REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

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SAMAR-I ELECTRIC COOPERATIVE, INC., Petitioner,	**C.T.A. CASE NO. 6697**
	Members:
- versus -	**ACOSTA,** *Chairperson* **BAUTISTA,** and **CASANOVA,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	**Promulgated:** JAN 19 2009 7:46 pm

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AMENDED DECISION

ACOSTA, *P.J.*:

For resolution are respondent's *Motion for Partial Reconsideration (Re: Decision dated 27 May 2008)* filed on June 13, 2008, and petitioner's *Motion for Reconsideration* filed on June 17, 2008, both seeking the reconsideration of this Court's *Decision* promulgated on May 27, 2008, the dispositive portion of which states:

> "**WHEREFORE**, the instant Petition for Review is hereby **PARTIALLY GRANTED**. Accordingly, the 1998 to 1999 deficiency income tax assessment issued against petitioner in the amount of P440,545.71 is hereby **CANCELLED** and **WITHDRAWN**.
>
> On the other hand, petitioner is hereby **ORDERED TO PAY** respondent deficiency Withholding Tax on Compensation for taxable years 1997, 1998, and 1999 in the amount of P2,855,701.59, computed as follows:

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	1997	1998	1999	Total
Deficiency WT	P 522,253.85	P419,960.06	P493,081.60	P 1,435,296.41
Add: 25% Surcharge	130,563.46	104,990.24	123,270.40	358,824.10
Interest	488,599.81	308,906.48	264,074.78	1,061,581.07
Total Deficiency WT	**P1,141,417.12**	**P833,857.68**	**P880,426.78**	**P 2,855,701.59**

In addition, petitioner is hereby **ORDERED TO PAY** respondent the twenty percent (20%) delinquency interest on the amount of P2,855,701.59 computed from September 30, 2002 until full payment, pursuant to Section 249(C) of the NIRC of 1997.

SO ORDERED."

The assailed *Decision* involved two deficiency tax assessments, namely: (1) deficiency income tax for taxable years 1998 and 1999; and (2) deficiency withholding tax for taxable years 1997, 1998, and 1999. The Court partially granted the *Petition for Review* by ordering the cancellation and withdrawal of the assessment pertaining to the deficiency income tax for 1997 and 1998; but sustaining the assessment relating to the deficiency withholding tax, by ordering petitioner to pay the deficiency tax in the reduced amount of P2,855,701.59.

Inasmuch as both parties rely on different grounds for their *Motions for Reconsideration*, each *Motion* will be discussed separately.

Respondent seeks to partially reconsider the said *Decision* on the following grounds:[1]

"A. Petitioner, not being a duly registered cooperative, is not entitled to tax privileges accorded to members in accordance with Republic Act No. 6938, or the Cooperative Code, nor it is entitled to the privileges of Presidential Decree (PD) No. 269. Rather, it is well covered by Executive Order No. 93 and the Fiscal Incentive Review Board (FIRB) Resolution No. 024-87.

B. Petitioner is liable to the Minimum Corporate Income Tax (MCIT) for taxable years 1998 and 1999.

C. Revenue Regulations No. 3-98 provides for a ceiling with regard to *de minimis* fringe benefits given or furnished to managerial or supervisory employees only, but not to the rank and file. No such ceiling is provided for all the other benefits received by employees pursuant to Revenue Regulations No. 2-98."

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[1] Respondent's *Motion for Partial Reconsideration*, p. 3.

It must be stressed that the second ground and the reasons and arguments raised by respondent in his *Motion* are mere reiterations set forth in his *Memorandum* which already have been considered, weighed, and resolved in the Court's *Decision*. Accordingly, only the first and third issues shall be discussed.

Respondent faults petitioner for not filing any application for tax exemption, pursuant to Revenue Memorandum Circular (RMC) No. 48-91.[2] A cursory reading of the said RMC, however, would reveal that that the filing of the application thereunder is not a prerequisite to avail of the tax exemption granted under Republic Act (RA) 6938. Section 10[3] of the RMC is addressed only to "(n)ewly organized cooperatives", and not to cooperatives already existing prior to the enactment of the said law, as in the case of petitioner. Therefore, the non-filing of the application for tax exemption under RMC No. 48-91 is of no consequence.

Respondent further contends that Revenue Regulations No. (RR) 3-98 provides for a ceiling with regard to *de minimis* benefits given or furnished to managerial or supervisory employees only, but not to the rank and file. According to respondent, no such ceiling is provided for all the other benefits received by the employees pursuant to Revenue Regulations No. 2-98.[4]

In effect, respondent is saying that this Court should not have applied the definition of *de minimis* benefits provided under Section 2.33(C) of RR 3-98 to that of the "(f)acilities and privileges of a relatively small value" referred to under Section 2.78.1(A)(3) of RR 2-98, since RR 3-98 "cover(s) only those fringe benefits given or furnished to managerial or supervisory employees and not to the rank and file."

The reasoning is specious.

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[2] Respondent's *Motion for Partial Reconsideration*, p. 7.
[3] SECTION 10. Newly organized cooperatives transacting both with members and non-members shall be issued certificate of tax exemption on the basis of the CDA certification of status (whether or not their accumulated reserves and undivided net savings are more than P10M) which shall be submitted to the BIR, together with the Articles of Cooperation and By-Laws.
[4] Respondent's *Motion for Partial Reconsideration*, p. 10.

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For easy reference, this Court shall compare the pertinent provisions of RR 2-98 vis-à-vis RR 3-98, thus:

Section 2.78.1(A)(3), RR 2-98	Section 2.33(C), RR 3-98
(3) Facilities and privileges of a relative small value. - Ordinarily, **facilities and privileges** (such as entertainment, medical services, or so-called "courtesy" discounts on purchases), **furnished or offered by an employer to his employees generally**, are not considered as compensation subject to withholding if such **facilities or privileges are of relatively small value and are offered or furnished by the employer merely as a means of promoting the health, goodwill, contentment, or efficiency of his employees.**	The term "DE MINIMIS" benefits which are exempt from the fringe benefit tax shall, **in general**, be limited to **facilities or privileges furnished or offered by an employer to his employees that are of relatively small value and are offered or furnished by the employer merely as a means of promoting the health, goodwill, contentment, or efficiency of his employees** such as the following: xxx

Needless to state, the two provisions are glaringly similar.

This Court is not barred from espousing the definition of *de minimis* benefits embodied under RR 3-98 to that of the "(f)acilities and privileges of a relatively small value" referred to under RR 2-98. This is so because of the following reasons:

1. RR 3-98 did not state that the definition therein of *de minimis* benefits shall be used exclusively for such revenue regulation;
2. RR 3-98 did not qualify the type of employees covered by such definition or characterization. It merely refers to them as "to (the employer's) employees". Thus, where the law does not distinguish, neither do we distinguish[5];
3. The provisions in question may be deemed *in pari materia.*[6] Thus, the rule of statutory construction dictates that they should be construed together;[7]
4. There is no substantial distinction between "facilities (and/or) privileges furnished and offered by an employer that are of relatively small value as a means of promoting the health, goodwill, contentment, or efficiency" enjoyed by the managerial or supervisory employees, and that of the rank and file. To make one would be violative of the equal protection clause of the 1987 Constitution;

[5] *Colgate-Palmolive Phils., Inc.vs. Gimenez, et al.*, G.R. No. L-14787, January 28, 1961.
[6] Statutes are said to be *in pari materia* when they relate to the same person or thing, or to the same class of persons or things, or have the same purpose or object (*City of Naga, et al. vs. Agna, et al.*, G.R. No. L-36049, May 31, 1976).
[7] *City of Naga, et al. vs. Agna, et al., supra.*

5. It is emphatically the province and duty of the judicial department to say what the law is.[8] The fact that RR 2-98 did not provide a "ceiling" gives this Court much leeway in determining what constitutes "facilities or privileges (which) are ... (of) relatively small value".

The search must always be for a reasonable interpretation. It is best to keep in mind the reminder from Justice Holmes that "there is no canon against using common sense in construing laws as saying what they obviously mean".[9] Where the law does not prohibit, it allows.

The Court now proceeds to resolve petitioner's *Motion.*

Petitioner seeks the reconsideration of the same *Decision* by enumerating a lengthy assignment of errors[10], which are summarized as follows:

1. the formal letter of demand and assessment notice for the 1997 withholding tax deficiency are void;
2. petitioner has no obligation to withhold from its employees whose total compensation income is below P5,000 per month or P60,000 per year;
3. the right of the Bureau of Internal Revenue (BIR) to assess has prescribed;
4. there is no findings or allegation that false returns were filed by petitioner; and
5. petitioner filed the withholding tax returns in good faith.

Except for the second assigned error, the other enumerated grounds and supporting arguments raised by petitioner in his *Motion* are mere reiterations of the same issues and contentions in its *Memorandum* which already have been tackled, resolved and disposed in the subject *Decision.* Thus, only the second ground shall be discussed.

Petitioner contends that the Court, in computing its deficiency withholding tax, should not have included its employees whose total compensation income is below P5,000 per month or P60,000 per year considering that it has no such obligation.[11] It cites the first paragraph of Section 2.79(A) of RR 2-98 as basis, which states:

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[8] *San Miguel Corporation vs. Avelino, et al.*, G.R. No. L-39699, March 14,.1979.
[9] *Republic Flour Mills, Inc. vs. Commisioner of Customs, et al.*, G.R. No. L-28463, May 31, 1971, citing *Rosehen vs. Ward*, 279 US 337, 339.
[10] Petitioner's *Motion for Reconsideration*, p. 2.
[11] Petitioner's *Motion for Reconsideration*, p. 4.

> "(A) *Requirement of Withholding.* — Every employer must withhold from compensations paid, an amount computed in accordance with these regulations. Provided, that no withholding of tax shall be required where the total compensation income of an individual does not exceed the statutory minimum wage or five thousand (P5,000) monthly (sixty thousand pesos [P60,000] a year), whichever is higher."

Since it is not legally bound to withhold when the total compensation income of the employee is below P5,000 per month or P60,000 per year, then the name of employees listed in the breakdown of the *Deficiency Withholding Tax on Compensation for the year 1998* as annexed to the subject *Decision*, should be removed and its deficiency withholding tax should be reduced.

There is merit in this contention.

Section 2.79(A) of RR 2-98 is substantially a reproduction of Section 79(A) of the NIRC of 1997, which states:

> "**SEC. 79. Income Tax Collected at Source.** —
>
> **(A) Requirement of Withholding.** — Every employer making payment of wages shall deduct and withhold upon such wages a tax determined in accordance with the rules and regulations to be prescribed in accordance with the rules and regulations to be prescribed by the Secretary of Finance, upon recommendation of the Commissioner: *Provided, however,* **That no withholding of a tax shall be required where the total compensation income of an individual does not exceed the statutory minimum wage, or Five thousand pesos (P5,000) per month, whichever is higher**." (*Emphasis supplied*)

Based on the foregoing, every employer making payment of wages has the responsibility to deduct and withhold from the same a corresponding income tax. However, such duty does not extend to a case when the total compensation income of the concerned employee "does not exceed the statutory minimum wage, or Five thousand pesos (P5,000) per month, whichever is higher". For, there is no duty where the law forbids.[12]

[12] *R.B. Industrial Development Co., Ltd., et al. vs. Enage, et al.*, G.R. No. L-27741, July 29, 1968.

The above-cited Section 79(A) of the NIRC of 1997 is very clear. It speaks in a language that is categorical and absolute, *i.e.*, "no withholding of a tax shall be required where the total compensation income of an individual does not exceed the statutory minimum wage, or Five thousand pesos (P5,000) per month, whichever is higher".

Accordingly, the withholding tax deficiency for 1999 and 1998 shall be reduced by P1,557.89[13] and P81,623.18, respectively, the latter amount determined as follows:

Name of employees[14]	**Total compensation**	**Withholding tax deficiency per Decision**
Patalinhug, Dionesio	457.00	22.85
Pagunsan, Arlyn	34,451.21	3,167.68
Pueblos, Joenel	410.55	20.53
Beduya, Roderick	37,625.65	3,643.85
Portugaliza, Renato	43,620.20	4,543.03
Zarzata, Leo	38,155.75	3,723.36
Ignacio, Bernardo	41,287.23	4,193.08
Monares, Serafin	45,372.29	4,805.84
Baloca, Ildefonso	41,193.63	4,179.04
Lepata, Melvin	42,844.15	4,426.62
Mondaya, Bernardo	34,194.55	3,129.18
Cruda, Reynaldo	51,110.01	5,666.50
Semillano, Casiano	50,819.40	5,622.91
Tarrayo, Danilo	51,110.01	5,666.50
Santos, Roberto	40,844.34	4,126.65
Salazar, Vicente	33,866.45	3,079.97
Mahinay, Arturo	43,221.83	4,483.27
Monsor, Ernesto	48,720.78	5,308.12
Savino, Joselito	48,644.06	5,296.61
Yangzon, Renato	29,791.80	2,479.18
Burca, Eduardo	40,256.06	4,038.41
TOTAL		81,623.18 ======

To recapitulate, the Court finds respondent's *Motion for Partial Reconsideration* untenable and petitioner's *Motion for Reconsideration* partly meritorious; hence, the amount of deficiency withholding tax on compensation ordered to be paid in the assailed *Decision*

[13] The amount of withholding tax deficiency for Mr. Roderick Beduya. *Rollo,* pp. 480 and 476.
[14] Breakdown of the Deficiency Withholding Tax on Compensation for the year 1998 as annexed to the subject Decision *Rollo,* pp. 473 and 469.

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will be reduced from P2,855,701.59 to P2,690,850.91. The rest of the *Decision*, particularly, those pertaining to the cancellation and withdrawal of the deficiency income tax assessment for 1998 and 1999 will remain unchanged.

WHEREFORE, respondent's *Motion for Partial Reconsideration* is hereby **DENIED** for lack of merit; while petitioner's *Motion for Reconsideration* is hereby **PARTIALLY GRANTED**. Accordingly, the dispositive portion of this Court's *Decision* promulgated on May 27, 2008 is hereby modified as follows:

> "**WHEREFORE**, the instant Petition for Review is hereby **PARTIALLY GRANTED**. Accordingly, the 1998 to 1999 deficiency income tax assessment issued against petitioner in the amount of P440,545.71 is hereby **CANCELLED** and **WITHDRAWN**.
>
> On the other hand, petitioner is hereby **ORDERED TO PAY** respondent deficiency Withholding Tax on Compensation for taxable years 1997, 1998, and 1999 in the amount of P2,690,850.91, computed as follows:

	1997	1998	1999	Total
Deficiency WT	P 522,253.85	P338,336.88	P491,523.71	P 1,352,114.44
Add: 25% Surcharge	130,563.46	84,584.22	122,880.93	338,028.61
Interest	488,599.81	248,867.61	263,240.44	1,000,707.86
Total Deficiency WT	P1,141,417.12	P671,788.71	P877,645.08	P 2,690,850.91

> In addition, petitioner is hereby **ORDERED TO PAY** respondent the twenty percent (20%) delinquency interest on the amount of P2,690,850.91 computed from September 30, 2002 until full payment, pursuant to Section 249(C) of the NIRC of 1997.
>
> **SO ORDERED.**"

SO ORDERED.

ERNESTO D. ACOSTA
Presiding Justice

WE CONCUR:

LOVELL R. BAUTISTA
Associate Justice

CAESAR A. CASANOVA
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above Amended 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
Chairman, First Division