

REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

FORMER SECOND DIVISION

PRHC PROPERTY MANAGERS,
INC.,

Petitioner,

- versus -

COMMISSIONER OF INTERNAL
REVENUE,

Respondent.

C.T.A. CASE NO. 7766

Members:

CASTAÑEDA, JR., *Chairperson*
UY, *and*
PALANCA-ENRIQUEZ, *JJ.*

Promulgated:

MAR 11 2010

3:06 p.m.

X-----X

DECISION

CASTAÑEDA JR., J.:

This case is a claim for refund of the amount of **ONE MILLION SEVEN HUNDRED SEVENTY SIX THOUSAND FIVE HUNDRED THIRTY FOUR PESOS (P1,776,534.00)**, allegedly representing unutilized excess creditable withholding taxes for taxable year 2005.

PRHC Property Managers, Inc. (Petitioner) is a corporation duly organized and existing under and by virtue of Philippine laws, with principal office and business address at E-2003B East Tower, PSE Centre, Exchange Road, Ortigas Center, Pasig City. Petitioner is engaged in the business of managing, operating, administering, maintaining, servicing, buying, leasing or *etc.*

selling real and/or personal properties either for itself or for others. It is registered with the Bureau of Internal Revenue (BIR) with Tax Identification Number (TIN) 001-009-400-000.¹

Respondent is the duly appointed Commissioner of Internal Revenue vested with the power to decide, approve, and grant refunds or tax credits of overpaid internal revenue taxes as provided by law. He holds office at the Office of the Commissioner, BIR National Office Building, BIR Road, Diliman, Quezon City.

On April 17, 2006, petitioner filed its Annual Income Tax Return (BIR Form No. 1702)² for taxable year 2005 with the BIR, showing a taxable income of P446,387.00³, and a corresponding tax due in the amount of P145,888.00.⁴

Also shown in the said Income Tax Return is petitioner's total tax credits/payments for the year 2005 amounting to P1,922,422.00, detailed as follows:

2005 (Quarter)	Amount	Exhibit
First	P 456,077.00	F-4
Second	501,611.00	H-4
Third	488,719.00	J-4
Fourth	476,015.00	D-5
TOTAL	P 1,922,422.00	

Petitioner likewise indicated its intention not to carry-over its excess/unutilized Creditable Withholding Tax (CWT) for taxable year 2005 in *jc*

¹ Pars. 3, 4, and 5, Joint Stipulation of Facts, docket, p. 94

² Exhibit "D"

³ Exhibit "D-2"

⁴ Exhibit "D-3"

the amount of P1,776,534.00, and its decision to claim a refund of the said amount by marking the box, "To be Refunded".

On January 3, 2008, petitioner filed with the Revenue District Office (RDO) No. 43 its Application for Tax Credits/Refunds (BIR Form No. 1914)⁵ and Request Letter⁶ dated December 27, 2007, requesting the issuance of tax credit certificate on its excess/unutilized creditable taxes withheld for the year 2005 amounting to P1,776,534.00.

Respondent has not taken any action on petitioner's administrative claim for refund; hence, petitioner filed its judicial claim with this Court on April 15, 2008.

In his Answer⁷ filed on May 26, 2008, respondent raised the following Special and Affirmative Defenses:

- "5. Claims for refund are strictly construed against the taxpayer as the same partakes the nature of a tax exemption;
6. The taxpayer has the burden to show that the taxes were erroneously or illegally paid. Failure on the part of the Petitioner to prove the same is fatal to its cause of action. Petitioner failed to substantiate its claim by presenting the necessary documents;
7. The Petitioner must prove that the amount of creditable withholding tax being claimed as refund was not utilized;
8. The Petitioner should prove its legal basis for claiming the amount being refunded." *Je*

⁵ Exhibit "O"

⁶ Exhibit "P"

⁷ Docket, p. 56

After trial on the merits, this case was submitted for decision on April 22, 2009, taking into consideration petitioner's Memorandum filed on April 17, 2009, sans respondent's Memorandum.

The parties submitted the following issues⁸ for this Court's resolution:

- "I. WHETHER OR NOT PETITIONER OVERPAID ITS CREDITABLE WITHHOLDING TAXES FOR THE TAXABLE YEAR 2005 IN THE AMOUNT OF PHP1,776,534.00.
- II. WHETHER OR NOT THE INCOME UPON WHICH THE TAXES WERE WITHHELD FOR THE TAXABLE YEAR 2005 WERE INCLUDED IN THE INCOME TAX RETURN OF PETITIONER FOR THE YEAR 2005.
- III. WHETHER OR NOT PETITIONER'S OVERPAID CREDITABLE WITHHOLDING TAX IN THE AMOUNT OF PHP1,776,534.00 IS SUBSTANTIATED BY DOCUMENTARY EVIDENCE.
- IV. WHETHER OR NOT PETITIONER IS ENTITLED TO THE REFUND OF THE AMOUNT OF PHP1,776,534.00 REPRESENTING ITS OVERPAID CREDITABLE WITHHOLDING TAX FOR THE TAXABLE YEAR 2005."

The above-enumerated issues can be summarized into a single issue, to wit:

"Whether or not petitioner is entitled to a refund of the amount of P1,776,534.00, representing its alleged unutilized creditable withholding taxes for taxable year 2005 based on the evidence presented."

THIS COURT'S RULING

Petitioner's claim finds legal basis on Section 76 of the National Internal Revenue Code (NIRC) of 1997, as amended, which states: 

⁸ Joint Stipulation of Facts, docket, p. 96

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

- "(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.

"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."

Under the aforequoted provisions of law, a corporation 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.⁹

In exercising its option, the corporation must signify in its annual corporate adjustment return (by marking the option box provided in the BIR form) its intention either to carry over the excess credit or to claim a refund. 

⁹ *Systra Philippines, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 176290, September 21, 2007, 533 SCRA 776.

To facilitate tax collection, these remedies are in the alternative and the choice of one precludes the other.¹⁰

The present claim in the amount of P1,776,534.00 represents the excess of the total tax credits of P1,922,422.00 over the income tax due of P145,888.00 reflected in petitioner's Annual Income Tax Return¹¹ for taxable year 2005. Inasmuch as petitioner properly marked the option "To be refunded" ¹² insofar as the excess tax credit of P1,776,534.00 is concerned, the same may be the proper subject of a claim for refund under Section 76 of the NIRC of 1997, as amended.

However, pursuant to *Section 2.58, Revenue Regulations No. 2-98*, as amended and as held by the Supreme Court in *Citibank N.A. vs. Court of Appeals and CIR* ¹³ and *ACCRA Investment Corporation vs. CA*, ¹⁴ in order to be entitled to a refund or issuance of a tax credit certificate of excess/unapplied creditable withholding taxes, petitioner must satisfy the following:

1. The claim for refund must be filed within the two-year prescriptive period as provided under Section 204(C) in relation to Section 229 of the NIRC of 1997, as amended;
2. The fact of withholding must be established by a copy of a statement duly issued by the payor (withholding agent) to the payee, showing the amount paid and the amount of tax withheld therefrom; and
3. The income upon which the taxes were withheld were included in the return of the recipient. 

¹⁰ *Philippine Bank of Communications vs. Commissioner of Internal Revenue*, G.R. No. 112024, January 28, 1999, 302 SCRA 241.

¹¹ Exhibit "D-6"

¹² Exhibits "D-9"

¹³ G.R. No. 107434, October 10, 1997, 280 SCRA 459.

¹⁴ G.R. No. 96322, December 20, 1991, 204 SCRA 957.

Anent the first requirement, the provisions of the NIRC of 1997, as amended, pertinent to claiming a tax refund are Sections 204(C) and 229, which provide:

"SEC. 204. Authority of the Commissioner to Compromise, Abate and Refund or Credit Taxes. – The Commissioner may -

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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 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.

XXX

XXX

XXX"

"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.

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."

Petitioner complied with the first requirement.

The reckoning of the two-year prescriptive period for the filing of a claim for refund/tax credit of excess income tax paid/withheld commences from the date of filing of the Final Adjustment Return¹⁵. The claimed excess creditable withholding taxes pertain to taxable year 2005 for which petitioner filed its Annual Income Tax Return on April 17, 2006.¹⁶ Counting from this date, petitioner had until April 17, 2008 within which to file its claim for refund or tax credit certificate both in the administrative and judicial levels. Therefore, petitioner's administrative claim for refund filed on January 3, 2008¹⁷ and the Petition for Review filed on April 15, 2008 are well within the two-year prescriptive period.

Petitioner submitted its Schedule of Creditable Tax Withheld¹⁸ and various Certificates of Creditable Tax Withheld at Source [BIR Form No. 2307]¹⁹ to prove the fact of withholding; which showed petitioner's creditable withholding taxes for taxable year 2005 in the amount of P1,922,421.77, detailed as follows:

Exhibit	Payor	Income Payments	Tax Withheld
<i>Commission</i>			
N-7, N-7-a	Greenhills Properties, Inc.	P 28,732.20	P 2,873.22
N-8, N-8-a	IEB Premium Properties, Inc.	281,111.80	28,111.80
M-8, M-8-a	Greenhills Properties, Inc.	8,217.60	821.76
L-8, L-8-a	Greenhills Properties, Inc.	8,572.73	857.27
L-9, L-9-a	IEB Premium Properties, Inc.	534,980.71	53,498.07

¹⁵ *Supra*, note 14.

¹⁶ Exhibit "D"

¹⁷ Exhibits "O" and "P"

¹⁸ Exhibits "N", "M", "L", and "E-4"

¹⁹ Exhibits "N-2" to "N-17-b", "M-3" to "M-19-b", "L-4" to "L-19-b", and "E-5" to "E-27-b"

E-10, E-10-a	Fairland Development Corp.		78,870.00	7,887.00
E-11, E-11-a	Greenhills Properties, Inc.		21,890.30	2,189.03
E-12, E-12-a	IEB Premium Properties, Inc.		268,565.45	26,856.55
E-21, E-21-a	Summit Securities, Inc.		39,709.00	3,970.91
Subtotal		P	1,270,649.79	P 127,065.61
Prime contractors/Sub-contractors				
N-12, N-12-a	One Wilson Place Condominium Corp.	P	90,300.00	P 1,641.81
N-14, N-14-a	Philippine Stock Exchange, Inc.		50,285.50	1,005.71
N-15, N-15-a	Philippine Stock Exchange, Inc.		100,571.00	2,011.42
M-13, M-13-a	One Wilson Place Condominium Corp.		90,300.00	1,641.81
M-15, M-15-a	Philippine Stock Exchange, Inc.		50,285.50	1,005.71
M-16, M-16-a	Philippine Stock Exchange, Inc.		50,285.50	1,005.71
M-17, M-17-a	Philippine Stock Exchange, Inc.		50,285.50	1,005.71
L-13, L-13-a	One Wilson Place Condominium Corp.		90,300.00	1,641.81
L-15, L-15-a	Philippine Stock Exchange, Inc.		50,285.50	1,005.71
L-16, L-16-a	Philippine Stock Exchange, Inc.		50,285.50	1,005.71
L-17, L-17-a	Philippine Stock Exchange, Inc.		50,285.50	1,005.71
E-16, E-16-a	One Wilson Place Condominium Corp.		93,930.00	1,707.81
E-18, E-18-a	Philippine Stock Exchange, Inc.		50,285.50	1,005.71
E-19, E-19-a	Philippine Stock Exchange, Inc.		50,285.50	1,005.71
E-20, E-20-a	Philippine Stock Exchange, Inc.		50,285.50	1,005.71
Subtotal		P	968,256.00	P 18,701.76
Professional/Management Fees				
N-2, N-2-a	Avalon Condominium Corp.	P	37,500.00	P 3,409.08
N-3, N-3-a	Casa Miguel Condominium Corp.		12,078.84	1,811.82
N-4, N-4-a	Cityland Wack Wack Royal Mansion, Inc.		291,003.08	40,052.15
N-6, N-6-a	Equitable PCI Bank		48,000.00	7,200.00
N-7, N-7-a	Greenhills Properties, Inc.		246,887.73	24,688.78
N-9, N-9-a	LTA Condominium Corp.		357,996.96	53,699.55
N-10, N-10-a	Nobel Plaza Condominium Corp.		94,272.73	14,140.90
N-11, N-11-a	The ODC Int'l. Plaza Condominium Corp.		162,256.17	16,225.62
N-13, N-13-a	Philippine Stock Exchange Centre Condominium Corp.		1,690,909.08	169,090.92
N-16, N-16-a	The Makati Tuscany Condominium Corp.		412,380.00	61,857.00
N-17, N-17-a	The Pearl Plaza, Inc.		66,983.22	6,698.31
M-3, M-3-a	Avalon Condominium Corp.		37,500.00	3,409.08
M-4, M-4-a	Casa Miguel Condominium Corp.		8,052.56	1,207.88
M-5, M-5-a	Cityland Wack Wack Royal Mansion, Inc.		291,868.38	43,780.26
M-7, M-7-a	Equitable PCI Bank		32,000.00	4,800.00
M-8, M-8-a	Greenhills Properties, Inc.		246,888.00	24,688.80
M-9, M-9-a	IEB Premium Properties, Inc.		741,460.90	74,146.09
M-10, M-10-a	LTA Condominium Corp.		357,996.96	53,699.55
M-11, M-11-a	Nobel Plaza Condominium Corp.		97,363.65	14,604.54
M-12, M-12-a	The ODC Int'l. Plaza Condominium Corp.		162,256.17	16,225.62
M-14, M-14-a	Philippine Stock Exchange Centre Condominium Corp.		1,694,545.46	169,454.56
M-18, M-18-a	The Makati Tuscany Condominium Corp.		412,380.00	61,857.00
M-19, M-19-a	The Pearl Plaza, Inc.		66,983.22	6,698.31
L-3, L-3-a	Avalon Condominium Corp.		37,500.00	3,409.08
L-4, L-4-a	Casa Miguel Condominium Corp.		8,052.56	1,207.88

L-5, L-5-a	Cityland Wack Wack Royal Mansion, Inc.	308,232.02	46,234.80
L-7, L-7-a	Equitable PCI Bank	64,000.00	9,600.00
L-8, L-8-a	Greenhills Properties, Inc.	246,888.00	24,688.80
L-10, L-10-a	LTA Condominium Corp.	357,996.96	53,699.55
L-11, L-11-a	Nobel Plaza Condominium Corp.	97,363.65	14,604.54
L-12, L-12-a	The ODC Int'l. Plaza Condominium Corp.	165,092.53	16,509.26
L-14, L-14-a	Philippine Stock Exchange Centre Condominium Corp.	1,696,363.65	169,636.38
L-18, L-18-a	The Makati Tuscany Condominium Corp.	412,380.00	61,857.00
L-19, L-19-a	The Pearl Plaza, Inc.	66,983.22	6,698.31
E-5, E-5-a	Avalon Condominium Corp.	37,500.00	3,409.08
E-6, E-6-a	Casa Miguel Condominium Corp.	12,078.84	1,811.82
E-7, E-7-a	Cityland Wack Wack Royal Mansion, Inc.	51,372.00	7,705.80
E-9, E-9-a	Equitable PCI Bank	48,000.00	7,200.00
E-11, E-11-a	Greenhills Properties, Inc.	246,887.70	24,688.78
E-13, E-13-a	LTA Condominium Corp.	355,695.96	53,354.39
E-14, E-14-a	Nobel Plaza Condominium Corp.	97,363.65	14,604.54
E-15, E-15-a	The ODC Int'l. Plaza Condominium Corp.	166,510.71	16,651.08
E-17, E-17-a	Philippine Stock Exchange Centre Condominium Corp.	1,696,363.65	169,636.38
E-22, E-22-a	The Makati Tuscany Condominium Corp.	422,826.00	63,423.90
E-23, E-23-a	The Pearl Plaza, Inc.	66,983.22	6,698.31
E-24, E-24-a	Phil. Realty & Holdings Corp.	104,148.98	10,414.90
E-25, E-25-a	Phil. Realty & Holdings Corp.	152,000.65	15,200.07
E-26, E-26-a	Phil. Realty & Holdings Corp.	77,548.90	7,754.89
E-27, E-27-a	Phil. Realty & Holdings Corp.	87,818.02	8,781.80
Subtotal		P 14,653,513.98	P 1,692,927.16
Rentals-Real Property			
N-5, N-5-a	Epsys, Inc.	P 431,181.84	P 21,559.08
M-6, M-6-a	Epsys, Inc.	431,181.84	21,559.08
L-6, L-6-a	Epsys, Inc.	431,181.70	21,559.08
E-8, E-8-a	Epsys, Inc.	381,000.00	19,050.00
Subtotal		P 1,674,545.38	P 83,727.24
TOTAL		P 18,566,965.15	P 1,922,421.77

Based on the foregoing, petitioner was able to substantiate by proper withholding tax certificates all the claimed creditable withholding taxes amounting to P1,922,421.77 for taxable year 2005.

The Court will now determine petitioner's compliance with the third requirement. Petitioner's 2005 Annual Income Tax Return²⁰ and Audited *Je*

²⁰ Exhibit "D", Lines 15C and 18C

Financial Statements reflect the following amounts of sales of services and non-operating/other income:

	Gross Income Per Income Tax Return
Sale of Services	
Management fee	P 15,237,728.00
Commission	<u>2,768,409.00</u>
Subtotal	<u>P 18,006,137.00</u>
Non-Operating and Other Income	
Rent income	P 1,674,545.00
Others	<u>131,894.00</u>
Subtotal	<u>P 1,806,439.00</u>
Total	<u>P 19,812,576.00</u>

The withholding tax certificates show that the creditable income taxes of P1,922,421.77 for taxable year 2005 were withheld on income payments in the total amount of P18,566,965.15, broken down as follows:

	Per Certificates	
	Income Payments	Income Tax Withheld
Sale of Services		
Commission	P 1,270,649.79	P 127,065.61
Prime contractors/Sub-contractors	968,256.00	18,701.76
Professional/Management Fees	<u>14,653,513.98</u>	<u>1,692,927.16</u>
Subtotal	<u>P 16,892,419.77</u>	<u>P 1,838,694.53</u>
Rentals-Real Property	<u>P 1,674,545.38</u>	<u>P 83,727.24</u>
Subtotal	<u>1,674,545.38</u>	<u>83,727.24</u>
TOTAL	<u>P 18,566,965.15</u>	<u>P 1,922,421.77</u>

Inasmuch as petitioner's reported gross income from sale of services in the amount of P18,006,137.00 was more by P1,113,717.23 when compared with the income payments of P16,892,419.77 reflected in the certificates, it can be concluded that petitioner reported in its Annual Income Tax Return the income upon which the claimed creditable withholding taxes of P1,838,694.53 were withheld. *Je*

Likewise, petitioner was able to establish that the income payment from rentals of P1,674,545.38 upon which the claimed creditable taxes of P83,727.24 were withheld was the very same figure declared in its 2005 Annual Income Tax Return.

In sum, petitioner sufficiently proved its entitlement to a refund of excess creditable withholding taxes for taxable year 2005 in the amount of P1,776,534.00.

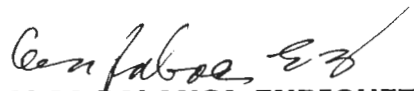
WHEREFORE, premises considered, the instant Petition for Review is hereby **GRANTED**. ACCORDINGLY, respondent Commissioner of Internal Revenue is hereby **ORDERED TO REFUND or ISSUE A TAX CREDIT CERTIFICATE** amounting to **ONE MILLION SEVEN HUNDRED SEVENTY SIX THOUSAND FIVE HUNDRED THIRTY FOUR PESOS (P1,776,534.00)** to petitioner PRHC Property Managers, Inc. representing its unutilized excess creditable withholding taxes for taxable year 2005.

SO ORDERED.


JUANITO C. CASTANEDA, JR.
Associate Justice

WE CONCUR:


ERLINDA P. UY
Associate Justice


OLGA PALANCA-ENRIQUEZ
Associate Justice

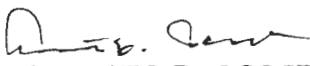
ATTESTATION

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

CERTIFICATION

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


ERNESTO D. ACOSTA
Presiding Justice