REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

Third Division

UNISYS PUBLIC SECTOR SERVICES CORPORATION,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA Case No. 8216

Members:
BAUTISTA, Chairperson
FABON-VICTORINO, *and*
RINGPIS-LIBAN, *JJ.*

Promulgated:

APR 16 2014 10:31 a.m.

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D E C I S I O N

RINGPIS-LIBAN, J.:

This is a Petition for Review under Rule 8 of the Revised Rules of the Court of Tax Appeals (RRCTA), pursuant to Section 11 of Republic Act (R.A.) No. 1125, as amended by R.A. 9282. Petitioner filed this appeal relative to its claim for refund for allegedly erroneously paid value added tax for the fourth (4th) quarter of the taxable year 2008 in the amount of Ten Million Nine Hundred Seventy-Eight Thousand Two Hundred Twenty-Four & 87/100 Pesos (₱10,978,224.87).

THE FACTS

Unisys Public Sector Services Corporation (petitioner) is a corporation duly organized and existing under and by virtue of the laws of the Republic of the Philippines, the primary purpose of which is, "to engage in the business of licensing and modifying computer hardware, computer system software programs, application, components, devices and supplies, as well as providing support, training and consultancy services in the use and application of said products."[1] Petitioner's principal office address is at Level 9 One Cyberpod, Eton Centris Station, EDSA corner Quezon Avenue, Quezon City.[2]

On the other hand, respondent is the duly appointed Commissioner of the Bureau of Internal Revenue (BIR) with the authority to decide, approve, and grant tax refunds/credits of overpaid internal revenue taxes as provided by law. She holds office at the BIR National Office Building, Agham Road, Diliman, Quezon City.

Petitioner registered with the BIR as a Value Added Tax (VAT) taxpayer on 1 January 1997, with Taxpayer Identification No. 003-933-453-000, and the supply of hardware and software consultancy, as its line of business.[3]

As such, petitioner entered into a build, operate, and transfer contract (Contract) for an estimated period of twelve (12) years from 2000 with the National Statistics Office (NSO), a Philippine government agency responsible for the collection, compilation, classification, production, publication and dissemination of general-purpose statistics and civil registry data.[4]

Specifically, the Contract provides the following terms and conditions, among others:

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[1] *Rollo*, pp. 93-94, Stipulated in Paragraph 1 of the Joint Stipulation of Facts and Issues (Between Petitioner UNISYS PUBLIC SECTOR SERVICES CORPORATION and Respondent COMMISSIONER OF INTERNAL REVENUE) ("JFSI") filed on 06 April 2011; **Exhibit "A" with sub-markings,** SEC Certificate of Incorporation and Articles of Incorporation, also identified in the hearing dated 04 May 2011.

[2] *Rollo*, p. 23.

[3] *Id.* at Note 4.

[4] See **Exhibit "P"**, Civil Registry System Information Technology Project (CRS-ITP) Contract dated 23 December 1999 between Unisys Public Sector Services Corporation, Unisys Australia, Limited (Philippine Branch), and the NSO; and **Exhibit "R"**, Assignment and Assumption Agreement dated 1 July 2001 between Unisys Public Sector Services Corporation, Unisys Australia, Limited (Philippine Branch), and the NSO.

a. Petitioner will be responsible for the design, development, construction, installation, testing, and commissioning of NSO's Civil Registry System-Information Technology (CRS-IT).

b. In consideration for its services, petitioners will receive a percentage of the revenues generated by NSO (Service Fee) from the services rendered under its CRS-IT including, among others, the authentication, certification, and issuance of Certificate of Live Birth, Certificate of Marriage, Certificate of No-Marriage, and other civil registry data.

During the 4th Quarter of the taxable year 2008, petitioner derived gross sales amounting to Pesos: One Hundred Ninety-Two Million Two Hundred Ninety Four Thousand Eight Hundred Fifty-One & 41/100 (₱192,294,851.41).[5]

The above amount of gross sales was subjected to five percent (5%) final VAT which was directly deducted and withheld by NSO pursuant to Section 114(c) of the 1997 Tax Code, as amended, *to wit:*

> "(C) *Withholding of Value-Added Tax.* - The Government or any of its political subdivisions, instrumentalities or agencies, including government-owned or controlled-corporations (GOCCs) shall, before making payment on account of each purchase of goods and services which are subject to the value-added tax imposed in Sections 106 and 108 of this Code, deduct and withhold a final value-added tax at the rate of five percent (5%) of the gross payment thereof: x x x"

Testimonial confirmation was presented by petitioner relative to the act of withholding by NSO such as the corresponding Certificates of Creditable Tax Withheld at Source (BIR Form No. 2307) for the months of October, November, and December 2008.

NSO withheld a total amount of Nine Million Six Hundred Fourteen Thousand Seven Hundred Forty-Two & 57/100 Pesos

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[5] See **Exhibit "E"**, Monthly VAT Declaration for the month of October 2008; **Exhibit "F"**, Monthly VAT Declaration for the month of November 2008; and **Exhibit "G"** *Original* Quarterly VAT Return for the Fourth (4th) Quarter of CY 2008.

(₱9,614,742.57) on all of its income payments to petitioner[6], as summarized in the table below:

Document/Month	Amount
Certificate of Creditable Tax Withheld at Source (BIR Form No. 2307) for October 2008[7]	₱3,456,774.93
Certificate of Creditable Tax Withheld at Source (BIR Form No. 2307) for November 2008[8]	₱3,396,940.02
Certificate of Creditable Tax Withheld at Source (BIR Form No. 2307) for December 2008[9]	₱2,761,027.62
Total:	₱9,614,742.57

Pursuant to Sec. 114 of the 1997 Tax Code[10], petitioner filed its VAT returns for the 4th Quarter of 2008[11].

[6] *Rollo*, p. 118, Answer to Question 42, **"Exhibit BB"**, Judicial Affidavit of Jennifer G. Glinoga.

[7] Although referred to as **Exhibit "L"**, **Exhibit "M"** actually indicates November 2008 VAT payment at 2,761,027.62.

[8] Although referred to as **Exhibit "M"**, **Exhibit "L"** actually indicates October 2008 VAT payment at 3,396,940.02.

[9] **"Exhibit "N"** actually indicates December 2008 VAT payment at 3,456,774.93. However, both Judicial Affidavits of Ms. Glinoga and the ICPA refer to the exhibits the same as table.

[10] Section 114, Tax Code of 1997:

"SEC. 114. *Return and Payment of Value-added Tax.* -- (A) *In General.* -- Every person liable to pay the value-added tax imposed under this Title shall file a quarterly return of the amount of his gross sales or receipt within twenty-five (25) days following the close of each taxable quarter prescribed for each taxpayer: *Provided, however,* That VAT-registered persons shall pay the value-added tax on a monthly basis.

"Any person, whose registration has been canceled in accordance with Section 236, shall file a return and pay the tax due thereon within twenty-five (25) days from the date of cancellation of registration: *Provided,* That only one consolidated return shall be filed by the taxpayer for his principal place of business or head office and all branches.

"(B) *Where to File the Return and Pay the Tax.* -- Except as the Commissioner otherwise permits, the return shall be filed with and the tax paid to an authorized agent bank, Revenue Collection Officer or duly authorized city or municipal Treasurer in the Philippines located within the revenue district where the taxpayer is registered or requied to register.

"(C) *Withholding of Creditable Value-added Tax.* -- The Government or any of its political subdivisions, instrumentalities or agencies, including government-owned or controlled-

Petitioner paid its VAT for the month of October 2008 on 20 November 2008[12] in the amount of Pesos: Four Million One Hundred Sixty-Five Thousand Nine Hundred Sixty-Five & 44/100 (₱4,165,965.44).[13]

Petitioner paid its VAT for the month of November 2008 on 18 December 2008[14] in the amount of Pesos: Four Million Three Hundred Seventy-Two Thousand One Hundred Ninety-Four & 77/100 (₱4,372,194.77).[15]

Petitioner paid its VAT for the month of December, 2008[16] in the amount of Pesos: Three Million One Hundred Thirty-Two Thousand Seven Hundred Five & 33/100 (₱3,132,705.33).[17]

In total, petitioner paid an additional VAT amounting to Pesos: Eleven Million Six Hundred Seventy Thousand Eight Hundred Sixty-Five & 54/100 (₱11,670,865.54)[18].

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corporations (GOCCs) shall, before making payment on account of each purchase of goods from sellers and services rendered by contractors which are subject to the value-added tax imposed in Sections 106 and 108 of this Code, deduct and withhold the value-added tax due at the rate of five percent (5%) of the gross payment thereof: *Provided,* That the payment for lease or use of properties or property rights to non-resident owners shall be subject to ten percent (10%) withholding tax at the time of payment. For purposes of this Section, the payor or person in control of the payment shall be considered as the withholding agent.

"The value-added tax withheld under this Section shall be remitted within ten (10) days following the end of the month the withholding was made. *(As amended by R.A. No. 9337.)*"

[11] See Exhibits "E", "F", and "G" for reference.

[12] *Rollo,* p. 94, Joint Stipulation of Facts and Issues (Between Petitioner UNISYS PUBLIC SECTOR SERVICES CORPORATION and Respondent COMMISSIONER OF INTERNAL REVENUE)

[13] See **Exhibit "I"** for reference, EFPS Payment Confirmation of VAT due for the month of October 2008.

[14] *Rollo,* p. 94, Joint Stipulation of Facts and Issues (Between Petitioner UNISYS PUBLIC SECTOR SERVICES CORPORATION and Respondent COMMISSIONER OF INTERNAL REVENUE)

[15] See **Exhibit "J"** for reference, EFPS Payment Confirmation of VAT due for the month of November 2008.

[16] *Rollo,* p. 94, Joint Stipulation of Facts and Issues (Between Petitioner UNISYS PUBLIC SECTOR SERVICES CORPORATION and Respondent COMMISSIONER OF INTERNAL REVENUE)

[17] See **Exhibit "K"** for reference, EFPS Payment Confirmation of VAT due for the month of December 2008.

[18] *Ibid.* See also **Exhibit "G-1",** EFPS Reference Number No. 090800002592348 and Date/Time Filed 20 November 20008; 5:22 PM, on the upper right hand corner of the Monthly VAT Return for the month of October 2008 (BIR Form No. 2550-M), **Exhibit "F-1",** EFPS Reference Number No. 09080002647895 and Date/Time Filed 18 December 2008; 12:12 PM, on the upper right hand corner of the Monthly VAT Return for the month of November 2008 (BIR Form No. 2550-M), and **Exhibit "G-1"** EFPS Reference Number No. 100900002714307 and Date/Time Filed

In computing its VAT liability for the 4th Quarter of 2008, petitioner initially used Actual Input VAT as reported in what will henceforth be called the Original VAT Return. In the Original VAT Return, petitioner reported zero ("0") sales to the government in Line 15 of the VAT returns. Consequently, it garnered a Total Output VAT amounting to Pesos of: Twenty-Four Million Seventy-Seven Thousand Six Hundred and Sixty-Five & 98/100 (₱24,077,665.98).

Private sales amounted to Pesos: Two Million Seven Hundred Ninety-Two Thousand Fifty Seven & 87/100 (₱2,792,057.87) with no amount reported for Input tax on sales to government closed to expense -- excess of standard input over actual input VAT. Its Total Input VAT, therefore, amounted to Pesos: Two Million Seven Hundred Ninety-Two Thousand Fifty Seven & 87/100 (₱2,792,057.87) with no VAT Overpayment reported.

Subsequently, petitioner filed an Amended VAT Return for the 4th Quarter of 2008[19] with a modified amount of VAT payable and claiming overpayment. Petitioner claims that it discovered that it erroneously overpaid its VAT liabilities to the BIR when it used its actual accumulated input VAT for the quarter instead of the seven percent (7%) standard input VAT in computing the net VAT payable. This is what they sought to correct by filing the Amended VAT Return using standard input VAT.

Reflected in the Amended VAT Return is overpaid VAT for the 4th Quarter of 2008 in the amount of Pesos: **Ten Million Nine Hundred Seventy-Eight Thousand Two Hundred Twenty-Four & 87/100 (₱10,978,224.87).**

On 20 January 2011, petitioner filed with the BIR its administrative claim for tax refund/credit[20] of its alleged overpaid

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21 January 2009; 5:42 PM, on the upper right hand corner of the Quarterly VAT Return for the 4th Quarter of 2008 (BIR Form No. 2550-M)

[19] See **Exhibit "H" with sub-markings** for reference, *Amended* Quarterly VAT Return for the Fourth (4th) Quarter of CY 2008.

[20] See **Exhibits "T", "T-1", and "T-2"** for reference, Administrative Claim for Tax Refund or Tax Credit of Overpaid Value-Added Tax of Unisys Public Sector Services.

VAT together with its Application for Tax Credits/Refund (BIR Form No. 1914)[21].

Due to respondent's failure to act on petitioner's administrative claim for refund, and because the two-year period within which to file a judicial claim for refund and/or issuance of tax credit certificates (TCC) was about to expire[22], petitioner filed the instant Petition for Review before this Court on 21 January 2011 to forestall the expiration of its right to bring suit on its claim for refund on the allegedly erroneous VAT payments.

On 23 February 2011, respondent filed her Answer[23]. As part of her Special and Affirmative Defenses, respondent alleged that:

1) the instant Petition for Review should not be given due course for being filed out of time[24];

2) filing the judicial claim one day after filing its administrative claim for refund with the BIR deprived the respondent the opportunity to examine petitioner's administrative claim for refund intelligently[25];

3) the burden is on petitioner to prove that the amount of erroneously paid VAT is properly documented in accordance with law and that there must be procedural compliance in pursuing the administrative claim leading to the appellate proceedings[26];

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[21] See **Exhibits "U" and "U-1"** for reference, Application for Tax Credits/Refund (BIR Form No. 1914).

[22] "Sec. 229. *Recovery of Tax Erroneously or Illegally Collected.* -- x x x "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: x x x "; 1997 National Internal Revenue Code.

[23] Respondent filed a "Motion for Extension of Time to File Answer" on 10 February 2011 which was granted in an order dated 14 February 2011. Respondent was given a non-extendible period of fifteen (15) days or until 26 February 2011 within which to file her Answer.

[24] *Rollo*, pp. 55-57.

[25] *Rollo*, pp. 57-58.

[26] *Rollo*, pp. 58-60.

4) the burden of proof is on the taxpayer to establish its right to refund and failure to sustain the burden is fatal to its claim for refund[27];

5) taxes collected are presumed to be in accordance with laws and regulations[28]; and

6) tax refunds are regarded as tax exemptions and are construed *strictissimi juris* against the person claiming the exemption.[29]

After the pre-trial conference, the parties filed their Joint Stipulation of Facts and Issues on 6 April 2011, which the Court approved on 29 April 2011.

During the trial, petitioner presented three (3) witnesses, namely: 1) Jennifer Glinoga, Finance Manager of the petitioner[30]; 2) Veronica R. Catajoy, External Tax Consultant of petitioner[31]; and 3) Katherine O. Constantino, the Court-commissioned Independent Certified Public Accountant (ICPA)[32].

After formal offer of its documents[33], petitioner rested its case.

On the other hand, respondent's counsel manifested during the hearing held on 2 May 2013 that due to the lack of BIR records for this case, he is constrained to waive respondent's right to present evidence and to submit the case for decision based on respondent's memorandum.[34] Thus, the parties were given a period of thirty (30) days from notice within which to submit their respective Memorandum.

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[27] *Rollo,* p. 60.
[28] *Id.*
[29] *Id.*
[30] Testified during the hearing held on 4 May 2011.
[31] Testified during the hearings held on 6 June 2011 and 12 September 2011.
[32] Testified during the hearing held on 29 August 2012.
[33] *Rollo,* pp. 264-276.
[34] *Rollo,* p. 486.

In the Resolution dated 3 July 2013, this case was submitted for decision, considering respondent's Memorandum filed on 28 June 2013 and petitioner's Memorandum filed on 24 June 2013.[35]

THE ISSUES

As agreed upon, the following are the parties' jointly stipulated issues[36] for this Court's resolution:

1. Whether Petitioner is entitled to a credit or a refund in the total amount of Ten Million Nine Hundred Seventy-Eight Thousand Two Hundred Twenty-Four & 87/100 Pesos (P10,978,224.87) allegedly representing erroneously paid VAT for the fourth (4th) quarter of the taxable year 2008 pursuant to Section 114 in correlation with Section 229 of the 1997 Tax Code, as amended.

2. Whether Petitioner's vatable purchases of goods and services for the fourth (4th) Quarter of taxable year 2008 is duly substantiated by evidence.

3. Whether Petitioner's claim for tax credit or refund of the alleged erroneously paid VAT for the fourth (4th) quarter of the taxable year 2008 was filed within the period prescribed by law.

4. Whether petitioner has complied with the submission of complete documents in support of its administrative claim for refund.

PETITIONER'S ARGUMENTS

Petitioner argues that based on Sections 204 and 229 of the Tax Code, it complied with the requisites for the entitlement to the refund and/or issuance of TCC representing erroneously paid taxes. The

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[35] *Rollo*, p. 541.
[36] *Rollo*, p. 107.

salient portions of the aforementioned sections are quoted below for reference:

> "**Sec. 204. Authority of the Commissioner to Compromise, Abate and Refund or Credit Taxes. --** *The Commissioner may --*
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> x x x
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> (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 filed 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."
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> x x x
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> "**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 therefore, 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 and underscoring ours)*

Petitioner claims that the following are the requisites[37] for the entitlement to the refund and/or issuance of TCC representing erroneously paid taxes:

a. That petitioner is registered with the BIR as a tax entity;

b. That petitioner erroneously overpaid its tax liabilities for a covered period; and

c. That administrative and judicial claim for refund was filed within two (2) years from the date of erroneous payment of tax.

Petitioner argues that it has sufficiently established all these elements or requisites that will entitle it to a claim for VAT refund and/or issuance of a TCC.

First, petitioner is registered with the BIR as a taxpayer and such was accorded a Tax Identification No. 003-933-453-000[38].

Second, petitioner presented substantial evidence to prove the following:

a. That the Petitioner is registered as a taxpayer;
b. That the Petitioner sold services to a government agency (e.g. National Statistics Office or NSO);
c. That NSO withheld VAT on its payment to Petitioner equivalent to 5% of the gross payments; and
d. That Petitioner paid VAT in excess of the VAT due for the period involved.

Petitioner goes on to argue that its rightful entitlement to its claim for tax refund/credit stemmed from its erroneous use of the actual instead of the standard input VAT in computing its VAT payable for the covered period.[39]

Finally, petitioner claims that it timely filed the administrative and judicial claims for refund of its erroneous and overpaid VAT

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[37] *Rollo,* p. 505, Memorandum (of Petitioner Unisys Public Sector Corporation)
[38] *Id.* at p. 506.
[39] *Id.* at pp. 513-516.

within the two-year prescriptive period provided under Section 229 of the Tax Code[40].

RESPONDENT'S COUNTER-ARGUMENTS

On the other hand, respondent contends that petitioner is not entitled to a refund and/or TCC because it filed its administrative and judicial claim for refund beyond the period prescribed by law.

Petitioner allegedly erroneously paid its VAT on 20 November 2008 and 18 December 2008. The administrative claim for refund, however, was filed only on 20 January 2011, while the judicial claim was filed on 21 January 2011. Respondent claims that both filings were already beyond the prescribed period set.

Furthermore, filing the judicial claim for refund one day after it filed its administrative claim for refund with the BIR deprived the respondent of the opportunity to examine petitioner's administrative claim intelligently as it was not given ample time to act on and investigate the claim.

Respondent also contends that even assuming that petitioner filed its claim for refund within the prescribed period, it nevertheless failed to substantiate the same. There was no procedural compliance in pursuing the administrative claim leading to the appellate proceedings, to wit:

a. Failure to comply with the invoicing and accounting requirements laid down in Secs. 113, 114 and 236 and its implementing regulations under Revenue Regulations (RR) 16-2005;
b. Failure to strictly comply with the submission of all supporting and relevant documents provided under RMO No. 53-98; and Failure to attach complete documents necessary to substantiate its claim and did not

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[40] *Id.* at pp. 516-517.

give the agency concerned the opportunity to ascertain the veracity and validity of the claim.

Consequently, respondent avers that this Court has no jurisdiction to entertain the instant Petition for Review because no valid administrative claim was filed. As tax refunds are regarded as tax exemptions, these are to be construed *strictissimi juris* against the person or entity claiming the exemption.

THE RULING OF THE COURT

In determining whether or not petitioner's claim for VAT refund was timely filed, we considered the relevant provisions of the 1997 NIRC together with the prevailing jurisprudence.

Section 204(c) lays down the period within which an **administrative claim** for refund must be filed, thus:

> "**Sec. 204. Authority of the Commissioner to Compromise, Abate and Refund or Credit Taxes.** - The Commissioner may - x x x **(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 x x x" *(Emphasis supplied)*

Given the foregoing, it is clear that an administrative claim for refund must be filed within two (2) years after payment of the tax or penalty.

Section 229 of the 1997 NIRC, on the other hand, lays down the requirements for a **judicial claim** to prosper, thus:

> "**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, of any sum alleged to have been excessively or in any manner wrongfully 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." *(Emphasis supplied)*

Section 229, therefore, requires: a) an administrative claim filed prior; and b) that the judicial claim be filed within two (2) years from the date of payment of the tax or penalty.

Thus, in a claim for refund, a taxpayer must prove not only his entitlement to a refund but also his compliance with the procedural due process as non-observance of the prescriptive periods within which to file the administrative and the judicial claims would result in the denial of his claim.[41]

Notably, the above provisions also set a two-year prescriptive period, reckoned from date of payment of the tax or penalty, for the filing of a claim of refund or tax credit. Notably too, both provisions apply only to instances of erroneous payment or illegal collection of internal revenue taxes[42] as opposed to Section 112 of the NIRC which

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[41] Commissioner of Internal Revenue v. Aichi Forging Company of Asia, Inc., G.R. No. 184823, October 6, 2010, 632 SCRA 422.

[42] *Id.*

governs refund/credit of input VAT arising from zero-rated or effectively zero-rated sales.

Existing jurisprudence shows that Section 229 applies to overpayment of taxes as well. In *Accra Investments Corporation vs. Court of Appeals*[43], Section 229 was applied to overpaid taxes on rental, commission and consultancy income withheld by the payors. In *Collector of Internal Revenue vs. Prieto*[44], the same section was applied to overpaid inheritance taxes. In these cases, the Supreme Court used the two (2)-year prescriptive period even when the issue involved was overpayment of taxes.

Is it necessary that the administrative claim be decided prior to filing a judicial claim? Respondent argues that filing the judicial claim for refund one day after petitioner filed its administrative claim did not give them ample time and opportunity to intelligently examine and investigate petitioner's administrative claim.

The long standing doctrine, however, has been that both administrative and judicial claims must be filed within the two (2) year prescriptive period, despite the pendency of the administrative claim. In *CIR vs. Victorias Milling, Co. Inc.*[45] (Victorias Milling Case), the Supreme Court stated that, "[i]f, however, the Collector takes time in deciding the claim, and the period of two years is about to end, the suit or proceeding must be started in the Court of Tax Appeals before the end of the two-year period without awaiting the decision of the Collector."[46]

Although the Victoria's Milling case construed then Section 306 of the applicable Tax Code at the time, Section 229 of the 1997 Tax Code essentially maintained the same wording thereof. The original wording in Section 306 has since been amended by Presidential

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[43] G.R. No. 96322, December 20, 1991, 204 SCRA 957.
[44] G.R. No. L-11976, August 29, 1961, 2 SCRA 1007.
[45] G.R. No. L-24108, January 3, 1968.
[46] *Id.* citing Gibbs v. Collector, L-13453, Feb. 29, 1960, citing College of Oral and Dental Surgery v. Court of Tax Appeals, 102 Phil. 912; Collector v. Court of Tax Appeals, L-11494, Jan. 28, 1961.

Decree No. 69[47] (PD 69) to include the phrase "regardless of any supervening cause".

Section 229 is emphatic on the requirement that the claim for refund must be filed within two (2) years from the date of payment in all cases in view of the phrase "regardless of any supervening cause"[48] that may arise after payment.

The wording of Section 229 is clear, plain, and explicit that that the two (2)-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 NIRC. 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 (2)-year period, a supervening cause should arise which would entitle the taxpayer to refund."[49]

In any event, pursuant to section 306 of the Tax Code[50], no suit or proceeding for refund or credit of any national internal revenue tax erroneously or illegally assessed or collected shall be begun after the expiration of two (2) years from the date of payment. This provision, which is mandatory, is not subject to any qualification, and, hence, it applies regardless of the conditions under which the payment has been made.

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[47] P.D. No. 69, "Amending Certain Sections of the National Internal Revenue Code", promulgated November 24, 1972.

[48] Aban, Benjamin B., Law of Basic Taxation in the Philippines, revised edition, page 328.

[49] Atlanta Land Corporation vs. Commissioner of Internal Revenue, C.T.A. EB No. 79, May 23, 2006, C.T.A. Case No. 6987 citing Arañas, Annotations and Jurisprudence on the National Internal Revenue Code of 1977, As Amended, Sixth Edition, p. 571. Affirmed in G.R. No. 172773 dated June 18, 2007.

[50] Now, Section 229 under the 1997 NIRC.

In the case at bar, the relevant dates and amounts of payments are summarized in the table below:

Taxable Period	October 2008 VAT	November 2008 VAT	December 2008 VAT
Five percent (5%) Final VAT withheld by NSO[51] *cf: Sec. 114C, NIRC*	P3,396,940.02	P3,456,774.93	P2,761,027.62
VAT Paid by Unisys[52]	P4,165,965.44	P4,372,194.77	P3,132,705.33
Date of Payment	November 20, 2008	December 18, 2008	January 29, 2009
Deadline Administrative Claim: 2 Years *cf: Sec. 204(c), NIRC*	November 20, 2010	December 18, 2010	January 29, 2011
Date of Filing Administrative Claim	January 20, 2011	January 20, 2011	January 20, 2011
Deadline Judicial claim: 2 years *Cf: Sec. 229, NIRC*	November 20, 2010	December 18, 2010	January 29, 2011
Date of filing of Judicial Claim	January 21, 2011	January 21, 2011	January 21, 2011

In determining whether or not the administrative claims of petitioner were filed within the prescriptive period of two years, the reckoning date according to Section 229 of the NIRC is the "date of

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[51] Total VAT Withheld by NSO: P9,614,742.57.
[52] Total VAT Paid by UNISYS: P11,670,865.54.

payment". As can be gleaned from the table above, petitioner paid its VAT liability for the months of October 2008, November 2008, and December 2008 on November 20, 2008, December 18, 2008, and January 29, 2009, respectively. Petitioner's deadline, therefore, for filing an administrative claim would be November 20, 2010 for October 2008 VAT, December 18, 2010 for its November 2008 VAT, and January 29, 2011 for its December 2008 VAT.

However, petitioner filed its administrative claims for refund for the October-December 2008 period all on the same date -- January 20, 2011. Clearly, its administrative claims for VAT refund for the months of October 2008 and November 2008 have already prescribed. We hold that only petitioner's administrative claim for refund for December 2008 VAT has been timely filed.

Next, we determine whether or not petitioner's judicial claim for refund has been timely filed. The table above shows that petitioner's administrative claim for its December 2008 VAT refund was filed on January 20, 2011, and that petitioner filed its judicial claim one day after, on January 21, 2011. However, petitioner had until January 29, 2011 to file its judicial claim. As previously discussed, this falls within the two-year prescriptive period within which to file a judicial claim. We hold, therefore, that the judicial claim for refund for the December 2008 VAT has likewise been timely filed.

Despite Timely Filing its Judicial Claim for Overpaid VAT for the Month of December 2008, Unisys is NOT Entitled to a Refund

From the VAT Returns presented, petitioner's claim in the aggregate amount of ₱10,978,224.87 may be broken down per month as follows:

	Exhibit "E" Oct-08	Exhibit "F" Nov-08	Amounts Pertaining to the month of December 2008	Exhibit "H" Total - 4th Qtr 2008
Vatable Sales/Receipt - Private	₱ 3,042,337.90	₱ 2,217,359.29	₱ 3,092,667.42	₱ 8,352,364.61
Sale to Government (*per Exhibits "V", "W" and "X"*)	69,135,498.65	67,938,800.36	55,220,552.40	192,294,851.41
Total Sales	**₱72,177,836.55**	**₱70,156,159.65**	**₱ 58,313,219.82**	**₱ 200,647,216.02**
Output Tax Due				
Vatable Sales/Receipt - Private	₱ 365,080.55	₱ 266,083.11	₱ 371,120.09	₱ 1,002,283.75
Sale to Government	8,296,259.84	8,152,656.04	6,626,466.29	23,075,382.17
Total Output Tax	**₱ 8,661,340.39**	**₱ 8,418,739.16**	**₱ 6,997,586.38**	**₱ 24,077,665.92**
Domestic Purchases of Goods Other than Capital Goods	₱ 622,994.06	₱ 389,178.81	₱ 259,857.33	₱ 1,272,030.20
Domestic Purchases of Service	415,606.10	260,425.55	843,996.02	1,520,027.67
Services Rendered by Non-Residents			4,646,436.99	4,646,436.99
Total Input Tax for the Current Period	**1,038,600.16**	**649,604.36**	**5,750,290.34**	**7,438,494.86**
Input Tax on Sale to Govt closed to expense	3,844,662.35	4,126,643.09	(1,639,517.62)	6,331,787.82
Total Available Input VAT	**₱ 4,883,262.51**	**₱ 4,776,247.45**	**₱ 4,110,772.72**	**₱ 13,770,282.68**
Net VAT Payable	**₱ 3,778,077.88**	**₱ 3,642,491.70**	**₱ 2,886,813.66**	**₱ 10,307,383.24**
Less: Tax Credits/Payments				
Creditable VAT Withheld				
Monthly VAT Payments - Previous 2 months	₱ 4,165,965.44	₱ 4,372,194.77	-	₱ 8,538,160.21
VAT Withheld on Sales to Government	3,456,774.93	3,396,940.02	2,761,027.62	9,614,742.57
Advance Payments made			3,132,705.33	3,132,705.33
Total Tax Credits	7,622,740.37	7,769,134.79	5,893,732.95	21,285,608.11
Total Amount Payable/(Overpayment)	**₱(3,844,662.49)**	**₱(4,126,643.09)**	**₱ (3,006,919.29)**	**₱(10,978,224.87)**

From the above table, only the VAT overpayment in the amount of ₱3,006,919.29 pertaining to the month of December 2008 may be a proper subject of a claim pursuant to Section 229 of the NIRC of 1997.

Based on records, petitioner derived its gross sales to government from its existing build, operate and transfer contract (BOT Contract) with the National Statistics Office (NSO) for the design, development, construction, installation, testing, and commissioning of NSO's Civil Registry System Information Technology (CRS-IT) for which petitioner will receive a percentage of the revenues generated by NSO from the CRS-IT.[53]

To substantiate its sales to government for the month of December 2008 amounting to ₱55,220,552.40, petitioner submitted in evidence the official receipt[54] it issued on December 19, 2008 to NSO.

[53] Exhibit "CC", 4A.
[54] Exhibit "X"

The revenues derived by petitioner from the NSO was subjected to the corresponding 12% VAT which was duly reported in petitioner's VAT Return for the 4th quarter of 2008, as forming part of the total output VAT of ₱24,077,665.98,[55] as well as to 5% final VAT which was withheld by the said government agency pursuant to Section 114(C) of the NIRC of 1997, as amended.

Moreover, in order to be entitled to the claimed refund or TCC, petitioner must be able to establish that it indeed incurred and has enough input tax and VAT payments that may be credited against its output VAT liability.

Based on records, petitioner's VAT payments essentially consisted of the following:

1. Actual VAT payments upon filing of the original VAT Return for the 4th quarter of 2008 which amounted to ₱3,132,705.33;[56] and

2. 5% VAT withheld by NSO which amounted to ₱2,761,027.62 for the month of December 2008 as supported by Certificates of Creditable Withholding Tax Withheld at Source (BIR Form 2307).[57]

On the other hand, petitioner's input VAT incurred for the month of December 2008 amounts to ₱5,750,290.34, broken down as follows:

Domestic Purchases of Goods Other than Capital Goods	₱	259,857.33
Domestic Purchases of Service		843,996.02
Services Rendered by Non-Residents		4,646,436.99
Total Input Tax for the Current Period	**₱**	**5,750,290.34**

[55] Line 19B of Exhibits "G" and "H".
[56] Exhibit "K".
[57] Exhibit "L". Note, however, that per Certificate, the amount is indicated as pertaining to the month of November 2008 but per Judicial Affidavit of Ms. Jennifer G. Glinoga (*Exhibit "B2"*), the amount of VAT withheld for December 2008 actually pertains to Exhibit "L", which is corroborated by the issued OR dated December 19, 2008 as per Exhibit "X".

In support thereto, petitioner submitted various suppliers' invoices and official receipts,[58] as well as its Monthly Remittance Return of Value Added Tax and Other Percentage Taxes Withheld (BIR Form 1600).[59]

Upon due consideration of the evidence presented, the following are the findings of this Court:

	Findings	Exhibit	OR/Inv No.	OR/Inv Date	Claimed Input VAT
1	***Domestic purchases of goods which are supported by VAT invoices***				
	Buendia Hardware & Construction Supply	LL-6	2688	11-Dec-08	₱ 2,614.29
	Mercury International	LL-19	7745	15-Dec-08	104,464.29
	Skyfresh International	LL-32	18367	3-Dec-08	120.00
	Skyfresh International	LL-33	18419	12-Dec-08	120.00
	Zenshin Systems Corp.	LL-41	130828	2-Dec-08	16,553.57
	sub-total				***123,872.15***
2	***Domestic purchase of service supported by VAT OR which is dated outside the period of claim***				
	Aboitiz One inc.	LL-44	475448	23-Jan-09	6,168.46
	sub-total				***6,168.46***
3	***Domestic purchases of goods supported by VAT invoices which are dated outside the period of claim***				
	Buendia Hardware & Construction Supply	LL-4	1665	3-Oct-08	186.96
	Buendia Hardware & Construction Supply	LL-5	1664	3-Oct-08	795.00
	E-Plus Stationery inc.	LL-8	387264	19-Nov-08	857.14
	Mercury International	LL-18	7545	28-Nov-08	43,875.00
	Roseco Marketing	LL-31	3436	21-Nov-08	1,339.29
	Zenshin Systems Corp.	LL-40	130139	24-Nov-08	15,857.14
	Northgate Technology	LL-42	12755	19-Nov-08	1,955.36
	Roseco Marketing	LL-166	3437	21-Nov-08	45,180.00
	sub-total				***110,045.89***
4	***Domestic purchases of services supported by VAT ORs wherein the input VAT are not separately indicated***				
	Airfreight 2100 Inc.	LL-43	1240999	24-Dec-08	131,931.63
	Airfreight 2100 Inc.	LL-46	1240027	19-Dec-08	70,706.71
	Hobbies of Asia Inc.	LL-12	00872	19-Dec-08	9,360.00
	Hobbies of Asia Inc.	LL-12	00872	19-Dec-08	9,360.00
	PLDT	LL-21	573927	23-Dec-08	4,343.24
	PLDT	LL-22	573938	23-Dec-08	4,338.96

[58] Exhibits "LL-1" to "LL-166"
[59] Exhibits "EE" and "FF"

	Findings	Exhibit	OR/Inv No.	OR/Inv Date	Claimed Input VAT
	PLDT	LL-23	573924	23-Dec-08	1,096.44
	PLDT	LL-24	573945	23-Dec-08	1,501.20
	PLDT	LL-25	573935	23-Dec-08	1,791.24
	PLDT	LL-26	573929	23-Dec-08	2,005.32
	sub-total				***236,434.74***
5	***Domestic purchase of goods supported by VAT invoice wherein the input VAT is not separately indicated***				
	Wellcome Printing	LL-39	958	12-Dec-08	3,214.29
	sub-total				***3,214.29***
6	***Domestic purchases of services supported by VAT ORs dated outside the period of claim and wherein the input VAT are not separately indicated***				
	Bayan Telecommunications, Inc.	LL-1	278834	7-Jan-08	8,760.00
	Bayan Telecommunications, Inc.	LL-2	278832	7-Jan-09	600.00
	Bayan Telecommunications, Inc.	LL-3	278833	7-Jan-08	600.00
	Consnet Builders Inc.	LL-7	233	9-Jan-09	22,212.00
	First 3K Group Builders	LL-9	0059	6-Feb-09	60,266.40
	Globe Telecom Inc.	LL-10	2069253	6-Jan-09	431.88
	Globe Telecom Inc.	LL-11	2069254	6-Jan-09	431.88
	Innove Communications	LL-13	205419	6-Jan-09	1,800.00
	Innove Communications	LL-14	205418	6-Jan-09	1,284.00
	ISS Facility Services	LL-15	32457	6-Jan-09	2,133.66
	M2 Kleen Carpet Cleaning	LL-16	2305	23-Jan-09	535.71
	Micro Imaging Sales	LL-20	1352	20-Jan-09	76,624.04
	PLDT	LL-27	71071	6-Jan-09	4,302.29
	Ricoh Philippines	LL-28	75789	30-Jan-09	179.93
	Ricoh Philippines	LL-29	76052	9-Jan-09	331,276.49
	Ricoh Philippines	LL-30	76061	16-Jan-09	409.68
	Superclean Services	LL-34	27916	15-Jan-09	10,317.94
	Superclean Services	LL-34	27916	15-Jan-09	3,291.97
	Systems Generators	LL-35	3233	30-Jan-09	18,684.61
	Ultimate Security	LL-36	2524	7-Jan-09	51,060.00
	sub-total				***595,202.48***
7	***Domestic purchases of goods supported by VAT invoices dated outside the period of claim and wherein the input VAT are not separately indicated***				
	Wellcome Printing	LL-37	950	26-Nov-08	13,810.71
	Wellcome Printing	LL-38	951	24-Nov-08	3,214.29
	sub-total				***17,025.00***
8	***Domestic purchase of services supported by document other than VAT OR and which is dated outside the period of claim***				
	Acquire Computer & Communications Inc.	LL-45	8479	15-Sep-08	5,700.00
	sub-total				***5,700.00***
9	***Domestic purchase of services supported by VAT OR issued not in the name of the petitioner***				
	Meralco	LL-17	418917	22-Dec-08	6,190.34
	sub-total				***6,190.34***

10	***Services rendered by non-residents supported by Monthly Remittance Return of VAT and Other Percentage Taxes Withheld (BIR Form 1600) but without payment confirmation***				
	For the month of July 2008	EE		19-Jan-11	2,412,927.21
	For the month of December 2008	FF		19-Jan-11	2,233,509.79
	sub-total				***4,646,437.00***
	TOTAL				**₱ 5,750,290.35**

Of the foregoing, only the input VAT of ₱123,872.15 *(item 1 above)* is considered as valid which may be credited against petitioner's output VAT for the month of December 2008; while the remaining input VAT amounting to ₱5,626,418.20 *(items 2 to 10)* shall be disallowed for the reasons stated therein which violate the substantiation requirements under Sections 110(A)[60] and 113(A) and (B)[61] of the NIRC of 1997, as amended, and as implemented by

[60] SEC. 110. Tax Credits. - (A) Creditable Input Tax. - (1) Any input tax evidenced by a VAT invoice or official receipt issued in accordance with Section 113 hereof on the following transactions shall be creditable against the output tax: (a) Purchase or importation of goods:

(i) For sale; or

(ii) For conversion into or intended to form part of a finished product for sale including packaging materials; or

(iii) For use as supplies in the course of business; or

(iv) For use as materials supplied in the sale of service; or

(v) For use in trade or business for which deduction for depreciation or amortization is allowed under this Code, except automobiles, aircraft and yachts.

(b) Purchase of services on which a value-added tax has been actually paid.

(2) The input tax on domestic purchase of goods or properties shall be creditable: (a) To the purchaser upon consummation of sale and on importation of goods or properties; and (b) To the importer upon payment of the value-added tax prior to the release of the goods from the custody of the Bureau of Customs.

However, in the case of purchase of services, lease or use of properties, the input tax shall be creditable to the purchaser, lessee or licensee upon payment of the compensation, rental, royalty or fee.

(3) A VAT-registered person who is also engaged in transactions not subject to the value-added tax shall be allowed tax credit as follows: (a) Total input tax which can be directly attributed to transactions subject to value-added tax; and (b) A ratable portion of any input tax which cannot be directly attributed to either activity.

The term "input tax" means the value-added tax due from or paid by a VAT-registered person in the course of his trade or business on importation of goods or local purchase of goods or services, including lease or use of property, from a VAT-registered person.

It shall also include the transitional input tax determined in accordance with Section 111 of this Code.The term "output tax" means the value-added tax due on the sale or lease of taxable goods or properties or services by any person registered or required to register under Section 236 of this Code.

[61] SEC. 113. Invoicing and Accounting Requirements for VAT-Registered Persons. -

(A) Invoicing Requirements. - A VAT-registered person shall, for every sale, issue an invoice or receipt.

In addition to the information required under Section 237, the following information shall be indicated in the invoice or receipt:

Sections 4.110-1[62], 4.110-2[63], 4.110-8[64], and 4.113-1(A) and (B)[65] of Revenue Regulations No. 16-2005.

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(1) A statement that the seller is a VAT-registered person, followed by his taxpayer's identification number (TIN); and(2) The total amount which the purchaser pays or is obligated to pay to the seller with the indication that such amount includes the value-added tax.

(B) Accounting Requirements. - Notwithstanding the provisions of Section 233, all persons subject to the value-added tax under Sections 106 and 108 shall, in addition to the regular accounting records required, maintain a subsidiary sales journal and subsidiary purchase journal on which the daily sales and purchases are recorded.

The subsidiary journals shall contain such information as may be required by the Secretary of Finance.

62 Revenue Regulations No. 16-2005, SECTION 4.110-1. Credits For Input Tax. — "Input tax" means the VAT due on or paid by a VAT-registered person on importation of goods or local purchases of goods, properties, or services, including lease or use of properties, in the course of his trade or business. It shall also include the transitional input tax and the presumptive input tax determined in accordance with Sec. 111 of the Tax Code.

It includes input taxes which can be directly attributed to transactions subject to the VAT plus a ratable portion of any input tax which cannot be directly attributed to either the taxable or exempt activity.

Any input tax on the following transactions evidenced by a VAT invoice or official receipt issued by a VAT-registered person in accordance with Secs. 113 and 237 of the Tax Code shall be creditable against the output tax:

(a) Purchase or importation of goods
   (1) For sale; or
   (2) For conversion into or intended to form part of a finished product for sale, including packaging materials; or
   (3) For use as supplies in the course of business; or
   (4) For use as raw materials supplied in the sale of services; or
   (5) For use in trade or business for which deduction for depreciation or amortization is allowed under the Tax Code,
(b) Purchase of real properties for which a VAT has actually been paid;
(c) Purchase of services in which a VAT has actually been paid;
(d) Transactions "deemed sale" under Sec. 106 (B) of the Tax Code;
(e) Transitional input tax allowed under Sec. 4.111 (a) of these Regulations;
(f) Presumptive input tax allowed under Sec. 4.111 (b) of these Regulations;
(g) Transitional input tax credits allowed under the transitory and other provisions of these Regulations.

63 Revenue Regulations No. 16-2005. SECTION 4.110-2. Persons Who Can Avail of the Input Tax Credit. — The input tax credit on importation of goods or local purchases of goods, properties or services by a VAT-registered person shall be creditable:

(a) To the importer upon payment of VAT prior to the release of goods from customs custody;

(b) To the purchaser of the domestic goods or properties upon consummation of the sale; or

(c) To the purchaser of services or the lessee or licensee upon payment of the compensation, rental, royalty or fee.

64 Revenue Regulations No. 16-2005. SECTION 4.110-8. Substantiation of Input Tax Credits. —

(a) Input taxes for theimportation ofgoods or the domestic purchase of goods, properties or services is made in the course of trade or business, whether such input taxes shall be credited against zero-rated sale, non-zero-rated sales, or subjected to the 5% Final Withholding VAT, must be substantiated and supported by the following documents, and must be reported in the information returns required to be submitted to the Bureau:

(1) For the importation of goods — import entry or other equivalent document showing actual payment of VAT on the imported goods.

Based on the foregoing, we find that petitioner is not entitled to any refund or tax credit of its alleged erroneous VAT payments for

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(2) For the domestic purchase of goods and properties — invoice showing the information required under Secs. 113 and 237 of the Tax Code.

(3) For the purchase of real property — public instrument i.e., deed of absolute sale, deed of conditional sale, contract/agreement to sell, etc., together with VAT invoice issued by the seller.

(4) For the purchase of services — official receipt showing the information required under Secs. 113 and 237 of the Tax Code.

A cash register machine tape issued to a registered buyer shall constitute valid proof of substantiation of tax credit only if it shows the information required under Secs. 113 and 237 of the Tax Code.

(b) Transitional input tax shall be supported by an inventory of goods as shown in a detailed list to be submitted to the BIR.

(c) Input tax on "deemed sale" transactions shall be substantiated with the invoice required under Sec. 4.113-2 of these Regulations.

(d) Input tax from payments made to non-residents (such as for services, rentals and royalties) shall be supported by a copy of the Monthly Remittance Return of Value Added Tax Withheld (BIR Form 1600) filed by the resident payor in behalf of the non-resident evidencing remittance of VAT due which was withheld by the payor.

(e) Advance VAT on sugar shall be supported by the Payment Order showing payment of the advance VAT.

[65] Revenue Regulations No. 16-2005. SECTION 4.113-1. Invoicing Requirements. —

(A) A VAT-registered person shall issue: —

(1) A VAT invoice for every sale, barter or exchange of goods or properties; and

(2) A VAT official receipt for every lease of goods or properties, and for every sale, barter or exchange of services.

Only VAT-registered persons are required to print their TIN followed by the word "VAT" in their invoice or official receipts. Said documents shall be considered as a "VAT Invoice" or VAT official receipt. All purchases covered by invoices/receipts other than VAT Invoice/VAT Official Receipt shall not give rise to any input tax.

VAT invoice/official receipt shall be prepared at least in duplicate, the original to be given to the buyer and the duplicate to be retained by the seller as part of his accounting records.

(B) Information contained in VAT invoice or VAT official receipt. — The following information shall be indicated in VAT invoice or VAT official receipt:

(1) A statement that the seller is a VAT-registered person, followed by his TIN;

(2) The total amount which the purchaser pays or is obligated to pay to the seller with the indication that such amount includes the VAT; Provided, That:

(a) The amount of tax shall be shown as a separate item in the invoice or receipt;

(b) If the sale is exempt from VAT, the term "VAT-exempt sale" shall be written or printed prominently on the invoice or receipt;

(c) If the sale is subject to zero percent (0%) VAT, the term "zero-rated sale" shall be written or printed prominently on the invoice or receipt;

(d) If the sale involves goods, properties or services some of which are subject to and some of which are VAT zero-rated or VAT-exempt, the invoice or receipt shall clearly indicate the break-down of the sale price between its taxable, exempt and zero-rated components, and the calculation of the VAT on each portion of the sale shall be shown on the invoice or receipt. The seller has the option to issue separate invoices or receipts for the taxable, exempt, and zero-rated components of the sale.

(3) In the case of sales in the amount of one thousand pesos (P1,000.00) or more where the sale or transfer is made to a VAT-registered person, the name, business style, if any, address and TIN of the purchaser, customer or client, shall be indicated in addition to the information required in (1) and (2) of this Section.

the month of December 2008 considering that petitioner still has VAT payable for the said month, as determined below:

	Amount
Output VAT	
Vatable Sales/Receipt - Private	₱ 371,120.09
Sales to Government (Line 16B of VAT Returns)	6,626,466.29
Total Output VAT	**6,997,586.38**
Input VAT	
Substantiated Actual Input VAT	123,872.15
Input Tax on Sale to Government closed to expense	(1,639,517.62)
Total Available Input VAT	**(1,515,645.47)**
Net VAT Payable	**8,513,231.85**
Less: VAT Payments	
Actual Payments	3,132,705.33
VAT Withheld on Sales to Government	2,761,027.62
Total VAT Payments	**5,893,732.95**
VAT Payable	**₱ 2,619,498.90**

WHEREFORE, in the light of the foregoing, petitioner's claim for refund or issuance of a tax credit certificate for its October 2008 VAT payment and its November 2008 VAT payment are **DENIED** on account of prescription having been filed beyond the two-year period decreed in Section 229; and petitioner's claim for refund for its December 2008 VAT payment is also **DENIED** on account of petitioner having a pending VAT payable of ₱2,619,498.90.

SO ORDERED.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

WE CONCUR:

LOVELL R. BAUTISTA
Associate Justice

ESPERANZA R. FABON-VICTORINO
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.

LOVELL R. BAUTISTA
Associate Justice
Chairperson

CERTIFICATION

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

ROMAN G. DEL ROSARIO
Presiding Justice