REPUBLIC OF THE PHILIPPINES
DEPARTMENT OF FINANCE
BUREAU OF INTERNAL REVENUE

Section 76 of the Tax Code of 1997, as amended	OT-	380-2022

Date: AUG 31 2022

Person to Contact: Chief, Law Division
Tel. Nos. 926-55-36 / 927-09-63

UNITED COCONUT PLANTERS BANK
UCPB Corporate Offices
7907 Makati Avenue, Makati City

Attention: <u>SVP CYNTHIA A. ALMIREZ</u>
Chief Finance Officer

Gentlemen:

This refers to your request for an opinion that the unutilized creditable withholding taxes (CWT) of United Coconut Planters Bank ("UCPB") for the taxable year 2006 amounting to P which was the subject of a claim for issuance of a Tax Credit Certificate (TCC) before the courts and which claim was denied with finality by the Supreme Court (SC), may be carried-over and credited against the estimated quarterly income tax liabilities on the taxable quarters of the succeeding taxable years, until fully utilized, as long as the fact of withholding of CWT was clearly established.

It is represented that UCPB is a domestic corporation duly authorized to operate as an expanded commercial bank, with principal office located in Makati City. On April 13, 2007, UCPB filed its annual Income Tax Return (ITR) for taxable year 2006 reflecting a net loss and excess CWT from first to fourth quarters of 2006 in the total amount of P . On April 16, 2007, UCPB filed an amended annual ITR for the year 2006 reflecting the same aforementioned data but with attachments.

Due to the fact that UCPB has reported net operating loss for year 2006, it decided to file a claim for issuance of TCC for the unutilized or excess CWT for year 2006 in the amount of P . Thus, on April 8, 2009, UCPB filed a Petition for Review with the Court of Tax Appeals (CTA) for the application of TCC covering the unutilized CWT of P .

On September 18, 2012, the CTA Third Division denied the claim of UCPB for the issuance of TCC despite the fact that during the hearing before the CTA Third Division, the court commissioned Independent Certified Public Accountant (ICPA) presented a summary of verified Certificate of Creditable Tax Withheld at Source (BIR Form 2307) which showed that a total of P claimed CWTs were properly supported with BIR Form 2307.

On Petition for Review before the CTA En Banc, the CTA En Bank likewise denied the claim for TCC of UCPB. In its decision, the CTA En Banc stated that to be entitled for refund, UCPB must establish that (1) the claim was filed with the Commissioner of Internal Revenue within the two year period from the date of the payment of the tax; (2) the fact of withholding by presenting a copy of a statement duly issued by the payor to the payee showing the amount paid and the amount withheld and (3) through its return, the income received was declared as part of gross income.

The CTA En Banc ruled that UCPB complied with the first requisite and that the petition was filed within the prescribed period. As to the second requisite, UCPB complied only to the extent of P out of P . However, as to the third requisite, the Court stated that UCPB failed to establish/show on its annual ITR, that the income payments related to the claim for TCC for taxable year 2006 in aggregate amount of P formed part of the income declared. To be entitled to the claim for refund, UCPB must comply with all the requisites. Thus, the claim for refund was denied by the CTA En Banc for failure to establish that the income payments related to the claim for TCC for taxable Year 2006 in aggregate amount of P formed part of the income declared per its annual ITR for 2006.

On April 6, 2015, the Bank filed a Petition for Certiorari before the SC. On June 7, 2015, the SC Third Division denied the Petition for Certiorari. UCPB filed a Motion for Reconsideration but the SC Third Division upheld the decision of CTA En Banc on September 16, 2015, denying with finality the Petition for UCPB's claim for issuance of TCC for the taxable year 2006.

Based on the foregoing, you now request for confirmation of your opinion that:

1. The CWT that was not eligible for refund will not be forfeited in the government's favor, and maybe carried-over in the succeeding taxable years and credited against quarterly tax liabilities of the taxable quarters of the succeeding taxable years, until fully utilized, otherwise, such may constitute unjust enrichment in favor of the goverment; and

2. The CWT of UCPB which was properly supported by Certificate of Tax Withheld at Source (BIR Form 2307) in the amount of P as shown in the report of commissioned ICPA may be carried-over as tax credits in the succeeding taxable years until fully utilized.

In reply, please be informed that under Section 76 of the National Internal Revenue Code (Tax Code) of 1997, as amended, a taxpayer entitled to a tax credit or refund of the excess estimated quarterly income taxes paid has two options: (1) to carry over the excess credit or (2) to apply for the issuance of a tax credit certificate or to claim a cash refund. If the option to carry over the excess credit is exercised, the same shall be irrevocable for that taxable period.

In the case of *Rhombus Energy, Inc. v. Commissioner of Internal Revenue*[1], the Supreme Court citing the case of *Republic v. Team (Phils.) Energy Corporation (formerly Mirant [Phils.] Energy Corporation*,[2] held that Section 76 of the Tax Code of 1997, as amended, is clear and unequivocal in providing that the carry-over option, once actually or constructively chosen by a corporate taxpayer, becomes irrevocable. The Supreme Court explains that the phrase "for that taxable period" merely identifies the excess income tax, subject of the option, by referring to the taxable period when it was acquired by the taxpayer, and the evident intent of the legislature, in adding the last sentence to Section 76 of the Tax Code of 1997, is to keep the taxpayer from flip-flopping on its options, and avoid confusion and complication as regards said taxpayer's excess tax credit.

Moreover, Section 76 of the Tax Code of 1997 is a tool designed to promote rational and efficient functioning of the tax system.[3] To be sure, flip-flopping on the part of the corporate taxpayer will not only run counter to the spirit of the law but will also create chaos and delay in the collection of taxes to the prejudice of the government.[4] In other words, the exercise of the option to claim a refund or issuance of a TCC bars the other option to carry-over the excess payment for application in the subsequent years' tax obligation.[5] Hence, when UCPB filed a Petition for Review with the CTA for the application of TCC covering its unutilized CWT, UCPB, from then onwards, became precluded from carrying-over its excess CWT.

[1] G.R. No. 206362, August 1, 2018.
[2] G.R. No. 188016, January 14, 2015, 746 SCRA 41.
[3] Commissioner of Internal Revenue v. McGeorge Food Industries, Inc., G.R. No. 174157, October 20, 2010.
[4] United Coconut Planters Bank v. Commissioner of Internal Revenue, CTA EB No. 979, Sept. 16, 2014.
[5] United Coconut Planters Bank v. Commissioner of Internal Revenue, CTA Case No. 7614, January 26, 2011.

OT- 380-2022
AUG 31 2022

With regard to the issue on unjust enrichment, the same is untenable. The principle of unjust enrichment is codified under Article 22 of the New Civil Code which states that "[e]very person who through an act of performance by another, or any other means, acquires or comes into possession of something at the expense of the latter without just or legal ground, shall return the same to him."

For the principle to apply, the following requisites must concur: (i) a person is unjustly benefited; and (ii) such benefit is derived at the expense of or with damages to another.[6]

In this case, the denial of UCPB's claim for TCC covering its unutilized CWT was due to its failure to comply with all the requisites to be entitled to a claim for refund or issuance of a TCC, as follows:

1) The claim must be filed with the Commissioner of Internal Revenue within the two-year period from the date of payment of the tax;

2) The fact of withholding must be established by a copy of a statement duly issued by the payor to the payee showing the amount paid and the amount of the tax withheld; and

3) It must be shown on the return that the income received was declared as part of the gross income.[7]

As held by the CTA En Banc which was upheld by the Supreme Court, UCPB complied with the first requisite and that the petition was filed within the prescribed period. Also, it complied with the second requisite but only to the extent of P out of P However, as to the third requisite, the Court stated that UCPB failed to establish/show on its annual ITR that the income payments related to its claim for TCC for taxable year 2006 in aggregate amount of P .00 formed part of the income declared. Thus, in relation to the principle of "unjust enrichment", the government is not unjustly benefited at the expense of or with damages to another considering that it is UCPB who failed to establish that it is entitled to a claim for refund or issuance of a TCC.

Please be guided accordingly.

Very truly yours,

Lilia C. Guillermo

LILIA CATRIS GUILLERMO
Commissioner of Internal Revenue

K-1-LMAT

001009

[6] Osmeña-Jalandoni v. Encomienda, 806 Phil. 566. 577 (2017) [Second Division, per J. Peralta].
[7] Commissioner of Internal Revenue v. Far East Bank & Trust Company (now; Bank of the Philippine Islands), G.R. No. 173854, March 15, 2010, 615 SCRA 417.