REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

Special Third Division

AECOM PHILIPPINES CONSULTANTS CORPORATION, *Petitioner,*	**CTA CASE NO. 10008**
	Members: **UY,** *Chairperson,*
-*versus*-	**RINGPIS-LIBAN,** *and* **MODESTO-SAN PEDRO,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	Promulgated: FEB 28 2023 9:52 a.m.

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RESOLUTION

MODESTO-SAN PEDRO, J.

For the Court's resolution is petitioner's **Motion for Reconsideration** ("Motion"),[1] without any Comment on the part of respondent.[2]

Petitioner's Motion seeks the reconsideration and setting aside of this Court's Decision ("Assailed Decision"), promulgated on 7 December 2021, the dispositive part of which reads:

> "**WHEREFORE**, in view of the foregoing, the present Petition for Review is hereby **DENIED** for lack of merit.
>
> **SO ORDERED.**"

In the present Motion, petitioner contends that: (a) the Court erred in ruling that 30 January 2017 (*i.e.*, the date of filing the Amended Annual Income Tax Return ("ITR")) is the reckoning date for the counting of the two (2) year period to file both the administrative and judicial claims for refund; and (b) the Court erred in denying the claim for refund of its unutilized Creditable Withholding Tax ("CWT") for the fiscal year ended September 2016 for failure to exhaust administrative remedies.

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[1] Records, pp. 543-561.
[2] *Id.*

Specifically, petitioner insists that the Court erroneously tacked the two (2) year period to file both the administrative and judicial claims for refund of erroneously or excessively paid taxes on the date of filing of the Amended ITR, 30 January 2017, instead of the date that the final adjusted return is due to be filed (*i.e.*, the fifteenth day of the fourth month following the close of the fiscal year, or in this case, 16 January 2017, since 15 January 2017 fell on a weekend).

Moreover, petitioner argues that there is nothing in ***Sections 204 (c) and 229 of the National Internal Revenue Code of 1997, as amended ("NIRC")*** that requires that respondent must be afforded sufficient time to act upon the administrative claim for refund prior to instituting a judicial claim before the Court. It contends that, in ***Commissioner of Internal Revenue v. Univation Motor Philippines, Inc. (formerly Nissan Motor Philippines, Inc.)***,[3] the Supreme Court already made a decisive determination on what constitutes exhaustion of administrative remedies. As long as the administrative claim and the judicial claim were filed within the two (2)-year prescriptive period, then administrative remedies have been exhausted. Further, petitioner observes that, in ***Commissioner of Internal Revenue v. Goodyear Philippines, Inc.***,[4] the Supreme Court ruled that the purpose of filing an administrative claim was simply to serve as a notice of warning to respondent that Court action would ensue unless the illegally or erroneously paid tax is refunded. Petitioner thus contends that it filed the administrative claim prior to the judicial claim and that such act already constitutes exhaustion of administrative remedies.

Petitioner relied on the doctrine in statutory construction that where the law does not distinguish, nor should the courts. It points out that should the ruling in the Assailed Decision stand, it would not be clear where the line should be drawn to be considered compliant with ***Section 229 of the NIRC*** – on what constitutes sufficient time for respondent to decide on petitioner's claim for refund.

With respect to the first argument interposed by petitioner, this Court is now convinced. Indeed, in ***Commissioner of Internal Revenue v. Univation Motor Philippines, Inc.***,[5] the Supreme Court reiterated the prevailing rule that the two (2) year prescriptive period to claim a refund actually commences to run, at the earliest, on the date of the filing of the adjusted final tax return.

Applying this, the two (2) year period within which petitioner could file its administrative and judicial claims for refund started on 16 January 2017.

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[3] G.R. No. 231581, 10 April 2019.
[4] G.R. No. 216130, 3 August 2016.
[5] G.R. No. 231581, 10 April 2019.

First and foremost, petitioner employs a fiscal year that ends on 30 September 2016.[6] Under ***Section 77 (B) of the NIRC***, "[t]he final adjustment return shall be filed... **on or before the fifteenth (15th) day of the fourth (4th) month following the close of the fiscal year.**"[7] The fifteenth day of the fourth month following said close of petitioner's fiscal year was 15 January 2017. As this day fell on a weekend, the deadline for filing petitioner's final adjustment return fell on the next working day, which was 16 January 2017, and petitioner did file its Original Annual ITR for fiscal year ended 30 September 2016 on said date.[8]

Given this, the two (2) year period to file an administrative and judicial claim for refund started on 16 January 2017, which is both the due date for and actual date of filing of petitioner's Annual ITR for fiscal year 2016. This stands even if petitioner filed an Amended Annual ITR for fiscal year ended 30 September 2016 on 30 January 2017,[9] as to tack the starting point of the two (2) year prescriptive period to file a claim for refund from the date of filing of an amended return would result in taxpayer-claimants merely needing to file an amended tax return to extend the period allowed to file a claim for refund of excessively or illegally collected tax, a situation open to abuse.

With respect to petitioner's argument that it has complied with the exhaustion of administrative remedies when it sought the refund of its unutilized CWT, although the Court stands by its position enunciated in the assailed Decision, that the filing of the administrative claim with respondent merely one (1) day before the lapse of the two (2) year period and the judicial claim with the Court immediately following the next day displayed a stark disregard of the rule requiring the exhaustion of administrative remedies, its hands are tied, given the recent ruling of the Supreme Court on the matter.

In ***Commissioner of Internal Revenue v. Carrier Air Conditioning Philippines, Inc.***,[10] the Supreme Court recognized the lack of any specific period fixed in ***Section 229 of the NIRC*** in relation to ***Section 204 of the NIRC*** and that the silence or insufficiency in the law is one that can be addressed by appropriate legislation:

> "The Court of Tax Appeals likewise allowed judicial claims filed simultaneously, or one to 28 days from the administrative claim's filing, on the same ground that both claims were filed within the two-year prescriptive period.
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> ...

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[6] Exhibit "P-4", Records, pp. 161-168.
[7] Emphasis and underscoring, Ours.
[8] Exhibit "P-4", Records, pp. 161-168.
[9] Exhibit "P-5", *id.*, pp. 169-176.
[10] G.R. No. 226592, 27 July 2021.

> These cases show that the lack of a specific period fixed by the law within which the Commissioner must decide the claim has led to delays, to the taxpayer's prejudice. On the other hand, there were instances when the Commissioner was deprived of the opportunity to act on the matter within their jurisdiction because of the short interval between the filing of the administrative claim and the filing of the judicial claim. This is so because the law merely provides two years for a taxpayer to file the administrative claim and judicial claim, with the former required to be filed first.
>
> Nonetheless, the silence or insufficiency in the law on the reasonable period for the Commissioner's action is one that can be addressed not by judicial pronouncement, but by appropriate legislation."

That there is an infirmity in the periods of filing was even raised by Justice Estela Perlas-Bernabe, who referred the same to the Senate for action in her Concurring Opinion:[11]

> "Whether or not the CIR should be given a mandatory period of review of administrative claims as a condition precedent to the filing of a judicial claim goes into the wisdom of the law. It is well-settled that the Court cannot supplant its own wisdom with that of Congress as this goes beyond the purview of its power of judicial review. As the Court has held, "[t]he courts may or may not agree with the legislature upon the wisdom or necessity of the law. Their disagreement, however, furnishes no basis for pronouncing a statute illegal. If the particular statute is within the constitutional power of the legislature to enact, whether the courts agree or not in the wisdom of its enactment, is a matter of no concern."
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> In this regard, the proper recourse against the curtailment of the CIR's power to first rule on administrative claim, as herein stated, is to seek the amendment of Section 229. "'[I]f the law is too narrow in scope, it is for the Legislature rather than the courts to expand it.' It is only when all other means of determining the legislative intention fail that a court may look into the effect of the law; otherwise, the interpretation becomes judicial legislation."
>
> Therefore, as now ruled by the *ponencia*, the Court is constrained to deny the present petition, but let a copy of this Decision be furnished to the Senate and the House of Representatives for their information, and for the possible enactment of remedial legislation."
> (Citations omitted.)

However, notwithstanding the foregoing, the Court still finds no basis to warrant the reversal of the Assailed Decision, as will be discussed.

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[11] *Ibid.*

Petitioner opted to refund its alleged excess CWT. It did not actually utilize or carry-over the said excess CWT as credit for income tax due in future taxable periods.

The refund of excess CWT is expressly allowed under ***Section 58 of the NIRC***:

> "**SEC. 58. Returns and Payment of Taxes Withheld at Source.** – xxx xxx xxx
>
> ***(D) Income of Recipient.*** - **Income upon which any creditable tax is required to be withheld at source under Section 57 shall be included in the return of its recipient but the excess of the amount of tax so withheld over the tax due on his return shall be refunded to him subject to the provisions of Section 204;** if the income tax collected at source is less than the tax due on his return, the difference shall be paid in accordance with the provisions of Section 56.
>
> All taxes withheld pursuant to the provisions of this Code and its implementing rules and regulations are hereby considered trust funds and shall be maintained in a separate account and not commingled with any other funds of the withholding agent."
> (Emphasis, Ours.)

Moreover, ***Section 76 of the NIRC*** provides options on how excess CWT can be utilized:

> "**SEC. 76. Final Adjustment Return.** - Every corporation liable to tax under Section 27 shall file a final adjustment return covering the total taxable income for the preceding calendar or fiscal year. If the sum of the quarterly tax payments made during the said taxable year is not equal to the total tax due on the entire taxable income of that year, the corporation shall either:
>
> (A) Pay the balance of tax still due; or
> (B) Carry-over the excess credit; or
> (C) Be credited or refunded with the excess amount paid, as the case may be.
>
> **In case the corporation is entitled to a tax credit or refund of the excess estimated quarterly income taxes paid, the excess amount shown on its final adjustment return may be carried over and credited against the estimated quarterly income tax liabilities for the taxable quarters of the succeeding taxable years. Once the option to carry-over and apply the excess quarterly income tax against income tax due for the taxable quarters of the succeeding taxable years has been made, such option shall be considered irrevocable for that taxable period and no application for cash refund or issuance of tax credit certificate shall be allowed therefor."**
> (Emphasis, Ours.)

Following these provisions, there are two (2) options available to a corporation whenever it overpays its income tax for a given taxable year, which are: (a) to carry over and apply the overpayment as a tax credit against the estimated quarterly income tax liabilities of the succeeding taxable years (also known as an automatic tax credit) until fully utilized, which means that there is no prescriptive period; or (b) to apply for a cash refund or issuance of a tax credit certificate within the prescribed period.[12]

In ***Systra Philippines, Inc. v. Commissioner of Internal Revenue***,[13] the Supreme Court provided that in exercising its option, a corporation must signify in its Annual ITR its intention either to carry over the excess credit or to claim a refund by marking the appropriate option box in the BIR form. These remedies are alternative in nature, and the choice of one precludes the other.[14] Once the carry over option is actually or constructively taken, it becomes irrevocable for that taxable period.[15] The phrase "for that taxable period" merely identifies the excess income tax, subject of the option, by referring to the taxable period when it was acquired by the taxpayer.[16] Hence, once a corporate taxpayer makes a choice, it cannot have a change of heart.

In the present case, petitioner indicated in its Amended Annual ITR for fiscal year ended 30 September 2016 that it had an income tax overpayment in the amount of Php44,018,500.00, which was arrived at after deducting the Regular Corporate Income Tax ("RCIT") due for fiscal year 2016 in the amount of Php4,539,998.00 from the prior year's excess credits in the amount of Php31,373,540.00 and adding the CWT for fiscal year 2016 in the amount of Php17,184,958.00 (which is subject of the current claim for refund), as follows:[17]

RCIT Due		Php4,539,998.00
Less: Tax Credits/Payments		
Prior Year's Excess Credits		Php31,373,540.00
CWT from Previous Quarters	Php12,591,237.00	
CWT for the Fourth Quarter	4,593,721.00	17,184,958.00
Total Tax Credits/Payments		Php48,558,498.00
Tax Overpayment		(Php44,018,500.00)

[12] University Physicians Services, Inc. - Management, Inc. v. Commissioner of Internal Revenue, G.R. No. 205955, 7 March 2018.
[13] G.R. No. 176290, 21 September 2007.
[14] Systra Philippines, Inc. v. Commissioner of Internal Revenue, G.R. No. 176290, 21 September 2007, citing Philippine Bank of Communications v. Commissioner of Internal Revenue, et al., G.R. No. 112024, 28 January 1999.
[15] Philam Asset Management, Inc. v. Commissioner of Internal Revenue, G.R. Nos. 156637 and 162004, 14 December 2005.
[16] Commissioner of Internal Revenue v. Bank of the Philippine Islands, G.R. No. 178490, 7 July 2009.
[17] Exhibit "P-5", Records, pp. 169-176.

In both the Original Annual ITR[18] and Amended Annual ITR[19] for fiscal year 2016, petitioner chose the option to refund its excess income tax payments. This being so, it complied with the requirement that the intention to refund the excess CWT must be indicated in the taxpayer's ITR as a prerequisite for granting the claim for refund.

In fact, petitioner's intention to refund the excess CWT for fiscal year 2016 was affirmed when it carried over only the amount of Php26,833,542 (Php31,373,540.00 prior year's excess credits for fiscal year 2016 - Php4,539,998.00 RCIT due for fiscal year 2016) as prior year's excess tax credits in its Original Annual ITR,[20] Amended Annual ITRs,[21] and Original and Amended Quarterly ITRs[22] for fiscal year 2017 to be used as credit for income tax due for said period. The Php17,184,958.00 sought to be refunded as excess CWT for fiscal year 2016 is no longer part of said amount.[23] The said excess CWT for fiscal year 2016 (claimed for refund) was not actually utilized or carried over as credit for fiscal year 2017 income taxes. This made petitioner compliant with the requirement in CWT refund that taxpayers should not actually utilize or carry-over the said excess CWT as credit for income tax due in future taxable periods.

Petitioner timely filed both its administrative and judicial claims for refund.

Sections 204 (C) and 229 of the Tax Code provide that both administrative and judicial claims for refund of erroneously or illegally collected taxes should be filed within two (2) years from the date of payment of taxes, *viz.*:

> "**SEC. 204.** ***Authority of the Commissioner to Compromise, Abate and Refund or Credit Taxes. –***
>
> The Commissioner may –
>
> xxx xxx xxx
>
> (C) Credit or refund taxes erroneously or illegally received or penalties imposed without authority, refund the value of internal revenue stamps when they are returned in good condition by the purchaser, and, in his discretion, redeem or change unused stamps that have been rendered unfit for use and refund their value upon proof of destruction. **No credit or refund of taxes or penalties shall be allowed unless the taxpayer files in writing with the Commissioner a claim for credit or refund within two**

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[18] See Exhibit "P-4", *id.*, pp. 161-168.
[19] See Exhibit "P-5", *id.*, pp. 169-176.
[20] See Exhibit "P-6", *id.*, pp. 177-184.
[21] See Exhibits "P-7" to "P-8", *id.*, pp. 185-200.
[22] See Exhibits "P-9" to "P-12", *id.*, pp. 201-211.
[23] See Independent Certified Public Accountant ("ICPA") Report, Exhibit "P-20", *id.*, p. 295.

> **(2) years after the payment of the tax or penalty:** Provided, however, That a return filed showing an overpayment shall be considered as a written claim for credit or refund.
>
> xxx xxx xxx
>
> "**Section 229.** *Recovery of Tax Erroneously or Illegally Collected.* - no suit or proceeding shall be maintained in any court for the recovery of any national internal revenue tax hereafter alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, of any sum alleged to have been excessively or in any manner wrongfully collected without authority, or of any sum alleged to have been excessively or in any manner wrongfully collected, until a claim for refund or credit has been duly filed with the Commissioner; but such suit or proceeding may be maintained, whether or not such tax, penalty, or sum has been paid under protest or duress.
>
> **In any case, no such suit or proceeding shall be filed after the expiration of two (2) years from the date of payment of the tax or penalty** regardless of any supervening cause that may arise after payment: Provided, however, That the Commissioner may, even without a written claim therefor, refund or credit any tax, where on the face of the return upon which payment was made, such payment appears clearly to have been erroneously paid." (Emphasis, Ours.)

In ***ACCRA Investments Corporation v. The Honorable Court of Appeals, et al.***,[24] the Supreme Court ruled that the two (2)-year prescriptive period for claiming a refund commences to run from the date of filing of the final adjusted return or the Annual ITR. The two (2)-year period starts to run from the filing of the Annual ITR since it is only the time when the taxpayer would know whether a tax is still due or a refund can be claimed based on the adjusted and audited figures.[25]

In the present case, petitioner filed its Original Annual ITR via the eFPS on 16 January 2017[26] and subsequently filed an Amended Annual ITR via the eFPS on 30 January 2017. As discussed above, however, the starting point of the two (2) year prescriptive period to file both administrative and judicial claim for refund is 16 January 2017 as this is the last day allowed to file the Original Annual ITR, and in fact, the actual date of filing of petitioner's Original Annual ITR. Starting from 16 January 2017, petitioner had until 16 January 2019 within which to file both its administrative and judicial claims.

Evidence shows that petitioner filed its administrative claim before Bureau of Internal Revenue ("BIR") - Revenue District Office No. 44 on 15 January 2019.[27] On the other hand, it filed the present Petition on 16 January

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[24] G.R. No. 96322, December 20, 1991.
[25] Commissioner of Internal Revenue v. TMX Sales, Inc., et al., G.R. No. 83736, 15 January 1992; Metropolitan Bank & Trust Company v. Commissioner of Internal Revenue, G.R. No. 182582, 17 April 2017.
[26] See Exhibit "P-4", Records, pp. 161-168.
[27] See Exhibits "P-13" to "P-14", *id.*, pp. 212-218.

2019. Petitioner thus timely filed both its administrative and judicial claims for refund of erroneously or excessively collected tax.

CWT in the total amount of Php16,329,073.54 is properly substantiated with Certificates of Creditable Tax Withheld at Source (BIR Form No. 2307) issued by petitioner's income payors.

Before a refund of excess CWT can be allowed, a taxpayer must adequately establish that its income payors actually withheld the income tax sought to be refunded. ***Section 2.58.3 (B) of Revenue Regulations No. 02-98 ("RR 2-98")*** is instructive, to wit:

> "SECTION 2.58.3. Claim for Tax Credit or Refund. –
>
> xxx xxx xxx
>
> (B) Claims for tax credit or refund of any creditable income tax which was deducted and withheld on income payments shall be given due course **only when it is shown that the income payment has been declared as part of the gross income and the fact of withholding is established by a copy of the withholding tax statement duly issued by the payor to the payee showing the amount paid and the amount of tax withheld therefrom."** (Emphasis and underscoring, Ours.)

As proof of the fact of withholding, petitioner presented the BIR Form No. 2307 issued to it by various income payors for fiscal year 2016 reflecting a total CWT of Php17,184,958.15 on various income payments made to petitioner in the total amount of Php193,157,667.01, as shown below:[28]

Client	Tax Base	CWT per BIR Form No. 2307	Exh. No.[29]
Aecom Philippines Incorporated	1,835,666.76	275,350.01	P-21
Chevron Philippines, Inc.	15,159,004.50	2,273,850.68	P-22
Chevron Philippines, Inc.	2,108,720.03	316,308.01	P-23
Chevron Philippines, Inc.	3,477,663.94	521,649.60	P-24
Chevron Philippines, Inc.	136,115.55	20,417.33	P-25
Chevron Philippines, Inc.	726,395.75	108,959.36	P-26

[28] Annex "A" of the ICPA Report, Found in the USB, Exhibit "P-20-b".
[29] *Id.*

Energy Develoment Corporation	56,700.00	1,134.00	P-27
Chevron Philippines, Inc.	430,449.75	64,567.47	P-28
Chevron Philippines, Inc.	19,244,442.78	2,886,666.42	P-29
Chevron Philippines, Inc.	9,821,428.57	1,473,214.29	P-30
Pilipinas Shell Petroleum Corporation	18,463,889.89	369,277.80	P-31
Aecom Philippines Incorporated	72,649.00	10,897.35	P-32
DENR	2,860,831.06	383,147.01	P-33
	2,860,831.06	383,147.01	
Chevron Philippines, Inc.	77,582.25	11,637.34	P-34
Chevron Philippines, Inc.	251,727.00	37,759.06	P-35
Chevron Philippines, Inc.	2,421,291.56	363,193.76	P-36
Chevron Philippines, Inc.	791,501.62	118,725.24	P-37
Chevron Philippines, Inc.	50,359.75	7,553.96	P-38
Chevron Philippines, Inc.	543,333.00	81,499.95	P-39
Stanley Black and Decker Netherlands BV	161,328.15	16,132.82	P-40
Chevron Philippines, Inc.	10,646,215.21	1,596,932.28	P-41
Pilipinas Shell Petroleum Corporation	1,854,848.06	37,096.96	P-42
Pilipinas Shell Petroleum Corporation	14,965,515.96	299,310.31	P-43
Energy Develoment Corporation	1,921,988.25	38,439.77	P-44
Chevron Philippines, Inc.	55,845.00	8,376.75	P-45
Chevron Philippines, Inc.	42,525.00	6,378.75	P-46
Chevron Philippines, Inc.	9,142,696.90	1,371,404.53	P-47
Chevron Philippines, Inc.	143,249.25	21,487.39	P-48
Energy Develoment Corporation	640,662.75	12,813.26	P-49
Chevron Philippines, Inc.	46,728.00	7,009.20	P-50
Energy Develoment Corporation	5,898,507.63	117,970.15	P-51
Pilipinas Shell Petroleum Corporation	1,093,386.75	21,867.74	P-52
Aecom Philippines Incorporated	130,104.40	1,301.05	P-53

Energy Develoment Corporation	857,771.64	17,155.43	P-54
Energy Develoment Corporation	168,921.17	3,378.42	P-55
Fgen Bubunawan Hydro Corporation	1,931,405.52	289,710.83	P-56
Energy Develoment Corporation	5,908,086.34	118,161.73	P-57
Greencore Geothermal, Inc.	1,215,246.74	24,304.93	P-58
Energy Develoment Corporation	778,629.37	15,572.59	P-59
Du Pont Far East Inc	311,590.50	31,159.05	P-60
Aecom Philippines Incorporated	8,332.84	1,249.93	P-61
Aecom Philippines Incorporated	19,645.00	2,946.75	
Chevron Philippines, Inc.	212,890.00	31,933.50	P-62
Energy Develoment Corporation	8,749,759.22	174,995.18	P-63
Energy Develoment Corporation	18,164.29	363.29	P-64
Chevron Philippines, Inc.	38,411.78	5,761.77	P-65
Chevron Philippines, Inc.	160,197.75	24,029.66	P-66
Chevron Philippines, Inc.	2,519,240.36	377,886.05	P-67
Chevron Philippines, Inc.	146,938.92	22,040.84	P-68
Chevron Philippines, Inc.	1,809,400.15	271,410.02	P-69
Chevron Philippines, Inc.	107,480.70	16,122.11	P-70
Chevron Philippines, Inc.	3,247,177.04	487,076.56	P-71
Chevron Philippines, Inc.	2,037,702.54	305,655.38	P-72
Energy Develoment Corporation	11,110,016.25	222,200.33	P-73
Chevron Philippines, Inc.	263,942.67	39,591.40	P-74
Chevron Philippines, Inc.	35,964.45	5,394.67	P-75
Chevron Philippines, Inc.	1,770,209.75	265,531.47	P-76
Du Pont Far East Inc	350,000.00	7,000.00	P-77
Chevron Philippines, Inc.	230,426.00	34,536.90	P-78
Chevron Philippines, Inc.	710,349.46	106,552.42	P-79
Chevron Philippines, Inc.	59,583.50	8,937.53	P-80

Chevron Philippines, Inc.	107,536.00	16,130.40	P-81
Chevron Philippines, Inc.	297,270.57	89,590.59	P-82
Chevron Philippines, Inc.	1,299,568.55	194,935.28	P-83
Chevron Philippines, Inc.	1,299,568.55	194,935.28	
Petron Corporation	526,833.44	79,025.02	P-84
Chevron Philippines, Inc.	768,475.82	115,271.37	P-85
Tiger Resort Leisure and Entertainment	7,527,654.00	150,553.08	P-86
Eaton Industries Philippines, LLC	950,000.00	19,000.00	P-87
Tiger Resort Leisure and Entertainment	7,469,091.00	149,381.82	P-88
TOTAL	**193,157,667.01**	**17,184,958.15**	
AMOUNT OF CWT CLAIMED		**17,184,958.22**	
LOWER OF THE CWT CLAIMED VIS-À-VIS BIR FORM NO. 2307 PRESENTED		**17,184,958.15**	

However, as noted by the Court commissioned Independent Certified Public Accountant ("ICPA"), there were certain BIR Forms No. 2307 that had improper CWT computation in the total amount of Php855,884.61, which should be removed from the amount that may be claimed by petitioner for refund. These are the following:[30]

Improper CWT Computation	**Tax Base**	**CWT Rate**	**CWT per BIR Form No. 2307**	**Exh. No.[31]**
DENR	2,860,831.06	15%	383,147.01[32]	P-33
	2,860,831.06	15%	383,147.01[33]	
Chevron Philippines, Inc.	297,270.57	15%	89,590.59[34]	P-82
Sub Total			**855,884.61**	
LOWER OF THE CWT CLAIMED VIS-À-VIS BIR FORM NO. 2307 PRESENTED			17,184,958.15	
SUPPORTED BY VALID BIR FORM NO. 2307			**16,329,073.54**	

After thorough verification of the pieces of document submitted before this Court, this Court agrees with the findings of the ICPA that petitioner has a claim for refund in the total amount of Php16,329,073.54 which is validly

30 Annex "A" of the ICPA Report, *id.*
31 *Id.*
32 Should be Php429,124.66.
33 Should be Php429,124.66.
34 Should be Php44,590.59.

supported by Certificates of Creditable Tax Withheld at Source (BIR Form No. 2307).

Petitioner failed to prove that the income payments of its alleged excess CWT was declared as part of its gross income subject to income tax.

As stated in ***Section 2.58.3 (B) of RR 2-98***, a claim for CWT refund may only prosper upon proof that income payment has been declared as part of the gross income subject to income tax.

As duly explained by the ICPA, the income payments made to petitioner upon which income taxes were withheld can be traced to the Official Receipts ("ORs") issued by petitioner for said income payments. The said ORs can then be associated with the particular statement of accounts/billing statements ("SOAs") which petitioner issues for purposes of collecting income payments which are due whenever a particular milestone is reached. Using the ORs and the SOAs, each income payment can now be traced to a Project Performance Report ("PPR") using the Project Contract Code ("PCC") indicated in the ORs and SOAs. The PPR provides the details of the revenue recognized by petitioner which is based on the percentage of completion of the project. Particularly, it is the source document of the revenue declared in the audited financial statements and the ITR. As duly provided in the ICPA Report, the ICPA explained as follows:[35]

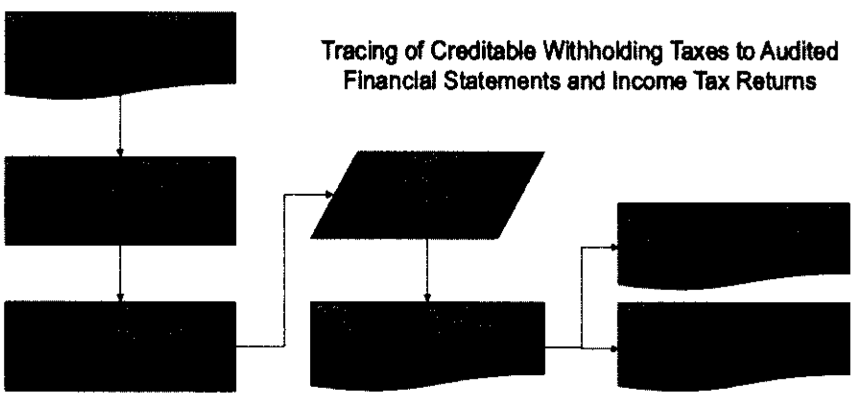
> "With respect to procedure nos. 4 and 5, I ascertained that the income payments upon which the income taxes were withheld formed part of the Company's gross income were validly supported by ORs and reported by the Company in its books of accounts, audited financial statements and Income Tax Returns, and ascertained that the said income payments were properly reported therein.
>
> The creditable withholding taxes from the income payments made by the Company's clients are shown in the Certificate of Creditable Tax Withheld at Source (BIR Form No. 2307). In turn, the amount of income payments received can be traced to the official receipts and statement of accounts/billing statements issued by the Company.
>
> Hence, I verified that the Company's gross income from which the income taxes were withheld were validly supported by ORs and traced the same to the invoices/statement of accounts/billing statements. The ORs are presented as Exhibits "**P-89**" to "**P-166**"; While, the statement of accounts/billing statements are presented in Exhibits "**P-168**" to "**P-325**"

[35] ICPA Report, par. 4, Records, pp. 291-292.

Upon identifying the official receipts and statement of accounts/billing statements of each particular income payment, the same may be traced to the Project Performance Report (PPR) using the Project Contract Code (PCC). The PPR is the source document which lists in details the revenue recognized by the Company in accordance with the percentage of completion method as well as the billings made by it, per contract, as identified by the PCC. It is also the report from which the information in the audited financial statements and annual income tax returns are sourced.

By tracing the BIR Forms No. 2307 to the PPR, the amount of income reported in the books pertaining to each payment may be ascertained. Moreover, the period in which such income payment was declared as part of gross income may also be determined.

In the PPR, the revenue per project for the year is recorded under the column "year-to-date gross revenue" or (YTD GR), while the total revenue recognized over the entire span of the project is recognized under the "inception-to-date gross revenue" (ITD GR) which can be verified under the percentage of completion column. On the other hand, the total amount billed to the customer may be found under the "Inception-To-Date Billing" (ITD Billing) column. For completed projects, "ITD GR" matches "ITD Billing".



Following this tracing procedure, the ICPA found that there are BIR Forms No. 2307 with CWTs that do not match its respective ORs and the Tax Recovery General Ledger Account's CWT amounts, as follows:[36]

Client	CWT per BIR Form No. 2307	Exh. No.[37]	OR No.	Exh. No.[38]	CWT Amount per OR and Tax Recovery General Ledger Account[39]	Variance	Reason for Variance
Pilipinas Shell Petroleum Corporation	369,277.80	P-31	1816	P-107	201,421.81	- 150.00	Due to erroneous non-booking of the P150.00 Booking
			1817	P-108	148,251.02		
			1820	P-109	5,797.94		

[36] Annex "C" of the ICPA Report, USB, Exhibit "P-20-b".
[37] *Id.*
[38] *Ibid.*
[39] Exhibit "P-167", *id.*

			1832	P-110	13,957.03		Charge ("BC") for OR No. 1832
Pilipinas Shell Petroleum Corporation	37,096.96	P-42	1833	P-114	79,953.52		
			1834	P-115	64,315.31		
			1835	P-116	87,866.21		
Pilipinas Shell Petroleum Corporation	299,310.31	P-43	1836	P-117	10,190.70	- 750.00	Due to the erroneous non-booking of BC
			1841	P-118	8,488.88		
			1843	P-119	19,913.39		
			1851	P-120	66,429.26		
Chevron Philippines, Inc.	194,935.28	P-83	1895	P-151	194,935.28	194,935.29	Double entry in CWT document
Chevron Philippines, Inc.	194,935.28						
Eaton Industries Philippines, LLC	19,000.00	P-87	1909	P-160	16,000.00	3,000.00	Difference in Sales / Revenue P950,000 against P800,000
Total Noted Material Variances	**1,114,555.63**						
Supported by valid BIR Forms No. 2307 (as computed above)	**16,329,073.54**						
Petitioner's claim for refund validly supported by BIR Forms No. 2307, ORs and Tax Recovery General Ledger Account	**15,214,517.91**						

Further, upon tracing the income payments as reflected in the BIR Forms No. 2307, which were submitted in evidence by petitioner to support its claim for refund, to the income payments as indicated by petitioner's PPRs, the ICPA likewise found that certain income payments as declared in the BIR Forms No. 2307 cannot be reconciled with those provided in petitioner's

PPRs. As such, the CWT withheld on such income payments were removed from the total amount that may be refunded. These unexplained income payments are as follows:[40]

Allowable CWTs after Deducting Noted Material Variances (*i.e.*, CWT per BIR Forms No. 2307 did not match those as indicated in the ORs and the Tax Recovery General Ledger Account)		**15,214,517.91**	
Income payments per BIR Form No. 2307 that cannot be reconciled with income payments per petitioner's PPRs.			
Income Payor:	**Income Payment**	**CWT**	**Exh. No.[41]**
Aecom Philippines Incorporated	72,649.00	10,897.35	P-32
Chevron Philippines, Inc.	543,333.00	81,499.95	P-39
Chevron Philippines, Inc.	9,142,696.90	1,371,404.53	P-47
Aecom Philippines Incorporated	130,104.40	1,301.05	P-53
Chevron Philippines, Inc.	2,519,240.36	377,886.05	P-67
Chevron Philippines, Inc.	1,770,209.75	265,531.47	P-76
Tiger Resort Leisure and Entertainment	7,527,654.00	150,553.08	P-86
Total		**2,259,073.48**	
Allowable CWT		**12,955,444.43**	

The Court agrees with these findings.

However, the Court disagrees with the ICPA's findings that the revenue indicated in the fiscal year 2016 PPRs were properly reported in the revenue portion of petitioner's ITRs for fiscal years 2016, 2015, and 2014. The ICPA attempted to reconcile the difference between the revenue reported in the PPRs with those reported in the ITRs for fiscal years 2016, 2015, and 2014:[42]

[40] Annex "F" of the ICPA Report, *id.*
[41] *Id.*
[42] ICPA Report, par. 4, Records, pp. 293.

Particulars	**2016**	**Exh. No.** [43]	**2015**	**Exh. No.**[44]	**2014**	**Exh. No.**[45]
Revenue per Books of Account (*i.e.*, PPRs)	211,592,127	P-326	163,781,345	P-327	162,231,494	P-328
Revenue per ITR	207,381,204	P-5	152,613,178	P-445	162,247,997	P-446
Audit Adjustments	4,213,226	Annex "G" of the ICPA Report[46]	(11,168,166)	Annex "H" of the ICPA Report[47]	16,503	Annex "I" of the ICPA Report[48]
Variance	(2,303)		1		-	

The said audit adjustments to reconcile the revenues per PPRs with the revenues per ITR are as follows:

For Fiscal Year 2016:[49]

Business Line	Exhibit No.[50]	
3508 Power & Energy	P-326	33,484,565
3520 EM - Environmental Management		155,814,865
3661 PCC - CM		22,292,698
Total Revenue, per PPR for 2016		**211,592,127**
Total Revenue, per Audited Financial Statements/ITR for 2016		**207,381,204**
Difference		4,210,923
Reconciliation:		
To Adjust revenue in relation to the adjustment in the project costs		5,114,106
To adjust revenue as of September 30, 2015.		(614,566)
2016 Project True-up / PJC Adjustments		(286,315)
Total		**4,213,226**

43 Found in the USB, Exhibit "P-20-b".
44 *Ibid.*
45 *Ibid.*
46 *Ibid.*
47 *Ibid.*
48 *Ibid.*
49 Annex "G" of the ICPA Report, *id.*
50 *Id.*

Variance / Unreconciled Difference		**(2,303)**

For Fiscal Year 2015:[51]

Business Line	Exhibit No.	
3508 Power & Energy	P-327	3,380,904
3520 EM - Environmental Management		155,923,219
3661 PCC - CM		4,477,222
Total Revenue, per PPR for 2015		**163,781,345**
Total Revenue, per Audited Financial Statements/ITR for 2015		**152,613,178**
Difference		11,168,167
Reconciliation:		
To Adjust revenue in relation to the adjustment in the project costs		5,114,106
To reverse the expense and revenue from scrap sale transaction		(15,667,706)
To adjust revenue as of September 30, 2015.		(614,566)
Total		**(11,168,166)**
Variance / Unreconciled Difference		**1**

For Fiscal Year 2014:[52]

Business Line	Exhibit No.	
3508 Power & Energy	P-328	1,545,336
3520 EM - Environmental Management		153,721,786
3661 PCC - CM		6,964,372
Total Revenue, per PPR for 2014		**162,231,494**
Total Revenue, per Audited Financial Statements/ITR for 2014		**162,247,997**

[51] Annex "H" of the ICPA Report, *id.*
[52] Annex "I" of the ICPA Report, *id.*

Difference		(16,503)
Reconciliation:		
To adjust for the proper valuation of revenue.		16,503
Total		**16,503**
Variance / Unreconciled Difference		-

The ICPA, however, failed to explain in detail such audit adjustments in his ICPA Report. Thus, this Court is unable to verify whether the revenues as indicated in the PPRs have indeed been declared as part of the gross income subject to income tax in the ITR.

It bears stressing that the Court is not bound by the findings of the ICPA. ***Section 3, Rule 13 of the Revised Rules of the Court of Tax Appeals, as amended,*** provides:

> "SEC. 3. Findings of independent CPA. -The submission by the independent CPA of pre-marked documentary exhibits shall be subject to verification and comparison with the original documents, the availability of which shall be the primary responsibility of the party possessing such documents and, secondarily, by the independent CPA. **The findings and conclusions of the independent CPA may be challenged by the parties and shall not be conclusive upon the Court, which may, in whole or in part, adopt such findings and conclusion subject to verification."**
> (Emphasis and underscoring, Ours.)

The ICPA's findings are not conclusive upon the Court as the same are subject to verification, to determine its accuracy, veracity, and merit. The Court may either adopt or reject the ICPA Report, wholly or partially, depending on the outcome of its own independent verification. Thus, absent an explanation justifying the reconciling items shown above, the Court cannot simply adopt the finding of the ICPA that the total sales/revenues declared in the ITR tally with the total sales/revenues reported in the PPRs.

Consequently, the Court finds that petitioner failed to prove that the income payments upon which the alleged excess CWTs were withheld were declared as part of the gross income subject to income tax.

On this finding alone, the instant claim for refund fails.

<u>The existence and validity of petitioner's prior years' excess tax credits have not been duly proven.</u>

Petitioner hinges its claim for refund on its prior years' excess tax credits in the amount of Php31,373,540.00, which was allegedly utilized to pay-off the RCIT due for fiscal year 2016 in the amount of Php4,539,998.00.

To grant the petitioner's claim for refund (which represents excess CWT for fiscal year 2016), it is important for petitioner to fully account for its prior year's excess tax credits.

However, petitioner failed to prove the existence and validity of its prior years' excess credits in the total amount of Php31,373,540.00.

In the ICPA Report, the ICPA alleged that he was able to verify the existence and validity of the prior years' excess tax credits by examining the audited financial statements of fiscal year 2015. These audited financial statements were marked as Exhibit "P-445".[53] Said exhibit, however, is a BIR Form 2307 and not audited financial statements, as shown below:

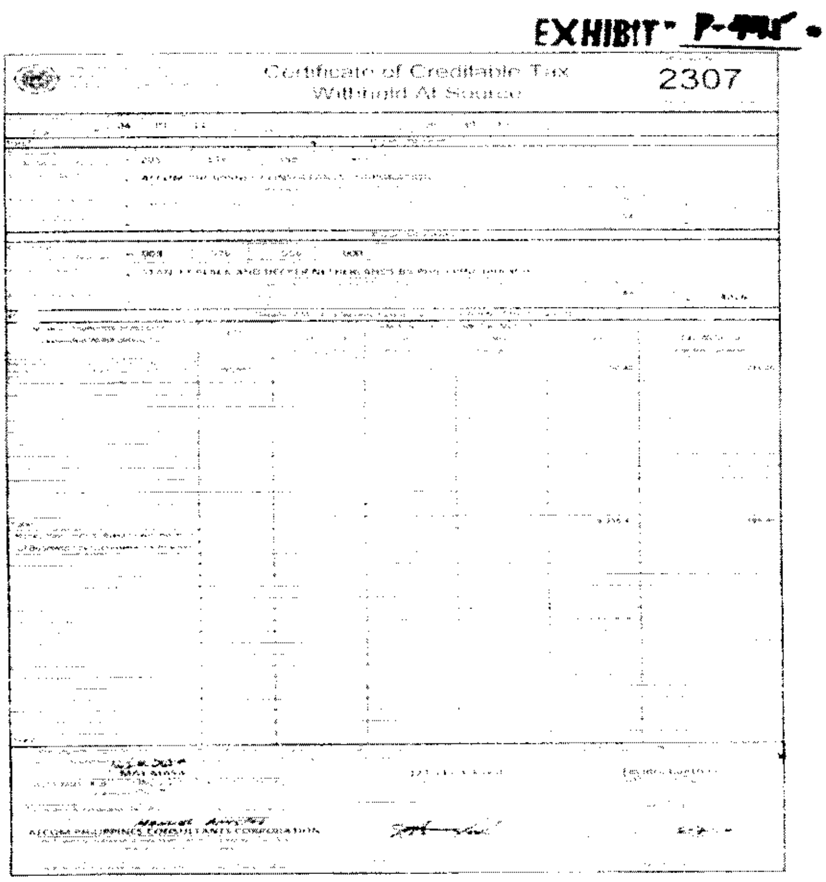


EXHIBIT
Certificate of Creditable Tax Withheld At Source
2307

[53] ICPA Report, par. 6, Records, p. 294.

Without the said audited financial statements, more so an ITR for fiscal year 2015, this Court has no means to verify that there is indeed a valid prior years' excess credits which petitioner may use to pay-off its RCIT due for fiscal year 2016.

While petitioner presented its BIR Forms No. 2307 for fiscal years 2015[54] and 2014,[55] the same can only account for the CWTs that were withheld on income payments made to petitioner during said periods. The said documents, however, do not provide the income taxes due for fiscal years 2015 and 2014 upon which the said CWTs can be applied as credit. Alone, the BIR Forms No. 2307 for fiscal years 2015 and 2014 cannot prove the existence and validity of petitioner's prior years' excess credits.

Without proof of the existence of valid prior years' excess credits, the RCIT due for fiscal year 2016 in the amount of Php4,539,998.00 is not deemed to have been fully paid. Thus, petitioner's claim for refund of excess CWT must necessarily fail.

In summary, the instant claim for refund of excess CWT is denied due to petitioner's failure to prove that the income payments upon which the alleged excess CWTs were withheld were declared as part of the gross income subject to income tax and due to its failure to prove the existence and validity of its prior years' excess credits.

WHEREFORE, in view of the foregoing, the present **Motion for Reconsideration** is hereby **DENIED** for lack of merit.

SO ORDERED.

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

WE CONCUR:

ERLINDA P. UY
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

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[54] Exhibits "P-329" to "P-385", Found in the USB, Exhibit "P-20-b".
[55] Exhibits "P-386" to "P-447", *id.*