REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

MELCO RESORTS LEISURE (PHP) CORPORATION,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 10514

Members:

RINGPIS-LIBAN, *Chairperson,*
MODESTO-SAN PEDRO, *and*
FERRER-FLORES, *JJ*

Promulgated:

JAN 0 6 2026

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DECISION

RINGPIS-LIBAN, *P.J.:*

THE CASE

The *Petition for Review* prays that the Court render judgment: (1) declaring petitioner entitled to a refund or issuance of tax credit certificate in the amount of ₱24,798,420.00, representing erroneously withheld tax on gaming revenues, and unutilized or excess creditable withholding taxes (CWTs) on income for taxable year 2018; and (2) ordering, respondent to grant petitioner a refund or issuance of tax credit certificate in the amount of ₱24,798,420.00.[1]

THE PARTIES

Petitioner Melco Resorts Leisure (PHP) Corporation is a corporation duly organized and existing under the laws of the Republic of the Philippines, with principal address at Asean corner Roxas Boulevard, Barangay Tambo, Parañaque City 1701, Philippines.[2] It is engaged in the business of developing and operating tourist facilities, including hotel casino entertainment complexes

[1] Statement of the Case, Pre-Trial Order dated May 11, 2022, Docket – Vol. I, p. 433.
[2] Par. 1, Stipulation of Facts, *Joint Stipulation of Facts and Issues* (JSFI), Docket – Vol. I, p. 412.

with hotel, retail and amusement areas and themed development components, without being engaged in retail trade, and engaged in casino gaming activities.[3] Petitioner is registered with the Bureau of Internal Revenue (BIR) under Taxpayer Identification Number (TIN) 008-362-871-00000.[4]

Respondent is the duly appointed Commissioner of Internal Revenue who holds office the BIR National Office Building located at BIR Road, Diliman, Quezon City.[5]

ANTECEDENTS (ADMINISTRATIVE LEVEL)

On January 28, 2013, the Philippine Amusement and Gaming Corporation (PAGCOR) issued an *Amended Certificate of Affiliation & Provisional License* to petitioner with other co-licensees and holders of the Provisional License, as a consortium, in accordance with PAGCOR Charter (Presidential Decree [PD] No. 1896), as amended by Republic Act (RA) No. 9487, and that LICENSEE is entitled to the customs duties and tax exemptions specified under Title IV, Section 13 of the PAGCOR Charter (as amended). The said *Amended Certificate of Affiliation & Provisional License* applies to casino(s) located in the Bagong Nayong Pilipino Manila Bay Entertainment City, Parañaque City, and in the Newport City Integrated Resort, Pasay City.[6]

Subsequently, in accordance with the same law, PAGCOR issued the *Gaming License* dated April 29, 2015 and the *Gaming License (Amended)* dated August 8, 2018, valid until July 11, 2033, in favor petitioner with other co-licensees, as a consortium, applicable to casino(s) located in the Entertainment City, Parañaque City, and in the Newport City Integrated Resort, Pasay City, specifically to the licensees' casino located along Asean Avenue and Roxas Boulevard, Tambo, Parañaque City, with the brand name of City of Dreams Manila.[7]

Petitioner filed with the BIR its *Annual Income Tax Return* (ITR) (BIR Form No. 1702) for taxable year 2018, through the Electronic Filing and Payment System (eFPS) on April 15, 2019, and manually filed the same on April 26, 2019.[8]

Thereafter, on April 12, 2021, petitioner then filed an administrative claim for refund with the Large Taxpayers Service of the BIR amounting to

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[3] Refer to Exhibit "P-1", Docket – Vol. 2, pp. 724 to 729.
[4] Exhibit "P-5", Docket – Vol. 2, pp. 733 to 735.
[5] Par. 2, Stipulation of Facts, JSFI, Docket – Vol. I, p. 412.
[6] Exhibit "P-2", Docket – Vol. 2, p. 730.
[7] Exhibits "P-3" and "P-4", Docket – Vol. 2, pp. 731 to 732.
[8] Exhibits "P-7", "P-7-1", and "P-7-2", Docket – Vol. 2, pp. 744 to 756.

₱24,798,420.00, allegedly representing erroneously withheld and unutilized CWTs for taxable year 2018.[9]

PROCEEDINGS BEFORE THIS COURT

Petitioner filed the present *Petition for Review via* electronic mail on April 14, 2021.[10]

On October 25, 2021, respondent filed his *Answer*,[11] interposing certain special and affirmative defenses, to wit: (1) petitioner's reliance on the theory that Section 13(2)(b) in relation to Section 13(2)(a) of PD No. 1869 exempts it from payment of income taxes is misplaced; (2) even assuming *arguendo* that petitioner is included in the exemption as a co-licensee or grantee of PAGCOR, it still has not proven entitlement to the refund claimed; and, (3) assuming, further, that petitioner can claim exemption from payment of income tax, it is submitted that its claim was filed out of time.

Respondent submitted the *BIR Records* for the case on October 26, 2021, consisting of one (1) folder, consecutively numbered as pages 1 to 1433.[12]

The Pre-Trial Conference was set and held on March 10, 2022.[13] *Respondent's Pre-Trial Brief* was filed on February 22, 2022,[14] while the *Pre-Trial Brief for Petitioner* was submitted on March 4, 2022.[15]

On April 11, 2022, the parties filed their *Joint Stipulation of Facts and Issues,*[16] which was admitted and approved by this Court in its Resolution dated April 19, 2022,[17] thereby deeming the termination of the Pre-Trial. Subsequently, the Court issued the Pre-Trial Order dated May 11, 2022.[18]

Trial ensued.

Petitioner presented its documentary and testimonial evidence. It offered the testimonies of the following individuals, namely: (1) Ms. Eunice

[9] Exhibits "P-11" and "P-11-1, Docket – Vol. 2, pp. 786 to 798.

[10] Docket – Vol. I, pp. 8 to 40 (N.B.: The hard copies of the *Petition for Review* were received by the Court only on May 18, 2021).

[11] Docket – Vol. I, pp. 243 to 258.

[12] *Compliance* dated October 26, 2021, Docket – Vol. I, pp. 260 to 262.

[13] *Notice of Pre-Trial Conference* dated November 12, 2021, Docket – Vol. I, pp. 264 to 265; Minutes of the hearing held on, and Order dated March 10, 2022, Docket – Vol. I, pp. 400 and 402 to 403, respectively.

[14] Docket – Vol. I, pp. 266 to 269.

[15] Docket – Vol. I, pp. 272 to 286.

[16] Docket – Vol. I, pp. 412 to 425.

[17] Docket – Vol. I, p. 427.

[18] Docket – Vol. I, pp. 433 to 440.

Rekha P. Pobre,[19] petitioner's Tax Manager; (2) Mr. Rafael B. Taladtad, Jr.,[20] petitioner's Director of Operational Accounting; and (3) Ms. Ma. Milagros F. Padernal,[21] the Court-commissioned Independent Certified Public Accountant (ICPA).[22]

The *Amended Report* of the ICPA was submitted on December 1, 2022.[23]

On March 20, 2023, petitioner filed its *Formal Offer of Evidence.*[24] Respondent, however, did not file his comment thereon.[25] In the Resolution dated August 4, 2023,[26] the Court admitted petitioner's exhibits, *except* Exhibits "P-31-1-1845" and "P-37-422" to "P-37-423", for not being found in the records.

Petitioner then filed its *Motion For Partial Reconsideration [of Resolution dated August 4, 2023] with Manifestation* on August 30, 2023.[27] Respondent filed his *Comment* thereto,[28] to which petitioner filed a *Motion to Admit Reply [To Respondent's Comment on Petitioner's Motion For Partial Reconsideration with Manifestation dated October 9, 2023]* on October 25, 2023.[29] In the Resolution dated April 25, 2024,[30] the Court granted petitioner's *Motion For Partial Reconsideration with Manifestation [of Resolution dated August 4, 2023]*, and thus, admitted Exhibits "P-37-422 to P-37-423".

For his part, respondent presented the lone testimony of Revenue Officer Setie Naira B. Deron.[31]

On June 14, 2024, respondent filed his *Formal Offer of Evidence*,[32] to which petitioner filed its *Comment (On Respondent's Formal Offer of Evidence dated June 14, 2024)* on June 28, 2024.[33] In the Resolution dated October 3, 2024,[34] the Court admitted all of respondent's offered exhibits.

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[19] *Judicial Affidavit of Eunice Rekha P. Pobre*, Docket – Vol. I, pp. 291 to 305; Minutes of the hearing held on, and Order dated, July 28, 2022, Docket – Vol. I, pp. 477, 479 to 480, respectively.
[20] *Judicial Affidavit of Rafael B. Taladtad, Jr.*, Docket – Vol. I, pp. 180 to 188; Minutes of the hearing held on, and Order dated, November 17, 2022, Docket – Vol. 2, pp. 570, 573 to 574, respectively.
[21] *Judicial Affidavit of Ma. Milagros F. Padernal (re. Amended ICPA Report dated December 1, 2022)*, Docket – Vol. 2, pp. 641 to 649, Minutes of the hearing held on, and Order dated, February 16, 2023, Docket – Vol. 2, pp. 650 to 653.
[22] *Oath of Commission* dated July 2[8], 2022, Docket – Vol. I, p. 478; Minutes of the hearing held on, and Order dated, July 28, 2022, Docket – Vol. I, pp. 477, 479 to 480, respectively.
[23] Exhibits "P-21" and "P-21-1", Docket – Vol. 2, pp. 576 to 635.
[24] Docket – Vol. 2, pp. 656 to 723.
[25] Records Verification Report dated April 3, 2023, issued by the Judicial Records Division of this Court, Docket – Vol. 2, p. 826.
[26] Docket – Vol. 2, pp. 830 to 835.
[27] Docket – Vol. 2, pp. 836 to 843.
[28] Docket – Vol. 2, pp. 849 to 851.
[29] Docket – Vol. 2, pp. 853 to 860.
[30] Docket – Vol. 2, pp. 951 to 953.
[31] Exhibit "R-6", Docket – Vol. I, pp. 394 to 399; and Minutes of the hearing held on, and Order dated, June 6, 2024, Docket – Vol. I, pp. 954, and 956 to 957, respectively.
[32] Docket – Vol. 2, pp. 958 to 962.
[33] Docket – Vol. 2, pp. 964 to 965.
[34] Docket – Vol. 2, pp. 968 to 969.

The *Memorandum for Petitioner* was filed on November 13, 2024.[35] Respondent, however, failed to file his memorandum.[36]

The present case was considered submitted for decision on January 7, 2025.[37]

THE ISSUE RAISED

The issue submitted by the parties for resolution of this Court is as follows"

> "WHETHER OR NOT PETITIONER IS ENTITLED TO A REFUND OR ISSUANCE OF TCC OF THE EXCESS OR UNUTILIZED AND ERRONEOUSLY WITHHELD CWT FOR TAXABLE YEAR 2018 AMOUNTING TO P24,798,420.00 AS PROVIDED UNDER SECTIONS 76 AND 229 OF THE NIRC."[38]

Petitioner's arguments:

Petitioner argues that it timely filed its claim for refund or issuance of tax credit certificate of its erroneously or excessively paid creditable withholding tax (CWT) for taxable year 2018 pursuant to Sections 204 and 229 of the National Internal Revenue Code (NIRC); that it is entitled to the refund or issuance of tax credit certificate of the excess and unutilized CWTs for taxable year 2018 amounting to ₱24,798,420.00, covering gaming and non-gaming revenues, as provided under Section 76 of the NIRC; and, that as a licensee of PAGCOR, it is entitled to the refund or issuance of tax credit certificate of ₱12,627,189.40, representing an erroneously withheld in income attributable to its gaming operations under Section 13(2)(b) in relation to Section 13(2)(1) of PD No. 1869, as amended.

Respondent's counter-arguments:

Respondent contends that petitioner's reliance on the theory that Section 13(2)(b) in relation to Section 13(2)(a) of PD No. 1869 exempts it from payment of income taxes is misplaced; that even assuming *arguendo* that petitioner is included in the exemption as a co-licensee or grantee of

[35] Docket – Vol. 2, pp. 971 to 998.
[36] Records Verification Report dated December 11, 2024, issued by the Judicial Records Division of this Court, Docket – Vol. 2, p. 999.
[37] Minute Resolution dated January 7, 2025, Docket – Vol. 2, p. 1000.
[38] Stipulation of Issues, JSFI, Docket – Vol. I, p. 413.

PAGCOR, it still has not proven entitlement to the refund claimed; and, that assuming, finally, that petitioner can claim exemption from payment of income tax, it is submitted that its claim was filed out of time.

THE COURT'S RULING

The present *Petition for Review* is partially granted.

The tax exemption granted to PAGCOR inured to the benefit of, and extended, to petitioner.

Section 13(2) of PD No. 1869[39] provides, in part, as follows:

> "SEC. 13. *Exemptions.* —
>
> xxx xxx xxx
>
> (2) *Income and other taxes.* — (a) **Franchise Holder: No tax of any kind or form, income or otherwise, as well as fees, charges or levies of whatever nature, whether National or Local, shall be assessed and collected under this Franchise from the Corporation; nor shall any form of tax or charge attach in any way to the earnings of the Corporation, except a Franchise Tax of five (5%) percent of the gross revenue or earnings derived by the Corporation from its operation under this Franchise. Such tax shall be due and payable quarterly to the National Government and shall be in lieu of all kinds of taxes, levies, fees or assessments of any kind, nature or description, levied, established or collected by any municipal, provincial, or national government authority.**
>
> (b) **Others: The exemptions herein granted for earnings derived from the operations conducted under the franchise specifically from the payment of any tax, income or otherwise, as well as any form of charges, fees or levies, shall inure to the benefit of and extend to corporation(s), association(s), agency(ies), or individual(s) with whom the Corporation or operator has any contractual relationship in connection with the operations of the casino(s) authorized to be conducted under this Franchise** and to those receiving compensation or other remuneration from the Corporation or operator as a result of essential facilities furnished and/or technical services rendered to the Corporation or operator.
>
> The fee or remuneration of foreign entertainers contracted by the Corporation or operator in pursuance of this provision shall be free of any tax.

[39] CONSOLIDATING AND AMENDING PRESIDENTIAL DECREE NOS. 1067-A, 1067-B, 1067-C, 1399 AND 1632, RELATIVE TO THE FRANCHISE AND POWERS OF THE PHILIPPINE AMUSEMENT AND GAMING CORPORATION (PAGCOR).

xxx xxx xxx." *(Emphases and underscoring added)*

Based on the foregoing provision, it is clear that PAGCOR is exempt from the payment of any tax, whether national or local, except for a franchise tax at the rate of 5% of the gross revenue or earning derived by it from its operation under PD No 1869; and that the said tax exemption inures to the benefit of and extend: (1) to corporations, associations, agencies, or individuals with whom PAGCOR or operator has any contractual relationship in connection with the operation of casino(s) authorized under PD No. 1869; and (2) to those receiving compensation or other remuneration from PAGCOR or operator as a result of essential facilities furnished and/or technical services rendered to PAGCOR or operator.

In other words, PD No. 1869 lays down the imposition of ***a five percent (5%) franchise tax*** **of the gross revenues or earnings** derived from its operations conducted under the Franchise, which **shall be due and payable *in lieu* of all kinds of taxes**, levies, fees or assessments of any kind, nature or description, levied, established or collected by any municipal, provincial or national government authority.[40] Since the payment of the said five percent (5%) franchise tax shall be *"in lieu of all kinds of taxes"*, the tax exemption privilege being enjoyed by PAGCOR is dependent on such payment.

As a corollary, in case of *non-payment* of the same *five percent* (5%) franchise tax by PAGCOR, and thus, no tax exemption privilege is bestowed on the latter, it follows that PAGCOR's *contractees and licensees* shall not also be entitled to any tax exemption. As the old adage goes, the spring cannot rise higher than its source.[41] In *Bloomberry Resorts and Hotels, Inc. vs. Bureau of Internal Revenue*,[42] the Supreme Court is clear on the significance of the payment of the said five percent (5%) franchise tax to entitle PAGCOR and all its *contractees and licensees* for the tax exemption to be enjoyed by them, to wit:

> "As the PAGCOR Charter states in unequivocal terms that exemptions granted for earnings derived from the operations conducted under the franchise specifically from the payment of any tax, income or otherwise, as well as any form of charges, fees or levies, ***shall inure to the benefit of and extend to*** corporation(s), association(s), agency(ies), or individual(s) with whom the PAGCOR or operator has any contractual relationship in connection with the operations of the casino(s) authorized to be conducted under this Franchise, **so it must be that all *contractees and licensees* of PAGCOR, <u>upon payment of the 5% franchise tax</u>, shall likewise be exempted from all other taxes, including corporate income tax realized from the operation of casinos.**
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> xxx xxx xxx

[40] Refer to *Philippine Amusement and Gaming Corporation (PAGCOR) vs. The Bureau of Internal Revenue, et al.*, G.R. No. 215427, December 10, 2014.
[41] *Heirs of Maximo Labanon, et al. vs. Heirs of Constancio Labanon*, G.R. No. 160711, August 14, 2004.
[42] G.R. No. 212530, August 10, 2016.

> Plainly, too, **upon payment of the 5% franchise tax, petitioner's income from its gaming operations of gambling casinos**, gaming clubs and other similar recreation or amusement places, and gaming pools, defined within the purview of the aforesaid section, **is not subject to corporate income tax.**" *(Emphases and underscoring added)*

Simply put, the tax exemption of PAGCOR, and its *contractees and licensees*, is dependent on PAGCOR's payment of the 5% franchise tax. To be sure, under Section 13(2)(a) of PD No. 1869, no 5% franchise tax is imposed on the *contractees and licensees*, and thus, the latter are not required to pay the same to the government, in order to be exempt, *inter alia*, from all taxes. What is crucial is PAGCOR's payment of the said franchise tax, so that PAGCOR itself and the same *contractees and licensees* may enjoy tax exemption.

In this case, for purposes of establishing payment of the 5% franchise tax by PAGCOR, petitioner presented the following documents, to prove petitioner's remittance of license fees, inclusive of 5% franchise tax to PAGCOR related to its gaming operations and to prove that PAGCOR remitted the said 5% franchise tax on behalf of its licensees, including petitioner to the BIR for taxable year 2018, to wit:

1) *Statement of Franchise Tax Remittances for Calendar Year* **2018** issued by PAGCOR;[43] and,

2) *Return of Percentage Tax Payable Under Special Laws* (BIR Form No. 2553) filed by PAGCOR **for the 1st to 4th quarter of 2018;**[44] and

To repeat, PD No. 1869 lays down the imposition of ***a five percent (5%) franchise tax* of the gross revenues or earnings** derived from its operations conducted under the Franchise, which **shall be due and payable *in lieu* of all kinds of taxes**, levies, fees or assessments of any kind, nature or description, levied, established or collected by any municipal, provincial or national government authority.[45] Thus, by virtue of the above-quoted Section 13(2), upon payment of the said franchise tax, PAGCOR and its *contractees and licensees* shall be ***exempt*** from taxes.

Petitioner complied with Section 76 of the NIRC of 1997. Notably, petitioner has not carried over the excess CWTs being claimed for refund

[43] Exhibit "P-14", Docket – Vol. 2, p. 801.
[44] Exhibits "P-16 and series", "P-17 and series," "P-18 and series", and "P-19 and series", Docket – Vol. 2, pp. 804 to 823.
[45] Refer to *Philippine Amusement and Gaming Corporation (PAGCOR) vs. The Bureau of Internal Revenue, et al.*, supra.

To recall, petitioner seeks the refund or issuance of tax credit certificate for the total amount of ₱24,798,420.00 on the basis that the same remained unutilized as of December 31, 2018, and was not carried forward to the succeeding taxable period/s pursuant to Section 76 of the NIRC of 1997, quoted hereunder for ready reference:

> "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."

The above provision discusses the two options of a taxable corporation whose total quarterly income tax payments in a given taxable year exceed its total income tax due. The taxpayer may either: (1) carry-over the excess amount to the succeeding taxable quarters/years until it is fully utilized, or (2) file a claim for refund in the form of cash or tax credit certificate. However, once the carry-over option is taken actually or constructively it becomes irrevocable for that taxable period.[46] The phrase *"for that taxable period"* refers to the taxable year when the excess income tax, subject of the option, was acquired by the taxpayer.[47]

In exercising its option, the corporation must signify in its annual corporate adjustment return (*by marking the option box provided in the BIR form*) its intention, either to carry over the excess credit or to claim a refund. To facilitate tax collection, these remedies are in the alternative and the choice of one precludes the other.[48]

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[46] *Rhombus Energy, Inc. vs. Commissioner of Internal Revenue,* G.R. No. 206362, August 1, 2018, citing the case of *Republic of the Philippines, represented by the Commissioner of Internal Revenue vs. Team (Phils.) Energy Corporation (formerly Mirant (Phils.) Energy Corporation,* G.R. No. 188016, January 14, 2015; *Philam Asset Management, Inc. vs. Commissioner of Internal Revenue,* G.R. Nos. 156637 & 162004, December 14, 2005; *Systra Philippines, Inc vs. Commissioner of Internal Revenue,* G.R. No. 176290, September 21, 2007.

[47] *Republic of the Philippines, represented by the Commissioner of Internal Revenue vs. Team (Phils.) Energy Corporation (formerly Mirant (Phils.) Energy Corporation),* G.R. No. 188016, January 14, 2015; *Commissioner of Internal Revenue vs. Bank of the Philippine Islands,* G.R. No. 178490, July 7, 2009.

[48] *Philippine Bank of Communications vs. Commissioner of Internal Revenue, et al.,* G.R. No. 112024, January 28, 1999.

A perusal of petitioner's Annual ITR for taxable year 2018[49] shows that petitioner declared a total income tax overpayment of ₱108,502,885.00, computed as follows:

Income Tax Due		₱ -
Less: Tax Credits/Payments		
Prior Year's Excess Credits Other than MCIT		83,704,465.00
Creditable Tax Withheld from Previous Quarters	₱15,656,999.00	
Creditable Tax Withheld per BIR Form No. 2307 for the Fourth Quarter	9,141,421.00	24,798,420.00
Overpayment		**₱108,502,885.00**

Petitioner claims that the entire amount of ₱108,502,885.00 was unutilized since petitioner incurred a net loss at that time. Hence, petitioner did not have income tax due from its activities subject to regular corporate income tax. Moreover, petitioner incurred a gross loss in taxable year 2018. Hence, petitioner is not subject to minimum corporate income tax (MCIT). Accordingly, it was not able to utilize the CWTs arising from taxable year 2018 in the aggregate amount of ₱24,798,420.00, as well as the CWTs from prior years in the amount of ₱83,704,465.00.

Verily, in line with Section 2.58.3(C) of Revenue Regulations (RR) No. 2-98, as quoted below, the submission of petitioner's Annual ITR for CY 2017 is sufficient to prove its "Prior Year's Excess Credits other than MCIT" in the amount of ₱83,704,465.00:

> "SEC. 2.58.3. *Claim for tax credit or refund.* —
>
> xxx xxx xxx
>
> (C) Excess Credits.—An individual or corporate taxpayer's excess expanded withholding tax credits for the taxable quarter/year shall **automatically be allowed as a credit** against his income tax due for the taxable quarters/years immediately succeeding the taxable quarters/years in which the excess credit arose, **provided he submits with his income tax return, a copy of the first page of his income tax return for the previous taxable period showing the amount of his excess withholding tax credits**, and on which return he has not opted for a cash refund or tax credit certificate." *(Emphasis added)*

Here, petitioner presented its Annual ITR for 2017 showing that it had excess tax credits amounting to ₱83,704,465.00[50] as of December 31, 2017

[49] Exhibits "P-7", "P-7-1", and "P-7-2", Docket – Vol. 2, pp. 744 to 756.
[50] Line 20, Part II – Total Tax Payable, Exhibits "P-23-5" and "P-23-15", USB marked as Exhibit "P-21-2".

which was then carried over in petitioner's Annual ITR for 2018.[51] Accordingly, the Court finds the submission of petitioner's Annual ITR for 2017[52] sufficient to prove petitioner's "Prior Year's Excess Credits Other Than MCIT" of ₱83,704,465.00 for taxable year 2018. Moreover, considering that petitioner had no income tax liability for taxable year 2018, the CWTs for same year in the amount of ₱24,798,420.00 remained unutilized as of the end of the period.

Since petitioner marked the box corresponding to the option "To be Refunded" in its Annual ITR for calendar year (CY) 2018[53] and carried over only the amount of ₱83,704,465.00 as prior year's excess tax credits in its Annual ITR for CY 2019,[54] the CWTs for taxable year 2018 in the amount of ₱24,798,420.00 may be a proper subject of a claim for refund or issuance of tax credit certificate pursuant to Section 76 of the NIRC of 1997.

Petitioner has erroneously withheld taxes related to its gaming revenues for taxable year 2018.

As ascertained by the ICPA, Ms. Ma. Milagros F. Padernal, the total CWTs of ₱24,798,420.00 arose from the following:[55]

Exhibit No.	Particulars	Income Payments	Taxes Withheld
"P-24"[56]	*Per Schedule of CWTs:*		
	Gaming Activities – Credit Card Transactions	₱ 2,525,441,480.00	₱ 12,627,189.40
	Non-gaming Activities – Credit Card Transactions (Hotel Operations)	304,538,457.00	1,522,692.29
	Non-gaming Activities – Credit Card Transactions (Food and Beverage)	563,557,034.00	2,817,785.20
	Non-gaming Activities – Other Transactions	392,354,528.96	7,830,433.65
		₱3,785,891,499.96	**₱24,798,100.54**
"P-23-6" and "P-23-16"[57]	Per 2018 Annual Income Tax Return		₱ 24,798,420.00
	Difference – Not Supported by BIR Form No. 2307		**(₱319.46)**

Petitioner claims that in addition to Section 76 as basis, petitioner is likewise entitled to a refund or issuance of tax credit certificate for the portion

[51] Line 1, Schedule 8 – Tax Credits/Payments, Exhibit "P-7", Docket – Vol. 2, p. 749.
[52] Exhibits "P-23-5" and "P-23-15", USB marked as Exhibit "P-21-2".
[53] Line 21, Exhibit "P-7", Docket, p. 744.
[54] Line 1, Schedule 8 – Tax Credits/Payments, Exhibit "P-8", Docket – Vol. 2, p. 762.
[55] Page 9, ICPA Report (Exhibit "P-21"), Docket – Vol. 2, p. 586.
[56] USB marked as "P-21-2".
[57] USB marked as "P-21-2".

of the 2018 CWTs of ₱24,798,420.00, equivalent to ₱12,627,189.40, representing 2018 CWTs related to gaming activities,[58] under PD No. 1869.

As discussed above, by virtue of Section 13(2) of PD No. 1869, petitioner is a licensee of PAGCOR, hence, tax exemption granted to PAGCOR inured to the benefit of, and extended, to petitioner. Consequently, petitioner's revenue from gaming operation is exempt from corporate income tax and, likewise, from withholding tax. Accordingly, the related CWTs erroneously withheld may be subject of refund or issuance of tax credit certificate.

In its Annual ITR for taxable year 2018,[59] petitioner allegedly reported its revenues from gaming as exempt from income tax. As earlier mentioned, of the CWTs of ₱24,798,420.00, ₱12,627,189.40 represents 2018 CWTs related to gaming activities.

Petitioner, through its Director of Finance-Operational Accounting, Mr. Rafael B. Taladtad, Jr., explained how to determine whether the revenues were derived from gaming or non-gaming activities. He avers that pursuant to the *Merchant Agreement*[60] with Banco De Oro (BDO), BDO has deployed credit card terminals for use by the petitioner in settlement transactions within the gaming and non-gaming areas in its premises, to wit:[61]

> "3. As the **Director, Finance-Operational Accounting** of the Corporation, I have access to, and accountable for, various credit card terminals deployed by Banco De Oro ("BDO"), for use in settlement transactions within the gaming and non-gaming area within the premises of the City of Dreams Manila.
>
> 4. For taxable year 2018, the following credit card terminals with the corresponding Merchant Identification Numbers ("MID") were deployed and used solely at the corresponding location or address within the premises of the Corporation:

GAMING AREAS:		
	MID	Location/Address
1	9181693607	Cage AX
2	9181229907	COD Main Cage
3	9181229915	COD Satellite Cage
4	9181229931	COD Mass Cage
5	9181229956	COD Li Ying Cage
6	9181229923	COD Signature Cage
7	9181339318	COD Rolling Cage

xxx xxx xxx

[58] Par. 56, *Memorandum for Petitioner*, Docket – Vol. 2, p. 982.
[59] Exhibit "P-7", Docket – Vol. 2, p. 749.
[60] Exhibit No. "P-22-9", USB marked as "P-21-2".
[61] Exhibit "P-22-10", USB marked as "P-21-2".

> 5. The credit card terminals assigned to **GAMING AREAS** were used solely and exclusively for transactions involving the buy-in of table game chips and slot machine tickets for gaming use within the premises of the Corporation."

Further, according to Ms. Eunice Rekha P. Pobre, petitioner's Tax Manager, the CWTs related to the gaming operations pertain to credit card charges made by petitioner' patrons. When these charges are paid by the credit card companies, such BDO, to petitioner, the same are subjected to withholding tax by said credit card companies. Upon withholding, BDO issues BIR Form No. 2307 or *Certificate of Creditable Tax Withheld at Source* to petitioner. It indicated in the space for "registered address" of petitioner the "CAGE", "COD MAIN CAGE", "COD SATELLITE CAGE", "COD MASS CAGE", "COD LI YING CAGE", COD SIGNATURE CAGE", "CAGE AX", or "COD ROLLING CAGE," to identify that the credit card charges were made in the cage of the casino premises and were used solely to purchase table game chips or slot machine tickets for gaming purposes. If the term "CAGE" is not indicated anywhere in BIR Form No. 2307, it means that the credit card charges were made in non-gaming areas for non-gaming purchases.[62]

To prove that petitioner has ₱12,627,189.40 CWTs for taxable year 2018, petitioner duly submitted the BIR Forms No. 2307[63] issued by BDO in its favor.

It is to be noted that for credit card transactions, the basis of the withholding tax is the gross amount paid by any credit card company in the Philippines to any business entity pursuant to Section 2.57.2(H) of RR No. 2-98, as amended. To ascertain that the income payments related to the CWTs of ₱12,627,189.40 were withheld from income exempt from tax, the same were then traced through its *Merchant Identification Number (MID)*/Terminal Address indicated in the BIR Form No. 2307 against the *Credit Card Reconciliation*, *Credit Card Summary* and *Bank Statements*.

The MID, represents the POS equipment unique serial number/code, and the Terminal Address represents the location/department which were indicated beside the period and registered address boxes in the BIR Form No. 2307 issued by BDO for the credit card transactions. The *Credit Card Reconciliation*[64] shows the amount of credit card transactions swiped in each terminal for the day. The *Credit Card Summary*[65] contains the daily comparison of credit card transactions per terminal against the actual net amount received from BDO per bank statement.[66]

[62] Q&A33, *Judicial Affidavit*, Docket – Vol. I, p. 301.
[63] Exhibits "P-25-1" to "P-25-79", USB marked as "P-21-2".
[64] Exhibits "P-27-1" to "P-27-12", USB marked as "P-21-2".
[65] Exhibits "P-27-13" to "P-27-24", USB marked as "P-21-2".
[66] Exhibit "P-28-1", USB marked as "P-21-2".

The reconciliation resulted to the following:

Exhibit No.	Particulars	Income Payments	Taxes Withheld
Listings of BIR Form No. 2307 vs MID/Terminal Address[67]			
"P-25-1" to "P-25-79"[68]	Per Listings of BIR Form No. 2307	₱2,525,441,480.00	₱12,627,189.40
"P-25"[69]	Per Terminal Address and MID	2,525,441,480.00	12,627,189.40
	Difference	₱ -	₱ -
MID/Terminal Address vs Credit Card Reconciliation[70]			
"P-25"[71]	Per Terminal Address and MID	₱2,525,441,480.00	₱12,627,189.40
"P-27-1" to "P-27-12"[72]	Per Credit Card Reconciliation	2,524,831,480.08	12,624,157.40
	Difference	₱ 609,999.92	₱ 3,032.00
	Accounted for as follows:		
	Not Within Period of Claim	610,000.00	3,050.00
	Rounding-Off Differences	(₱0.08)	(₱18.00)
Credit Card Reconciliation vs Credit Card Summary[73]			
"P-27-1" to "P-27-12"[74]	Per Credit Card Reconciliation	₱2,524,831,480.08	₱12,624,157.40
"P-27-13" to "P-27-24"[75]	Per Credit Card Summary	2,524,976,480.08	12,624,882.40
"P-27-12"[76]	***Gross amount paid by BDO in TY 2018 but BIR Form No. 2307 received in TY 2019 – not subject of claim***	(₱145,000.00)	(₱725.00)

Exhibit No.	Particulars	Income Payments	Taxes Withheld	Net Amount
Credit Card Summary vs Bank Statements[77]				
"P-27-13" to "P-27-24"[78]	Per Credit Card Summary	₱2,524,976,480.08	₱12,624,882.40	₱2,468,879,022.02
"P-28"[79]	Per Bank Statements	2,517,424,830.40	12,587,124.15	2,461,848,579.52
	Difference	7,551,649.68	37,758.25	7,030,442.50
	Accounted for as follows:			
"P-27-1"[80]	***Outstanding balance in December 2017 but only reflected in the January 2018 bank statements***	20,500,000.00	102,500.00	20,397,500.00

[67] Table 9 of ICPA Report (Exhibit "P-21"), Docket – Vol. 2, p. 591.
[68] USB marked as "P-21-2".
[69] USB marked as "P-21-2".
[70] Table 10 of ICPA Report (Exhibit "P-21"), Docket – Vol. 2, p. 592.
[71] USB marked as "P-21-2".
[72] USB marked as "P-21-2".
[73] Table 10 of ICPA Report (Exhibit "P-21"), Docket – Vol. 2, p. 592; "Exhibit "P-27", USB marked as "P-21-2".
[74] USB marked as "P-21-2".
[75] USB marked as "P-21-2"; Table 11 of ICPA Report (Exhibit "P-21"), Docket – Vol. 2, p. 593.
[76] USB marked as "P-21-2".
[77] Table 11 of ICPA Report (Exhibit "P-21"), Docket – Vol. 2, p. 593.
[78] USB marked as "P-21-2".
[79] USB marked as "P-21-2".
[80] USB marked as "P-21-2".

"P-27-12"[81]	*Outstanding balance in December 2018 but only reflected in the January 2019 bank statements*	(27,419,000.00)	(137,095.00)	(26,809,291.00)
	Difference – not traced to bank statement	(₱632,649.68)	(₱3,163.25)	(₱618,651.50)

Moreover, the income payments per bank statements were traced to the *Journal Vouchers*[82] and to the *General Ledger - Cash Receipts*[83] for the taxable year 2018 which are generated from the petitioner's *Workday Financial Management* (Workday) computerized system with *Permit to Use Computerized Accounting System* (CAS Permit)[84]. As per re-examination of the *Bank Statements* from BDO for Gaming[85] and non-gaming[86] activities, the Court noted that the income payments amounting to ₱2,461,848,579.52 were swiped or entered to MID/Terminals assigned to gaming activities, summarized as follows:[87]

Seq No.	Terminal Address	MID	Income Payments
1	9181229907/918229907	COD Main Cage	₱ 309,851,056.60
2	9181229915/918229915	COD Satellite Cage	304,621,120.62
3	9181229923/918229923	COD Signature Cage	1,290,103,957.00
4	9181229931/918229931	COD Mass Cage	154,040,597.30
5	9181229956/918229956	COD Li Ying Cage	130,455,420.00
6	9181339318/918339318	COD Rolling Cage	243,740,543.00
7	9181693607	Cage AX	29,035,885.00
Total (Net of Taxes Withheld)			**₱2,461,848,579.52**

As per verification, there was no difference in the income payments based on the documents presented, to wit:

Exhibit No.	Particulars	Income Payments
"P-28"[88]	Per Bank Statements	₱2,461,848,579.52
"P-33-1-1" to "P-33-1-621"[89]	Per Journal Vouchers	2,461,848,579.52
"P-33-2"[90]	Per General Ledger–Cash Receipts for Gaming Activities	2,461,848,579.52
	Difference	₱ –

From the foregoing reconciliations, the income payment difference of ₱610,000.00, with corresponding CWTs of ₱3,050.00, pertains to the gross amount paid by BDO to petitioner in December 2017 but the corresponding

[81] USB marked as "P-21-2".
[82] Exhibits "P-33-1-1" to "P-33-1-621", USB marked as "P-21-2".
[83] Exhibits "P-33-2", USB marked as "P-21-2".
[84] Exhibit "P-22-12", USB marked as "P-21-2".
[85] Exhibits "P-28", and "P-28-1", USB marked as "P-21-2".
[86] Exhibits "P-34", "P-34-1" and "P-41", USB marked as "P-21-2".
[87] Exhibit "P-28-1", USB marked as "P-21-2".
[88] USB marked as "P-21-2".
[89] USB marked as "P-21-2".
[90] USB marked as "P-21-2".

BIR Form No. 2307 was only received in January 2018. On the other hand, the income payments of ₱632,649.68 with corresponding CWTs of ₱3,163.25 was not traced to the bank statement. Hence, the total amount of CWTs of ₱6,213.25 with related income payments of ₱1,242,649.68 shall be disallowed from the present claim, as determined below:

Particulars	Income Payments	Taxes Withheld
Not within the period of claim	₱ 610,000.00	₱ 3,050.00
Not traced to bank statement	632,649.68	3,163.25
Total	**₱ 1,242,649.68**	**₱ 6,213.25**

Consequently, petitioner was able to prove that the CWTs in the amount of ₱12,620,976.15 (₱12,627,189.40 less ₱6,213.25) were duly supported by BIR Form 2307 and were erroneously withheld from income payments related to its gaming operations.

Requisites to claim a tax credit or refund of excess and unutilized CWT.

As earlier presented, the amount of ₱12,171,230.60 represents unutilized CWTs related to petitioner's non-gaming activities. To prove entitlement thereto, in addition to the requisites provided under Section 76 of the NIRC of 1997, the following requisites must be further complied with:

1. The claim for refund must be filed within the two-year prescriptive period as provided under Sections 204(C) and 229 of the NIRC of 1997;

2. The fact of withholding must be established by a copy of a statement duly issued by the payor (withholding agent) to the payee, showing the amount paid and the amount of tax withheld therefrom; and

3. The income upon which the taxes were withheld must be included in the return of the recipient.[91]

Thus, it behooves petitioner to establish the foregoing requisites.

Petitioner timely filed both its administrative and judicial claims

[91] *Republic of the Philippines, represented by the Commissioner of Internal Revenue vs. Team (Phils.) Energy Corporation (formerly Mirant (Phils.) Energy Corporation)*, G.R. No. 188016, January 14, 2015; *United International Pictures AB vs. Commissioner of Internal Revenue*, G.R. No. 168331, October 11, 2012; *Citibank N.A. vs. Court of Appeals*, et al., G.R. No. 107434, October 10, 1997; *ACCRA Investments Corporation vs. The Honorable Court of Appeals, et al.*, G.R. No. 96322, December 20, 1991; Section 2.58, Revenue Regulations No. 2-98, as amended.

for refund of/ issuance of tax credit certificate.

As to the *first* requisite, that the claim for refund was filed within the two (2)-year prescriptive period, the pertinent legal bases therefor are Sections 204(C) and 229 of the NIRC of 1997, which read as follows:

> "SEC. 204. *Authority of the Commissioner to Compromise, Abate and Refund or Credit Taxes.* – The Commissioner may –
>
> xxx xxx xxx
>
> (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 after the payment of the tax 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." *(Emphasis added)*

The above-stated provisions mandate that the administrative and judicial remedy of filing a claim for refund of erroneously or excessively paid tax must be done within two (2) years from the date of payment of the tax.

It is well settled that the two (2)-year prescriptive period for claiming a refund of overpaid income tax/CWTs commences to run on the date of filing of the Final Adjustment Return (FAR)[92] (or Annual ITR). This is so because it

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

is only when the FAR covering the whole year is filed that the taxpayer would know whether a tax is still due or a refund can be claimed based on the adjusted and audited figures.[93] In other words, it is only logical to reckon the two-year prescriptive period from the time the FAR or the Annual ITR was filed, since it is only at that time that it would be possible to determine whether the corporate taxpayer paid an amount exceeding its annual income tax liability.[94]

In this case, petitioner filed its Annual ITR *via* electronic filing and payment system or eFPS of the BIR on April 15, 2019.[95] Thus, counting therefrom, petitioner had until April 15, 2021, within which to file both its administrative and judicial claims.

Accordingly, petitioner filed its administrative claim for refund and its *Application for Tax Credits/Refunds* (BIR Form No. 1914) on April 12, 2021, with the BIR.[96]

On the other hand, the judicial claim was electronically filed on April 14, 2021,[97] or within the two (2)-year prescriptive period. However, the hard copy of the *petition* was only filed on May 18, 2021.[98]

Nevertheless, this Court *En Banc*'s Resolution No. 4-2021 dated February 24, 2021, allows the filing of pleadings, motions, and other court submissions *by e-mail* during the Period of State of Public Health Emergency due to the COVID-19 Pandemic. However, litigants shall submit, by personal filing or licensed courier, the required number of hard copies of the pleadings, motions, and other court submissions within five (5) calendar days from date of filing by email.[99] Moreover, in cases where there are filing fees or other legal fees that are required to be paid on the pleadings, motions, and other court submissions filed by e-mail, litigants are required to submit the proof of payment of the filing fees or other legal fees due thereon within five (5) calendar days from the date of filing through email.[100] Failure to do so shall be a ground for declaring the pleading, motion, and other court submission as deemed not filed which may result in the dismissal of the petition for review, complaint or information, and the imposition of other appropriate sanctions as may be determined by the Court.[101]

Hence, pursuant to this Court's *En Banc* Resolution No. 4-2021, petitioner must submit, by personal filing or licensed courier, the required

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[93] *Commissioner of Internal Revenue vs. TMX Sales Inc., et al.*, G.R. No. 83736, January 15, 1992.
[94] *Metropolitan Bank & Trust Company vs. The Commissioner of Internal Revenue*, G.R. No. 182582, April 17, 2017.
[95] Exhibits "P-7", Docket – Vol. 2, p. 744.
[96] Exhibits "P-11" and "P-11-1, Docket – Vol. 2, pp. 786 to 798.
[97] Docket – Vol. I, p. 2.
[98] Docket – Vol. I, pp. 8 to 38.
[99] Paragraph 3, CTA *En Banc* Resolution No. 4-2021.
[100] Paragraph 4, CTA *En Banc* Resolution No. 4-2021.
[101] Paragraph 6, CTA *En Banc* Resolution No. 4-2021.

number of hard copies of its Petition and proof of payment of the filing fees or other legal fees due within five (5) calendar days from the date of filing of email, or until April 17, 2021.

However, due to the physical closure of the Courts brought about by the COVID-19 Pandemic, the Supreme Court issued the following Administrative Circulars (ACs) suspending the filing periods for pleadings/court submissions for Courts in the National Capital Region and nearby provinces until the physical reopening of the relevant court, to wit:

AC No.	*Date Issued*	*Subject*	*Content*
15-2021	Apr. 3, 2021	RE: EXTENSION OF THE PHYSICAL CLOSURE OF COURTS AND THE FILING PERIODS FOR PLEADINGS AND OTHER COURT SUBMISSIONS IN LIGHT OF THE FURTHER EXTENSION OF THE ENHANCED COMMUNITY QUARANTINE FROM APRIL 5 TO APRIL 11, 2021.	"Likewise, the **filing periods** of pleadings and other court submissions that fell due or would fall due <u>during the period beginning from March 29 to April 11, 2021</u> are hereby EXTENDED for seven (7) calendar days, counted from <u>April 12, 2021</u>. xxx"
21-2021	Apr. 10, 2021	RE: EXTENSION OF PHYSICAL CLOSURE OF COURT	"Considering the unabated rise of COVID-19 cases, the requests of the judges and court personnel, and upon the concurrence of the members of the Court *en banc*, ALL the courts and judicial offices in the National Capital Judicial Region and the provinces of Bulacan, Cavite, Laguna, and Rizal (NCJR+) shall remain physically closed until 18 April 2021. They may be reached through their hotlines and email addresses as posted in the Supreme Court website. xxx xxx xxx The time for filing and service of pleadings and motions during this period is SUSPENDED and shall resume seven (7) calendar days counted from the first day of physical reopening of the relevant court."
22-2021	Apr. 14, 2021	RE: PHYSICAL CLOSURE OF COURTS IN ENHANCED COMMUNITY QUARATINE AND MODIFIED ENHANCED COMMUNITY	"Considering that the National Capital Region, and the provinces of Abra, Bulacan, Cavite, Laguna, Quirino and Rizal, and Santiago City are under Modified Enhanced Community Quarantine (MECQ) until 30

AC No.	*Date Issued*	*Subject*	*Content*
		QUARANTINE AREAS	April 2021, the physical closure of courts in the said areas is likewise extended to 30 April 2021. xxx xxx xxx The time for filing and service of pleadings and motions during this period is SUSPENDED and shall resume seven (7) calendar days counted from the first day of physical reopening of the relevant court."
29-2021	Apr. 30, 2021	RE: WORK ARRANGEMENTS IN COURTS ON 3 – 14 MAY 2021	"Considering that the National Capital Region, the provinces of Abra, Bulacan, Cavite, Laguna, Quirino, and Rizal, and Santiago City, Isabela, continue to be under Modified Enhanced Community Quarantine (MECQ) until 14 May 2021, ALL first and second level courts, and appellate collegiate courts, and their judicial offices in the said areas shall **continue to be physically closed until <u>14 May 2021</u>.** xxx xxx xxx The time for filing and service of pleadings and motions during this period in **these areas is SUSPENDED and shall resume after seven (7)** calendar days counted from the first day of the physical reopening of the relevant court."
33-2021	May 14, 2021	RE: COURT OPERATIONS STARTING 17 MAY 2021	"Considering that the National Capital Region and nearby provinces of Bulacan, Cavite, Laguna, and Rizal, together with some provinces and cities, have been placed under General Community Quarantine (GCQ) starting 15 May until 31 May 2021, all first and second level courts, and appellate collegiate courts (except the Supreme Court), and the judicial offices in these areas under GCQ shall be physically opened with a skeleton force of at least thirty percent (30%) to at most fifty percent (50%), beginning **<u>17 May 2021</u>** until further notice."

Based on the foregoing circulars, the reopening of courts resumed on May 17, 2021, and petitioner had seven (7) days from this date, or until May 24, 2021, within which to file hard copies of its *Petition for Review* as well as to show proof of payment of its filing fees.

In view of the foregoing, petitioner's filing of the hard copies of its *Petition for Review* as well as the proof of payment of its filing fees on May 18, 2021,[102] is well within the extended period for filing judicial claim for refund as provided above, thus, fulfilling the *first* requisite.

The fact of withholding is established by certificates of tax withheld at source.

In compliance with the *second* requisite, petitioner submitted various BIR Forms 2307,[103] which were examined by the ICPA. Based on her examination and per the undersigned's further verification, the CWTs of ₱3,549,405.25 with related income payments of ₱426,842,131.63 should be disallowed for not being supported by BIR Forms No. 2307, summarized as follows:

Exhibit No.	Particulars	Income Payments	Taxes Withheld
"P-26"[104]	*Difference – Not supported by BIR Form No. 2307:*		
	Non-gaming Activities – Credit Card Transactions (Hotel Operations)	3,776,472.00	18,882.36
	Non-gaming Activities – Credit Card Transactions (Food and Beverage)	355,020,338.00	1,775,101.69
	Non-gaming Activities – Other Transactions	68,045,321.63	1,755,101.74
	Difference per Schedule of CWTs vs per 2018 Annual ITR		319.46
	Total	**₱426,842,131.63**	**₱3,549,405.25**

Consequently, only the CWTs of ₱8,621,825.35 with related income payments of ₱833,607,888.33 were duly supported by BIR Form No. 2307, as summarized below:

Non-gaming Activities – Credit Card Transactions (Hotel Operations)	₱ 300,761,985.00	₱ 1,503,809.93
Non-gaming Activities – Credit Card Transactions (Food and Beverage)	208,536,696.00	1,042,683.51
Non-gaming Activities – Other Transactions	324,309,207.33	6,075,331.91
Total	**₱ 833,607,888.33**	**₱8,621,825.35**

[102] Docket – Vol. I, p. 3.
[103] Exhibits "P-25-80" to "P-1297", USB marked as "P-21-2".
[104] USB marked as "P-21-2".

Petitioner failed to prove that the income payments from its* non-gaming revenue *upon which the claimed unutilized CWTs were withheld were declared as part of its gross income in its Annual ITR.

Regarding the *third* requisite, petitioner must prove that the income payments from which the substantiated CWT were withheld were declared as part of its gross income. Correspondingly, it becomes necessary to trace the revenues per BIR Form No. 2307 *vis-à-vis* recorded in the general ledger book and ultimately to Annual ITR to ascertain that the related income was duly reported as revenues for taxable year 2018.

To reiterate, the CWTs claimed for refund pertains to income payments from credit card sales transactions from these regular tax revenue-generating activities, listed as follows:

Exhibit	Particulars	Income Payments	Taxes Withheld
"P-24"[105]	Non-gaming Activities – Credit Card Transactions (Hotel Operations)	304,538,457.00	1,522,692.29
	Non-gaming Activities – Credit Card Transactions (Food and Beverage)	563,557,034.00	2,817,785.20
	Non-gaming Activities – Other Transactions	392,354,528.96	7,830,433.65
	Total	**₱1,260,450,019.96**	**₱12,170,911.14**

Petitioner submitted *General Ledgers for Non-gaming Revenue*, AFS and Annual ITR which shows the following revenue amounts:

Exhibit No.	Particulars	Amount
General Ledger – Non-gaming Revenue vs Audited Financial Statements[106]		
"P-32-61" to "P-32-134"[107]	Per General Ledger – Non-gaming Revenue	₱6,181,048,219.39
"P-23-22"[108]	Per Audited Financial Statements:	
	Rooms	2,815,424,000.00
	Food and beverage	2,759,911,000.00
	Entertainment, retail and other	605,714,000.00
		6,181,049,000.00
	Rounding-off difference	**(₱780.61)**

[105] USB marked as "P-21-2".
[106] Table 32 of ICPA Report (Exhibit "P-21"), Docket – Vol. 2, p. 609.
[107] USB marked as "P-21-2".
[108] USB marked as "P-21-2".

Schedule of Reconciliation of Financial and Taxable Income vs Annual Income Tax Return[109]

"P-35"[110]	Non-gaming Revenue in the taxable income column per Schedule of Reconciliation of Financial and Taxable Income	2,306,857,299.02
"P-23-6" and "P-23-16"[111]	Revenue under "Total Regular" column reflected in the Annual Income Tax Return for the taxable year 2018	2,306,857,299.00
	Rounding-off difference	**₱0.02**

While the ICPA claims that the Non-gaming Revenues per GL agreed with the AFS for taxable year 2018,[112] as well as with the amount of "Net Sale/Revenue/Receipts/Fess" under the "Total Regular" column of Annual ITR for taxable year 2018, petitioner did not provide a reconciliation or detailed tracing of the income payments from credit card transactions subjected to withholding amounting to ₱1,260,450,019.96 to the general ledger - non-gaming revenue amounting ₱6,181,048,219.39 to ascertain whether these income payments were the same revenue reported in the AFS and Annual ITR for taxable year 2018.

Further, while there was reference to Credit Card Transaction Process Narratives, it remains unclear on how the non-gaming revenue amounting to ₱1,260,450,019.96 from credit card sales transactions from BDO can be traced to the General Ledger - non-Gaming Revenue amounting to ₱6,181,048,219.39, or any other documents that would somehow aid the Court in verifying whether the income payments related to the claimed CWTs were indeed declared in the Annual ITR for taxable year 2018.

The Court emphasizes that the ICPA is commissioned to assist the Court in determining the merit of a taxpayer's case. However, it is not bound by the findings of the ICPA, as provided under Section 3, Rule 13 of the Revised Rules of Court of Tax Appeals, which states:

> "SEC. 3. *Findings of independent CPA.* – The submission by the independent CPA of pre-marked documentary exhibits shall be subject to verification and comparison with the original documents, the availability of which shall be the primary responsibility of the party processing such documents and, secondarily, by the independent CPA. **The findings and conclusions of the independent CPA may be challenged by the parties and <u>shall not be conclusive upon the Court</u>, which may, in whole or in part, adopt such findings and conclusions subject to verification.**" *(Emphasis and underscoring added)*

Based on the foregoing provision, the ICPA's findings are not conclusive upon this Court as the same are subject to its verification, to determine its accuracy, veracity and merit. The Court may either wholly or

[109] Table 33 of ICPA Report (Exhibit "P-21"), Docket – Vol. 2, p. 610.
[110] USB marked as "P-21-2".
[111] USB marked as "P-21-2".
[112] Par. 34, ICPA Report (Exhibit "P-21"), Docket – Vol. 2, p. 608.

partially adopt or even disregard the findings of the ICPA, depending on the outcome of its own independent verification and evaluation. It is essential for the petitioner to present evidence to support its compliance with the requirements of the law in order to pursue its claim for credit or refund.

Consequently, the Court cannot determine the veracity of petitioner's claim of having duly reported the sales related to the subject claimed withholding taxes, and thus, the Court cannot rule that petitioner complied with the *third* requisite for entitlement to a refund or issuance of tax credit certificate for unutilized excess CWTs.

Petitioner's non-compliance with the *third* requisite is fatal to its claim. A claimant has the burden of proof to establish the factual basis of his or her claim for tax credit or refund.[113] Tax refunds are in the nature of tax exemptions. As such, they are regarded as in derogation of sovereign authority and to be construed *strictissimi juris* against the person or entity claiming the refund.[114] Considering petitioner's failure to discharge such burden of proof, the present claim for tax refund or issuance of tax credit certificate pertaining to unutilized CWTs of ₱12,171,230.60, though the amount of ₱8,621,825.35 was duly supported by BIR Forms No. 2307, must necessarily fail.

Correspondingly, the Court finds petitioner entitled to a refund or for the issuance of a tax credit certificate pertaining only to erroneously paid CWT related to its gaming or exempt activities, amounting to ₱12,620,976.15.

ACCORDINGLY, in light of the foregoing considerations, the present *Petition for Review* is **PARTIALLY GRANTED**. Accordingly, respondent is **ORDERED** to refund or issue a tax credit certificate in favor of petitioner the amount of **₱12,620,976.15**, representing erroneous and unutilized withholding tax on its gaming revenues for taxable year 2018.

SO ORDERED.

Ma. Belen

MA. BELEN M. RINGPIS-LIBAN
Presiding Justice

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[113] *Citibank, N.A. vs. Court of Appeals, et al.*, G.R. No. 107434, October 10, 1997.
[114] *Commissioner of Internal Revenue vs. S.C. Johnson and Son, Inc., et al.*, G.R. No. 127105, June 25, 1999.

WE CONCUR:

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

CORAZON G. FERRER-FLORES
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.

MA. BELEN M. RINGPIS-LIBAN
Presiding 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.

MA. BELEN M. RINGPIS-LIBAN
Presiding Justice