

**REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY**

SPECIAL FIRST DIVISION

IDS LOGISTICS (PHILS.), INC.,
Petitioner,

C.T.A. CASE NO. 7540

- versus -

Members:

ACOSTA, P.J.
BAUTISTA, and
CASANOVA, JJ.

**COMMISSIONER OF INTERNAL
REVENUE,**

Respondent.

Promulgated:

MAY 20 2010

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DECISION

CASANOVA, J.:

This is a Petition for Review filed on November 7, 2006 by petitioner, under Rule 8, Section 4(a) of the Revised Rules of the Court of Tax Appeals (RRCTA), to review by appeal the inaction of the respondent Commissioner of Internal Revenue (CIR) on petitioner's Letter of Protest, filed on February 17, 2006, assailing CIR's deficiency income tax and expanded withholding taxes assessment dated January 13, 2006¹, in the aggregate amount of SEVENTY FOUR MILLION FOUR HUNDRED TWENTY SEVEN THOUSAND SIX HUNDRED FORTY FOUR PESOS and 47/100 (P74,427,644.47), inclusive of interest, covering the taxable year 2002.

The facts of the case, based on joint stipulations and evidence on record, are as follows:

Petitioner is a domestic corporation duly organized and registered with the Securities and Exchange Commission on December 13, 2001, duly authorized to engage in, conduct

¹ Annex "A" of Petition for Review, Docket, p. 24; Exhibit D

and carry on the business of providing contract logistics, warehousing and supply chain management services throughout the Philippines with principal place of business located at No. 29 Industria St. Bagumbayan, Quezon City².

Respondent is the Commissioner of Internal Revenue, duly appointed to perform the duties of his office, including, among others, the power to decide, cancel and abate tax liabilities pursuant to Section 204 of the 1997 National Internal Revenue Code (Tax Code). Respondent holds office and may be served with all papers, orders and other legal processes of this Honorable Court at the 5th Floor, Bureau of Internal Revenue, National Office Building, BIR Road Diliman, Quezon City³.

Respondent disallowed petitioner from claiming the following expenses (in the amount of P 102,525,682.90): (a) Salaries and Wages, (b) Income Payments, and Rentals⁴, as deduction from its gross income for 2002 on the alleged ground that petitioner did not subject the same to withholding.

The respondent issued and mailed the Preliminary Assessment Notice to petitioner on December 29, 2005, which was received by petitioner on January 16, 2006⁵.

The Formal Letter of Demand (with the attached assessment notices) was mailed to petitioner on January 13, 2006; its date of issue as indicated therein is likewise January 13, 2006⁶. Consequently, petitioner received the said Formal Letter of Demand on January 20, 2006⁷.

Respondent disallowed Salaries and Wages amounting to P40,228,487.70 (sic) computed by respondent, as follows:⁸

² Joint Stipulation of Facts (JSFI), Paragraph 3, Docket, p. 67

³ Ibid, Paragraph 4, Docket, p. 67

⁴ Ibid, Paragraph 5, Docket, p. 67

⁵ Exhibit "C" (Petitioner's FOE)

⁶ JSFI, Paragraph 7, Docket, p. 68

⁷ Exhibit "D" (Petitioner's FOE)

⁸ JSFI, Paragraph 8, Docket, p. 68

Salaries and Wages per F/S	P 148,337,007.57
Salaries and Wages per Alpha List	<u>108,108,519.83</u>
Disallowed Salaries and Wages	<u>P 40,228,487.74</u>

Based on petitioner's records, the "Personnel Cost" account in its F/S consists of the following items:⁹

Salaries and Wages	P 131,839,488.39
Other Staff Cost	<u>16,497,519.18</u>
Total Personnel Cost	<u>P 148,337,007.57</u>

Respondent disallowed Professional Fees in the amount of P26,448,391.10 computed as follows:¹⁰

Professional Fees per F/S	P 2,245,120.00
Professional Fees per Alpha List	<u>28,693,511.10</u>
Disallowed Professional Fees	<u>P 26,448,391.10</u>

on the allegation that said discrepancy is considered as undeclared income, hence, taxable.

Respondent alleged that various income payments to various contractors amounting to P 46,323,154.00 were not subjected to EWT and hence disallowed them¹¹.

Respondent disallowed rentals in the amount of P15,974,041.20 for petitioner's alleged failure to subject said rentals to EWT:¹²

Rental per F/S	P 68,408,253.00
Rental per Alpha List	<u>52,434,211.80</u>
Disallowed Rentals	<u>P 15,974,041.20</u>

Respondent disallowed transportation and travel expenses amounting to P2,543,120.00 for petitioner's alleged failure to support the same¹³.

⁹ JSFI, Paragraph 9, Docket, p. 68

¹⁰ JSFI, Paragraph 10, Docket, p. 68

¹¹ JSFI, Paragraph 11, Docket, p. 68

¹² JSFI, Paragraph 12, Docket, p. 68

¹³ JSFI, Paragraph 13, Docket, p. 68

Respondent disallowed tax credits amounting to P3,758,253.00 on the ground that petitioner allegedly failed to support the tax credits reflected in the annual ITR for taxable year 2002, pursuant to Sec. 2.58.3 of Revenue Regulations No. 2-98, as amended¹⁴.

On February 17, 2006, petitioner filed its protest-letter dated February 15, 2006 with Revenue Region No. 7, Assessment Division of the Bureau of Internal Revenue, Quezon City¹⁵.

On April 12, 2006, petitioner submitted to respondent its documentary evidence to support its claim in the Letter of Protest, pursuant to Sec. 228 of the Tax Code¹⁶.

Without action or answer from the respondent to its Letter of Protest, petitioner filed the instant Petition for Review on November 7, 2006.

In his Answer¹⁷, respondent interposed the following defenses:

"6. All presumptions are in favor of the correctness of the Assessment;

7. The Respondent has acted upon the administrative protest but the final resolution thereof has not yet been finalized;

8. The Respondent has not violated the provisions of Section 228 of the National Internal Revenue Code and Revenue Regulations No. 12-99. No other than the Petitioner itself admitted the validity of the Preliminary Assessment Notices and the Final Assessment Notices when it cited the case of *Basilan Estates vs. Commissioner*, 21 SCRA 17 in paragraph 23 of the herein Petition for Review. Under the said case, 'to compute the 3-year prescriptive period, the assessment is deemed issued when **released, mailed or sent** by the Commissioner of Internal Revenue to the taxpayer'. (Underscoring supplied) Hence, there was no violation of the above-cited provisions of law;

9. Respondent disallowed Salaries and Wages amounting to P40,228,487.70 (sic) because the Petitioner failed to subject the said amount to withholding pursuant to Section 34(k) of the National Internal Revenue Code;

¹⁴ JSFI, Paragraph 14, Docket, p. 68

¹⁵ Petition, Annex B, Docket, pp. 29-42; Exhibit "E"

¹⁶ Exhibit "F"

¹⁷ Answer, Docket, pp. 49-50

10. Income payments in the amount of P46,323,154 was disallowed from gross income for failure of the Petitioner to subject the same to expanded withholding tax pursuant to Section 34(k) of the National Internal Revenue Code of 1997;

11. The herein Petitioner was fully appraised of the facts and the law on which the Final Assessment was issued. The Final Assessment Notice, Demand Letter and Details of Discrepancies which were all together sent at the same time to the Petitioner, contained, in detail, date of the assessment, the manner of computation, the facts on which the assessment was based and the provisions of the law used in arriving at such deficiency assessment."

On August 31, 2007, this Court appointed R.S. BERNALDO & ASSOCIATES, represented by Mr. Romeo De Jesus, as Independent Certified Public Accountant upon Motion¹⁸ of the petitioner pursuant to Rules 12 and 13 of the Revised CTA Rules.

Petitioner presented testimonial¹⁹ and documentary evidence²⁰ to support its claims. On the other hand, this Court considered the respondent to have waived his right to present evidence due to his continuous absence during hearing²¹.

This case was submitted for Decision on May 27, 2009, taking into consideration petitioner's "Memorandum", filed on May 25, 2009, without respondent's memorandum.

The following are the parties' jointly stipulated issues submitted for this Court's resolution:

- "1. Whether or not respondent's Formal Letter of Demand with attached Assessment Notices violated petitioner's right to due process and therefore should be declared null and void.
2. Whether or not respondent's right to assess a significant portion of the alleged deficiency withholding taxes is already barred by prescription.

If the first two issues are resolved in the negative:

3. Whether or not Petitioner subjected the claimed expenses to withholding pursuant to Revenue Regulations No. 2-98. 

¹⁸ Minutes, Docket, pp. 149-150

¹⁹ Hearing, Filipina A. Baltazar, TSN of April 19, 2007; Corazon M. Espiritu, TSN of June 5, 2007; Romeo A. De Jesus, TSN of January 10, 2008

²⁰ Docket, pp. 409-419, 420-421, 449, 453-454

²¹ Resolution, Docket, p. 447

4. Whether or not the income payments of the Petitioner are subject to withholding pursuant to the provisions of Sec. 34(K) of the Tax Code.
5. Whether or not the assessments have factual and legal bases.²²

The ultimate issue is whether or not petitioner shall be held liable under the assailed tax assessments of respondent CIR.

This Court shall first resolve preliminary matters of procedural issue, before addressing the substantial issue raised in the petition.

Petitioner essentially alleged that it was not afforded the benefit of procedural due process when respondent CIR issued the assailed tax assessments.

The contention is without merit.

The essence of due process is to be found in the reasonable opportunity to be heard and submit any evidence one may have in support of one's defense, as held in *Rizal Commercial Banking Corporation vs. Commissioner of Internal Revenue*.²³ The Supreme Court in the said case aptly stated that:

"It is basic that as long as a party is given the opportunity to defend his interests in due course, he would have no reason to complain, for it is this opportunity to be heard that makes up the essence of due process. In *Batongbakal v. Zafra*,²⁴ the Court held that:

There is no question that the 'essence of due process is a hearing before conviction and before an impartial and disinterested tribunal' but due process as a constitutional precept does not, always and in all situations, require a trial-type proceeding. **The essence of due process is to be found in the reasonable opportunity to be heard and submit any evidence one may have in support of one's defense.** 'To be heard' does not only mean verbal arguments in court; one may be heard also through pleadings. **Where opportunity to be heard, either through oral arguments or pleadings, is accorded, there is no denial of procedural due process.'** (emphasis supplied)

²² Docket, p. 69

²³ G.R. No. 168498, June 16, 2006, citing *Estares v. Court of Appeals*, G.R. No. 144755, June 8, 2005, 459 SCRA 604, 623

²⁴ G.R. No. 141806, January 17, 2005, 448 SCRA 399, 410

In taxation, due process has been discussed by this Court in *Bank of the Philippine Islands vs. Commissioner of Internal Revenue*²⁵ as follows:

"Revenue Regulations No. 12-85 provides for the procedure covering the Administrative Protests on Assessments of the BIR. Under the said Revenue Regulation, a post-reporting notice is sent to the taxpayer for an informal conference when there are findings of deficiency taxes. Subsequent to this notice is the issuance of the pre-assessment notice upon findings of the Commissioner that an assessment for deficiency taxes should be issued. However, such pre-assessment notice may or may not be protested by the taxpayer. In fact, Section 5 of the same Revenue Regulation provides that 'In the event that the taxpayer fails to respond to the pre-assessment notice within the prescribed period . . . he should be informed of such fact and the report of investigation shall be given due course.'

The essential elements of due process are notice and opportunity to present one's side. To begin with, petitioner had knowledge of the investigation being conducted by the BIR on its tax liabilities for the taxable years 1982-1986, as evidenced by the letter of respondent addressed to petitioner dated September 25, 1986 and received by petitioner on September 26, 1986. The said letter, in fact, requested for an informal conference on the matter and requested further that petitioner submits documentary evidence to support its stand.

As the facts would demonstrate, petitioner was never deprived of due process as it was fully apprised of the legal and factual bases of the assessment issued against it; which enabled petitioner to substantially protest the arguments and issues raised. It is sufficient that there is notice to the taxpayer of the legal and factual bases of the assessment; and to the Court, this is substantial compliance of what is mandated by Section 228 of the NIRC. Thus, so long as the parties are given the opportunity to explain their side, the requirements of due process are satisfactorily complied with.

Although a pre-assessment notice is required to be issued to petitioner, however, failure on the part of respondent to issue the same cannot be considered as a violation of petitioner's right to due process. It may be required but the issuance of a pre-assessment notice is not indispensable. This finds support in the fact that a taxpayer is not obligated to protest a pre-assessment notice. And even the failure of the taxpayer to protest a pre-assessment notice does not result in the finality of the assessment against it. This Court in the case of *Security Bank Corporation vs. Commissioner of Internal Revenue* corroborates the foregoing and explained the significance and effects of a preliminary assessment notice (PAN) vis-a-vis a final assessment notice (FAN), in the following manner:

²⁵ C.T.A. CASE NO. 7397, April 9, 2008

'It must be emphasized that a protest to the preliminary assessment notice is not the same as the protest required to be filed as an answer to the final assessment notice. In fact, a preliminary assessment notice may or may not even be protested to by the taxpayer, and the fact of non-protest shall not in any way make the preliminary assessment notice final and unappealable. What is clear from Section 319-A of the Tax Code of 1977, as amended, is that failure on the part of the taxpayer to protest or reply to a preliminary assessment notice paves the way for the issuance of a final assessment notice. However, evident under the said Section is that failure on the part of the taxpayer to file a valid administrative protest through a request for reconsideration or reinvestigation on the final assessment notice, shall result in the finality of the said FAN.'

What the law demands is the issuance of a final assessment notice which should be formally protested to by petitioner; otherwise, the same becomes final and executory. Hence, when petitioner received the final assessment notice and duly protested the same, petitioner's right to due process was properly protected and observed." (emphasis supplied)

Based on the foregoing, what the law demands is the issuance of a Final Assessment Notice which should be formally protested to by petitioner; otherwise, the same becomes final and executory.

In the instant case, it is undisputed that petitioner received the Preliminary Assessment Notice on January 16, 2006 and the Final Assessment Notice or the Formal Letter of Demand (with the attached assessment notices) on January 20, 2006. Thereafter, on February 17, 2006, petitioner filed its protest-letter dated February 15, 2006 with Revenue Region No. 7, Assessment Division of the Bureau of Internal Revenue, Quezon City.²⁶ On April 12, 2006, pursuant to Sec. 228 of the Tax Code, petitioner submitted to respondent its documentary evidence to support its claim in the Letter of Protest. Evidently, petitioner was afforded the procedural due process as required by law when it was fully apprised of the legal and factual bases of the assessment issued against it and petitioner was given the opportunity to substantially protest or dispute the assailed assessments.

²⁶ Petition, Annex B, Docket, pp. 29-42; Exhibit "E"

Having discussed the procedural issue, this Court shall now proceed to address the substantive issues raised by petitioner.

The petition is partly meritorious, as discussed hereunder.

I. Deficiency Income Tax Assessment

Respondent assessed petitioner of deficiency income tax for taxable year 2002 in the amount of P71,641,857.25, computed as follows²⁷:

Taxable income (loss) per return		P (68,786,994.00)
Add: Adjustments/Discrepancies per investigation:		
Salaries and wages not subjected to WT	P 40,228,487.70	
Unaccounted professional fees	26,448,391.10	
Income payments not subjected to EWT	46,323,154.00	
Rentals	15,974,041.20	
Unsupported transportation & travel	2,543,120.00	131,517,194.00
Net income per investigation		P 62,730,200.00
Add: Net Operating Loss Carry-Over (NOLCO)		68,786,994.00
Taxable income per investigation		P 131,517,194.00
Income tax due thereon (32%)		P 42,085,502.08
Add: Unsupported credits carried over to succeeding period		3,758,253.00
Deficiency Income Tax		P 45,843,755.08
Add: 20% Interest p.a. from 04.18.03 to 02.13.06		25,798,102.17
TOTAL AMOUNT DUE		P 71,641,857.25

As can be seen from the above computation, the deficiency income tax assessment arose from the following items and expenses:

A. Salaries and wages not subjected to WT	P 40,228,487.70
B. Unaccounted professional fees	26,448,391.10
C. Income payments not subjected to EWT	46,323,154.00
D. Rentals	15,974,041.20
E. Unsupported transportation & travel	2,543,120.00
F. Net Operating Loss Carry-Over (NOLCO)	68,786,994.00
G. Unsupported credits carried over to succeeding period	3,758,253.00

This Court shall review the specific items and expenses, to wit:

²⁷ Exhibit "D"

A. Salaries and wages—P40,228,487.70

Invoking Section 34(K) of the NIRC of 1997, respondent disallowed as deduction from petitioner's gross income, the amount of P40,228,487.70 representing the difference between the salaries and wages reflected per petitioner's Financial Statements (F/S) *vis-à-vis* the amount shown per petitioner's Alpha List (A/L), computed as follows²⁸:

Salaries and wages per F/S	P	148,337,007.57
Salaries and wages per A/L		108,108,519.83
Difference	P	40,228,487.74

In its Protest Letter,²⁹ petitioner explained that "Personnel Cost" reported in its F/S consisted of the following:

Salaries and wages	P	131,839,488.39
Other staff cost		16,497,519.18
TOTAL	P	148,337,007.57

Petitioner further stated that the salaries and wages of P131,839,488.39 forming part of P148,337,007.57 are either not subject to withholding tax or were already subjected to expanded withholding tax (EWT), to wit:

Salaries and wages		P	131,839,488.39
Less: Items not subject to WT or already subjected to EWT			
Pension cost (retirement accrual)	P	5,522,738.00	
Medical expenses		2,659,520.41	
Insurance		365,465.00	
Training cost (subjected to EWT)		1,069,804.59	
Contractual labor & consultancy services (subjected to EWT)		44,142,611.00	53,760,139.00
Total Salaries and wages			P 78,079,343.39

Petitioner also averred that pension cost (retirement accrual) was presented as a reconciling item in its Income Tax Return for the year 2002,³⁰ and that training costs, as

²⁸ Exhibit "E", "Schedule-A"

²⁹ Exhibit "E", Pages 6 to 7

³⁰ Exhibit "I", Section E, Line 114

well as payments to contractual labor, pertain to employees provided by manpower agencies which were already subjected to expanded withholding tax.

Petitioner alleged that gross compensation per alphalist of employees for the year 2002 amounted only to P79,758,206.87³¹ and not P108,108,519.83 as reported by respondent's examiner.

This Court, relying on documents and evidence on record, finds that salaries and wages, as indicated in the financial statements (that is, income statement) amounting to P148,337,007.57, consisted of "Salaries and wages" and "Other Staff Cost", which likewise comprised of the following:³²

Salaries and wages:		
Basic salary	P	46,897,788.77
Part-time salary		44,142,611.00
Overtime		12,139,269.94
Fixed bonus		23,137,080.64
Pension cost		5,522,738.04
Subtotal	P	131,839,488.39
Other staff cost:		
Medical expenses	P	2,659,520.41
Insurance		365,465.03
Training		1,069,804.59
Allowances		3,849,843.48
Welfare		2,272,385.01
Other staff cost		6,280,500.66
Subtotal	P	16,497,519.18
TOTAL	P	148,337,007.57

This Court finds, and so holds, that the basic salary, part-time salary, overtime and fixed bonus in the total amount of P126,316,750.35 (*P131,839,488.39 less P5,522,738.04*), are subject to withholding tax on compensation pursuant to Section 79(A) of the NIRC of 1997, as implemented by Section 2.78 of Revenue Regulations No. 2-98, as amended. 

³¹ Exhibit "E-1" and Schedule A1.1-Exhibits "1.1" to "1.7", "2", "3" and "4"

³² Exhibit "1" (contained in the folder for Schedule A1 of the ICPA Report)

Anent petitioner's pension cost of P5,522,738.04, a scrutiny of petitioner's Annual Income Tax Return³³ for taxable year 2002 shows that in the "Reconciliation of Net Income Per Books Against Taxable Income"³⁴, the pension cost of P5,522,738.04 was added back to "Net Income/(Loss) per books" as "Retirement accrual". Considering that for income tax purposes, the pension cost of P5,522,738.04 was not claimed by petitioner as deduction from its taxable gross income for 2002, it is no longer necessary to determine whether the same was subjected to withholding tax on compensation.

While the Court-commissioned independent CPA found that part-time salary amounting to P29,659,667.32 and consultancy fees (under part-time salary) in the amount of P658,229.86 were subjected to EWT,³⁵ this Court could not reconcile whether the amount of P29,659,667.32 indeed formed part of the total part-time salary of P44,142,611.00, as reported in petitioner's audited financial statements. Thus, part-time salary allegedly subjected to EWT in the amount of P29,659,667.32 shall be considered as subject to withholding tax on compensation. The same holds true with the consultancy fees amounting to P658,229.86 due to petitioner's failure to substantiate the same.

As to petitioner's allegation that the gross compensation per alphalist of employees for the year 2002 amounted only to P79,758,206.87³⁶ and not P108,108,519.83, suffice it to say that petitioner failed to substantiate the said claim by failure to present corresponding evidence thereof. This Court could not also confirm said allegation from the evidence of the respondent considering that the BIR Records of the instant case were not submitted to this Court as respondent was deemed to have waived his right to present evidence.

This Court also observed that, assuming as true that petitioner's gross compensation per alphalist of employees for the year 2002 amounted only to P79,758,206.87, it would

³³ Exhibit "I"

³⁴ Exhibit "I", Part III, Section E

³⁵ Exhibit "OOOO-2", Schedule A1

³⁶ Exhibit "E-1" and Schedule A1.1-Exhibits "1.1" to "1.7", "2", "3" and "4"

appear that salaries and wages declared and subjected to withholding tax of P79,758,206.87 is more than the net total salaries and wages reflected in the financial statements of only **P78,079,349.39**. Thus, the claim is inherently uncorroborated and inconsistent.

Accordingly, the unexplained discrepancy between the amount of salaries and wages per petitioner's F/S which was likewise claimed as deduction in its income tax return *vis-à-vis* the salaries and wages per petitioner's Alpha List is computed as follows:

Adjusted salaries and wages per ITR	P 126,316,750.35
Adjusted salaries and wages per Alphalist	79,758,206.87
Difference	P46,558,543.48

Again, due to petitioner's failure to prove that the discrepancy in the amount of P46,558,543.48 was subjected to withholding tax on compensation, the same shall be disallowed as deduction from petitioner's taxable gross income for the year 2002 pursuant to Section 34(K) of the NIRC of 1997.

This Court, however, notes that the above amount of P46,558,543.48 disallowed as deduction from petitioner's taxable gross income for the year 2002 exceeds respondent's disallowance of P40,228,487.70. In such case, this Court is constrained to disallow the lower amount of P40,228,487.70, instead of P46,558,543.48.

As to the issue of prescription, the failure on the part of petitioner to present as evidence its duly filed monthly remittance returns for the year 2002 has prevented the Court to determine which portion of the subject assessment is already barred by prescription pursuant to Section 203 of the 1997 NIRC.

B. Unaccounted professional fees—P26,448,391.10

Pursuant to Sections 31 and 32 of the NIRC of 1997, respondent assessed petitioner of an undeclared income in the amount of P26,448,391.10 representing the discrepancy between the professional fees subjected to expanded withholding tax (EWT) per Alpha List *vis-a-vis* the amount shown in petitioner's financial statements:

Professional fees per F/S	P 2,245,120.00
Professional fees per A/L	28,693,511.10
Difference	P 26,448,391.10

Petitioner countered that the reconciliation of professional fees per F/S and the Alpha List is not an accurate process of determining the alleged unaccounted professional fees because professional fees reported in the financial statements included only those paid for audit and legal services rendered by general professional partnerships such as *PriceWaterhouse and Cooper* and *Castillo Laman Tan Pantaleon Law Offices* amounting to P2,245,120.00. The alphalist, on the other hand, included the following:³⁷

Technical & support services-JDH Phils.	P 27,840,903.10
Consultancy services	789,230.00
Medical services	63,378.00
Total	P 28,693,511.10

This Court finds for the petitioner.

The imputation of alleged undeclared income is based on a mere presumption that since there were alleged undeclared expenses, there was likewise undeclared income which corresponds to it. Even if these alleged undeclared professional fees are to be considered as income, the same will be offset by recording the equivalent payments as expenses. Hence, no taxable income will result from the said transactions.

While axiomatic is the fact that all presumptions are in favor of the correctness of tax assessments, the assessment in itself should not be based on presumptions no matter how logical the presumption might be. In order to stand the test of judicial scrutiny the assessment must be based on actual facts³⁸. For lack of factual basis, the deficiency income tax assessment corresponding to the alleged undeclared income of P26,448,391.10 should be cancelled. 

³⁷ Exhibit "E", page 8

³⁸ Collector of Internal Revenue vs. Benipayo, G.R. No. L-13656, 31 January 1962, 4 SCRA 182, 185

C. Income payments not subjected to EWT—P46,323,154.00

By comparing petitioner's income payments to contractors as reported in the financial statements and per alphalist, respondent's examiner found a discrepancy of P46,323,154.00 and assessed petitioner of deficiency expanded withholding taxes and disallowed said income payments for failure to withhold the corresponding EWT therefrom.

The difference was computed as follows:³⁹

Per Financial Statements:

Security services	P	44,741,400.00	
Repairs & maintenance		3,444,091.00	
Printed forms		10,852,869.00	
Outside services		228,231,825.00	
Services		1,462,205.00	
Supplies		224,280.00	
Leasehold improvements		25,568,984.00	P 314,525,654.00

Per Alphalist:

Income payments	P	306,422,162.00	
Less: EWT on fixed assets	P	33,600,000.00	
EWT on Asset-racking system		4,619,662.00	38,219,662.00
			268,202,500.00

Difference

P 46,323,154.00

Petitioner claims that for the first quarter of the taxable year 2002, petitioner's affiliate, JDH Philippines, Inc., advanced most of the former's expenses. Consequently, the latter withheld and remitted the taxes on the income payments made for petitioner.⁴⁰

Per Monthly Remittance Returns of Creditable Income Taxes Withheld-Expanded (BIR Form No. 1601-E)⁴¹, JDH remitted expanded withholding taxes for the months of January, February and March 2002 on the following income payments:

	<u>January</u> <u>(Exh. II)</u>	<u>February</u> <u>(Exh. OO)</u>	<u>March</u> <u>(Exh. UU)</u>	<u>Total</u>
Corporations:				
Rentals	P 6,744,759.60	P 4,181,715.60	P 5,746,763.00	P 16,673,238.20
Contractors/Sub-contractors	23,480,288.50	24,773,093.00	33,296,969.00	81,550,350.50
Brokers and agents	-	224,198.10	98,630.70	322,828.80
Income payments made by top 5,000 corporations	722,193,297.00	537,725,740.00	523,948,014.00	1,783,867,051.00
Individuals:				
Professionals	41,310.30	197,485.70	609,652.60	848,448.60
Rentals-real property	301,929.40	376,878.00	207,662.00	886,469.40
Contractors/Sub-contractors	5,818,150.50	17,704,657.00	6,238,246.00	29,761,053.50
TOTAL	<u>P 758,579,735.30</u>	<u>P 585,183,767.40</u>	<u>P 570,145,937.30</u>	<u>P 1,913,909,440.00</u>

³⁹ Exhibit "D", Schedule-A

⁴⁰ Exhibit "E", page 10 and Exhibit "MMMM", Paragraphs 8 to 11

⁴¹ Exhibits "II", "OO" and "UU"

In a sworn affidavit,⁴² petitioner's Senior Finance Supervisor, Ms. Corazon M. Espiritu, showed a summary of income payments made by JDH on behalf of petitioner for the first quarter of 2002, to wit:⁴³

Corporations:	
Rentals	P 2,034,366.40
Contractors/Sub-contractors	24,585,664.50
Brokers and agents	31,016.00
Income payments made by top 5,000 corporations	1,781,861.00
Individuals:	
Rentals-real property	592,276.20
Contractors/Sub-contractors	6,262,678.50
Professionals	1,083,610.10
Utilities	9,663,100.00
TOTAL	P 46,034,572.70

Ms. Espiritu stated that the foregoing income payments, except payments for utilities, were duly subjected to withholding by JDH. Withholding taxes amounting to P876,029.41 were allegedly remitted by JDH to the Bureau of Internal Revenue (BIR).

Petitioner submitted summaries of income payments and corresponding EWT made by JDH for the account of petitioner for the months of January, February and March 2002, summarized below:

	<u>Income Payments</u>		<u>EWT</u>
January (Exh. IIII)	P 14,481,804.80	P	310,440.72
February (Exh. JJJJ)	19,878,040.90		468,367.49
March (Exh. KKKK)	2,011,627.00		97,221.20
Total	P 36,371,472.70	P	876,029.41

Ms. Espiritu stated further that utility payments for January to December 2002 in the amount of P9,663,100.00 were not subjected to withholding tax because petitioner was not yet determined by the BIR as one of the top 10,000 corporations.⁴⁴ Such notification was received only in January 2004.⁴⁵

However, the ICPA found that only income payments in the amount of P25,138,404.40 were advanced by petitioner's affiliate JDH Philippines. Further, the

⁴² Exhibit "MMMM"

⁴³ Exhibit "MMMM", Paragraph 12

⁴⁴ Exhibits "MMMM", Paragraph 15 and "MMMM-2"

⁴⁵ Exhibit "LLLL"

assessed account includes various expenses paid through petty cash and adjustments made amounting to P25,721,248.59.⁴⁶ Supporting documents⁴⁷ were presented and evaluation of the same revealed that only P226,435.17 is duly substantiated.⁴⁸

Granting that JDH's remittances indeed included income payments made and expanded taxes were withheld on behalf of petitioner, respondent had until the following dates to assess:

<u>Month</u>	<u>Exhibit</u>	<u>Date Filed</u>	<u>Last Day to File</u> ⁴⁹	<u>Last Day to Assess</u>
January	HH, II	11-Feb-02	10-Feb-02	11-Feb-05
February	NN, OO	11-Mar-02	10-Mar-02	11-Mar-05
March	TT, UU	10-Apr-02	10-Apr-02	10-Apr-05
April	XXX, YYY	10-May-02	10-May-02	10-May-05
May	TTT, UUU	10-Jun-02	10-Jun-02	10-Jun-05
June	RRR, SSS	10-Jul-02	10-Jul-02	10-Jul-05
July	NNN, OOO	12-Aug-02	10-Aug-02	12-Aug-05
August	MMM	10-Sep-02	10-Sep-02	10-Sep-05
September	III, JJJ	10-Oct-02	10-Oct-02	10-Oct-05
October	GGG, HHH	11-Nov-02	10-Nov-02	11-Nov-05
November	EEE, FFF	10-Dec-02	10-Dec-02	10-Dec-05
December	AAA, BBB	15-Jan-03	15-Jan-03	15-Jan-06

Since the Formal Assessment Notice was issued on January 13, 2006⁵⁰ and the disallowed income payments amounting to P36,371,472.70 pertain to the first quarter of 2002, respondent is barred by prescription to assess the deficiency expanded withholding tax.

With regard to the alleged utility payments of P9,663,100.00 in the year 2002, this Court agrees with petitioner that said payments are not subject to withholding taxes, and that petitioner was not then designated as a withholding agent. However, petitioner should have presented proof that the said amount of P9,663,100.00 was indeed paid for utilities expense; hence, the same payments should be disallowed as deduction from gross income.

In fine, respondent's disallowance of income payments not subjected to EWT in the amount of P36,660,054.00 and the corresponding deficiency income tax assessment should

⁴⁶ Exhibit "OOOO-2", Page 7

⁴⁷ Exhibits in Schedules B2.3 to B2.8

⁴⁸ See Annex A for details.

⁴⁹ Pursuant to Sec. 4(1) of Revenue Regulations No. 6-01

⁵⁰ Joint Stipulation of Facts, par. 7, Docket, p. 68; Exhibit "D"

be cancelled. However, utility payments of P9,663,100.00 should be disallowed for failure to substantiate the same.

D. Rentals—P15,974,041.20

Respondent disallowed petitioner's rental payments in the amount of P15,974,041.20 and assessed petitioner of deficiency expanded withholding tax on the said payments for failure to withhold taxes therefrom, computed thus:

Per Financial Statements	P	68,408,253.00
Per Alphalist		52,434,211.80
Discrepancy	P	<u>15,974,041.20</u>

From the various Monthly Remittance Returns of Creditable Income Taxes Withheld-Expanded (BIR Form No. 1601-E),⁵¹ total rental expense from which taxes were duly withheld amount to P52,429,485.40, as shown below:

<u>Month</u>	<u>Rentals- Corporation</u>	<u>Rentals-Individual</u>	<u>Total</u>
April	P 5,740,374.60	P 410,484.00	P 6,150,858.60
May	5,894,925.20	473,663.00	6,368,588.20
June	6,692,430.60	60,820.00	6,753,250.60
July	5,316,815.80	441,992.00	5,758,807.80
August	5,378,886.20	251,642.80	5,630,529.00
September	4,967,936.80	168,423.00	5,136,359.80
October	5,621,901.60	238,327.00	5,860,228.60
November	5,339,976.40	489,553.00	5,829,529.40
December	4,818,206.40	123,127.00	4,941,333.40
TOTAL	P 49,771,453.60	P 2,658,031.80	P 52,429,485.40

It should be noted that there is a discrepancy of P4,726.40 between respondent's per alphalist amount of P52,434,211.80 and per Court's evaluation of remittance returns of P52,429,485.40.

In his report, the Court-commissioned independent CPA accounted for the discrepancy as follows:

Rentals remitted by JDH	P	2,626,642.60
Non-taxable items included as part of rentals:		
Various adjustments made	P	1,196,529.32
Recorded as rentals but were subjected to 2% EWT		<u>57,272.73</u>
Allocated rentals by JDH		137,008.00
Taxable items not recorded as rentals		(248,938.20)
Excess of amount remitted per BIR vs Book		(66,900.00)

⁵¹ Exhibits "II", "OO", "UU", "YYY", "UUU", "SSS", "OOO", "MMM", "JJJ", "HHH", "FFF" and "BBB"

Accounted rentals with EWT
Discrepancy per BIR assessment

	12,272,426.75
P	<u>15,974,041.20</u>

Petitioner also raised the issue of prescription of respondent's right to assess for the period January 2002 to November 2002. However, based on the documents presented in evidence, this Court could not ascertain which portion of the rent expense pertains to the said period and subsequently barred by prescription pursuant to Section 203 of the 1997 NIRC.

Further evaluation of the ICPA's findings showed that a portion of the rentals accounted for by the ICPA amounting to P12,272,426.75 has already been included in the alleged advances made by JDH, which were not sufficiently proven, and the rest has been likewise included in the amount per alphalist of P52,429,485.40. The remaining reconciling items were not properly substantiated by supporting documents other than the schedules prepared by the ICPA.

Therefore, respondent's assessment should be upheld. Petitioner should be liable for rentals amounting to P15,978,767.60, computed as follows:

Discrepancy per BIR assessment	P	15,974,041.20
Add: Discrepancy per Court's verification		4,726.40
Adjusted discrepancy	P	<u>15,978,767.60</u>

However, since the above amount of P15,978,767.60 is higher than respondent's disallowance, the Court is constrained to disallow the lower amount of P15,974,041.20. Consequently, deficiency expanded withholding tax assessment should be upheld.

E. Unsupported transportation and travel—P2,543,120.00

Respondent's examiner also found that petitioner had unsupported transportation and travel expenses in the amount of P2,543,120.00, thus, disallowed pursuant to Section 34(A)(b) of the 1997 NIRC, which states:

Sec. 34. Deductions from Gross Income.—

(A) Expenses.—

XXX XXX XXX

(b) *Substantiation Requirements.*—No deduction from gross income shall be allowed under Subsection (A) hereof unless the taxpayer shall **substantiate with sufficient evidence, such as official receipts or other adequate records:** (i) the amount of the expense being deducted, and (ii) the direct connection or relation of the expense being deducted to the development, management, operation, and/or conduct of the trade, business or profession of the taxpayer. (*emphasis supplied*)

It is represented that petitioner's transportation and travel account pertains to local and overseas travels, parking fees, toll fees, etc. which are legitimate business expenses.⁵² To prove its allegation, petitioner submitted a Transaction Summary of Transportation and Travel Accounts totaling P501,968.89.⁵³

That transportation and travel expenses are legitimate, is not in question. The said expenses were disallowed for being unsupported. Even the transaction summary was not able to fully account for the disallowed expense of P2,543,120.00. Hence, for failure to substantiate transportation and travel expenses, respondent's disallowance should prevail.

F. Net operating loss carry over (NOLCO)—P68,786,994.00

Section 34(D)(3) of the 1997 NIRC provides that the net operating loss of the business or enterprise for any taxable year immediately preceding the current taxable year, which had not been previously offset as deduction from gross income shall be carried over as a deduction from gross income for the next three (3) consecutive taxable years immediately following the year of such loss.

Petitioner argues that it is impossible to have any NOLCO from the previous year since it was incorporated only on December 13, 2001⁵⁴ and started commercial operations on February 1, 2002.⁵⁵ Petitioner correctly pointed out that the alleged NOLCO is actually its 

⁵² Petitioner's Memorandum, Paragraph 53

⁵³ Schedule A4-Exhibits "1" to "18" (annexed to Exhibit 0000-2)

⁵⁴ Exhibits "HHHH" to "HHHH-1"

⁵⁵ Petitioner's Memorandum, Paragraph 55, p. 486; Exhibit "MMMM"

net loss for the taxable year 2002 that was not considered by respondent's examiner in computing the deficiency income tax liability.

This Court could only assume that the examiner added back petitioner's net loss because the investigation resulted to a net income and petitioner's net loss for the taxable year 2002 should not be used as NOLCO in the succeeding year. However, respondent failed to present evidence to prove that petitioner used its 2002 net loss as NOLCO in the succeeding year. Granting, for the sake of argument, that petitioner actually deducted its 2002 net loss as NOLCO in the succeeding year of 2003 and that the said deduction was not proper as petitioner did not incur net loss, the same should be disallowed in the year 2003 when it was claimed as deduction and not in the year 2002, subject period of the present assessment. Hence, adding back the net loss amount of P68,786,994.00 to petitioner's taxable income for the year 2002 is erroneous.

G. Unsupported credits carried over to succeeding period—P3,758,253.00

Respondent disallowed petitioner's tax credits amounting to P3,758,253.00 for being unsupported by proper documents. To refute respondent's findings, petitioner submitted certificates of withholding, summarized below:

<u>Exh.</u>	<u>Period</u>	<u>Payor</u>	<u>Income Payment</u>	<u>EWI</u>
L	Apr-Jun 02	California Mfg Co	P 16,460,634.22	P 743,156.27
M	Apr-Jun 02	California Mfg Co	5,825,418.00	281,630.56
Z	Apr-Jun 02	Kraft Foods Phils	3,411,453.50	68,229.07
AA	Apr-Jun 02	Gillette Phils	7,897,932.04	157,958.52
BB	Apr-Jun 02	Philip Morris Phils	8,481,123.50	169,622.47
CC	Apr-Jun 02	L'Oreal Phils	6,104,657.58	122,093.14
DD	Apr-Jun 02	Allied Domecq Phils	590,093.93	11,801.88
S	Apr-Jun 02	Kraft Foods Phils	2,780,615.00	55,612.30
			2,239,601.50	44,792.03
N	Jul-Sep 02	California Mfg Co	19,459,964.96	915,210.92
O	Jul-Sep 02	Philip Morris Phils	40,724,838.50	814,496.77
P	Jul-Sep 02	Philip Morris Phils	1,168,032.00	58,401.60
Q	Jul-Sep 02	Degussa Texturant Systems Phils	131,142.80	6,557.14
R	Jul-Sep 02	Kraft Foods Phils	10,321,798.50	206,435.97
T	Jul-Oct 02	Allied Domecq Phils	429,709.11	8,594.18
U	Jun-Sep 02	Unilever Phils	1,561,000.00	31,220.00
V	Jun-Sep 02	Unilever Phils	3,122,000.00	62,440.00
TOTAL			P 130,710,015.14	P 3,758,252.82

However, a scrutiny of the foregoing documents revealed that petitioner's claimed creditable withholding taxes in the amount of P118,052.30 should be disallowed because the supporting Certificates of Creditable Tax Withheld at Source were not in the name of petitioner, to wit:

<u>Exh.</u>	<u>Period</u>	<u>Payor</u>	<u>Income Payment</u>	<u>EWT</u>
S	Apr-Jun 02	Kraft Foods Phils	P 2,780,615.00	P 55,612.30
V	Jun-Sep 02	Unilever Phils	3,122,000.00	62,440.00
TOTAL			P 5,902,615.00	P 118,052.30

In fine, petitioner duly substantiated its reported tax credits with the exception of the amount of P118,052.30 detailed above. Hence, disallowed tax credits should only be P118,052.30.

After taking into account all the valid disallowances from petitioner's claimed deductions from gross income for taxable year 2002, petitioner would still be in a net loss position and would not result to any deficiency tax, as shown below:

Taxable income/(loss) per return		P (68,786,994.00)
Add: Adjustments/Discrepancies per investigation:		
Salaries and wages not subjected to WT		P 40,228,487.70
Income payments not subjected to EWT	P 46,323,154.00	
Less: Income payments barred by prescription	(36,660,054.00) ⁵⁶	9,663,100.00
Rentals		15,974,041.20
Unsupported transportation & travel		2,543,120.00
Total Adjustments/Discrepancies per investigation		P 68,408,748.90
Taxable income/(loss) per investigation		P (378,245.10)

Therefore, respondent's deficiency income tax assessment against petitioner for taxable year 2002 in the amount of P71,641,857.25 should be cancelled and/or withdrawn.

II. Deficiency Expanded Withholding Tax (EWT) Assessment

From the disallowances in the deficiency income tax assessment, two (2) items were assessed for deficiency expanded withholding tax, to wit:

⁵⁶ Disallowed income payments of P46,323,154.00 less income payments on utilities of P9,663,100.00.

<u>Deficiency Expanded Withholding Tax</u>	<u>Amount</u>	<u>Tax Rate</u>	<u>Tax Due</u>
Rent expenses	15,974,041.20	5%	P 798,702.06
Payment to contractors	46,323,154.00	2%	926,463.08
Deficiency expanded withholding tax			P 1,725,165.14
Interest (20% p.a. from 01.16.03 to 02.13.06)			1,060,622.08
TOTAL AMOUNT DUE			P 2,785,787.22

Petitioner argued that respondent's right to assess a significant portion (January to November 2002) of the alleged deficiency withholding tax is already barred by prescription.⁵⁷

As earlier discussed under the assessment of income payments not subjected to EWT (see discussion in item C. above), the corresponding assessments of deficiency EWT are null and void due to prescription,⁵⁸ with the exception of utility payments amounting to P9,663,100.00. Thus, petitioner is liable to pay the corresponding deficiency EWT in the amount of P1,849,809.15, computed as follows:

<u>Income Payments</u>	<u>Amount</u>	<u>Tax Rate</u>	
Payments to contractors not subjected to EWT	P 9,663,100.00	2%	P 193,262.00
Rent expenses	P15,974,041.20	5%	798,702.06
Total deficiency EWT			P 991,964.06
Add: Surcharge (25%)			247,991.02
Interest (20% p.a. from 01.16.03 to 02.13.06)			609,854.07
TOTAL AMOUNT DUE			P 1,849,809.15

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WHEREFORE, the instant Petition for Review is hereby **PARTIALLY GRANTED**. Accordingly, petitioner's deficiency income tax assessment in the amount of P71,641,857.25 for the year 2002 is hereby **CANCELLED** and **WITHDRAWN**. However, the deficiency assessment pertaining to expanded withholding tax (EWT) for taxable year 2002 is hereby **UPHELD** but in the reduced amount of P1,849,809.15, as computed above. Consequently, petitioner is **ORDERED** to **PAY** respondent the amount of P1,849,809.15 representing expanded withholding tax (EWT) for taxable year 2002.

⁵⁷ Petitioner's Memorandum, Discussion Item II, Paragraphs 16 to 23, pp. 476-478

⁵⁸ CTA Case No. 6121, August 24, 2004; Clorox International Phils. Inc. (formerly First Brands Philippines, Inc.) vs. Commissioner of Internal Revenue

⁵⁹ A 25% surcharge was included in the total amount due pursuant to Section 248(3) of the NIRC of 1997

In addition thereto, petitioner is **ORDERED** to pay 20% delinquency interest on the amount of P1,849,809.15 computed from February 13, 2006 until full payment thereof pursuant to Section 249(C)(3) of the NIRC of 1997, as amended.

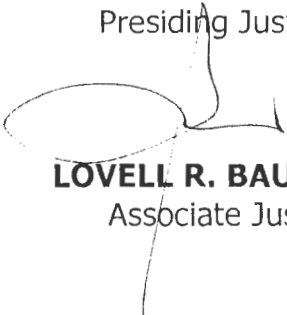
SO ORDERED.



CAESAR A. CASANOVA
Associate Justice

WE CONCUR:

(ON LEAVE)
ERNESTO D. ACOSTA
Presiding Justice



LOVELL R. BAUTISTA
Associate Justice

ATTESTATION

I attest 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.



LOVELL R. BAUTISTA
Associate Justice
Acting Chairperson, First Division

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, and the Division Chairperson's Attestation, 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.

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Acting Presiding Justice

SUBSTANTIATED PETTY CASH DISBURSEMENTS

<u>Exhibit</u>	<u>Reference No.</u>	<u>Date</u>	<u>Amount</u>
Schedule B2.3 Janitorial/Security			
1	PV 16018633	13-May-02	37.90
2.1 to 2.2	PV 16026319	8-Aug-02	10,000.00
3	PV 16016199	10-Apr-02	1,800.00
4.1 to 4.5	PV 16016430	17-Apr-02	2,210.00
5	PV 16018844	15-May-02	1,800.00
6.1 to 6.5	PV 16022755	1-Jul-02	6,200.00
7.1 to 7.9	PV 16033307	25-Oct-02	5,300.00
8.1 to 8.4	PV 16033604	4-Nov-02	3,200.00
9.1 to 9.2	PV 16037479	9-Dec-02	9,002.00
10	PV 16019866	27-May-02	1,000.00
11	PV 16021463	18-Jun-02	1,000.00
12	PV 16025067	26-Jul-02	1,000.00
13.1 to 13.2	PV 16026836	21-Aug-02	922.95
19.1 to 19.2	PV 16030616	1-Oct-02	736.70
20	PV 16016004	9-Apr-02	1,000.00
21	PV 16019289	21-May-02	1,000.00
22	PV 16021404	17-Jun-02	1,000.00
23	PV 16023761	6-Jul-02	1,000.00
24	PV 16013850	19-Feb-02	70.00
25.1 to 25.2	PV 16013885	26-Feb-02	1,695.00
26	PV 16015311	13-Mar-02	238.00
31	PV 16018256	7-May-02	1,000.00
32	PV 16017089	18-Sep-02	1,000.00
33	PV 16021161	23-Apr-02	1,000.00
34	PV 16026676	11-Jun-02	1,000.00
35	PV 16038444	15-Nov-02	1,000.00
36.1 to 36.3	PV 16018266	7-May-02	1,350.00
37	PV 16020654	4-Jun-02	800.00
38	PV 16027554	29-Aug-02	98.75
39.1 to 39.3	PV 16009545	16-Dec-02	1,199.45
40.1 to 40.2	PV 16015315	13-Mar-02	399.20
41.1 to 41.6	PV 16026830	21-Aug-02	6,068.00
Subtotal			65,127.95
Schedule B2.4 Repairs			
1	PV 16033620	4-Nov-02	2,060.00
2.1 to 2.2	PV 16014226	18-Mar-02	1,850.00
3	PV 16026850	21-Aug-02	150.00
4	PV 16018519	9-May-02	128.00
5	PV 16020312	30-May-02	250.00
6	PV 16034903	10-Nov-02	105.00
7	PV 16033912	4-Nov-02	380.00
8	PV 16031469	7-Oct-02	647.50
9	PV 16018843	15-May-02	2,900.00
10	PV 16021463	18-Jun-02	560.00
11	PV 16021062	7-Jun-02	256.00
12	PV 16026701	17-Aug-02	438.50
13	PV 16025293	30-Jul-02	203.25
14	PV 16019702	15-May-02	150.00
15	PV 16020649	4-Jun-02	400.00
16.1 to 16.2	PV 16019499	22-May-02	1,018.00
17.1 to 17.2	PV 16019428	22-May-02	390.00
18.1 to 18.2	PV 16019322	24-May-02	911.50
19	PV 16020773	4-Jun-02	525.00
20	PV 16035375	15-Nov-02	200.00
21	PV 16017742	3-May-02	100.00
22.1 to 22.3	PV 16017734	3-May-02	1,202.00
23.1 to 23.2	PV 16015315	2-Apr-02	1,757.50
24.1 to 24.2	PV 16019842	31-May-02	1,155.00
25.1 to 25.5	PV 16017713	1-May-02	1,053.95
26.1 to 26.2	PV 16010348	25-Jan-02	730.00
27.1 to 27.2	PV 16033242	23-Oct-02	656.50
28	PV 16014303	19-Mar-02	60.00

<u>Exhibit</u>	<u>Reference No.</u>	<u>Date</u>	<u>Amount</u>
29	PV 16038306	19-Dec-02	450.00
30.1 to 30.3	PV 16011877	20-Feb-02	3,000.00
31.1 to 31.3	PV 16011814	20-Feb-02	3,981.25
32.1 to 32.3	PV 16011572	19-Feb-02	899.00
33	PV 16018424	5-May-02	450.00
34	PV 16017777	1-May-02	1,200.00
35.1 to 35.3	PV 16017164	23-Apr-02	1,500.00
36	PV 16013885	13-Mar-02	450.00
37	PV 16013850	13-Mar-02	450.00
38	PV 16021471	21-Jun-02	500.00
39	PV 16025160	29-Jul-02	1,059.75
40.1 to 40.4	PV 16018846	15-May-02	4,221.00
41	PV 16016200	10-Apr-02	300.00
42	PV 16025542	1-Aug-02	300.00
43.1 to 43.2	PV 16016427	17-Apr-02	375.00
44	PV 16021161	11-Jun-02	700.00
45	PV 16018266	7-May-02	800.00
46.1 to 46.3	PV 16019869	27-May-02	769.75
47	PV 16018849	15-May-02	500.00
48	PV 16016208	10-Apr-02	450.00
49.1 to 49.3	PV 16008891	18-Jan-02	998.00
50.1 to 50.2	PV 16018524	9-May-02	2,559.75
51	PV 16019097	17-May-02	78.00
52.1 to 52.2	PV 16026077	6-Aug-02	490.00
53.1 to 53.2	PV 16030141	26-Sep-02	457.00
54	PV 16031470	7-Oct-02	1,517.00
55.1 to 55.2	PV 16033306	25-Oct-02	330.00
56.1 to 56.2	PV 16035378	15-Nov-02	500.00
57	PV 16035902	22-Nov-02	493.00
58.1 to 58.2	PV 16034692	8-Nov-02	1,100.00
59	PV 16021408	17-Jun-02	323.75
60	PV 16019323	24-May-02	180.00
61.1 to 61.9	PV 16016261	12-Apr-02	1,902.73
62.1 to 62.8	PV 16013921	13-Mar-02	5,416.00
63.1 to 63.2	PV 16022952	5-Jul-02	1,636.36
Subtotal			60,575.04
Schedule B2.5 Outside Services			
1	PV 16022589	28-Jun-02	3,500.00
2	PV 16013885	13-Mar-02	440.00
3	PV 16019145	18-May-02	1,000.00
4	PV 16010348	25-Jan-02	193.50
5.1 to 5.6	PV 16015410	3-Apr-02	760.00
6	PV 16019147	18-May-02	514.00
7	PV 16026677	16-Aug-02	5,000.00
8	PV 16018324	8-May-02	750.00
9	PV 16026676	16-Aug-02	1,500.00
10	PV 16016997	23-Apr-02	140.00
11.1 to 11.3	PV 16015311	2-Apr-02	1,000.00
12.1 to 12.2	PV 16016422	17-Apr-02	1,500.00
Subtotal			16,297.50
Schedule B2.6 Services			
1.1 to 1.2	PV 16026828	21-Aug-02	901.00
2	PV 16025844	2-Aug-02	3,000.00
3	PV 16031009	3-Oct-02	69.75
4	PV 16031469	7-Oct-02	105.00
5.1 to 5.3	PV 16031469	7-Oct-02	403.25
6	PV 16019710	25-May-02	500.00
7	PV 16026011	9-Aug-02	630.00
8.1 to 8.2	PV 16033033	10-Sep-02	1,000.00
Subtotal			6,609.00
Schedule B2.7 Printed Forms			
1.1 to 1.4	PV 16014226	18-Mar-02	278.75
2.1 to 2.4	PV 16017083	23-Apr-02	467.25
3.1 to 3.3	PV 16018633	13-May-02	421.25

<u>Exhibit</u>	<u>Reference No.</u>	<u>Date</u>	<u>Amount</u>
4	PV 16015055	27-Mar-02	75.00
5	PV 16021164	11-Jun-02	64.50
6.1 to 6.2	PV 16025845	3-Aug-02	697.00
7.1 to 7.2	PV 16021464	18-Jun-02	366.60
8	PV 16025143	29-Jul-02	596.25
9	PV 16017244	23-Apr-02	39.00
9	PV 16017244	23-Apr-02	450.00
9	PV 16017244	23-Apr-02	275.00
10	PV 16028290	5-Sep-02	303.75
11.1 to 11.2	PV 16033547	28-Oct-02	2,630.00
12	PV 16027361	27-Aug-02	105.00
13	PV 16016199	10-Apr-02	170.00
14.1 to 14.2	PV 16018843	15-May-02	319.50
15	PV 16019144	18-May-02	132.50
16.1 to 16.3	PV 16022755	1-Jul-02	252.25
17.1 to 17.6	PV 16026830	21-Aug-02	1,958.00
18	PV 16033307	25-Oct-02	121.50
19.1 to 19.2	PV 16033604	4-Nov-02	1,226.00
20	PV 16037479	9-Dec-02	20.00
21	PV 16021573	19-Jun-02	375.00
22	PV 16023483	4-Jul-02	202.00
23	PV 16026758	21-Aug-02	470.00
24	PV 16027369	27-Aug-02	800.00
25.1 to 25.2	PV 16019144	18-May-02	325.00
26	PV 16029406	17-Sep-02	275.00
27	PV 16030466	1-Oct-02	145.50
28	PV 16035234	13-Nov-02	340.00
29	PV 16035764	20-Nov-02	72.50
30	PV 16016205	10-Apr-02	26.00
31	PV 16019866	27-May-02	64.00
32	PV 16021463	18-Jun-02	53.00
33	PV 16025067	26-Jul-02	66.00
34	PV 16026836	21-Aug-02	415.00
35	PV 16016846	19-Apr-02	515.00
36	PV 16020333	31-May-02	60.00
37.1 to 37.3	PV 16019702	15-May-02	453.50
38.1 to 38.2	PV 16022767	1-Jul-02	478.25
39	PV 16026076	6-Aug-02	67.50
40.1 to 40.3	PV 16026406	12-Aug-02	339.30
41	PV 16014804	25-Mar-02	135.00
42	PV 16016433	17-Apr-02	600.00
43.1 to 43.2	PV 16018854	15-May-02	264.00
44	PV 16019145	18-May-02	99.00
45	PV 16021169	12-Jun-02	196.30
46.1 to 46.3	PV 16023770	6-Jul-02	317.80
47.1 to 47.2	PV 16025848	3-Aug-02	502.50
48	PV 16020778	4-Jun-02	20.00
49	PV 16034703	8-Nov-02	35.00
50	PV 16020773	4-Jun-02	169.75
51	PV 16024314	18-Jul-02	265.50
52	PV 16025847	2-Aug-02	281.25
53	PV 16027558	29-Aug-02	100.00
54.1 to 54.3	PV 16030616	1-Oct-02	700.25
55	PV 16035534	18-Nov-02	50.00
56.1 to 56.2	PV 16015383	2-Apr-02	604.00
57.1 to 57.2	PV 16017713	1-May-02	450.75
58.18 to 58.8	PV 16019842	31-May-02	2,159.80
59	PV 16025277	30-Jul-02	98.85
60.1 to 60.2	PV 16019147	18-May-02	29.00
61	PV 16018346	5-May-02	33.25
62.1 to 62.2	PV 16018394	5-May-02	182.80
63	PV 16013850	13-Mar-02	1,375.00
64.1 to 64.2	PV 16013885	13-Mar-02	640.00
65.1 to 65.4	PV 16018424	5-May-02	2,210.40
66.1 to 66.4	PV 16018840	15-May-02	1,857.00
67	PV 16019784	31-May-02	1,375.00
68	PV 16026847	20-Aug-02	1,375.00

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<u>Exhibit</u>	<u>Reference No.</u>	<u>Date</u>	<u>Amount</u>
69	PV 16029010	10-Sep-02	2,560.00
70.1 to 70.5	PV 16029950	24-Sep-02	1,413.50
71	PV 16031538	8-Oct-02	337.00
72.1 to 72.10	PV 16016200	10-Apr-02	971.00
73.1 to 73.9	PV 16018846	15-May-02	2,393.00
74	PV 16018256	7-May-02	441.50
75	PV 16025542	1-Aug-02	104.00
76	PV 16026413	12-Aug-02	30.00
77	PV 16026409	12-Aug-02	100.00
78.1 to 78.2	PV 16016427	17-Apr-02	650.00
79.1 to 79.2	PV 16018259	7-May-02	259.00
80.1 to 80.2	PV 16018259	7-May-02	320.00
81	PV 16019148	18-May-02	160.00
82.1 to 82.2	PV 16020775	4-Jun-02	254.50
83	PV 16021943	21-Jun-02	160.00
84.1 to 84.3	PV 16023765	6-Jul-02	240.00
85.1 to 85.8	PV 16020695	4-Jun-02	6,439.11
86	PV 16024511	22-Jul-02	193.25
87	PV 16031624	9-Oct-02	197.75
88	PV 16021161	11-Jun-02	382.50
89	PV 16022592	28-Jun-02	257.35
90.1 to 90.2	PV 16026676	16-Aug-02	530.75
91	PV 16038444	20-Dec-02	230.00
92.1 to 92.4	PV 16021344	13-Jun-02	1,259.50
93	PV 16032950	21-Oct-02	1,825.75
94.1 to 94.3	PV 16037799	12-Dec-02	557.00
95.1 to 95.6	PV 16018266	7-May-02	1,124.00
96.1 to 96.5	PV 16020654	4-Jun-02	699.25
97.1 to 97.9	PV 16016208	10-Apr-02	1,152.30
98	PV 16016997	22-Apr-02	135.50
99	PV 16016997	22-Apr-02	238.50
100.1 to 100.3	PV 16016997	22-Apr-02	181.00
101.1 to 101.2	PV 16018849	15-May-02	124.00
102.1 to 102.2	PV 16018849	15-May-02	729.50
103.1 to 103.5	PV 16019869	27-May-02	63.90
103.1 to 103.5	PV 16019869	27-May-02	448.25
104	PV 16021188	12-Jun-02	34.50
105	PV 16027554	29-Aug-02	600.00
106.1 to 106.2	PV 16036921	3-Dec-02	3,128.10
107.1 to 107.2	PV 16031470	7-Oct-02	682.00
108.1 to 108.3	PV 16010348	25-Jan-02	331.50
109	PV 16024584	23-Jul-02	259.00
Subtotal			<u>64,836.61</u>
Schedule B2.8 Supplies			
1.1 to 1.3	PV 16019699	25-May-02	1,219.15
2.1 to 2.8	PV 16019842	27-May-02	1,398.65
3.1 to 3.3	PV 16019784	27-May-02	384.75
4	PV 16021471	19-Jun-02	377.75
5.1 to 5.2	PV 16023770	6-Jul-02	409.15
6.1 to 6.2	PV 16024584	23-Jul-02	950.70
7.1 to 7.5	PV 16025277	30-Jul-02	1,925.85
8	PV 16026409	12-Aug-02	75.00
9	PV 16026836	21-Aug-02	254.70
10.1 to 10.2	PV 16027362	27-Aug-02	227.50
11	PV 16029010	11-Sep-02	240.00
12	PV 16029835	24-Sep-02	97.00
13	PV 16031538	8-Oct-02	1,239.32
14	PV 16032131	14-Oct-02	237.05
15	PV 16035534	18-Nov-02	298.50
16	PV 16037552	10-Dec-02	200.00
17		9-Dec-02	398.00
18.1 to 18.2	PV 16027558	29-Aug-02	443.30
19.1 to 19.9	PV 16033242	23-Oct-02	2,612.70
Subtotal			<u>12,989.07</u>
TOTAL			<u>226,435.17</u>