REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

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PHILIPPINE SAVINGS BANK,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

C.T.A. CASE NO. 7579

Members:

ACOSTA, *Chairperson*
BAUTISTA, and
CASANOVA, *JJ.*

Promulgated:

JUN 03 2008, 1:00 pm

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RESOLUTION

For resolution are:

1. petitioner's **"Motion to Dismiss"** filed on March 25, 2008;
2. respondent's **"Opposition (Re: Motion to Dismiss)"** filed on April 3, 2008; and
3. petitioner's **"Reply (Re: Respondent's Opposition dated April 2, 2008)"** filed on April 24, 2008.

In its Motion to Dismiss, petitioner submits that on December 31, 2007 it availed of the provisions of Republic Act (R.A.) No. 9480, otherwise known as the Tax Amnesty Law of 2007. In view hereof, petitioner submits copies of the following documents to prove its entitlement to the immunities and privileges set forth in the same law, to wit:

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a. Notice of Availment of Tax Amnesty;

b. Statement of Assets, Liabilities and Networth (SALN) as of December 31, 2005;

c. Tax Amnesty Return (BIR Form No. 3116);

d. BIR Tax Payment Deposit Slip

e. Tax Amnesty Payment Form

Respondent, on the other hand, opposes petitioner's availment of the tax amnesty provisions on the ground that petitioner's case falls under the exceptions as provided for under Section 8 (f)[1] of R.A. No. 9480. As can be seen, tax cases encompassed by final and executory judgments of the courts are explicitly barred from availing of the amnesty provided by law. Accordingly, tax cases involving issues on special savings accounts have long been subject to the final and executory decision rendered by the Honorable Supreme Court in the case of **Banco de Oro Universal Bank vs. Commissioner of Internal Revenue.** To bolster its argument, respondent cites Revenue Memorandum Circular No. 70-2007 which allegedly clarifies the proper treatment of cases under administrative or judicial protest for amnesty tax purposes as excluding cases which involve issues already decided by the courts with finality.

Petitioner counters on the grounds that:

a. Section 8 (f) of R.A. No. 9480 refers to specific tax cases which have become final and executory after the reglementary period of appeal has lapsed and no appeal has been taken;

b. Administrative issuances cannot expand the letter and spirit of the law they seek to enforce; and

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[1] Section 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:
xxx
(f) Tax cases subject of final and executory judgment by the courts.

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c. R.A. No. 9480 covers all internal revenue taxes such as documentary stamp taxes (dst).

This Court agrees with petitioner.

The exception covered under Section 8(f) of R.A. No. 9480 correctly refers to those cases which have become final and executory for the party's failure to take an appeal within the period allowed by law to do so, or in appealed cases, where the Supreme Court decided the said case with finality. The law cannot be made clearer than that. Thus, pending cases before the courts, like this instant case before Us, or administrative agencies for that matter, evidently do not fall under the exception.

This Court cannot accept respondent's argument for it evidently tries to expand the letter of the law. Section 8 (f) of R.A. No. 9480 surely cannot be made to refer to those "tax cases involving the same issues which have already been decided with finality by the Supreme Court", for the law is clear when it states that only "tax cases subject of final and executory judgment by the courts" are excluded from the tax amnesty provided under Section 5 of the same law. A close reading of the provision shows that the exception refers to the tax case already subject of a final and executory judgment for the party's failure to timely file an appeal, or which became final and executory by virtue of a Supreme Court decision appealed to the highest court, and despite such finality yet still avails of the provisions of the tax amnesty program. Thus, cases which have become final and executory can no longer avail of the provisions of R.A. No. 9480.

As regards petitioner's motion, and after evaluating the documents presented, the Court finds the same to be in order. Petitioner duly complied with the requirements in availing of the tax amnesty, pursuant to Section 5 of R.A. No. 9480, which provides thus:

> "**Section 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.

The effect thereof is stated under Section 6(a) of the law, *viz*:

> "**Section 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:
>
> (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."

Applying the aforementioned provisions to this instant case, and considering that the exhibits submitted are certified true copies of the originals, this Court hereby resolves in favor of petitioner.

IN VIEW OF THE FOREGOING, petitioner's "Petition for Review" filed on March 21, 2007 is deemed **WITHDRAWN,** and the afore-entitled case is considered **CLOSED** and **TERMINATED** subject to the provision of RA 9480.

SO ORDERED.

ERNESTO D. ACOSTA
Presiding Justice

LOVELL R. BAUTISTA
Associate Justice

CAESAR A. CASANOVA
Associate Justice

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