REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

STOCK TRANSFER SERVICES, INC.,
Petitioner,

- versus -

C.T.A. CASE NO. 6094

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:

JUN 04 2002

x - x

DECISION

This case involves a claim for refund or issuance of a tax credit certificate in the amount of ONE HUNDRED THIRTY THOUSAND FIVE HUNDRED FORTY ONE PESOS (P130,541.00) representing excess creditable withholding tax for the year 1997.

The facts are briefly stated as follows:

Petitioner is a corporation organized and existing under and by virtue of the laws of the Republic of the Philippines with principal office located at the Ground Floor Asianbank Center, Sen. Gil J. Puyat Avenue, Makati City.

On April 15, 1998, petitioner filed with the Bureau of Internal Revenue (BIR) its Corporate Annual Income Tax Return (ITR) for the calendar year 1997 reporting a net loss of One Million Nine Hundred Sixty Five Thousand Four Hundred Seventy One Pesos (P1,965,471.00) and creditable withholding tax payments of P130,541.00 (Exhibit "A"). In the said return, petitioner indicated its intention to claim for the refund of its unutilized creditable withholding tax (Exhibit "A-6").

On May 28, 1999, petitioner filed its Amended Corporate Annual Income Tax Return for the calendar year 1998, likewise reflecting a net loss amounting to Seven Hundred Sixty Six Thousand Six Hundred Ninety Five Pesos (P766,695.00) (Exhibit B). The return showed no prior year's excess credits (Exhibit B-1).

On April 17, 2000, petitioner filed with the BIR an application for the refund of its 1997 unutilized creditable withholding tax in the amount of P130,541.00. On even date, the instant petition for review was filed with this Court.

Respondent filed his Answer through registered mail on June 9, 2000 and raised the following Special and Affirmative Defenses:

> "4. The petition states no cause of action as it does not alleges (sic) the dates when the taxes sought to be refunded were actually paid;
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> 5. Petitioner's claim for refund has prescribed;
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> 6. Claims for refund are construed strictly against the claimant, the same being in the nature of exemption from taxes (Commissioner of Internal Revenue vs. Ledesma, 31 SCRA 95; Manila Electric Co. vs. Commissioner of Internal Revenue, 67 SCRA 35)
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> 7. One who claims to be exempt from payment of a particular tax must do so under clear and unmistakable terms found in the statute (Asiatic Petroleum vs. Llanes, 49 Phil. 466; Union Garment Co. vs. Court of Tax Appeals, 4 SCRA 304);
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> 8. In action for refund, the burden is upon the taxpayer to prove that he is entitled thereto, and failure to sustain the same is fatal to the action for tax refund;
>
> 9. It is incumbent upon petitioner to show compliance with the provisions of Section 229 of the National Internal Revenue Code;
>
> 10. Taxes paid and collected are presumed to have been made in accordance with the laws and regulations, hence not refundable."

On August 31, 2000, respondent filed through registered mail a Motion to Dismiss on the ground of lack of jurisdiction. According to respondent, the Income Tax Return of petitioner was filed on April 15, 1998 while both the administrative and judicial claims for refund were filed on April 17, 2000 or two (2) days late from the expiration of the two-year period provided for in Section 229 of the Tax Code; therefore, the claim has already prescribed. Petitioner filed its Opposition also through registered mail on September 14, 2000, contending that its claim for refund was timely filed considering that April 15, 1998 falls on a Saturday, in which case the deadline for filing a claim for refund is on the next succeeding working day which is April 17, 1998 pursuant to Section 1, Rule 22 of the 1997 Rules of Civil Procedure.

In a resolution promulgated on November 28, 2000, this Court denied respondent's Motion to Dismiss based on the aforesaid Section 1, Rule 22 of the 1997 Rules of Civil Procedure, prompting respondent to file a Motion for Reconsideration on December 19, 2000, which this Court likewise denied for lack of merit on February 2, 2001.

In their Joint Stipulation of Facts and Issues filed on March 23, 2001, the parties submitted the following issues for resolution:

1. Whether or not petitioner has overpaid income tax for the calendar year ended December 31, 1997 in the amount of P130,541.00.

2. Whether or not Petitioner is entitled to the refund of the said amount.

3. Whether or not the said overpaid income taxes are substantiated by evidence.

We deny the claim.

For claims for refund or tax credit of excess or unutilized creditable withholding taxes to be given due course, the following basic requirements must be met:

1. That the claim for refund was filed within the two-year prescriptive period provided under Section 204(3) [now 204 (C)] in relation to Section 230 [now 229] of the Tax Code, as amended;

2. That the fact of withholding is established by a copy of a statement duly issued by the payor (withholding agent) to the payee, showing the amount paid and the amount of tax withheld therefrom; and

3. That the income upon which the taxes were withheld were included in the return of the recipient [Revenue Regulations No. 12-94 (amending Revenue Regulations No. 6-85); *Citibank, N.A. vs. Court of Appeals*, 280 SCRA 459; *ACCRA Investments Corporation vs. Court of Appeals*, 204 SCRA 957].

Records reveal that petitioner filed its Annual Income Tax Return for the taxable year 1997 on April 15, 1998 (Exhibit "A"). On the other hand, it filed its claim for refund with the BIR (Annex "WW, Petition for Review") on April 17, 2000, the same day it elevated its case before Us.

Petitioner alleged that its administrative and judicial claims for refund were filed within the two-year prescriptive period considering that April 15, 2000, which is the last day for filing both the administrative and judicial claims, fell on a Saturday. Therefore, according to petitioner, the last day was moved to the next working day, which in this case is April 17, 2000.

After carefully considering the evidence adduced solely by petitioner as well as the applicable laws and jurisprudence, this Court finds that both the administrative and judicial claims for refund were indeed filed beyond the two-year prescriptive period, this notwithstanding our earlier pronouncement that petitioner's claim for refund was filed on time.

Sections 204(3) and 230 of the Tax Code provide:

> **"Section 204.** *Authority of the Commissioner to compromise, abate, and refund credit taxes.* - The Commissioner may:
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> x x x x x x x x x
>
> (3) 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: x x x
>
> **"Section 230.** *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, or of any sum alleged to have been excessive 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 begun after the expiration of two 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."

Moreover, Article 13 of the Civil Code clearly states:

> "**Article 13**. When the laws speak of years, months, days or nights, it shall be understood that years are of three hundred sixty five days each; months, of thirty days, days of twenty-four hours; and nights from sunset to sunrise.
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> If months are designated by their name, they shall be computed by the number of days which they respectively have.
>
> In computing a period, the first day shall be excluded and the last day included." (Underscoring ours)

Based on the foregoing provision of law, petitioner had only until April 14, 2000 within which to file its claim for refund with this Court since the year 2000 is a leap year. We failed to realize in our earlier resolution that the year 2000 is a leap year. In the case of ***Primetown Property Group, Inc. vs. Commissioner of Internal Revenue and Arturo V. Parcero*, CTA Case No. 6113, December 15, 2000**, We had the occasion to rule on the same issue, thus:

> "In the case at bar, Petitioner filed its final adjustment return on April 14, 1998. Supposedly, it had until April 14, 2000 the day the instant Petition for Review was filed within which to file the legal remedy. However, the year 2000 is a leap year, the two year period expired on April 13, 2000. It is then obvious that the claim was filed out of time."

This ruling finds support in the case of ***State Investment House, Inc. vs. Court of Appeals*, 215 SCRA 734, November 13, 1992**, where the Highest Tribunal ruled in this wise:

> "Under Article 13 of the New Civil Code, a year is understood to be of three hundred sixty five (365) days. Thus, excluding the first day and counting from August 25, 1983 (under paragraph 3 of Article 13 of the New Civil Code), and bearing in mind that 1984 was a leap year, Cuenca had only until August 23, 1984, the 365th day after registration of

> the sale on August 24, 1983, within which to redeem the foreclosed property in accordance with law. It was thus already beyond the redemption period when Cuenca filed her suit below on August 24, 1984.
>
> It should be stressed in this regard that it is not proper to count, as Cuenca submits in her Rejoinder, the period on the basis of 30 days per month. The law speaks of a "one year" period within which to redeem, not twelve months as in the case of redemption by a judgment debtor under Section 30 of Rule 39. Applying Article 13 of the Civil Code, the period of one year within which to redeem in the case at bar is to count 365 days from August 24, 1983. Consequently, the last to redeem would be and indeed fell on August 23, 1984, said year being a leap year (cf Go vs. Dizon, et al., G.R. No. 75915-16, September 18, 1992)

Based on the foregoing, it is evident that more than two years have elapsed when the claims for refund, both administrative and judicial, were filed on April 17, 2000. Since the year 2000 is a leap year, the two-year prescriptive period in the case at bar expired on April 14, 2000, which fell on a Friday. Accordingly, petitioner's cause of action is time-barred.

Considering that petitioner failed to file its judicial claim within the two year prescriptive period provided for under Section 230 (now 229) of the Tax Code, this Court finds it no longer necessary to discuss petitioner's compliance with the other two aforementioned requirements.

WHEREFORE, in view of the foregoing, the instant Petition for Review is hereby **DENIED** on account of prescription.

SO ORDERED.

ERNESTO D. ACOSTA
Presiding Judge

I CONCUR:

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Judge

CERTIFICATION

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

ERNESTO D. ACOSTA
Presiding Judge