REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

THE COMMISSIONER OF INTERNAL REVENUE ,
Petitioner,

-versus-

FINANCIAL MARKETING SERVICES CORPORATION,
Respondent.

CTA EB No. 159
(C.T.A. CASE No. 6443)

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FINANCIAL MARKETING SERVICES CORPORATION,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE ,
Respondent.

CTA EB No. 161
(C.T.A. CASE No. 6443)

PRESENT:
Acosta, *P.J.*,
Castañeda, Jr.,
Bautista,
Uy,
Casanova,
Palanca-Enriquez, *JJ.*:

Promulgated:

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DECISION

CASTAÑEDA, JR., *J.*:

The above-captioned consolidated cases are Petitions for Review under Section 18 of Republic Act No. 1125, as amended by Republic Act No. 9282. The appeal filed by the Commissioner of Internal Revenue

(CIR) docketed as C.T.A. EB No. 159 assails the Decision dated September 7, 2005 rendered by the First Division of this Court (hereafter the Court in Division) partially granting the Petition for Review in C.T.A. CASE No. 6443. The Court in Division ordered the respondent to issue a tax credit certificate in favor of the petitioner in the amount of P35,681,956.00 representing overpaid income tax as of December 31, 2000. The decision was later affirmed in the assailed Resolution dated January 23, 2006. On the other hand, the appeal filed by the Financial Marketing Services Corporation (FSMC) docketed as C.T.A. EB No. 161 assails the Court in Division's decision partially denying a portion of its claim for refund in the amount of P608,621.00 for being barred by prescription under Section 229 of the 1997 NIRC.

The undisputed facts as found by the Court in Division are as follows:

> *First,* petitioner has an excess quarterly income tax payments as of December 31, 2000 in the amount of P36,290,577.00 as evidenced by its 1998, 1999 and 2000 annual income tax returns *(Exhibits A, B and E, inclusive of submarkings)*. The payments of quarterly income taxes were supported by machine validated quarterly income tax returns for the first quarter of 1998 and third quarter of 1999 *(Exhibits C, C-1, F and F-1)*. The aforesaid payments were also acknowledged by Ms. Carmelita SJ. Pascual, Chief Revenue Accounting Division, BIR to have been remitted to the coffers of the government *(BIR records, pages 182 and 183, Folder No. I)*.
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> *Second,* the amount of P36,290,577.00 remained unapplied as of December 31, 2000 *(Exhibit E)* and was not carried over to the succeeding year 2001 as verified with the

> petitioner's short term income tax return for the year 2001 *(BIR records, page 83).*
>
> *Third,* petitioner has paid all its internal revenue taxes for the years 2000 and 2001 as shown by the result of revenue officers' investigation *(BIR records, pages 225 and 226, Folder No. 1).*
>
> *Fourth,* petitioner's corporate existence was already terminated on April 30, 2001 as evidenced by the minutes of the special meeting of the Board of Directors and stockholder *(Exhibits H and I),* Application for Registration Information Update *(Exhibit J),* filing of short term income tax return for 2001 *(BIR records, pages 67 to 83, Folder 2)* and payment of all internal revenue tax liabilities *(BIR records, pages 225 and 226, Folder 1).*

After trial on the merits, the Court in Division ruled that the remaining balance of petitioner's 1998 overpaid income tax amounting to P608,621.00 is already barred by prescription pursuant to Section 229 of the National Internal Revenue Code of 1997 (NIRC) which provides that the filing of judicial claim for refund should be made within two (2) years from the date of payment of the tax regardless of any supervening cause that may arise after payment. The Court in Division found that petitioner filed its 1998 annual income tax return on April 15, 1999 but the administrative and judicial claims for refund were only filed on December 12, 2001 and June 12, 2002, respectively. Hence, barred by prescription.

The Court in Division ruled that the claim for refund with respect to the 1999 overpaid income tax in the amount of P35,681,956.00 was filed within the two-year prescriptive period; petitioner complied with the requisites of Section 229; petitioner was able to substantiate its 1999 excess income tax payment. The Court in Division likewise found that as per the memorandum report of respondent's examining revenue officers (*Exhibit K*), the audit of the transactions affecting income tax disclosed that all revenues were reported by petitioner for income tax purposes and deductions were properly supported with documents, thus, the report recommended the following: 1) that a tax clearance be issued to the petitioner; and 2) that a corresponding tax credit certificate be issued for petitioner's unapplied income tax payment. Thus, the Court in Division granted the refund of P35,681,956.00 representing therein petitioner's overpaid income tax. The dispositive portion of the assailed decision reads as follows:

> **WHEREFORE,** in view of the foregoing, the instant Petition for Review is hereby PARTIALLY GRANTED. Accordingly, respondent is ORDERED to ISSUE A TAX CREDIT CERTIFICATE in favor of petitioner the amount of P35,681,956.00 representing overpaid income tax as of December 31, 2000.
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> **SO ORDERED.**

Hence, the instant appeals.

In a Resolution dated September 18, 2006, C.T.A. EB No. 161 was consolidated with C.T.A. EB No. 159 pursuant to Section 1, Rule 31 of the 1997 Rules of Civil Procedure considering that the above- Jc captioned cases involve the same parties and common questions of law and/or facts. The consolidated petitions were submitted for decision on November 8, 2006 *sans* the parties' memoranda in view of the failure of both parties to file the same within the period prescribed by the Court *en banc*.

ASSIGNMENT OF ERRORS

In C.T.A. E.B. No. 159

The petitioner - *Commissioner of Internal Revenue* (CIR) - assigns the following errors:

I.

THE HONORABLE FIRST DIVISION OF THE CTA ERRED IN HOLDING THAT RESPONDENT IS ENTITLED TO ITS CLAIMED REFUND OF OVERPAID INCOME TAX FOR TAXABLE YEAR 2000, NOT APPLYING THE RULE UNDER SECTION 76 OF THE 1997 TAX CODE, WHICH PROVIDES THAT THE REMEDIES OF CLAIM FOR AUTOMATIC TAX CREDIT FOR THE SUCCEEDING TAXABLE YEAR ARE IN THE ALTERNATIVE, AND THE CHOICE OF ONE PRECLUDES THE OTHER.

II.

THE HONORABLE FIRST DIVISION OF THE CTA ERRED IN HOLDING THAT RESPONDENT IS ENTITLED TO ITS CLAIMED REFUND OF OVERPAID INCOME TAX FOR TAXABLE YEAR 2000 APPLYING THE RULE ON EQUITY AND THE PROVISION OF SECTION 112 (c) OF THE NIRC OF 1997.

III.

THE HONORABLE FIRST DIVISION OF THE CTA ERRED IN NOT APPLYING THE RULE THAT TAX REFUNDS BEING IN THE NATURE OF TAX EXEMPTION ARE CONSTRUED STRICTISSIMI JURIS AGAINST THE PERSON OR ENTITY CLAIMING THE EXEMPTION.

In C.T.A. E.B. No. 161

The petitioner - *Financial Marketing Services Corporation* (FMSC) - makes a lone assignment of error:

THE FIRST DIVISION ERRED IN ITS CONCLUSION THAT PETITIONER'S RIGHT TO CLAIM A TAX CREDIT CERTIFICATE FOR ITS EXCESS AND UNUTILIZED QUARTERLY INCOME TAX PAYMENT FOR CY 1998, IN THE AMOUNT OF P608,621.00 IS BARRED BY PRESCRIPTION PURSUANT TO SECTION 229, TAX CODE.

ARGUMENTS OF THE PARTIES

In his Petition for Review (C.T.A. EB No. 159), the CIR argues that Section 76 of the 1997 Tax Code provides that the remedies of claim for refund and a claim for automatic tax credit for the succeeding taxable year are in the alternative and the choice of one precludes the other. According to the CIR, Section 76 provides that "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 CIR asserts that the provision is clear, when an option has been exercised, the same shall be irrevocable for that taxable period. The command is that, once the option to carry-over has been made, as in the case at bar, the taxpayer may no longer apply for a refund of unutilized taxes for that taxable period.

According to the CIR, the Court in Division erred in applying equity rather than the law when it ruled that "if we are going to apply strictly Section 76, petitioner's application for refund can no longer be allowed. However, owing to the peculiar circumstances of the case, the Court deems it proper to rule equitably for the petitioner." The CIR argues that "equity is a lame excuse to afford a contrary interpretation or construction of a law or jurisprudence. In no case can it be utilized to supplant the clear mandate of the law which under Section 76 of the Tax Code, that is, once the option to carry over has been made, as in the case at bar, the taxpayer may no longer apply for a refund of unutilized taxes for that taxable period because the two remedies provided for in Section 76 of the 1997 NIRC are alternative, and the choice of one precludes the other."

On the other hand, the FMSC argues in its Petition for Review (C.T.A. EB No. 161) that the two-year statute of limitations under

Section 229 of the tax code for filing a judicial claim for refund of tax erroneously paid was not intended to apply to entities which had ceased operations due to dissolution, such as herein petitioner's case. It avers that the two-year prescriptive period under Section 229 does not result in the extinguishment of a taxpayer's credit against the government, it merely forecloses an administrative or judicial enforcement of the claim, but the credit against the government remains because it can still be claimed on the tax return in the succeeding taxable periods. However, when the taxpayer is no longer a going concern, it must be allowed to claim a credit both administratively and judicially. To rule otherwise would result in the extinguishment of a substantive right, which is not envisioned in Section 204 (C) of the Tax Code.

FMSC argues that this Court must distinguish between substantive rights on the one hand and procedural rights on the other. Section 204 (C) of the Tax Code merely relates to a procedural right as indeed, the credit is not extinguished after the two-year period expires. It remains as a substantive right, which procedurally, the taxpayer may claim in its tax return, as opposed to an administrative or judicial proceeding. According to the FMSC, the principles of substantive due process, *solutio indebiti*, and unjust enrichment forecloses the application of the two-year statute of limitations provided under Section 229 of the tax code.

THIS COURT'S RULING

The petitions are bereft of merit.

C.T.A. EB No. 159

The main argument proffered by the CIR in his Petition for Review in C.T.A. EB No. 159 is that Section 76 of the 1997 Tax Code provides that the remedies of claim for automatic tax credit for the succeeding taxable year are in the alternative and the choice of one precludes the other. Consequently, having chosen 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.

We are not persuaded by CIR's arguments.

The provision of law that is relevant to the instant Petition for Review is Section 76 of the 1997 NIRC, quoted hereunder:

> "**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

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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."** *(Emphasis supplied)*

The rationale behind the afore-quoted Section 76 of the 1997 NIRC has been explained by the Supreme Court in this wise:

Section 76 offers two options to a taxable corporation whose total quarterly income tax payments in a given taxable year exceeds its total income tax due. These options are (1) filing for a tax refund or (2) availing of a tax credit.

The first option is relatively simple. Any tax on income that is paid in excess of the amount due the government may be refunded, provided that a taxpayer properly applies for the refund.

The second option works by applying the refundable amount, as shown on the FAR of a given taxable year, against the estimated quarterly income tax liabilities of the succeeding taxable year.

These two options under Section 76 are alternative in nature. The choice of one precludes the other. Indeed, in Philippine Bank of Communications v. Commissioner of Internal Revenue [361 Phil. 916, January 28, 1999] the Court ruled that a corporation must signify its intention — whether to request a tax refund or claim a tax credit — by marking the corresponding option box provided in the FAR. **While a taxpayer is required to mark its choice in the form provided by the BIR, this requirement is only for the purpose of facilitating tax collection.**

One cannot get a tax refund and a tax credit at the same time for the same excess income taxes paid. Failure to signify one's intention in the FAR does not mean outright barring of a valid request for a refund, should one still choose this option later on. **A tax credit should be construed merely as an alternative remedy to a tax refund under Section 76**, subject to prior verification and approval by respondent.

The reason for requiring that a choice be made in the FAR upon its filing is to ease tax administration, particularly the self-assessment and collection aspects. A taxpayer that makes a choice expresses certainty or preference and thus demonstrates clear diligence. Conversely, a taxpayer that makes no choice expresses uncertainty or lack of preference and hence shows simple negligence or plain oversight.[1]

It is clear from the foregoing disquisition of the Supreme Court that the purpose of requiring a corporate taxpayer which has excess income tax payments in a particular year to choose an option whether to file a claim for refund or to carry-over the excess as tax credit for its tax liabilities in the succeeding taxable year is to ease tax administration and facilitate tax collection. In addition, it prevents taxpayers from getting a tax refund and a tax credit at the same time for the same excess income taxes paid, as the choice of one precludes the other.

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1 *Philam Asset Management, Inc., vs. Commissioner of Internal Revenue,* G.R. Nos. 156637/162004, December 14, 2005 (477 SCRA 761).

In the instant petition, the CIR is assailing the Decision of the Court in Division partially granting the claim for refund of FMSC's excess income tax payments for the year 1999 in the amount of P35,681,956.00 on the sole ground that the taxpayer "originally elected to have both the 1998 and 1999 income tax payment to be carried over to the succeeding taxable years."[2]

While it is true that Section 76 of the 1997 NIRC provides that "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**[3] for that taxable period and no application for cash refund or issuance of a tax credit certificate shall be allowed therefor", nevertheless, this Court *en banc* concurs with the opinion of the Court in Division that a literal application of Section 76 of the 1997 NIRC is not warranted in view of the following circumstances, to wit:

First, FMSC's corporate existence was already terminated on April 30, 2001 as shown by the minutes of the special meeting of the Board of Directors and stockholder *(Exhibits H and I)*; Application for Registration Information Update *(Exhibit J)*; the filing of short term

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2 Petition for Review, C.T.A EB No. 159, p. 8.

3 *Paseo Realty & Development Corporation vs. Court of Appeals, Court of Tax Appeals and Commissioner of Internal Revenue*, G.R. No. 119286, October 13, 2004 (440 SCRA 235); *Philam Asset Management, Inc. vs. Commissioner of Internal Revenue, supra.*

income tax return for 2001 *(BIR records, pages 67 to /83, Folder 2)* and payment of all internal revenue tax liabilities *(BIR records, pages 225 and 226, Folder 1).*[4]

Second, the taxpayer has paid all its internal revenue taxes for the years 2000 and 2001 as shown by the result of the revenue officers' investigation *(BIR records, pages 225 and 226, Folder No. 1).*[5]

Third, the amount of P36,290,577.00 remained unapplied as of December 31, 2000 *(Exhibit E)* and was not carried over to the succeeding year 2001 as verified with the petitioner's short term income tax return for the year 2001 *(BIR records, page 83).*

Fourth, the unapplied excess income tax in the amount of P36,290,577.00 can no longer be utilized by the taxpayer because of its corporate dissolution. However, a portion thereof amounting to P608,621.00 representing the remaining balance of its 1998 overpaid income tax is already barred by prescription.

Fifth, the Court in Division found that FMSC had complied with the requirement of filing of the administrative and judicial claim for refund within the two-year prescriptive period under Section 229 of the 1997 NIRC with respect to its 1999 overpaid income tax amounting to P35,681,956.00.

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4 Assailed Decision, page 6.
5 *Id.*

In view of the foregoing undisputed facts, the Court *en banc* concurs with the Court in Division's ruling that the refund in the total amount of P35,681,956.00 representing FMSC's excess income tax payments for the year 1999 is proper considering that "there is no possible way by which petitioner can utilize the excess payment because petitioner will no longer incur future income tax liability."[6]

As explained by the Supreme Court, the rationale behind the irrevocability of the option chosen by the taxpayer is to prevent a taxpayer from getting a tax refund and a tax credit at the same time for the same excess income taxes paid. FMSC had sufficiently proven that it will not be able to apply its excess income tax payments to any future income tax liabilities on account of its corporate dissolution, hence, the danger sought to be avoided by the irrevocability option has been totally eliminated. Considering that the danger of double utilization of a single tax payment, a claim for tax refund and at the same time a carry-over of excess tax credits, does not exist anymore due to the dissolution of its corporate existence, FMSC is entitled to be refunded of a portion of its total unapplied excess income tax payments which is not yet barred by prescription.

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6 *Id.* at p. 10

As borne out by the records of this case, the Court in Division noted that "petitioner has complied with the requisites of Section 229 and it was able to substantiate the 1999 excess income tax payment. Moreover, as per the memorandum report of respondent's examining revenue officers *(Exhibit K)*, the audit of the transactions affecting income tax disclosed that petitioner declared all its revenues for income tax purposes and deductions therefrom were properly supported with documents. Thus, the examining revenue officers recommended that a Tax Clearance be issued to the petitioner and the corresponding tax credit certificate be issued for its unapplied income tax payment.[7] However, as pointed out by the taxpayer in its Comment to the instant petition, despite the examining revenue officer's affirmative recommendation *(Exhibit K-1)* for the issuance of a Tax Clearance in favor of Financial Marketing Services Corporation, respondent has not issued any tax clearance thereby effectively preventing the Securities and Exchange Commission (SEC) from issuing a Certificate of Dissolution.

Corollary to the absence of a tax clearance, the Office of the Solicitor General (OSG) filed a "Supplemental Petition for Review" on March 27, 2006 alleging that there is no showing that the taxpayer has

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7 *Id.* at p. 13

rendered a verified correct return to the CIR setting forth the terms of the resolution for its dissolution pursuant to Sec. 52 (c) of the 1997 NIRC nor secured the issuance by the Securities and Exchange Commission of the Certificate of Dissolution with the required submission to the latter of a Certificate of Tax Clearance from the Bureau of Internal Revenue (BIR). Hence, absent the Certificate of Tax Clearance from the BIR, it cannot be ascertained if indeed respondent has already paid all its tax liabilities to entitle it to the refund claimed or issuance of tax credit certificate.

The absence of a tax clearance would have been a valid argument[8] against a claim for refund were it not for the fact that the issue of the absence of a tax clearance from the BIR was belatedly raised for the first time when the case was already on appeal to this Court *en banc*. The CIR did not even raise the issue at the administrative level nor in the proceedings in the Court in Division, consequently, said issue can no longer be raised on appeal as ruled by the Supreme Court, thus:

> To allow a litigant to assume a different posture when he comes before the court and challenge the position he had accepted at the administrative level, would be to sanction a procedure whereby the court — which is supposed to review administrative determinations — would not review, but

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8 *Lotus Software (Philippines), Inc., vs. Commissioner of Internal Revenue,* C.T.A. CASE No. 6673, May 18,2005; *SMI-ED Philippines Landholdings, Inc. vs. Commissioner of Internal Revenue,* C.T.A. CASE No. 6649, April 4, 2006.

> determine and decide for the first time, a question not raised at the administrative forum. This cannot be permitted, for the same reason that underlies the requirement of prior exhaustion of administrative remedies to give administrative authorities the prior opportunity to decide controversies within its competence, and in much the same way that, on the judicial level, issues not raised in the lower court cannot be raised for the first time on appeal.[9]

In fact, in the assailed Resolution dated January 23, 2006, the Court in Division noted the minimal participation of the respondent CIR during the trial phase of C.T.A. CASE No. 6443, thus:

> At the outset, it should be noted that except for interposing an Answer and submitting a Joint Stipulation of Facts and Issues, respondent barely participated during the trial. The Court granted several re-settings of the case due to respondent's failure to appear or his request for postponement. **In the end, respondent submitted the case for decision without presenting any evidence and he did not submit his Memorandum as manifested.** *(Emphasis supplied)*

In fine, the defense of lack of tax clearance was not even raised during the trial of the case considering the minimal participation of the respondent therein, hence, the issue cannot be taken up on appeal.

Even if this Court will gloss over this procedural defect and resolve the issue of tax clearance on the merits, the taxpayer, FSMC, will still prevail. It was established by FMSC that the revenue examiners who examined petitioner's claim for refund recommended that a tax clearance and a tax credit certificate be issued in favor of the taxpayer for the total claim for refund. *Exhibit K* shows that Letter of

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9 *Aguinaldo Industries Corporation (Fishing Nets Division) vs. Commissioner of Internal Revenue and the Court of Appeals,* G.R. No. L-29790, February 25, 1982 (112 SCRA 136).

Authority No. 00035458 covering all internal revenue taxes for the taxable years 1999, 2000 and 2001 of FMSC "was issued in view of the taxpayer's application for cancellation of registration due to the company's dissolution and request for issuance of Tax Credit Certificate (TCC) on the income tax overpayment."

In addition, a Memorandum[10] dated July 22, 2004 prepared by Ms. Corazon C. Pangcog, Chief, LTDO-Makati, addressed to Ms. Kim S. Jacinto-Henares, Deputy Commissioner for Special Concerns, OIC, Large Taxpayers Service, states that "the findings per review have been complied with" referring to the BIR Revenue Officer / Group Supervisor's compliance with the "Summary of Review Findings".

Indisputably, the taxpayer had already performed all acts necessary under the circumstances to obtain a tax clearance from the CIR on account of its corporate dissolution. Therefore, the lack of tax clearance was not due to its fault or inaction but rather due to the CIR's failure to act upon the recommendation of the revenue examining officers for the issuance of a tax clearance and tax credit certificate *(Exhibit K-1)* and to use it against the taxpayer as the ground to disallow an otherwise valid claim for refund would be unfair and unjust to say the least. "When it is undisputed that a taxpayer is entitled to a

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10 BIR records, pages 225 to 227, Folder No. 1

refund, the State should not invoke technicalities to keep money not belonging to it. No one, not even the State, should enrich oneself at the expense of another."[11] Substantial justice, equity and fair play are on the side of FMSC.

Technicalities and legalisms, however, exalted, should not be misused by the government to keep money not belonging to it and thereby enrich itself at the expense of its law abiding citizens. If the State expects its taxpayers to observe fairness and honesty in paying their taxes, so must it apply the same standard against itself in refunding excess payments of such taxes. Indeed, the State must lead by its own example of honor, dignity and uprightness.[12]

C.T.A. EB No. 161

The basis of FMSC's appeal in C.T.A. EB No. 161 is that it is exempted from the application of the two-year prescriptive period in Section 229 of the 1997 NIRC because said provision was not intended to apply to entities which had ceased operations due to dissolution, such as herein petitioner's case, hence, the government has no right to keep money which does not belong to it under the principle of *solutio indebiti*.

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11 *BPI-Family Savings Bank, Inc., vs. Court of Appeals, Court of Tax Appeals and the Commissioner of Internal Revenue,* G.R. No. 122480, April 12, 2000 (330 SCRA 507).

12 *Id.*

We do not agree. FMSC's arguments are unmeritorious.

Section 229 of the 1997 NIRC reads as follows:

> "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.
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> **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."

The above-quoted provision provides that "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***", thus, whatever may be the reason behind a claimant's failure to file its administrative or judicial claim for refund within the two-year prescriptive period is not an excuse for not applying the two-year prescriptive period. This Court had explained Section 229 of the 1997 NIRC as follows:

> The language of the law is unequivocal, it provides that no suit or proceeding shall be maintained in any court for the recovery of any national internal revenue tax 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.

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The date of payment of the tax is the reckoning point of the two-year period within which a valid claim for refund may be filed in both the administrative [Sec. 204 (C)] and judicial levels. Any claim or proceeding for the recovery of taxes shall be filed within the two-year prescriptive period, otherwise, the taxpayer loses his right *ipso facto* to recover any tax alleged to have been erroneously or illegally collected.

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The argument proffered by the petitioner that the two-year period should commence from the date of the extra-judicial rescission of the *dacion en pago* arrangement is contrary to the clear language of Section 229 of the 1997 NIRC. The same is true with respect to the other arguments raised by the petitioner, to wit: that the two-year period should be reckoned from the date of judicial determination of the act of rescission, the pendency of the litigation between the petitioner and its creditor bank and the enactment of R.A. 9182 otherwise known as *The Special Purpose Vehicle Act* . **These are all extraneous matters from the date of payment of the tax. In fact, they occurred after the payment of the tax, thus, not relevant in determining the prescriptive period. Section 229 explicitly states that the two-year prescriptive period is not affected by any supervening cause, hence, the phrase *regardless of any supervening cause*.** This phrase was originally added by P.D. No. 69 dated November 24, 1972 and was retained in both the 1977 and 1997 National Internal Revenue Code. The intent of the law is unmistakable, to establish as a condition *sine qua non* that all claims and actions for refund of any tax or penalty shall be filed within two years from the date of payment of such tax or penalty, even if the taxpayer had no cause for refund as the tax or penalty, was legally collected, and even if after the lapse of the two-year period, a supervening cause should arise which would entitle the taxpayer to refund."[13] *(Emphasis supplied)*

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13 *Atlanta Land Corporation vs. Commissioner of Internal Revenue*, C.T.A. EB No. 79, May 23, 2006.

As found by the Court in Division, a portion of this P36,290,577.00 tax overpayment amounting to **P608,621.00 pertains to the excess income tax payments for the year 1998 reported in its Annual Income Tax Return which was filed on April 15, 1999**. Under Section 229 of the 1997 NIRC, **a claim for refund for P608,621.00 should have been filed on or before April 15, 2001** or within two years from the date of filing of its 1998 Annual Income Tax Return. According to herein petitioner's own declaration in the statement of facts in the instant Petition for Review, **it filed its administrative claim for refund only on December 12, 2001 and its judicial claim for refund only on April 12, 2002, both beyond the two-year prescriptive period** prescribed by Section 229 of the 1997 NIRC. Hence, the Petition for Review in C.T.A. EB No. 161 has no leg to stand on considering that petitioner already has knowledge of its impending dissolution prior to the filing of its 2000 Annual Income Tax Return.

In its Annual Income Tax Return for the year 2000 filed on April 18, 2001, FMSC indicated its option to claim a tax credit certificate for its tax overpayment of P36,290,577.00 as of December 31, 2000. The reason for this selection, as stated by petitioner's own witness, Mr. Tadeo J. Claravall, Jr., was that the management of Financial

Management Services Corporation has already decided to cease its operations by April 2001, hence, it will no longer be able to make use of its excess tax credits of P36,290,577.00. Thus, it had the opportunity to comply with the requirement of Section 229 of the 1997 NIRC requiring the filing of its administrative and judicial claims for refund on or before April 15, 2001, the last day of the two-year prescriptive period. But petitioner failed to do so.

Finally, the principle of *solutio indebiti* is likewise not applicable. *Solutio indebiti* is a principle in Civil Law found in the Civil Code of the Philippines, a general law, whereas the two-year prescriptive period for the recovery of erroneously paid taxes is found in Section 229 of the 1997 NIRC, a special law. It is well-settled that a principle of law is to be applied only in the absence of a particular law governing a subject matter and that a special law (1997 National Internal Revenue Code) shall prevail over a general law (Civil Code). Thus, the two-year prescriptive period found in Section 229 of the 1997 NIRC shall prevail over the principle of *solutio indebiti* as regards the portion amounting to P608,621.00 representing the remaining balance of FMSC's 1998 excess income tax payments.

The two-year prescriptive period for filing an action for tax refund was purposely included in Section 229 of the 1997 NIRC to enable the government to settle claims for refund at the earliest possible time considering that *taxes are the lifeblood of the Government and their prompt and certain availability is an imperious need (Commissioner of Internal Revenue vs. Pineda, 21 SCRA 105).* The availability of funds from the collection of taxes cannot forever be left subject to the contingency of refund brought about by certain acts which are solely within the exclusive control of the private contracting parties, otherwise, fiscal adequacy cannot be achieved. In a recent case, the Supreme Court has even applied the two-year prescriptive period in denying a claim for refund of income tax payments erroneously withheld from the income of certain **tax-exempt** employees' trusts.[14]

In view of all the foregoing, the Court *en banc* finds no reversible error committed by the Court in Division and sees no cogent reason to REVERSE, MODIFY or AMEND the assailed Decision and Resolution.

WHEREFORE, the consolidated Petitions for Review, C.T.A. EB No. 159 filed on February 27, 2006 and C.T.A. EB No. 161 filed on February 10, 2006, are both **DENIED** for lack of merit. Accordingly, the assailed Decision dated September 7, 2005 and Resolution dated January 23, 2006 are hereby **AFFIRMED** *in toto.*

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14 *Far East Bank and Trust Company, as Trustee of Various Retirement Funds vs. Commissioner of Internal Revenue and The Court of Appeals,* G.R. No. 138919, May 2, 2006 (488 SCRA 473).

SO ORDERED.

JUANITO C. CASTAÑEDA, JR.
Associate Justice

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Justice

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

(On Leave)
CAESAR A. CASANOVA
Associate Justice

OLGA PALANCA-ENRIQUEZ
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, it is hereby certified that the above Decision has been reached in consultation with the members of this Court before the case was assigned to the writer of the opinion of the Court.

ERNESTO D. ACOSTA
Presiding Justice