REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

PEFTOK INTEGRATED SERVICE, INC.,
Petitioner,

- versus - C.T.A. CASE NO. 4193

THE HONORABLE COMMISSIONER OF BUREAU OF INTERNAL REVENUE,
Respondent.

7/28

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D E C I S I O N

Petitioner is a domestic corporation engaged in the business of providing private security and guard services to individuals and entities.

For the year 1975, petitioner's income tax return showed a refundable amount of P5,940.61 which it claimed. In order to properly evaluate the return, the Bureau of Internal Revenue (BIR) requested petitioner to submit xerox copies of official receipts for the first, second and third quarters of 1975. (Exh. "C".)

Petitioner submitted the following official receipts for the first 2 quarters: (Exhs. "D" and "D-1".)

	O.R. No.	Date	Amt. Paid
First Qtr.	2005991	5/28/75	P 987.00
Second Qtr.	2403428	8/29/75	11,059.00
T o t a l			P12,046.00

Having failed to locate Official Receipt No. T-2545050 for the third quarter, ending September 30, 1975, petitioner presented as alternative evidence a xerox copy of the Declaration Of Net Taxable Income for the said quarter, showing as tax due the amount of P23,282.61 (Exh. "E"), as well as a returned/encashed Philippine Veterans Bank (PVB) Check No. CC 6790, issued on November 27, 1975, for P23,282.61 (Exhs. "F"), with the "Bureau of Internal Revenue" as payee. Proof that the check was cleared by the Central Bank (CB) was also presented (Exh. "F-1").

In a letter received by the BIR on May 2, 1980, petitioner reiterated its claim for the refund/tax credit of P5,940.61, already adverted to (Exh. "G").

Respondent denied the claim on the ground that the receipt for income tax payment for the third quarter of 1975 was not authentic, having been issued to Union Candon Facoma of Candon, Ilocos Sur, as payment for tobacco inspection fee of P200.00, on May 27, 1974. Consequently, respondent assessed petitioner a delinquency income tax for 1975, totalling P33,296.49, computed as follows: (Exhs. "A" and "A-1")

Net taxable income		P112,535.72
Income tax due thereon		P29,388.00
Less: Quarterly payments:		
1st Quarter ...	P 987.00	
2nd Quarter	11,059.00	12,046.00
Delinquency income tax		P17,342.00
Add: 50% Surcharge		8,671.00
14% Interest (Maximum) ...		7,283.49
TOTAL AMOUNT DUE AND COLLECTIBLE		P33,296.49

Petitioner protested the assessment on June 23, 1987 (Exh. "H"), but respondent denied the protest in his decision, dated July 22, 1987, received by petitioner on August 17, 1987 (Exh. "B"). On September 16, 1987, petitioner filed the instant petition for review seeking the cancellation of the disputed assessment issued by respondent and at the same time reiterating the refund/tax credit of P5,940.61 as overpaid income tax for 1975.

Respondent contends that petitioner's claim for refund has already prescribed, citing Section 230 of the National Internal Revenue Code (NIRC) which provides for a two-year prescriptive period within which to file a suit for the recovery of tax excessively or wrongfully collected. The two-year period is counted from the date of payment.

In this regard, the Supreme Court in the recent case of **Commissioner of Internal Revenue v. TMX Sales, Inc., et. al.**, (G.R. No. 83736, January 15, 1992) restated the ruling that the two-year prescriptive period should be computed from the time of filing the Adjustment Return or Annual Income Tax Return and final payment of the income tax. The herein petition for the refund/tax credit of P5,940.61, among other things, was filed only on September 16, 1987, more than 11 years from final payment of the 1975 quarterly taxes. Therefore, petitioner's claim for refund/tax credit could no longer be entertained having already prescribed.

With respect to the timeliness of petitioner's appeal from respondent's decision regarding the disputed assessment, the Court finds that the instant petition for review was filed within the 30-day reglementary period to appeal. The said decision was received on August 17, 1987, and the petition was filed with the Court exactly on the 30th day, or on September 16, 1987.

The only remaining and real issue, as perceived by this Court, is whether or not the third quarter tax had actually been paid.

Courts exist to render justice, and We rule for petitioner on this issue.

1. It has been established that the third quarter tax had been paid, as supported by competent, material and relevant pieces of evidence, viz, Exhibits "F" and "F-1". The corresponding return shows a tax liability of P23,282.61. The PVB check, Exhibit "F", dated November 27, 1975 (which is within 60 days from the end of the third quarter, September 30, 1975), was for the same amount and was made payable to the BIR. It was signed by two responsible officers of petitioner, namely, the President (Dionisio A. De Leon) and the Treasurer (Patricio C. Buyson). The said check was **CLEARED** by the CB on December 2, 1975 (Exh. "F-1"), debiting in effect petitioner's account with the PVB in favor of the BIR. That the amount of P23,282.61 "may have been paid for other tax liabilities of petitioner" as lamely claimed by the respondent is a purely gratuitous allegation, being speculative and devoid of proof which should not be allowed to override convincing evidence of actual payment, such as Exhibits "F" and "F-1".

2. It is not likewise controverted that it was the "BIR teller" who wrote the "official receipt no. T-2545050... at the lower right portion" of the return, as explained by petitioner to Eduardo A. Pamitan, Chief, Receivable Accounts Division of the BIR at its National Office in his letter, dated June 27, 1987 (See also Exh. "H"). Clearly, the mistake is attributable to that BIR teller and not to petitioner which had nothing to do with the false/erroneous notation of the receipt number. Pamitan should have investigated that BIR teller after the matter was reported to him in the same letter. Since the more important consideration is actual payment by the petitioner, and since respondent does not have any evidence to overturn this proof, it is only just, under the circumstances, to credit the actual payment of the third quarter tax to petitioner.

3. Payment is a mode of extinguishing an obligation (Civil Code, Art. 1231[1]). The third quarter tax of P23,282.61 having

already been paid, respondent has no basis to issue the questioned assessment. Payment is also one of the grounds for the filing of a motion to dismiss (Rules of Court, Rule 16, Section 1[h]). Hence, no suit can be maintained to enforce the collection of a tax already paid.

4. To require petitioner to pay the delinquency tax of P33,296.49, inclusive of 50% surcharge and 14% interest, will also unjustly enrich the government at the expense of petitioner.

WHEREFORE, the decision appealed from is hereby **REVERSED**. The deliquency income tax assessment in the amount of P33,296.49 issued by respondent against petitioner, Peftok Integrated Services, Inc., is deemed cancelled.

Petitioner's claim for the refund/tax credit of P5,940.61, representing overpaid 1975 income tax is **DENIED** for having been filed out of time.

No costs.

SO ORDERED.

Quezon City, Metro Manila, July 28, 1992.

~~STELLA DADIVAS-FARRALES~~
Acting Associate Judge

I CONCUR:

Ernesto D. Acosta

ERNESTO D. ACOSTA
Presiding Judge

CERTIFICATION

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

Ernesto D. Acosta

ERNESTO D. ACOSTA
Presiding Judge
Court of Tax Appeals