REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

WINEBRENNER & IÑIGO INSURANCE BROKERS, INC., Petitioner,	CTA CASE NO. 7910
	Members:
- versus -	ACOSTA, *Chairperson* UY, *and* FABON-VICTORINO, *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: OCT 11 2011; 4:00pm

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DECISION

***Fabon-Victorino, J.*:**

Before the Court is the Petition for Review filed by Winebrenner and Iñigo Insurance Brokers, Inc. praying for the refund or issuance of a Tax Credit Certificate (TCC) in the amount of P4,327,568.00, allegedly representing petitioner's excess and unutilized creditable withholding taxes (CWT) for the year 2006.

Petitioner Winebrenner and Iñigo Insurance Brokers, Inc. alleges that it is a duly organized domestic corporation with

Securities and Exchange Commission (SEC) Registration No. 70271 and located at the 8th Floor, 88 Corporate Center, Sedeño corner Valero Streets, Salcedo Village, Makati City.[1] Petitioner is likewise registered with the Bureau of Internal Revenue (BIR) Region No. 8, District Office No. 50 (South Makati) and has been issued a Taxpayer Identification No. 000-151-714-000.[2] Its primary purpose is to engage in the business of insurance and/or reinsurance, as a general agent and/or agent and/or broker and/or consultant.[3]

Respondent, on the other hand, is the Commissioner of the Bureau of Internal Revenue (BIR) vested with authority to refund overpaid and erroneously or illegally collected internal revenue taxes. She holds office at the BIR National Office Building, BIR Road, Diliman, Quezon City.

On April 15, 2007, petitioner filed its Annual Income Tax Return[4] for taxable year 2006.[5] Indicated therein was its CWT

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[1] Par. 1, Facts Admitted in Respondent's Answer, Joint Stipulation of Facts and Issues (JSFI), docket, p. 101.
[2] Exhibit "A"; Par. 1, Joint Stipulation of Facts, JSFI, docket p. 102.
[3] Par. 3, Facts Admitted in Respondent's Answer, JSFI, docket, pp. 101-102.
[4] Exhibit "E[6]".
[5] Par. 2, Joint Stipulation of Facts, JSFI, docket p. 102.

in the amount of P4,327,568.00[6] and the exercise of its option "To be issued a Tax Credit Certificate"[7] for the same.

On April 8, 2009, petitioner filed with the BIR a letter dated March 19, 2009,[8] claiming the refund of the said 2006 excess and unutilized CWT of P4,327,568.00.[9] Respondent failed to act on the claim for refund thus, petitioner filed the instant Petition for Review on April 14, 2009.

In her Answer[10] filed on June 8, 2009, respondent interposes the following Special and Affirmative Defenses:

> "4. Petitioner's claim for refund or issuance of a tax credit certificate is still subject to administrative routinary investigation/examination by respondent's Bureau;
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> 5. Taxes paid and collected are presumed to have been made in accordance with law, hence, not refundable;
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> 6. Petitioner's claim for refund in the amount of **Php4,327,568.00**, as alleged excess and unutilized creditable withholding taxes for taxable year 2006 were not fully substantiated by proper documentary evidence, such as invoices, official receipts,

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[6] Exhibit "E[6]-6" (Creditable Tax Withheld for the First Three Quarters of 1,463,074 + Creditable Tax Withheld Per BIR Form 2307 for the Fourth Quarter of 2,864,494).
[7] Exhibit "E[6]-8".
[8] Exhibit "B".
[9] Par. 3, Joint Stipulation of Facts, JSFI, docket p. 102.
[10] Docket, starting p. 76.

certificates of withholding tax at source and other necessary tax returns.

7. Petitioner failed to prove that the amount of **Php4,327,568.00**, as alleged excess and unutilized creditable withholding taxes for taxable year 2006 were declared in full as part of its gross income for taxable year 2006, and that it did not carry-over to the succeeding taxable quarters or years the subject of its claim, and the same were not fully utilized in payment of its income tax liability for the succeeding taxable quarters or years.

8. Petitioner failed to prove that the amount of **Php4,327,568.00**, as alleged excess and unutilized creditable withholding taxes for taxable year 2006 were received in full by the BIR.

9. In an action for refund/credit, the burden of proof is on petitioner to establish its right to the claimed refund and failure to adduce sufficient evidence is fatal to its claim.

10. It is incumbent upon petitioner to show that it has complied with the provisions under Section 204(c) in relation to Section 229 of the Tax Code. Otherwise, its failure to prove the same is fatal to its claimed refund;

11. Claim for refund partakes the nature of tax exemption, hence, the same is construed strictly against petitioner. (CIR vs. Ledesma, 31 SCRA 95)."

During the pre-trial conference, the parties agreed and pursuant thereto filed their Joint Stipulation of Facts and Issues on August 07, 2009. It was approved by the court on August 14, 2009.

Petitioner's lone witness, Soo Yuk L. Yu, testified that she is the Assistant Manager for Finance and Administration of petitioner. She assists in the financial and accounting management of petitioner, reviews its transactions before they are entered in its books, reviews tax returns before filing with the BIR, and assists in the handling of tax audits and assessments against petitioner including the filing of administrative and judicial claims for refund or issuance of TCCs.

She is familiar with the case as she assisted in the preparation of petitioner's 2006 Annual Income Tax Return[11] filed with the BIR on April 16, 2007. In relation to petitioner's administrative claim for refund, she identified petitioner's Tax Credit Schedule for the Year 2006[12] showing the schedule of CWT withheld by petitioner's clients, petitioner's Audited Financial Statement as of December 31, 2006[13], and the Letter dated March 19, 2009,[14] constituting petitioner's claim for refund with the BIR filed on April 8, 2009.

[11] Exhibit "E^6" to "E^6-9".
[12] Exhibit "E^6-10" to "E^6-11".
[13] Exhibit "F^6".
[14] Exhibit "B".

In its 2006 Annual ITR,[15] petitioner had excess income tax credits in the aggregate amount of P8,748,741.00 broken down, as follows:

Prior Year's Excess Credits	P4,421,173.00[16]
Creditable Tax withheld (1st 3 quarters of 2006)	P1,463,074.00[17]
CWT for the 4th quarter of 2006	P2,864,494.00[18]
TOTAL	**P8,748,741.00**

Petitioner however had an income tax liability for 2006 in the amount of P1,082,009.00.[19] Pursuant to the "first-in, first-out" principle, petitioner utilized its Prior Year's Excess Credits of P4,421,173.00[20] to pay the said income tax liability. The remainder of P3,339,164.00 when added to the sum of P4,327,568.00, representing the CWT for the 1st to the 4th quarters of 2006 (P1,463,074.00 + P2,864,494.00= P4,327,568.00) amounted to P7,666,732.00.[21] Petitioner opted "To be issued a TCC"[22] for its unutilized CWT for 2006 in the

[15] Exhibit "E6" to "E6-9".
[16] Exhibit "E6-4".
[17] Exhibit "E6-5".
[18] Exhibit "E6-6".
[19] Exhibit "E6-3".
[20] Exhibit "E6-4".
[21] Exhibit "E6-7".
[22] Exhibit "E6-8".

total amount of P4,327,568.00, which is the subject of both the administrative claim and the present appeal.

The witness further testified that petitioner did not carry over or utilize the said CWT for 2006 in the amount of P4,327,568.00 in the succeeding taxable year as shown in its 2007 Quarterly ITRs[23] and 2007 Annual ITR.[24] Its 2007 Quarterly ITRs indicates a zero or nil prior year's excess credits while its Annual ITR indicates the amount of P3,339,164.00 as prior year's excess credits.

Petitioner's excess CWT in 2006 in the amount of P4,327,568.00 consists of the CWT withheld by various insurance companies from their respective income payments to it as shown in the Certificates of Creditable Tax Withheld at Source (BIR Form 2307)[25] issued in its favor. The Certificates specify the income payments to petitioner, the CWT withheld, and the period for which the Certificates were issued. Per these Certificates (BIR Form 2307), various insurance companies paid petitioner an aggregate amount of P43,275,680.00, of which the amount of P4,327,568.00 was withheld as CWT.

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[23] Exhibits "E," "F," and "G".
[24] Exhibit "C".
[25] Exhibits "H" to "D6".

Likewise, petitioner declared as part of its sales and revenues in its 2006 Annual ITR the amount of P43,275,680.00 income payments made by various insurance companies. The said income payments are included in the "Sales/Revenues/Receipts/Fees" amounting to P44,216,619.00[26] as reflected in Item No. 15C of its 2006 Annual ITR.

The witness clarified that petitioner is in the business of "Life" and "Non-Life Insurance" as indicated in its BIR Certificate of Registration dated June 27, 1994.[27] Aside from primarily insurance, petitioner is also involve in brokering, as shown in its Audited Financial Statements (AFS) for December 31, 2006.[28] In the pursuit of this line of business, petitioner, in 2006, earned commission from various insurance companies amounting to P44,216,619.00 as indicated in its 2006 AFS.[29] However, only the amount of P43,271,924.92 from the said earned commission is reflected in petitioner's "Tax Credit Schedule for the Year 2006,"[30] or P944,694.08 less than the amount indicated in the 2006 AFS.

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[26] Exhibit "E^6-1"
[27] Exhibit "A".
[28] Exhibit "F^6".
[29] Exhibit "F^6".
[30] Exhibit "E^6-10" and "E^{6-11}".

The discrepancy, according to the witness, was due to the timing difference of petitioner's booking of commission income and the insurance companies' recognition of the commission expense they pay and the corresponding income tax liability. Petitioner recognizes commission income at the time the insurance policies are received and recorded in the books.

As an insurance broker, it is authorized by insurance companies to collect premiums from their clients on their behalf. Petitioner is given a special credit term of 90 days from inception of policy to remit the collected premium to them. Only upon receipt of petitioner's remittance will the insurance companies record the commission expenses, withhold and remit corresponding expanded withholding taxes to the BIR. Only then the insurance companies will issue the CWT Certificates to petitioner.

The discrepancies also surface when petitioner's billings on commission are disputed by insurance companies. Under this circumstance, the insurance companies pay less than the billed amounts. Consequently, the CWT Certificates issued by the insurance companies and the CWT withheld on commissions are based on the lower amount paid to petitioner. This is not to mention that there are also entities that do not issue CWT Certificates for CWT withheld on commission payments to petitioner. In any event, petitioner declares all the commission received as part of its commission income in its Annual Income Tax return even if it will not be able to claim any CWT on such commission income.

Witness Soo Yuk L. Yu further declared that the prior year's excess credits of PHP4,421,173.00 reported in the 2006 Annual ITR[31] consists of unutilized CWT in 2004 and prior years, as shown in the 2002,[32] 2003,[33] 2004,[34] 2005[35] Annual ITR's, as well as the Amended 2005 Annual ITR[36] of petitioner.

After presentation of its evidence petitioner rested, filing its Formal Offer of Evidence on February 09, 2010.

In its Resolution dated June 15, 2010, the Court admitted all of petitioner's documentary evidence except Exhibits Q, E^4, A^6, and N^6.

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[31] Exhibit "E^6".
[32] Exhibit "W^6".
[33] Exhibit "X^6".
[34] Exhibit "Z^6".
[35] Exhibit "A^7".
[36] Exhibit "B^7".

On August 12, 2010, respondent waived presentation of evidence and submitted the case for decision.[37]

On October 11, 2010, respondent filed her Memorandum while petitioner, on October 13, 2010.

In its Memorandum, petitioner basically reiterates the testimony of its lone witness Ms. Soo Yuk L. Yu that it is entitled to a refund or issuance of tax credit certificate. It was able to fully substantiate its entitlement to the relief sought through the documentary evidence it presented in Court, among others are the CWT Certificates which are sufficient proof of the CWT. With the presentation of these documents, it is not required to prove actual remittance of the unutilized CWT to the BIR.

It also presented its Annual ITR and reconciling schedule to prove that the income payments from which the CWT sought to be refunded were withheld were declared by petitioner as part of its income. Petitioner as well established that it has exercised its option to be issued a tax credit certificate in is 2006 Annual ITR.

[37] Docket, page 294.

To show that it did not carry over the CWT in 2006 to the succeeding quarters or years, petitioner presented its 2007 Annual ITR and its 1st, 2nd, and 3rd Quarterly ITRs for 2007. Finally, both its administrative and judicial claims for refund or issuance of tax credit certificate were filed within the two-year prescriptive period as provided under Section 229 of the Tax Code.

Respondent however is diametrically opposed to petitioner's asseveration. She argues that petitioner failed to substantiate its claim for refund as it failed to present and offer in evidence its quarterly income tax returns for taxable year 2006 and for the 4th quarter of taxable year 2007, as required under Section 76 of the NIRC. Absent such documents, it cannot be determined with reasonable certainty whether petitioner had exercised the option to claim a refund, or carry-over its alleged unutilized excess creditable withholding taxes for the year 2006 to the year 2007.

Admittedly, petitioner did not mark the option box "To be carried as tax credit next year" in its 2006 and 2007 Annual ITRs, nonetheless it is deemed to have exercised such option by indicating the amounts of P4,412,173.00 and P3,339,164.00 as

"Prior year's excess tax credit" in its 2006 and 2007 Annual ITRs, respectively. Having impliedly made an irrevocable carry-over choice, petitioner, pursuant to Section 76 of the NIRC, cannot at this point turn 180 degrees to claim for a refund.

Lastly, respondent claims that although she admits the existence of the Certificates of Creditable Tax Withheld at Source presented in evidence by petitioner, she disputes that these documents are conclusive evidence of payment and remittance to the BIR of the taxes withheld by petitioner's withholding agents. The Certificates are mere proof of the withholding and not the remittance of the withheld taxes to the government in contravention of Section 51(a) of the Tax Code which states that "taxes deducted and withheld under Section 50 thereof shall be covered by a return and paid to the BIR."

After the parties filed their respective memoranda, the instant Petition for Review was deemed submitted for decision on October 22, 2010.

The parties raise the following issues[38] for the resolution of the Court:

"A.
WHETHER OR NOT THE INCOME PAYMENTS FROM WHICH THE TAXES WERE WITHHELD WERE INCLUDED AS PART OF PETITIONER'S GROSS INCOME FOR TAXABLE YEAR 2006.

B.
WHETHER OR NOT PETITIONER HAS AN EXCESS CREDITABLE WITHHOLDING TAX FOR TAXABLE YEAR 2006 IN THE AMOUNT OF PHP4,327,568.00.

C.
WHETHER OR NOT PETITIONER HAS CARRIED-OVER TO THE SUCCEEDING TAXABLE QUARTERS OR YEARS THE CLAIMED EXCESS CREDITABLE WITHHOLDING TAX FOR TAXABLE YEAR 2006 AND APPLIED THE SAME IN PAYMENT OF ITS INCOME TAX LIABILITY FOR THE SUCCEEDING TAXABLE QUARTERS OR YEARS.

D.
WHETHER OR NOT PETITIONER'S CLAIM FOR REFUND OF THE ALLEGED EXCESS CREDITABLE WITHHOLDING TAX FOR TAXABLE YEAR 2006 IN THE AMOUNT OF PHP4,327,568.00 WERE DULY SUBSTANTIATED BY PROPER DOCUMENTARY EVIDENCE.

E.
WHETHER OR NOT PETITIONER IS ENTITLED TO THE CLAIMED REFUND OR ISSUANCE OF A TAX CREDIT CERTIFICATE IN THE SUM OF PHP4,327,568.00 AS EXCESS CREDITABLE WITHHOLDING TAX FOR TAXABLE YEAR 2006.

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[38] Docket, pp. 102-103, Joint Stipulation of Issues, JSFI.

> F.
> WHETHER OR NOT THE CLAIM FOR REFUND WAS FILED WITHIN THE TWO (2)-YEAR PRESCRIPTIVE PERIOD PRESCRIBED UNDER SECTION 204(C), IN RELATION TO SECTION 229 OF THE TAX CODE."

The foregoing issues can be summarized into one, as follows:

> "Whether or not petitioner is entitled to the refund or issuance of tax credit certificate in the amount of P4,327,568.00, representing its alleged excess and unutilized creditable withholding tax for taxable year 2006."

THE RULING OF THE COURT

Before any claim for refund can be entertained by the Court, petitioner-claimant must show compliance with Section 76 of the National Internal Revenue Code (NIRC) of 1997, which reads as follows:

> "SEC. 76. *Final Adjustment Return.* - Every corporation liable to tax under Section 27 shall file a final adjustment return covering the total taxable income for the preceding calendar or fiscal year. If the sum of the quarterly tax payments made during the said taxable year is not equal to the total

> tax due on the entire taxable income of that year, the corporation shall either:
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> (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**." (Emphasis supplied)

From the foregoing provision, the excess tax credits or overpaid income tax in a given taxable year of the corporate taxpayer may either be refunded – either in cash or tax credit certificate - or carried-over/applied to the succeeding taxable quarters of the succeeding taxable years. The phrase "taxable period" referred to in the provision is that taxable period when the excess income tax, subject of the option, was acquired by the taxpayer.[39]

If the option to carry-over the excess credit is exercised, the same shall be irrevocable for that taxable period and no application for cash refund or issuance of a tax credit certificate shall be allowed. The law is clear and unequivocal. It provides that the carry-over option, once actually or constructively chosen by a corporate taxpayer, it becomes *irrevocable*.[40]

The taxpayer must signify in its annual corporate adjustment return - by marking the option box provided in the BIR form its intention - whether to request for a refund or claim an automatic tax credit for the succeeding taxable years. To ease the administration of tax collection, these remedies are in the alternative, and the choice of one precludes the other.[41]

In the instant case, petitioner unequivocally expressed its option to be issued a tax credit certificate for its excess creditable withholding tax for taxable year 2006, by placing a

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[39] *Commissioner of Internal Revenue vs. Bank of the Philippine Islands*, G.R. No. 178490, July 7, 2009.
[40] Commissioner of Internal Revenue vs. PL Management International, G.R. No. 160949, April 04, 2011.
[41] *Philippine Bank of Communications vs. Commissioner of Internal Revenue, et al.*, G.R. No. 112024, January 28, 1999.

check mark in the box corresponding to the said choice[42] in its 2006 Annual Income Tax Return.[43]

Anent the timeliness of the filing of the instant claim, Sections 204 and 229 of the National Internal Revenue Code (NIRC), as amended, are instructive, to wit:

> "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**. xxx" (*Emphasis supplied)*

> "SEC. 229. *Recovery of Tax Erroneously or Illegally Collected.* - No suit or proceeding shall be maintained in any

[42] Exhibit "E^{6}-8".
[43] Exhibit "E^{6}".

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

The Tax Code allows the refund of erroneously paid or collected taxes and penalties to a taxpayer who claims it in writing within two years after payment of the taxes to the BIR.[44] The two-year prescriptive period is reckoned from the filing of the final adjusted return (FAR).[45]

[44] Philam Asset Management, Inc. vs. Commissioner of Internal Revenue, G.R. Nos. 156637/162004, December 14, 2005.
[45] Commissioner of Internal Revenue vs. Primetown Property, G.R. No. 162155, August 28, 2007.

In the instant case, petitioner filed its Annual Income Tax Return for taxable year 2006 on April 15, 2007.[46] On April 8, 2009, it filed with the BIR a letter dated March 19, 2009,[47] representing petitioner's administrative claim for refund of the excess and unutilized creditable withholding tax in 2006 in the amount of P4,327,568.00.[48] On the other hand, the instant Petition for Review was filed on April 14, 2009. Patently, both the administrative claim and the judicial claim through the instant Petition were instituted within the two-year prescriptive period from the filing of the FAR in compliance with the law.

On the merits of the Petition, per petitioner's Income Tax Return[49] for taxable year 2006, it had a total tax credit of P7,666,732.00, consisting of its prior year's excess credits in the amount of P4,421,173.00 and creditable taxes withheld during the year 2006 in the amount of P4,327,568.00. Petitioner's income tax due for 2006 in the amount of P1,082,009.00 was paid using a portion of its P4,421,173.00 prior year's excess credits, leaving a balance of P3,339,164.00 and creditable taxes withheld during the year 2006 in the amount of P4,327,568.00,

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[46] Joint Stipulation of Facts, JSFI, docket page 102.
[47] Exhibit "B".
[48] Par. 3, Joint Stipulation of Facts, JSFI, docket p. 102.
[49] Exhibit "E^6".

or a total of P7,666,732.00, unutilized as of December 31, 2006, as shown below:

Income Tax Due			P1,082,009.00
Less	Prior Year's Excess Credits		4,421,173.00
Balance of Prior Year's Excess Credits			P3,339,164.00
Add:	Creditable Taxes Withheld – 2006		
	Creditable Taxes Withheld for the First Three Quarters	P1,463,074.00	
	Creditable Taxes Withheld per BIR Form No. 2307 for the Fourth Quarter	2,864,494.00	4,327,568.00
Excess Creditable Taxes Withheld as of December 31, 2006			P7,666,732.00

As earlier stated, petitioner opted to be issued a tax credit certificate for its tax credits for taxable year 2006.[50] In its 2007 Income Tax Return, petitioner reflected the amount of P3,339,164.00[51] as its prior year's excess credit instead of the total excess credits of P7,666,732.00.

However, under Section 2.58.3 of Revenue Regulations (RR) No. 2-98, claims for refund of income taxes deducted and withheld from income payments shall be given due course only:

> (1) when the fact of withholding is established by a copy of the withholding tax

[50] Exhibit "E^6-8".
[51] Exhibit "C-1".

> statement, duly issued by the payor to the payee, showing the amount paid and the income tax withheld from that amount; and
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> (2) when it is shown on the ITR that the income payment received is being declared part of the taxpayer's gross income.[52]

In compliance with the first requisite, petitioner presented various Certificates of Creditable Tax Withheld at Source[53] duly issued in its favor by its clients/affiliates for taxable year 2006, and the summary of petitioner's schedule of tax credits for the year 2006 showing its total creditable taxes withheld amounting to P4,327,192.49. However, only the amount of P3,853,147.41[54] was duly substantiated by Certificates of Creditable Tax Withheld at Source. Thus, only the amount of P3,853,147.41 has complied with the first requisite.

As to the second requisite, perusal of the withholding tax certificates revealed that the remaining substantiated creditable withholding taxes of P3,853,147.41 were withheld on gross income payments of P41,379,378.31,[55] which is lower than petitioner's gross income reflected in its 2006 Annual Income Tax

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[52] Philam Asset Management vs. Commissioner of Internal Revenue, G.R. Nos. 156637/162004, December 14, 2005.
[53] Exhibits "H" to "D^6", "H^6" to "V^6", and "V^7" to "Z^7".
[54] Annex "A" of this Decision.
[55] Annex "A" of this Decision.

Return[56] and Audited Statement of Operations[57] amounting to P44,216,619.00.[58]

In view of the foregoing, the Court agrees with petitioner that it has complied with the requisites laid down by the Supreme Court in refund of creditable withholding taxes cases, to wit: (1) that it has shown on the return of the recipient that the income payment received was declared as part of gross income, (2) the fact of withholding is established by a copy of the statement duly issued by the withholding agent to the payee and (3) that the taxpayer filed its claim for refund within the two-year period prescribed under Section 229 of the Tax Code (Citibank N.A. vs. Court of Appeals and Commissioner of Internal Revenue, 280 SCRA 459).

WHEREFORE, the instant Petition for Review is hereby **PARTIALLY GRANTED.** Accordingly, respondent Commissioner of Internal Revenue is hereby **ORDERED** to **REFUND** or **ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner WINEBRENNER & IÑIGO INSURANCE BROKERS, INC., in the

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[56] Exhibit "E6".
[57] Exhibit "F6".
[58] Exhibit "E6-1" and "F6-2".

reduced amount of P3,853,147.41 representing its excess/unutilized creditable withholding taxes for the year 2006.

SO ORDERED.

ESPERANZA R. FABON-VICTORINO
Associate Justice

We concur:

ERNESTO D. ACOSTA
Presiding Justice

ERLINDA P. UY
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, 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's Division.

ERNESTO D. ACOSTA
Presiding Justice