

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

SONOMA SERVICES, INC.,
Petitioner,

CTA CASE NO. 7911

Members:

- versus -

ACOSTA, *Chairperson*
UY, *and*
FABON-VICTORINO, *JJ.*

COMMISSIONER OF INTERNAL
REVENUE,

Promulgated:

APR 25 2012 3:30 p.m.

Respondent.

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DECISION

Fabon-Victorino, J.:

This is a Petition for Review filed on April 14, 2009 by petitioner Sonoma Services, Inc., assailing the inaction of the Commissioner of Internal Revenue over its administrative claim for tax refund or issuance of tax credit certificate in the amount of P3,991,800.00, allegedly representing its excess and unutilized creditable withholding taxes (CWT) for taxable year 2006.

Petitioner alleges that it is a duly organized and existing domestic corporation, with principal place of business at the 35th

Floor, Tower One and Exchange Plaza, Ayala Triangle, Ayala Avenue, Makati City.¹ It is registered and was issued by the Bureau of Internal Revenue (BIR), with Taxpayer Identification No. 220-868-954-000.²

Petitioner's primary purpose is to provide general services with any party, including but not limited to rendering of management and other allied services within limits allowed by law, such as office and clerical support services, maintenance services of any kind, also to engage in any preservation, maintenance or repair work upon any and every kind of property, and to enter into and execute contracts therefore or relating thereto.³

Respondent, on the other hand, is the Commissioner of Internal Revenue (CIR), with the power to decide, approve, and grant refunds or tax credits of overpaid or erroneously paid taxes. She holds office at the BIR National Office Building, BIR Road, Diliman, Quezon City.



¹ Par. 1, Admitted Facts II, Joint Stipulation of Facts and Issues (JSFI) dated July 22, 2009, docket, p. 69; Annex "A", Petition for Review, docket, pp. 11-28.

² Par. 4, Admitted Facts II, JSFI dated July 22, 2009, docket, p. 69; Annex "B", Petition for Review, docket, p. 29.

³ Par. 3, Admitted Facts II, JSFI dated July 22, 2009, docket, p. 69; Annex "A", Petition for Review, docket, p. 12.

On April 16, 2007, petitioner filed with the BIR its Annual Income Tax Return (BIR Form 1702) for taxable year 2006.⁴ In Line 31 of the said Return, petitioner marked the box "To be refunded", indicating its intention to claim a refund of its excess/unutilized creditable withholding tax for 2006.⁵

On December 19, 2007, petitioner filed with the BIR Revenue Region No. 8, Revenue District Office No. 50, a letter dated December 18, 2007, requesting for refund of its excess creditable tax withheld for taxable year 2006 in the amount of P3,991,800.00.⁶

Due to respondent's inaction⁷ on petitioner's claim for refund, the latter filed the instant Petition for Review on April 14, 2009.

In her Answer⁸, respondent interposes the following Special and Affirmative Defenses:



⁴ Exhibit "F"; Par. 6, Admitted Facts II, JSFI dated July 22, 2009, docket, p. 70.

⁵ Exhibit "F-4"; and Par. 8, Admitted Facts II, Joint Stipulation of Facts and Issues dated July 22, 2009, docket, p. 70.

⁶ Par. 10, Admitted Facts II, JSFI dated July 22, 2009, docket, p. 70; Annex "E", Petition for Review, docket, p. 36.

⁷ Par. 12, Admitted Facts II, JSFI dated July 22, 2009, docket, p. 70

⁸ Docket, pp. 42-45.

"4. Granting arguendo that Petitioner filed a claim for refund, the same is subject to investigation by the Bureau of Internal Revenue;

5. Petitioner failed to demonstrate that the alleged tax sought for refund or tax credit has been (sic) or erroneously or illegally collected in violation of the tax laws relied upon by the petitioner;

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;

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)."

On June 02, 2009,⁹ petitioner filed its Pre-Trial Brief while respondent, on May 28, 2009.¹⁰

On July 27, 2009, the parties filed their Joint Stipulation of Facts and Issues dated July 22, 2009,¹¹ which the Court approved on July 30, 2009.¹²

In the course of the proceedings, petitioner presented its Financial Accountant Vanessa Maturana-Besas.¹³ She testified that the amount subject of the claim arose from the withholding tax on petitioner's sale of services in taxable year 2006. In 2006, petitioner had gross revenues of P33,903,900.00,¹⁴ which

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⁹ Docket, p. 48.

¹⁰ See Minutes of the hearing dated June 05, 2009, docket, p. 56.

¹¹ Docket, p. 68.

¹² Docket, p. 73.

¹³ Minutes of Hearing, August 6, 2009, docket, p. 89.

¹⁴ Exhibits "F-1" (Line 15) and "F-8".

pertains to revenues from its sale of services.¹⁵ This gross revenue from sale of services equates to a corporate income tax liability in the amount of P434,043.00 for the year 2006.¹⁶

In 2006, petitioner had total tax credits of P4,629,376.00 consisting of the creditable taxes withheld during the four (4) quarters of 2006 in the amount of P3,991,800.00 and prior year's excess credits of P637,576.00.

From the total tax credits of P4,629,376.00, after deducting the income tax liability for the year 2006 in the amount of P434,043.00, petitioner has a total of P4,195,333.00¹⁷ excess tax credits for 2006. These excess tax credits consists of the creditable taxes withheld for the four (4) quarters of year 2006 in the amount of P3,991,800.00, and the remainder of the prior year's excess credits which now totals P203,533.00 after deducting the 2006 tax liability (P637,576.00 prior year's excess credits minus P434,043.00 income tax liability for 2006). ✓

¹⁵ Line 37, Exhibit "F-6".

¹⁶ Exhibit "F-2".

¹⁷ Exhibit "F-3".

Petitioner opts to claim a refund of the P3,991,800.00 creditable withholding taxes accumulated for the year 2006, evidenced by petitioner's Annual Income Tax Return for calendar year 2006¹⁸ in which petitioner marked "x" the box before the option "To be refunded."¹⁹ Petitioner also applied for the refund for the said amount with the BIR on December 19, 2007.

As to the P203,533.00 remaining prior year's excess credits, petitioner continues to carry it over to the succeeding taxable year. The witness explained how petitioner arrived at this amount.

Per her explanation, these income tax credits were incurred in 2003 when petitioner had CWT in the total amount of P2,506,600.00. Petitioner applied the withholding tax credits of P2,506,600.00 as payment for its income tax liability of P289,502.00. Hence, petitioner reported a tax overpayment of P2,217,098.00 as of December 31, 2003.

Petitioner carried over the excess withholding tax credits of P2,217,098.00 to 2004, during which it had an income tax liability of P550,220.00. The prior year's excess credits of

¹⁸ Exhibit "F".

¹⁹ Exhibit "F-4".

P2,217,098.00 was used as payment for its income tax liability of P550,220.00. Hence, the remainder of petitioner's prior year's excess credits as of December 31, 2004 was P1,666,878.00, which was carried over to pay petitioner's 2005 income tax liability of P1,029,302.00. Hence, the remainder of petitioner's prior year's excess credits as of December 31, 2005 was P637,576.00.

Again, the aforesaid amount of P637,576.00 was carried over and used to pay its 2006 income tax liability of P434,043.00, leaving as prior year's excess credits as of December 31, 2006 the amount of P205,533.00. Petitioner carried over this latter amount to 2007 and applied the same, in addition to the CWTs incurred during the four quarters of 2007, as payment for petitioner's income tax liability of P756,740.00.

The foregoing claim on prior year's excess credits is evidenced by petitioner's income tax returns for calendar year 2003,²⁰ 2004,²¹ 2005,²² and 2006,²³ and its Quarterly²⁴ and Annual²⁵ Income Tax Returns for year 2007. According to the

²⁰ Exhibit "B".

²¹ Exhibit "C".

²² Exhibits "D" and "E".

²³ Exhibit "F".

²⁴ Exhibits "K," "L," and "M".

²⁵ Exhibit "J".



witness, the Returns for year 2007 show that the P3,991,800.00 CWT accumulated for year 2006 subject of the instant claim for refund was not carried over to the succeeding year.

As to the CWT for the year 2006 in the amount of P3,991,800.00, the witness explained that it pertains to the creditable taxes withheld from the service income/administration fees that petitioner received from its clients in 2006 as shown in the summary/schedule²⁶ that it prepared based on the Certificates of Creditable Tax Withheld at Source (BIR Form 2307) received from its clients/withholding agents for the year 2006. This summary/schedule shows the fees received by petitioner from its clients and the CWT withheld.

The fees received from clients in 2006 were reported as part of petitioner's gross revenues for that year. The total amount of service income reported in the Annual Income Tax Return for 2006 was P33,903,900.00,²⁷ while the total amount of income subject to CWT was only P27,060,000.00.

The witness further testified that the income subjected to CWT (per BIR Form 2307) was reported as part of the service

²⁶ Exhibit "N".

²⁷ Exhibits "F-1" and "F-6".

income declared in petitioner's Annual Income Tax Return, as evidenced by a reconciliation schedule²⁸ prepared by petitioner. The reconciliation schedule shows the breakdown of petitioner's income based on the Certificates of Creditable Tax Withheld at Source (BIR Form 2307), in connection with the amounts of income reported in petitioner's Annual Income Tax Return for 2006,²⁹ and the audited financial statements³⁰ for 2006 of petitioner.

For non-appearance despite due notice, counsel for respondent failed to conduct a cross-examination.³¹

On September 15, 2009, the Court, at the instance of petitioner, commissioned Katherine O. Constantino, as Independent Certified Public Accountant (ICPA),³² pursuant to Rule 13 of the Revised Rules of the Court of Tax Appeals.

When placed on the witness stand, the ICPA manifested that on October 15, 2009, she submitted to the Court³³ her

²⁸ Exhibit "O".

²⁹ Exhibit "F".

³⁰ Exhibit "F-7".

³¹ Minutes of the hearing dated August 06, 2009, docket p. 89; TSN dated August 06, 2009.

³² Minutes of Hearing, September 15, 2009, docket p. 100; Motion to Commission Independent Certified Public Accountant, docket, pp. 91-93.

³³ Exhibit "AA".

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Report on the result of her examination in relation to petitioner's claim for refund or issuance of Tax Credit Certificate (TCC) in the amount of P3,991,800.00, representing its alleged excess and unutilized creditable withholding taxes for year 2006.

She stated that based on petitioner's Annual Income Tax Return for 2006, petitioner had a total tax credit of P4,629,376.00 in 2006. After deducting the income tax liability of P434,043.00 from petitioner's total tax credits, it had excess tax credits of P4,195,333.00 as of December 31, 2006. This amount consists of the creditable taxes withheld during the four (4) quarters of 2006 in the amount of P3,991,800.00 and the remainder of prior year's excess credits in the amount of P203,533.00. Petitioner opted to refund its excess withholding tax credits for 2006, as indicated in its Annual Income Tax Return³⁴ for year 2006.

Her audit also shows that petitioner's creditable income tax for 2006 in the amount of P3,991,800, which is the subject of this claim, were properly supported by Certificates of Creditable

³⁴ Exhibit "F".

Tax Withheld at Source (BIR Form 2307)³⁵ issued by the withholding agents.

She also disclosed that the revenues reported in petitioner's Annual Income Tax Return for 2006³⁶ match with the revenues reported by petitioner in its Audited Financial Statements for the same year.³⁷ Further, the revenue of P27,060,000.00 from which the CWT was withheld, stated in petitioner's Breakdown of Revenues for CY 2006³⁸, matches with the revenue stated in the Summary of Creditable Withholding Tax,³⁹ also prepared by petitioner.

Based on petitioner's Quarterly⁴⁰ and Annual⁴¹ Income Tax Returns for 2007, the excess CWT for 2006 was not reported as "Prior Year's Excess Credits" for 2007 and the amount subject of the claim was not carried over to the succeeding year.

The witness also declared that the prior year's excess credits carried over and used as payment for petitioner's income tax liability for the year 2006 represent the balance of

³⁵ Exhibits "SS-1" to "SS-27".

³⁶ Exhibit "F".

³⁷ Exhibit "F-7".

³⁸ Exhibit "O".

³⁹ Exhibit "N".

⁴⁰ Exhibits "K," "L," and "M".

⁴¹ Exhibit "J".



petitioner's CWT for the year 2003. Moreover, the CWT for 2006 in the amount of P3,991,800.00 subject of the claim are properly supported by BIR Form 2307, issued by the withholding agents. The amounts indicated therein were remitted by the respective withholding agents to the BIR in 2006.

Anent the creditable withholding taxes for 2003 in the amount of P2,506,600.00, the same was utilized or applied against petitioner's income tax liabilities for 2003 in the amount of P289,502.00, for 2004 in the amount of P550,220.00, and for 2005 in the amount of P1,029,302.00, resulting to a net creditable withholding taxes to be carried over for calendar year 2006 in the amount of P637,576.00. This amount was sufficient to cover petitioner's income tax liability for 2006 in the amount of P434,043.00.

Further, the creditable withholding taxes for 2004 claimed for refund/tax credit in CTA Case No. 7613 in the amount of P5,188,970.00 was not utilized or applied against petitioner's income tax liability for 2004 nor was it carried over to the years 2005, 2006, and 2007.



With respect to the creditable withholding taxes for 2005 claimed for refund/tax credit in CTA Case No. 7757 in the amount of P5,070,932.00, the same was not utilized or applied against petitioner's income tax liability for 2005 nor was it carried over to taxable years 2006 and 2007.

The creditable withholding taxes for 2006 subject of the instant claimed for refund/tax credit in the amount of P3,991,800.00 was not utilized or applied against petitioner's income tax liability for taxable 2006 nor was it carried over to the succeeding year 2007.

Finally, the ICPA confirmed that all documents supporting petitioner's claim for refund of excess and unutilized creditable withholding taxes 2006, including petitioner's income tax returns, Certificates of Creditable Tax Withheld at Source, accounting record and all other documents, all used as basis for the schedules and summaries in her Report, are faithful reproductions of the originals.

Again, no cross examination of ICPA Katherine O. Constantino was conducted for failure of respondent's counsel to



appear during the scheduled hearing on November 19, 2009, despite due notice.⁴²

With the conclusion of the presentation of its second witness, the petitioner rested its case.⁴³

On June 07, 2010, petitioner filed its Formal Offer of Evidence dated June 04, 2010,⁴⁴ submitting Exhibits "A" to "Q", and "AA" to "XXX", inclusive of sub-markings. In the Resolutions dated October 01, 2010⁴⁵ and February 18, 2011,⁴⁶ the Court admitted all the documentary evidence offered by petitioner.

During the scheduled initial presentation of respondent's evidence on March 10, 2011, her counsel manifested that respondent was submitting the case for decision without presentation of any evidence since no report of investigation of the case was submitted from Revenue District Office (RDO) No. 50. As prayed for, the Court granted the parties thirty (30) days to file their respective memoranda.⁴⁷ ✓

⁴² Docket, p. 106; see also Minutes of the hearing dated November 19, 2009, docket p. 104.

⁴³ TSN dated April 22, 2010, pp. 3-4; Minutes of the hearing dated April 22, 2010, docket p. 181.

⁴⁴ Docket, pp. 194-232.

⁴⁵ Docket, p. 235.

⁴⁶ Docket, p.250.

⁴⁷ Minutes of Hearing, March 10, 2011, docket, p. 252.

On May 13, 2011, this case was submitted for decision, considering petitioner's Memorandum filed on May 09, 2011, *sans* any from respondent.⁴⁸

Per the parties' Joint Stipulation of Facts and Issues dated July 22, 2009, the following issues are submitted for the resolution of the Court:⁴⁹

"1. Whether or not petitioner's withholding tax credits for CY 2006 in the amount of P3,991,800.00 are duly substantiated by documentary evidence.

2. Whether or not the income from which the subject creditable income taxes were withheld was reported as part of the revenues declared in petitioner's Annual Income Tax Return.

3. Whether or not petitioner applied its excess creditable withholding taxes for CY 2006 against its income tax liability for the succeeding taxable year(s).

4. Whether or not petitioner filed its administrative and judicial claims for refund of excess creditable withholding taxes for CY 2006 within the two-year prescriptive period provided in Sections 204(C) and 229, Tax Code.

5. Whether or not petitioner is entitled to its claim for refund or issuance of Tax Credit Certificate for its excess and unutilized creditable withholding taxes for CY 2006 in the amount of P3,991,800.00."



⁴⁸ Docket, p. 276.

⁴⁹ Docket, pp. 70-71.

The foregoing issues may be summarized as follows:

"Whether or not petitioner is entitled to a refund or issuance of tax credit certificate in the amount of P3,991,800.00, allegedly representing petitioner's unutilized creditable withholding taxes for taxable year 2006."

DISCUSSION/RULING

The Court finds merit in the petition.

Section 76 of the National Internal Revenue Code (NIRC) of 1997, as amended, provides as follows:

"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

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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*)

The above provision prescribes two options to a taxable corporation whose total quarterly income tax payments in a given taxable year exceed its total income tax due. The taxpayer may either file a tax refund (either in the form of cash or tax credit certificate) **or** avail of a tax credit. In the case of *Systra Philippines, Inc. vs. Commissioner of Internal Revenue*,⁵⁰ the Supreme Court elucidated on the alternative and irrevocable options, in this wise:

"A corporation entitled to a tax credit or refund of the excess estimated quarterly income taxes paid has two options: (1) to carry over the excess credit or (2) to apply for the issuance of a tax credit certificate or to claim a cash refund. If the option to carry over the excess credit is exercised, the same shall be irrevocable for that taxable period.



⁵⁰ G.R. No. 176290, September 21, 2007

In exercising its option, the corporation must signify in its annual corporate adjustment 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.

This is known as the irrevocability rule and is embodied in the last sentence of Section 76 of the Tax Code. The phrase "such option shall be considered irrevocable for that taxable period" means that the option to carry over the excess tax credits of a particular taxable year can no longer be revoked."

Hence, the controlling factor for the operation of the *irrevocability rule* is that the taxpayer chose an option; and once it had already done so, it could no longer make another one.⁵¹ In other words, once the taxpayer opts to carry-over the excess income tax against the taxes due for the succeeding taxable years, such option is irrevocable for the whole amount of the excess income tax, thus, prohibiting the taxpayer from applying for a refund for that same excess income tax in the next succeeding taxable years.⁵² Under the new law, once the option to carry-over excess income tax payments to the succeeding

⁵¹ Commissioner of Internal Revenue vs. Bank of the Philippine Islands, G.R. No. 178490, July 07, 2009.

⁵² Asiaworld Properties vs. Commissioner of Internal Revenue, G.R. No. 171766, July 29, 2010.

years has been made, it becomes irrevocable.⁵³ Thus, applications for refund of the unutilized excess income tax payments may no longer be allowed.⁵⁴

In the case at bar, petitioner marked the option "To be refunded" in its Annual Income Tax Return⁵⁵ for taxable year 2006, clearly electing the option to refund its excess creditable taxes withheld for taxable year 2006.

Further, perusal of petitioner's Annual Income Tax Return⁵⁶ for taxable year 2006 shows that the excess tax credits as of December 2006 in the amount of P4,629,376.00 consists of the prior year's excess credits of P637,576.00 and creditable taxes withheld during the year of P3,991,800.00, detailed as follows:

Prior Year's Excess Credits		P 637,576.00
Creditable Taxes Withheld		
for the First Three Quarters	P 3,930,210.00	
for the Fourth Quarter	61,590.00	3,991,800.00
Total Tax Credits		P 4,629,376.00



⁵³ Commissioner of Internal Revenue vs. PL Management International, G.R. No. 160949, April 04, 2011.

⁵⁴ Belle Corporation vs. Commissioner of Internal Revenue, G.R. No. 181298, January 10, 2011.

⁵⁵ Exhibit "F-4".

⁵⁶ Exhibit "F".

Evidence as well reveal that the prior year's excess credits of P637,576.00 originated from the creditable taxes withheld for the year 2003 in the amount of P2,506,600.00⁵⁷, after deducting therefrom the income tax due for the years 2003, 2004 and 2005 in the respective amounts of P289,502.00; P550,220.00 and P1,029,302.00, as computed below:

Exhibit	Taxable Year	Income Tax Due	Prior Year's Excess Credits	Balance Due / Refundable	CWT for the Year	Excess CWT End of the Year
"B"	2003	P 289,502.00	P -	P 289,502.00	P2,506,600.00	P 2,217,098.00
"C"	2004	550,220.00	2,217,098.00	1,666,878.00	5,188,970.00	6,855,848.00
"E"	2005	1,029,302.00	1,666,878.00 ⁵⁸	637,576.00	5,070,932.00	5,708,508.00

The prior year's excess credits of P637,576.00 was applied against petitioner's income tax due for the year 2006 in the amount of P434,043.00,⁵⁹ leaving the unutilized amount of P203,533.00, representing prior year's excess credits and the amount of P3,991,800.00, representing creditable taxes withheld during the year 2006, or a total unutilized tax credit of P4,195,333.00⁶⁰ as of December 31, 2006, as shown below:

⁵⁷ Exhibits "VV-1" to "VV-45" as summarized in Exhibit "VV" (Summary of petitioner's Creditable Withholding Taxes, BIR Form 2307, for CY 2003).

⁵⁸ Exhibit "E", Amended Annual ITR for 2005, showing that petitioner only reflected P1,666,878.00 as its prior year's excess credit.

⁵⁹ Exhibit "F-2".

⁶⁰ Exhibit "F-3".



Prior Year's Excess Credits	P 637,576.00
Less: Income Tax Due	434,043.00
Balance of Prior Year's Excess Credits	P 203,533.00
Add: Creditable Taxes Withheld During the Year	3,991,800.00
Unutilized Excess Tax Credits as of December 31, 2006	P 4,195,333.00

Given that petitioner clearly indicated its intention to claim for refund by marking the box "To be refunded" in its 2006 Annual Income Tax Return⁶¹ and reflected only the amount of P203,533.00 as "Prior Year's Excess Credits" in its Quarterly Income Tax Returns⁶² and Annual Income Tax Return⁶³ for taxable year 2007, its unutilized creditable withholding taxes for taxable year 2006 in the amount of P3,991,800.00 is obviously refundable, pursuant to Section 76 of the NIRC of 1997, as amended.

Aside from compliance with Section 76 of the NIRC, as amended, petitioner must satisfy the following requisites to be entitled to a refund of its excess creditable withholding tax, to wit:

1. That the claim for refund was filed within the two-year prescriptive period as provided under Section 204(C) in

⁶¹ Exhibit "F-4".

⁶² Line 29A, Exhibits "K", "K-1", "L", "L-1", "M" and "M-1".

⁶³ Exhibits "J" and "J-1".

relation to Section 229 of the NIRC of 1997;

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.⁶⁴

In a number of cases, the Supreme Court enumerated the requisites for claiming a tax credit or a refund of creditable withholding tax, to wit: 1) The claim must be filed with the CIR within the two-year period from the date of payment of the tax; 2) It must be shown on the return that the income received was declared as part of the gross income; and 3) The fact of withholding must be established by a copy of a statement duly issued by the payor to the payee showing the amount paid and the amount of the tax withheld.⁶⁵



⁶⁴ Section 2.58, Revenue Regulations No. 2-98, as amended; Citibank N.A. vs. Court of Appeals and CIR, 280 SCRA 459; ACCRA Investment Corporation vs. CA, 204 SCRA 957.

⁶⁵ Commissioner of Internal Revenue vs. Mirant (Philippines) Operations, Corporation, G.R. No. 171742, June 15, 2011 and Mirant (Philippines) Operations Corporation (Formerly: Southern Energy Asia-Pacific Operations (Phils.), Inc.) vs. Commissioner of Internal Revenue, G.R. No. 176165.

As to the timeliness of the claim for refund, the pertinent provisions are Sections 204(C) and 229 of the NIRC, as amended, which provide, thus:

"SEC. 204. Authority of the Commissioner to Compromise, Abate and Refund or Credit Taxes. – The Commissioner may -

xxx xxx xxx

(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." (underscoring supplied)

"SEC. 229. Recover 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, non 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.” (underscoring supplied)

In applying the foregoing provision, the High court in the case of *ACCRA Investments Corporation vs. Court of Appeals, et al.*,⁶⁶ held that the two-year prescriptive period for claiming a refund commences to run on the date of filing of the Final Adjustment Return. It is only when the Final Adjustment Return covering the whole year is filed that the taxpayer would know whether a tax is still due or a refund can be claimed based on the adjusted and audited figures.⁶⁷ This guiding principle was repeated in the more recent case of *Commissioner of Internal Revenue vs. Primetown Property*,⁶⁸ where it was held that the two-year prescriptive period is reckoned from the filing of the final adjusted return.

⁶⁶ G.R. No. 96322, December 20, 1991 (204 SCRA 957).

⁶⁷ *Commissioner of Internal Revenue vs. TMX Sales Inc., et al.*, G.R. No. 83736, January 15, 1992.

⁶⁸ G.R. No. 162155, August 28, 2007.



In this case, petitioner filed its Annual Income Tax Return for calendar year 2006 on April 16, 2007.⁶⁹ Counting from April 16, 2007, petitioner had until April 16, 2009, to file a claim for refund of its excess creditable withholding taxes for the year 2006 both in the administrative and judicial levels. Thus, petitioner seasonably filed its administrative claim for refund with respondent on December 19, 2007,⁷⁰ and its judicial claim for refund through the instant Petition for Review, on April 14, 2009.

With regard the second requisite - 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 - petitioner presented Certificates of Creditable Tax Withheld at Source⁷¹ (BIR Form No. 2307) duly issued to it by various withholding agents for the taxable year 2006, reflecting creditable withholding taxes in the total amount of P3,991,800.00⁷². The second requisite is satisfied as well.

⁶⁹ Admitted Facts II, par. 6, Joint Stipulation of Facts and Issues dated July 22, 2009, docket p. 70; Exhibit "F".

⁷⁰ Exhibit "A"; Admitted Facts II, par. 10, Joint Stipulation of Facts and Issues dated July 22, 2009, docket p. 70.

⁷¹ Exhibits "SS-1" to "SS-27".

⁷² Annex 1, Exhibit "AA"; Exhibit "N".

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As to the third requisite mandating that the income received from which the excess CWT arose be declared as part of the gross income, a review of the withholding tax certificates proves that the creditable taxes of P3,991,800.00 were withheld from income payments of P27,060,000.00⁷³ received by petitioner for the year 2006. Petitioner's Annual Income Tax Return for the year 2006 reveals a gross income of P36,680,857.00⁷⁴. Petitioner presented a Breakdown of Revenues⁷⁵, as follows:

	Per 2307	INCOME TAX RETURN
Interest Income on Loans		P 2,770,257.00
Miscellaneous Income		6,700.00
Administration Fee		
Withholding Agents	P 26,463,900.00	26,463,900.00
Non-withholding Agents (Individuals)		7,440,000.00
Recovery on Costs	596,100.00	-
Total	P 27,060,000.00	P 36,680,857.00

The Court-commissioned Independent CPA explained the difference of P596,100.00, as follows:⁷⁶

"5. Recovery on Costs was rental and miscellaneous expenses shared by the Petitioner's managed companies in

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⁷³ Annex 1, Exhibit "AA"; Exhibit "N".

⁷⁴ Line 19C, Exhibit "F".

⁷⁵ Exhibit "O".

⁷⁶ Exhibit "AA", page 8.

accordance with their *Cost Recovery Agreements* (to be presented as **Exhibits CC-1 to CC-3**). For the month of January 2006, Recovery on Costs was collected with Administration fees and thus was initially recorded in the 'Administration Fees' ledger account (to be presented as **Exhibit DD-1**). A reclassifying entry (to be presented as **Exhibit EE**) was made in August 3, 2006 wherein the amount recorded in 'Administration fee' of P298,050 was reclassified as a credit (addition) to the 'Recovery on Costs' ledger account (to be presented as **Exhibit DD-2**). Subsequent collections of Recovery on Costs as supported by official receipts 453, 456 and 458 (to be presented as **Exhibits FF-19, FF-22 and FF-24**) totaling P298,050 were directly credited to the Recovery on Costs ledger account (to be presented as **Exhibit DD-2**).

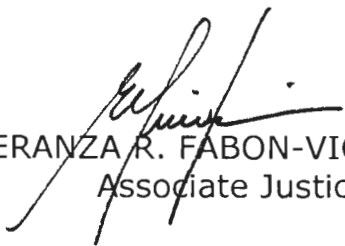
Total Recovery on Costs for the calendar year 2006 amounted to P596,100 (breakdown as shown in **Annex 5**)."

The clear explanation of the ICPA established that petitioner's income from which the creditable income taxes of P3,991,800.00 were withheld were reported in its Annual Income Tax Return for the year 2006.

In fine, the Court finds petitioner entitled to a refund of its excess creditable withholding taxes for taxable year 2006 in the amount of P3,991,800.00. ✓

IN VIEW WHEREOF, the instant Petition for Review dated April 14, 2009 is **GRANTED**. Accordingly, respondent is hereby **DIRECTED TO REFUND** or **TO ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner Sonoma Services, Inc. the amount of **THREE MILLION NINE HUNDRED NINETY-ONE THOUSAND EIGHT HUNDRED PESOS (P3,991,800.00)**, representing its excess and unutilized creditable withholding taxes for taxable year 2006.

SO ORDERED.


ESPERANZA R. FABON-VICTORINO
Associate Justice

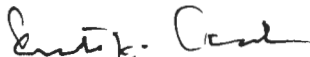
We concur:


ERNESTO D. ACOSTA
Presiding Justice

ON LEAVE
ERLINDA P. UY
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, 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