REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL THIRD DIVISION

ESTELITA R. RODRIGUEZ, MARIA CHRISTINA M. RODRIGUEZ, GERARDO M. RODRIGUEZ, JOSE MARIANO M. RODRIGUEZ AND EDMOND M. RODRIGUEZ, *Petitioners,*	**CTA CASE NO. 10151**
	Members:
	RINGPIS-LIBAN, *Chairperson,* *and* **MODESTO-SAN PEDRO,** *JJ.*
- versus -	
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	Promulgated: JUL 20 2023 4:10 p.m.

x---x

DECISION

RINGPIS-LIBAN, J.:

THE CASE

The *Petition for Review* prays that a Decision be rendered in favor of petitioners as follows:

1. Reversing and setting aside the Decision dated July 3, 2019 issued by respondent; and

2. Granting the claim of petitioners for refund of the proportion of the capital gains tax amounting to ₱990,000.00, plus legal interest.[1]

[1] Statement of the Case, Pre-Trial Order dated February 3, 2021, Docket, p. 355.

THE PARTIES

Petitioners Estelita R. Rodriquez, Maria Cristina M. Rodriguez, Gerardo M. Rodriguez, Jose Mariano M. Rodriguez, and Edmond M. Rodriguez, are individual taxpayers with residence at 23 St. Mary, Paradise Village, Quezon City.[2]

Respondent, on the other hand, is the duly appointed Commissioner of the Bureau Internal Revenue (BIR), with principal office at the 5th Floor, BIR National Office Building, Agham Road, Diliman, Quezon City.[3] He is vested with authority to administer all laws pertaining to internal revenue taxes and has jurisdiction to decide disputed tax assessments.[4]

THE FACTS

On December 14, 2017, petitioners paid capital gains tax of ₱8,835,312.00, for the sale of residential property covered by Transfer Certificate of Title No. 101691, as shown in BIR Form No. 1706 – Capital Gains Tax Return stamped received by Revenue District Office (RDO) No. 38 on the same date.[5]

Subsequently, on July 3, 2019, petitioners filed their claim for refund of capital gains tax for taxable year 2017, in the amount of ₱990,000.00 at RDO No. 38.[6] On the same date, pursuant to his delegated authority from respondent to grant or deny claims for refund of internal revenue taxes,[7] Revenue District Officer Renato N. Molina of RDO No. 38 denied petitioners' claim for refund,[8] on the ground that "the sellers did not file a sworn declaration of intent/escrow agreement".[9]

The present *Petition for Review* was filed on August 15, 2019.[10]

Within the extended period granted by the Court,[11] respondent filed his *Answer* on January 6, 2020.[12]

On January 24, 2020, petitioners filed their *Reply*.[13]

---

[2] Par. 1, Stipulation of Facts, *Joint Stipulation of Facts and Issues* (JSFI), Docket, p. 343.
[3] Par. 2, Stipulation of Facts, JSFI, Docket, p. 343.
[4] Par. 3, Stipulation of Facts, JSFI, Docket, p. 343.
[5] Par. 4, Stipulation of Facts, JSFI, Docket, pp. 343 to 344; Exhibit "P-22", Docket, p. 508; and BIR Records (Exhibit "R-1"), pp. 18 to 20.
[6] Par. 5, Stipulation of Facts, JSFI, Docket, p. 344; Exhibit "P-8", Docket, pp. 444 to 446; and BIR Records (Exhibit "R-1"), pp. 42 to 49.
[7] Refer to par. 2, *Petition for Review*, vis-à-vis par. 1, *Answer*, Docket, pp. 10 to 11, and 90, respectively.
[8] Par. 6, Stipulation of Facts, JSFI, Docket, p. 344; Exhibit "P-7", Docket, p. 403.
[9] Par. 25, *Petition for Review*, vis-à-vis par. 1, *Answer*, Docket, pp. 16 and 90, respectively.
[10] Docket, pp. 10 to 24.
[11] Resolution dated December 3, 2019, Docket, p. 89.
[12] Docket, pp. 90 to 96.

After being directed by the Court,[14] respondent transmitted the docket *(BIR Records)* for this case, consisting of fifty-four (54) pages, on February 19, 2020.[15]

The Pre-Trial Conference was initially set on March 26, 2020,[16] but was eventually reset to,[17] and held on, December 3, 2020.[18] Prior thereto, petitioners' *Pre-Trial Brief* was submitted on August 20, 2020,[19] while the *Respondent's Pre-Trial Brief* was filed *via* electronic mail on August 24, 2020.[20]

On December 11, 2020, the parties submitted their *Joint Stipulation of Facts and Issues*,[21] which the Court admitted and approved in the Resolution dated December 21, 2020,[22] thereby deeming the termination of the Pre-Trial. The Court then issued the Pre-Trial Order dated February 3, 2021.[23]

As the trial ensued, the parties presented their respective testimonial and documentary evidence.

Petitioners offered the testimonies of the following individuals, namely: (1) Ms. Estelita R. Rodriguez;[24] (2) Ms. Maria Christina M. Rodriguez;[25] (3) Mr. Edmond M. Rodriguez;[26] and (4) Ms. Rosalia E. Resare.[27]

On July 7, 2021, petitioners filed their *Formal Offer of Evidence.*[28] Respondent filed his *Manifestation* on July 30, 2021,[29] manifesting, *inter alia*, that he had no objection to the admission of petitioners' exhibits.

In the Resolution dated December 16, 2021,[30] the Court admitted all the offered exhibits of petitioners.

---

[13] Docket, pp. 99 to 108.
[14] Resolutions dated December 3, 2019 and February 6, 2020, Docket, pp. 89, and 113 to 114, respectively.
[15] Letter dated February 19, 2020, Docket, p. 115.
[16] *Notice of Pre-Trial Conference* dated January 8, 2020, Docket, pp. 97 to 98.
[17] *Notice of Resetting* dated June 4, 2020, Docket, p. 117; Resolution dated September 2, 2020, Docket, pp. 159 to 160.
[18] Minutes of the hearing held on, and Order dated, December 3, 2020, Docket, pp. 335, and 340 to 342, respectively.
[19] Docket, pp. 123 to 132.
[20] Docket, pp. 140 to 144.
[21] Docket, pp. 343 to 346.
[22] Docket, pp. 352 to 353.
[23] Docket, pp. 355 to 361.
[24] Exhibit "P-1", Docket, pp. 165 to 176; Minutes of the hearing held on, and Order dated, April 22, 2021, Docket, pp. 371 to 373.
[25] Exhibit "P-2", Docket, pp. 210 to 223; Minutes of the hearing held on, and Order dated, April 22, 2021, Docket, pp. 371 to 373.
[26] Exhibit "P-5", Docket, pp. 286 to 292; Minutes of the hearing held on, and Order dated, June 22, 2021, Docket, pp. 389 to 391.
[27] Exhibit "P-6", Docket, pp. 327 to 331; Minutes of the hearing held on, and Order dated, June 22, 2021, Docket, pp. 389 to 391.
[28] Docket, pp. 393 to 403.
[29] Docket, pp. 531 to 532.
[30] Docket, pp. 536 to 537.

For his part, respondent offered the testimony of Revenue Officer Buena C. Salud.[31]

Respondent's Formal Offer of Evidence was filed on May 2, 2022,[32] to which petitioners posted their *Objections/Comment to Respondent's Formal Offer of Evidence* on May 16, 2021.[33] In the Resolution dated June 22, 2022,[34] the Court admitted respondent's offered exhibits.

The *Memorandum for Petitioners* was filed on August 22, 2022,[35] while respondent submitted his *Memorandum* on August 23, 2022.[36]

The present case was deemed submitted for decision on August 25, 2022.[37]

THE ISSUES

The following issue was stipulated by the parties for this Court's resolution, *viz.*:

> "Whether or not the Petitioners are entitled to the claim for refund of the capital gains tax amounting to P990,000.00."[38]

Petitioners' arguments:

Petitioners argue that they complied with the essential basic conditions for exemption from payment of capital gains tax for sale of principal residence set forth under pertinent provisions of law and existing jurisprudential declarations; and that the capital gains tax paid by petitioners was erroneously collected by the BIR.

Respondent's counter-arguments:

Respondent contends that petitioners are not entitled only for refund, but also for the exemption under Revenue Regulations (RR) No. 13-99, as amended by RR No. 14-2000; that petitioners failed to notify respondent

---

[31] Exhibit "R-6", Docket, pp. 311 to 316; Minutes of the hearing held on, and Order dated, April 26, 2022, Docket, pp. 538 to 540.
[32] Docket, pp. 541 to 543.
[33] Docket, pp. 549 to 552.
[34] Docket, pp. 557 to 558.
[35] Docket, pp. 562 to 580.
[36] Docket, pp. 582 to 587.
[37] Order dated August 25, 2022, Docket, p. 594.
[38] Stipulation of Issue, JSFI, Docket, p. 344.

within thirty (30) days from the date of sale or disposition of their intention to avail of the tax exemption as required by National Internal Revenue Code (NIRC) of 1997, as amended by TRAIN Law/Republic Act (RA) No. 10963, Section 24 (D)(2); that granting there was payment of capital gains tax, petitioners failed to file an Escrow Agreement as required by RR No. 14-20, Section 2.2(1) (amended section 3 of RR No. 13-99); that the unnumbered BIR Ruling dated December 6, 1996 was issued prior to the Tax Reform Act of 1997, thus, the same is no longer applicable pursuant to RR 05-2012 dated April 2, 2012; that assuming but without admitting that petitioners is entitled to refund, it is incumbent upon the petitioners to show compliance with the procedure as mandated by law and regulations, and their failure to prove the same is fatal to their claim for refund; and that claims for refund are strictly construed against the taxpayer as the same partakes the nature of a tax exemption.

THE COURT'S RULING

The present *Petition for Review* must be denied.

Governing provisions for refund claims.

Sections 204(C) and 229 of the NIRC of 1997 read:

> "SEC. 204. *Authority of the Commissioner to Compromise/Abate and Refund or Credit Taxes.* — The Commissioner may —
>
> xxx xxx xxx
>
> (C) Credit or refund taxes erroneously or illegally received or penalties imposed without authority, refund the value of internal revenue stamps when they are returned in good condition by the purchaser, and, in his discretion, redeem or change unused stamps that have been rendered unfit for use and refund their value upon proof of destruction. **No credit or refund of taxes or penalties shall be allowed unless the taxpayer files in writing with the Commissioner a claim for credit or refund within two (2) years after the payment of the tax or penalty**: *Provided, however,* that a return filed showing an overpayment shall be considered as a written claim for credit or refund." *(Emphasis added)*
>
> "SEC. 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**

N

> **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." *(Emphases added)*

The aforequoted provisions are clear: within two (2) years from the date of payment of tax, the claimant must first file an administrative claim with respondent before filing its judicial claim with the courts of law. Both claims must be filed within a two (2)-year reglementary period. Timeliness of the filing of the claim is mandatory and jurisdictional, and thus the Court cannot take cognizance of a judicial claim for refund filed either prematurely or out of time. It is worthy to stress that as for the judicial claim, tax law even explicitly provides that it be filed within two (2) years from payment of the tax "regardless of any supervening cause that may arise after payment."[39]

Moreover, the foregoing provisions allow the recovery of taxes erroneously or illegally collected. An "erroneous or illegal tax" is defined as one levied without statutory authority, or upon property not subject to taxation, or by some officer having no authority to levy the tax, or one which is some other similar aspect is illegal.[40] In other words, what can be refunded or credited is a tax that is erroneously, illegally, excessively or in any manner wrongfully collected. In short, there must be a wrongful payment because what is paid, or part of it, is not legally due.[41]

Thus, for the present claim for refund to prosper, petitioners must not only establish that they timely filed their refund claim, they must likewise prove that the subject capital gains tax paid is erroneous, illegal, or wrongful.

---

[39] *Commissioner of Internal Revenue vs. San Miguel Corporation, etseq.*, G.R. Nos. 180740 and 180910, November 11, 2019.

[40] *Commissioner of Internal Revenue vs. Pilipinas Shell Petroleum Corporation*, G.R. No. 188497, April 25, 2012, citing the definition provided in BLACK'S LAW DICTIONARY, Fifth Edition, p. 486.

[41] *Commissioner of Internal Revenue vs. San Roque Power Corporation, et seq.*, G.R. Nos. 187485, 196113, and 197156, February 12, 2013.

Petitioner timely filed its administrative and judicial claims.

In this case, it is shown that petitioners paid capital gains tax totaling ₱8,835,312.00 to the BIR on December 14, 2017.[42] Counting from this date, petitioners had until December 14, 2019 to file its administrative and judicial claims for refund. Notably, petitioners' administrative claim for refund was filed on July 3, 2019 before respondent,[43] and the judicial claim for refund filed before this Court on August 15, 2019.[44] Thus, both administrative and judicial claims fell within the two-year prescriptive period.

Correspondingly, petitioners timely filed their administrative and judicial claims.

However, petitioner failed to show that there was an erroneous or illegal capital gains tax which was collected by the government.

Section 24(D) of the NIRC of 1997 provides as follows:

> "SEC. 24. *Income Tax Rates.* –
>
> xxx xxx xxx
>
> (D) *Capital Gains from Sale of Real Property.* –
>
> (1) *In General.* – The provisions of Section 39(B) notwithstanding, **a final tax of six percent (6%) based on the gross selling price or current fair market value as determined in accordance with Section 6(E) of this Code, whichever is higher, is hereby imposed upon capital gains presumed to have been realized from the sale, exchange, or other disposition of real property located in the Philippines, classified as capital assets, including *pacto de retro* sales and other forms of conditional sales, by individuals, including estates and trusts**: xxx
>
> (2) *Exception.* – The provisions of paragraph (1) of this Subsection to the contrary notwithstanding, **capital gains presumed to have been realized from the sale or disposition of their principal residence by natural persons, the proceeds**

[42] Par. 4, Stipulation of Facts, JSFI, Docket, pp. 343 to 344; Exhibit "P-22", Docket, p. 508; and BIR Records (Exhibit "R-1"), pp. 18 to 20.
[43] Par. 5, Stipulation of Facts, JSFI, Docket, p. 344; Exhibit "P-8", Docket, pp. 444 to 446; and BIR Records (Exhibit "R-1"), pp. 42 to 49.
[44] Docket, pp. 10 to 24.

> **of which is fully utilized in acquiring or constructing a new principal residence within eighteen (18) calendar months from the date of sale or disposition, shall be exempt from the capital gains tax imposed under this Subsection: *Provided*, That the historical cost or adjusted basis of the real property sold or disposed shall be carried over to the new principal residence built or acquired: *Provided, further*, That the Commissioner shall have been duly notified by the taxpayer within thirty (30) days from the date of sale or disposition through a prescribed return of his intention to avail of the tax exemption herein mentioned: *Provided, still further*, That the said tax exemption can only be availed of once every ten (10) years: *Provided, finally*, That if there is no full utilization of the proceeds of sale or disposition, the portion of the gain presumed to have been realized from the sale or disposition shall be subject to capital gains tax.** For this purpose, the gross selling price or fair market value at the time of sale, whichever is higher, shall be multiplied by a fraction which the unutilized amount bears to the gross selling price in order to determine the taxable portion and the tax prescribed under paragraph (1) of this Subsection shall be imposed thereon." *(Emphases added)*

Based on the foregoing provisions, the capital gains presumed to have been realized from the sale, exchange, or other disposition of real property located in the Philippines, classified as capital assets, including *pacto de retro* sales and other forms of conditional sales, by individuals, including estates and trusts, are subject to the capital gains tax of six percent (6%). However, the capital gains presumed to have been realized from the sale or disposition of a principal residence by natural persons shall be exempt from the said capital gains tax upon the fulfillment of the following conditions, to wit:

1) the proceeds of the sale or disposition are fully utilized in acquiring or constructing a new principal residence within eighteen (18) calendar months from the date of sale or disposition;

2) the historical cost or adjusted basis of the real property sold or disposed shall be carried over to the new principal residence built or acquired;

3) respondent shall have been duly notified by the taxpayer within thirty (30) days from the date of sale or disposition through a prescribed return of his or her intention to avail of the said tax exemption;

4) the said tax exemption can only be availed of once every ten (10) years; and

5) if there is no full utilization of the proceeds of sale or disposition, the portion of the gain presumed to have been realized from the sale or disposition shall be subject to capital gains tax.

Implementing the aforequoted Section 24(D) relative to the granting of exemption from the capital gains tax, Section 3 of RR No. 13-99[45], as amended by RR No. 14-2000[46], reads as follows:

> "SEC. 3. *Conditions for Exemption.* — The general provisions of the Code to the contrary notwithstanding, capital gains presumed to have been realized from the sale, exchange or disposition by a natural person of his Principal Residence shall not be imposed with six percent (6%) capital gains tax, subject to compliance with the following:
>
> (1) *Escrow Agreement.* — The six percent (6%) capital gains tax otherwise due on the presumed capital gains derived from the sale, exchange or disposition of his Principal Residence shall be deposited in cash or manager's check in interest-bearing account with an Authorized Agent Bank (AAB) under an Escrow Agreement (ANNEX A hereof) between the concerned Revenue District Officer, the Seller/Transferor and the AAB to the effect that the amount so deposited, including its interest yield, shall only be released to such Seller/Transferor upon certification by the said RDO that the proceeds of sale or disposition thereof has, in fact, been utilized in the acquisition or construction of the Seller/Transferor's new Principal Residence within eighteen (18) calendar months from date of the said sale or disposition. The date of sale or disposition of a property refers to the date of notarization of the document evidencing the transfer of said property. In general, the term 'Escrow' means 'A scroll, writing or deed, delivered by the grantor, promisor or obligor into the hands of a third person, to be held by the latter until the happening of a contingency or performance of a condition, and then by him delivered to the grantee, promisee or obligee.'
>
> (2) *Capital Gains Tax Return.* — The Seller/Transferor shall file, in duplicate, his Capital Gains Tax Return (BIR FORM No. 1706) covering the sale or disposition of his Principal Residence with the concerned Revenue District Office within thirty (30) days from date of its sale or disposition: *Provided, however*, that the Seller/Transferor shall not be required to pay any capital gains tax during the 18-month period on the sale of his

[45] SUBJECT: Exemption of Certain Individuals from the Capital Gains Tax on the Sale, Exchange or Disposition of a Principal Residence under Certain Conditions.
[46] SUBJECT: Amending Sections 2(2), 3 and 6 of Revenue Regulations No. 13-99 vis-à-vis Sale, Exchange or Disposition, by a Natural Person, of His "Principal Residence".

principal residence duly established as such: *Provided, further*, that for purposes of the capital gains tax otherwise due on the sale, exchange or disposition of the said Principal Residence, the execution of the Escrow Agreement referred to in the immediately preceding Section 3(1) hereof shall be considered sufficient.

xxx xxx xxx

(3) *Post Reporting Requirement.* — The proceeds from the sale, exchange or disposition of his old Principal Residence must be fully utilized in acquiring or constructing his new Principal Residence within eighteen (18) calendar months from date of its sale, exchange or disposition, in order to show proof that positive action was undertaken to utilize the proceeds for the acquisition or construction of his new Principal Residence within the 18-month reglementary period, he shall submit to the RDO concerned, within thirty (30) days from the lapse of the said period, the following documents:

(a) A sworn statement that the total proceeds from the sale or disposition of his old Principal Residence has been actually utilized in the acquisition or construction of his new Principal Residence or, if the construction of his new Principal Residence is still in progress, a sworn statement that such amount shall be fully utilized to procure the necessary materials and pay for the cost of labor and other expenses for the construction thereof;

(b) A certified statement from his architect or engineer, or both, showing the cost of materials and labor for the construction of his new Principal Residence;

(c) A certified copy of the Building Permit issued by the Office of the Building Official of the City or Municipality where his new Principal Residence shall be constructed as well as xerox copies of documents (e.g., building specification plan, construction plans, or construction cost estimates) submitted with his application for the said Building Permit on which computation of the amount of the building license fee has been based;

(d) In case his new Principal Residence is acquired by purchase, a duplicate original copy of the Deed of Absolute Sale covering the purchase of his new Principal Residence.

(4) *Release from the Escrow Agreement.* — Upon a showing, based on the foregoing documents, that the proceeds of sale, exchange or disposition of his old Principal Residence have already been fully utilized in the acquisition or construction of his new Principal Residence, the concerned Revenue District Officer

shall, within fifteen (15) days from date of submission by the Seller/Transferor of the foregoing documents, release the Escrow on the aforesaid bank deposit in favor of the Seller/Transferor (ANNEX B hereof).

(5) *Limitation on Tax Exemption Privilege.* — The tax exemption herein granted may be availed of only once every ten (10) years;

(6) *Cost Basis of the New 'Principal Residence'.* — The historical cost or adjusted cost basis of his old Principal Residence sold, exchanged or disposed shall be carried over to the cost basis of his new Principal Residence; and

(7) *Assessment for Deficiency Capital Gains Tax; Application of the Escrowed Bank Deposit Against the Deficiency Tax.* — If the Seller/Transferor fails to submit documentary evidence within thirty (30) days after the lapse of the aforesaid 18-month period, showing that he has utilized the proceeds of sale, exchange or disposition of his old Principal Residence to acquire or construct his new Principal Residence, it shall be presumed that he did not, in fact, utilize the aforesaid proceeds of sale for the construction or acquisition of his new Principal Residence, in which case, he shall be treated deficient in the payment of his capital gains tax from the sale or disposition of his aforesaid Principal Residence, and shall be accordingly be assessed for deficiency capital gains tax, inclusive of the 20% interest per annum, pursuant to the provisions of Section 228 of the Code, as implemented by Revenue Regulations No. 12-99, in relation to Section 249 of the said Code.

Pursuant to the provisions of Revenue Regulations No. 12-99, the taxpayer shall be issued with the required Post Reporting Notice informing him, in writing, of the aforementioned facts, in order that he may present his side of the case through informal conference, and the required Preliminary Assessment Notice, before issuance of the Formal Assessment Notice. If, at this point in time, the escrowed tax money is still in the custody of the Depository Bank, the full amount thereof, including its interest earnings, shall be applied in computing for the taxpayer's deficiency capital gains tax. Upon the time that the said deficiency tax assessment has become final and executory, the deposit in escrow, inclusive of its interest earnings, shall be forfeited and applied against the taxpayer's deficiency capital gains tax liability. The depository Bank shall forthwith be informed of this action, and shall, upon demand in writing, by the Commissioner or his duly authorized representative (ANNEX C hereof), turn over the money for application in payment of the taxpayer's deficiency tax liability. If the same is insufficient to cover the entire amount

> assessed, the seller/transferor shall remain liable for the remaining balance of the assessment. On the other hand, the excess of the deposit in escrow, if any, shall forthwith be returned to the Seller/Transferor, by the Bank, upon written authorization from the Commissioner or his duly authorized representative.
>
> (8) *Partial Utilization of the Proceeds of Sales Exchange or Disposition.* — If there is no full utilization of the proceeds of sale, exchange or disposition of his old Principal Residence for the acquisition or construction of his new Principal Residence, he shall be liable for deficiency capital gains tax, inclusive of 20% interest per annum, computed from the 31st day after the date of sale or disposition of the said old Principal Residence."

In this case, there is no indication that petitioners fulfilled the third condition for the tax exemption granted under Section 24(D)(2) of the NIRC of 1997, *i.e.*, respondent shall have been duly notified by petitioners within thirty (30) days from the date of sale or disposition through a prescribed return of their intention to avail of the said tax exemption.

In fact, when the prescribed return (*i.e.*, BIR Form No. 1706 – Capital Gains Tax Return) for the transaction was filed on December 14, 2017,[47] or nine (9) days from the date of the subject *Deed of Absolute Sale*[48], petitioners did not treat the transaction as an *"Exempt"* sale.[49] Moreover, the same Tax Return is to the effect that the property being sold is **not** the *"principal residence"* of petitioners,[50] and that the latter do **not** *"intend to construct or acquire a new principal residence within 18 months from the date of disposition/sale"*,[51] consistent with the said information that the said transaction is not an exempt sale.

Thus, on this score alone, there being no notification to respondent of petitioners' intention to avail of the capital gains tax exemption under Section 24(D)(2) of the NIRC of 1997, the refund claim must already fail.

Be that as it may, the failure of petitioners to submit the required Escrow Agreement, as a condition for the said capital gains tax exemption, as set forth in the above-quoted Section 3 of RR No. 13-99, as amended by RR No. 14-2000, is likewise fatal to its refund claim. RR or administrative issuances have the force of law and are entitled to great weight.[52]

---

[47] Par. 4, Stipulation of Facts, JSFI, Docket, pp. 343 to 344; Exhibit "P-22", Docket, p. 508; and BIR Records (Exhibit "R-1"), pp. 18 to 20.
[48] Exhibit "P-20", Docket, pp. 503 to 506; and BIR Records (Exhibit "R-1"), pp. 22 to 25.
[49] Refer to Box 21, Exhibit "P-22" (BIR Form No. 1706 – Capital Gains Tax Return), Docket, p. 508; and BIR Records (Exhibit "R-1"), pp. 18 to 20.
[50] Refer to Box 17, Exhibit "P-22" (BIR Form No. 1706 – Capital Gains Tax Return), Docket, p. 508; and BIR Records (Exhibit "R-1"), pp. 18 to 20.
[51] Refer to Box 18, Exhibit "P-22" (BIR Form No. 1706 – Capital Gains Tax Return), Docket, p. 508; and BIR Records (Exhibit "R-1"), pp. 18 to 20.
[52] *Atlas Consolidated Mining and Development Corporation vs. Commissioner of Internal Revenue*, G.R. No. 159490, February 18, 2008.

Notably, RR No. 13-99,[53] and its amendment thereto, RR No. 14-2000,[54] were promulgated pursuant to Section 244 of the NIRC of 1997, to wit:

> "SEC. 244. *Authority of Secretary of Finance to Promulgate Rules and Regulations.* – The Secretary of Finance, upon recommendation of the Commissioner, shall promulgate all needful rules and regulations for the effective enforcement of the provisions of this Code."

The foregoing provision grants authority to the Secretary of Finance, upon the recommendation of respondent, to promulgate all needful rules and regulations *"for the effective enforcement of the provisions"* of the NIRC of 1997. Correspondingly, RR No. 13-99 and RR No. 14-2000 were promulgated for the effective enforcement of the provisions of the same law, particularly Section 24(D)(2) thereof.

Relative thereto, the wisdom behind the required submission of the Escrow Agreement under the aforequoted Section 3 of RR No. 13-99, as amended by RR No. 14-2000, is not hard to discern.

It is noteworthy that the capital gains tax exemption under Section 24(D)(2) is conditioned on the fact that "the proceeds of the sale or disposition are fully utilized in acquiring or constructing a new principal residence within eighteen (18) calendar months from the date of sale or disposition". Thus, as of the date of sale or disposition of the principal residence, and even within the prescribed period of filing the pertinent Capital Gains Tax Returns (BIR Form No. 1706), which is thirty (30) days following such sale or disposition,[55] it is still impossible to determine whether the seller or sellers has/have fully utilized the proceeds thereof, and thus, the issue of whether or not the transaction should already be subjected to the capital gains tax or should already be treated as exempt therefrom is likewise cannot yet be determined.

To address the conundrum, the Secretary of Finance, upon the recommendation of respondent, came up with the requirement, *inter alia*, of an Escrow Agreement between the concerned Revenue District Officer, the seller/transferor, and the concerned Authorized Agent Bank (AAB), involving the amount equivalent to the six percent (6%) capital gains tax deposited in cash or manager's check in an interest-bearing account with the said AAB. The said Escrow Agreement is to the effect that the amount deposited, including its interest yield, shall only be released to said seller/transferor upon certification by the said Revenue District Officer that the subject proceeds of sale or disposition have, in fact, been utilized in the acquisition or construction of the

[53] Section 1, RR No. 13-99.
[54] Section 1, RR No. 13-99.
[55] Refer to Section 51(C)(2)(b), NIRC of 1997.

said seller/transferor's new principal residence within eighteen (18) calendar months from the date of same sale or disposition. With the said Escrow Agreement, the seller/transferor would not be required to pay the capital gains tax upon the filing of the pertinent Capital Gains Tax Returns (BIR Form No. 1706).

Within thirty (30) days from the lapse of the eighteen (18)-month period from the date of sale or disposition of the old principal residence, the seller/transferor is required to submit to the concerned Revenue District Officer certain documents to establish, among others, the fact that the subject proceeds of the sale or disposition have been fully utilized. Upon a showing of such fact, the concerned Revenue District Officer shall issue, within a fifteen (15)-day period from the submission of the said documents, a certification to that effect to the concerned AAB, releasing the Escrow on the aforesaid bank deposit in favor of the seller/transferor.

However, upon failure of the seller/transferor to show that the subject proceeds of the sale or disposition have been utilized in the acquisition or construction of the said seller/transferor's new principal residence within eighteen (18) calendar months from the date of same sale or disposition, within thirty (30) from the same eighteen (18)-month period, the same seller/transferor shall be treated as deficient in the payment of the corresponding capital gains tax. In such case, the provisions of RR No. 12-99 shall then be observed in the eventual issuance of a formal assessment notice for the said capital gains tax, inclusive of interest thereto. Upon the finality of the deficiency tax assessment, the deposit in escrow, inclusive of its interest earnings, shall be forfeited and applied against the taxpayer's deficiency capital gains tax liability. The depository bank or the concerned AAB shall be informed of this action, and shall, upon demand in writing by respondent or his duly authorized representative, turn over the money for application of payment of the taxpayer's deficiency tax liability. If the same is insufficient to cover the entire amount assessed, the seller/transferor shall remain liable for the remaining balance of the assessment. And in case there is an excess in the deposit in escrow, the same shall be returned by the concerned AAB to the seller/transferor, upon written authorization from respondent or his duly authorized representative.

Where a statute does not require any particular procedure to be followed by an administrative agency, the agency may adopt any reasonable method to carry out its functions.[56] Having this in mind, this Court finds that the submission of an Escrow Agreement entered into by the seller/transferor, the concerned Revenue District Officer, and the concerned AAB, is a reasonable requirement, in lieu of paying the capital gains tax that may be due on the sale, exchange, or other disposition of a principal residence. Thus, the failure of

[56] *Chamber of Real Estate and Builders' Association, Inc. vs. Hon. Executive Secretary Alberto Romulo, et al.*, G.R. No. 160756, March 9, 2010.

petitioners to execute and submit the required Escrow Agreement for the subject transaction warrants the denial of the present refund claim.

In sum, the present refund claim must be denied: (1) for failure of petitioners to notify respondent, through Capital Gains Tax Returns (BIR Form No. 1706), of their intention to avail of the capital gains tax exemption, pursuant to Section 24(D)(2) of the NIRC of 1997; and (2) for their failure to execute and submit the required Escrow Agreement as required under Section 3 of RR No. 13-99, as amended by RR No. 14-2000. Correspondingly, in this case, it cannot be said that there was an erroneous collection of capital gains tax.

Actions for tax refund, as in the instant case, are in the nature of a claim for exemption. As such, the law is not only construed in *strictissimi juris* against the taxpayer, the pieces of evidence presented entitling a taxpayer to an exemption must also be *strictissimi* scrutinized and duly proven.[57] Since taxes are the lifeblood of the government, tax laws must be faithfully and strictly implemented. They are not intended to be liberally construed.[58] The taxpayer has the burden to show that it has strictly complied with the conditions for the grant of the tax refund.

WHEREFORE, the present *Petition for Review* is **DENIED** for lack of merit.

SO ORDERED.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

I CONCUR:

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

[57] *Kepco Philippines Corporation vs. Commissioner of Internal Revenue*, G.R. No. 179961, January 31, 2011.
[58] *Coca-Cola Bottlers Philippines, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 221694 (Notice), January 19, 2021.

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.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice
Chairperson

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.

ROMAN G. DEL ROSARIO
Presiding Justice