REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

THE OVERSEAS BANK OF MANILA,
Petitioner,

- versus -

C.T.A. CASE NO. 3039

THE COMMISSIONER OF INTERNAL REVENUE,
Respondent.

2/20/87

x - - - - - - - - - - - - - - - x

D E C I S I O N

Petitioner, Overseas Bank of Manila, a banking corporation organized under the laws of the Philippines paid 5% specific taxes (bank tax) in the total sum of ₱114,194.47 during the periods from April 19, 1974 to January 19, 1976 on its gross receipts under then Section 249 (Section 260,, 1977 Tax Code) of the National Internal Revenue Code itemized as follows:

O.R. No.	Date Paid	Amount Paid
335837	4-19-74	₱ 8,625.81
369445	7-19-74	4,660.84
370427	10-16-74	7,280.50
427072	1-21-75	3,613.50
443265	4-16-75	7,026.66
479550	7-16-75	20,298.16
2122631	10-17-75	37,323.90
4515684	1-19-76	25,364.80
T o t a l ---		₱114,194.47

It subsequently obtained from the respondent Commissioner of Internal Revenue the refund of this allegedly erroneously paid 5% specific taxes in the total sum of ₱114,194.47 on the ground that its suspension by the Central Bank during the time the aforesaid specific taxes (bank taxes) were paid were not subject to the said 5% bank tax under Section 249 of the NIRC, as it was merely collecting or liquidating the bank's receivables, under which circumstances, it asserted that it was not engaged in such banking activities to be subject to the 5% bank tax. (See Annex A, Petition for Review and Claim for Refund of Taxes Paid, pp. 8-9, CTA rec.)

On December 13, 1978, respondent Commissioner of Internal Revenue denied the claim for refund on the ground that during the period in which the bank tax was paid, petitioner had "xxx continued its other banking activities such as the right to receive interest, rentals of property, dividends, etc., transactions normally engaged in by banks" and that "Accordingly, and considering that during the period of its suspension it continued to transact other banking activities, all amounts received or realized therefrom constitute its gross receipts subject to the 5% bank tax under Section 260 (formerly

Section 249) of the National Internal Revenue Code of 1977. For having transacted such banking activities, the Overseas Bank of Manila (herein petitioner) therefore did not err in its payment of the bank tax in the amount of ₱114,194.47 for 1974 and 1975." (Annex A, Ibid, pp.8-9, CTA rec.)

From this denial of the claim for refund, petitioner filed on October 31, 1979 its petition for review and judicial claim for refund. In his "Answer" thereto, respondent Commissioner denied petitioner's allegation which is conformably on the grounds for his administrative denial of petitioner's claim for refund, and in the special and affirmative defenses in his answer, among others, asserted that the right to refund has already prescribed.

We are in full agreement with respondent Commissioner of Internal Revenue who stood pat on his assertion to the effect that it is incumbent upon petitioner to show that it had brought its appeal to this Court within the statutory period provided by law and jurisprudence. In claims for refund, a formal written claim for refund must have to be filed with the Commissioner of Internal Revenue within two (2) years from the payment of the tax and concomitantly, in order that the Court of Tax Appeals shall have jurisdiction over the judicial claim for refund, the petitioner must have to equally file the same with said Court within two (2) years from the payment of the tax. (Gibbs vs. Coll., GR L-13453, Feb. 29, 1960; Guagua Electric Light Plant, Inc. vs. Coll., 1 SCRA 1221). In other words, in this particular case, the petition for review and judicial claim for refund of petitioner should have been filed within 2 years from each of the separate payments of the specific taxes, or particularly from the last payment of the specific tax on January 19, 1976, not later than January 19, 1978, with or without, or otherwise without waiting for the decision of the respondent Commissioner of Internal Revenue denying the claim for refund. (P.J. Kiener vs. Comm. Of Int. Rev., CTA Case No. 1143, February 19, 1972; Coll. v. Sweeney, 106 Phil. 59; Gibbs v. Coll. 107 Phil. 232; Comm. v. National Power Corp., G.R. L-18874, Jan. 30, 1970.) The "Petition for Review and Claim for Refund of Taxes Paid" of petitioner, having been filed with this Court only on October 31, 1979, was filed out of time or beyond the two-year period from payment is non-compliance of the provisions of Section 306 and 309 of the Tax Code (now Secs. 292 and 295 of the 1977 NIRC, as amended). Consequently, we hold that this judicial claim for refund is time barred.

WHEREFORE, the instant petition for review and judicial claim for refund of petitioner Overseas Bank of Manila is hereby dismissed with costs against petitioner. With costs.

SO ORDERED.

Quezon City, February 20, 1987.

CONSTANTE C. ROAQUIN
Associate Judge

WE CONCUR:

AMANTE FILLER
Presiding Judge

ALEX Z. REYES
Associate Judge