REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

****

DUMAGUETE CATHEDRAL CREDIT COOPERATIVE [DCCO], represented by MRS. FELICIDAD L. RUIZ,
Petitioner,

C.T.A. CASE NO. 6827

Members:

- versus -

ACOSTA, *Chairperson*
BAUTISTA, and
CASANOVA, JJ.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
FEB 06 2007, 2:40 PM

x - x

DECISION

BAUTISTA, L., J.:

Before the Court is a Petition for Review filed on December 3, 2003 praying that the assessment for deficiency withholding taxes in the amounts of ONE MILLION FOUR HUNDRED EIGHTY NINE THOUSAND SIXTY FIVE PESOS and THIRTY CENTAVOS (₱1,489,065.30) for taxable year 1999 and ONE MILLION FOUR HUNDRED SIXTY TWO THOUSAND SIX HUNDRED FORTY FOUR PESOS and NINETY CENTAVOS (₱1,462,644.90) for taxable year 2000 issued against the petitioner be nullified and set aside for lack of factual and legal basis.

Petitioner is a cooperative duly registered with the Cooperative Development Authority ("CDA") and regulated by the latter. Respondent is the head of the Bureau of Internal Revenue ("BIR") with main office address located at Agham Road, Diliman, Quezon City.

On November 27, 2001, BIR Operations Group Deputy Commissioner Lilian B. Hefti issued Letter of Authority Nos. 63222[1] and 63223[2], which were received by petitioner on December 19, 2001, authorizing BIR Officers Tomas Rambuyon and Tarcisio Cubillan of Revenue Region No. 12 - Bacolod City to examine petitioner's books of accounts and other accounting records for all internal revenue taxes for the taxable years 1999 and 2000, respectively. Further, Deputy Commissioner Lilian B. Hefti requested petitioner that all facilities be extended to said Revenue Officers in order to expedite the examination.

After the examination, the BIR Regional Special Task Force left a two (2)-page computation of deficiency withholding taxes for the years 1999 and 2000,[3] as follows:

<u>For year 1999:</u>

1. Honorarium of Board of Directors	P104,000.00		
Per Diems	710,800.00	814,800.00	
Tax Rate		10%	
Basic Deficiency Tax		81,480.00	
Add: Surcharge 25%		20,370.00	
Interest - 1999-2002/3=45%		45,832.50	
Compromise		10,000.00	
Total Due & Payable		P 157,682.50	
2. Security & Janitorial Services	P234,300.00	1%	2,343.00
Commission	11,739.93	5%	586.99
Legal & Professional Fees	35,688.55	10%	3,568.86
Total Basic Tax Deficiency			6,498.85
Add: Surcharge 25%			1,624.71
Interest - 1999-2002/3=45%			3,655.60
Compromise			5,000.00
Total Due & Payable			P 16,779.16

[1] Exhibit 1.
[2] Exhibit B.
[3] Exhibit C.

3. Interest on Savings Deposit		P 604,602.00	
Interest on Time Deposit		2,729,111.27	
Total	20%x	3,333,713.27	666,742.65
Basic Deficiency Tax			P 666,742.65
Add: Surcharge: 25%			166,685.66
Interest: 1999-2002/3=45%			375,042.74
Compromise			25,000.00
Total Due & Payable			P1,233,471.05
Total Deficiency Taxes Due & Payable			P1,407,932.71

For year 2000:

1. Honorarium of Board of Directors		P 130,000.00
Per Diems		962,500.00
Total		P 1,092,500.00
x tax rate		10%
Basic Tax Deficiency		P 109,250.00
Add: Surcharge 25%		27,312.50
Interest – 2000-2002/3 =25%		34,140.63
Compromise		10,000.00
Total Due & Payable		P 180,703.13
2. Security & Janitorial Services	P 246,666.67 x 1%	2,466.67
Commission	9,736.96 x 5%	486.85
Legal & Professional Fees	76,858.50 x 10%	7,685.85
Total Basic Tax Deficiency		10,639.37
Add: Surcharge 25%		2,659.85
Interest - 2000-2002/3=25%		3,324.80
Compromise		5,000.00
Total Due & Payable		P 21,624.02
3. Interest on Savings Deposit		P 786,638.82
Interest on Time Deposit		2,749,509.99
Total		P 3,536,148.81
x tax rate		20%
Basic Deficiency Tax		P 707,229.76
Add: Surcharge 25%		176,807.44
Interest - 2000-2002/3=25%		221,009.30
Compromise		25,000.00
Total Due & Payable		P 1,130,046.50
Grand Total		P 1,332,373.65

On June 26, 2002, petitioner received two (2) Pre-Assessment Notices similarly dated June 14, 2002, with attached computations, for deficiency withholding taxes for the years

1999[4] and 2000.[5] Petitioner filed on July 23, 2002, a protest to said Pre-Assessment Notices.[6]

On October 16, 2002, petitioner received another two (2) Pre-Assessment Notices similarly dated September 17, 2002 for deficiency withholding tax with attached Audit Sheets for Individuals for the same years 1999[7] and 2000.[8] In response, petitioner sent a letter dated October 22, 2002 to BIR Regional Director Sonia L. Flores informing her that it would pay the withholding tax, excluding penalties and interest, in the amount of ₱87,977.86 due on Security and Janitorial, Commission, Legal and Professional Fees and Board of Directors' Fees for the year 1999. It further reiterated its view that it is not liable to pay withholding tax on savings and time deposits interests.[9] Also, in a letter dated November 8, 2002, petitioner informed BIR Region 12 Assistant Regional Director Rogelio B. Zambarrano that it would likewise pay the withholding taxes, excluding penalties and interest, in the amount of ₱119,889.37 due on Security and Janitorial, Commission, Legal/Professional Fees and Board of Directors' Fees for the year 2000. It also expressed its intention to avail of the Voluntary Assessment and Abatement Program ("VAAP") of the BIR under Revenue Regulations No. 17-2002. It further reiterated its view that it is not liable to pay withholding tax on savings and time deposits interests.[10]

On November 29, 2002, petitioner applied for the VAAP under Revenue Regulations No. 17-2002 and paid the amount of ₱105,574.62 for the year 1999[11] and ₱143,867.24 for the year 2000,[12] computed as follows:

---

[4] Exhibits D and D-1.
[5] Exhibit E and E-1.
[6] Exhibit F.
[7] Exhibits G and G-1.
[8] Exhibits H and H-1.
[9] Exhibit I.
[10] Exhibit J.
[11] Exhibit K-1.
[12] Exhibit L-1.

For the year 1999:

PARTICULARS	TAX BASE	TOTAL TAX DUE
1. Withholding Tax on Compensation		P 74,612.06
2. Honorarium of Board of Directors	P 104,000.00	
3. Per Diems	710,800.00	
	814,800.00	
Multiplied by	10%	P 81,840.00
4. Security & Janitorial Services	P 234,300.00	
Multiplied by	1%	2,343.00
5. Commission	11,739.93	
Multiplied by	5%	586.99
6. Legal & Professional Fees	P 35,688.55	
Multiplied by	10%	3,568.86
Total		P 162,590.91
Less: Withholding tax remitted		74,612.06
Total Tax Deficiency		P 87,978.85
Multiplied by Tax Rate		120%
TOTAL DEFICIENCY TAXES DUE		P 105,574.62

For the year 2000:

PARTICULARS	TAX BASE	TOTAL TAX DUE
1. Withholding Tax on Compensation		
2. Honorarium of Board of Directors	P 130,000.00	
3. Per Diems	962,500.00	
	1,092,500.00	
Multiplied by	10%	P 109,250.00
4. Security & Janitorial Services	P 246,666.67	
Multiplied by	1%	2,466.67
5. Commission	P 9,736.96	
Multiplied by	5%	486.85
6. Legal & Professional Fees	P 76,858.50	
Multiplied by	10%	7,685.85
Total Basic Tax Deficiency		P 119,889.36
Multiplied by Tax Rate		120%
TOTAL DEFICIENCY TAXES DUE		P 143,867.24

On April 24, 2003, petitioner received Letter of Demand No. 00027-2003 dated April 14, 2003 from BIR-Revenue Region No. 12 Regional Director Sonia L. Flores[13] with Transcript of Assessment[14] and Audit Result/Assessment Notice,[15] requesting that it pay the

[13] Exhibit N.
[14] Exhibit N-1.
[15] Exhibit N-2.

amount of ₱1,489,065.30 representing the deficiency withholding tax, inclusive of penalties, for the year 1999, computed as follows:

Basic Tax Due	P 754,721.50
Add: 25% Surcharge	188,680.40
20% Annual interest from 1/25/00 to 5/31/03	505,663.40
Compromise penalty	40,000.00
TOTAL AMOUNT DUE AND COLLECTIBLE	P 1,489,065.30

On same date, petitioner also received Letter of Demand No. 00026-2003 dated April 14, 2003 from BIR-Revenue Region No. 12 Regional Director Sonia L. Flores[16] with Transcript of Assessment[17] and Audit Result/Assessment Notice,[18] requesting that it pay ₱1,462,644.90 representing the deficiency withholding tax, inclusive of penalties, for the year 2000, computed as follows:

Basic Tax Due	P 827,119.13
Add: 25% Surcharge	206,779.78
20% Annual interest from 1/25/01 to 5/31/03	388,745.99
Compromise penalty	40,000.00
TOTAL AMOUNT DUE AND COLLECTIBLE	P 1,462,644.90

On May 9, 2003, petitioner filed its protest to said Letters of Demand and Assessment Notices.[19]

As respondent failed to act on the protest within the 180-day period, petitioner decided to elevate its case to this Court by way of Petition for Review on December 3, 2003.

Both parties stipulated on the following issues for the Court to decide:

"1. Whether or not the respondent erred in holding that the petitioner herein should be held liable to pay the tax assessment which essentially covers withholding taxes on the deposits maintained by its members for the calendar years 1999 and 2000?

2. Whether the BIR has authority to assess and collect taxes for the year 1999 even if the Letter of Authority covers only the period 2000?

---

[16] Exhibit O.
[17] Exhibit O-1.
[18] Exhibit O-2.
[19] Exhibit P.

3. Whether or not the respondent erred in applying the withholding tax on deposits maintained by members with the petitioner herein, the latter being a credit cooperative and not a banking institution and likewise, Revenue Regulations 2-98 exempts petitioner from withholding?

4. Whether or not the respondent erred in applying Revenue Regulation(s) No. 20-2001 which took effect on November of 2001, retroactively against the petitioner-cooperative for the years 1999 and 2000?

5. Whether or not the respondent should respect Revenue Ruling No. 551-88 which has not been repealed or modified and which is exactly apropos in the case at bar?

6. Whether or not the interests on savings or time deposits maintained by members of the petitioner are subject to the 20% withholding tax imposed in Section 24[b] of the Tax Code?

7. Whether or not the legal basis of the assessment for the 20% final withholding tax on interest is Revenue Regulation(s) No. 2-98 in relation to Revenue Regulation(s) No. 17-84 as amended by Revenue Regulation(s) No. 20-2001?

8. Whether or not the petitioner's availment of the Voluntary Assessment Program exonerated it from the liability for the assessment for withholding tax on honorarium, per diem, for the janitorial services fees, commissions an(d) legal and professional fees?

9. Whether or not the petitioner is liable for deficiency withholding tax for the years 1999 and 2000 in the respective amounts of ₱1,489,065.30 and ₱1,462,644.90."

The Court shall first dispose of the second issue raised.

In the hearing held on February 14, 2006, counsel for petitioner stipulated and admitted the existence of Letter of Authority No. 0063222 dated November 27, 2001, which covered the examination of petitioner's books of accounts and other accounting records for all internal revenue taxes for the taxable year 1999.[20] Hence, resolution of the second issue is rendered moot.

[20] Marked as Exhibits 1 and 1-a for the respondent, verbally offered in evidence by the respondent and admitted by this Court on even date.

This Court deems it necessary to discuss the first, third and sixth issues together being interrelated, to wit:

> *Whether or not respondent erred in holding that the petitioner should be held liable to pay the tax assessment which essentially covers withholding taxes on the deposits maintained by its members for the calendar years 1999 and 2000;*
>
> *Whether or not the respondent erred in applying the withholding tax on deposits maintained by members with the petitioner, the latter being a credit cooperative and not a banking institution and likewise, Revenue Regulations No. 2-98 exempts petitioner from withholding; and*
>
> *Whether nor not the interests on savings or time deposits maintained by members of the petitioner are subject to the 20% withholding tax imposed in Section 24 (B) of the Tax Code.*

It is petitioner's contention that it is not liable for the tax assessments pertaining to the interests on the savings deposits of its members, and that Revenue Regulations No. 2-98 in relation to Revenue Regulations No. 17-84, as well as Section 24 [B] of the Tax Code from which respondent finds support for his assessments against petitioner, are inapplicable in the case at bench.

Petitioner argues that the aforementioned specific laws refer to interest on any currency bank deposits and yield from deposit substitutes. Accordingly, the deposit or deposit substitutes must be from banks before the 20% is imposed and withheld. And a bank is defined under Section 22 [V] as referring to "*every banking institution, as defined in Section 2, of Republic Act 337, as amended otherwise known as General Banking Act. A bank may either be commercial bank, a thrift bank, a development bank, a rural bank or a specialized government bank.*"

Clearly then, petitioner, being a credit cooperative governed and regulated by the Cooperative Development Authority (CDA), is not a bank by any stretch of the imagination, and more importantly, it only deals with its members and not the general public. Perforce, the provisions relied upon by respondent finds no application here.

/

This Court disagrees.

There is no dispute that petitioner is a duly registered cooperative which does not transact business with nonmembers or the general public. As defined in Republic Act (R.A.) No. 6938,[21] a cooperative is a duly registered association of persons, with a common bond of interest, who have voluntarily joined together to achieve a lawful common social or economic end, making equitable contributions to the capital required and accepting a fair share of the risks and benefits of the undertaking in accordance with universally accepted cooperative principles.[22] To enable cooperatives to develop into viable and responsive economic enterprises,[23] the State through a legislative act, granted them certain privileges and benefits. Petitioner, as a duly registered cooperative which does not transact any business with nonmembers or the general public, shall not be subject to any government taxes or fees imposed under the internal revenue laws and other tax laws as provided in Article 61 of R.A. No. 6938.[24] Thus:

> "ART. 61. *Tax Treatment of Cooperatives.* – Duly registered cooperatives under this Code which do not transact any business with nonmembers or the general public shall not be subject to any government taxes or fees imposed under the internal revenue laws and other tax laws. xxx"

However, a reading of the assessments issued by the respondent against petitioner reveals that the deficiency withholding taxes arose from petitioner's failure to withhold the taxes supposedly due on the honorarium and per diems of the Board of Directors; security and janitorial services; commissions, legal and professional fees; and interests on savings and time deposits of its members. Hence, petitioner is being held liable for its failure to withhold and remit to the Bureau of Internal Revenue the withholding taxes due for the taxable years 1999 and 2000. In other words, the deficiency tax assessments were not imposed directly against petitioner as a deficient taxpayer, but rather, for its non-compliance

[21] "An Act To Ordain A Cooperative Code of the Philippines".
[22] Article 3 of R.A. No. 6938.
[23] See Article 2 of R.A. No. 6938.
[24] Article 61 of R.A. No. 6938.

with the codal provision on the withholding of taxes from the taxpayers legally liable for its payment.

In ***Commissioner of Internal Revenue vs. The Court Of Appeals, Court Of Tax Appeals and A. Soriano Corp.***,[25] the Supreme Court explained the withholding tax system as follows:

> "In the operation of the withholding tax system, the withholding agent is the payor, a separate entity acting no more than an agent of the government for the collection of the tax in order to ensure its payments; the payer is the taxpayer — he is the person subject to tax imposed by law; and the payee is the taxing authority. In other words, the withholding agent is merely a tax collector, not a taxpayer. Under the withholding system, however, the agent-payor becomes a payee by fiction of law. His (agent) liability is direct and independent from the taxpayer, because the income tax is still imposed on and due from the latter. The agent is not liable for the tax as no wealth flowed into him — he earned no income. **The Tax Code only makes the agent personally liable for the tax arising from the breach of its legal duty to withhold as distinguished from its duty to pay tax since:**
>
> > **"'the government's cause of action against the withholding agent is not for the collection of income tax, but for the enforcement of the withholding provision of Section 53 of the Tax Code, compliance with which is imposed on the withholding agent and not upon the taxpayer.'**
>
> "xxx xxx xxx
>
> "Codal provisions on withholding tax are mandatory and must be complied with by the withholding agent. The taxpayer should not answer for the non-performance by the withholding agent of its legal duty to withhold unless there is collusion or bad faith. The former could not be deemed to have evaded the tax had the withholding agent performed its duty. xxx." *[Citations omitted. Emphasis supplied.]*

In ***Citibank, N.A. vs. Court of Appeals and Commissioner of Internal Revenue***,[26] the Supreme Court gave us three reasons for the withholding tax system: (1) to provide the taxpayer a convenient manner to meet his probable income tax liability; (2) to

---

[25] 301 SCRA 152. See also *Filipinas Synthetic Fiber Corp. vs. Court of Appeals, Court of Tax Appeals and Commissioner of Internal Revenue*, 316 SCRA 480.
[26] 280 SCRA 459.

ensure the collection of the income tax which could otherwise be lost or substantially reduced through failure to file the corresponding returns; and (3) to improve to government's cash flow.

Clearly from the foregoing, petitioner is merely an agent acting for the government to ensure collection of taxes. Its liability to withhold and remit taxes is personal and direct; and petitioner shall be made to answer for its failure to comply with the withholding tax provisions of the Tax Code, which was to deduct and withhold from the payees and to remit to the government the withholding taxes due. Being tax-exempt is not a valid ground for its refusal to withhold and remit the taxes due. Petitioner is reminded that the codal provisions on the withholding tax are mandatory and must be complied with by the withholding agent.[27] Thus, for petitioner's failure to withhold the taxes, it is but logical for the respondent to issue the deficiency tax assessments against petitioner.

To reiterate, petitioner's argument that it is tax-exempt is not a valid ground for its refusal to withhold and remit the taxes due. It must be emphasized that petitioner's exemption from government taxes or fees as a duly registered cooperative, does not extend to its members. Section 61 of RA No. 6938 clearly provides for the exemption from taxes of duly registered cooperatives, but unmistakably there is no provision of the exemption extending beyond the cooperative and to its members. It is a well-settled principle in taxation that tax exemptions are not presumed but are highly disfavored. And no exemption from common burden is permitted to exist upon vague implications.[28] Thus, as there is no specific provision in law which gives tax exemptions other than to the petitioner, necessarily, the honorarium and per diems of its Board of Directors; interest on savings and time deposits; security and janitorial services; and commissions, legal and professional fees are subject to tax.

---

[27] *Philippine Guaranty Co., Inc. vs. Commissioner of Internal Revenue*, 15 SCRA 1.
[28] *Davao Light & Power Co., Inc. vs. Commissioner of Customs and Court of Tax Appeals*, 44 SCRA 122.

Petitioner further argues that it is not a banking institution, thus, the interests earned by its members from their savings and time deposits with the cooperative are not subject to withholding tax.

This Court likewise disagrees. Section 24(B)(1) of the National Internal Revenue Code of 1997 provides that:

> *(B) Rate of Tax on Certain Passive Income.* –
>
> (1) *Interests, Royalties, Prizes, and Other Winnings.* - A **final tax at the rate of twenty percent (20%) is hereby imposed upon the amount of interest from** any currency bank deposit and yield or any other monetary benefit from deposit substitutes and from **trust funds and similar arrangements**; xxx

Thus, the above law imposes 20% final tax not only on interests from any currency bank deposit or any other monetary benefit from deposit substitutes but likewise on any monetary benefit from trust funds and similar arrangements.

With respect to petitioner, this Court takes note of the following facts:

1. As stated in its Amended Articles of Cooperation, the objectives and purposes for which petitioner was formed includes: to increase the income and purchasing power of the members; to pool the resources of the members by encouraging savings and promoting thrift to mobilize capital formation for development activities; and, to extend loans to members for provident and productive purposes;[29]

2. Petitioner also has the powers: (a) to draw, make accept, endorse, guarantee, execute and issue promissory notes, mortgages, bills of exchange, drafts, warrants, certificates and all kinds of obligations and instruments in connection with and in furtherance of its business operations; and (b) to issue bonds, debentures, and other obligations of petitioner to contract indebtedness and to secure the same with a mortgage or deed of trust, or pledge or lien on any or all of the real and personal properties of petitioner.[30]

Clearly, petitioner's conduct of business constitutes activities under "similar arrangements" which is taxable under Section 24(B)(1) of the Tax Code. Furthermore,

---

[29] See folder containing documentary requirements for tax exemption submitted on July 9, 1997 (BIR Records).
[30] *Ibid.*

petitioner does not dispute that it accepts money from its members by way of savings and time deposits, an act which satisfies one of its objectives and purposes, that is, to pool the resources of its members by encouraging savings and promoting thrift to mobilize capital formation for development activities; and to extend loans to members for provident and productive purposes.

Again, this Court wishes to reiterate that the exemption of cooperatives from government taxes or fees does not extend to their individual members. Thus, petitioner's members are liable to pay all the necessary internal revenue taxes under the Tax Code and other tax laws. It is also worthy to stress that the liability of petitioner's members to pay the taxes arose from the fact there exists wealth or income when they deposit their money with the cooperative. And any taxpayer earning income is liable to pay the tax attached to it.

We proceed to the fourth and seventh issue which shall be likewise jointly discussed as they are interrelated:

> *Whether or not the respondent erred in applying Revenue Regulations No. 20-2001 which took effect on November of 2001, retroactively against the petitioner-cooperative for the years 1999 and 2000; and*
>
> *Whether or not the legal basis of the assessment for the 20% final withholding tax on interest is Revenue Regulation No. 2-98 in relation to Revenue Regulation No. 17-84 as amended by Revenue Regulation No. 20-2001.*

As regards the fourth issue, petitioner contends that respondent erred in relying upon the provisions of Revenue Regulations No. 20-2001. Accordingly, laws are prospective in nature and never retroactive, citing the case of **Commissioner of Internal Revenue vs. Marubeni Corporation.**[31] Moreover, petitioner argues that Section 5 of the said Revenue Regulations is clear on the matter that *"interests received by members of a cooperative with accumulated reserves and undivided net savings greater than ten million*

---

[31] 372 SCRA 576.

(PHP10,000,000.00) after the lapse of the ten-year exemption under Section 3.2 (II) above, shall no longer be taxable in the hands of such members." Thus, in this regard, there is no reason for petitioner to withhold such interest payment.

This Court is not persuaded.

First of all, petitioner cannot argue that Revenue Regulations No. 20-2001 cannot find application in this case contending that laws should be prospective in nature, and, at the same time, cites Section 5 of the same Revenue Regulations as basis for its claim.

Besides, Revenue Regulations No. 20-2001 was promulgated to (i) implement the provisions of Articles 61 and 62 of R.A. No. 6938, as effectively amended by R.A. Nos. 7716, 8241 and 8424 granting tax exemptions to cooperatives, and (ii) to prescribe the guidelines for the availment thereof, thereby amending RMC No. 48-91. Indubitably, the laws granting tax exemptions to cooperatives were already in existence. Thus, there can be no retroactive application to speak of. Simply put, Revenue Regulations No. 20-2001, which merely implemented the already existing tax exemption laws, did not in any way amend or modify the said laws.

Further, a close reading of the above-mentioned section reveals that the "interests" referred to as no longer taxable after the lapse of the ten-year exemption period clearly refers to **the interests on the members' capital contributions**. Capital contribution refers to the assets which a member puts into the cooperative as part of his investment in the company. As in this instant case, the members of the cooperative were required, as part of his application for membership with petitioner, to subscribe to at least five (5) shares with a total value of One Thousand Pesos (PHP1,000).[32] One's membership to the cooperative is therefore dependent on the members' capital subscription or contribution to the cooperative.

---

[32] Section 3(b), Amended By-laws of the Dumaguete Cathedral Credit Cooperative (DCCCO), Rollo, p. 161.

Clearly, contrary to petitioner's argument, the interests referred to does not correspond to the interests on the savings and time deposits of the members, which are entirely different from capital contributions. As capital contributions refer to the members' investment in the cooperative, it is noted that savings and loaning services are services offered by the cooperative to its members. As stated in petitioner's amended by-laws, its prospective member should "**use or anticipate to use the services of the Cooperative more particularly the savings and loaning services and other allied services relative thereto**." In fine, Section 5 of RR No. 20-2001 cannot refer to the interests earned from the "savings or time deposits" of the members simply because a "savings or time deposit" does not run on the same ground with "capital contribution".

As regards petitioner's issue on the legal basis of respondent in issuing the assailed assessments, it is clear that this case involves withholding taxes, thus, Revenue Regulations No. 02-98 and the corresponding provisions of the NIRC of 1997 should be made applicable. As earlier discussed, Revenue Regulations No. 20-2001 was promulgated to implement the provisions on the tax exemptions of cooperatives, as well as, to prescribe guidelines for the availment thereof. In other words, though the provisions of R.R. No. 20-2002 may apply in this case, the primary basis for the deficiency assessment against petitioner was Revenue Regulations No. 02-98, as obviously pointed out in respondent's Audit Results/Assessment Notices dated April 14, 2003.[33]

Anent the fifth issue of whether or not the respondent should respect Revenue Ruling No. 551-88 which has not been repealed or modified and which is exactly apropos in the case at bar, petitioner submits that Revenue Ruling No. 551-88 issued by then Commissioner Bienvenido A. Tan settled, among others, the issues raised in this case regarding the withholding taxes from compensation of employees and savings account and

[33] Exhibits N-2 and O-2.

time deposits of members. Petitioner relies on the resolution issued by then Commissioner Tan. To quote:

> *"Furthermore, under Section 50(a) of the Tax Code, as amended, the tax imposed or prescribed by Section 21(c) of the same Code on specified items of income shall be withheld by payor-corporation and/or person and paid in the same manner and subject to the same conditions as provided in Section 51 of the Tax Code, as amended. Such being the case, and since interest from any Philippine currency bank deposit and yield or any other monetary benefit from deposits substitutes are paid by banks, you are not the party required to withhold the corresponding tax on the aforesaid savings account and time deposits of your members."*

Petitioner further contends that opinions of the Commissioner is entitled to great weight in the absence of any showing that it is plainly wrong.

This Court does not agree. As correctly pointed out by respondent in his Memorandum,[34] nothing in the above quoted resolution will give the conclusion that savings account and time deposits of members of a cooperative are tax- exempt. What is entirely clear is the opinion of the Commissioner that the proper party to withhold the corresponding taxes on certain specified items of income is the payor-corporation and/or person. In the same way, in the case of interests earned from Philippine currency deposits made in a bank, then it is the bank which is liable to withhold the corresponding taxes considering that the bank is the payor-corporation. Thus, the ruling that a cooperative is not the proper party to withhold the corresponding taxes on the aforementioned accounts is correct. However, this ruling does not hold true if the savings and time deposits are being maintained in the cooperative, for in this case, it is the cooperative which becomes the payor-corporation, a separate entity acting no more than an agent of the government for the collection of taxes, liable to withhold the corresponding taxes on the interests earned.

We now delve on the eight issue of whether or not petitioner's availment of the Voluntary Assessment and Abatement Program exonerated it from the liability for the

---

[34] Memorandum for Respondent, Rollo, pp. 259-261.

assessment for withholding tax on honorarium, per diem, janitorial services fees, commissions and legal and professional fees.

Petitioner applied for the VAAP under Revenue Regulations No. 17-2002 on November 29, 2002 and paid the amounts of P105,574.62[35] and P143,867.24[36] representing 120% of its basic tax due on the tax base, pursuant to Section 4(F) thereof,[37] for the taxable years 1999 and 2000, respectively, computed as follows:

For the Taxable Year 1999

Particulars	Tax Base	Total Tax Due
Withholding Tax On Compensation		P 74,612.06
Honorarium of Board of Directors	P 104,000.00	
Per Diems	710,800.00	
	814,800.00	
Multiplied By	0.10	81,840.00
Security & Janitorial Services	234,300.00	
Multiplied By	1%	2,343.00
Commission	11,739.93	
Multiplied By	5%	586.99
Legal & Professional Fees	35,688.55	
Multiplied By	10%	3,568.86
TOTAL		162,590.91
Less: Withholding Tax Remitted		74,612.06
Total Tax Deficiency		87,978.85
Multiplied By Tax Rate		120%
TOTAL DEFICIENCY TAX DUE		P105,574.62

35 Exhibits K to K-3.

36 Exhibits L to L-3.

37 (F) Documentary Stamp Tax/Withholding Tax/Taxes on One-Time Transactions. – The tax payable for DST/withholding tax/taxes on one-time transaction such as estate tax, donor's tax, capital gains tax. Expanded withholding tax and documentary stamp tax on sale, exchange, or disposition of real property and/or shares of stock on transactions occurring on or before June 30, 2002, shall be 120% of the basic tax due on the tax base.

For the Taxable Year 2000

Particulars	Tax Base	Total Tax Due
Honorarium of Board of Directors	P 130,000.00	
Per Diems	962,500.00	
	1,092,500.00	
Multiplied By	0.10	P109,250.00
Security & Janitorial Services	246,666.67	
Multiplied By	1%	2,466.67
Commission	9,736.96	
Multiplied By	5%	486.85
Legal & Professional Fees	76,858.50	
Multiplied By	10%	7,685.85
TOTAL		119,889.36
Total Tax Deficiency		119,889.36
Multiplied By Tax Rate		120%
TOTAL DEFICIENCY TAX DUE		P143,867.24

Revenue Regulations No. 17-2002, or the Regulations Providing for the Policies, Procedures and Guidelines in the Implementation of the Expanded Voluntary Assessment and Abatement Program (VAAP), was promulgated for the purpose of providing an opportunity for the taxpayers covered by the RELIEF[38] System or found to have materially understated their sales to the respective deficiency taxes due thereon **without the imposition of the full amount of penalties imposable by law**. It was provided therein that the payment of the aforementioned amounts shall constitute an abatement or cancellation of penalties, and shall be in lieu of surcharge, interest and penalties otherwise

[38] Reconciliation for Listing and Enforcement System.

due on the deficiency taxes payable by the taxpayer, however, subject to the findings by the respondent of additional discrepancies through the RELIEF System and the ITS.[39]

Although petitioner may have availed of the VAAP, this does not, necessarily mean that its liability for the taxes on the honorarium, per diems, security and janitorial services, commissions, as well as, legal and professional fees, has been fully exonerated. It bears emphasis that the "in lieu of surcharge, interests and penalties" comes with a proviso that petitioner's payment is still subject to the review and evaluation by the National Office of the Bureau of Internal Revenue. Thus, any additional discrepancy discovered by the Bureau shall make petitioner's availment of the VAAP for each type of tax and taxable year covered as null and void.[40] On the other hand, absent any findings by the Bureau of any additional discrepancies, petitioner's payment of the taxes pursuant to Section 4(F) of R.R. No. 17-2002 shall constitute its full payment of the said deficiency withholding taxes.

In the present case, We find petitioner's payment under the VAAP for the taxable years 1999 and 2000 of the basic tax due on the honorarium and per diems of the Board of Directors, security and janitorial services, commissions, as well as, legal and professional fees to be in order, absent any discrepancy findings from the BIR.

Thus, We shall proceed to the last issue of whether or not petitioner is liable for deficiency withholding tax for the years 1999 and 2000 in the respective amounts of P1,489,065.30 and P1,462,644.90.

As discussed above, petitioner is no longer liable for deficiency withholding taxes for the honorarium and per diems of its Board of Directors, security and janitorial services, commissions, and legal and professions fees due to its payment thereof under the VAAP. However, petitioner is still liable to pay the withholding tax deficiencies for its failure to

---

[39] Integrated Tax System.
[40] Section 7, R.R. No. 17-2002.

withhold the interests on its members' savings and time deposits for the taxable years 1999 and 2000, computed as follows:

Particulars	1999	2000
Interest on Savings Deposit	P 604,602.00	P 786,638.82
Interest on Time Deposit	2,729,111.27	2,749,509.99
Total	P 3,333,713.27	P 3,536,148.81
Tax Rate	20%	20%
Basic Tax deficiency	P 666,742.65	P 707,229.76
Add; 25% Surcharge	166,685.66	176,807.44
Interest (.67) (1-25-00 to 8-25-02)	446,717.58	473,843.94
Total Deficiency Taxes Due	**P 1,280,145.89**	**P 1,357,881.14**

This Court cannot uphold the compromise penalties imposed by respondent against petitioner. Compromise penalties are amounts collected by the BIR in lieu of criminal prosecution for violations committed by taxpayers and the payment thereof is based on a compromise agreement validly entered into between the taxpayer and the Commissioner of Internal Revenue.[41] It implies mutual agreement.[42] In this instant case, there was no compromise agreement entered into by and between the petitioner and respondent, hence, the imposition of a compromise penalty is not in order.

IN VIEW OF ALL THE FOREGOING, the Petition for Review is hereby **PARTIALLY GRANTED**. Assessment Notice Nos. 00026-2003 and 00027-2003 are hereby **MODIFIED** and the assessment for deficiency withholding taxes on the honorarium and per diems of petitioner's Board of Directors, security and janitorial services, commissions and legal and professional fees are hereby **CANCELLED**. However, the assessments for deficiency withholding taxes on interests are hereby **AFFIRMED**.

---

[41] *Collector of Internal Revenue vs. University of Sto. Tomas*, 104 Phil 1062.

[42] *Rightfield Property Ventures, Inc.* (*now known as Universal Rightfield Property Holdings, Inc.) *vs. Commissioner of Internal Revenue*, CTA Case No. 5972, October 16, 2003.

Accordingly, petitioner is **ORDERED TO PAY** the respondent the respective amounts of P1,280,145.89 and P 1,357,881.14 representing deficiency withholding taxes on interests from savings and time deposits of its members for the taxable years 1999 and 2000. In addition, petitioner is ordered to pay the 20% delinquency interest from May 26, 2003 until the amount of deficiency withholding taxes are fully paid pursuant to Section 249(C) of the Tax Code.

SO ORDERED.

LOVELL R. BAUTISTA
Associate Justice

WE CONCUR:

ERNESTO D. ACOSTA
Presiding 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 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
Chairperson, First Division