan Bank & Trust Company v. Commissioner of Internal Revenue*, G.R. No. 182582, 17 April 2017.

64 Supra at note 12.

65 Supra at note 16.

filed on **12 April 2022**[66], both claims for refund of unutilized/excess CWTs were seasonably filed within the two (2)-year prescriptive period. Such being the case, this Court has jurisdiction to entertain the present case.

Notwithstanding the foregoing, a careful examination of the evidence and records of the case nevertheless compels Us to deny the petition. The reasons are essayed below, in *seriatim*.

PETITIONER FAILED TO COMPLY WITH SECTION 76 OF THE NATIONAL INTERNAL REVENUE CODE (NIRC) OF 1997, AS AMENDED.

Petitioner's claim for refund of its excess and unutilized CWTs is anchored on Section 76 of the NIRC of 1997, as amended, which provides:

> ...
>
> **SEC. 76.** *Final Adjustment Return.* — Every corporation liable to tax under Section 27 shall file a final adjustment return covering the total taxable income for the preceding calendar or fiscal year. 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 income of that year, the corporation shall either:
>
> (A) Pay the balance of tax still due; or
> (B) Carry-over the excess credit; or
> (C) **Be credited or refunded with the excess amount paid, as the case may be.**
>
> In case the corporation is entitled to a tax credit or refund of the excess estimated quarterly income taxes paid, the excess amount shown on its final adjustment return may be carried over and credited against the estimated quarterly income tax liabilities for the taxable quarters of the succeeding taxable years. Once the option to carry-over and apply the excess quarterly income tax against income tax due for the taxable quarters of the succeeding taxable years has been made, such option shall be considered irrevocable for that taxable period and no application for cash refund or issuance of a tax credit certificate shall be allowed therefor.[67]
>
> ...

66 Supra at note 1.
67 Emphasis supplied and italics in the original text.

Based on the foregoing provision, two (2) options are available to a taxpayer that has excess CWTs for the CY: (1) to carry-over and apply the overpayment as tax credit against the estimated quarterly income tax liabilities of the succeeding CYs (also known as *automatic tax credit*) until fully utilized (meaning, there is no prescriptive period); and (2) to apply for a cash refund or issuance of a Tax Credit Certificate (**TCC**) within the prescribed period.[68] In exercising its option, the applicant-taxpayer must signify, in its AITR, the option it intends to avail. This is done by marking the appropriate box provided in the BIR form.[69] To facilitate tax collection, these remedies are in the alternative and the choice of one precludes the other.[70]

In the case of *University Physicians Services Inc.-Management, Inc. v. Commissioner of Internal Revenue*[71], the Supreme Court shed light on the principle of irrevocability. Interpreting the last sentence of above-quoted Section 76 of the NIRC of 1997, as amended, it held that the provision applies only when the option to carry-over is elected and there is nothing therein that suggests that the other choice, *i.e.*, cash refund or TCC, is also irrevocable.[72] Meanwhile, the phrase "for that taxable period" refers to the CY when the excess CWTs (subject of the option) was acquired by the taxpayer.[73]

Simply stated, the law does not prevent a taxpayer who originally opted for a refund or TCC from shifting to the carry-over of the excess creditable taxes to the taxable quarters of the succeeding taxable years. **Thus, in case the taxpayer decides to shift its option for a carry-over, it may no longer revert to its original choice due to the irrevocability rule.**

Here, an examination of petitioner's AITR for CY 2019[74] shows that it had total excess and unutilized CWTs of ₱44,881,216.00[75] as of 31 December 2019, as shown below:

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68 *University Physicians Services Inc.-Management, Inc. v. Commissioner of Internal Revenue*, G.R. No. 205955, 07 March 2018.

69 See *Philippine Bank of Communications v. Commissioner of Internal Revenue, et al.*, G.R. No. 112024, 28 January 1999.

70 Id.

71 Supra at note 68.

72 Id.

73 *Commissioner of Internal Revenue v. Bank of the Philippine Islands*, G.R. No. 178490, 07 July 2009.

74 Exhibit "P-3", supra at note 12.

75 Line 20, id.

Prior Year's Excess Credits Other Than MCIT		₱36,501,562.00[76]
Creditable Tax Withheld from Previous Quarter/s *per* BIR Form No. 2307	₱8,866,118.00[77]	
Creditable Tax Withheld *per* BIR Form No. 2307 for the 4th Quarter	2,862,553.00[78]	11,728,671.00
Total Tax Credit		**₱48,230,233.00[79]**
Less: Total Income Tax Due		3,349,017.00[80]
Total Overpayment		**₱44,881,216.00**

As indicated on the face of its 2019 AITR, petitioner marked the box corresponding to the option "*To be refunded*"[81], clearly manifesting its intention to claim for refund its excess and unutilized CWTs for the CY 2019.

However, while it signified in the said 2019 AITR its intention to be refunded, petitioner, in its amended AITR for CY 2020 carried over the amount of ₱44,881,216.00[82], which includes the subject claim of ₱11,717,431.36, as "*Prior Year's Excess Credits Other Than MCIT*". Such being the case, petitioner's chosen option to be refunded is effectively negated by its very act of carrying over the same amount to the subsequent CY 2020, as part of the prior year's excess credits. Petitioner likewise filled out the "*Prior Year's Excess Credits – Taxes Withheld*" with the amount of ₱44,881,216.00, which includes the subject claim of ₱11,717,431.36, in its Quarterly ITRs for the first (1st), second (2nd) and third (3rd) quarters of CY 2020.[83] The inevitable conclusion then is that petitioner categorically availed itself of the carry-over option.

As the law and jurisprudence provide that the option to carry-over, once chosen, is irrevocable[84], petitioner cannot now renege on its choice to carry-over its excess and unutilized CWTs. Consequently, petitioner is not entitled to the refund of the amount being sought. Petitioner's only recourse is to apply the subject excess and unutilized CWTs of ₱11,717,431.36 to the succeeding years until fully utilized.

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76 Schedule 7, Line 1, id.
77 Schedule 7, Line 5, id.
78 Schedule 7, Line 6, id.
79 Schedule 7, Line 12, id.
80 Line 16, id.
81 Line 21, id.
82 Line 44, Exhibit "P-5-C", id., Volume III, p. 1104.
83 Line 31A, Exhibits "P-4-A", "P-4-B" and "P-4-C", id., pp. 1088, 1090 and 1092, respectively.
84 *United Coconut Planters Bank, substituted by Land Bank of the Philippines v. Commissioner of Internal Revenue*, G.R. No. 204687, 24 April 2023.

Given the foregoing disquisitions, the only judicious course of action left to the Court is to deny the pending claim for refund.

WHEREFORE, the foregoing premises considered, the Petition for Review filed by petitioner Norconsult Management Services Phils., Inc. on 12 April 2022 is hereby **DENIED** for lack of merit.

SO ORDERED.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

LANEE S. CUI-DAVID
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, 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's Division.

ROMAN G. DEL ROSARIO
Presiding Justice