

REPUBLIC OF THE PHILIPPINES
Court Of Tax Appeals
QUEZON CITY

FORMER SECOND DIVISION

PHILIPPINE AIRLINES, INC. C.T.A. CASE NO. 7224
(PAL),

Petitioner,

Members:

-versus-

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

Promulgated:

COMMISSIONER OF INTERNAL
REVENUE,

MAY 11 2010

Respondent.

2:26 p.m.

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DECISION

PALANCA-ENRIQUEZ, J.:

A franchise is a legislative grant to operate a public utility. Like those of any other statute, the ambiguous provisions of a franchise should be construed in accordance with the intent of the legislature. In the present case, *Presidential Decree 1590 (P.D. 1590)* granted Philippine Airlines an option to pay the lower of two alternatives: (a) “the basic corporate income tax based on PAL’s annual net taxable income computed in accordance with the provisions of the National Internal Revenue Code” or (b) “a franchise tax of two percent of gross revenues.”

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Availment of either of these two alternatives shall exempt the airline from the payment of “all other taxes,” including final withholding tax on bank deposits (*Commissioner of Internal Revenue vs. Philippine Airlines, Inc.*, 504 SCRA 91). However, it cannot be escaped that the taxpayer needs to establish not only that the refund is justified under the law, but also the correct amount that should be refunded. If the latter requisite cannot be ascertained with particularity, there is cause to deny the refund, or allow it only to the extent of the sum that is actually proven as due.

THE CASE

This is a Petition for Review filed by petitioner PAL praying for refund or issuance of a tax credit certificate (TCC) in the total amount of P3,621,067.51, comprising of: P3,417,807.17, representing 7½% final income tax, and P203,260.34, representing 20% final income tax, erroneously withheld by petitioner PAL’s various depository banks from its interest income on its U.S. Dollar deposits and Philippine peso deposits for the period January to December, 2003.

THE PARTIES

Petitioner PAL is a domestic corporation duly organized and existing under and by virtue of Philippine laws, with principal office at the 9th Floor, PAL Center, Legaspi Village, Makati City.



Respondent, on the other hand, is the duly appointed Commissioner of Internal Revenue, in charge of the assessment and collection of all national internal revenue taxes, fees, and charges, including 20% final income tax on interest on currency bank deposits and yield or any other monetary benefit from deposit substitutes and from trust fund and similar arrangements received by domestic corporations, as well as, 7½% final income tax on interest income derived by a domestic corporation from a depository bank, under the expanded foreign currency deposit system, imposed under Sec. 27 (D) (1) of the NIRC, with principal office at the BIR National Office Building, Agham Road, Diliman, Quezon City.

THE FACTS

The facts of the case, as stipulated upon by the parties, are, as follows:

On February 28, 2005, petitioner PAL's VP-Financial Services, Marianne Raymundo, filed with the office of the respondent, a written claim dated February 24, 2005, for refund of final withholding taxes on petitioner PAL's interest on its Philippine Peso and U.S. Dollar deposits for the calendar year 2003, amounting to P203,260.34 and USD62,311.89, respectively.



For failure of respondent to act on its claim and in order to toll the running of the prescriptive period, on April 21, 2005, petitioner PAL filed the instant Petition for Review.

In his Answer, respondent, by way of special and affirmative defenses, averred that:

“4.) Petitioner’s claim for refund is subject to administrative investigation/examination by the respondent;

5.) To support its claim, it is imperative for petitioner to prove the following, viz:

a. That the Final Withholding Taxes levied upon petitioner for taxable year 2003 amounting to Php203,260.34 and USD62,311.89, have been remitted to the Bureau;

b. That petitioner’s administrative and judicial claims for tax credit or refund of the alleged erroneously withheld final taxes was filed within two (2) years after the close of the taxable month when the amounts were deducted in accordance with Section 229 of the Tax Code, as amended;

c. That petitioner’s earnings which were subjected to the Final Withholding Tax arose primarily from its conduct of the trade or business from which its alleged basis for exemption lies;

d. That since the petitioner has been claiming refund of the alleged erroneously withheld final taxes, it must be able to unequivocally show that it has included said interest incomes in its returns in the computation of its Gross receipts for



purposes of the computation of the 2% Franchise Tax, or as part of its income in the corporate income tax returns, whichever is applicable to petitioner for taxable year 2003;

e. That petitioner duly paid the taxes due from it under existing laws;

xxx xxx”

Petitioner PAL presented Evelyn Taghap, Wilfredo Quijencio, Cyril Bandiola, Mary Evangeline Cruz, Carmencita Tan, Lucia Sietereales, Antonio Santos, Cecille Reyes, Bienvenido Nieto and Minna Tablaza, as witnesses, and documentary evidence, marked as *Exhibits* “A” to “QQ”, inclusive of their submarkings, which were admitted by the Court, except for the provisionally marked *Exhibits* “K” and “K-1” for failure to submit the duly marked documents and to present the original copies for comparison, and *Exhibits* “L-1”, “L-2”, “M-1” and “M-2” for failure to mark them during trial.

On the other hand, on April 20, 2009, counsel for respondent manifested that he is waiving his right to present evidence.

Thereafter, both parties were ordered to file their simultaneous memoranda, within thirty (30) days from notice. Considering respondent’s “Memorandum” filed on July 14, 2009 and petitioner PAL’s



“Memorandum” filed on July 20, 2009, the case was deemed submitted for decision on July 27, 2009.

Hence, this decision.

ISSUES

As stipulated upon by the parties, the following are the issues for this Court’s consideration:

I

WHETHER OR NOT PETITIONER IS ENTITLED TO THE REFUND OF THE 20% AND 7 ½% FINAL TAX PRAYED FOR AMOUNTING TO PHP3,621,067.51.

II

WHETHER OR NOT THE AFOREMENTIONED AMOUNT BEING CLAIMED BY PETITIONER REPRESENTING THE TOTAL AMOUNT OF 20% AND 7 ½% FINAL INCOME TAXES WITHHELD FROM THE INTEREST INCOME OF PAL FOR THE PERIOD JANUARY 2003 TO DECEMBER 2003, ARE PROPERLY DOCUMENTED.

III

WHETHER OR NOT THE AFOREMENTIONED AMOUNT BEING CLAIMED BY PETITIONER HAD BEEN REMITTED TO THE BIR.

IV

WHETHER OR NOT PETITIONER COMPLIED WITH THE PROVISIONS OF SECTIONS 204 (C) AND 229 OF



THE TAX CODE ON THE PRESCRIPTIVE PERIOD FOR
CLAIMING TAX REFUND/CREDIT.

Principal Issue

The foregoing issues raised by both parties boil down to the principal issue of whether or not petitioner PAL is entitled to a refund or issuance of a TCC in the aggregate amount of P3,621,067.51, representing the 20% and 7½% final income tax erroneously withheld by petitioner PAL's various depository banks from its interest income on its US Dollar deposits and Philippine peso deposits for the period January to December 2003.

THE COURT'S RULING

The petition has no merit.

**PAL's franchise exempts it from paying
any tax other than the option it chooses**

This case is not one of first impression as the Supreme Court in a similar case entitled *Commissioner of Internal Revenue vs. Philippine Airlines (504 SCRA 90)* ruled that petitioner PAL is exempted from payment of final withholding taxes on interest on bank deposits by virtue of the "in lieu of all other taxes" clause granted by its franchise, thus:

"While the Court recognizes the general rule that the grant of tax exemptions is strictly construed against the taxpayer and in favor of the taxing power, Section 13

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of the franchise of respondent leaves no room for interpretation. Its franchise exempts it from paying any tax other than the option it chooses: either the “basic corporate income tax” or the two percent gross revenue tax.”

Pursuant to the said ruling, petitioner PAL’s franchise (*P.D. 1590*) granted it an option to pay the lower of two alternatives: (a) “the basic corporate income tax based on PAL’s annual net taxable income computed in accordance with the provisions of the National Internal Revenue Code” or (b) “a franchise tax of two percent of gross revenues”. Availment of either of these two alternatives shall exempt the airline from the payment of “all other taxes,” including 20% and 7½% final withholding tax on bank deposits.

On the Issue of Substantiation of Claim

We now proceed to the determination of the substantiation of the claimed amount. Settled is the rule that failure to show proof of proper documentation and evidence to support its allegation is fatal to one’s claim for refund or credit.

In this regard, *Section 14 of P.D. 1590* provides:

“**SEC. 14.** The grantee shall pay either the franchise tax or the basic corporate income tax on quarterly basis to the Commissioner of Internal Revenue. Within sixty (60) days after the end of each of the first three quarters of the taxable calendar or fiscal year, the quarterly franchise or

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income-tax return shall be filed and payment of either the franchise or income tax shall be made by the grantee.

A final or an adjustment return covering the operation of the grantee for the preceding calendar or fiscal year shall be filed on or before the fifteenth day of the fourth month following the close of the calendar or fiscal year. The amount of the fiscal franchise or income tax to be paid by the grantee shall be the balance of the total franchise or income tax shown in the final or adjustment return after deducting therefrom the total quarterly franchise or income taxes already paid during the preceding first three quarters of the same taxable year.

Any excess of the total quarterly payments over the actual annual franchise or income tax due as shown in the final or adjustment franchise or income-tax return shall either be refunded to the grantee or credited against the grantee's quarterly franchise or income-tax liability for the succeeding taxable year or years at the option of the grantee.

The term "gross revenues" is herein defined as the total gross income earned by the grantee from; (a) transport, nontransport, and other services; (b) earnings realized from investments in money-market placements, bank deposits, investments in shares of stock and other securities, and other investments; (c) total gains net of total losses realized from the disposition of assets and foreign-exchange transactions; and (d) gross income from other sources."

Pursuant to the above-quoted provision of petitioner PAL's franchise, petitioner PAL is required to file at least three (3) quarterly franchise or income tax returns and a final or an adjustment return for the purpose of determining its income tax liability. The return will show the

option elected by petitioner PAL, whether it chose to be taxed under either *Section 13 (a)* or *(b)* of its franchise, whichever is lower.

Upon a careful examination of the evidence adduced by petitioner PAL, the Court finds that it has faithfully complied with the aforesaid prescribed requirements. It offered in evidence its Annual Income Tax Returns for the fiscal years ending March 31, 2003 and March 31, 2004 (*Exhibits "L" and "M"*) to prove that petitioner PAL chose, in accordance with its franchise, to be taxed under *Section 13 (a) of P.D. 1590*, which is the basic corporate income tax. A perusal of the income tax returns presented reveals that petitioner PAL incurred negative income tax liability (*line 25 of Exhibits "L" and "M"*) because of a zero net income, which reasonably explains why petitioner PAL need not pay, as there was actually no tax due to the government for the fiscal years ending March 31, 2003 and March 31, 2004. Logically, negative income tax liability based on the basic corporate income tax is lower than the 2% franchise tax.

We now determine whether petitioner PAL has duly substantiated its claim of the total amount of P3,621,067.51 representing the total amount of 20% and 7½ % final taxes deducted from its interest income from its bank deposits for calendar year 2003.



To prove that petitioner PAL earned interest income on its bank deposits and that they were remitted to the BIR, petitioner PAL offered in evidence the following certifications and Certificates of Final Tax Withheld at Source (BIR Form No. 2306) from various banks, to wit:

BANK	PERIOD COVERED	AMOUNT OF TAX WITHHELD	
		PHP	USD
Allied Banking Corp. (Exhibit "B")	Jan – Dec 2003	73,677.85	900.87
China Banking Corp. (Exhibits "C" & "C-1")	Jan – Dec 2003	4,719.40	32,561.66
HSBC (Exhibit "D")	Mar – Dec 2003	2,748.84	3,051.62
JP Morgan Chase bank (Exhibit "G")	Jan – Mar 2003	121,964.09	
Landbank of the Phils. (Exhibit "H")	Jan – Dec 2003	150.16	
PBCom (Exhibit "E")	May – June 2003		5,843.75
Standard Chartered Bank (Exhibits "F" and "F-1")	Jan –Dec 2003		19,953.33
TOTAL		P203,260.34	USD62,311.89

However, the Court finds that the certifications from petitioner's various banks were not corroborated by other documentary evidence to show that the amounts withheld from petitioner PAL were actually remitted to the BIR, thus, we cannot give credence to said certifications. Although petitioner PAL presented Certificates of Final Tax Withheld at Source (BIR Form No. 2306) from the various banks, a careful examination of the said certificates does not show that the amount withheld corresponding to the 20% and 7½% final taxes deducted from

petitioner PAL's interest income from its bank deposits for calendar year 2003, were included as part of those remitted by petitioner's various banks to the BIR. At most, the Certificates of Final Tax Withheld at Source presented by petitioner PAL only show that the various banks remitted withholding taxes from their depositors. However, it bears stressing that equally important to petitioner PAL's claim for refund is evidence showing that the taxes withheld from petitioner PAL's interest income were actually remitted to the BIR. Without supporting documents to prove that the amount petitioner PAL is claiming for refund had in fact been remitted to the BIR, this Court cannot determine the exact amount refundable to petitioner PAL by reason of its exemption from all other taxes. This Court can order refund to petitioner PAL only the amount of taxes duly withheld and actually remitted to the government.

Well settled is the rule that the taxpayer needs to establish not only that the refund is justified under the law, but also the correct amount that should be refunded. If the latter requisite cannot be ascertained with particularity, there is cause to deny the refund, or allow it only to the extent of the sum that is actually proven as due. Tax refunds partake of the nature of tax exemptions and are thus construed *strictissimi juris*



against the person or entity claiming the exemption (*Far East Bank & Trust Co. vs. CIR*, 488 SCRA 473). The burden in proving the claim for refund necessarily falls on the taxpayer, and petitioner in this case failed to discharge the necessary burden of proof. Failure on its part to adduce evidence pertinent and substantial to its case is fatal to petitioner PAL's claim for refund.

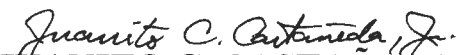
The foregoing conclusion renders unnecessary a discussion on the other issues raised in the petition.

WHEREFORE, premises considered, the petition is hereby **DENIED**, and accordingly, **DISMISSED**.

SO ORDERED.


OLGA PALANCA-ENRIQUEZ
Associate Justice

WE CONCUR:


JUANITO C. CASTAÑEDA, JR.
Associate Justice


ERLINDA P. UY
Associate Justice

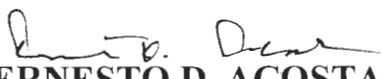
ATTESTATION

I attest that the conclusions in the above Decision were reached in consultation before the cases were assigned to the writer of the opinion of the Court's Division.


JUANITO C. CASTANEDA, JR.
Associate Justice
Chairperson

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, and the Division Chairman's Attestation, it is hereby certified that the conclusions in the above Decision were reached in consultation before the cases were assigned to the writer of the opinion of the Court's Division.


ERNESTO D. ACOSTA
Presiding Justice