REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

FORMER SECOND DIVISION

OILINK INTERNATIONAL CORPORATION, Petitioner,	**C.T.A. CASE NO. 6876**
	Members:
- versus -	**CASTAÑEDA, JR.,** *Chairperson* **UY,** *and* **PALANCA-ENRIQUEZ,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	**Promulgated:** OCT 2 1 2010 1:07 p.m.

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D E C I S I O N

UY, J.:

This is a Petition for Review filed by Oilink International Corporation on February 24, 2004, pursuant to Section 228 of the NIRC of 1997 in relation to Sections 7 and 11 of Republic Act No. (RA) 1125, praying to declare the 1996 Assessments totaling ₱ 188,240,937.49 and the 1997 Assessments totaling ₱ 143,075,530.48, both issued by the BIR as null and void, and/or cancelled or withdrawn.

THE FACTS

Based on the evidence presented in this case and as stipulated by the parties, these are the established facts of the case.

Petitioner Oilink International Corporation is a domestic corporation duly organized and existing under the laws of the Republic of the Philippines.[1] On the other hand, respondent Commissioner of Internal Revenue is the public officer authorized under the Tax Code to examine any taxpayer and to assess the correct amount of internal revenue tax.[2]

Sometime in 1998, respondent served a Letter of Authority No. 000019321[3] dated August 25, 1998 upon petitioner for the examination of the latter's books of accounts and other accounting records for taxable year 1997 and "unverified prior years".[4]

On March 30, 1999, petitioner, through its President, Esther P. Magleo, executed a Waiver of the Defense of Prescription Under the Statute of Limitations of the NIRC (hereinafter referred to as the "First Waiver") extending the right of the BIR to assess and/or collect all its internal revenue tax liabilities for taxable year **1996** until December 31, 2000. This First Waiver was attested by the Assistant Commissioner for the Enforcement Service of the BIR, Percival T. Salazar.[5]

On December 20, 2000, petitioner executed, again through its President, a second Waiver of the Defense of Prescription Under the Statute of Limitation of the NIRC (hereinafter referred to as the "Second Waiver") extending the right of the BIR to assess and/or collect all its internal revenue tax liabilities not only for taxable year **1996** but also for taxable year **1997**, until June 30, 2002. This Second Waiver was

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[1] Par. 1.1, Summary of Admitted Facts, Joint Stipulation of Facts and Statement of the Issues (JSFSI), Docket, p. 167. Par. 1, Joint Stipulation of Facts, Docket, p. 506.
[2] Par. 1.2, Summary of Admitted Facts, JSFSI, Docket, p. 167. Par. 2, Joint Stipulation of Facts, Docket, p. 506.
[3] Exhibit "1".
[4] Par. 1.3, Summary of Admitted Facts, JSFSI, Docket, p. 168.
[5] Exhibit "2", BIR Records (Folder 2), p. 478. Exhibit "PPPPP".

with the conformity of the Assistant Commissioner for the Large Taxpayers Service of the BIR, Virginia L. Trinidad.[6]

Then on March 4, 2002, petitioner executed another Waiver of the Statute of Limitation Under the NIRC (hereinafter referred to as the "Third Waiver") extending, once more, the right of the BIR to assess and collect all of petitioner's internal revenue tax liabilities for taxable years **1996 to 1997** until December 31, 2002. This Third Waiver was notarized on March 6, 2002 in Quezon City.[7]

Again on October 17, 2002, petitioner executed a Waiver of the Statute of Limitation Under the NIRC (hereinafter referred to as the "Fourth Waiver") extending, for the last time, the right of the BIR to assess and collect all of its internal revenue tax liabilities for taxable years **1996 and 1997** until June 30, 2003. This Fourth Waiver has been notarized on October 18, 2002 in Quezon City.[8]

On May 7, 2003,[9] petitioner received respondent's Formal Letters of Demand for the payment of its 1996 and 1997 deficiency taxes, with attached five (5) and six (6) assessment notices, respectively, with the following details, to wit:[10]

For calendar year 1996:

Particulars	Basic Tax	Interest as of 5/31/03	Surcharge	Total
I. Income Tax	₱ 32,152,709.19	₱ 39,387,068.76		₱ 71,539,777.95
II. Value-added Tax	29,369,459.72	37,211,105.47		66,580,565.19
III. Excise Tax				
a. Late Filing		19,174,674.18	₱ 19,702,261.63	38,876,935.81
b. Non-payment	4,013,257.50	5,183,790.93	1,003,314.38	10,200,362.81

[6] Exhibit "6", BIR Records (Folder 2), p. 617. Exhibit "QQQQQ".

[7] Exhibit "8", BIR Records (Folder 2), p. 620. Exhibit "RRRRR". It is herein noted that while Exhibit "RRRRR" indicates no signatory on the part of the BIR to signify that the Waiver has been accepted, Exhibit "8" contains such information, to wit: the Waiver was accepted on March 4, 2002 by the Assistant Commissioner for the Large Taxpayers Service, Mr. Edwin R. Abella.

[8] Exhibit "9", BIR Records (Folder 2), p. 622. Exhibit "SSSSS". It is herein noted that while Exhibit "SSSSS" indicates no signatory on the part of the BIR to signify that the Waiver has been accepted, Exhibit "9" contains such information, to wit: the Waiver was accepted on October 17, 2002 by the Assistant Commissioner for the Large Taxpayers Service, Mr. Edwin R. Abella.

[9] Transcript of Stenographic Notes, Hearing held on June 28, 2006, pp. 20 to 21.

[10] Par. 1.4, Summary of Admitted Facts, JSFSI, Docket, p. 168. Par. 3, Joint Stipulation of Facts, Docket, pp. 506 to 507.

IV. EWT	429,827.30	551,468.43		981,295.73
V. Compromise	62,000.00			62,000.00
Totals	**₱ 66,027,253.71**	**₱ 101,508,107.77**	**₱ 20,705,576.01**	**₱ 188,240,937.49**

For calendar year 1997:

Particulars	**Basic Tax**	**Interest as of 5/31/03**	**Surcharge**	**Total**
I. Income Tax	₱ 10,869,393.15		₱ 11,043,303.44	₱ 21,912,696.59
II. Value-added Tax	28,798,505.62		31,188,781.80	59,987,287.42
III. VAT on NRFC	348,874.95	₱ 87,218.74	377,831.57	813,925.26
IV. Excise Tax				
a. Late Filing		34,428,338.86	8,185,720.71	42,614,059.57
b. Non-payment	6,996,485.00	1,744,121.25	8,221,779.13	16,942,385.38
V. EWT	362,542.61		392,633.65	755,176.26
VI. Compromise	50,000.00			50,000.00
Totals	**₱ 47,425,801.33**	**₱ 36,259,678.85**	**₱ 59,410,050.30**	**₱ 143,075,530.48**

On June 6, 2003, petitioner, through counsel, filed separate protest letters dated June 5, 2003 on the subject assessments.[11] Subsequently on August 5, 2003, petitioner also filed separate supplemental protest letters dated August 4, 2003 and submitted additional documents in support of the respective protests.[12] The issue of validity or invalidity of the above-stated Waivers was discussed by petitioner only in the said supplemental letters.[13]

Due to the inaction of respondent on petitioner's protests, petitioner filed the instant Petition for Review on February 24, 2004.

Respondent filed an Answer[14] on April 21, 2004, raising, among others, the following Special and Affirmative Defenses, to wit: that the assessments were issued within the prescriptive period allowed by law; that as provided for in the Tax Code, Gross Income means all income derived from whatever source [Section 28 (A)][now Section 32 (A)] and a reconciliation of sales per books and sales per invoices issued disclosed unrecorded sales, hence the validity of the income tax assessments.

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[11] Par. 1.5, Summary of Admitted Facts, JSFSI, Docket, p. 169. Exhibits "XXXXX" and "ZZZZZ".
[12] Par. 1.6, Summary of Admitted Facts, JSFSI, Docket, p. 169. Exhibits "YYYYY" and "AAAAAA".
[13] Par. 2.6, Stipulation of Facts, JSFSI, Docket, p. 169.
[14] Docket, pp. 107 to 125.

Further, it was verified that certain debits to income from PAL were not fully documented, thus assessed.

As regards certain income payments made to natural or juridical persons, respondent alleges that the payor-corporation are required to be subjected to expanded withholding tax following the provision of Section 50 (b) [now Section 57 (b)] of the Tax Code and its implementing revenue regulations. Reconciliation of expenses per financial statements and alphabetical listing of income recipients of petitioner allegedly revealed that some income payments were not subjected to expanded withholding tax as required under Section 50 (b) [now Section 57 (b)] of the Tax Code, hence, assessed. The expanded withholding tax assessments in the total amount of ₱ 981,295.73 and ₱ 755,176.26 representing 1996 and 1997 deficiency taxes are, therefore, in order.

Moreover, upon verification respondent found that petitioner issued value-added tax (VAT) invoices covering sales of petroleum products that are exempt from VAT under Section 103 (e) of the Tax Code [now Section 109 (e)] while petitioner did not include these sales as part of sales subject to VAT. As the sale of petroleum products were covered by VAT invoices, petitioner is allegedly liable to the 10% VAT pursuant to Section 103 of the Tax Code (now Section 109) and Section 21 of Revenue Regulations No. 5-87. Further, a reconciliation of sales data reflected in the VAT returns and details of income per investigation showed that the petitioner failed to consider various service incomes such Income from PAL, Income from terminalling, Income from BSC tanks, Ort Usage and Commission in the computation of the VAT. The aforestated income should be subject to VAT since they fall squarely under the definition of taxable sales of services as provided for under Section 102 (a) of the Tax Code [now section 108 (a)] as implemented by Revenue regulations No. 7-95. Pursuant to Section 100 (b) of the Tax Code [now Section 106 (B)] as implemented by Section B(2) of Revenue Regulations, deemed sales transactions shall be subject to the 10% VAT. An examination of petitioner's books of accounts and verification of the nature of transactions pertaining to transfers of company's properties to an affiliate as well as the decrease on some of its assets accounts allegedly disclosed certain deemed sales transactions subject to VAT, hence the VAT assessment. Audit investigation also disclosed that the total amount of sales per invoices issued exceeded the amount of sales as reflected in the books of the petitioner in the amount of ₱ 1,030,312.60 and said sales discrepancy was not subjected to value-added tax. Sales transactions were clearly established, hence, the issuance of VAT assessment.

Respondent further submits that verification disclosed that the company engaged the services of Idemitsu Engineering Ltd., a non-resident foreign corporation as a consultant in the construction of its Berth and Wharf in Mariveles, Bataan and paid the amount of ₱ 3,488,749.49 for such services. This income payment is subject to VAT pursuant to the above quoted provisions of the Tax Code and its implementing revenue regulations; that petitioner's claimed input taxes included the amount ₱ 7,065,033.75 representing VAT on the 1997 importation of petroleum products but which were paid in 1998. Considering that input tax is creditable only upon payment of the VAT prior to the release of goods from customs custody, the disallowance of VAT is proper. In addition, input taxes on certain expenses amounting to ₱ 2,594,594.98 was allegedly disallowed for failure to comply with the substantiation requirements provided for by law.

As regards petitioner's payment of excise taxes, documents submitted to the BIR revealed that the filing of importation documents and payments of excise taxes were made beyond the statutory period as provided for under the above-quoted provision of the Tax Code. Petitioner claimed that they are not required to pay the necessary taxes upon importation since they operate a Customs Bonded Warehouse which allows them to pay taxes within nine (9) to twelve (12) months after importation. The documents submitted, however, to support their claim showed that the authority to operate such bonded warehouse was issued by the Bureau of Customs to an affiliated company and not to the herein petitioner. Consequently, necessary surcharge and penalties for late payment of taxes were imposed pursuant to section 248 (b) and 249 of the Tax Code, as amended. Hence, the excise tax assessments covering late payment and non-payment for the taxable years 1996 and 1997 in the amount of ₱ 38,876,935.81, ₱ 10,200,362.81, ₱ 42,614,059.57 and ₱ 16,942,385.38, respectively, are allegedly in order.

Respondent also points out that petitioner failed to maintain the following records, hence the imposition of the corresponding penalties pursuant to Section 250 of the Tax Code, viz:

> Failure to maintain subsidiary sales and purchase journals as required under Section 108 (b) [now Section 113 (B)] of the Tax Code;
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> Failure to maintain Official register Book as required under Revenue Regulations No. 13-77 as amended by Revenue Regulations 8-96; and
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> Failure to use Withdrawal Certificates as required under Revenue Regulations No. 13-77 as amended by Revenue Regulations No. 8-96.

Respondent also contends that the issue of prescription was not raised in the administrative level, hence, cannot be raised for the first time on appeal.

Lastly, respondent argues that the assessments were issued in accordance with the existing law and regulations; and that assessments are *prima facie* presumed correct and made in good faith. The taxpayer has the duty of proving otherwise. In the absence of proof of any irregularities in the performance of official duties, an assessment will not be disturbed. All presumptions are in favor of the correctness of tax assessments.[15] Failure to present proof of error in the assessment will justify judicial affirmation of said assessment.[16]

On September 10, 2004, the parties filed their "Joint Stipulation of Facts and Statement of the Issues",[17] which was approved by this Court in the dated September 15, 2004.[18]

During trial, petitioner presented four witnesses, namely: Nerissa R. Leoncio[19], Atty. Enrico G. Valdez[20], Eugenio M. Pranada[21], and Atty. Raymond T. Zorilla[22]. Thereafter, petitioner's documentary evidence[23] were admitted in the Resolution dated September 5, 2007.[24] On the other hand, respondent presented a lone witness, Resurreccion C. Ang, who testified on the validity of the subject assessments.

Meanwhile, on November 12, 2007, petitioner availed of the tax amnesty under Republic Act No. (RA) 9480 or the Tax Amnesty Act of 2007[25], by paying the applicable amnesty tax and filing with the BIR the Notice of Availment of Tax

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[15] *Interprovincial Autobus Co., Inc. v. Collector of Internal Revenue*, 98 Phil. 290; *Sy Po v. CTA, et al*, GR No. 81446, August 18, 1988; *Dayrit, et al. v. Cruz, et al*, L-39910, September 26, 1988; *Cagayan Robina Sugar Milling Company v. Court of Appeals, et al.*, G.R. No. 122451, October 12, 2000.
[16] *Delta Motors Co. v. Commissioner*, CTA Case No. 3782, May 21, 1986; *Commissioner of Internal Revenue v. Court of appeals, et al.*, G.R. Nos. 104151 and 105563, March 10, 1995).
[17] Docket, pp. 167 to 174.
[18] Docket, p. 175.
[19] Minutes of hearings held on October 6, 2004, March 14, 2005, May 11, 2005, August 31, 2005, June 28, 2006, and September 11, 2006, respectively. Docket, pp. 177, 194, 208, 236, 268, and 277.
[20] Minutes of hearing held on October 12, 2005, Docket, p. 243.
[21] Minutes of hearing held on January 10, 2007, Docket, p. 297.
[22] Minutes of hearing held on February 26, 2007, Docket, p. 307.
[23] Exhibits "A" to "LLLLLLLL", inclusive of their sub-markings
[24] Docket, pp. 370 to 372.
[25] As referred to in Department Order No. 29-07 dated August 15, 2007 issued by the Department of Finance.

Amnesty[26] and the required documents, to wit: Tax Amnesty Return (BIR Form No. 2116)[27], Tax Amnesty Payment Form/Acceptance of Payment Form (BIR Form No. 0617)[28], Development Bank of the Philippines Tax Payment Deposit Slip[29], Amended Statement of Assets, Liabilities and Networth (SALN) as of December 31, 2005[30], and Original Statement of Assets, Liabilities and Networth as of December 31, 2005[31].[32]

On June 15, 2009, by virtue of the availment of petitioner of the tax amnesty, the parties filed an additional Joint Stipulation of Facts[33] stipulating on matters relative to said availment and was approved by this Court on June 22, 2009.[34]

On even date, both parties filed their respective Formal Offer of Evidence, to wit: petitioner filed a Formal Offer of Additional Evidence[35] in support of its availment of the tax amnesty under RA 9480; while respondent filed Formal Offer of Documentary Evidence.[36] Both Formal Offers of Evidence were admitted in the Resolution[37] dated August 13, 2009.

On November 3, 2009, this case was submitted for decision after the parties filed their respective Memorandum[38] on October 19, 2009. Hence, this Decision.

THE ISSUES

The following are the issues[39] submitted by the parties for this Court's resolution, to wit:

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[26] Exhibit "MMMMMMMM", Docket, p. 565.
[27] Exhibit "NNNNNNNN", Docket, p. 566.
[28] Exhibit "PPPPPPPP", Docket, p. 568.
[29] Exhibit "OOOOOOOO", Docket, p. 567.
[30] Exhibit "QQQQQQQQ", Docket, pp. 569 to 577.
[31] Exhibit "RRRRRRRR", Docket, pp. 578 to 619.
[32] Par. 4, Joint Stipulation of Facts, Docket, p. 508.
[33] Docket, pp. 506 to 510
[34] Docket, p. 656.
[35] Docket, pp. 562 to 563.
[36] Submitting Exhibits "1" to "65", Docket, pp. 620 to 636.
[37] Docket, pp. 680 to 682.
[38] Docket, pp. 694 to 749 and 751 to 782.

"**GENERAL ISSUES:**

3.1 Whether or not the assessments were issued within the prescriptive period as provided for in Sections 203, 222 and 224 for the Tax Code, as amended.

3.2 Whether or not the waivers of the statute of limitations executed by Petitioner which were received by respondent through his authorized representatives are valid.

3.3 Whether or not petitioner can raise the issue of prescription for the first time on appeal?

3.4 Whether or not the petitioner is liable to pay the aggregate amount of P331,316,467.97 inclusive of interest and compromise penalties, representing deficiency income tax, value added tax, excise tax, expanded withholding tax, and compromise penalties for the taxable years 1996 and 1997.

INCOME TAX:

3.5 Whether or not the Petitioner has undeclared or unrecorded sales during the year covered.

3.6 Whether or not the requisite for the deductibility of business expenses and the substantiation requirements in accordance with the pertinent provision of the Tax Code have been complied with the Petitioner.

3.7 Whether or not the petitioner has complied with the expanded withholding tax regulations with respect to income payments covered under Section 50 (b) of the Tax Code.

3.8 Whether or not the tax credits claimed by the Petitioner are supported by Certificate of Creditable Withholding Taxes as required under the pertinent provisions of the Tax Code and its implementing revenue regulations.

VALUE ADDED TAX

3.9 Whether or not Petitioner is liable to the 10% VAT for VAT invoices issued by the Petitioner covering tax exempt transactions under Section 103 of the Tax Code.

3.10 Whether or not Income from PAL, Income from Terminalling, Income from BSC Tanks, or Usage and Commission Income fall squarely under the definition of taxable sale of services

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[39] Docket, pp. 170 to 173.

as provided for under Section 102 (a) of the Tax Code as implemented by Revenue Regulations No. 7-95.

3.11. Whether or not the transfers of Petitioner's properties to an affiliate, if any, as well as the decrease on some of its asset accounts are deemed sales transactions subject to VAT.

3.12 Whether or not all sales covered by VAT invoices are reflected in the Petitioner's Books of Accounts.

3.13 Whether or not payments made to Idemitsu Ltd., a non-resident foreign corporation, for services rendered by the latter have been subjected to VAT.

3.14 Whether or not the crediting to input VAT is at the time of importation or at the time of payment.

3.15 Whether or not the input taxes claimed by the Petitioner are duly substantiated.

EXCISE TAXES

3.16 Whether or not Petitioner was issued an authority to operate a customs bonded warehouse.

3.17 Whether or not Petitioner is still liable to pay deficiency 25% surcharge and interest for late payment of excise tax due for importation of petroleum products.

3.18 Whether or not Petitioner is liable for excise tax on its importation of aromatic hydrocarbon.

ADMINISTRATIVE REQUIREMENTS:

3.19 Whether or not Petitioner maintains the following records and/or books of accounts:

a. Subsidiary Sales and Purchase Journals as required under Section 108 (b) of the Tax Code for calendar years 1996 and 1997.

b. Withdrawal Certificates as required under Revenue Regulations No. 13-77, as amended by Revenue Regulations No. 8-96 for calendar years 1996 and 1997.

c. Official Register Book as required under Revenue Regulations No. 13-77, as amended by Revenue Regulations No. 8-96 for calendar year 1996."

Petitioner's Arguments

Petitioner argues that it is not liable for deficiency income, value-added and excise taxes for calendar years 1996 and 1997 as a consequence of its availment of the tax amnesty under RA 9480; that it is not liable to pay respondent for its assessments for calendar year 1996 and 1997 because they were issued outside the prescriptive period provided under Section 203, 222 and 224 of the NIRC, as amended; that the First, Second, Third, and Fourth Waivers it executed were all invalid, and thus have no force and effect, for having been issued in violation of pertinent laws, circulars and memorandum of respondent; and that petitioner is not liable for excise tax on its aromatic hydrocarbon importations.

Respondent's Counter-Arguments

Respondent counter-argues that the assessments were issued within the prescriptive period provided by law; that having availed of the tax amnesty, petitioner admits the validity of the assessments and waivers; that the tax deficiency assessments made against petitioner are fully substantiated by concrete and convincing evidence; and that the same assessments have become final, executory and unappealable.

THE COURT'S RULING

In the resolution of the submitted issues in this case, the Court takes special note that, during the pendency of the proceedings in this case, petitioner availed of the benefits of tax amnesty under RA 9480 entitled "An Act Enhancing Revenue Administration and Collection By Granting An Amnesty on all Unpaid Internal Revenue Taxes Imposed by the National Government for Taxable Year 2005 and Prior Years".

Thus, We are confronted with the preliminary issue as to whether or not petitioner is entitled to all the immunities and privileges provided under RA 9480.

A tax amnesty is a general pardon or the intentional overlooking by the State of its authority to impose penalties on persons otherwise guilty of violation of a tax law. It partakes of an absolute waiver by the government of its right to collect what is due it and to give tax evaders who wish to relent a chance to start with a clean slate. A tax amnesty, much like a tax exemption, is never favored nor presumed in law. The grant of a tax amnesty, similar to a tax exemption, must be construed strictly against the taxpayer and liberally in favor of the taxing authority.[40]

The tax amnesty law in the instant case is RA 9480, the pertinent provisions thereof are quoted as follows:

> "SECTION 1. *Coverage.* — There is hereby authorized and granted a tax amnesty which shall cover **all national internal revenue taxes** for the **taxable year 2005 and prior years, with or without assessments duly issued therefor**, that have remained unpaid as of December 31, 2005: *Provided, however,* That the amnesty hereby authorized and granted shall not cover persons or cases enumerated under Section 8 hereof.
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> SEC. 2. *Availment of the Amnesty.* — Any person, natural or juridical, who wishes to avail himself of the tax amnesty authorized and granted under this Act shall file with the Bureau of Internal Revenue (BIR) **a notice and Tax Amnesty Return accompanied by a Statement of Assets, Liabilities and Networth (SALN) as of December 31, 2005,** in such form as may be prescribed in the implementing rules and regulations (IRR) of this Act, **and pay the applicable amnesty tax within six months from the effectivity of the IRR**.
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> xxx xxx xxx
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> SEC. 4. *Presumption of Correctness of the SALN.* — **The SALN as of December 31, 2005 shall be considered as true and correct except where the amount of declared networth is understated to the extent of thirty percent (30%) or more as may be established in proceedings initiated by, or at the instance of, parties other than the BIR or its agents: *Provided,* That such proceedings must**

[40] *Philippine Banking Corporation vs. Commissioner of Internal Revenue,* G.R. No. 170574, January 30, 2009; *Metropolitan Bank and Trust Co. vs. Commissioner of Internal Revenue,* G.R. No. 178797, August 4, 2009.

be initiated within one year following the date of the filing of the tax amnesty return and the SALN. Findings of or admission in congressional hearings, other administrative agencies of government, and/or courts shall be admissible to prove a thirty percent (30%) under-declaration.

SEC. 5. *Grant of Tax Amnesty.* — Except for the persons or cases covered in Section 8 hereof, any person, whether natural or juridical, may avail himself of the benefits of tax amnesty under this Act, and pay the amnesty tax due thereon, based on his networth as of December 31, 2005 as declared in the SALN as of said period, in accordance with the following schedule of amnesty tax rates and minimum amnesty tax payments required:

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(b) Corporations

(1) **With subscribed capital of above P50 Million------------5% or P500,000, whichever is higher**
(2) With subscribed capital of above P20 Million up to P50 Million-----------5% or P250,000, whichever is higher
(3) With subscribed capital P5Million to P20Million----5% or P100,000, whichever is higher
(4) With subscribed capital Of below P5 Million---------5% or P25,000, whichever is higher

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<u>SEC. 6. *Immunities and Privileges.* — Those who availed themselves of the tax amnesty under Section 5 hereof, and have fully complied with all its conditions shall be entitled to the following immunities and privileges:</u>

<u>(a) The taxpayer shall be immune from the payment of taxes, as well as additions thereto, and the appurtenant civil, criminal or administrative penalties under the National Internal Revenue Code of 1997, as amended, arising from the failure to pay any and all internal revenue taxes for taxable year 2005 and prior years.</u>

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All these immunities and privileges **shall not apply** where the person failed to file a SALN and the Tax Amnesty Return, or where the amount of networth as of December 31, 2005 is proven to be understated to the extent of thirty percent (30%) or more, in accordance with the provisions of Section 3 hereof.

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SEC. 8. *Exceptions.* — The tax amnesty provided in Section 5 hereof **shall not extend to the following persons** or cases existing as of the effectivity of this Act:

(a) **Withholding agents with respect to their withholding tax liabilities**; (*Emphases and underscoring supplied*)"

Additionally, the Department of Finance issued Department Order No. (DO) 29-07 dated August 15, 2007 entitled Rules and Regulations to Implement R.A. No. 9480. Pertinently, Section 6 thereof provides:

"SEC. 6. *Method of Availment of Tax Amnesty.*—

1. *Forms/Documents to be filed.*—To avail of the general tax amnesty, concerned taxpayers shall file the following documents/requirements:

a. Notice of Availment in such form as may be prescribed by the BIR;
b. Statements of Assets, Liabilities and Networth (SALN) as of December 31, 2005 in such form, as may be prescribed by the BIR;
c. Tax Amnesty Return in such form as may be prescribed by the BIR.

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The Acceptance of Payment Form, the Notice of Availment, the SALN, and the Tax Amnesty Return shall be submitted to the RDO, which shall be received only after complete payment. **The completion of these requirements shall be deemed full compliance with the provisions of RA 9480**." *(Emphasis supplied)*

Based on Section 2 of RA 9480 and Section 6 of DO 29-07, to avail of the tax amnesty pertaining to national internal revenue taxes for the taxable year 2005 and prior years that have remained unpaid as of December 31, 2005, the concerned taxpayer must file with the BIR a notice of availment, tax amnesty return, and SALN, and must pay the applicable amnesty tax.

Records show that on November 12, 2007, petitioner filed with the BIR its Notice of Availment of Tax Amnesty dated November 9, 2007,[41] Tax Amnesty Return (BIR Form No. 2116),[42] SALN,[43] and paid the applicable amnesty tax in the amount of ₱ 595,099.00,[44] determined as follows:

	With Previous SALN/ Balance Sheet
TAXABLE BASE	
I. Total Networth As of December 31, 2005	₱ 552,711,513
II. Total Networth per Amended Return	564,613,484
III. Total Increase in Networth	₱ 11,901,971
COMPUTED AMOUNT PER APPLICABLE TAX RATE (5%)	₱ 595,099
MINIMUM ABSOLUTE AMOUNT	₱ 500,000
AMNESTY TAX DUE (higher amount)	₱ 595,099

Evidently, the amount pertaining to petitioner's Networth was taken from its SALN. As the one-year period provided under Section 4 of RA 9480 had already lapsed without anyone challenging the correctness of petitioner's SALN, the presumption of truthfulness and correctness thereof stands.

In view thereof, and considering petitioner's completion of the said legal requirements, petitioner is hereby deemed to have fully complied with the tax amnesty program under RA 9480. Effectively, as mandated by RA 9480, petitioner shall thereafter be immune from the payment of internal revenue taxes, and additions thereto, as well as the appurtenant civil, criminal or administrative penalties under the NIRC of 1997, as amended, arising from the failure to pay any and all internal revenue taxes for taxable year 2005 and prior years.[45]

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[41] Exhibit "MMMMMMMM", Docket, p. 565.
[42] Exhibit "NNNNNNNN", Docket, p. 566.
[43] Exhibits "QQQQQQQQ" and "RRRRRRRR", Docket, pp. 569 to 577, and 578 to 579.
[44] Exhibits "OOOOOOOO" and "PPPPPPPP", Docket, pp. 567 to 568.
[45] *Philippine Banking Corporation vs. Commissioner of Internal Revenue,* supra.

Accordingly, assessments of deficiency income tax, VAT and excise tax, as well as the surcharges, interests, and compromise penalties imposed thereon, against petitioner for taxable years 1996 and 1997 must be cancelled and set aside pursuant to RA 9480.

However, it appears that the assessments for deficiency expanded withholding taxes (EWT) for taxable years 1996 and 1997 amounting to ₱ 981,295.73 and ₱ 755,176.26, respectively, including the interest and surcharge imposed thereon, are excluded from the scope of RA 9480, to wit:

> **SEC. 8. *Exceptions.*** — The tax amnesty provided in Section 5 hereof **shall not extend to the following persons** or cases existing as of the effectivity of this Act:
>
> (a) **Withholding agents with respect to their withholding tax liabilities;**" (*Emphases and underscoring supplied*)

Thus, the only remaining issue in the instant case is the validity of the assessments for deficiency EWT for taxable years 1996 and 1997 amounting to ₱ 981,295.73 and ₱ 755,176.26, respectively, including the interest and surcharge imposed thereon. The resolution of the foregoing issue must be taken in conjunction with the resolution of the first general issue specified in the Joint Stipulation of Facts and Statement of the Issues dated September 8, 2004, to wit:

> "Whether or not the assessments were issued within the prescriptive period as provided for in Sections 203, 222 and 224 for (of) the Tax Tax Code, as amended."

Considering that the general issue pertains to the validity of the assessments for taxable years 1996 and 1997 in its entirety, and not only to deficiency EWT, Our resolution thereof shall pertain to the entirety of the assessments in the instant case, for taxable years 1996 and 1997.

Section 203 of the NIRC of 1997, speaks of the period of limitation upon assessment and collection of taxes, to wit:

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

Based on Section 203, internal revenue taxes must be assessed within three (3) years counted from the period fixed by law for the filing of the tax return or the actual date of filing, whichever is later. This mandate governs the question of prescription of the government's right to assess internal revenue taxes primarily to safeguard the interests of taxpayers from unreasonable investigation. Necessarily therefore, the government must assess internal revenue taxes on time so as not to extend indefinitely the period of assessment and deprive the taxpayer of the assurance that it will no longer be subjected to further investigation for taxes after the expiration of reasonable period of time.[46]

An exception to the three-year prescriptive period on the assessment of taxes is Section 222(b) of the NIRC of 1997, which provides:

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

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[46] *Commissioner of Internal Revenue vs. FMF Development Corporation,* G.R. No. 167765, June 30, 2008.

The above provision authorizes the extension of the original three-year period by the execution of a valid waiver, where the taxpayer and the BIR agrees in writing that the period to issue an assessment and collect the taxes due is extended to an agreed upon date.[47]

Under Revenue Memorandum Order No. (RMO) 20-90[48], implementing Section 203 and 222(b) of the NIRC of 1997,[49] the following procedures should be **strictly** followed:

> "1. The waiver must be in the form identified hereof. xxx.
>
> 2. The waiver shall be signed by the taxpayer himself or his duly authorized representative. In the case of a corporation, the waiver must be signed by any of its responsible officials.
>
> Soon after the waiver is signed by the taxpayer, **the Commissioner of Internal Revenue or the revenue official authorized by him, as hereinafter provided, shall sign the waiver indicating that the Bureau has accepted and agreed to the waiver. The date of such acceptance by the Bureau should be indicated.** Both the date of execution by the taxpayer and date of acceptance by the Bureau should be before the expiration of the period of prescription or before the lapse of the period agreed upon in case a subsequent agreement is executed.
>
> 3. The following revenue officials are authorized to sign the waiver.
>
> xxx xxx xxx
>
> 4. The waiver must be executed in three (3) copies, **the original copy to be attached to the docket of the case**, the second copy for the taxpayer and the third copy for the Office accepting the waiver. **The fact of receipt by the taxpayer of his/her file copy shall be indicated in the original copy.**
>
> 5. **The foregoing procedures shall be strictly followed.** Any revenue official found not to have complied with this Order resulting in prescription of the right to assess/collect shall be administratively dealt with." *(Emphases supplied)*

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[47] Supra.
[48] Subject:Proper Execution of the Waiver of the Statute of Limitations under the National Internal Revenue Code.
[49] *Philippine Journalists, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 162852, December 16, 2004.

Applying RMO 20-90, the First Waiver[50] executed on March 30, 1999 is defective and did not validly extend the original three-year prescriptive period for the assessment of petitioner's supposed deficiency tax liabilities for deficiency income tax, VAT, excise tax, and EWT, as well as the surcharges, interests, and compromise penalties imposed thereon, for taxable year 1996 for the following reasons:

1) The First Waiver was merely "attested" by the Assistant Commissioner for the Enforcement Service of the BIR, Percival T. Salazar and there is no indication that the BIR has "accepted and agreed to the waiver";
2) Even if We assume that the waiver in question was indeed accepted, it did not contain the date of acceptance by the Commissioner of Internal Revenue, a requisite necessary to determine whether the said waiver was validly accepted before the expiration of the original three-year period;[51]
3) The fact of receipt by petitioner of its file copy is not indicated in the original copy[52] of the waiver, which is attached to the docket of the case.

Taking into consideration the foregoing defects in the First Waiver, the period to assess the entire supposed tax liabilities of petitioner for taxable year 1996 was never extended. Consequently, when the Second Waiver[53] was executed on December 20, 2000 covering both the petitioner's 1996 and 1997 tax liabilities, and there being no assessment having been issued as of that time, prescription has already set in as regards the 1996 tax liabilities of petitioner. This being the case, Our examination as to whether or not the Second Waiver complied with the provisions of RMO 20-90 shall cover only petitioner's 1997 tax liabilities because the

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[50] Exhibit "2", BIR Records (Folder 2), p. 478. Exhibit "PPPPP".
[51] *Commissioner of Internal Revenue vs. FMF Development Corporation,* supra.
[52] Exhibit "2", BIR Records (Folder 2), p. 478.
[53] Exhibit "6", BIR Records (Folder 2), p. 617. Exhibit "QQQQQ".

Second Waiver of the statute of limitations cannot be deemed to include taxes already prescribed.[54]

A perusal of the Second Waiver likewise reveals infirmities thereon, to wit:

1. Said waiver was merely with the conformity of the Assistant Commissioner for the Large Taxpayers Service of the BIR, Ms. Virginia L. Trinidad and there is also no indication that the BIR has "accepted and agreed to the waiver";
2. Granting that it was accepted, it failed to indicate the date of acceptance by the Commissioner of Internal Revenue; and
3. The fact of receipt by petitioner of its file copy is not indicated in the original copy[55] of the waiver.

Thus, the Second Waiver, being also defective, did not validly extend the original three-year prescriptive period for the assessment of petitioner's supposed tax liabilities for deficiency income tax, VAT, excise tax, and EWT, as well as the surcharges, interests, and compromise penalties imposed thereon, for taxable year 1997.

With the foregoing findings, We hold that the First Waiver and the Second Waiver did not extend the period to assess the subject deficiency tax liabilities of petitioner for taxable years 1996 and 1997.

Consequently, it becomes unnecessary to examine the Third and Fourth Waivers, as these were executed way beyond the three-year period prescribed by law. These Waivers cannot be considered as "subsequent written agreement(s)

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[54] *Republic of the Philippines vs. Lim De Yu*, G.R. No. L-17438, April 30, 1964.
[55] Exhibit "6", BIR Records (Folder 2), p. 617.

made before the expiration of the period previously agreed upon" referred to in the second sentence of the earlier quoted Section 222(b) of the NIRC of 1997, as there is no "period previously agreed upon" to speak of.

In fine, considering the defects in the First and Second Waivers, the periods to assess or collect deficiency taxes for the taxable years 1996 and 1997 were never extended. Consequently, the subject taxes for deficiency income tax, VAT, excise tax, and EWT, as well as the surcharges, interests, and compromise penalties imposed thereon, for taxable years 1996 and 1997, in the total amounts of ₱ 188,240,937.49 and ₱ 143,075,530.48, respectively, were issued by the BIR beyond the three-year period and are void.[56]

With the foregoing findings, it becomes unnecessary to resolve the other issues raised in the instant case.

WHEREFORE, premises considered, the instant Petition for Review is hereby **GRANTED**. Accordingly, the assessments for deficiency income tax, VAT, excise tax, and EWT, as well as the surcharges, interests, and compromise penalties imposed thereon, in the aggregate amounts of ₱ 188,240,937.49 and ₱ 143,075,530.48, for taxable years 1996 and 1997, are hereby **CANCELLED** and **SET ASIDE** due to prescription.

Additionally, the assessments for deficiency income tax, VAT, and excise tax, as well as the surcharges, interests, and compromise penalties imposed thereon, for taxable years 1996 and 1997 in the aggregate amounts of ₱ 187,259,641.76[57] and ₱ 142,320,354.22[58], respectively, the same are hereby also **CANCELLED** and **SET**

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[56] See *Commissioner of Internal Revenue vs. Kudos Metal Corporation,* G.R. No. 178087, May 5, 2010.
[57] ₱ 188,240,937.49 less ₱ 981,295.73.
[58] ₱ 143,075,530.48 less ₱ 755,176.26.

ASIDE in view of petitioner's availment of the Tax Amnesty Program under Republic Act No. 9480.

SO ORDERED.

ERLINDA P. UY
Associate Justice

WE CONCUR:

JUANITO C. CASTANEDA, JR.
Associate Justice

OLGA PALANCA-ENRIQUEZ
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.

JUANITO C. CASTANEDA, JR.
Associate Justice
Chairperson

CERTIFICATION

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

ERNESTO D. ACOSTA
Presiding Justice