REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

MR. DOMINADOR MENGUITO,
Petitioner,

- versus -

C.T.A. CASE NO. 5886

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
APR 0 2 2002

x - x

DECISION

This is a petition seeking for the cancellation and withdrawal of the deficiency income and percentage tax assessments issued by the Respondent against the Petitioner on September 2, 1997, in the total amount of P34,192,627.38, for the years 1991, 1992 and 1993. Petitioner likewise prays that the Warrant of Distraint and/or Levy dated May 3, 1999 issued to Petitioner be nullified and forthwith withdrawn and cancelled.

The antecedent facts follow.

Petitioner Dominador Menguito is a Filipino citizen, of legal age, married to Jeanne Menguito and is engaged in the restaurant and/or cafeteria business. For the years 1991, 1992 and 1993, its principal place of business was at Gloriamaris, CCP Complex, Pasay City and later transferred to Kalayaan Bar (Copper Kettle Cafeteria Specialist or CKCS), Departure Area, Ninoy Aquino International Airport, Pasay City. During the same years, he also operated a branch at Club John Hay, Baguio City carrying the business name of

Copper Kettle Cafeteria Specialist (Joint Stipulation of Facts and Admissions, p. 133, CTA records).

On May 16, 1994, Letters of Authority Nos. 0392697, 0392698 and 0392699 were issued by the Special Investigation Division, Revenue Region No. 2 of the Bureau of Internal Revenue, Baguio City (BIR Baguio), against Jeanne Menguito of CKCS, authorizing Revenue Intelligence Officer Mr. Peter George Caburao to examine the former's books of accounts and other accounting records for income, business and withholding taxes for the calendar years 1991, 1992 and 1993 (pp. 012-014, BIR records).

On November 11, 1994, Letter of Authority No. 30623 was issued by RDO No. 51, Pasay City, Revenue Region No. 8, Makati (BIR Pasay), this time against Petitioner Dominador Menguito addressed at c/o CCP Complex, Pasay City, authorizing Revenue Officer Manuel Tiuseco of RDO No. 51, Pasay City to examine Petitioner's books of accounts and other accounting records for all internal revenue taxes for the period from January 1, 1993 to December 31, 1993 (Annex A, Petition for Review).

The investigation conducted pursuant to Letters of Authority Nos. 0392697, 0392698 and 0392699 disclosed the following deficiency taxes, inclusive of surcharges, interest and compromise penalty, which were paid on February 8, 1995:

Exhibit	*ATAP No.*			
4	597528	1991	Deficiency Income Tax	P 14,167.43
4-a	597529	1992	Deficiency Income Tax	83,008.34
4-d	597531	1993	Deficiency Income Tax	138,382.35
4-c	597530	1992	Deficiency Business Tax	17,185.04
4-b	597532	1993	Deficiency Business Tax	387,210.21
				P639,953.37

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On the other hand, as a result of the investigation conducted pursuant to Letter of Authority No. 30623, Petitioner was made to pay and did pay on June 23, 1995, its 1993 deficiency percentage and income taxes, in the amounts of P115,627.99 and P35,919.15, respectively, inclusive of 25% surcharge, interest and compromise penalty (Annexes B and C, Petition for Review). On the same day, Revenue District Officer Edmundo A. Vasquez issued a certification to the effect that the books of accounts and other pertinent documents of Petitioner have already been examined for the taxable year 1993 under Letter of Authority No. 30623 (Annex D, Petition for Review). Prior thereto, or on October 17, 1994, the same Revenue District Officer issued a similar certification but covering the taxable year 1992 and prior years (Anne E, Petition for Review), by virtue of which Petitioner paid the amount of P5,000.00 as compromise penalty for late registration of books of accounts (Annex F, Petition for Review).

Subsequently, BIR Baguio received information that Petitioner has undeclared income from Texas Instruments and Club John Hay, prompting the BIR to conduct another investigation. Through a letter dated July 28, 1997, Spouses Dominador and Jeanne Menguito (Spouses Menguito) were informed by the Assessment Division of the said office that they have underdeclared sales totaling P48,721,555.96 (Exhibit 11, p. 83, BIR records). This was followed by a Preliminary Ten (10) Day Letter dated August 11, 1997, informing Petitioner that in the investigation of his 1991, 1992 and 1993 income, business and withholding tax case, it was found out that there is still due from him the total sum of P34,193,041.55 as deficiency income and percentage tax.

On September 2, 1997, the assessment notices subject of the instant petition were issued. These were protested by Ms. Jeanne Menguito, through a letter dated September 28, 1997 (Exhibit 14, p. 112, BIR Records), on the ground that the 40% deduction allowed on their computed gross revenue, is unrealistic. Ms. Menguito requested for a period of thirty (30) days within which to coordinate with the BIR regarding the contested assessment.

On October 10, 1997, BIR Baguio replied, informing the Spouses Menguito that the source of assessment was not through the disallowance of claimed expenses but on data received from Club John Hay and Texas Instruments Phils., Inc. Said letter gave the spouses ten (10) days to present evidence (Exhibit 15, p. 110, BIR Records).

In an effort to clear an alleged confusion regarding Copper Kettle Cafeteria Specialist (CKCS) being a sole proprietorship owned by the Spouses Menguito, and Copper Kettle Catering Services, Inc. (CKCS, Inc.) being a corporation with whom Texas Instruments and Club John Hay entered into a contract, Petitioner submitted to BIR Baguio a photocopy of the SEC Registration of Copper Kettle Catering Services, Inc. on March 23, 1999 (pp. 134-141, BIR Records).

On April 12, 1999, BIR Baguio wrote a letter to Spouses Menguito, informing the latter that a reinvestigation or reconsideration cannot be given due course by the mere submission of an uncertified photocopy of the Certificate of Incorporation. Thus, it avers that the amendment issued is still valid and enforceable.

On May 26, 1999, Petitioner filed the present case, praying for the cancellation and withdrawal of the deficiency income tax and percentage tax assessments on account of

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prescription, whimsical factual findings, violation of procedural due process on the issuance of assessment notices, erroneous address of notices and multiple credit/investigation by the Respondent of Petitioner's books of accounts and other related records for the same tax year.

Instead of filing an Answer, Respondent moved to dismiss the instant petition on July 1, 1999, on the ground of lack of jurisdiction. According to Respondent, the assessment had long become final and executory when Petitioner failed to comply with the letter dated October 10, 1997.

Petitioner opposed said motion on July 21, 1999, claiming that the final decision on Petitioner's protest is the April 12, 1999 letter of the Baguio Regional Office; therefore, the filing of the action within thirty (30) days from receipt of the said letter was seasonably filed. Moreover, Petitioner asserted that granting that the April 12, 1999 letter in question could not be construed to mean as a denial or final decision of the protest, still Petitioner's appeal was timely filed since Respondent issued a Warrant of Distraint and/or Levy against the Petitioner on May 3, 1999, which warrant constituted a final decision of the Respondent on the protest of the taxpayer.

On September 3, 1999, this Court denied Respondent's "Motion to Dismiss" for lack of merit.

Respondent filed his Answer on September 24, 1999, raising the following Special and Affirmative Defenses:

> "5. Investigation disclosed that for taxable years 1991, 1992 and 1993, petitioner filed false or fraudulent income and percentage tax returns with intent to evade tax by underdeclaring his sales.

6. The alleged duplication of investigation of petitioner by the BIR Regional Office in Baguio City and by the Revenue District Office in Pasay City is justified by the finding of fraud on the part of the petitioner, which is an exception to the provision in the Tax Code that the examination and inspection of books and records shall be made only once in a taxable year (Section 235, Tax Code). At any rate, petitioner, in a letter dated July 18, 1994, waived his right to the consolidation of said investigation.

7. The aforementioned falsity or fraud was discovered on August 5, 1997. The assessments were issued on September 2, 1997, or within ten (10) years from the discovery of such falsity or fraud (Section 223, Tax Code). Hence, the assessments have not prescribed.

8. Petitioner's allegation that the assessments were not properly addressed is rendered moot and academic by his acknowledgment in his protest letter dated September 28, 1997 that he received the assessments.

9. Respondent complied with the provisions of Revenue Regulations No. 12-85 by informing petitioner of the findings of the investigation in letters dated July 28, 1997 and August 11, 1997 prior to the issuance of the assessments.

10. Petitioner did not allege in his administrative protest that there was a duplication of investigation, that the assessments have prescribed, that they were not properly addressed, or that the provisions of Revenue Regulations No. 12-85 were not observed. Not having raised them in the administrative level, petitioner cannot raise the same for the first time on appeal (Aguinaldo Industries Corp. vs. Commissioner of Internal Revenue, 112 SCRA 136).

11. The assessments were issued in accordance with law and regulations.

12. All presumptions are in favor of the correctness of tax assessments (CIR vs. Construction Resources of Asia, Inc., 145 SCRA 67), and the burden to prove otherwise is upon petitioner."

The issues we are tasked to resolve have been stipulated by the parties to be as follows:

1. Whether Petitioner was issued a post-reporting notice.
2. Whether the issuance of Letters of Authority (LA) for 1991, 1992 and 1993 by BIR Baguio was valid.
3. Whether the assessment notices were issued beyond the prescriptive period.
4. Whether Respondent accorded Petitioner procedural due process.
5. Whether Petitioner is liable for the amount of P34,192,627.38 as deficiency income and percentage taxes for 1991, 1992 and 1993 tax years.
6. Whether or not the issues that there was a duplication of investigation, that the assessments have prescribed, that they were not properly addressed, and that the provisions of Revenue Regulations No. 12-85 were not observed, may be raised for the first time on appeal.
7. Whether the third party information submitted to the Assessment Division relative to the sales/revenues of Copper Kettle Catering Services, Inc. can be considered as sales of Petitioner.

After an exhaustive and painstaking scrutiny of the evidence presented by the parties, we rule in favor of the Respondent.

Since the first and fourth issues are interrelated, the same shall be discussed jointly.

BIR records show that on July 28, 1997, a letter was issued by BIR Baguio to Spouses Menguito, informing the latter of their supposed underdeclaration of sales totaling P48,721,555.96 and giving them 5 days to communicate any objection to the results of the investigation (Exhibit 11, p. 83, BIR Records). Records likewise reveal the issuance of a Preliminary Ten (10) Day Letter on August 11, 1997, informing

Petitioner that the sum of P34,193,041.55 is due from him as deficiency income and percentage tax (Exhibit 13, p. 173, BIR Records). Said letter gave the Petitioner a period of ten (10) days to submit his objection to the proposed assessment, either personally or in writing, together with any evidence he may want to present.

Petitioner, however, in his Petition for Review, contended that Respondent failed to observe the provisions of Revenue Regulations No. 12-85 which mandate that the taxpayer be issued post reporting notice and pre-assessment notice before the preliminary findings of deficiency may ripen into a formal assessment through the issuance of the assessment notice itself. According to Petitioner, the said regulations were not followed to the letter on matters of post-reporting and pre-assessment notices to Petitioner (at his Pasay City address), as well as the 15-day period accorded a taxpayer to reply to the findings of deficiency.

Section 2 of Revenue Regulations No. 12-85, relied upon by Petitioner, provides in part:

> "**SECTION 2.** ***Notice for Proposed Assessment.*** When the Commissioner or his duly authorized representative finds that taxes should be assessed, he shall first notify the taxpayer of his findings in the attached prescribed form as Annex "B" hereof. The notice shall be made in writing and sent to the taxpayer **at the address indicated in his return** or at his last known address as stated in his notice of change of address." (Emphasis supplied)

Clearly from the above, the notice shall be sent to the taxpayer at the address indicated in his return, which is precisely what Respondent did, or at his last known address as stated in his notice of change of address. Since the address of CKCS indicated

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in the Quarterly Percentage Tax Returns of Petitioner (pages 4 to 6, BIR Records) was 19th Tee, Camp John Hay, Baguio City, the Post-reporting notice as well as the Preliminary Ten Day Letter were not erroneously addressed. Moreover, in his Petition for Review, there was no categorical denial made by Petitioner of his receipt of the letters in question. He merely made a statement that the revenue regulation was not followed to the letter on matters of post-reporting and pre-assessment notices to Petitioner (at his Pasay City address). Likewise, in his "Opposition to Respondent's Motion to Dismiss" (p. 82, CTA Records), Petitioner alleged that nowhere in the records of the case is it shown that Respondent issued post-reporting and pre-assessment notices to Petitioner (at his Pasay City address). Obviously, this is because the post-reporting and pre-assessment notices, like the assessment notices, were sent at his Baguio City address. Hence, it may be presumed that Petitioner actually received the letters not in his principal place of business but in his Baguio branch and this fact alone cannot render the assessment notices invalid. "An incorrect address will not nullify a notice of deficiency if the taxpayer actually receives the notice without delay." (Mertens, Law of Federal Income Taxation, 49c, p. 38). And as correctly observed by Respondent, Petitioner did not even testify before this Court to deny receipt of the notices. The statement made by Petitioner's witness, Ms. Theresa Nalda, denying receipt by the Petitioner of the post-reporting and pre-assessment notices, deserves scant consideration not only because the same is merely hearsay but more so because she was employed by Mr. Menguito only in June of 1998, long after the notices in question have been issued.

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As to Petitioner's allegation that he was given only ten (10) days to reply to the findings of deficiency instead of fifteen (15) days granted to a taxpayer under Revenue Regulations No. 12-85, this Court believes that when Respondent gave the Petitioner on October 10, 1997 an additional period of ten (10) days to present documentary evidence, or a total of twenty (20) days, there was compliance with Revenue Regulations No. 12-85 and the latter was amply given the opportunity to present his side. Clearly there was no violation of procedural due process committed by the Respondent against the Petitioner.

As to whether the issuance of Letters of Authority for 1991, 1992 and 1993 by BIR Baguio was valid, we rule in the affirmative.

Records disclose that the issuance of the Letters of Authority on May 16, 1994 was brought about by the apprehension of the Petitioner-taxpayer for non-issuance of receipts and non-payment of percentage taxes (p. 11, BIR Records). And contrary to Petitioner's assertion that BIR Baguio duplicated the task done by BIR Pasay, it was the former who first issued Letters of Authority against herein Petitioner as a result of which Petitioner paid without objection the deficiency taxes, some of which even included 50% surcharges. While it is a rule that books and records shall be subject to examination and inspection by internal revenue officers only once in a taxable year, in cases of fraud, irregularity, or mistakes, as determined by the Commissioner, the rule does not apply.

Anent the third issue, Petitioner argues that fraud not having been established, the three-year period and not the ten-year period to assess should apply, therefore the assessments pertaining to taxable years 1991, 1992 and 1993 have all been issued beyond the prescriptive period and should have no force and effect.

Respondent counters with the argument that Petitioner underdeclared his sales by a total of P48,721,555.96 making its tax returns false giving the authorities a ten-year period to assess from discovery of the falsity pursuant to Section 223 of the Tax Code.

The resolution of the issue on prescription is hinged primarily on the question of the existence of fraud or falsity in the entries found in Petitioner's tax returns thereby justifying the ten-year prescriptive period to assess.

A careful analysis of the records of the case which includes the findings of the revenue officers with respect to the taxable years 1991, 1992 and 1993, reveals that fraud was committed by Petitioner by means of substantial underdeclaration of sales resulting to huge deficiencies in income and percentage taxes.

In a letter dated March 26, 1996, Regional Director Marcelino M. Ramos requested the manager of Texas Instruments for vital information regarding its transactions with Petitioner as to the kind of work accomplished, monthly and/or quarterly payments and gross amount of contract and taxes withheld, if any (Exhibit 6, p. 0100 BIR Records). A similar letter was given to the Finance Manager of Camp John Hay requesting for the same information (Exhibit 9, 0096-0097, BIR Records).

Texas Instruments complied with the letter request by submitting a summary of payments/income of Petitioner for the years 1991 to 1993 (p. 0099, BIR Records). Club John Hay similarly complied by providing the revenue officers with a computation detailing the payments made to the Petitioner for the same taxable years.

Armed with the data provided by these two companies, the revenue officers conducted their investigation and found substantial underdeclaration of sales upon a

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review of Petitioner's Income and Business Tax Returns for the taxable years 1991, 1992 and 1993. In a letter dated July 28, 1997, the OIC of the Assessment Division, Ms. Beverly Siagan-Milo informed the Petitioner of its findings specifying therein the results of their investigation (Exhibit 11, p. 0083, BIR Records).

On September 2, 1997, assessment notices for deficiency income and percentage taxes for the tax years ending December 31, 1991, 1992 and 1993 in the aggregate amount of P34,192,627.38 were issued against Petitioner. All these assessment notices carried a 50% fraud penalty.

The results of the investigation which resulted in the assessments revealed that Petitioner did not report or it underdeclared its sales by P10,542,695.34 in 1991, P12,770,306.32 in 1992 and P25,408,554.30 in 1993 or a total P48,721,555.96 (see Exhibit 11, pages 0082-0083, BIR Records).

In several pleadings filed in this Court, Petitioner, instead of confronting the issue of underdeclaration head on, denied having any contract with Texas Instruments and claimed that the latter transacted with "Copper Kettle Catering Services, Inc." which is a corporation, while the Copper Kettle which he owns is named Copper Kettle Cafeteria Specialist," a single proprietorship. The records of this case however belie his claim. The contract between Texas Instruments and Copper Kettle was signed by Petitioner's wife, Jeanne Menguito as proprietress (see Exhibit 17, p. 202, CTA records and TSN dated July 18, 2000). Faced with this document, Petitioner cannot now claim that Copper Kettle Catering Services and Copper Kettle Cafeteria Specialist are two different entities presumably owned by different persons.

In the case of **Avelino vs. Collector of Internal Revenue, 8 SCRA 572**, the Supreme Court has ruled that failure to disclose one's true income and declaring a small fraction of the actual income constitute fraud. Article 1339 of the Civil Code provides that failure to disclose facts constitutes fraud, when there is a duty to reveal them.

In this particular case, Petitioner did not offer any satisfactory explanation to rebut the findings of fraud and/or false entries in his income and percentage tax returns. Neither was he transparent with respect to his relationship or lack of it with Copper Kettle which has dealings with Texas Instruments and Club John Hay. Since fraud is an integral element in the assessments issued against Petitioner, then said conclusion is said to be presumed correct as assessments are given the presumption of correctness and are made in good faith (**SY Po vs. Court of Tax Appeals 164 SCRA 527**). Failure of the Petitioner to refute the findings of fraud concomitantly establishes its existence thereby strengthening the conclusion of the Respondent.

To revert to the issue of prescription, the existence of fraud justifies the ten-year prescriptive period to assess from the discovery of the falsity or fraud as provided in Section 223 (now Section 222) of the Tax Code, thus:

> "**SEC. 223**. ***Exceptions as to period of limitation of assessment and collection of taxes.*** - In the case of a false or fraudulent return with intent to evade tax or of failure to file a return, the tax may be assessed, or a proceeding in court for the collection of such tax may be begun without assessment, at any time <u>within ten years after the discovery of the falsity, fraud or omission:</u> xxx"

Applying the above provision to the subject assessments, we can categorically rule that they were all issued within the ten-year period. Records disclose that all the

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assessments were issued on September 2, 1997 and when counted from the time the fraud was discovered or established on February 19,1997 (by virtue of an information contained in a sealed envelope delivered by an unidentified person), then said assessments were all issued within the 10-year prescriptive period. In the case of **Aznar vs. Court of Tax Appeals 58 SCRA 519**, the Supreme Court ruled that the "ordinary period of prescription should be applicable to normal circumstances but whenever the government is placed at a disadvantage so as to prevent lawful agents from proper assessment of tax liabilities then the period of ten years from the time of discovery of the falsity, fraud or omission should be the one enforced."

Based on the foregoing, the assessments issued against Petitioner are deemed valid and enforceable but with certain modifications as a result of our own analysis of the records of this case. The results of the investigation computed the total underdeclaration of sales based on the report of Texas Instruments that it only subsidized 55% of the meals of their employees and that the latter paid for the other 45%. From this statement, the examiners merely presumed that the total amount of the documents submitted comprise only 55% of the sales of Petitioner and from this presumption the examiners computed the 45% shares of the employees. In the interest of justice and fair play, we cannot allow a mere presumption to be the basis of Petitioner's assessed tax deficiencies so we reduced the same by not considering the amount pertaining to the 45% (**The Collector of Internal Revenue vs. Alfredo Benipayo, 4 SCRA 182**), hence the total tax deficiencies of Petitioner are computed as follows:

1991 Deficiency Income Tax
(Figures used in the computations were based on the BIR records)

Net Income Per Investigation			P	23,574.44
Add: Undeclared Income				
a. Texas Instrument				
- Company Share 55%	P	5,930,514.40		
b. Club John Hay		2,930,612.47		
Total	P	8,861,126.87		
Less: Sales per Return		3,120,680.58		
Balance	P	5,740,446.29		
Less: Optional Standard Deduction				
(P5,740,446.29 x 10%)		574,044.63		5,166,401.66
Total Net Income			P	5,189,976.10
Less: Personal Exemption (based on BIR records)				9,000.00
Taxable Net Income			P	5,180,976.10
Tax Due (based on Sec. 21 of 1991 Tax Code)			P	1,760,516.64
Less: Tax Paid Per ATAP No. 597528				705.21
Deficiency Tax Due			P	1,759,811.43
Add: 50% Surcharge	P	879,905.71		
60% Interest		1,583,830.28		2,463,736.00
Total Deficiency Income Tax Due			P	4,223,547.42
Less: Increments				
a. Per ATAP. No. 597528	P	13,462.22		
b. Per Ocular Inspection in Baguio		29,325.00		42,787.22
Deficiency Income Tax Due			**P**	**4,180,760.20**

1992 Deficiency Income Tax

Net Income Per Investigation			P	222,688.93
Add: Undeclared Income				
a. Texas Instrument				
- Company Share 55%	P	6,352,307.98		
b. Club John Hay		10,587,985.09		
Total	P	16,940,293.07		
Less: Sales Per Investigation		9,637,985.09		
Balance	P	7,302,307.98		
Less: Deduction (Sec. 29 of Tax Code)				
(P7,302,307.98 x 40%)		2,920,923.19		4,381,384.79
Total Net Income			P	4,604,073.72
Less: Personal Exemption				18,000.00
Taxable Net Income			P	4,586,073.72
Tax Due [based on Sec. 21(f) of 1992 Tax Code]			P	1,332,422.12
Less: Tax Paid Per ATAP No. 597529				32,537.78
Deficiency Income Tax Due			P	1,299,884.34

Add: 50% Surcharge	P	649,942.17		
60% Interest		779,930.60		1,429,872.77
Total Deficiency Income Tax Due			P	2,729,757.10
Less: Increments Per ATAP No. 597529				50,470.56
Deficiency Income Tax Due			**P**	**2,679,286.54**

1993 Deficiency Income Tax

Net Income Per Investigation			P	423,793.00
Add: Undeclared Income				
a. Texas Instrument				
- Company Share 55%	P	7,398,617.97		
b. Club John Hay		13,575,612.13		
Total	P	20,974,230.10		
Less: Sales per Investigation		9,575,612.10		
Balance	P	11,398,618.00		
Less: Deduction (Sec. 29 of Tax Code)				
(P11,398,618.00 x 40%)		4,559,447.20		6,839,170.80
Total Net Income			P	7,262,963.80
Less: Personal Exemption				18,000.00
Taxable Net Income			P	7,244,963.80

Tax Due (based on Sec. 21(f) of 1992 Tax Code)			P	2,130,089.14
Less: Basic Taxes Paid				
a. Per ATAP No. 597531	P	78 338.00		
b. Per ATAP No. 2243836 (Annex C)		22,568.38		100,906.38
Deficiency Income Tax Due			P	2,130,089.14
Add: 50% Surcharge	P	1,065,044.57		
60% Interest		1,278,053.48		2,343,098.05
Total Deficiency Income Tax Due			P	4,473,187.19
Less: Increments/Payments Made				
a. Increments Per ATAP No. 597531	P	60,044.35		
b. Per ATAP No. 2243836 (Annex C)		35,919.15		95,963.50
Deficiency Income Tax Due			**P**	**4,473,187.19**
Total Deficiency Percentage Taxes for 1991, 1992 & 1993			**P**	**11,333,233.94**

1991 Deficiency Percentage Tax

A. Texas Instrument – Company Share 55%		
First Quarter	P	1,306,578.50
Second Quarter		1,588,052.30
Third Quarter		1,569,329.70
Fourth Quarter		1,466,663.90
Total	P	5,930,624.40

Multiply by Percentage Tax Rate		4%		
Percentage Tax Due			P	237,224.98
B. Club John Hay - Restaurant				
First Quarter	P	-		
Second Quarter		-		
Third Quarter		1,014,635.43		
Fourth Quarter		1,360,842.15		
Total	P	2,375,477.58		
Multiply by Percentage Tax Rate		4%		
Percentage Tax Due				95,019.10
C. Club John Hay - Bar				
First Quarter	P	-		
Second Quarter		-		
Third Quarter		151,612.19		
Fourth Quarter		403,522.70		
Total	P	555,134.89		
Multiply by Percentage Tax Rate		8%		
Percentage Tax Due				44,410.79
Total Percentage Tax Due			P	376,654.87
Less: Payments Per Returns Filed (Sch. IV)				140,968.17
Deficiency Percentage Tax Due			P	235,686.70
Add: 50% Surcharge	P	117,843.35		
60% Interest		212,118.03		329,961.38
Total Deficiency Percentage Tax Due			**P**	**706,616.25**

1992 Deficiency Percentage Tax

A. Texas Instrument - Company Share 55%				
First Quarter	P	1,428,903.50		
Second Quarter		1,454,951.00		
Third Quarter		1,659,185.65		
Fourth Quarter		1,809,267.83		
Total	P	6,352,307.98		
Multiply by Percentage Tax Rate		4%		
Percentage Tax Due			P	254,092.32
B. Club John Hay - Restaurant				
First Quarter	P	2,799,002.01		
Second Quarter		3,855,714.47		
Third Quarter		1,156,166.22		
Fourth Quarter		1,993,655.48		
Total	P	9,804,538.18		
Multiply by Percentage Tax Rate		4%		
Percentage Tax Due				392,181.53
C. Club John Hay - Bar				
First Quarter	P	112,577.35		
Second Quarter		162,097.60		
Third Quarter		334,507.09		
Fourth Quarter		174,264.87		
Total	P	783,446.91		

Multiply by Percentage Tax Rate		8%		
Percentage Tax Due				62,675.75
Total Percentage Tax Due			P	708,949.60
Less: Payments Per Returns Filed (Sch. IV)				489,391.92
Deficiency Percentage Tax Due			P	219,557.68
Add: 50% Surcharge	P	109,778.84		
60% Interest		197,601.91		307,380.75
Total Deficiency Percentage Tax Due			P	**526,938.43**

1993 Deficiency Percentage Tax

A. Texas Instrument - Company Share 55%				
First Quarter	P	1,576,355.20		
Second Quarter		1,960,164.20		
Third Quarter		1,803,276.22		
Fourth Quarter		2,058,822.36		
Total	P	7,398,617.98		
Multiply by Percentage Tax Rate		4%		
Percentage Tax Due			P	295,944.72
B. Club John Hay - Restaurant				
First Quarter	P	-		
Second Quarter		4,799,595.92		
Third Quarter		1,445,359.18		
Fourth Quarter		2,731,239.08		
Total	P	8,976,194.18		
Multiply by Percentage Tax Rate		4%		
Percentage Tax Due				359,047.77
C. Club John Hay - Bar				
First Quarter	P	423,559.10		
Second Quarter		717,181.01		
Third Quarter		215,973.21		
Fourth Quarter		408,116.19		
Total	P	1,764,829.51		
Multiply by Percentage Tax Rate		8%		
Percentage Tax Due				141,186.36
Total Percentage Tax Due			P	796,178.85
Less: Payments Per Returns Filed (Sch. IV)				293,530.85
Deficiency Percentage Tax Due			P	502,648.00
Add: 50% Surcharge	P	251,324.00		
60% Interest		452,383.20		703,707.20
Total Deficiency Percentage Tax Due			P	1,499,886.04
Less: Increments Paid (Sch. IV)				159,784.90
Deficiency Percentage Tax Due			P	**1,340,101.14**

Total Deficiency Percentage Taxes for 1991, 1992 & 1993	P	**2,573,655.82**

Accordingly, Petitioner is **ORDERED** to **PAY** the Respondent the amount of P11,333,233.94 and P2,573,655.82 as deficiency income and percentage tax liabilities, respectively for taxable years 1991, 1992 and 1993 plus 20% delinquency interest from October 2, 1997 until full payment thereof.

SO ORDERED.

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

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Judge

(With Dissenting Opinion)
AMANCIO Q. SAGA
Associate Judge

CERTIFICATION

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

ERNESTO D. ACOSTA
Presiding Judge

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