REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

SECOND DIVISION

PHILIPPINE REALTY & HOLDINGS CORPORATION, Petitioner,	**C.T.A. CASE NO. 6944**
	Members:
- versus -	**CASTAÑEDA, JR.,** *Chairperson* **UY,** *and* **PALANCA-ENRIQUEZ,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	**Promulgated:** OCT 1 1 2006

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DECISION

UY, J.:

Before Us is a Petition for Review under Section 9 of Republic Act No. 9282 filed on April 14, 2004 by petitioner, Philippine Realty & Holdings Corporation, against respondent Commissioner of Internal Revenue, seeking the issuance of a tax credit certificate (TCC) in the total amount of SIXTEEN MILLION FIFTY SEVEN THOUSAND NINE HUNDRED TWENTY TWO (P16,057,922.00) PESOS allegedly representing excess or unutilized creditable withholding taxes for the taxable year 2001.

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THE FACTS

As culled from the records of the case and the admissions contained in the parties' Joint Stipulation of Facts filed on November 11, 2004,[1] these are the established facts of this case:

Petitioner is a corporation duly organized and existing under and by virtue of the laws of the Philippines with principal office and business address at the 3rd Floor, Magnitude Building, 186 E. Rodriguez, Jr. Avenue, Brgy. Bagumbayan, Quezon City.[2]

Respondent, on the other hand, is the duly appointed Commissioner of Internal Revenue, vested by law to implement and enforce the provisions of the 1997 National Internal Revenue Code (NIRC) and other tax laws, and in particular, decide claims for refund of internal revenue taxes, with office address at the 5th Floor, BIR National Office, Agham Road, Diliman, Quezon City.[3]

In a letter dated July 1, 1993, the respondent classified petitioner as a Large Taxpayer effective 1993 based on the criteria prescribed in Republic Act No. 7646.[4]

Petitioner filed with the Large Taxpayers Assistance Division of the Bureau of Internal Revenue (BIR) its Annual Income Tax Return for taxable year 2001[5] reporting a Minimum Corporate Income Tax (MCIT) due of P9,774,390.00; tax credits/payments of P25,832,312.00;[6] and a tax

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[1] Joint Stipulation of Facts (JSF), Rollo, pp. 84-87, duly approved by this Court in the Resolution dated November 24, 2004, Rollo, p. 88.
[2] Paragraph 1, JSF, Ibid.
[3] Paragraph 2, JSF, Ibid.
[4] Exhibit "E"; Paragraph 3, JSF, Ibid.
[5] Exhibit "A-1"; Paragraph 4, JSF, Ibid.
[6] Exhibit "A-2".

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overpayment in the amount of P16,057,922.00[7] for which petitioner opted to be issued a TCC.[8]

On July 16, 2003, petitioner filed with the Large Taxpayers Assistance Division of the BIR, a letter requesting for issuance of a TCC of its excess creditable tax withheld for the taxable year 2001 in the sum of P16,057,922.00.[9]

Consequently, Deputy Commissioner[10] Estelita C. Aguirre issued a Letter of Authority (LOA2000 00002607) dated October 8, 2003, authorizing Revenue Officers Leonora E. Bornales and Oscar Sable of the Large Taxpayers Audit and Investigation Division I (LTAID-I), to examine petitioner's books of accounts and other accounting records pertaining to petitioner's claim for issuance of TCC for taxable year 2001.[11]

Pursuant to the said Letter of Authority, Revenue Officers Leonora E. Bornales and Oscar Sable of the LTAID-I of the BIR sent a letter dated October 14, 2003 to petitioner requiring the latter to submit/present its books of accounts and other documents in connection with its claim for TCC. Thus, in its letters dated January 19 and 23, 2004, petitioner submitted to the LTAID-I of the BIR certain relevant documents pertaining to its claim for TCC.[12]

Due to respondent's inability to complete the investigation on petitioner's claim for the issuance of a TCC, petitioner instituted the instant

[7] Exhibit "A-3".
[8] Exhibit "A-4"; Paragraph 4, JSF, Rollo, p.85.
[9] Exhibit "F"; Paragraph 5, JSF, Ibid.
[10] OIC of the Large Taxpayers Service.
[11] Exhibit "J"; Paragraph 6, JSF, Rollo, p.85.
[12] Exhibits "G" and "H", respectively; Paragraphs 7 and 8, JSF, Rollo, p. 86.

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Petition for Review before this Court on April 14, 2004 in order to toll the running of the two-year prescriptive period.

Respondent, in his Answer filed on June 3, 2004, averred the following special and affirmative defenses:

1) Petitioner's claim for refund is subject to administrative investigation/examination by the respondent;

2) The following requirements must be complied with before a claim for refund of creditable withholding taxes is sustained, to wit:

   a) The claim for refund was filed within the two (2)- year period prescribed under Section 230 of the NIRC;
   b) The income upon which the taxes were withheld was included in the return of the recipient; and
   c) The fact of withholding is established by a copy of statement (BIR Form 1743.1) duly issued by the payor (withholding agent) to the payee, showing the amount paid and the amount of tax withheld therefrom[13]; and

3) In taxation, claims for refund are construed strictly against the claimant as they partake of the nature of an exemption from tax and it is incumbent upon petitioner to prove that it is entitled thereto under the law.

During trial, petitioner presented testimonial and documentary evidence in support of its claim while respondent submitted the case for decision sans any evidence. The Court directed the parties to simultaneously file their respective memorandum within thirty (30) days from March 8, 2006, but only petitioner filed its Memorandum within the given period. Hence, this Decision.

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[13] Citibank N.A. vs. Court of Appeals and Commissioner of Internal Revenue, 280 SCRA 459 (1997).

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THE ISSUES

The parties stipulated on the following issues for this Court's resolution, to wit:

1. Whether or not petitioner overpaid its creditable withholding taxes for the taxable year 2001 in the amount of P16,057,922.00;

2. Whether or not the income upon which the taxes were withheld for taxable year 2001 were included in the 2001 Income Tax Return of petitioner;

3. Whether or not petitioner's overpaid creditable withholding tax in the amount of P16,057,922.00 is substantiated by documentary evidence; and

4. Whether or not petitioner is entitled to the issuance of TCC representing its overpaid creditable withholding tax for taxable year 2001.

In sum, this case revolves around the issue as to whether or not petitioner is entitled to its claim for the issuance of a TCC in its favor representing its alleged excess or unutilized creditable withholding taxes for the taxable year 2001 on the basis of the evidence presented.

THE COURT'S RULING

The focal point of the controversy hinges on petitioner's entitlement to the issuance of the TCC in the amount of P16,057,922.00. Thus, the issues being intertwined, We shall discuss them jointly for convenience and brevity.

Section 76 of the 1997 NIRC provides:

> "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 taxable year is not equal to the total tax on the entire taxable income of that year, the corporation shall either:

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> (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.
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> 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."

Based on the afore-quoted provision, if the sum of the quarterly tax payments made by the corporation during a taxable year is more than the total tax on the entire taxable income of that year, it shall be credited or refunded with the excess amount paid. Consequently, the taxpayer is allowed two (2) options, namely: (a) to carry-over the excess credit; or (b) to be credited or refunded with the excess amount paid (either in the form of cash or credit certificate).

A perusal of petitioner's Annual Income Tax Return for the taxable year 2001 readily shows that its total tax credits/payments amounting to P25,832,312.00[14] consists of the prior year's excess credit (P1,738,807.00)[15] and creditable tax withheld during taxable year 2001 (P24,093,505.00).[16]

The amount of P1,738,807.00 represents petitioner's tax credits for taxable year 2000 which was indicated in its Annual Income Tax Return[17] for

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[14] Annual Income Tax Return for taxable year 2001 (AITR 2001), Line 26G, Part II; Exhibit "A-1".
[15] AITR 2001, Line 26A, Part II.
[16] AITR 2001, Total sum of the amounts stated in Lines 26C and 26D, Part II.
[17] Annual Income Tax Return for taxable year 2000 (AITR 2000), Line 31, Part II; Exhibit "K-2".

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the same year to be carried over as a tax credit for the next year.[18] Clearly, pursuant to Section 76 of the 1997 NIRC, the excess amount of P1,738,807.00 cannot be the subject of a refund and/or issuance of a TCC; nevertheless, the same shall be applied against petitioner's MCIT due for taxable year 2001 in the amount of P9,774,390.00,[19] thereby leaving an MCIT balance due of P8,035,583.00 (P9,774,390.00 – P1,738,807.00).

Now, after applying the reported 2001 creditable withholding tax of P24,093,505.00 against the MCIT balance due of P8,035,583.00, there still remains an excess tax credits for the taxable year 2001 in the amount of P16,057,922.00 (P24,093,505.00 – P8,035,583.00), the amount being claimed in the present case.

Since petitioner indicated in its Annual Income Tax Return for the taxable year 2001 its intention to be issued a TCC of the alleged excess or unutilized creditable withholding tax, as evidenced by an **"x"** mark in a box corresponding to the choice "To be issued a Tax Credit Certificate" therein, the same may be a proper subject of a claim for a TCC pursuant to Section 76 of the 1997 NIRC, as quoted earlier.

However, it bears stressing that for a taxpayer to be entitled to a claim for refund or issuance of a tax credit certificate of excess creditable withholding tax at source, it must satisfy the following requisites:

1. That the claim for refund must be filed within the two-year prescriptive period provided under Section 204 (C) in relation to Section 229 of the NIRC of 1997, as amended;

2. That the fact of withholding is established by a copy of the statement duly issued by the payor (withholding agent) to

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[18] AITR 2000, Ibid; Exhibit "K-3".
[19] AITR 2001, Line 25, Part II.

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the payee, showing the amount paid and the amount of tax withheld therefrom; and

3. That income upon which the taxes were withheld was included in the return of the recipient.[20]

As to the first requirement, the reckoning of the two (2)-year prescriptive period for the filing of a claim for refund/TCC of excess creditable withholding tax/quarterly income tax payment starts from the date of filing of the annual income tax return.[21]

In the case at bench, petitioner filed its 2001 Income Tax Return on April 15, 2002.[22] Counting from this date, petitioner had until April 14, 2004[23] within which to file its claim for the issuance of a TCC both administratively and judicially. Clearly, petitioner's administrative claim filed on April 15, 2003[24] and Petition for Review filed on April 14, 2004 fall within the two (2)-year period prescribed under Section 204 (C) in relation to Section 229 of the NIRC of 1997, as amended. Therefore, the first requirement has been complied with.

In compliance with the second requirement, petitioner presented the Certificates of Creditable Tax Withheld at Source[25] issued to it by various withholding agents for taxable year 2001 which showed the creditable withholding taxes in the amount of P24,205,529.73, detailed as follows:

[20] Citibank N.A. v. Court of Appeals and Commissioner of Internal Revenue, Supra; Section 2.58.3(B), Revenue Regulations No. 2-98, as amended.
[21] ACCRA Investments Corporation vs. Court Appeals, 204 SCRA 957 (1991); Commissioner of Internal Revenue vs. TMX Sales, Inc., 205 SCRA 184 (1992).
[22] Exhibit "A-1"; Supra.
[23] 2004 being a leap year.
[24] Paragraph 4, JSF; Supra.
[25] Exhibits "Q" to "UUUU".

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Payor (Withholding Agent)	Exhibit	Income Payments	Tax Withheld
Sale, exchange or transfer of real property other than capital assets sold by the corporation, estate or trust			
Majal Properties, Inc.	EE	P 397,500.00	P 19,875.00
Metropolitan Bank & Trust Company	II	448,249,091.00	22,412,454.55
Wilbert Tan	KK	2,174,268.00	108,713.40
John Ong	ZZ	4,594,997.40	229,749.87
Heirs of Manuel T. Sia, Inc.	KKKK	5,411,100.00	270,555.00
Sub-total		**P460,826,956.40**	**P 23,041,347.82**
Rentals - Real Property			
A Taste of Country Inc.	Q	P 150,000.00	P 7,500.00
Alternative Beverages Co., Inc.	R	86,340.00	4,317.00
Baeja, Anna Marie Versoza	S	26,730.00	1,366.50
BG Consolidated Holdings (Philippines) Inc.	T	10,500.00	525.00
Citisecurities Inc.	U	34,999.98	1,750.00
CMG Life Insurance Co., Inc.	V	15,400.00	770.00
Complete Providers, Inc.	W	22,522.50	1,126.13
DB Soft Phils., Inc.	X	12,840.00	642.00
EPSYS Incorporated	Y	24,500.00	1,225.00
Fitness Corporation of the Philippines	Z	170,164.50	8,508.22
Gammox Foods, Inc.	AA	96,997.89	4,849.89
Golden Donuts, Inc.	BB	51,578.40	2,578.92
Linkman, Inc. – Cucina Bacolod	CC	48,000.00	2,400.00
Luigi Communication & News Post	DD	7,200.00	360.00
Manila North Tollways Corporation	FF	2,354,880.00	117,744.00
Megalicious Foods Corporation	GG	41,684.00	2,084.20
PRHC Property Managers, Inc.	JJ	700,227.00	35,011.35
Via Mare Catering Services, Inc.	LL	1,728,468.00	86,423.40
A Taste of Country Inc.	MM	162,840.00	8,142.00
Abeja, Ana Marie Versoza	NN	26,730.00	1,366.50
Alternative Beverages Co., Inc.	OO	14,340.00	717.00
Barrington Consultants, Inc.	PP	10,500.00	525.00
BG Consolidated Holdings (Philippines) Inc.	QQ	10,500.00	525.00
Citisecurities Inc.	RR	35,000.00	1,750.00
Complete Providers, Inc.	SS	22,522.50	1,126.13
DB Soft Phils., Inc.	TT	12,840.00	642.00
Fitness Corporation of the Philippines	VV	159,147.26	7,957.36
Gammox Foods, Inc.	WW	87,351.48	4,367.57
Golden Donuts, Inc.	XX	53,668.60	2,683.43
Hampstead Gardens Corporation	YY	13,636.37	681.81
Linkman, Inc. – Cucina Bacolod	AAA	48,000.00	2,400.00
Littman Drug Corporation	BBB	72,000.00	3,600.00
Luigi Communication & News Post	CCC	10,800.00	540.00
Manila North Tollways Corporation	DDD	1,766,160.00	88,308.00
PRHC Property Managers, Inc.	EEE	700,227.00	35,011.35

Sebastian Liganor & Galinato	FFF	16,200.00	810.00
Solar Securities, Inc.	GGG	14,124.00	706.20
Via Mare Catering Services, Inc.	HHH	1,350,932.40	67,546.62
A Taste of Country Inc.	III	162,840.00	8,142.00
Abeja, Ana Marie Versoza	KKK	26,730.00	1,366.50
BG Consolidated Holdings (Philippines) Inc.	LLL	10,500.00	525.00
Citisecurities Inc.	MMM	85,000.00	1,750.00
Complete Providers, Inc.	NNN	22,522.50	1,126.13
DB Soft Phils., Inc.	OOO	12,840.00	642.00
Dining Alternatives Co.	PPP	104,000.00	5,200.00
EPSYS Incorporated	QQQ	10,500.00	525.00
Fitness Corporation of the Philippines	RRR	174,065.49	8,703.27
Golden Donuts, Inc.	SSS	55,790.00	2,789.50
Luigi Communication & News Post	TTT	10,800.00	540.00
Ma. Angelita S. Martinez	UUU	344,773.00	17,238.65
Manila North Tollways Corporation	VVV	1,766,160.00	88,308.00
Megalicious Foods Corporation	WWW	61,527.40	3,076.35
PRHC Property Managers, Inc.	XXX	700,227.00	35,011.35
Sebastian Liganor & Galinato	YYY	16,200.00	810.00
Via Mare Catering Services, Inc.	ZZZ	1,500,618.20	75,030.91
Abeja, Ana Marie Versoza	AAAA	26,730.00	1,366.50
Arquitectonica International Corporation	BBBB	25,680.00	1,284.00
Citisecurities Inc.	CCCC	35,000.00	1,750.00
DHL Philippines Corporation	DDDD	3,600.00	180.00
DHL Philippines Corporation	EEEE	3,600.00	180.00
DHL Philippines Corporation	FFFF	3,600.00	180.00
Dining Alternatives Co.	GGGG	26,000.00	1,300.00
EPSYS Incorporated	HHHH	10,500.00	700.00
Fondevilla Jasarino Fondevilla Young Rondario & Librojo Law Office	IIII	150,496.40	7,524.82
Golden Donuts, Inc.	JJJJ	51,081.40	2,554.07
Kameraworld, Inc.	LLLL	7,200.00	360.00
Kameraworld, Inc.	MMMM	3,600.00	180.00
Luigi Communication & News Post	NNNN	10,800.00	540.00
Manila North Tollways Corporation	OOOO	1,766,160.00	88,308.00
Sebastian Liganor & Galinato	PPPP	16,200.00	810.00
Via Mare Catering Services, Inc.	QQQQ	1,456,017.00	72,800.85
Fitness Corporation of the Philippines	RRRR	658,018.33	32,900.89
Gammox Foods, Inc.	SSSS	362,226.67	18,111.33
PRHC Property Managers, Inc.	TTTT	2,785,833.20	139,291.66
In the name of Petitioner	*UUUU*	*656,278.20*	*32,813.91*
Sub-total		**P 23,294,266.67**	**P 1,162,508.27**
Professional/talent fee			
Alternative Beverages Co., Inc.	JJJ	P 14,340.00	P 717.00
Meridian Assurance Corporation	HH	9,566.42	956.64
Sub-total		**23,906.42**	**1,673.64**
TOTAL		**P484,145,129.49**	**P24,205,529.73**

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The Court noticed that in the certificate marked as Exhibit "UUUU" covering the claimed creditable withholding tax of P32,813.91, petitioner's name was not indicated as the payee but rather as the payor/withholding agent. Therefore, We are constrained to exclude the said amount from the above total creditable taxes withheld at source, resulting in a substantiated creditable withholding taxes of P24,172,715.82 (P24,205,529.73 – P32,813.91).

Finally, as to the third requirement, a perusal of petitioner's 2001 Income Tax Return shows that its declared gross income consisted of the following:

Sale of Condominium units – net	
(Exhibit A-9 in relation to Exhibits A-1 & A-5)	P 5,489,692.00
Other Income: *(Section A, Schedules 1 & 4 of Exhibit A-1)*	
Gain on *dacion en pago*	436,665,091.00
Rental	20,066,129.00
Fastfood	6,434,428.00
Parking fees	4,358,305.00
Interest	1,271,925.00
Others	21,542,221.00

On the other hand, the Certificates of Creditable Taxes Withheld at Source reveal that the substantiated creditable withholding taxes in the sum of P24,172,715.82 pertains to the following gross income payments:

Claimed Creditable Tax Withheld	Income Payment	Nature of Income Payment
P 23,041,347.82	P 460,826,956.40	Sale, exchange or transfer of real property
1,129,694.36	22,637,988.47	Rental of real property
1,673.64	23,906.42	Professional/talent fee
P 24,172,715.82	P 483,488,851.29	

A verification of the records in this case discloses that out of the creditable withholding taxes of P23,041,347.82 related to petitioner's sale of real property, the amount of P22,412,454.55 pertains to its sale of real property by way of *dacion en pago* to Metropolitan Bank & Trust Company (Metrobank),[26] on the basis of which petitioner declared as part of its gross income in its 2001 Income Tax Return[27] the related gain amounting to P436,665,091.00, computed as follows:

Dacion en Pago Value	P448,249,090.91
Less: Cost/Expenses	11,583,999.91
Gain from *Dacion en Pago*	P436,665,091.00

As regards petitioner's claim for the remaining creditable withholding taxes of P628,893.27 related to its sale of real property:

CWT related to Sale of Property	P23,041,347.82
Less: CWT related to *Dacion en Pago*	22,412,454.55
Remaining claimed CWT	P 628,893.27

We cannot determine which portion of the related income of P12,577,865.40[28] was included in the declared gross income of P5,489,692.00[29] on sale of real property per petitioner's 2001 Income Tax Return, computed as follows:

Total Income from sale of real property	P460,826,956.40
Less: Income Payment of Metrobank	448,249,091.00
Remaining Income Payment	P 12,577,865.40

since petitioner failed to provide supporting documents or any explanation as to the income discrepancy of P7,088,173.40, computed hereunder:

Income from sale of real property - net of *dacion*	P12,577,865.40
Less: Sale of Condominium Units - Net	5,489,692.00
Discrepancy	P 7,088,173.40

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[26] BIR Records, pp. 31, 332-335.
[27] Section A, Schedule 4 & Section F of Exhibit "A-1"; BIR Records, p. 336.
[28] Total income payments stated in Exhibits "EE", "KK", "ZZ" and "KKKK".
[29] AITR 2001, Supra on p.2; Exhibit "A-5".

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With reference to the claimed creditable withholding taxes of P1,129,694.36,[30] a comparison of the gross rental income of P22,637,988.47[31] reflected per certificates and the gross rental income of P20,066,129.00 reported per petitioner's 2001 Income Tax Return reveals a discrepancy of P2,571,859.47. Considering that petitioner failed to reconcile or provide supporting documents explaining such discrepancy, We cannot ascertain whether the income related to the claimed creditable withholding taxes of P1,129,694.36 was in fact declared in their 2001 Income Tax Return.

Anent the claimed creditable withholding taxes of P1,673.64 relative to the professional fees of P23,906.42 received by petitioner, petitioner also failed to prove that it declared the said income in its 2001 Income Tax Return.

In the light of the foregoing, We find petitioner to have sufficiently substantiated its reported creditable withholding taxes for taxable year 2001, pursuant to Section 76, in relation to Sections 204 (C) and 229 of the 1997 NIRC, and Revenue Regulations No. 2-98, particularly Section 2.58.3 thereof, but only to the extent of P22,412,454.55. Accordingly, petitioner's excess creditable withholding taxes for taxable year 2001 is recomputed as follows:

Minimum Corporate Income Tax Due for 2001	P 9,774,390.00
Less: Prior year's (2000) excess credits	1,738,807.00
Balance of Minimum Corporate Income Tax Due	P 8,035,583.00
Less: Substantiated Creditable Taxes Withheld during 2001	22,412,454.55
Excess Tax Credits for taxable year 2001	P 14,376,871.55

WHEREFORE, the instant Petition for Review is **PARTIALLY GRANTED**. Respondent is hereby **ORDERED to ISSUE a TAX CREDIT**

[30] Per Certificates of Creditable Tax Withheld at Source, Exhibits "Q" to "TTTT" (less tax withheld stated in Exhibit "UUUU").
[31] Less the amount of P656,278.20 as stated in Exhibit "UUUU".

CERTIFICATE in favor of the petitioner in the reduced amount of P14,376,871.55 representing excess creditable withholding taxes for the taxable year 2001.

SO ORDERED.

ERLINDA P. UY
Associate Justice

WE CONCUR:

JUANITO C. CASTAÑEDA, JR.
Associate Justice

OLGA PALANCA-ENRIQUEZ
Associate Justice

ATTESTATION

I attest that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

JUANITO C. CASTAÑEDA, JR.
Associate Justice
Chairperson

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CERTIFICATION

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

ERNESTO D. ACOSTA
Presiding Justice

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