REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

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COMMISSIONER OF INTERNAL REVENUE, Petitioner,	**CTA EB No. 1123** (CTA Case No. 8140)
	Present:
-versus-	Del Rosario, *P.J.*, Castañeda, Jr., Bautista, Uy, Casanova, Fabon-Victorino, Mindaro-Grulla, Cotangco-Manalastas, and Ringpis-Liban, *JJ.*
BASES CONVERSION AND DEVELOPMENT AUTHORITY, Respondent.	**Promulgated:** APR 15 2015

x- 4:10 p.m. - -x

RESOLUTION

CASTAÑEDA, JR., *J.*:

For resolution is petitioner's Motion for Reconsideration assailing the Decision dated December 16, 2014 with respondent's Comment/Opposition thereto.

In her Motion, petitioner asserts that the corporations mentioned in Section 2.57.5 of RR No. 2-98 are the same corporations stated in Section 27 (c) of the 1997 National Internal Revenue Code ("NIRC"), as amended. Despite amendments in the Tax Code, respondent is still not included and classified as an exempt institution; hence, it is liable to pay taxes.

In the case at bar, the income derived by respondent from the sale of real properties should be subjected to tax, the same will be credited in its favor and declared under the creditable withholding tax system ("CWT"). Consequently, respondent's buyers particularly the NetGroup is obligated to remit the withholding taxes due.

Considering that respondent is liable to pay income tax, it must prove that the income from which taxes were withheld was included as part of its gross income. Respondent failed to state that the income pertaining to the sales made on 23 May 2008 were included as part of the income declared in its annual income tax return ("ITR") for taxable year 2008.

Petitioner stresses the following: a) the financial statements were not audited by the Commission on Audit; b) it is not sufficient that the claimed CWT is supported by CWT certificates, payment forms or payment deposit slips; c) respondent's income indicated in its annual income tax return has no breakdown as to its components; d) the Deeds of Absolute Sale, BIR Payment Forms 0605, BIR Tax Payment Deposit slips and Certificates of CWT are not enough to prove that income from which taxes were withheld was included as part of the gross income; and e) respondent failed to present detailed reconciliation schedule or any other documents that will prove or determine with certainty that the income payments related to creditable withholding tax formed part of its gross income in its 2008 annual ITR.

Respondent act of carrying over its 2008 excess credit to the subsequent year conclusively shows that it chose to carry over its excess credit, and not to claim a refund. Had respondent not incurred loss for 2008, then definitely it would have applied its excess credit to its tax liability for 2009.

The act of carrying over excess credit of taxable year 2008 to the succeeding year bars respondent to claim for tax refund under the irrevocability rule provided in Section 76 of the 1997 NIRC, as amended.

Respondent on the other hand, alleges that all the grounds raised by petitioner, are not novel which would warrant a reversal or modification of the assailed Decision.

Petitioner's Motion for Reconsideration is unmeritorious.

We reiterate the salient points of the assailed Decision as follows:

1. Respondent is not an exempt corporation under Section 27(C) of the 1997 Tax Code. The express mention of the government-owned and controlled corporations ("GOCCs") exempted from payment of corporate income tax excludes all others such as respondent.

2. The sale of the "Expanded Big Delta Lots" is exempt from tax under Republic Act No. 7227, as amended by Republic Act No. 7917. The sale is an income derived by the Government in the exercise of governmental functions; hence, excluded from gross income.

> 2a. To sustain petitioner's assertion that respondent should be taxed on its sale of the Expanded Big Delta Lots, such payment would in effect have resulted in diminishing the proceeds of the sale that the Republic received and turned over to the respondent to capitalize it. Under Section 8 of Republic Act No. 7227, it is clear that the capital of the respondent, which shall come from the sales proceeds and/or transfers of certain Metro Manila military camps, was not intended to be diminished by the payment of tax. Section 1 of Republic Act No. 7917 clearly exempted the proceeds of the sale of the Fort Bonifacio land from all forms of taxes, including income taxes. This is further supported by Administrative Order No. 236 entitled, "*Prescribing Rules and Regulations on the Collection, Remittance and Utilization of Sales Proceeds Under Republic Act No. 7227, as amended by Republic Act No. 7917*".[1]
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> 2c. Between Republic Act No. 7227, as amended by Republic Act No. 7917, one hand, which is a special law governing the Bases Conversion and Development Authority, which took effect in 1995; and the 1997 Tax Code, on the other, which is the general law on national internal revenue taxes, that took effect on January 1, 1998, the former prevails. A later statute, general in its terms and not expressly repealing a prior

[1] Rollo, p. 171.

special statute, will ordinarily not affect the special provisions of such earlier statute.[2]

3. Section 76 of the 1997 Tax Code is inapplicable insofar as the respondent's sale of the Expanded Big Delta Lots is concerned.

3a. Under Sec. 2.57.5 of Revenue Regulations No. 2-98, the creditable withholding tax system does not apply to the National Government and its instrumentalities.

3b. According to the Court in Division, there is no need to rule on whether the income from which taxes were withheld was included as part of the gross income since compliance with the said requirement is vital only for refund of excess income tax payments or excess creditable withholding tax sanctioned under Section 76 of the NIRC, and not to a claim for refund of erroneously remitted tax, which the withholding agents should not have withheld and remitted to the BIR in the first place.

The Court sees no cogent reason to reverse, much less, modify the assailed Decision.

WHEREFORE, premises considered, petitioner's Motion for Reconsideration is hereby **DENIED** for lack of merit.

SO ORDERED.

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

[2] *Commissioner of Internal Revenue v. Philippine Airlines, Inc.*, G.R. No. 180066, July 7, 2009, 592 SCRA 237-268, 259-260.

LOVELL R. BAUTISTA
Associate Justice

(On Leave)
ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

Cielito N. Mindaro-Grulla
CIELITO N. MINDARO-GRULLA
Associate Justice

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice