Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

SECOND DIVISION

PHILAM PROPERTIES CORPORATION, Petitioner,	CTA CASE NO. 7912
	For: Refund of excess/unutilized creditable withholding taxes for CY 2006
-versus-	Present: CASTAÑEDA, JR., Chairperson CASANOVA, and MINDARO-GRULLA, JJ.
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: JAN 12 2012 4:15 p.m.

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DECISION

MINDARO-GRULLA, J.:

This is a Petition for Review filed on April 14, 2009 by Philam Properties Corporation as petitioner, against the Commissioner of Internal Revenue (CIR) as respondent, for the Court in Division, pursuant to Section 7 (a) (2) of Republic Act (RA) No. 1125, An Act Creating the Court of Tax Appeals, as amended[1], as well as Rule 4,

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1 Sec. 7. *Jurisdiction.* –The CTA shall exercise:
(a) Exclusive appellate jurisdiction to review by appeal, as herein provided:
x x x x x x
(2) Inaction by the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees

Section 3 (a) (2), in relation to Rule 8, Section 4(a), of the Revised Rules of the Court of Tax Appeals (RRCTA)[2]. It involves a claim for the

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or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue, where the National Internal Revenue Code provides a specific period for action, in which case the inaction shall be deemed a denial;

x x x x x x

[2] Rule 4. Sec. 3. *Cases within the jurisdiction of the Court in Division.* – The Court in Division shall exercise:

(a) Exclusive original over or appellate jurisdiction to review by appeal the following:

x x x x x x

(2) Inaction by the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue, where the National Internal Revenue Code or other applicable law provides a specific period for action: *Provided,* that in case of disputed assessments, the inaction of the Commissioner of Internal Revenue within the one hundred eighty day-period under Section 228 of the National Internal Revenue Code shall be deemed a denial for purposes of allowing the taxpayer to appeal his case to the Court and does not necessarily constitute a formal decision of the Commissioner of Internal Revenue on the tax case; P*rovided, further,* that should the taxpayer opt to await the final decision of the Commissioner of Internal Revenue on the disputed assessments beyond the one hundred eighty day-period abovementioned, the taxpayer may appeal such final decision to the Court under Section 3(a), Rule 8 of these Rules; and *Provided, still further,* that in the case of claims for refund of taxes erroneously or illegally collected, the taxpayer must file a petition for review with the Court prior to the expiration of the two-year period under Section 229 of the National Internal Revenue Code;

x x x x x x

Rule 8. Sec. 4. *Where to appeal; mode of appeal.* –

(a) An Appeal from a decision or ruling or the inaction of the Commissioner of Internal Revenue on disputed assessments or claim for refund of internal revenue taxes erroneously or illegally collected; the decision or ruling of the Commissioner of Customs, the Secretary of Finance, the Secretary of Trade & Industry, the Secretary of Agriculture, and the Regional Trial Court in the exercise of their original jurisdiction, shall be taken to the Court by filing before it a petition for review as provided in Rule 42 of the Rules of Court. The Court in Division shall act on the appeal.

refund of the amount of P9,176,116.69, allegedly representing excess/unutilized creditable withholding taxes for the calendar year 2006.

Petitioner Philam Properties Corporation is a corporation duly organized and existing under and by virtue of the laws of the Philippines, with principal office at 5th Floor Philamlife Bldg., 126 L.P. Leviste St., Salcedo Village, Makati City.

Respondent is the Commissioner of the Bureau of Internal Revenue (BIR) who was duly appointed and empowered to perform the duties of her office, including the duty to act and approve claims for refund or tax credit as provided by law. She holds office at the BIR National Office Building, Diliman, Quezon City.

On April 16, 2007, petitioner filed with the Bureau of Internal Revenue its Annual Income Tax Return for the calendar year 2006. The said return indicated that petitioner declared a net loss in the amount of P3,300,336.00 and a Minimum Corporate Income Tax (MCIT) due in the amount of P981,659.12. Petitioner also had total tax credits in the amount of P34,739,282.96, consisting of prior years excess credits in the amount of P25,550,663.00 and creditable tax withheld for the year in the amounts of P7,087,172.37 and P2,101,447.59, respectively.

After deducting the MCIT liability in the amount of P981,659.12, petitioner indicated an overpayment in the amount of P33,757,623.84. Petitioner opted to be issued a tax credit certificate.

On April 8, 2009, petitioner filed an administrative claim with the BIR Revenue District Office No. 50 for the issuance of a tax credit certificate for excess/unutilized creditable taxes withheld for the taxable year 2006 amounting to P9,176,116.69.

On April 14, 2009, petitioner filed the instant Petition for Review before this Court in order to preserve its right to claim for refund of its excess or unutilized creditable withholding tax for the calendar year 2006 in the amount of P9,176,116.69.

Respondent, in her Answer filed on May 8, 2009, interposed the following Special and Affirmative Defenses:

> "4. Granting arguendo that Petitioner filed a claim for refund, the same is subject to investigation by the Bureau of Internal Revenue.
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> 5. Petitioner failed to demonstrate that the alleged tax sought for refund or tax credit has been [or, sic] erroneously or illegally collected in violation of the tax laws relied upon by the petitioner.
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> 6. It is incumbent upon the petitioner to prove by substantial and credible evidence that it is entitled for a refund or for issuance of Tax Credit Certificate.
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> 7. Well-settled is the rule that the interpretation placed upon a statute by executive officers, whose duty is to enforce it, is entitled to great respect by the courts. Nevertheless, such interpretation is not conclusive and will be ignored if judicially found to be erroneous. Thus, the courts will not countenance

administrative issuances and rulings that override, instead of remaining consistent and in harmony with the law which they seek to apply and implement (Philippine Bank of Communications v. Commissioner of Internal Revenue, G.R. No. 112024, 302 SCRA 241, January 28, 1999).

8. Taxes paid and collected are presumed to be made in accordance with the laws and regulations, hence, not creditable or refundable.

9. It is incumbent upon the Petitioner to show that it has complied with the provision of Sections 108 and 112 in relation to Section 229 of the 1997 Tax Code, as amended.

10. In an action for tax credit or refund, the burden is upon the taxpayer to prove that he is entitled thereto, and failure to discharge the said burden is fatal to the claim (Emmanuel & Zenaida Aguilar v. Commissioner, CA-GR No. Sp. 16432, March 30, 1990 cited in Aban, Law of Basic Taxation in the Philippines, 1st Edition, p. 206).

11. Claims for refund are construed strictly against the claimant, the same partake the nature of exemption from taxation (Commissioner of Internal Revenue vs. Ledesma, 31 SCRA 95) and, as such, they are looked upon with disfavor (Western Minolco Corp. vs. Commissioner of Internal Revenue, 124 SCRA 121)."

During trial, petitioner presented as witnesses, namely: Mary Jane C. Baysic and Atty. Fredieric B. Landicho.

On August 20, 2010, petitioner filed its Formal Offer of Evidence without respondent's comment. This Court in its Resolution dated October 26, 2010 admitted Exhibits "A" to "HH-14", and thereafter, petitioner was deemed to have formally rested its case.

The documentary evidence formally offered and admitted are as follows:

Exhibits	Description
A	Certificate of Filing of Amended Articles of Incorporation issued by the Securities and

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	Exchange Commission under COMPANY REG NO. AS095-12730 to PHILAM PROPERTIES CORPORATION together with the Amended Articles of Incorporation consisting of 10 pages inclusive of the SEC Certificate
A-1	Primary Purpose of Petitioner
B	Corporate annual income tax return of PPC for CY 2006 consisting of the return which was e-filed as indicated in the upper right portion where the reference no. and the date and time of filing are indicated as well as the copy of the duly signed corporate annual income tax return which was manually filed with the BIR, inclusive of all attachments
B-1	Stamped Received by the BIR dated April 16, 2007
B-2	No. 7 of the Notes to Financial Statements, p. 16, captioned as "Other Current Assets"
B-3	Signature of Mr. Luis Enrique Mangosing
C	Tentative Corporate Annual Income Tax return of PPC for CY 2007 inclusive of all attachments duly filed with the BIR
C-1	Signature of Mr[s, sic]. Luis Enrique Mangosing
D	Amended Corporate Annual Income Tax Return of Petitioner for CY 2007 consisting of the copy which was filed through e-filing as indicated in the upper right portion where the Reference No. and date and time file are indicated as well as the copy of the corporate annual income tax return which was duly signed and physically transmitted to the BIR Office, inclusive of all attachments
D-1	Stamped Received dated April 29, 2008
D-2	Signature of Mr. Luis Enrique Mangosing
D-3	Item 28A of Petitioner's Amended Corporate Annual Income Tax Return labelled as "Prior years' excess tax credits other than MCIT" in the amount of ₱24,569,004
E	Summary of Petitioner's Creditable Withholding Taxes for CY 2006

E-1	Signature of Ms. Mary Jane Baysic and Ms. J. Martinez, Finance Mgr and VP for Finance and Controller, respectively of Petitioner
F	Application for Tax Credit/Refund together with the letter claim for refund and the summary of creditable taxes withheld for CY 2006 filed by Petitioner with the BIR
F-1	Stamp Received by the BIR dated April 8, 2009
F-2	Signature of Mr. Luis Enrique Mangosing
G	Letter of Authority dated July 28, 2009 issued by the BIR to Petitioner
I	First Quarterly Income Tax Return of Petitioner for CY 2006
J	Second Quarterly Income Tax Return of Petitioner for CY 2006
K	Third Quarterly Income Tax Return of Petitioner for CY 2006
L	Schedule of Reconciliation Income per ITR and per CWT for the year 2006 of Petitioner
N	Report on the results of audit procedures performed by the audit firm of Manabat Delgado Amper & Co. dated March 5, 2010 with respect to Petitioner's judicial claim for refund of its excess/unutilized tax credits for CY 2006
N-1	Signature of Fredieric Landicho
O to O-505	Summary of creditable withholding taxes from tenants/clients with valid support and recorded in the books for the year 2006
P to P-12	Summary of creditable withholdings taxes with photocopies of original CWTs, official receipts with related income not recorded in 2006 books
Q to Q-10	Summary of creditable withholding taxes w/photocopies of original CWTs official receipts not provided with related income not recorded in CY2006 books
R to R-36	Summary of creditable withholdings taxes with photocopies of original CWT, official receipts not

	provided with related income recorded in 2006 books
S TO S-1	Summary of creditable withholding taxes with photocopies of original CWTs with related income recorded in 2006 books w/ official receipt dated 2005
T to T-85	Summary of creditable withholding taxes w/ photocopies of original CWTs with related income recorded in 2006 books partly valid and partly with exceptions
U	Supplemental Report on the results of audit procedures performed by the audit firm of Manabat Delgado Amper & Co. dated April 22, 2010 with respect to Petitioner's judicial claim for refund of its excess/unutilized creditable taxes for CY 2006
U-1	Signature of Fredieric Landicho
V to V-624	Summary of creditable withholding taxes with original CWTs, official receipts and with related income recorded in CY 2006 books
W to W-6	Summary of creditable withholding tax (BIR Form 2307) from tenants/clients related income not traced in the 2006 books and official receipt not provided
X to X-49	Summary of creditable withholding tax (BIR Form 2307) from tenants/clients corresponding income partly not traced in the 2008 books and OR dated 2007
Y to Y-2	Summary of creditable withholding tax (BIR Form 2307) from tenants/clients for the year 2006
Z to Z-8	Summary of creditable withholding tax (BIR Form 2307) from tenants/clients w/ valid support and recorded in the books for year 2006
AA to AA-7	Summary of creditable withholding tax (BIR Form 2307) from tenants/clients with official receipt not dated in 2006
BB to BB-70	Summary of creditable withholding tax (BIR Form 2307) from tenants/clients with valid support and recorded in the books for the year 2006

CC to CC-2	Summary of creditable withholding tax (BIR Form 2307) from tenants/clients revenue reported in 2005 and supported by OR for the year 2006
DD to DD-8	Summary of creditable withholding tax (BIR Form 2307) from tenants/clients with official receipt not dated in 2006 for the year 2006
EE to EE-5	Summary of creditable withholding tax (BIR Form 2307) from tenants/clients corresponding to income partly not traced in the 2006 books and one official receipt dated 2005
FF to FF-55	Summary of creditable withholding tax (BIR Form 2307) from tenants/clients with valid support and recorded in the books for the year 2006
GG to GG-14	Summary of creditable withholding tax (BIR Form 2307) from tenants/clients revenues reported in 2005 and supported by official receipt
HH to HH-14	Summary of creditable withholding tax (BIR Form 2307) from tenants/clients OR not dated 2006

Initial presentation of respondent's evidence was set on November 17, 2010, January 17, 2011, February 16, 2011 and March 16, 2011. On the last date, March 16, 2011, respondent's counsel manifested that upon verification with the Revenue District Office No. 50 where petitioner's administrative claim for refund is filed, there is still no final report on the said claim, hence, he is submitting the case for decision.

On June 1, 2011, the case was deemed submitted for decision, considering petitioner's Memorandum and the report of this Court's Records Division that respondent did not file her Memorandum.

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

> Whether or not petitioner is entitled to the tax credit/refund of its purported excess/unutilized creditable withholding taxes amounting to P9,188,619.96 under Section 229 and 76 of the National Internal Revenue Code, as amended; and
>
> Whether or not petitioner's claim for refund/issuance of tax credit certificate for its alleged excess/unutilized creditable withholding taxes for taxable year 2006 is fully substantiated by documentary evidence.

The principal issue is whether petitioner is entitled to a refund or an issuance of a tax credit certificate for its alleged unutilized creditable withholding taxes for the calendar year 2006 upon substantiated documentary evidence.

Petitioner anchors its claim on Section 76, in relation to Sections 204(C) and 229 of the National Internal Revenue Code (NIRC) of 1997, which are quoted hereunder for easy reference:

> "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.**" *(Emphasis supplied)*

"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." *(Emphasis supplied)*

"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." *(Emphasis supplied)*

Based on the above-quoted provisions, if a corporate taxpayer has excess tax credits or overpaid income tax in a given taxable year, the same may either be refunded in the form of cash or a tax credit certificate, or carried over/applied to the succeeding taxable years until fully utilized. However, once the carry-over option is taken actually or constructively, it becomes irrevocable for that taxable period.

In exercising its option, the corporation must signify in its Annual Income Tax 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. To facilitate tax collection, these remedies are in the alternative and the choice of one precludes the other.

Should the taxpayer choose to be refunded of the excess tax credits, it must satisfy the following requirements:

1. That the claim for refund was 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. That the fact of withholding is 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. That the income upon which the taxes were withheld were included in the return of the recipient.

In the instant case, petitioner chose "To be issued a Tax Credit Certificate" by marking the box corresponding to the said choice in its 2006 Annual Income Tax Return.

Records disclose that petitioner filed its Annual Income Tax Return for 2006 on April 16, 2007. Thus, petitioner had until April 16, 2009 within which to file a claim for refund for the taxable year 2006, both in the administrative and judicial levels. Clearly, petitioner's application for refund filed with the BIR on April 8, 2009 and the subsequent appeal via a Petition for Review filed before this Court on April 14, 2009 are well within the two-year prescriptive period.

Nevertheless, petitioner's claim must be denied.

The pieces of evidence show that petitioner failed to prove that the income, related to the excess creditable withholding taxes, was reported in petitioner's return.

Petitioner's Annual Income Tax Return for the taxable year 2006 shows that the excess credits as of December 31, 2006 in the amount of P33,757,623.84 consisted of the balance of the prior year's (2005) excess credits in the amount of P24,569,003.88 and creditable taxes withheld during the year (2006) in the amount of P9,188,619.96, as shown below:

Gross Income		P 49,082,956.00
Less:	Deductions	52,383,292.00
Taxable Income		P (3,300,336.00)
Minimum Corporate Income Tax (MCIT) Due		P 981,659.12
Less:	Prior Year's Excess Credits	25,550,663.00
Balance of Prior Year's Excess Credits		P 24,569,003.88
Add:	Creditable Taxes Withheld for the year 2006	9,188,619.96
Total Excess Tax Credits as of December 31, 2006		**P 33,757,623.84**

Petitioner presented its tentative and amended Annual Income Tax Returns for the taxable year 2007, which showed that the amount of P24,569,004.00, reflected as "Prior Year's Excess Credits", pertains to its excess tax credits as of December 31, 2005.

But petitioner failed to establish the existence of its prior year's excess credits in the amount of P25,550,663.00, from which the amount of MCIT due for 2006 was applied or credited. Petitioner should prove that indeed it had enough prior year's excess credits to cover its MCIT liability; otherwise, the said MCIT liability shall be deducted from petitioner's 2006 creditable withholding taxes. Petitioner should have submitted the Certificates of Creditable Taxes Withheld at Source and the Annual Income Tax Returns for prior years.

Anent the requisite that the income related to the claimed creditable withholding taxes must be reported in petitioner's income tax return, an examination of the Summary of Creditable Withholding Taxes for 2006, the Certificates of Creditable Tax Withheld at Source (BIR

Forms No. 2307), and the report of the Court-commissioned Independent Certified Public Accountant (CPA) shows that petitioner failed to satisfy said requirement.

Petitioner was able to substantiate with Certificates of Creditable Tax Withheld at Source its claimed creditable withholding taxes for the year 2006 in the amount of P9,176,116.69, detailed as follows:

Exhibit	Payor/Withholding Agent	Income Payment	Income Tax Withheld
	Payments Made by Top 10,000 Corporations on their local supplier of services		
V1	Bank of China Manila Branch	6,077.53	303.88
V3	Bank of China Manila Branch	6,077.53	303.88
V108	Bank of China Manila Branch	5,788.13	289.41
V110	Bank of China Manila Branch	6,077.53	303.88
V112	Bank of China Manila Branch	6,077.53	303.88
V114	Bank of China Manila Branch	6,077.53	303.88
V156	Merck Sharp and Dohme Philippines	10,500.00	525.33
V158	Merck Sharp and Dohme Philippines	10,500.00	525.67
V258	Bank of China Manila Branch	6,077.53	303.88
V260	Bank of China Manila Branch	6,077.53	303.88
V262	Bank of China Manila Branch	6,077.53	303.88
V299	Merck Sharp and Dohme Philippines	10,500.00	525.67
V404	Bank of China Manila Branch	6,077.53	303.88
V406	Bank of China Manila Branch	6,077.53	303.88
V464	Merck Sharp and Dohme Philippines	10,500.00	525.67
V466	Merck Sharp and Dohme Philippines	10,500.00	525.67
V468	Merck Sharp and Dohme Philippines	10,500.00	525.67
V510	Philam Care Health System Inc.	46,363.64	4,636.36
	Subtotal	175,927.07	11,118.25
	Rental Payments		
V5	BMW Philippines Corp.	8,500.00	425.00

V7	BMW Philippines Corp.	8,500.00	425.00
V9	BNP Paribas Peregrine Securities Inc.	9,750.00	487.50
V13	Isla Lipana & Co.	119,850.00	5,992.50
V17	JP Morgan Chase Bank	24,000.00	1,200.00
V22	JP Morgan Chase Bank	4,000.00	200.00
V24	KBC Bank NV	26,700.00	1,335.00
V28	MD International Limited	205,615.00	10,280.75
V30	MD International Limited	205,945.75	10,297.29
V32	MD International Limited	205,945.75	10,297.29
V34	Merck Sharp and Dohme Philippines	10,500.00	525.67
V36	Merck Sharp and Dohme Philippines	10,500.00	525.67
V38	Misys Int'l Banking Systems Inc.	7,293.04	364.65
V40	Misys Int'l Banking Systems Inc.	7,293.04	364.65
V42	Misys Int'l Banking Systems Inc.	4,750.00	237.50
V44	Misys Int'l Banking Systems Inc.	4,750.00	237.50
V46	Misys Int'l Banking Systems Inc.	4,750.00	237.50
V48	Misys Int'l Banking Systems Inc.	6,000.00	300.00
V51	Navitaire International Inc.	10,422.74	521.14
V53	Navitaire International Inc.	10,422.73	521.14
V55	Navitaire International Inc.	10,422.73	521.14
V57	Ogilvy and Mather (Phils.) Inc.	1,350.00	67.50
V59	Ogilvy and Mather (Phils.) Inc.	1,350.00	67.50
V62	Ogilvy and Mather (Phils.) Inc.	1,350.00	67.50
V83	Regus Centers Inc.	465,353.00	23,267.65
V86	Regus Centers Inc.	465,353.00	23,267.65
V89	Regus Centers Inc.	465,353.00	23,267.65
V97	Sun Microsystem Phils. Inc.	7,293.04	364.55
V101	Tower Club Inc.	1,439,432.52	71,971.62
V103	Union Bank of California N.A.	1,800.00	90.00
V116	BMW Philippines Corp.	8,500.00	425.00
V118	BMW Philippines Corp.	8,500.00	425.00
V120	BMW Philippines Corp.	8,500.00	425.00
V122	BNP Paribas Peregrine Securities Inc.	9,750.00	487.50

V126	General Mills Foods Inc.	24,521.22	1,226.06
V133	General Mills Foods Inc.	27,750.00	1,387.50
V140	Isla Lipana & Co.	119,850.00	5,992.50
V144	JP Morgan Chase Bank	8,000.00	400.00
V146	KBC Bank NV	10,700.00	535.00
V150	MD International Limited	205,945.75	10,297.29
V152	MD International Limited	205,945.75	10,297.29
V154	MD International Limited	205,945.75	10,297.29
V160	Misys Int'l Banking Systems Inc.	6,000.00	300.00
V162	Misys Int'l Banking Systems Inc.	4,750.00	237.50
V164	Misys Int'l Banking Systems Inc.	6,000.00	300.00
V166	Navitaire International Inc.	10,422.80	521.14
V168	Navitaire International Inc.	10,422.73	521.14
V170	Navitaire International Inc.	10,422.73	521.14
V172	Ogilvy and Mather (Phils.) Inc.	1,350.00	67.50
V201	Philamlife Tower Condo Corporation	255,424.80	12,771.24
V206	Philamlife Tower Condo Corporation	304,805.20	15,240.26
V210	Philamlife Tower Condo Corporation	233,381.00	11,669.05
V214	Philamlife Tower Condo Corporation	228,885.00	11,444.25
V240	Regus Centers Inc.	465,353.00	23,267.65
V243	Regus Centers Inc.	465,353.00	23,267.65
V246	Regus Centers Inc.	465,353.00	23,267.65
V249	Sun Microsystem Phils. Inc.	7,657.69	382.88
V252	Sun Microsystem Phils. Inc.	7,657.69	382.88
V254	Sun Microsystem Phils. Inc.	7,657.60	382.88
V256	Tower Club Inc.	719,716.25	35,985.81
V264	BMW Philippines Corp.	8,500.00	425.00
V266	BMW Philippines Corp.	8,500.00	425.00
V268	BMW Philippines Corp.	8,500.00	425.00
V270	BNP Paribas Peregrine Securities Inc.	9,750.00	487.50
V276	General Mills Foods Inc.	27,750.00	1,387.50
V283	General Motors Automobiles Philippines	4,000.00	200.00
V285	JP Morgan Chase Bank	8,000.00	400.00

V287	JP Morgan Chase Bank	8,000.00	400.00
V289	JP Morgan Chase Bank	8,000.00	400.00
V293	MD International Limited	205,945.80	10,297.29
V295	MD International Limited	205,945.80	10,297.29
V297	MD International Limited	205,945.75	10,297.29
V301	Merck Sharp and Dohme Philippines	10,500.00	525.67
V303	Merck Sharp and Dohme Philippines	10,500.00	525.67
V306	Misys Int'l Banking Systems Inc.	6,000.00	300.00
V308	Misys Int'l Banking Systems Inc.	4,750.00	237.50
V310	Misys Int'l Banking Systems Inc.	6,000.00	300.00
V312	Misys Int'l Banking Systems Inc.	6,000.00	300.00
V314	Misys Int'l Banking Systems Inc.	4,750.00	237.50
V316	Misys Int'l Banking Systems Inc.	4,750.00	237.50
V318	Multimedia Telephony Inc.	30,000.00	1,500.00
V322	Navitaire International Inc.	10,422.73	521.14
V324	Navitaire International Inc.	10,422.73	521.14
V326	Navitaire International Inc.	10,422.73	521.14
V328	Ogilvy and Mather (Phils.) Inc.	900.00	45.00
V330	Ogilvy and Mather (Phils.) Inc.	900.00	45.00
V332	Ogilvy and Mather (Phils.) Inc.	900.00	45.00
V342	Philamlife Tower Condo Corporation	180,465.00	9,023.25
V345	Philamlife Tower Condo Corporation	180,465.00	9,023.25
V362	Philamlife Tower Condo Corporation	347,551.00	17,377.55
V380	Regus Centers Inc.	9,894,960.00	494,748.00
V382	Regus Centers Inc.	465,353.00	23,267.65
V385	Sun Microsystem Phils. Inc.	7,657.69	382.88
V387	Sun Microsystem Phils. Inc.	7,657.60	382.88
V397	Tower Club Inc.	719,716.27	35,985.81
V399	Tower Club Inc.	2,878,864.80	143,943.24
V402	Tower Club Inc.	720,127.97	36,006.40
V408	BMW Philippines Corp.	8,500.00	425.00
V410	BMW Philippines Corp.	8,500.00	425.00
V412	BMW Philippines Corp.	8,500.00	425.00

V414	BNP Paribas Peregrine Securities Inc.	10,581.00	529.05
V418	Digital Telecommunications Phils. Inc.	66,550.00	3,327.50
V421	Digital Telecommunications Phils. Inc.	99,825.00	4,991.25
V425	Digital Telecommunications Phils. Inc.	103,152.50	5,157.63
V429	Digital Telecommunications Phils. Inc.	146,410.00	7,320.52
V434	General Mills Foods Inc.	27,750.00	1,387.50
V441	General Motors Automobiles Philippines	4,000.00	200.00
V443	General Motors Automobiles Philippines	4,000.00	200.00
V445	General Motors Automobiles Philippines	4,000.00	200.00
V447	General Motors Automobiles Philippines	4,000.00	200.00
V449	JP Morgan Chase Bank	6,000.00	300.00
V451	JP Morgan Chase Bank	6,000.00	300.00
V452	JP Morgan Chase Bank	6,000.00	300.00
V458	MD International Limited	205,945.80	10,297.29
V460	MD International Limited	205,945.75	10,297.29
V462	MD International Limited	205,945.75	10,297.29
V470	Misys Int'l Banking Systems Inc.	6,000.00	300.00
V472	Misys Int'l Banking Systems Inc.	4,750.00	237.50
V474	Misys Int'l Banking Systems Inc.	6,300.00	315.00
V476	Misys Int'l Banking Systems Inc.	4,750.00	237.50
V478	Misys Int'l Banking Systems Inc.	6,300.00	315.00
V480	Misys Int'l Banking Systems Inc.	4,750.00	237.50
V482	Multimedia Telephony Inc.	90,000.00	4,500.00
V486	Multimedia Telephony Inc.	30,000.00	1,500.00
V488	Multimedia Telephony Inc.	30,000.00	1,500.00
V491	Navitaire International Inc.	10,787.38	539.37
V493	Navitaire International Inc.	10,422.73	521.14
V495	Nokia Philippines Inc.	149,242.66	7,462.13
V500	Nokia Philippines Inc.	91,200.00	4,560.00
V504	Ogilvy and Mather (Phils.) Inc.	900.00	45.00
V506	Ogilvy and Mather (Phils.) Inc.	900.00	45.00
V536	Philamlife Tower Condo Corporation	301,670.20	15,083.51
V550	Regus Centers Inc.	465,353.04	23,267.65

V553	Regus Centers Inc.	448,440.00	22,422.00
V556	Sun Microsystem Phils. Inc.	7,657.69	382.88
V558	Sun Microsystem Phils. Inc.	7,657.60	382.88
V560	Sun Microsystem Phils. Inc.	15,315.38	765.77
V619	Tower Club Inc.	720,992.54	36,049.63
V621	Tower Club Inc.	719,792.54	35,989.63
GG9	Tower Club Inc.	694,190.64	34,709.53
W4	Tower Club Inc.	719,792.54	35,989.63
W5	Tower Club Inc.	719,792.54	35,989.63
W6	Peoplesupport (Phils.) Inc.	389,864.00	19,493.18
HH1	Merck Sharp and Dohme Philippines	10,500.00	525.53
HH12	Philamlife Tower Condo Corporation	66,134.60	3,306.73
X14	Philamlife Tower Management Corporation	302,655.80	15,132.79
X18	Philamlife Tower Management Corporation	431,001.20	21,550.06
X35	Nokia Philippines Inc.	136,200.00	6,810.00
X39	Nokia Philippines Inc.	91,800.00	4,590.00
X44	Philamlife Tower Condominium Corporation	448,135.80	22,406.79
	Subtotal	32,312,794.85	1,615,642.88
	Professional Fees		
V65	Perf Realty Corporation	18,409.09	2,761.36
V67	Philam Asset Management, Inc.	30,000.00	4,500.00
V76	Philam Plans Inc.	260,000.00	39,000.00
V78	Philam Plans Inc.	130,000.00	19,500.00
V80	Philam Plans Inc.	14,722.07	2,208.31
V95	Social Security System	582,320.00	87,348.00
V176	Philam Plans Inc.	59,874.76	8,981.21
V178	Philamlife Tower Condo Corporation	202,045.80	30,306.67
V180	Philamlife Tower Condo Corporation	335,545.80	50,331.87
V183	Philamlife Tower Condo Corporation	226,770.27	34,015.54
V187	Philamlife Tower Condo Corporation	265,745.80	39,861.87
V190	Philamlife Tower Condo Corporation	225,739.13	33,860.87
V196	Philamlife Tower Condo Corporation	3,500.00	700.00
V228	Philamlife Tower Condo Corporation	1,270,155.53	190,523.33

V230	Philamlife Tower Condo Corporation	1,065,679.73	159,851.96
V232	Philamlife Tower Condo Corporation	562,364.93	84,354.74
V237	Philamlife Tower Condo Corporation	624,468.73	93,670.31
V274	Citibank Savings Inc.	12,547.00	1,882.05
V291	Kapatiran Realty Corporation	125,250.00	18,787.50
V334	Perf Realty Corporation	167,500.00	25,125.00
V336	Philam Plans Inc.	139,750.00	20,962.50
V338	Philam Plans Inc.	279,500.00	41,925.00
V340	Philam Plans Inc.	16,945.19	2,541.78
V348	Philamlife Tower Condo Corporation	211,045.80	31,656.87
V351	Philamlife Tower Condo Corporation	220,458.00	33,006.87
V354	Philamlife Tower Condo Corporation	202,045.80	30,306.87
V356	Philamlife Tower Condo Corporation	3,500.00	700.00
V367	Philamlife Tower Condo Corporation	707,148.87	106,072.33
V369	Philamlife Tower Condo Corporation	2,656,345.27	398,451.79
V389	The Philippine American Life & General Insurance	2,543,623.88	381,543.58
V456	Kapatiran Realty Corporation	146,750.00	22,012.50
V508	Perf Realty Corporation	85,200.00	12,780.00
V515	Philam Plans Inc.	11,096.87	1,664.53
V517	Philam Plans Inc.	390,000.00	58,500.00
V519	Philam Plans Inc.	58,500.00	8,775.00
V521	Philam Plans Inc.	139,750.00	20,962.50
V523	Philam Plans Inc.	59,848.05	8,977.21
V526	Philamlife Tower Condo Corporation	488,268.60	73,240.29
V530	Philamlife Tower Condo Corporation	192,843.80	28,926.57
V533	Philamlife Tower Condo Corporation	218,045.80	32,706.87
V540	Philamlife Tower Condo Corporation	471,505.80	70,725.87
V542	Philamlife Tower Condo Corporation	543,461.80	81,519.27
V544	Philamlife Tower Condo Corporation	2,047,189.20	307,078.38
V562	The Philippine American Life & General Insurance	9,965.48	1,494.82
V564	The Philippine American Life & General Insurance	53,297.94	7,994.69
V566	The Philippine American Life & General Insurance	1,047,475.00	157,121.25
V568	The Philippine American Life & General Insurance	1,047,475.00	157,121.25

V570	The Philippine American Life & General Insurance	12,075.80	1,811.37
V572	The Philippine American Life & General Insurance	9,880.20	1,482.03
V574	The Philippine American Life & General Insurance	261,684.17	39,252.63
V576	The Philippine American Life & General Insurance	261,774.14	39,266.13
V578	The Philippine American Life & General Insurance	17,548.38	2,632.26
V580	The Philippine American Life & General Insurance	19,769.17	2,965.38
V582	The Philippine American Life & General Insurance	16,174.77	2,426.22
V584	The Philippine American Life & General Insurance	10,342.38	1,551.36
V586	The Philippine American Life & General Insurance	15,513.57	2,327.04
V588	The Philippine American Life & General Insurance	11,954.80	1,793.22
V590	The Philippine American Life & General Insurance	9,781.20	1,467.18
V592	The Philippine American Life & General Insurance	90,407.00	13,561.05
V594	The Philippine American Life & General Insurance	114,845.00	17,226.75
V596	The Philippine American Life & General Insurance	21,448.02	3,217.20
V598	The Philippine American Life & General Insurance	68,924.56	10,338.68
V600	The Philippine American Life & General Insurance	13,001.49	1,950.22
V602	The Philippine American Life & General Insurance	12,180.02	1,827.00
V604	The Philippine American Life & General Insurance	444,844.50	66,726.68
V606	The Philippine American Life & General Insurance	23,887.79	3,583.17
V608	The Philippine American Life & General Insurance	8,940,444.33	1,341,066.66
V623	Tower Club Inc.	187,000.00	28,050.00
GG1	Kapatiran Realty Corporation	122,805.00	18,420.75
GG5	Philam Plans Inc.	130,000.00	19,500.00
GG13	Tower Club Inc.	51,051.25	2,552.56
W1	Philam Plans	279,500.00	41,925.00
W2	Philam Plans Inc.	506,750.00	76,012.50
W3	Philamlife Tower Condominium Corp.	3,500.00	700.00
HH3	Philam Plans Inc.	139,750.00	20,962.50
HH5	Philam Plans Inc.	139,750.00	20,962.50
HH7	Philam Plans Inc.	40,418.02	6,062.70
HH16	The Philippine American Life and Gen Insurance Co	801,211.11	120,181.67
HH18	The Philippine American Life and Gen Insurance Co	929,825.65	139,473.85
X1	AIG Business Processing Services, Inc.	238,283.84	35,742.58

X8	Philamlife Tower Management Corporation	1,003,473.67	150,521.05
X6	Philam Insurance Agency and Call Center Serv, Inc.	120,162.92	18,024.44
X26	The Philippine American Life and Gen Insurance Co	10,405,973.25	1,560,896.00
X10	Philamlife Tower Management Corporation	1,899,078.47	284,861.77
X23	Philamlife Tower Management Corporation	1,784,564.67	267,684.70
	Subtotal	**49,332,841.73**	**7,395,345.98**
	Payments Made to Prime Contractors/Sub-contractors		
V71	Philam Care Health System Inc.	92,970.77	13,945.62
V99	Sun Microsystem Phils. Inc.	7,293.04	364.65
V174	Philam Equitable Life Assurance Company Inc.	108,767.78	16,315.17
V193	Philamlife Tower Condo Corporation	391,451.50	7,829.03
V198	Philamlife Tower Condo Corporation	40,249.50	804.99
V218	Philamlife Tower Condo Corporation	62,523.00	1,250.46
V222	Philamlife Tower Condo Corporation	10,081.00	201.62
V225	Philamlife Tower Condo Corporation	3,069.00	61.38
V234	Philamlife Tower Condo Corporation	35,539.00	710.78
V358	Philamlife Tower Condo Corporation	38,555.00	771.10
V360	Philamlife Tower Condo Corporation	46,578.50	931.57
V374	Philamlife Tower Condo Corporation	7,082.00	141.64
V376	Philamlife Tower Condo Corporation	10,134.50	202.69
V378	Philam Tower Realty Corporation	1,824.00	36.48
V548	Philam Tower Realty Corporation	462.00	9.24
GG3	Philam Equitable Life Assurance Company Inc.	24,106.16	3,615.92
GG11	Philam Tower Management Corporation	11,358.50	227.17
	Subtotal	**892,045.25**	**47,419.51**
	Payment Made by the Government to its local supplier of services		
V92	Social Security System	45,753.70	915.07
HH14	Social Security System	542,500.00	81,375.00
	Subtotal	**588,253.70**	**82,290.07**
	Gross commission or service fees		
GG7	Social Security System	243,000.00	24,300.00
	Subtotal	**243,000.00**	**24,300.00**
	TOTAL	83,544,862.60	9,176,116.69

c

The above summary indicates that the claimed creditable withholding taxes of P9,176,116.69 were withheld from the following income payments totaling P83,544,862.60:

		Income Payment	Income Tax Withheld
Sale of Services			
	Payments Made by Top 10,000 Corporations to their local supplier of services	P 175,927.07	P 11,118.25
	Professional Fees	49,332,841.73	7,395,345.98
	Payment Made to Prime Contractors/Sub-Contractors	892,045.25	47,419.51
	Payment Made by the Government to its local supplier of services	588,253.70	82,290.07
	Gross commission or service fees	243,000.00	24,300.00
	Subtotal	P 51,232,067.75	P 7,560,473.81
Rental Income		32,312,794.85	1,615,642.88
Total		P 83,544,862.60	P 9,176,116.69

However, petitioner, in its 2006 Annual Income Tax Return, reflected the amount of P93,212,492.00 as its revenues from sale of services and lease of properties:

Sale of Services	P 52,552,837.00
Lease of Properties	40,659,655.00
Total	P 93,212,492.00

Evidently, there are discrepancies between the income payments shown per certificates *vis-à-vis* the income amounts per petitioner's 2006 Annual Income Tax Return, as shown below:

	Per Certificates	Per Income Tax Return	Discrepancy
Sale of Services	P 51,232,067.75	P 52,552,837.00	P 1,320,769.25
Lease of Properties	32,312,794.85	40,659,655.00	8,346,860.15
Total	P 83,544,862.60	P 93,212,492.00	P 9,667,629.40

The Independent CPA explained that the discrepancies represent certain items such as recovery of condominium dues, payments where taxes were not withheld, accrual of income in the calendar year 2006 but billed in calendar year 2007, timing differences in recording income and certain non-income payments.

Also, the Independent CPA reported that the income related to the claimed creditable withholding taxes of P8,851,978.35 was recorded in petitioner's books. Below is the breakdown of the amount of P8,851,978.35:

a)	Creditable Withholding taxes	
	Supported with Original CWTs, Official Receipts, and	
	with related income recorded in 2006 books [Annex A, Exhibit "U"]	P 6,081,610.16
b)	Creditable Withholding taxes	
	Supported with Original CWTs,	
	Official Receipts dated other than in 2006	
	with related income recorded in 2006 books [Annex M, Exhibit "U"]	392,850.48
e)	Creditable Withholding taxes	
	Supported with Original CWTs with	
	* Valid documentation (supported by Official	
	Receipts and with related income recorded in 2006 books) [Annex C, Exhibit "U"]	796,327.25
	* CWT with exception (Official Receipts provided and	
	with related income recorded in the Books other	
	than in 2006) [Annex C, Exhibit "U"]	1,581,190.46
	Total	P8,851,978.35

However, the Court cannot verify the above report and the explanation of the Independent CPA because petitioner failed to present supporting documents such as, but not limited to, detailed general ledger, sales journal and sales invoices/billing statements for 2006 and prior years, income tax returns and audited financial statements for prior years or any other document whereby the Court can determine if petitioner properly reported the income related to the claimed creditable withholding taxes either in the current or prior years. Petitioner's non-compliance with the third requisite is fatal to its claim.

It bears stressing that a claimant has the burden of proof to establish the factual basis of his or her claim for tax credit or refund. Tax refunds are in the nature of tax exemptions. As such, they are regarded as in derogation of sovereign authority and to be construed *strictissimi juris* against the person or entity claiming the refund.

WHEREFORE, premises considered, petitioner's claim for refund or issuance of a tax credit certificate is hereby **DENIED** due to insufficient evidence.

SO ORDERED.

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

WE CONCUR:

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

CAESAR A. CASANOVA
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.
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's Division.

ERNESTO D. ACOSTA
Presiding Justice