REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

STOCK TRANSFER SERVICE, INC.,
Petitioner,

- versus -

C.T.A. CASE NO. 5629

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
AUG 18 1998

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RESOLUTION

Respondent Commissioner of Internal Revenue, in its Answer to the petition and in a verbal motion made in open court, seeks the dismissal of the instant petition for review on the ground that the suit for refund was already barred by prescription. She argued that the two-year prescriptive period within which to claim a refund commences to run at the earliest, on the <u>date of the filing</u> of the adjusted final tax return, citing the case of *ACCRA Investments Corp. vs. Commissioner of Internal Revenue, 204 SCRA 957.* Hence, she stressed that since the petitioner's Corporate Annual Income Tax Return was filed on April 10, 1996, petitioner had only until April 10, 1998 within which to file its claim for refund, thus, the instant claim which was filed on April 15, 1998 had already prescribed.

The issue as to when the two-year prescriptive period provided in Section 230 of the Tax Code, stated hereunder, in filing a claim for refund, commences to run has long been settled by the Supreme Court.

> SEC. 230. ***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, 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.
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> "In any case, no 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 the case of *Commissioner of Internal Revenue vs. Asia Australia Express Ltd., G.R. No. L-85956, Resolution, dated April 10, 1989*, the Supreme Court ruled that "the two-year prescriptive period within which to claim a refund commences to run, at the earliest, on the date of filing of the adjusted final tax return" (underlining supplied).

In the case of *ACCRA Investments Corporation vs. Court of Appeals, 204 SCRA 957*, the Supreme Court held that "the rationale in computing the two-year prescriptive period with respect to the petitioner corporation's claim for refund from the time it filed its final adjustment return is the fact that it is only then that ACCRAIN could ascertain whether it made profits or incurred losses in its business operations." (underscoring ours).

In the case of *Commissioner of Internal Revenue vs. TMX Sales, Inc., 205 SCRA 184*, the Supreme Court held that "the most reasonable and logical application of the law would be to compute the two-year prescriptive period at the time of filing the Final Adjustment Return or the Annual Income Tax Return, when it can be finally ascertained if the taxpayer has still to pay additional income tax or if he is entitled to a refund of overpaid income tax" (underscoring supplied).

In the recent case of *Commissioner of Internal Revenue vs. Philippine American Life Insurance, Co., 244 SCRA 446*, the Supreme Court reiterated its previous decisions on the matter, by saying that the two-year prescriptive period to claim refund commences to run only from the time the refund is ascertained, which can only be determined after a final adjustment return is accomplished.

It is clear and vivid from the abovementioned rulings of the Supreme Court that the two-year prescriptive period starts to run from the time the taxpayer filed its adjusted final tax return, that is on or before the 15th day of April or of the fourth month following the close of the fiscal year covering the entire taxable income of preceding calendar or fiscal year.

In the case at bar, it is undisputed that petitioner filed its Corporation/Partnership Annual Income Tax Return on April 10, 1996. On this date, petitioner had already ascertained the results of its business operation for the year 1995. Hence, it is from this date, April 10, 1996, that the two-year prescriptive period commences to run. In other words, herein petitioner has until April 10, 1998 to judicially file the instant claim for refund with this Court, and since such the action was initiated with this Court only on April 15, 1998, we hold that the right to bring the instant case with this Court has already prescribed.

ACCORDINGLY, the instant petition for review is **DISMISSED**, without pronouncement as to costs.

SO ORDERED.

ERNESTO D. ACOSTA
Presiding Judge

AMANCIO Q. SAGA
Associate Judge

RAMON O. DE VEYRA
Associate Judge