REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SERVICEWIDE SPECIALISTS, INC.,
Petitioner,

- versus - C.T.A. CASE NO. 4255

COMMISSIONER OF INTERNAL REVENUE,
Respondent.
x - - - - - - - - - - - - - - - - x

10/17

D E C I S I O N

This is a claim for the refund of the prior year's excess credit of P30,829.89 and taxes withheld at source by various clients of petitioner in the sum of P25,979.00, or a total amount of P56,808.89.

For the calendar year 1985, petitioner filed its income tax return showing a gross income of P4,958,611.00, deductions of P5,028,288.00 and a net loss of P69,677.00 and therefore no income tax was due. There was however, an excess credit of income tax of P30,829.89 in the prior year (1984) and taxes withheld at source in the amount of P25,979.00. Total amount claimed as refundable is P56,808.89.

By letter of October 9, 1986, petitioner wrote the Commissioner of Internal Revenue requesting for the "tax credit of tax withheld by client for 1982 and 1985 amounting to P32,697.89."

The respondent Commissioner of Internal Revenue failed to act on petitioner's claim for tax credit. Hence, petitioner filed the instant petition for review.

Instead of filing an Answer to the Petition for Review, the respondent Commissioner of Internal Revenue filed a "Motion to Dismiss" on the ground that the instant Petition for Review was filed out of time and petitioner's claims for tax refund/credit had prescribed.

We agree *in toto* with respondent Commissioner of Internal Revenue that the Petition for Review was filed out of time and the claim for tax refund/credit had prescribed and we quote at length his dissertation in his "Motion to Dismiss" filed on July 12, 1988.

> Section 243 of the National Internal Revenue Code provides:
>
> > "Sec. 243. 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, <u>or of any sum alleged to have been execessive</u> 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 begun after the expiration of two 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 therefore, refund or credit any tax, where on face of the return upon which payment was made, such payment appears clearly to have been erroneously paid." (Underscoring for emphasis)

Thus, any suit or proceeding to recover an amount claimed to be paid in excess of a tax due must be instituted within two (2) years from the payment. Otherwise, it is forever barred. In <u>Gibbs vs. Collector of Internal Revenue and Court of tax Appeals, 107 Phil. 232, it was held:</u>

> "A taxpayer who has paid the tax, whether under protest or not, and who is claiming a refund of the same, must comply with the requirements of both Section 306 (now Section 243 of the NLRC) and Section 11 of Republic Act No. 1125; that is, he must file a claim for refund

> with the Collector (now Commissioner) of Internal Revenue within 2 years from the date of his payment of the tax, as required by said Section 306 of the National Revenue Code, an appeal to the Court of Tax Appeals within 30 days from the receipt of the Collector's decision or ruling denying his claim for refund, as required by said Section 11 of Republic Act No. 1125.
>
> If, however, the Collector takes time in deciding the claim, and the period of two years is about to end, the suit or proceeding must be started in the Court of Tax Appeals before the end of the two-year period without waiting the decision of the Collector. This is so because the positive requirement of Section 306 and the doctrine that delay of the Collector in rendering decision does not extend the peremptory period fixed by the stature." (Underscoring for emphasis)

Petitioner admits that the alleged excess tax payment of P39,829.89 was made in 1984, which amount it desires to be credited as payment of its income tax of 1985 (Petition, p.1, par. 2). In a letter dated October 9, 1986 (Petition, Annex B) petitioner asks that withheld taxes for years 1982 and 1985 in the amount of P32,697.80 (the amount stated in the Petition is P25,979.00) be credited as payment presumably for income tax due for 1986.

Since the alleged excess tax payments are claimed to have been made in 1982, 1984 and 1985, the action to recover these should have been filed not later than 1987. This Petition for

Review, however, was filed on April 15, 1988, or beyond the reglementary 2-year period.

Clearly, the instant Petition for Review was filed out of time. Petitioner's claims have prescribed. (Underlining ours.)

WHEREFORE, the judicial claim for refund/tax credit of the amount of P56,808.89 should be, as it is hereby, DISMISSED.

With costs against petitioner.

SO ORDERED.

Quezon City, Metro Manila, October 17, 1990.

CONSTANTE C. ROAQUIN
Associate Judge

I CONCUR:

ALEX Z. REYES
Associate Judge

C E R T I F I C A T I O N

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

CONSTANTE C. ROAQUIN
Associate Judge
Court of Tax Appeals