REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

WINEBRENNER & INIGO INSURANCE ASSOCIATES, INC.,
Petitioner,

- versus -

C.T.A. CASE NO. 6193

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
SEP 0 2 2002

x - x

DECISION

This case involves a claim for refund or issuance of a tax credit certificate in the total amount of Two Million Two Hundred Ninety One Thousand One Hundred Twenty Eight Pesos (P2,291,128.00) allegedly representing petitioner's excess creditable withholding taxes for calendar years ending December 31, 1998 and December 31, 1999.

The facts of the case are as follows:

Petitioner is a domestic corporation duly organized and existing under and by virtue of the laws of the Philippines and is engaged in business as an insurance broker. Its principal office is located at Suite 803, 88 Corporate Center, Sedeno corner Valero Streets, Salcedo Village, Makati City (*par. 1, Stipulation of Facts*).

On June 7, 1999, petitioner filed with the Bureau of Internal Revenue (BIR) its amended Corporate Annual Income Tax Return for the calendar year ending December 31, 1998, which showed a refundable income tax in the amount of One Million Six

Hundred Twenty Two Thousand Five Hundred Forty One Pesos (P1,622,541.00) (*par. 3, Stipulation of Facts*), computed as follows:

Tax Due	P 801,414
Less: Tax credits/payments	
Prior year's excess credits	1,170,653
Tax withheld per BIR Form No. 2307	
for the 4th Quarter	1,253,302
Tax Payable /(Overpayment)	(P1,622,541)

According to petitioner, it did not carry-over its 1998 excess creditable withholding taxes amounting to P1,253,302.00 to its 1999 corporate income tax return.

On April 15, 2000, petitioner filed its Corporate Annual Income Tax Return for calendar year ended December 31, 1999 which showed a refundable amount of One Million Thirty Seven Thousand Eight Hundred Twenty Six Pesos (P1,037,826.00) (*par. 4, Stipulation of Facts*), detailed as follows:

Tax Due	P 291,506
Less: Tax credits/payments	
Prior year's excess credits	- 0 -
Tax withheld for the first three quarters	477,073
Tax withheld per BIR Form No. 2307	
for the 4th Quarter	852,259
Tax Payable /(Overpayment)	(P1,037,826)

In the said return, petitioner manifested its intention not to carry over its excess creditable withholding tax by checking the box "To be issued a tax credit certificate."

On August 10, 2000, petitioner duly filed an administrative claim for refund of its excess or overpaid creditable withholding taxes for the year 1998 in the amount of P1,253,302.00 and for 1999 in the amount of P1,037,826.00 or a total of Two Million

Two Hundred Ninety One Thousand One Hundred Twenty Eight Pesos (P2,291,128.00) with the Bureau of Internal Revenue (BIR), Revenue District Office No. 50 (Makati City), in accordance with Sections 204 and 229 of the Tax Code, as amended (*par. 5, Stipulation of Facts*).

In order to meet the two (2) year deadline for filing of refund claims, petitioner filed the instant Petition for Review on November 9, 2000.

In his Answer filed through registered mail on December 27, 2000, the respondent raised the following Special and Affirmative Defenses:

> "6. It is incumbent upon herein petitioner to show that it complied with the provisions of **Section 229 of the Tax Code**, as amended, which provides as follows:
>
> > "**Section 229** – No suit or proceeding shall be maintained in any court for the recovery of any national internal revenue tax hereafter alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, or of any sum alleged to have been 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.
> >
> > 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…"
>
> 7. Claims for refund are construed strictly against the claimant, the same being in the nature of exemption from taxes (**Commissioner of Internal Revenue vs. Ledesma**, 31 SCRA 95; **Manila Electric Company vs. Commissioner of Internal Revenue**, 67 SCRA 35);
>
> 8. One who claims to be exempt from payment of a particular tax must do so under clear and unmistakable terms found in the statute (**Asiatic Petroleum vs. Llanes,** 49 Phil.466; **Union Garment Co. vs. CTA,** 4 SCRA 304);
>
> 9. In an action for refund, the burden is upon the taxpayer to prove that he is entitled thereto, and failure to sustain the same is fatal to the action for refund.

Furthermore, as pointed out in the case of **William Li Yao vs. Collector**, (L-11875, December 28, 1963), amounts sought to be recovered or credited should be shown to be taxes which are erroneously or illegally collected; that is to say, their payment was an independent single act of voluntary payment of a tax believed to be due and collectible and accepted by the Government, which had, therefore, become part of the State moneys subject to expenditure and perhaps already spent or appropriated; and

10. Taxes paid and collected are presumed to have been made in accordance with the law and regulations, hence, not refundable."

The parties stipulated on the following issues to be resolved by this court:

1. Whether or not petitioner's creditable withholding taxes for calendar years ended 1998 and 1999 amounting to Two Million Two Hundred Ninety One Thousand One Hundred Twenty Eight Pesos (P2,291,128.00) are duly supported by Certificates of Creditable Tax Withheld at Source.

2. Whether or not the income from which the creditable taxes were withheld were duly declared as part of petitioner's income in its Corporate Annual Income Tax Return for calendar years ended December 31, 1998 and December 31, 1999;

3. Whether or not petitioner did not in fact carry over its unutilized creditable withholding taxes for calendar year ended December 31, 1998 amounting to One Million Two Hundred Fifty Three Thousand Three Hundred Two Pesos (P1,253,302.00) to the succeeding taxable year 1998 and its unutilized creditable withholding taxes for calendar year ended December 31, 1999 amounting to One Million Thirty Seven Thousand Eight Hundred Twenty Six Pesos (P1,037,826.00) to the succeeding taxable year 2000; and

4. Whether or not the petitioner had duly filed both the administrative and judicial claims for refund within the two-year prescriptive period pursuant to Sections 204 and 229, respectively, of the National Internal Revenue Code, as amended.

After considering the attending facts, evidence, laws and jurisprudence applicable to this case, we rule in favor of the petitioner.

The Court has time and again reiterated the legal requirements that should be satisfied by a taxpayer in order to be entitled to a refund/issuance of a tax credit certificate of unapplied creditable income tax paid. Petitioner must prove compliance with the following three (3) basic requirements:

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

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

3. That the income upon which the taxes were withheld were included in the return of the recipient [**Revenue Regulations No. 12-94** (amending **Revenue Regulations No. 6-85**); **Citibank, N.A. vs. Court of Appeals and Commissioner of Internal Revenue**, 280 SCRA 459 & **ACCRA Investments Corporation vs. The Hon. Court of Appeals, Commissioner of Internal Revenue and The Court of Tax Appeals**, 204 SCRA 957; **Renaissance Properties and Management Corporation vs. The Hon. Commissioner of Internal Revenue,** CTA Case No. 5602, dated 5 August 1999].

In the case before us, petitioner was able to establish that both the administrative and judicial claims for refund/tax credit certificate of excess creditable taxes for calendar years ended December 31, 1998 and 1999 were filed within the two-year prescriptive period, as provided in **Section 229 of the Tax Reform Act of 1997**, we quote thus:

> "**Section 229. Recovery of tax erroneously or illegally collected.** – No suit or proceeding shall be maintained in any court for the recovery of any national internal revenue tax hereafter alleged to have been erroneously or illegally assessed or collected, or 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 ours*)

Petitioner submitted with the BIR its Corporate Annual Income Tax Return for the calendar year 1998 on April 15, 1999 (*Exhibit "UUUUUUUU"*). On June 7, 1999, petitioner filed with the BIR its Amended Corporate Annual Income Tax Return for the calendar year 1998 (*Exhibit "A"; par. 3, Stipulation of Facts*). On the other hand, petitioner filed with the BIR its Corporate Annual Income Tax Return for the calendar year 1999 on April 15, 2000 (*Exhibit "PPPP"; par. 4, Stipulation of Facts*).

In the case of ***Commissioner of Internal Revenue vs. TMX Sales***, *G.R. No. 83736*, promulgated on January 15, 1992, the Supreme Court ruled that the two-year prescriptive period xxx should be computed from the time of filing the Adjustment Return or Annual Income Tax Return and final payment of income tax. Accordingly, in counting the said prescriptive period for filing the administrative and judicial claims for refund, the reckoning date is the filing of the original annual income tax return which in the instant case were on April 15, 1999 and April 15, 2000, the dates of filing of the final adjustment returns for taxable years 1998 and 1999, respectively. Clearly, the administrative claim for refund filed by petitioner on August 10, 2000 as well as the filing of the present case on November 9, 2000 are both well within the two-year prescriptive period provided by law.

We proceed to the remaining two requisites which shall discussed jointly.

In order to establish the fact of withholding for the years 1998 and 1999 and to prove that the subject income were included in the return of the recipient, petitioner presented the following withholding tax certificates (Exhibits *B* to *QQQQQQQ*), the contents of which are summarized and presented below:

YEAR 1998

EXHIBIT	PAYOR		INCOME PAYMENT		TAX WITHHELD
B	Asia Health & Hospital Mgt.	P	40,463.40	P	2,023.17
C-F	Asia Traders Insurance Corporation		36,993.12		1,849.70
G	Blue Cross Health Care		830.40		41.52
H	Central Surety & Insurance Co.		3,741.27		187.06
I	Citystate Insurance Corp.		105,189.40		5,259.47
J	Country Bankers Insurance Corp.		1,051.20		105.12
K	CCC Insurance Corp.		14,840.20*		742.01
L	Consolidated Insurance Co., Inc.		2,462.16		[illegible].15
M	Covenant Assurance Co., Inc.		432.00		21.60
N	Dunlop Slazenger (Phil), Inc.		12,509.80*		625.49
O	Makati Insurance Company, Inc.		15,792.26		789.64
P-Q	FEB MITSUI Marine Inc., Co.		50,824.50		2,541.24
R-U	Federal Phoenix Assurance Co.		4,755,956.80		237,797.84
V	FGU Insurance Corp.		1,052,321.07		52,616.12
W-Z	Filipino Merchants' Insurance Co.		7,589.75		379.49
AA-BB	First Guarantee Life Assurance Co.		1,912.20		95.61
CC	First Lepanto Taisho		459,867.92		23,045.99
DD-GG	Fortune Guarantee & Insurance Corp.		105,151.60		5,257.58
HH	General Accident Insurance Asia		2,489,411.00		124,470.55
II	Hamburg Insurance Agency Corp.		803,285.60*		40,164.28
JJ-LL	Health Plus, Inc.		34,875.60		1,743.78
MM	Insular General Insurance Co.		8,253,333.20		412,666.66
NN	Insurance Co. of N. America		324,273.40		16,213.67

OO	Insurance of the Phil. Islands Co.	38,280.07	2,087.96
PP	Malayan Insurance Co., Inc.	263,377.20	13,168.86
QQ	Malayan Zurich Insurance Co.	611,625.80	30,581.29
RR	Mapfre Asian Insurance Corporation	39,436.80	1,971.84
SS-VV	Oriental Assurance Corporation	231,466.46	11,573.20
WW	Pacific Union Insurance Co.	311,223.60*	15,561.18
XX-ZZ	Paramount Insurance	330.98	14.46
AAA	PCIB Cigna Life Insurance	38,860.27	1,943.01
BBB-CCC	Philamcare Health Systems	74,089.90	3,704.50
DDD-GGG	Philam Insurance Co., Inc.	3,118,922.79	155,946.24
HHH-KKK	Phil. Charter Insurance Corporation	250,089.99	12,490.71
LLL-OOO	Phil. Health Care Providers	139,814.01	6,990.70
PPP-RRR	Phil. Phoenix Surety Insurance	4,361.61	217.93
SSS	Pioneer Insurance & Surety Insurance	241,698.58	12,084.93
TTT	PNB General Insurers Co.	1,900.00	95.00
UUU-WWW	Prudential Guarantee & Assurance	1,043,160.93	52,117.34
XXX	Quantom Foods	14,945.00	149.45
YYY	Rizal Surety & Insurance Co.	280.47	14.02
ZZZ	Royal International Insurance	11,802.80*	590.14
AAAA	Seaboard-Eastern Insurance Co.	256,875.00	12,843.75
BBBB	Stronghold Insurance Co., Inc.	929.00 *	46.45
CCCC-FFFF	The Netherlands Insurance Co.	98,210.00	4,910.50
GGGG	The New India Assurance Co.	1,021.84	51.09
HHHH	Tokio Marine Malayan Insurance	86,951.60	4,347.58
IIII-LLLL	UCPB General Insurance Co.	127,486.00	6,374.30
MMMM-NNNN	Union Insurance Society of Canton	92,287.50	4,614.38
	TOTAL	**P 25,672,536.05**	**P 1,283,251.55**

YEAR 1999

EXHIBIT	**PAYOR**	**INCOME PAYMENT**	**TAX WITHHELD**
QQQQ	Aetna Healthcare, Inc.	P 3,445.95	P 172.30
RRRR	Asia Traders Insurance Corp.	20,039.48	1,002.02
SSSS	Berkley International Life Insurance Co., Inc.	12,505.29	625.26
TTTT	CCC Insurance Corporation	11,471.91	573.61
UUUU	Central Surety and Insurance Co.	4,305.96	215.29
VVVV	Citystate Insurance Corporation	69,438.20	3,471.91
WWWW	Consolidated Insurance Co., Inc.	1,892.22	94.61
XXXX	Covenant Assurance Co., Inc.	700.00	35.00*
YYYY	FEB-Mitsui Marine Insurnace Co.	1,298,626.44	64,931.33
ZZZZ-CCCCC	Federal Phoenix Assurance Co., Inc.	7,840,907.40	393,045.37
DDDDD-GGGGG	FGU Insurance Corp.	971,818.84	48,590.09
HHHHH-KKKKK	Filipino Merchants' Insurance Co., Inc.	13,000.01	650.00
LLLLL-NNNNN	First Guarantee Life Assurance Co., Inc.	4,987.20	249.36
OOOOO	First Lepanto-Taisho Ins. Corp.	308,131.84	15,406.56
PPPPP-SSSSS	Fortune Guarantee &Insurance Corp.	104,002.20	5,200.11
TTTTT	General Accident Insurance Asia Ltd.	2,651,919.40	132,595.97
VVVVV-YYYYY	Hamburg Insurance Agency Corp.	606,321.40	30,316.08

ZZZZZ-BBBBBB	Health Plus, Inc.	16,413.00	820.65
CCCCCC-FFFFFF	Insular General Insurance Co.	3,429,949.60	171,497.48
GGGGGG-JJJJJJ	Insurance Company of North America	386,646.80	19,332.69
KKKKKK	Insurance of the Philippine Islands Co., Inc.	34,294.67	1,714.70
LLLLLL	Intra Strata Assurance Corp.	8,457.23	422.87
MMMMMM	Malayan Insurance Co., Inc.	532,540.60	26,627.03
NNNNNN	Malayan Zurich Insurance Co.	903,595.60	45,179.78
OOOOOO	Manila Bankers Life Insurance Corp.	10,834.80	541.74
PPPPPP-SSSSSS	Manila Bankers Life Insurance Corp.	10,528.80	526.44
TTTTTT	Mapfre Asian Insurance Corp.	42,281.60	2,114.08
UUUUUU-XXXXXX	Maxicare PCIB Cigna Healthcare Corp.	175,609.80	8,781.29
YYYYYY-ZZZZZZ	Meridian Assurance Corp.	4,420.00	221.01
AAAAAAA-DDDDDDD	NicPhil Insurance Inc.	119,005.80	5,800.29
EEEEEEE-HHHHHHHH	Oriental Assurance Inc.	209,570.86	10,478.13
IIIIIII	Pacific Union Insurance Company	216,188.92	10,809.45
JJJJJJJ	Paramount General Insurance Corp.	38,399.50	1,920.00
KKKKKKK	PCIB Cigna Life Insurance Corp.	183,570.80	9,178.54
LLLLLLL-PPPPPPP	Philam Insurance Company	3,652,121.89	182,606.10
QQQQQQQ-TTTTTTT	Philipine Charter Insurance Corp.	303,651.67	14,828.55
UUUUUUU-VVVVVVV	Philipine Phoenix Surety & Insurance, Inc.	1,240.92	62.05
WWWWWWW-XXXXXXX	Pioneer Insurance & Surety Corp.	330,855.66	16,542.70
YYYYYYY-BBBBBBBB	Prudential Guarantee and Assurance Inc.	684,090.89	34,163.83
CCCCCCCC	Rizal Surety & Insurance Co.	262.53	13.13
DDDDDDDD	Seaboard-Eastern Insurance Co.	240,912.40	12,045.62
EEEEEEEE	Standard Insurance Co., Inc.	18,213.25	910.66
FFFFFFFF-GGGGGGGG	Sun Life Assurance Co. of Canada	12,889.20	644.46
HHHHHHHH	The Mercantile Insurance Co., Inc.	42,667.63	2,133.39
IIIIIIII	The Philippine American Life Insurance Co.	141,911.88	7,095.60
JJJJJJJJ	The Philippine American Life Insurance Co.	137,929.31	6,896.47
KKKKKKKK	Tokio Marine Malayan Insurance Co., Inc.	37,862.40	1,893.12
LLLLLLLL-OOOOOOOO	UCPB General Insurance Co., Inc.	136,855.80	6,842.79
PPPPPPPP	Union Insurance Society of Canton, Ltd.	215,482.07	10,774.07
QQQQQQQQ	Zurich General Insurance Philippines, Inc.	374,787.02	18,739.35
	TOTAL	**P 26,577,556.64**	**P 1,329,332.93**

* Supplied by petitioner per schedule (Exhibits A-6 & PPPP-8) and verified by the court through the process of working back.

After a thorough examination and analysis of the said certificates, we noted the following, to wit:

<u>As to the 1998 alleged unutilized creditable withholding taxes:</u>

It is clear that petitioner's income from services rendered and other income were subjected to withholding tax. As can be gleaned from the above summary, the total creditable withholding taxes for the year 1998 is P1,283,251.55. Out of the said amount, the certificate issued by Stronghold Insurance Co. with corresponding creditable withholding tax of P46.45 (*Exhibit BBBB*) has no date indicated on its face; hence, the same should not be considered for the reason that it cannot be ascertained whether the said certificate pertains to taxable year 1998. Despite the said exception, petitioner is still entitled to the actual amount being claimed for refund of P1,253,302.00 since the total amount substantiated for 1998 creditable withholding tax of P1,283,205.10 (net amount of P1,283,251.55 after disallowing the amount P46.45) is greater than the former amount.

It was also established that the corresponding income of P25,672,536.05 upon which taxes were withheld were included as part of the income from services rendered amounting to P24,394,703.00 (*Exhibit A-5-1*) and from other income account of Fees/Commission in the amount of P1,924,370.00 (*Exhibit A-5-3*) declared in petitioner's 1998 income tax return.

<u>As to the 1999 alleged unutilized creditable withholding taxes:</u>

Petitioner was able to prove the creditable withholding taxes for 1999 which were duly supported by Certificates of Creditable Withholding Tax at Source. It was, however, noted that the certificate bearing the name Insular General Insurance Company as withholding agent with corresponding creditable withholding tax of P19,277.58 (*Exhibit FFFFFF*) pertains to year 2000, hence, must be disallowed.

Likewise, it is evident that the 1999 corresponding income of P26,577,556.64 upon which creditable taxes were withheld of P1,329,332.93[1] were included as part of the service income in the amount of P27,976,054.00 declared in petitioner's 1999 income tax

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[1] Per ITR and judicial claim, the amount declared was P1,329,332.00.

return (*Exhibit PPPP-11*). It is to be noted that the former is lower than the latter amount.

Lastly, based on the 1999 and 2000 income tax returns (*Exhibits PPPP and VVVVVVVV*), petitioner did not carry over its unutilized creditable withholding taxes for the taxable years ended December 31, 1998 and December 31, 1999, respectively. The space provided under the caption "Prior Year's Excess Credits" in the 1999 and 2000 income tax returns were left blank indicating that the 1998 and 1999 excess credits were indeed not carried over.

In summary, the excess creditable withholding taxes for the taxable years 1998 and 1999 that can be refunded to the petitioner is only P2,271,850.42, computed as follows:

1998 Creditable Withholding Tax		P1,253,302.00
1999 Creditable Withholding Tax		
Total Creditable Withholding Tax	P1,329,332.00	
Less: Tax Due for 1999	P 291,506.00	
Unutilized Withholding Tax	P1,037,826.00	
Less: Creditable Withholding Tax pertaining to the period-year 2000	19,277.58	P1,018,548.42
Total amount to be refunded		P2,271,850.42

WHEREFORE, in view of all the foregoing, the court finds the instant petition meritorious and in accordance with law. Accordingly, respondent is hereby **ORDERED** to **REFUND** or, in the alternative, **ISSUE A TAX CREDIT CERTIFICATE** to petitioner in the amount of P2,271,850.42 representing its excess creditable taxes withheld for the taxable years 1998 and 1999.

SO ORDERED.

ERNESTO D. ACOSTA
Presiding Judge

I CONCUR:

JUANITO C. CASTAÑEDA, JR.
Associate Judge

CERTIFICATION

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

ERNESTO D. ACOSTA
Presiding Judge