Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

En Banc

COMMISSIONER OF INTERNAL REVENUE, Petitioner,	**CTA EB No. 1310** (CTA Case No. 8431)
	Present:
- versus -	**DEL ROSARIO,** *PJ,* **CASTAÑEDA, JR., BAUTISTA, UY, CASANOVA, FABON-VICTORINO, MINDARO-GRULLA, COTANGCO-MANALASTAS,** *and* **RINGPIS-LIBAN,** *JJ.*
	Promulgated:
STAEDTLER (PHILIPPINES), INC., Respondent.	JAN 2 8 2016 10:45 a.m.

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DECISION

CASANOVA, *J.*:

This is an appeal, by way of a Petition for Review[1], filed by petitioner Commissioner of Internal Revenue on May 22, 2015 assailing the Decision[2] dated January 20, 2015 and Resolution[3] dated May 4, 2015 of the Court of Tax Appeal's (CTA) First Division in CTA Case No. 8431, which cancelled and withdrew her value-added tax assessment and modified her deficiency income tax and expanded withholding tax assessment for taxable year 2007 against respondent Staedtler (Philippines), Inc.

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[1] CTA *En Banc* Rollo, pp. 1-10
[2] Division Docket (Vol. III), pp. 1930-1987
[3] *Ibid.*, pp. 2008-2014

Petitioner is the Commissioner of Internal Revenue (CIR), the government agency officially responsible for the assessment and collection of all national internal revenue taxes, fees and charges and the enforcement of all forfeitures, penalties and fines connected with such taxes. She holds office at the 4th Floor, BIR National Office Building, Agham Road, Diliman, Quezon City.

Respondent Staedtler (Philippines), Inc. is a corporation duly organized and existing under the laws of the Republic of the Philippines, with office address at the 2nd Floor, 15 Gilmore Avenue, New Manila, Quezon City. It is engaged in the wholesale and importation of Staedtler products in the Philippines.[4] Petitioner is a registered taxpayer, with Certificate of Registration No. OCN3RC0000277506[5].

On August 26, 2008, respondent received a Letter of Authority No. LOA200700039798[6] for the examination of its books of accounts and other accounting records for all internal revenue taxes for the period from January 1, 2007 to December 31, 2007.

On October 21, 2010, respondent received a Preliminary Assessment Notice[7] (PAN) dated October 8, 2010 assessing it for deficiency income tax, value-added tax (VAT) and expanded withholding tax (EWT). In response, respondent filed a Letter of Protest[8] against the said PAN on October 29, 2010.

Subsequently, on November 19, 2010, respondent received a Formal Letter of Demand with Details of Discrepancies and Assessment Notices No. 040-B105-07[9] (FLD-DDAN) all dated November 4, 2010, broken down as follows:

I. Deficiency Income Tax

Taxable Income per Income Tax Return (ITR)	₱ 2,644,993.58
Add: Adjustments per Investigation:	

[4] Paragraph 2, Summary of Admitted Facts, Joint Stipulation of Facts and Issues (JSFI), Division Docket (Vol. I), p. 134
[5] Exhibit "B-51"
[6] Exhibit "1-a", BIR Records, p.1
[7] Exhibit "J"; Exhibits "1-e" and "1-e-1", BIR Records, pp. 206-209
[8] Exhibits "K", "K-1-1" and "K-1-2"
[9] Exhibits "L", "L-1-2", "L-1", "L-2", "L-3", "L-4" and "L-4-a"; Exhibits "1-f", "1-f-2", "1-f-3" and "1-f-4", BIR Records, pp. 211-217

Income Payments not subjected to withholding tax	₱ 569,706.72	
Unaccounted source of cash	977,097.22	1,546,803.94
Taxable Income per Investigation		₱ 4,191,797.52
Income tax due thereon (35%)		₱ 1,467,129.13
Less: Allowable tax credits payments		
Payments	₱ 556,727.06	
Claimed creditable tax withheld	369,020.94	925,748.00
Deficiency Income Tax		₱ 541,381.13
Add: 20% Interest p.a. (04.16.08 to 12.04.10)		285,671.25
TOTAL AMOUNT DUE		**₱ 827,052.38**

II. Deficiency Value Added Tax

Taxable sales/receipts per value-added tax (VAT) returns		₱38,447,067.43
Add: Adjustments per Investigation:		
Unaccounted source of cash		977,097.22
Taxable sales/receipts per investigation		₱39,424,164.65
Output tax Due thereon (12%)		₱ 4,730,899.76
Less: Allowable tax credits/payments		
Current Input Tax	₱ 4,261,115.70	
Payments	651,635.01	
Input tax credit carried over from previous period	911,214.41	
Total	₱ 5,823,965.12	
Less : Excess input tax carried over to next accounting period	1,210,317.03	4,613,648.09
Deficiency value-added tax		₱ 117,251.67
Add: 20% Interest p.a. (01.26.08 to 12.04.10)		67,074.38
TOTAL AMOUNT DUE		**₱ 184,326.05**

III. Deficiency Expanded Withholding Tax

	Amount	**EWT Rate**	**EWT Due**
Income Payments to Sub/contractors	₱ 494,566.56	2%	₱ 9,891.33
Brokerage fee	64,140.16	10%	6,414.02
Legal and professional fee	11,000.00	15%	1,650.00
Deficiency Expanded Withholding Tax			₱ 17,955.35
Add: 20% Interest p.a. (01.16.08 to 12.04.10)			10,369.83
TOTAL AMOUNT DUE			**₱ 28,325.18**

Accordingly, on November 22, 2010, respondent filed its Protest Letter[10] dated November 19, 2010 to the FLD-DDAN.

On July 11, 2011, respondent received a Notice of Informal Conference[11] dated June 29, 2011 requesting respondent to appear for an informal conference at the BIR on July 14, 2011. After which, respondent submitted a Transmittal Letter[12] on July 18, 2011, which was received by Revenue Officer Rosanna Baduria, forwarding therewith the documents requested during the said informal conference.

On January 26, 2012, respondent received a Final Decision[13] dated January 19, 2012, denying its Protest Letter. Thus, on February 23, 2012, respondent filed a judicial appeal with the CTA *via* a Petition for Review[14].

Thereafter, trial ensued.

On January 20, 2015, the CTA First Division promulgated the Decision[15] being assailed in this wise:

> "**WHEREFORE**, premises considered, the assessment issued by respondent against petitioner for the taxable year 2007, covering deficiency VAT in the amount of ₱117,251.67 is **CANCELLED** and **WITHDRAWN**. However, the assessments for deficiency income tax and EWT are **UPHELD WITH MODIFICATIONS**. Accordingly, petitioner [*respondent herein*] is **ORDERED TO PAY** the amount of ₱60,501.01 and ₱8,681.04, representing deficiency income tax and EWT, respectively, inclusive of the twenty-five percent (25%) surcharge imposed under Section 248 (A)(3) of the NIRC of 1997, as amended, computed as follows:

TAX TYPE	BASIC	25% SURCHARGE	TOTAL
Income Tax	₱ 48,400.81	₱ 12,100.20	₱ 60,501.01

[10] Exhibits "M", "M-1" and "M-1-2"
[11] Exhibits "N" and "N-1"
[12] Exhibits "O" and "O-1-1"
[13] Exhibits "P" and "P-1"; Exhibit "I-j", BIR Records, p. 321
[14] Division Docket (Vol. I), pp. 6-24
[15] *Supra* No. 2

EWT	6,944.83	1,736.21	8,681.04
TOTAL	**₱55,345.64**	**₱13,836.41**	**₱69,182.05**

In addition, petitioner is **ORDERED TO PAY** the following:

a. Deficiency interest at the rate of twenty percent (20%) per annum on the basic deficiency income tax of ₱48,400.81 and EWT of ₱6,944.83, computed from April 15, 2008 and January 15, 2008, respectively, until full payment thereof pursuant to Section 249(B) of the NIRC of 1997, as amended;

b. Delinquency interest at the rate of 20% per annum on the total deficiency taxes of ₱69,182.05, computed from December 4, 2010 until full payment thereof pursuant to Section 249 (C)(3) of the NIRC of 1997, as amended; and

c. Delinquency interest at the rate of 20% per annum on the 20% deficiency interest which have accrued as aforementioned in "a", computed from December 4, 2010 until full payment thereof pursuant to Section 249 (C)(3) of the NIRC of 1997, as amended.

SO ORDERED."

On February 5, 2015, petitioner filed a Motion for Reconsideration[16], praying that the above Decision be set aside and that the deficiency VAT and EWT assessment for taxable year 2007 be upheld.

On May 4, 2015, the Court *a quo* promulgated the assailed Resolution[17], denying petitioner's Motion for Reconsideration for lack of merit.

Aggrieved, petitioner elevated the matter to the Court *En Banc* on May 22, 2015 *via* the instant Petition for Review. She prays that the Court *En Banc* render judgment reversing the Decision and Resolution

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[16] Division Docket (Vol. III), pp. 1988-1993
[17] *Supra* No. 3

dated January 20, 2015 and May 4, 2015, respectively, rendered by the CTA First Division.

In the Resolution[18] dated July 1, 2015, the Court *En Banc* directed respondent to file its Comment within ten (10) days from receipt thereof. In compliance, respondent filed its Comment with Motion (to the Petition for Review dated 21 May 2015)[19] on July 16, 2015, praying that the Petition for Review be dismissed for utter lack of merit, and that the Decision dated January 20, 2015 and Resolution dated May 4, 2015 be declared final and executory in so far as the decision of the CTA First Division to modify the deficiency income tax and expanded withholding tax is concerned. Respondent, further, moves that petitioner be ordered to forthwith compute the amount payable under the Decision and issue a Payment Order to respondent.

On August 12, 2015, the Court *En Banc* issued a Resolution[20] which gave due course to the instant Petition and granted the parties a period of thirty (30) days within which to file their respective memorandum.

Thus, on September 17, 2015, both parties filed their respective Memorandum[21]. Accordingly, in the October 8, 2015 Resolution[22], the Court *En Banc* deemed the case submitted for decision.

In her Petition for Review, petitioner raised the sole issue[23] of *whether the CTA First Division erred in deciding that the VAT Assessments of respondent had already prescribed.*

Petitioner contends that the deficiency VAT assessments for taxable year 2007 has not yet prescribed because the prescriptive period to issue an assessment is suspended by the grant of the request for reinvestigation pursuant to Section 223 of the National Internal Revenue Code (NIRC) of 1997, as amended. Hence, petitioner continues that when she granted respondent's request for reinvestigation, it tolled the running of the period of the statute of limitations.

[18] CTA *En Banc* Rollo, pp. 80-81
[19] *Ibid.*, pp. 82-85
[20] *Id.,* pp. 91-92
[21] Petitioner's Memorandum, CTA *En Banc* Rollo, pp. 93-102; Respondent's Memorandum, CTA *En Banc* Rollo, pp. 103-114
[22] CTA *En Banc* Rollo, pp. 116-117
[23] Ground, Petition for Review, *Ibid.*, p. 5

On the other hand, respondent argues that petitioner failed to refute the court's finding that there was neither a request for reinvestigation nor a reinvestigation proper that was conducted by petitioner. Hence, petitioner's deficiency VAT assessment had already prescribed. Respondent further claims that since petitioner raises only a single assignment of error, that is, with regard to the VAT assessment, then the portion of the Decision dated January 20, 2015 pertaining to the deficiency income tax and EWT should be considered final and executory.

After due consideration of the arguments and thorough evaluation of the records of this case, the Court *En Banc* finds no merit in the instant Petition.

The general rule is that internal revenue taxes shall be assessed within three (3) years after the last day prescribed by law for the filing of the return or the actual date of filing of said return, whichever comes later.[24] This mandate governs the question of prescription of the government's right to assess internal revenue taxes primarily to safeguard the interests of taxpayers from unreasonable investigation.[25] Corollary thereto, Section 114 (A)[26] of the NIRC of 1997, as amended, provides that every person liable to pay the value-added tax shall file a quarterly return of the amount of his gross sales or receipts within twenty-five (25) days following the close of each taxable quarter prescribed for each taxpayer.

To recapitulate, respondent filed its Quarterly VAT Returns for taxable year 2007 on April 24, 2007[27] for the first quarter, July 25, 2007[28] for the second quarter, October 24, 2007[29] for the third quarter, and January 25, 2008[30] for the fourth quarter. Thus, petitioner had only until April 25, 2010, July 25, 2010, October 25, 2010 and January 25,

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[24] Section 203 of the NIRC of 1997, as amended

[25] Commissioner of Internal Revenue vs. FMF Development Corporation, G.R. No. 167765, June 30, 2008

[26] "**SEC. 114.** *Return and Payment of Value-Added Tax.* -

(A) In General. - Every person liable to pay the value-added tax imposed under this Title shall file a quarterly return of the amount of his gross sales or receipts within twenty-five (25) days following the close of each taxable quarter prescribed for each taxpayer: Provided, however, That VAT-registered persons shall pay the value-added tax on a monthly basis."

[27] Exhibits "B-3" and "B-3-1"

[28] Exhibits "B-6" and "B-6-1"

[29] Exhibits "B-9" and "B-9-1"

[30] Exhibits "B-12" and "B-12-a"

2011 within which to assess respondent. A table below is provided for ease of reference:

VAT	Last Day to File Return	Actual Date of Filing	Last Day to Assess
First Quarter	April 25, 2007	April 24, 2007	April 25, 2010
Second Quarter	July 25, 2007	July 25, 2007	July 25, 2010
Third Quarter	October 25, 2007	October 24, 2007	October 25, 2010
Fourth Quarter	January 25, 2008	January 25, 2008	January 25, 2011

However, petitioner issued her FLD-DDAN No. 040-B105-07[31] only on November 4, 2010. Therefore, based from the foregoing, and as correctly held by the Court *a quo*, the right of petitioner to assess respondent for deficiency VAT with respect to the first, second and third quarters of taxable year 2007 had already prescribed.

Going back to the present petition, petitioner now claims that the running of the Statute of Limitations on respondent's VAT assessment was suspended by virtue of its request for reinvestigation *via* its administrative protest. Petitioner seeks sanction from Section 223 of the NIRC of 1997, as amended, wherein the law recognizes the instances when the running of the Statute of Limitations shall be deemed suspended. Said section provides that:

> "**SEC. 223.** *Suspension of Running of Statute of Limitations.* - The running of the Statute of Limitations provided in Sections 203 and 222 on the making of assessment and the beginning of distraint or levy or a proceeding in court for collection, in respect of any deficiency, shall be suspended for the period during which the Commissioner is prohibited from making the assessment or beginning distraint or levy or a proceeding in court and for sixty (60) days thereafter; **when the taxpayer requests for a reinvestigation which is granted by the Commissioner**; when the taxpayer cannot be located in the address given by him in the return filed upon which a tax is being assessed or collected: Provided, That, if the taxpayer informs the Commissioner of any change in address, the running of the Statute of Limitations will not be suspended; when the warrant of distraint or levy is duly served upon

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[31] *Supra* No. 9

> the taxpayer, his authorized representative, or a member of his household with sufficient discretion, and no property could be located; and when the taxpayer is out of the Philippines." *(Emphasis Ours)*

Clearly, under Section 223 of the NIRC of 1997, as amended, it is only *when the taxpayer requests for a reinvestigation which is granted by the Commissioner* that the running of the statute is suspended. In connection with this, Section 228[32] of the NIRC of 1997, as amended, provides two (2) kinds of protest, *viz*, a request for reconsideration and a request for reinvestigation. The two are defined under Section 6 of Revenue Regulations (RR) No. 12-85[33] and Section 2 of RR No. 18-2013[34] as follows:

> *Request for reconsideration.* — refers to a plea of re-evaluation of an assessment **on the basis of existing records without need of additional evidence**. It may involve both a question of fact or of law or both.
>
> *Request for reinvestigation.* — refers to a plea of re-evaluation of an assessment **on the basis of newly-discovered or additional evidence that a taxpayer intends to present** in the reinvestigation. It may also involve a question of fact or law or both." *(Emphases Ours)*

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[32] "**SEC. 228.** *Protesting of Assessment.* - *x x x*

xxx xxx xxx

Within a period to be prescribed by implementing rules and regulations, the taxpayer shall be required to respond to said notice. If the taxpayer fails to respond, the Commissioner or his duly authorized representative shall issue an assessment based on his findings.

Such assessment may be protested administratively by filing a request for reconsideration or reinvestigation within thirty (30) days from receipt of the assessment in such form and manner as may be prescribed by implementing rules and regulations. Within sixty (60) days from filing of the protest, all relevant supporting documents shall have been submitted; otherwise, the assessment shall become final.

xxx xxx xxx" (Emphasis Ours)

[33] PROCEDURE COVERING ADMINISTRATIVE PROTESTS ON ASSESSMENTS OF THE BUREAU OF INTERNAL REVENUE, dated November 27, 1985

[34] AMENDING CERTAIN SECTIONS OF REVENUE REGULATIONS NO. 12-99 RELATIVE TO THE DUE PROCESS REQUIREMENT IN THE ISSUANCE OF A DEFICIENCY TAX ASSESSMENT, dated November 28, 2013

In the instant case, perusal of respondent's Letter of Protest[35] dated October 29, 2010 against petitioner's PAN, and its subsequent Protest Letter[36] dated November 19, 2010 against petitioner's FLD-DDAN, reveal that neither of them contains a request for reinvestigation or even have the tenor of requesting reinvestigation. A portion of both protest are reproduced below, *to wit*:

Letter of Protest dated October 29, 2010

> "Hon. Kim S. Jacinto-Henares
> Commissioner of Internal Revenue
> BUREAU OF INTERNAL REVENUE
> Revenue Region No. 7, Q.C.
> Assessment Division
>
> Thru: Mr. Jonas DP Amora
> Asst. Regional Director
>
> Dear Sir:
>
> We are in receipt of your preliminary assessment notice dated October 8, 2010 allegedly for deficiency income tax, value-added tax and expanded withholding tax for the calendar year ending December 31, 2007. We respectfully disagree with your findings as stated in your letter. We state herein our explanation:
>
> *x x x*
>
> We hope the above explanations will finalize the records for the business year 2007.
>
> Thank you for your kind attention."

Protest Letter dated November 19, 2010

> "Hon. Kim S. Jacinto-Henares
> Commissioner of Internal Revenue
> BUREAU OF INTERNAL REVENUE
> Revenue Region No. 7, Q.C.
> Assessment Division

[35] *Supra* No. 8
[36] *Supra* No. 10

Thru: Mr. Jonas DP Amora
Asst. Regional Director

Dear Sir:

We are in receipt today of your Formal Letter of Demand with No. 040-B105-07 dated November 4, 2010 allegedly for deficiency taxes for calendar year ending December 31, 2007.

Please be informed that on October 21, 2010, we have received a preliminary assessment notice dated October 8, 2010 on the same subject matter and we have sent our letter reply dated October 29, 2010 duly received by Ms. Nelia A. delos Reyes, Billing Section on October 29, 2010. A photocopy of said letter is attached for your reference. We are surprised to receive a formal letter of demand.

Thank you for your kind attention."

Even a simple reading of the above protests would reveal that the same did not offer to present any newly-discovered or additional evidence to bolster its claim, as required in requests for reinvestigation. While it is true that there were attachments in respondent's protests, they cannot be considered as newly discovered since they were already existing records at that time. They were merely reiterated in respondent's protest so as to explain why it should not be held liable for deficiency income tax, VAT and EWT. As such, it can be surmised that the protests filed by respondent were requests for reconsideration, and not a reinvestigation, of the assessment issued against it.

Nonetheless, assuming *arguendo*, that the protests filed by respondent were requests for reinvestigation, there was still no showing that they were granted by petitioner and that actual reinvestigation had been conducted by her or her agents. As mentioned earlier, the plain and unambiguous wording of Section 223 of the NIRC of 1997, as amended, dictates that two requisites must concur before the period to enforce collection may be suspended: (a) that the taxpayer requests for reinvestigation, and (b) that petitioner grants such request.[37] The logic behind it is that a reinvestigation, which entails the reception and evaluation of additional evidence, will take more time than a reconsideration of a tax assessment, which will be limited only to

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[37] *See* Commissioner of Internal Revenue vs. Hambrecht & Quist Philippines, Inc., G.R. No. 169225, November 17, 2010

the evidence at hand.[38] Accordingly, both requisites must be present, for lack of one will not suspend the running of the statute of limitations.

In the case of ***Commissioner of Internal Revenue vs. Bravo Alabang, Inc.***[39], it was held that the request for reinvestigation must be granted by the Commissioner in order to suspend the running of the prescriptive periods for assessment and collection, *viz*:

> "A mere request for 'reinvestigation' without the corresponding action on the part of the Commissioner does not interrupt the running of the prescriptive period. **The request should first be granted in order to effect suspension.**
>
> In the case of *Republic of the Philippines vs. Felix B. Acebedo*, the High Court likewise stressed that the running of the statute of limitations shall not be suspended or interrupted unless the taxpayer's request for reinvestigation is acted upon by the Commissioner.
>
> In the case of *Bank of the Philippine Islands vs. Commissioner of Internal Revenue*, the High Court declared that **the burden of proof that the request for reinvestigation had been actually granted shall be on the respondent**. Such grant may be expressed in the communications with the taxpayer or implied from the action of the BIR Commissioner or her authorized representative in response to the request for reinvestigation.
>
> In this case, there is nothing in the evidence presented which would show that by the acts of petitioner, respondent was convinced to postpone the collection of the tax due to reinvestigation or that petitioner was made aware of the action taken on its request. In fact, what only appears from the evidence admitted before the Court is that the protest filed by petitioner is a mere request for reconsideration of the Formal Assessment Notice and that respondent issued the Final Decision on Disputed Assessment only on

[38] Commissioner of Internal Revenue vs. Bank of the Philippine Islands, CTA EB No. 404 (CTA Case No. 7397), March 11, 2009
[39] CTA En Banc No. 997 (CTA Case No. 8199), September 30, 2014

> November 3, 2010, which was received by petitioner on November 11, 2010. Accordingly, the running of the prescriptive period for collection was never interrupted or suspended." *(Emphases Ours and Citations Omitted)*

Likewise, in the more recent case of *Bank of the Philippine Islands vs. Commissioner of Internal Revenue*[40], it has been held by the Supreme Court that a request for reinvestigation shall only toll the running of the prescriptive period to assess and collect taxes if the same is granted by the Commissioner of Internal Revenue.

Furthermore, notwithstanding the fact that petitioner's right to assess respondent for deficiency VAT with respect to the first, second and third quarters of taxable year 2007 has already prescribed, the Court *a quo*, likewise, found that petitioner's deficiency VAT assessment lacks sufficient basis, which, therefore, should be cancelled in its entirety. As held in the Decision assailed:

> "As previously discussed, respondent's findings for deficiency income tax from the alleged unaccounted source of cash is bereft of merit. Accordingly, the corresponding assessment for the deficiency VAT on the same is also without basis.
>
> *xxx xxx xxx*
>
> In the Formal Letter of Demand, respondent also disallowed from the total tax credit of ₱2,512,255.96 the amount of ₱1,210,317.03, representing excess input tax credits carried over to the next accounting period, presumably to recapture the tax benefit realized by petitioner in carrying the said amount to the succeeding year. Apparently, the disallowances is improper inasmuch as any tax benefit derived therefrom redounds to the succeeding year 2008, which is not the period covered by the present assessment. Since the tax benefit will be in the succeeding year, at most, petitioner may only be assessed in the said succeeding year.
>
> In fine, petitioner has no deficiency VAT liability for the year 2007 since it has sufficient input tax credits to

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[40] G.R. No.181836, July 9, 2014

cover its output VAT liability for the same year, as shown below:

Deficiency Value Added Tax		
Taxable Sales/Receipts per VAT returns		₱38,447,067.43
Output tax Due thereon		₱ 4,613,648.09
Less: Allowable Tax Credits/Payments		
Current Input Tax	₱ 4,261,115.70	
Less: Overclaimed Input Tax	14,486.17	
Adjusted Current Input Tax	4,246,629.53	
Payments	651,635.01	
Input tax credit carried over from previous period	911,214.41	5,809,478.95
Basic Deficiency Value-added Tax		**(₱1,195,830.86)**

Therefore, respondent's deficiency VAT assessment for the year 2007 should be cancelled."[41]

Lastly, as to respondent's Motion that petitioner be ordered to forthwith compute the amount payable under the Decision and issue a Payment Order to respondent, the same must likewise be denied for lack of merit considering that the present case has not yet attained finality.

Accordingly, finding no reversible error, the Court *En Banc* finds no cogent reason or justification to disturb the conclusions reached by the CTA First Division.

WHEREFORE, the instant Petition for Review is hereby **DENIED** for lack of merit. The Decision dated January 20, 2015 and Resolution dated May 4, 2015 of the CTA First Division in CTA Case No. 8431 are both **AFFIRMED.**

SO ORDERED.

CAESAR A. CASANOVA
Associate Justice

[41] Pages 54-55 of Decision, Division Docket (Vol. III), pp. 1983-1984

WE CONCUR:

(I join Justice Uy's Concurring and Dissenting Opinion)
with separate concurring & dissenting opinion
ROMAN G. DEL ROSARIO
Presiding Justice

(With Separate Concurring Opinion)
JUANITO C. CASTAÑEDA, JR.
Associate Justice

LOVELL R. BAUTISTA
Associate Justice

(With Concurring and Dissenting Opinion)
ERLINDA P. UY
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

CIELITO N. MINDARO-GRULLA
Associate Justice

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
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 with the members of the Court *en banc* before the case was assigned to the writer of the opinion of the Court.

ROMAN G. DEL ROSARIO
Presiding Justice

REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE, Petitioner,	**CTA EB NO. 1310** (CTA Case No. 8431)
	Present:
- versus -	Del Rosario, P.J., Castañeda, Jr., Bautista, Uy, Casanova, Fabon-Victorino, Mindaro-Grulla, Cotangco-Manalastas, *and* Ringpis-Liban, JJ.
STAEDTLER (PHILIPPINES), INC., Respondent.	Promulgated: JAN 28 2016 10:45 a.m.

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CONCURRING AND DISSENTING OPINION

DEL ROSARIO, PJ:

I concur with the *ponencia* in denying the Petition for Review for lack of merit.

Nonetheless, upon review of the case records, it appears that 20% deficiency interest was imposed on the assessed expanded withholding tax, which was affirmed by the Court *En Banc*. Although this particular issue was not raised, I deemed it appropriate to address the same if only to provide a just determination of the controversy.

In this regard, I quote below the position I have taken in *Avon Products Manufacturing, Inc. vs. Commissioner of Internal Revenue*[1] on the imposition of deficiency interest:

> "xxx I am not unaware of *Paper Industries Corporation of the Philippines vs. Court of Appeals, Commissioner of Internal Revenue, and Court of Tax Appeals (PICOP)*,[2] which somehow made mention of deficiency interest under the NIRC of 1977. I must stress, however, that *PICOP* cannot be relied upon to justify the imposition of deficiency interest on petitioner's excise tax liability. *PICOP* did not state nor resolve the issue whether or not the deficiency interest provided for in Section 249 (B) of the NIRC of 1997, as amended, may be imposed on tax other than donor's, estate, and income taxes. Thus, not having been resolved therein, *PICOP* cannot be considered as a doctrine on the matter. The case of *Office of the Ombudsman vs. Honorable Court of Appeals and Former Deputy Ombudsman for the Visayas Arturo C. Mojica*,[3] is instructive:
>
>> "The legal maxim "*stare decisis et non quieta movere*" (follow past precedents and do not disturb what has been settled) states that where the same questions relating to the same event have been put forward by parties similarly situated as in a previous case litigated and decided by a competent court, the rule of *stare decisis* is a bar to any attempt relitigate the same issues.
>>
>> xxx xxx xxx
>>
>> **Thus, where the issue involved was not raised nor presented to the court and not passed upon by the court in the previous case, the decision in the previous case is not *stare decisis* of the question presented."** (Emphasis supplied)
>
> If *PICOP* has any relevance to the present controversy, it is the doctrinal precedent that **deficiency interest may be imposed only on tax specifically covered by the relevant provision of the NIRC of 1977**. Thus, the Court in *PICOP*, while recognizing that transaction tax is in the nature of income tax and that deficiency interest is imposable on income tax, nonetheless declined to impose such deficiency interest on transaction tax after noting the significant provisions of the NIRC of 1977: *first*, it is Section 51 (c)(1), (e)(1), and (3) which impose deficiency interest; *second*, Section 51 (c) (1) confines such deficiency interest on taxes covered by TITLE II; and, *third*, that transaction tax does not fall within TITLE II. Thus:

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[1] CTA EB No. 1062, January 15, 2016.
[2] G.R. Nos. 106949-50, December 1, 1995.
[3] G.R. No. 146486, March 4, 2005.

> **"It will be seen that Section 51 (c) (1) and (e) (1) and (3), of the 1977 Tax Code, authorize the imposition of surcharge and interest only in respect of a *"tax imposed by this Title,"* that is to say, Title II on "Income Tax."** It will also be seen that Section 72 of the 1977 Tax Code imposes a surcharge only in case of failure to file a return or list *"required by this Title,"* that is, *Title II on "Income Tax."* **The thirty-five percent (35%) transaction tax is, however, imposed in the 1977 Tax Code by *Section 210 (b) thereof which Section is embraced in Title V on"Taxes on Business"* of that Code.** Thus, while the thirty-five percent (35%) transaction tax is in truth *a tax imposed on* interest *income* earned by lenders or creditors purchasing commercial paper on the money market, the relevant provisions, *i.e.,* Section 210 (b), were *not* inserted in Title II of the 1977 Tax Code. The end result is that the thirty-five percent (35%) transaction tax is *not* one of the taxes in respect of which Section 51 (e) authorized the imposition of surcharge and interest and Section 72 the imposition of a fraud surcharge." (Emphases supplied)

True, the Supreme Court in *PICOP* declared that the present provision of the NIRC mentions that **additions** on tax applies to all taxes. While such pronouncement may not be construed beyond the context in which it was made, *PICOP* simply confirmed that *in general*, certain penalties and charges are applicable to all types of tax or deficiency tax; PICOP, however, did not categorically construe the provision of Section 249 (B) that deals with "deficiency interest" on the type of tax "as defined in [the] Code". Note that the present NIRC is explicit with respect to the type of tax on which deficiency interest may be imposed, viz:

> 'Section 249.Interest-
>
> (B) Deficiency Interest. – Any deficiency in the tax due, **as the term is defined in this Code**, shall be subject to the interest prescribed in Subsection (A) hereof, which interest shall be assessed and collected from the date prescribed for its payment until the full payment thereof.' (Emphasis supplied)

Section 249 (B) cannot be any clearer: the deficiency interest must refer only to 'deficiency in the tax due, <u>as the term is defined in [the] Code</u>.'

Verily, as the law stands, only donor's, estate, and income taxes carry a provision on deficiency tax; they are the types of taxes on which such deficiency interest may be imposed.

> Finally, Sections 247 (a) and 249 (A) are **general provisions** that impose "additions" to the tax and "interest" thereon. Both sections may not be read in isolation from the relevant and **specific provision** of Section 249 (B) with respect to the imposition of "deficiency" interest, more so as all these provisions fall within the same Chapter I of Title X of the NIRC of 1997, as amended."

Otherwise stated, Sections 247 (a) and 249 (A) must reasonably be read and construed subject to the provision of Section 249 (B) - - all these provisions being covered by the same Chapter I of Title X of the NIRC of 1997, as amended.

In sum, deficiency interest may be imposed only on tax specifically covered by the relevant provisions of the NIRC, *i.e., income tax, donor's tax and estate tax*; conversely, deficiency interest may not properly be imposed on the expanded withholding tax assessed against respondent.

All told, I vote to deny the Petition for Review for lack of merit and to affirm the judgment of the Court in Division with modification relating to the imposition of 20% deficiency interest on the assessed expanded withholding tax, which should appropriately be cancelled and set aside.

ROMAN G. DEL ROSARIO
Presiding Justice

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE, Petitioner,	**CTA EB NO. 1310** (CTA CASE NO. 8431)
	Present:
-versus-	Del Rosario, *P.J.*, Castañeda, Jr., Bautista, Uy, Casanova, Fabon-Victorino, Mindaro-Grulla, Cotangco-Manalastas, and Ringpis-Liban, *JJ.*
STAEDTLER PHILIPPINES, INC, Respondent.	**Promulgated:**
	JAN 2 8 2016 10:45 a.m.

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SEPARATE CONCURRING OPINION

CASTAÑEDA, JR., ***J.*****:**

I concur with the decision of J. Casanova which denied the Petition for Review and affirmed the January 20, 2015 Decision and the May 4, 2015 Resolution of the Court in Division.

Concerning the computation of deficiency and delinquency interests, the dispositive portion of the January 20, 2015 Decision states:

> "In addition, petitioner is **ORDERED TO PAY** the following:
>
> a. Deficiency interest at the rate of twenty percent (20%) per annum on the basic deficiency income tax of P48,400.81 and EWT of P6,944.83, computed from April 15, 2008 and

January 15, 2008, respectively, until full payment thereof pursuant to Section 249 (B) of the NIRC of 1997, as amended;

b. Delinquency interest at the rate of 20% per annum on the total deficiency taxes of P69,182.05, computed from December 4, 2010 until full payment thereof pursuant to Section 249 (C) (3) of the NIRC of 1997, as amended; and

c. Delinquency interest at the rate of 20% per annum on the 20% deficiency interest which have accrued as afore-mentioned in 'a', computed from December 4, 2010 until full payment thereof pursuant to Section 249 (C) (3) of the NIRC of 1997, as amended.

SO ORDERED."

In connection with the above judgment, it bears reiterating that:

1. Section 247(a) in relation to Section 249(B) of the 1997 NIRC sanctions the imposition of deficiency interest on all deficiency taxes; and,

2. Section 249(B) and (C) of the 1997 NIRC authorizes the simultaneous imposition of deficiency interest and delinquency interest.

Section 247(a) in relation to Section 249(B) of the 1997 NIRC authorizes the imposition of deficiency interest on all taxes under the NIRC.

The law is clear. There is no room left for interpretation.

Section 247(a) of the 1997 NIRC provides:

"TITLE X
STATUTORY OFFENSES AND PENALTIES

CHAPTER I
ADDITIONS TO THE TAX

SECTION 247. General Provisions. —

(a) The additions to the tax or deficiency tax prescribed in this Chapter shall apply to **all taxes**, fees and charges **imposed**

in this Code. The amount so added to the tax shall be collected at the same time, in the same manner and as part of the tax." (emphasis and underscoring supplied)

The text of Section 247(a) states without any doubt that the additions under Chapter I, Title X are applicable to *all taxes* imposed under the code, i.e., the 1997 NIRC. The authority to impose additions under that provision clearly extends to *all taxes* regardless of the title under which they are classified.

Therefore, the law does *not* limit these additions *only* to the three (3) types of internal revenue taxes, namely, income (Title II), estate (Title III) and donor's tax (Title III). Their imposition applies with equal force and effect to the other taxes under the 1997 NIRC such as the value-added tax (Title IV), other percentage taxes (Title V), excise tax (Title VI) and documentary stamp tax (Title VII).

Accordingly, the additions to the tax or deficiency tax such as, among others, *Civil Penalties or Surcharges* under Section 248, *Deficiency Interest* under Section 249(B), *Delinquency Interest* under Section 249(C), and *Interest on Extended Payment* under Section 249(D) are applicable to the deficiency expanded withholding tax (EWT) of respondent Staedtler (Philippines), Inc (Staedtler).

It has been argued that because there are no definitions for *deficiency* withholding tax, value-added tax, percentage tax, excise tax or documentary stamp tax unlike those provided for *income tax* in Section 56(B), for *estate tax* in Section 93 and for *donor's tax* in Section 104 then no deficiency interest can be imposed on the deficiency EWT due from Staedtler. The *lacuna* or the missing definition was precisely addressed by Section 247(a) when this provision was first legislated as a revision[1] to the *1977 NIRC* and then subsequently reenacted in the 1997 NIRC.

The Supreme Court discussed the history of this provision in *Paper Industries Corporation of the Philippines (PICOP) v. Court of Appeals, et al.*[2]

In the case, the Supreme Court held that PICOP was *not* liable for interest and surcharge on the unpaid transaction tax because the 1977 Tax Code applicable at that time authorized the imposition of interest and surcharge *only* on taxes within Title II of the code (Income Tax). Therefore, since transaction tax was embraced under a *different* title, Title V (Taxes on Business), the Court concluded that said transaction tax was not one of the taxes on which interest and surcharge could be imposed. *Nonetheless, it*

[1] Presidential Decree No. 1994. Please refer to the subsequent discussions in the opinion.
[2] G.R. No. 106949-50, December 1, 1995 consolidated with *Commissioner of Internal Revenue v. Paper Industries Corporation of the Philippines (PICOP), et al.*, G.R. No. 106984-85, December 1, 1995.

further expounded that this inadvertence in the 1977 NIRC was cured subsequently by fiat. Thus:

> "The CIR, both in its petition before the Court of Appeals and its Petition in the instant case, points to Section 51(e) of the 1977 Tax Code as its source of authority for assessing a surcharge and penalty interest in respect of the thirty-five percent (35%) transaction tax due from Picop.
>
> It will be seen that Section 51(c)(1) and (e)(1) and (3), of the 1977 Tax Code, authorize the imposition of surcharge and interest only in respect of a "*tax imposed by this Title*," that is to say, *Title II on "Income Tax*." It will also be seen that Section 72 of the 1977 Tax Code imposes a surcharge only in case of failure to file a return or list "*required by this Title*," that is, *Title II on "Income Tax."* The thirty-five percent (35%) transaction tax is, however, imposed in the 1977 Tax Code by *Section 210 (b) thereof which Section is embraced in Title V on "Taxes on Business"* of that Code. Thus, while the thirty-five percent (35%) transaction tax is in truth a *tax imposed on* interest *income* earned by lenders or creditors purchasing commercial paper on the money market, the relevant provisions, *i.e.*, Section 210(b), were *not* inserted in Title II of the 1977 Tax Code. The end result is that the thirty-five percent (35%) transaction tax is *not* one of the taxes in respect of which Section 51(e) authorized the imposition of surcharge and interest and Section 72 the imposition of a fraud surcharge.
>
> **It is not without reluctance that we reach the above conclusion on the basis of what may well have been an inadvertent error in legislative draftsmanship**, a type of error common enough during the period of Martial Law in our country. Nevertheless, we are compelled to adopt this conclusion. We consider that the_authority to impose what the present Tax Code calls (in Section 248) *civil penalties* consisting of additions to the tax due, must be expressly given in the enabling statute, in language too clear to be mistaken. The grant of that authority is not lightly to be assumed to have been made to administrative officials, even to one as highly placed as the Secretary of Finance.
>
> The state of the present law tends to reinforce our conclusion that Section 51 (c) and (e) of the 1977 Tax Code did not authorize the imposition of a surcharge and penalty interest for failure to pay the thirty-five percent (35%) transaction tax imposed under Section 210 (b) of the same Code. The corresponding provision in the *current* Tax Code very clearly embraces failure *to pay all taxes imposed in the Tax Code*,

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without any regard to the Title of the Code where provisions imposing particular taxes are textually located. Section 247 (a) of the NIRC, as amended, reads:

'Title X
Statutory Offenses and Penalties

Chapter I
Additions to the Tax

SECTION 247. *General Provisions*. — (a) The additions to the tax or deficiency tax prescribed in this Chapter shall *apply to all taxes, fees and charges imposed in this Code*. The amount so added to the tax shall be collected at the same time, in the same manner and as part of the tax. . . .

SECTION 248. *Civil Penalties*. — (a) There shall be imposed, *in addition to the tax required to be paid, penalty equivalent to twenty-five percent (25%) of the amount due*, in the following cases:

xxx xxx xxx

(3) failure to pay the tax within the time prescribed for its payment; or

xxx xxx xxx

(c) the penalties imposed hereunder shall form part of the tax and the entire amount shall be subject to the interest prescribed in Section 249.

SECTION 249. *Interest*. — (a) *In General*. — There shall be assessed and collected *on any unpaid amount of tax, interest* at the rate of *twenty percent (20%) per annum* or *such higher rate as may be prescribed by regulations*, from the date prescribed for payment until the amount is fully paid. . . ..' (Emphases supplied)

In other words, Section 247 (a) of the current NIRC supplies what did not exist back in 1977 when Picop's liability for the thirty-five percent (35%) transaction tax became fixed. **We do not believe we can fill that legislative *lacuna* by judicial fiat. There is nothing to suggest that Section 247(a) of the present Tax Code, which was inserted in 1985, was intended to be given retroactive application by the legislative**

gr

> **authority**. (underscoring and emphases supplied; citations omitted)

In fact, this Court *En Banc*, through the *ponencia* of J. Mindaro-Grulla in *Takenaka Corporation Philippine Branch v. CIR*,[3] relied upon the same *PICOP* holding. To stress its point, the Court cited *PICOP* and stated that the deficiency interest imposed under Section 249(B) of the 1997 NIRC does *not* apply merely to deficiency income, deficiency estate and deficiency donor's tax *by virtue* of Section 247(a) of the same law. It reads:

> "Anent the issue on the applicability of deficiency interest under Section 249(B) of the NIRC of 1997, as amended, only to deficiency income tax, deficiency estate tax, and deficiency donor's tax, as held by the Court a quo, petitioner asseverates that such an interpretation would result to absurd conclusions as it would mean triple imposition of 20% interest under Sections 249(A), 249(B), and 249(C) of the NIRC of 1997, simultaneously, effectively giving rise to at least 60% interest *per annum.*
>
> We agree with petitioner.
>
> The issue is no longer novel as the same was sufficiently discussed by the Supreme Court in *Paper Industries Corporation of the Philippines (PICOP) v. Court of Appeals, et al.* The Supreme Court held that Section 247(a) of the NIRC of 1977, as amended [**now Section 247(a) of the NIRC of 1997, as amended**], "very clearly embraces failure to pay **all taxes imposed in the Tax Code**, without any regard to the Title of the Code where provisions imposing particular taxes are textually located." (emphases and underscoring supplied; citations omitted)

In sum, Staedtler's deficiency EWT should be subject to deficiency interest pursuant to Section 249 of the 1997 NIRC.

Section 249(B) and (C) of the 1997 NIRC authorizes the simultaneous imposition of deficiency interest and delinquency interest.

This Court *En Banc* has consistently held that the plain reading of Section 249 of the 1997 NIRC justifies the simultaneous imposition of deficiency interest and delinquency interest. *gr*

[3] CTA EB Case No. 745, September 4, 2012.

The Supreme Court recently upheld this interpretation in a Resolution dated November 10, 2014 in *Republic Cement [as surviving corporation in a merger involving FR Cement Corporation] v. Commissioner of Internal Revenue*:[4]

> "After a careful perusal of the records, the Court resolves to **DENY** the instant petition and **AFFIRM** the July 18, 2012 Decision and November 21, 2012 Resolution of the Court of Tax Appeals (CTA) En Banc in CTA EB No. 821 for failure of Republic Cement Corporation (petitioner) to show that the CTA En Banc committed any reversible error in assessing it for deficiency creditable withholding value-added tax (CWVAT) for taxable year 1999 in the amount of Pl0,044,824.64, inclusive of 25% surcharge, and in imposing deficiency interest of 20% per annum on the basic deficiency CWVAT of P8,035,859.71 from January 25, 2000 until full payment thereof, as well as delinquency interest of 20% per annum on the total deficiency taxes of Pl0,044,824.64 and on the 20% deficiency interest that have accrued from January 31, 2005 until full payment thereof.
>
> **As correctly ruled by the CTA *En Banc*, the simultaneous imposition of deficiency and delinquency interests are sanctioned under Section 249 of the National Internal Revenue Code (NIRC),** which explicitly provides that deficiency interest shall be reckoned from the date prescribed for payment of the *deficiency tax* until full payment thereof while *delinquency interest* shall also be collected computed from the due date prescribed under the Assessment Notice until full payment thereof.
>
> SO ORDERED." (underscoring and emphases supplied)

In *Medicard Philippines, Inc. v. CIR*,[5] we also held that there is no legal obstacle for the Court in Division to simultaneously impose the deficiency interest and the delinquency interest:

> "In the case of *Philippine Aerospace Development Corporation v. Commissioner of Internal Revenue*, this Court exhaustively discussed the propriety of the simultaneous imposition of deficiency and delinquency interest, in this wise:
>
> The propriety of the simultaneous imposition of deficiency and delinquency interests was more definitively resolved in April 2013. This was in First Lepanto Taisho Insurance Corporation

[4] G.R. No. 204715.
[5] CTA EB No. 1224, September 2, 2015.

v. Commissioner of Internal Revenue, where the Supreme Court upheld a 2011 decision of this Court affirming the imposition of delinquency interest under Section 249(c)(3) of the 1997 NIRC. The Supreme Court ruled this imposition 'to be proper, because failure to pay the deficiency tax assessed within the time prescribed for its payment justifies the imposition of interest at the rate of twenty percent (20%) per annum, which interest shall be assessed and collected from the date prescribed for its payment until full payment is made.'

Earlier in 2011, the Supreme Court sustained the 2005 rulings of this Court imposing 20% delinquency tax on deficiency taxes, inclusive of deficiency interest, in *Rizal Commercial Banking Corporation v. Commissioner of Internal Revenue.*

In 2006, the Supreme Court also upheld a 2004 Court of Appeals decision where the latter imposed delinquency interest at 20% per annum in addition to the interest on deficiency VAT and deficiency documentary stamp tax, in *Michel J. Lhuiller Pawnshop, Inc. v. Commissioner of Internal Revenue*, although without discussion of the propriety of multiple simultaneous interests.

And even earlier, in 2000, the Supreme Court likewise upheld the imposition of 20% annual delinquency interest on deficiency amusement tax, inclusive of 20% deficiency interest, in *Philippine Basketball Association v. Court of Appeals, Court of Tax Appeals, and Commissioner of Internal Revenue.*

Actually, double interests have been sustained by the Supreme Court at least as early as 1971, in *Commissioner of Internal Revenue v. Connel Bros. (Phil.) and Court of Tax Appeals.* Under the tax law at the time, R.A. No. 2343 of 1959, these were the 'interest on deficiency' and what may be referred to as 'additional interest' (in case of non-payment within the prescribed period), at the rates of 6% per annum and 1% per month, respectively.

It is abundantly clear, from the foregoing discussion of the law and jurisprudence, that under the circumstance laid down by Section 249(c)(3) of the Tax Reform Act of 1997 — i.e., in case of failure to pay a deficiency tax, or any surcharge or interest on such deficiency tax — delinquency interest of 20% per annum shall be assessed and collected.

The petitioner asked whether or not simultaneous deficiency and delinquency interests 'are allowed by law and equity.' The answer is in the law itself, which does not merely allow but prescribes simultaneous imposition under the aforecited circumstance. As this is undoubtedly proper under the law — and petitioner has not assailed the validity of the law itself — there is neither need nor duty for this Court to expand the discussion to the realm of equity, for 'equity is applied only in the absence of, and never against, statutory law, and the rule is that 'equity follows the law.''

Verily, We explained in the *Philippine Aerospace* case that, following the various and consistent rulings of the Supreme Court, there is nothing repugnant with the simultaneous imposition of deficiency and delinquency interests. Thus, the Court in Division is correct in imposing the aforesaid civil penalties in the instant case."

In the same vein, *Avon Products Manufacturing, Incorporated v. CIR* [6] discussed the legal bases for the Court's position on this point, thus:

"Petitioner submits that the Court in Division seriously erred in its simultaneous imposition of the deficiency interest and the delinquency interest upon the amounts payable by petitioner. The latter argues that deficiency interest and delinquency interest provided under Section 249 (B) and 249 (C) of the NIRC are not intended to be imposed simultaneously. Otherwise, it will amount to an interest that is excessive, iniquitous, unconscionable and exorbitant.

We do not agree with petitioner.

Section 249 of the NIRC of 1997 provides:

'SEC. 249. Interest. —

(A) In General. — There shall be assessed and collected on any unpaid amount of tax, interest at the rate of twenty percent (20%) per annum, or such higher rate as may be prescribed by rules and regulations, from the date prescribed for payment until the amount is fully paid.

(B) Deficiency Interest. — Any deficiency in the tax due, as the term is defined in this Code, shall be subject to the interest prescribed in Subsection (A) hereof, which interest shall be assessed and collected from the date prescribed for its payment until the full payment thereof. Jr

[6] CTA EB No. 1062, March 16, 2015.

(C) Delinquency Interest. — In case of failure to pay:

(1) The amount of the tax due on any return required to be filed, or

(2) The amount of the tax due for which no return is required, or

(3) A deficiency tax, or any surcharge or interest thereon on the due date appearing in the notice and demand of the Commissioner, there shall be assessed and collected on the unpaid amount, interest at the rate prescribed in Subsection (A) hereof until the amount is fully paid, which interest shall form part of the tax.

xxx xxx xxx.'

Interest is imposed to compensate the State for the delay in paying the tax and for the concomitant use by the taxpayer of funds that rightfully should be in the government's hands. It is imposable upon failure of the taxpayer to pay the tax on the date fixed in the law for its payment.

In this case, by its own argumentation, petitioner stresses that the deficiency interest under subsection (B) of Section 249 is applicable where the taxpayer is found to have a tax deficiency. Since We find in this Decision that petitioner is liable to the deficiency excise tax assessed by respondent, there can be no doubt that petitioner is likewise liable to the deficiency interest imposed by the Court in Division.

Furthermore, We see no legal obstacle for the Court in Division to simultaneously impose the deficiency interest and the delinquency interest.

Nowhere in Section 249 does it state that if subsection (B) is applicable, subsection (C) would be rendered inapplicable, or *vice versa*. Furthermore, there is no indication in the same Section 249 that the beginning of the imposition of delinquency interest under subsection (C) would end upon the imposition of deficiency interest under subsection (B). Especially so that both subsection (B) and subsection (C) provide that the interests shall respectively accrue until full payment thereof.

It is a cardinal rule in statutory construction that no word, clause, sentence, provision or part of a statute shall be considered surplusage or superfluous, meaningless, void and insignificant. To this end, a construction which renders every word operative is preferred over that which makes some words idle and nugatory. This principle is expressed in the maxim *Ut magis valeat quam pereat*, that is, we choose the interpretation which gives effect to the whole of the statute — its every word. Thus, every word of Section 249 should be given effect." (underscoring supplied; citations omitted)

The legislative intent to impose deficiency interest *concurrently* with delinquency interest is underscored especially when viewed in the light of the revisions of the germane provisions of the 1977 NIRC[7] and the enactment of substantially the same revisions in the 1997 NIRC. The relevant provisions are quoted in the table below to facilitate reference:

1977 NIRC as amended by Presidential Decree No. (P.D.) 1705, Section 14.	**1977 NIRC** as amended/revised by P.D. 1994, Section 40	**1997 NIRC**
	TITLE XI - Additions to the Tax and General Penal Provisions **CHAPTER I - Additions to the Tax** **Sec. 281. General provisions. -** (a) <u>The additions to the tax or deficiency tax prescribed in this Chapter shall apply to all taxes, fees and charges imposed in this Code. The amount so added to the tax shall be collected at the time, in the same manner and as part of the tax</u>. XXXX	**TITLE X - Statutory Offenses and Penalties** **CHAPTER I - Additions to the Tax** **Sec. 247.** *General Provisions.* - (a<u>) The additions to the tax or deficiency tax prescribed in this Chapter shall apply to all taxes, fees and charges imposed in this Code. The amount so added to the tax shall be collected at the same time, in the same manner and as part of the tax</u>. XXXX
Sec. 88. Civil penalties. — **(a) Individuals.** XXXX. **(b) Corporations. –** **(1) Deficiency, defined.** — XXXX. **(2) (i) Interest.** — <u>Interest upon the amount determined as a deficiency</u> shall be assessed at the same time as the deficiency; and shall be paid upon notice and demand from the Commissioner of Internal Revenue; and <u>shall be collected as part of the tax at the rate</u>	**Sec. 282. Civil Penalties.** – XXXX. **Sec. 283. Interest.** – (a) *In general.* -<u>There shall be assessed and collected on any unpaid amount of tax, interest at the rate of twenty percent (20%) per annum</u>, or such higher rate as may be prescribed by regulations, <u>from the date prescribed for payment until the amount is fully paid</u>. (b) *Deficiency interest.* - <u>Any deficiency in the tax due</u>, as the term	**Sec. 248.** *Civil Penalties.* – XXXX. **Sec. 249.** *Interest.* – (A) In General. — <u>There shall be assessed and collected on any unpaid amount of tax, interest at the rate of twenty percent (20%) per annum</u>, or such higher rate as may be prescribed by rules and regulations, <u>from the date prescribed for payment until the amount is fully paid</u>. (B) *Deficiency Interest.* - <u>Any deficiency in the tax due</u>, as the term

[7] Presidential Decree No. 1994 which took effect on January 1, 1986 made substantial revisions to the 1977 NIRC.

1977 NIRC as amended by Presidential Decree No. (P.D.) 1705, Section 14.	**1977 NIRC** as amended/revised by P.D. 1994, Section 40	**1997 NIRC**
of twenty per centum per annum from the date prescribed for the payment of the tax to the date the deficiency is assessed: **Provided, That the maximum amount that may be collected as interest on deficiency shall in no case exceed the amount corresponding to a period not later than the fifteenth day of April or the fifteenth day of fourth month following the close of the taxable year**: Provided, further, That no interest on deficiency quarterly income tax shall be assessed at any time after assessment of the actual income tax due for the taxable year. **(ii) Addition to estimated tax in case of nonpayment. –** (1) Tax shown on the quarterly return. — Where the amount shown by the taxpayer as tax on its quarterly return or part of such amount, is not paid on or before the date prescribed for its payment, there shall be collected, as part of the tax interest upon such unpaid amount at the rate of twenty per centum per annum from the date prescribed for its payment until it is paid but not later than the fifteenth day of April or the fifteenth day of the fourth month following the close of the taxable year.	is defined in this Code, shall be subject to the interest prescribed in paragraph (a) hereof, which interest shall be assessed and collected from the date prescribed for its payment until the full payment thereof.	is defined in this Code, shall be subject to the interest prescribed in Subsection (A) hereof, which interest shall be assessed and collected from the date prescribed for its payment until the full payment thereof.
(2) Deficiency. — Where the deficiency, or interest on deficiency, assessed under subsection (a) of this Section, or part thereof, is not paid in full within thirty days from the date of receipt by the taxpayer of the notice and demand from the Commissioner of Internal Revenue, **there shall be collected upon such unpaid amount, as part of the tax, interest at the rate of twenty per centum per annum from the date of receipt by the taxpayer of such notice and demand until it is paid not later than the fifteenth day of April or the fifteenth day of the fourth month following the close of the taxable year**. (emphases and underscoring supplied)	(c) *Delinquency interest.* - In case of failure to pay: (1) The amount of the tax due on any return required to be filed, or (2) The amount of the tax due for which no return is required, or (3) A deficiency tax, or any surcharge or interest thereon, on the due date appearing in the notice and demand of the Commissioner, **there shall be assessed and collected, on the unpaid amount, interest at the rate prescribed in paragraph (a) hereof until the amount is fully paid**, which interest shall form part of the tax. (emphases and underscoring supplied)	(C) *Delinquency Interest.* - In case of failure to pay: (1) The amount of the tax due on any return required to be filed, or (2) The amount of the tax due for which no return is required, or (3) A deficiency tax, or any surcharge or interest thereon on the due date appearing in the notice and demand of the Commissioner, **there shall be assessed and collected on the unpaid amount, interest at the rate prescribed in Subsection (A) hereof until the amount is fully paid**, which interest shall form part of the tax. (emphases and underscoring supplied)

By comparing these codal provisions, it can be seen from their texts that:

1. With respect to *deficiency* interest, when P.D. 1994 deleted the limiting clause "*Provided, That the maximum amount that may be collected as interest on deficiency shall in no case exceed the amount corresponding to a period not later than the fifteenth day of April or the fifteenth day of fourth month following the close of the taxable year:*" the legislature clearly intended to let the interest period run without a ceiling. Therefore:

   a. *Before the revisions under P.D. 1994*, deficiency interest was computed at 20% *per annum* from the date prescribed for the payment of tax to the date the deficiency tax is assessed. But the amount of deficiency interest cannot exceed the limit imposed by the clause which, it is submitted, can be difficult to calculate due to the construction of the text.

   b. *After the revisions under P.D. 1994 and even subsequently under the 1997 NIRC*, deficiency interest is still computed at 20% *per annum* but the interest period is now allowed to run without the cap. Thus, interest is computed at 20% *per annum* from the date prescribed for the payment of tax, to the date the deficiency tax is assessed and, *even extending beyond*, until the date of full payment.

2. With respect to *delinquency* interest, it must be noted that:

   a. *Even before the revision under P.D. 1994*, Section 88(b)(2)(ii)(2) of the 1977 NIRC *already* imposed 20% interest[8] on "*interest on deficiency*."

      However, the *delinquency* interest period was computed from the taxpayer's receipt of notice and demand until paid *but again, with the limiting clause*, "there shall be collected upon such unpaid amount, as part of the tax, interest at the rate of twenty per centum per annum from the date of receipt by the taxpayer of such notice and demand until it is paid not later than the fifteenth day of April or the fifteenth day of the fourth month following the close of the taxable year."

   b. *After the revisions under P.D. 1994 and even subsequently under the 1997 NIRC*, delinquency interest is still computed at 20% *per annum* but the interest period is now allowed to run without the ceiling. Thus, interest is computed at 20% *per annum* from the due

[8] The term used by the 1977 NIRC, as amended by P.D. 1705, is "deficiency."

date appearing in the notice and demand of the Commissioner until the date of full payment.

3. There is a *legislated overlap* in the imposition of the deficiency and of the delinquency interest. Specifically, both deficiency and delinquency interests toll concurrently *from* the due date appearing in the notice and demand of the Commissioner *until* the full payment.

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I have no compelling reason to deviate from the consistent holdings of this Court.

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

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

****

COMMISSIONER OF INTERNAL REVENUE, Petitioner,	**CTA EB No. 1310**
	Present:
- versus -	**DEL ROSARIO,** P.J., **CASTAÑEDA, JR., BAUTISTA, UY, CASANOVA, FABON-VICTORINO, MINDARO-GRULLA, COTANGCO-MANALASTAS,** and **RINGPIS-LIBAN,** JJ.
STAEDTLER (PHILIPPINES), INC., Respondent.	**Promulgated:** JAN 28 2016 10:45 a.m.

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CONCURRING AND DISSENTING OPINION

UY, J.:

With all due respect with the learned ponente and my other colleagues, while I concur with the cancellation and withdrawal of the deficiency value-added tax in the amount of ₱117,251.67, and the imposition of the deficiency income tax, including surcharges and interests, and of the deficiency expanded withholding tax (EWT), including surcharges, as held in the assailed Decision dated January 20, 2015 and as sustained in the assailed Resolution dated May 4, 2015, both in CTA Case No. 8431, I dissent on the imposition of the deficiency interest on the deficiency EWT, under Section 249(B) of the National Internal Revenue Code of 1997, and the inclusion of said deficiency interest in the computation of delinquency interest under Section 249(C) of the same Code.

Section 249 of the NIRC of 1997 reads:

"SEC. 249. *Interest.* –

(A) *In General.* – There shall be assessed and collected on any unpaid amount of tax, interest at the rate of twenty percent (20%) *per annum,* or such higher rate as may be prescribed by the rules and regulations, from the date prescribed for its payment until the amount is fully paid.

(B) *Deficiency Interest.* – Any **deficiency** in the tax due, **as the term is defined in this Code**, shall be subject to the interest prescribed in Subsection (A) hereof, which interest shall be assessed and collected from the date prescribed for its payment until the full payment thereof.

(C) *Delinquency Interest.* – In case of failure to pay:

xxx xxx xxx

(3) A deficiency tax, or any surcharge or interest thereon on the due date appearing in the notice and demand of the Commissioner, there shall be assessed and collected on the unpaid amount, interest at the rate prescribed in Subsection (A) hereof until the amount is fully paid, which interest shall form part of the tax." *(Emphases supplied)*

Based on the foregoing Section 249(B), the *"Deficiency Interest"* shall be imposed on "[a]*ny deficiency in the tax due, as the term is defined in this Code"*, *i.e.*, as the term "deficiency" is defined in the NIRC of 1997. Relative thereto, an examination of the said Code discloses that there are only three (3) instances where it defines the term "deficiency", and this relates only and respectively to three (3) types of internal revenue taxes, namely, income tax, estate tax, and donor's tax, pursuant to Sections 56(B), 93 and 104 of the NIRC of 1997, viz:

"SEC. 56. *Payment and Assessment of Income Tax for Individuals and Corporations.*—

xxx xxx xxx

(B) *Assessment and Payment of Deficiency Tax.*— After the return is filed, the Commissioner shall examine its and assess the correct amount of the tax. The tax or deficiency income tax so discovered shall be paid upon notice and demand from the Commissioner.

As used in this Chapter[1], in respect of a tax imposed by this Title[2], the term **'deficiency'** means:

(1) The amount by which the tax imposed by this Title exceeds the amount shown as the tax by the taxpayer upon his return; but the amount so shown on the return shall be increased by the amounts previously assessed (or collected without assessment) as a deficiency, and decreased by the amount previously abated, credited, returned or otherwise repaid in respect of such tax; or

(2) If no amount is shown as the tax by the taxpayer upon his return, or if no return is made by the taxpayer, then the amount by which the tax exceeds the amounts previously assessed (or collected without assessment) as a deficiency; but such amounts previously assessed or collected without assessment shall first be decreased by the amounts previously abated, credited, returned or otherwise repaid in respect of such tax." *(Emphasis supplied)*

"SEC. 93. *Definition of Deficiency.* — As used in this Chapter[3], the term **'deficiency'** means:

(a) The amount by which the tax imposed by this Chapter exceeds the amount shown as the tax by the executor, administrator or any of the heirs upon his return; but the amount so shown on the return shall first be increased by the amounts previously assessed (or collected without assessment) as a deficiency and decreased by the amounts previously abated, refunded or otherwise repaid in respect of such tax; or

(b) If no amount is shown as the tax by the executor, administrator or any of the heirs upon his return, or if no return is made by the executor, administrator, or

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[1] Chapter IX – RETURNS AND PAYMENT OF TAX.
[2] Title II – TAX ON INCOME.
[3] CHAPTER I – ESTATE TAX (under TITLE III – ESTATE AND DONOR'S TAXES).

any heir, then the amount by which the tax exceeds the amounts previously assessed (or collected without assessment) as a deficiency; but such amounts previously assessed or collected without assessment shall first be decreased by the amounts previously abated, credited, returned or otherwise repaid in respect of such tax." *(Emphasis supplied)*

"SEC. 104. *Definitions.* — xxx

The term **'deficiency'** means: (a) the amount by which the tax imposed by this Chapter[4] exceeds the amount shown as the tax by the donor upon his return; but the amount so shown on the return shall first be increased by the amounts previously assessed (or collected without assessment) as a deficiency, and decreased by the amounts previously abated, refunded or otherwise repaid in respect of such tax, or (b) if no amount is shown as the tax by the donor upon his return, then the amount by which the tax exceeds the amounts previously assessed (or collected without assessment) as a deficiency, but such amounts previously assessed or collected without assessment shall first be decreased by the amounts previously abated, credited, returned or otherwise repaid in respect of such tax." *(Emphasis supplied)*

Such being the case, the deficiency interest under Section 249(B) should be applied only whenever there is a deficiency income tax, a deficiency estate tax, and a deficiency donor's tax. For this reason, in this case, no deficiency interest under Section 249(B) should be imposed on the deficiency EWT assessed against petitioner. Correspondingly, the computation of the delinquency interest imposed under Section 249(C) should not as well include the said deficiency interest.

Correspondingly, I vote for the DELETION of the following:

(1) in the Decision dated January 20, 2015, under paragraph (a) thereof, the imposition of deficiency interest at the rate of 20% *per annum* on the basic deficiency EWT in the amount of ₱6,944.83; and

[4] CHAPTER II – DONOR'S TAX (under TITLE III – ESTATE AND DONOR'S TAXES).

(2) in the same Decision, under paragraph (c) thereof, the inclusion of said deficiency interest in the computation of the delinquency interest to be imposed on the basic deficiency EWT in the amount of ₱6,944.83.

ERLINDA P. UY
Associate Justice