

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

FIRST DIVISION

UPSI MANAGEMENT, INC.,
Petitioner,

CTA CASE No. 7762

~ versus ~

Members:

Acosta, PJ,
Uy, and
Fabon-Victorino, JJ.

**COMMISSIONER OF INTERNAL
REVENUE,**

Respondent.

Promulgated:

APR 15 2010 ; 4:00 pm

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DECISION

ACOSTA, PJ:

This is a claim for refund through the issuance of tax credit certificate allegedly due to excess or unutilized creditable withholding tax in the total amount of P1,912,195.00 for the taxable year 2005.

The records of the case disclose that petitioner is a corporation duly incorporated and existing under Philippine laws, with business address at 1122

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General Luna Street, Paco, Manila. Respondent, on the other hand, is the duly appointed Commissioner of Internal Revenue with office address at the Fifth Floor, BIR National Office Building, BIR Road, Diliman, Quezon City, where he may be served with summons and other legal processes.¹

On April 17, 2006, petitioner filed its annual income tax return for the year ended December 31, 2005 with the Revenue District No. 34 of the Revenue Region No. 6 of the Bureau of Internal Revenue (BIR), declaring, among others, the following:²

Sales/Revenues/Receipts/Fees	P 18,741,488.00
Less: Cost of Sales/Services	14,325,299.00
Gross Income from Operation	4,416,189.00
Add: Non-Operating & Other Income	466.00
Total Gross Income	4,416,655.00
Less: Deductions	4,524,900.00
Taxable Income	(108,245.00)
Minimum Corporate Income Tax	88,333.00
Income Tax Due	88,333.00
Less: Tax Credits/Payments	
Prior Year's Excess Credits	4,570,705.00
Creditable Tax Withheld for the First Three Quarters	1,664,028.00
Creditable Tax Withheld for the Fourth Quarter	248,167.00
Total Tax Credits/Payments	6,482,899.00
Tax Overpayment	(6,394,566.00)

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¹ Paragraphs 1 and 2, Joint Stipulation of Facts, page 298, *Rollo*.

² Paragraph 3, Joint Stipulation of Facts, page 299, *Rollo* and Exhibit A.

Moreover, petitioner indicated in the corresponding box of the said return its intention to be issued a tax credit certificate (TCC) by marking the appropriate box thereon.³

On 7 March 2008, within the period prescribed by law, petitioner filed a claim for the issuance of a tax credit certificate in the total amount of P1,912,195.00 representing unutilized creditable income taxes for the taxable year 2005 pursuant to Section 204(C) and 229 of the National Internal Revenue Code (NIRC).⁴

While its claims for refund is still pending administrative investigation, petitioner filed on April 14, 2008 the instant Petition for Review pursuant to Section 229 of the National Internal Revenue Code.⁵

In his Answer filed on May 27, 2008, respondent prayed that the petition be dismissed with cost. He likewise raised the following Special and Affirmative Defenses,⁶ viz:

1. Petitioner's claim for refund is still pending administrative investigation;

2. Petitioner has the *burden of proof* to show that it is entitled to the refund of the amounts claimed as refundable because taxes are presumed to have been collected in accordance with laws and regulations (*Caltex Phils. Inc. vs. Commissioner of Internal Revenue, CTA Case No. 2871, January 29, 1986*).

³ Paragraph 9, Joint Stipulation of Facts, page 299, *Rollo*.

⁴ Paragraph 4, Joint Stipulation of Facts, page 2, *Rollo*; and Exhibit C.

⁵ Paragraphs 14 and 17, Joint Stipulation of Facts, page 3, *Rollo*.

⁶ Pages 274-277, *Rollo*.

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3. Claims for refund are to be construed strictly against the petitioner, the same being in the nature of an exemption form (*sic*) taxation. Failure on the part of the petitioner to prove the same is fatal to its claim for tax refund (*Meralco Electric Co. vs. Commissioner of Internal Revenue*, 67 SCRA 351; *Commissioner of Internal Revenue vs. Ledesma*, 31 SCRA 95).

4. Petitioner must prove that the alleged refundable taxes were neither automatically applied as tax credit against its tax liability for the succeeding quarters of the succeeding year nor included as creditable taxes declared or applied to the succeeding taxable years.

5. Under Section 76 of the 1997 Tax Code, petitioner's excess creditable tax withheld for taxable year 2005 may either be refunded, claimed as tax credit or carried over/applied to the succeeding taxable years as could be explicitly gleaned out from the petitioner's annual income tax return (Annex "A"). However, once an option has been made, the same becomes irrevocable for that taxable period and no application for cash refund and/or tax credit certificate shall be allowed therefore.

6. In the case at bar, petitioner opted to claim as tax credit the amount of P1,912,195 only, but the said amount represents the mere unutilized creditable tax withheld for taxable year 2005, which amount excludes the petitioner's prior excess tax credits. Undoubtedly, petitioner has violated Section 76 of the 1997 Tax Code for claiming only partial tax credit certificate option while automatically carrying-over the remaining overpayment of tax specified in item 31 of the ITR. Said petitioner's practice of splitting claims would not only confuse the respondent of petitioner's claim but it is likewise highly irregular, improper and erroneous.

7. While the petitioner's act of carrying-over is allowed under the Tax Code, the fact of partial carry-over creates serious conflict where respondent would be in a state of quandary in determining whether or not he would allow petitioner's claim for refund and/or tax credit on one hand and the automatic carrying-over on the other. Respondent maintains that the petitioner could not claim an option of carry-over and refund and/or tax credit at the same time; that is, partly as tax refund/tax credit certificate and partly as automatic carrying over of excess tax credits. Such petitioner's splitting of options is clearly violative of Section 76 of the 1997 Tax Code;

8. Moreover, the existence of an excess creditable withholding taxes alone does not per se entitle petitioner to a refund. The petitioner must prove that, (1) its claim for refund is filed with the respondent within the two (2) year period from the date of payment of the tax required under Section 204 of the 1997 Tax Code; (2) it must be shown on petitioner's return that the income payment received was declared as part of its gross income; and (3) the fact of withholding is established by copies of statement duly issued by petitioner's payors showing the amount paid and the amount of taxes withheld (*Citytrust Finance Corporation vs. Commissioner of Internal Revenue*, CTA Case No. 4134, November 11, 1991; *Paseo Realty & Development*

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Corporation vs. Commissioner of Internal Revenue, CTA Case No. 4254, August 10, 1993).

After trial, this case was submitted for decision on January 20, 2010 taking into consideration respondent's memorandum filed on November 23, 2009 and petitioner's memorandum filed on November 25, 2009, including petitioner's comment to respondent's memorandum filed on December 17, 2009.⁷

The issues to be tried or resolved by this Court are jointly stipulated by the parties, viz:

1. Whether or not the fact of withholding is established by a copy of a statement duly issued by the payors (withholding agents) to petitioner, showing the amount paid and the amount of tax withheld therefrom.

2. Whether or not the excess creditable withholding tax of P1,912,195.00 for taxable year 2005 sought to be refunded were actually withheld and remitted by petitioner's withholding agents to the Bureau of Internal Revenue in accordance with the provisions of the Tax Code.

3. Whether or not petitioner's income tax returns for taxable year 2005 include income payments, that were subjected to creditable withholding tax, as part of petitioner's gross income for taxable year 2005.

4. Whether or not petitioner's claim for refund/issuance of tax credit certificate of P1,912,195.00 for taxable year 2005 instead of P6,394,566.00 is deemed a waiver of the remaining amount of P4,570,705.00.

4.1 Whether or not petitioner could validly have a dual option under Item 31 of its 2005 ITR, by partly claiming a tax refund/issuance of tax credit certificate of P1,912,195.00 for excess withholding tax credits arising from taxable year 2005 and partly automatically carrying-over its prior years' tax credit.



⁷ Page 1240, Vol. II, *Rollo*.

4.2 Whether or not petitioner could validly carry-over the amount of P2,331,102.00 in its 2006 ITR without violating Section 76 of the 1997 Tax Code.

The crux of the aforequoted jointly stipulated issues is the determination of whether or not petitioner is entitled for refund of its alleged excess or unutilized creditable withholding tax in the amount of P1,912,195.00 for the taxable year 2005.

The following are the basic requirements⁸ before a refund or issuance of tax credit certificate of excess creditable withholding taxes may be granted, viz:

1. The claim for refund must be filed within the two-year prescriptive period provided under Section 204(C) in relation to Section 229 of the NIRC of 1997, as amended;
2. The fact of withholding is established by a copy of a statement issued by the payor (withholding agent) to the payee, showing the amount paid and the amount of tax withheld therefrom; and
3. The income upon which the taxes were withheld were included in the return of the recipient.

Equally important, aside from the above-quoted requirements, is that petitioner must prove that it did not carry-over its excess creditable withholding taxes to the succeeding taxable year.⁹ This additional requirement is an offshoot of the “irrevocable rule” introduced in the last sentence of Section 76

⁸ Citibank N.A. vs. Court of Appeals and Commissioner of Internal Revenue, 280 SCRA 459 and Section 2.58.3(B) of Revenue Regulations No. 2-98 cited in *Golden Arches Realty Corporation vs. Commissioner of Internal Revenue*, CTA Case No. 7201, May 17, 2007.

⁹ *Golden Arches Realty Corporation vs. Commissioner of Internal Revenue*, CTA (First Division) Case No. 7201, May 17, 2007.

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of the 1997 National Internal Revenue Code (NIRC). The said provisions of the NIRC provide:

“Section 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 a tax credit certificate shall be allowed therefor.”**

(Emphases supplied)

In the case of *Systra Philippines, Inc. vs. Commissioner of Internal Revenue*,¹⁰ the Supreme Court held that the legislative intent to make the option irrevocable becomes clearer when Section 76 is viewed in comparison to Section 69 of the (old) 1977 Tax Code.¹¹ Accordingly, under Section 69 of the

¹⁰ G.R. No. 176290, September 21, 2007 Resolution.

¹¹ Section 69. *Final Adjustment Return*. - Every corporation liable to tax under Section 24 shall file a final adjustment return covering the total net 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 net income of that year the corporation shall either:

(A) Pay the excess tax still due; or

(B) Be refunded 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 refundable amount shown on its final adjustment return may be credited against the estimated quarterly income tax liabilities for the taxable quarters of the succeeding taxable year.



1977 Tax Code, there was no irrevocability rule. Instead of claiming a refund, the excess tax credits could be “credited against the estimated quarterly income tax liabilities for the taxable quarters of the succeeding taxable year,” that is, *the immediately following year only*. In contrast, Section 76 of the present Tax Code formulates an irrevocability rule which stresses and fortifies the nature of the remedies or options as alternative, not cumulative. It also provides that the excess tax credits “may be carried over and credited against the estimated quarterly income tax liabilities for the taxable quarters of the succeeding taxable years” until fully utilized.

After having mentioned the four requirements for the entitlement of refund of excess or unutilized creditable withholding tax, we are now going to determine petitioner’s compliance therewith.

Section 204(C)¹² of the 1997 National Internal Revenue Code (NIRC) in relation to Section 229¹³ of the same Code provide that the claim for refund both

¹² Sec. 204. *Authority of the Commissioner to compromise, abate and refund/credit taxes.* – The Commissioner may – (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 tax 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 refund.”

¹³ 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 any penalty claimed to have been collected without authority, or of any sum alleged to have been excessively or in any manner wrongfully collected, until a claim for refund or credit has

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in the administrative and judicial levels must be filed within two (2) years from the date of payment of the tax. For the filing of a claim for refund or tax credit certificate of excess creditable withholding tax, it is already settled that the reckoning point of the two-year prescriptive period is from the date of filing of the annual income tax return¹⁴ because it is only from this time that the refund is ascertained.¹⁵ Applying the said provisions of law and jurisprudence in the case at hand would show that petitioner's claim with the BIR on March 7, 2008 and its Petition for Review before this Court on April 14, 2008, were both filed within the two (2) year prescriptive period reckoned from April 17, 2006, the date the 2005 Annual Income Tax Return was filed. Therefore, petitioner has complied with the first requirement.

In order to prove compliance of the second requirement concerning the fact of withholding of creditable taxes by the withholding agents on income subject to withholding tax, petitioner offered the following evidence, namely: Certificates of Creditable Tax Withheld at Source issued by various withholding

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.

¹⁴ ACCRA Investment Corporation vs. Court of Appeals, 204 SCRA 957; Commissioner of Internal Revenue vs. TMX Sales, Inc., 205 SCRA 184; and The Commissioner of Internal Revenue vs. Asia Australia Express, Ltd., represented by Soviamont Steamship Agencies, Inc. and the Court of Tax Appeals. GR No. 85956, April 10, 1989.

¹⁵ Commissioner of Internal Revenue vs. The American Life Insurance Co., 244 SCRA 446.



agents; Annual Information Return of Creditable Income Taxes Withheld; Alpha List of Payees Subject to Expanded Withholding Tax; and Summary of Monthly Remittance of Expanded Tax Withheld at Source.¹⁶

Careful examination of the aforesaid documentary evidence, particularly, the Certificates of Creditable Tax Withheld at Source issued by various withholding agents of the petitioner reveals that the aggregate amount of P1,912,795.16 tax was withheld from petitioner as shown in the table below, viz:

Exhibit	Payor	Amount of Income	Tax Withheld
F; F-1; F-1-a	Emilio Aguinaldo Educational Corporation	4,230.50	423.08
F-2; F-2-a	Emilio Aguinaldo Educational Corporation	41,945.17	4,194.53
F-3; F-3-a	Emilio Aguinaldo Educational Corporation	120,027.01	12,002.71
F-4; F-4-a	Emilio Aguinaldo Educational Corporation	125,204.17	12,520.44
G; G-1; G-1-a	Hospital Management Services, Inc.	378,057.54	37,805.76
G-2; G-2-a	Hospital Management Services, Inc.	594,858.29	59,485.83
G-3; G-3-a	Hospital Management Services, Inc.	378,057.54	37,805.75
G-4; G-4-a	Hospital Management Services, Inc.	1,098,756.55	109,875.66
G-5; G-5-a	Hospital Management Services, Inc.	797,231.62	79,723.16
H; H-1; H-1-a	House of Knowledge, Inc	113,534.32	11,353.44
H-2; H-2-a	House of Knowledge, Inc	75,429.38	7,542.94
I	UPSI Mgt. Inc. (Note: Immaculate Conception Academy, Inc. is the payor per Annual Remittance Return)	63,589.90	6,358.99
J; J-1; J-1-a; LLL-2	Lope De Vega Tower Condominium Association, Inc.	62,532.37	6,253.24
J-2; J-2-a	Lope De Vega Tower Condominium Association, Inc.	70,948.42	7,094.84
K; K-1; K-1-a; LLL-1	Rural Bank of Dasmariñas, Inc	4,628.38	462.84
K-2; K-2-a	Rural Bank of Dasmariñas, Inc	9,256.76	925.68
K-3; K-3-a	Rural Bank of Dasmariñas, Inc	19,897.74	1,989.77
K-4; K-4-a	Rural Bank of Dasmariñas, Inc	16,783.32	1,678.33
L; L-1; L-1-a; KKK-1	Pearl of the Orient Seas Hotel, Resorts & Recreations, Inc.	340,120.24	34,012.04

¹⁶ Exhibits F, F-1, F-2, F-3, F-4, G, G-1, G-2, G-3, G-4, G-5, H, H-1, H-2, I, J, J-1, K, K-1, K-2, K-3, K-4, L, L-1, L-2, L-3, L-4, M, M-1, M-2, M-3, N, N-1, O-1, O-2, O-3, O-4, P, P-1, III-1, III-2, III-3, JJJ, KKK-1, KKK-2, KKK-3, KKK-4, LLL-1, LLL-2, MMM, Q, R, S, T, U, V, W, X, Y, Z, AA, BB, CC, DD, EE, FF, GG, HH, II, JJ, KK, LL, MM, NN, and OO.

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L-2; L-2-a; KKK-2	Pearl of the Orient Seas Hotel, Resorts & Recreations, Inc.	529,666.95	52,066.70
L-3; L-3-a; KKK-3	Pearl of the Orient Seas Hotel, Resorts & Recreations, Inc.	715,893.19	71,589.32
L-4; L-4-a; KKK-4	Pearl of the Orient Seas Hotel, Resorts & Recreations, Inc.	729,659.93	72,966.00
M; M-1; M-1-a; III-1	UPSI Property Holdings, Inc.	3,200,000.00	320,000.00
M-2; M-2-a; III-2	UPSI Property Holdings, Inc.	3,200,000.00	320,000.00
M-3; M-3-a; III-3	UPSI Property Holdings, Inc.	3,200,000.00	320,000.00
N; N-1; N-1-a; JJJ	Emilio Aguinaldo Educational Corporation	127,179.00	12,717.90
O-1; O-1-a	Yaman Lahi Foundation, Inc.	412,272.81	41,227.29
O-2; O-2-a	Yaman Lahi Foundation, Inc.	412,272.81	41,227.29
O-3; O-3-a	Yaman Lahi Foundation, Inc.	381,959.70	38,195.98
O-4; O-4-a	Yaman Lahi Foundation, Inc.	421,864.10	42,186.42
P; P-1; P-1-a; MMM	UPSI Property Holdings, Inc.	1,491,092.30	149,109.23
Total		19,127,950.01	1,912,795.16

Moreover, petitioner's creditable withholding tax for taxable year 2005 was accounted by the Commissioned Independent CPA, Mr. Richard S. Querido in his Report dated February 21, 2008,¹⁷ and in his Judicial Affidavit¹⁸ executed on February 16, 2009, viz:

"Comparison of Creditable Withholding Tax Certificates per Schedule of Income, Collections and Creditable Withholding Taxes against the amounts reported per Income Tax Return (ITR) for Taxable Year 2005 are as follows:

Creditable Withholding Tax Supported by Certificates per <i>Annex I</i>	P1,874,989.40
Creditable Withholding Tax Shown in the 2005 ITR	<u>1,912,195.00</u>
Difference	<u>P. (37,205.60)</u>

Presented below is the breakdown of the difference:

HMSI	P37,805.76
EAEC	<u>(600.14)</u>
Total	P37,205.60

The creditable withholding tax certificate issued by Hospital Management Services, Inc. (HMSI) in favor of the Company (Exhibit G-1) was excluded in the claim for issuance of tax credit certificate presented in Annex I because the total amount of creditable withholding tax certificate issued by HMSI in favor of the Company will exceed the creditable tax that should be withheld from the management fee income recognized in 2005.

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¹⁷ Exhibit PPP.

¹⁸ Exhibit QQQ.

Creditable Withholding Tax Certificate issued in 2005	P 324,696.16
Creditable Withholding Tax that should be withheld from Management fee in 2005 $[(P2,608,094.54 + P260,809.46) \times 10\%]$	<u>286,890.40</u>
Total	<u>P 37,805.76</u>

On the other hand, the difference of P600.14 is attributable to the understatement of the amount of creditable withholding taxes reported in the 2005 ITR against the amount of creditable withholding tax certificate issued by Emilio Aguinaldo Educational Corporation (EAEC) (*Exhibit F-4*)."

It appears that out of the total creditable withholding tax of P1,912,795.16 as reflected in the Certificates of Creditable Tax Withheld, P1,912,195.00 thereof has been reflected in the Income Tax Return. As accounted by the Commissioned Independent CPA, there was understatement of creditable withholding tax of P600.14 pertaining to the Certificate of Creditable Tax Withheld issued by Emilio Aguinaldo Educational Corporation (EAEC). Moreover, out of the reported P1,912,195.00 creditable withholding tax, P37,805.76 thereof which is based on the Certificate of Creditable Tax Withheld issued by Hospital Management Services, Inc. (HMSI) in petitioner's favor will be excluded, as noted by the Commissioned Independent CPA, since it will exceed the creditable tax that should be withheld from the management fee income recognized in 2005. Hence, only the amount of P1,786,656.40 (*P1,874,989.40 creditable withholding tax supported by Certificates as per Report of the Commissioned Independent CPA less the Minimum Corporate Income Tax due for 2005 amounting to P88,333.00*) may be the subject of refund.



As regards the third requirement, the Commissioned Independent CPA reported the following:¹⁹

“Comparison of Management Fees per Schedule of Income, Collections and Creditable Withholding Taxes against the amounts reported per Audited Financial Statements (“AFS”) and Income Tax Return (“ITR”) for Taxable Year 2005 are as follows:

Management fees per <i>Annex I</i>	P18,741,488.34
Management fees per AFS and ITR	<u>18,741,488.00</u>
Difference	<u>P.34</u>

Difference is due mainly to rounding-off of amounts reported per AFS and ITR.”

Based on this report, it readily appears that petitioner’s income amounting to P18,741,488.34, upon which the creditable taxes is withheld, were included as part of the gross income declared in the 2005 income tax return.²⁰

With respect to the last requirement, petitioner presented its 2006 Annual Income Tax Return²¹ to prove that it did not carry over its claimed excess or unutilized creditable withholding taxes to taxable year 2006.

Respondent argued that petitioner has violated Section 76 of the 1997 Tax Code when it merely claimed a partial refund of P1,912,195.00 instead of the total tax credit of P6,394,566.00 for 2005. He likewise questioned the action of the petitioner which opted to claim the amount of P1,912,195.00 as tax credit in the 2005 income tax return and at the same time opted to carry-over the

¹⁹ Notes 17 and 18, *Supra*.

²⁰ Exhibit A.

²¹ Exhibit B.

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amount of P2,331,102.00 as the alleged excess tax credit in the 2006 income tax return, for violation of the same Section of the Tax Code. Accordingly, the claim for refund on one hand and the automatic carry-over on the other creates confusion because petitioner is not allowed under the law an option of refund and carry-over at the same time. Lastly, respondent questioned petitioner as to how the amount of P2,331,102.00, representing as the prior year's excess credit for 2006, was computed.

Petitioner argued that for taxable year 2005 its excess withholding tax credits is only P1,912,195.00, and not P6,394,566.00. The latter amount include not only the overpayment for taxable year 2005 but also overpayments from prior taxable years, which are not anymore eligible for refund because of the two-year prescriptive period. Accordingly, it is iniquitous for respondent to require it to seek the refund of an overpayment which is no longer eligible for refund.

Petitioner likewise clarified that it categorically chose the option of tax refund through the issuance of a tax credit certificate for all its excess creditable withholding tax in the amount of P1,912,195.00 for taxable year 2005; not only a portion thereof, by placing an "x" mark corresponding to the said choice in the income tax return, and thus the absence of the alleged splitting of options. For the excess creditable withholding tax arising from years prior to taxable year

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2005 (except those which are subject of separate claims for refund), it opted to carry-over to succeeding taxable year. Hence, its action does not and should not cause any confusion. Accordingly, it has chosen only one option for taxable year 2005, which is to refund, through the issuance of tax credit certificate, all its excess tax credits in the amount of P1,912,195.00, arising solely from taxable year 2005.

Petitioner further argued that it has the right to choose a different option every taxable year. Its prior choice to carry-over its excess tax credits arising from prior taxable years does not make a bar from choosing a different option in the succeeding taxable years. Accordingly, the “irrevocable rule” is applicable only to a particular taxable period and not across several taxable periods, contrary to what respondent is trying to imply. Petitioner concluded that there is nothing inconsistent with its 2006 income tax return compared to the option it has chosen for taxable year 2005, since the amount carried-over in the 2006 income tax return pertains to the amount arising from taxable years other than taxable year 2005.

As regards respondent’s question as to the basis of the amount of P2,331,102.00 indicated as prior years excess credits in petitioner’s income tax return for taxable year 2006, petitioner argued that the same has already been addressed in the report of the Independent Certified Public Accountant.

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Respondent's arguments are bereft of merit.

It is an error for the respondent to state that petitioner violated the provisions of Section 76 of the NIRC simply because the latter opted to claim the amount of P1,912,195.00, not the total tax credit of P6,394,566.00, as well as by choosing the option of tax credit in the 2005 income tax return and at the same time opted to carry-over the excess tax credit accumulated prior to 2005 the amount of P2,331,102.00 to the income tax return of 2006.

In *Commissioner of Internal Revenue vs. Bank of the Philippine Islands*,²² the Supreme Court ruled that:

"Hence, the controlling factor for the operation of the *irrevocability rule* is that the taxpayer chose an option; and once it had already done so, it could no longer make another one. Consequently, after the taxpayer opts to carry-over its excess tax credit to the following taxable period, the question of whether or not it actually gets to apply said tax credit is irrelevant. Section 76 of the NIRC of 1997 is explicit in stating that once the option to carry over has been made, "no application for tax refund or issuance of a tax credit certificate shall be allowed therefor."

The last sentence of Section 76 of the NIRC of 1997 reads: "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 tax refund or issuance of a tax credit certificate shall be allowed therefor." 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. In the present case, the excess income tax credit, which BPI opted to carry over, was acquired by the said bank during the taxable year 1998. The option of BPI to carry over its 1998 excess income tax credit is irrevocable; it cannot later on opt to apply for a refund of the very same 1998 excess income tax credit.

The Court of Appeals mistakenly understood the phrase "for that taxable period" as a prescriptive period for the *irrevocability rule*. This would mean that since the tax credit in this case was acquired in 1998, and BPI opted to carry it over

²² G.R. No. 178490, July 7, 2009.



to 1999, then the irrevocability of the option to carry over expired by the end of 1999, leaving BPI free to again take another option as regards its 1998 excess income tax credit. This construal effectively renders nugatory the *irrevocability rule*. The evident intent of the legislature, in adding the last sentence to Section 76 of the NIRC of 1997, is to keep the taxpayer from flip-flopping on its options, and avoid confusion and complication as regards said taxpayer's excess tax credit. The interpretation of the Court of Appeals only delays the flip-flopping to the end of each succeeding taxable period.

The Court similarly disagrees in the declaration of the Court of Appeals that to deny the claim for refund of BPI, because of the *irrevocability rule*, would be tantamount to unjust enrichment on the part of the government. The Court addressed the very same argument in *Philam*, where it elucidated that there would be no unjust enrichment in the event of denial of the claim for refund under such circumstances, because there would be no forfeiture of any amount in favor of the government. The amount being claimed as a refund would remain in the account of the taxpayer until utilized in succeeding taxable years, as provided in Section 76 of the NIRC of 1997. It is worthy to note that unlike the option for refund of excess income tax, which prescribes after two years from the filing of the FAR, there is no prescriptive period for the carrying over of the same. Therefore, the excess income tax credit of BPI, which it acquired in 1998 and opted to carry over, may be repeatedly carried over to succeeding taxable years, i.e., to 1999, 2000, 2001, and so on and so forth, until actually applied or credited to a tax liability of BPI."

(Emphasis supplied)

It is clear from the aforementioned jurisprudence that the excess or unutilized creditable withholding taxes, from which the carry over option was chosen, may be repeatedly carried over to the succeeding taxable years, as petitioner did when it carried over to its 2006 income tax return its excess or unutilized creditable withholding taxes obtained prior to taxable year 2005 in the amount of P2,331,102.00. The said amount of prior years excess credits has been accounted by the Commissioned Independent CPA as follows:²³

"Upon examination of the ITR for Taxable Year 2004, 2005 and 2006 to validate the appropriateness of the carry-over creditable withholding taxes in excess of creditable withholding taxes being claimed, we present below the results:

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²³ Notes 17 and 18, *Supra*.

Prior Year's Excess Creditable Withholding Taxes per 2003 ITR (Exhibit OOO)	P 2,546,619.00
Creditable Withholding Taxes for Taxable Year 2003 (Exhibit OOO)	<u>2,089,252.00</u>
Total Creditable Withholding Taxes	4,635,871.00
Less: Creditable Withholding Taxes Applied to 2003 Minimum Corporate Income Tax (MCIT) (Exhibit OOO)	58,719.00
Unutilized Creditable Withholding Taxes for 2003 Claimed as Tax Refund/Credit (CTA Case No. 7436)	<u>2,089,252.00</u>
Total Prior Year's Excess Creditable Withholding Taxes per Amended ITR for Taxable Year 2004 (Exhibit E)	2,487,900.00
Creditable Withholding Taxes for Taxable Year 2004 (Exhibit E)	2,151,269.00
Less: Creditable Withholding Taxes Applied to 2004 MCIT (Exhibit E)	<u>68,464.00</u>
Total Prior Year's Excess Creditable Withholding Taxes per Amended ITR for Taxable Year 2005 (Exhibit A)	4,570,705.00
Creditable Withholding Taxes for Taxable Year 2005 (Exhibit A)	<u>1,912,195.00</u>
Total Creditable Withholding Taxes	6,482,900.00
Less: Creditable Withholding Taxes Applied to 2005 MCIT (Exhibit A)	88,333.00
Unutilized Creditable Withholding Taxes for 2004 Claimed as Tax Refund/Credit (CTA Case No. 7602)	2,151,269.00
Unutilized Creditable Withholding Taxes for 2005 Claimed as Tax Refund/Credit (CTA Case No. 7762)	<u>1,912,195.00</u>
Total Excess Creditable Withholding Taxes for carry-over to 2006 ITR	<u>P2,331,103.00</u>

As stated on our report dated February 21, 2008, we reiterate that the Company did not amend the 2005 tax return to reflect the claims for unutilized creditable withholding taxes for the year 2004. This was due to the Letter of Authority ("LOA") dated July 21, 2006 (Exhibit ZZ) issued by the Bureau of Internal Revenue and was received by the Company on July 27, 2006. The said LOA pertain to the examination of the Company's books of accounts and other accounting records for all internal revenue taxes for the taxable year 2005, thus, prohibiting the Company to make any amendments to the ITR filed for 2005. However, the Company reflected their claim for Tax Refund of excess/unutilized creditable withholding taxes for 2004 and 2005 in the ITR for Taxable Year 2006 (Exhibit B)."

Thus, respondent cannot insist that petitioner should have claimed the total tax overpayment of P6,394,566.00 for taxable year 2005 because portion thereof in the amount of P2,151,269.00 was already claimed by petitioner in a separate case docketed as CTA Case No. 7602; another portion in the amount of

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P1,912,195.00 is the subject of the present case; and lastly, the amount of P2,331,103.00 was carried over by petitioner to its 2006 income tax return. The amount of P2,331,103.00 cannot be the subject of refund because of the irrevocable rule.

Notwithstanding the above discussion, petitioner still has failed to prove that it did not carry over its claimed excess or unutilized creditable withholding taxes to the succeeding quarters of taxable year 2006. Records of the case disclosed that petitioner failed to present as evidence its 2006 quarterly income tax returns. Although, petitioner presented its 2006 Annual Income Tax Return wherein it shows that it did not carry over as tax credit its claimed unutilized creditable withholding taxes of P1,912,195.00 to the succeeding taxable year 2006, however, this evidence is not enough to conclude that petitioner did not apply the said excess or unutilized creditable withholding taxes against the income tax due for the first three quarters of 2006. Petitioner should have presented its 2006 quarterly income tax returns. The said quarterly income tax returns could help the Court determine whether petitioner effectively opted to carry over the 2005 excess or unutilized creditable withholding taxes to the subsequent taxable year. If petitioner applied the said excess or unutilized creditable withholding taxes against the income tax due for the first three quarters of taxable year 2006, it therefore effectively exercised the option to



carry over the 2005 excess or unutilized creditable withholding taxes to the succeeding taxable year 2006; thus, its claim for refund should be denied pursuant to Sec. 76 of the 1997 National Internal Revenue Code, which explicitly state that once the option to carry over has been made, no application for tax refund or issuance of a tax credit certificate shall be allowed therefor.

In the case of *Benguet Management Corporation vs. Commissioner of Internal Revenue*,²⁴ the Court *En Banc* agreed with the findings of the Court in *Division* that petitioner therein indeed carried over its declared overpayment for 2001 to the subsequent quarters as proved by its quarterly income tax returns of 2002, and, hence, affirmed the denial of petitioner's claim. Pertinent portion of the decision in the said case are hereunder quoted:

"However, petitioner carried over the declared overpayment for 2001 in the amount of P6,249,534.00 to the succeeding quarters of taxable year 2002 as prior year's excess credits (*Annexes C to E, Petition for Review, pp. 10-12*). As petitioner's own evidence would show (*original/tentative annual ITR for CY 12/2001, Exhibit "A"*), the total declared overpayment of P6,249,534.00 for the calendar year 2001, was carried over by the petitioner to the first quarter of 2002 filed on June 11, 2002 (*Quarterly Income Tax Return for the 1st Quarter of 2002, Annex C, Petition for Review*). When petitioner filed its second quarterly return for the year 2002, it likewise carried over the amount of P6,249,534.00 as prior year's excess credits (*Quarterly Income Tax Return for the 2nd Quarter of 2002, Annex D, Petition for Review*). For the third quarter of 2002, petitioner still carried over the same amount of P6,249,534.00 as prior year's excess credits (*Quarterly Income Tax Return for 3rd Quarter of 2002, Annex E, Petition for Review*). The total amount of P5,700,272.00 subject of this claim, formed part of the P6,249,534.00 overpayment for calendar year 2001 (Exhibit A-1)."

²⁴ CTA EB No. 200, April 4, 2007 affirming the decision of Benguet Management Corporation vs. Commissioner of Internal Revenue, CTA Case No. 6890, January 9, 2006.



“When petitioner filed its corporate annual income tax return for the calendar year 2002 on April 14, 2003, it still carried over the amount of P6,249,534.00 as prior year’s excess credits (*Exhibit F, Records, pp. 91-93*). The fact that petitioner amended its 2002 tax return on October 9, 2003 (*Exhibit G, Records, pp. 94-96*) does not alter the fact that petitioner in fact carried the amount of P6,249,534.00 which the claimed amount of P5,700,272.00 formed a part of, to the succeeding first, second and third quarters of 2002. And in its 2002 original corporate income tax return, petitioner again carried over the same amount of prior year’s excess credits.

(Emphasis supplied)

In fact, Section 2.58.3 of Revenue Regulations No. 2-98 implementing Republic Act No. 8424 even provides:

“Section 2-58-3. Claim for Tax Credit or Refund. –

(A) . The amount of creditable tax withheld shall be allowed as a tax credit against the income tax liability of the payee in the quarter of the taxable year in which income was earned or received.

(B) Claims for tax credit or refund or 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.

(C) Excess Credits – An individual or corporate taxpayer’s excess expanded withholding tax credits for the taxable quarter/year shall automatically be allowed as a credit against his income tax due for the taxable quarters/years immediately succeeding the taxable quarters/years in which the excess credit arose, provided he submits with his income tax return, a copy of the first page of his income tax return for the previous taxable period showing the amount of his excess withholding tax credits, and on which return he has not opted for a cash refund or tax credit certificate.

1. If in lieu of the automatic application of his excess credit, the taxpayer wants a cash refund or a tax credit certificate for use in payment of his other national internal revenue tax liabilities, he shall make a written request therefore, within two years after the payment of the tax (Ref. Secs. 204(c) and 229 of the Code), provided however, that if the taxpayer has indicated in his income tax return his option for either a cash refund or a tax credit certificate, such indication shall be considered sufficient for the



purpose. Upon filing of his request, the taxpayer's income tax return showing the excess expanded withholding tax credits shall be examined. The excess expanded withholding tax so determined, shall be refunded/credited to the taxpayer.

2. Sample computation of application of excess credits-ordinary

Tax Period	1997	1998-QTR1	1998-QTR2	1998-QTR3
Tax Due	1,000	200	200	500
Less: Tax Withheld	(1,500)	(500)	(300)	0
Net Tax Payable/Creditable	(500)	(300)	(100)	500

In the above illustration, there is an excess credit in 1997 that can be applied to the subsequent quarter. And if the option to apply the excess credit is initiated in the first quarter of 1998, the taxpayer cannot avail of a refund/tax credit certificate of the excess credit of P500 in 1997."

(Emphasis Supplied)

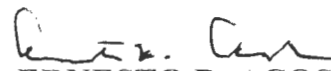
Thus, the presentation of the quarterly income tax returns is very important. Without which, it cannot be fully ascertained whether petitioner did not carry over the 2005 excess or unutilized creditable withholding taxes to the subsequent quarters of 2006. Petitioner may have carried over its 2005 excess or unutilized creditable withholding taxes to its quarterly income tax returns for 2006, and it may have amended said quarterly returns before the filing of the 2006 annual income tax return whereby such excess or unutilized creditable withholding taxes are no longer reflected therein; and thus, it follows that its 2006 annual income tax return will likewise not show the amount of P1,912,195.00 as part of its prior year's excess credit. This doubt could have been avoided had petitioner presented its quarterly income tax returns for 2006.



It is a settled rule that tax refunds, like tax exemptions, are construed strictly against the taxpayer and that the claimant has the burden of proof to establish the factual basis of its claim for tax credit or refund.²⁵ Failure of the petitioner to present the quarterly income tax returns for 2006 is fatal to its claim for refund or tax credit. In a similar case of *Millennium Business Service, Inc. vs. Commissioner of Internal Revenue*,²⁶ this Court denied the claim for refund of unutilized creditable withholding taxes on the ground that the claimant therein was not able to present its quarterly income tax returns of the subsequent period of its claim.

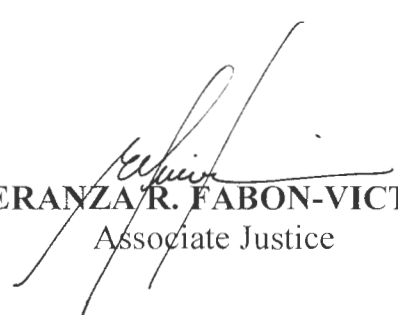
WHEREFORE, petitioner's claim for refund is hereby DENIED for insufficiency of evidence.

SO ORDERED.


ERNESTO D. ACOSTA
Presiding Justice

WE CONCUR:


ERLINDA P. UY
Associate Justice


ESPERANZA R. FABON-VICTORINO
Associate Justice

²⁵ *Silicon Philippines, Inc. vs. Commissioner of Internal Revenue*, CTA EB Case No. 298, January 18, 2008 citing *Citibank, N.A. vs. Court of Appeals and the Commissioner of Internal Revenue*, 280 SCRA 459.

²⁶ February 11, 2009, Amended Decision. First Division, CTA Case No. 7441.

CERTIFICATION

I hereby certify that the above decision was reached after due consultation with the members of the Court of Tax Appeals, First Division in accordance with Section 13, Article VIII of the Constitution.


ERNESTO D. ACOSTA
Presiding Justice