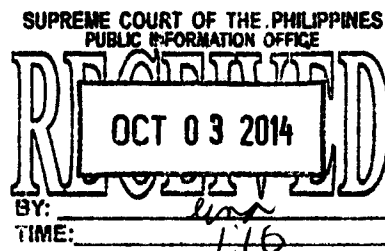




Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

NOTICE



Sirs/Mesdames:

Please take notice that the Court, First Division, issued a Resolution dated September 1, 2014 which reads as follows:

“G.R. No. 194624 (UPSI Management, Inc. v. Commissioner of Internal Revenue). - After a judicious review of the records, the Court resolves to **DENY** the instant petition and **AFFIRM** the September 15, 2010 Decision¹ and November 19, 2010 Resolution² of the Court of Tax Appeals (CTA) *En Banc* in CTA EB No. 544 for failure of UPSI Management, Inc. (petitioner) to show that the CTA *En Banc* committed any reversible error in denying its claim for tax refund through the issuance of a tax credit certificate (TCC) for its excess creditable withholding taxes for the taxable year 2004 in the amount of ₱2,151,269.00.

As correctly ruled by the CTA *En Banc*, petitioner is precluded from seeking the issuance of a TCC for its excess creditable withholding taxes after exercising the option to carry-over by filling out the portion “Prior Year’s Excess Credits” in its 2004 final adjustment return. Such act constitutes a categorical availment of the carry-over option³ which, once exercised, is irrevocable for that taxable period and bars a claim for tax refund or issuance of TCC⁴ pursuant to the irrevocability rule laid down in the last sentence of Section 76⁵ of the National Internal Revenue Code of

¹ *Rollo*, pp. 43A-58. Penned by Associate Justice Amelia R. Cotangco-Manalastas with Presiding Justice Ernesto D. Acosta and Associate Justices Juanito C. Castañeda, Jr., Lovell R. Bautista, Erlinda P. Uy, Caesar A. Casanova, Olga Palanca-Enriquez, Esperanza R. Fabon-Victorino, and Cielito N. Mindaro-Grulla, concurring.

² *Id.* at 76-79.

³ *Philam Asset Management, Inc. v. Commissioner of Internal Revenue*, G.R. Nos. 156637 & 162004, December 14, 2005, 477 SCRA 761, 778. In the said case, the Court noted that: “[i]f an application for a tax refund has been—or will be—filed, then that portion of the BIR form should necessarily be blank, even if the [final adjustment return] of the previous taxable year already shows an overpayment in taxes;”



⁴ See *United International Pictures AB v. Commissioner of Internal Revenue*, G.R. No. 168331, October 11, 2012, 684 SCRA 23, 29; *Commissioner of Internal Revenue v. Mirant (Philippines) Operations, Corporation*, G.R. Nos. 171742 & 176165, June 15, 2011, 652 SCRA 80, 89-90; *Commissioner of Internal Revenue v. PL Management International Philippines, Inc.*, G.R. No. 160949, April 4, 2011, 647 SCRA 72, 82.

⁵ Section 76 of the National Internal Revenue Code provides:

1997, as amended. As such, petitioner's recourse is to carry-over the amount of ₱2,151,269.00 to the succeeding taxable years until fully exhausted.⁶

SO ORDERED. *SERENO, C.J.*, on leave; *VELASCO, JR., J.*, acting member per S.O. No. 1772 dated August 28, 2014.

Very truly yours,


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No. 544)

The Solicitor General (x)
Makati City

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No. 12-7-1-SC)

SR

SEC. 76. *Final Adjustment Return.* – Every corporation liable to tax under Section 27 shall file a final adjustment return covering the total taxable income for the preceding calendar or fiscal year. If the sum of the quarterly tax payments made during the said taxable year is not equal to the total tax due on the entire taxable income of that year, the corporation shall either:

(A) Pay the balance of tax still due; or

(B) Carry-over the excess credit; or

(C) Be credited or refunded with the excess amount paid, as the case may be.

In case the corporation is entitled to a tax credit or refund of the excess estimated quarterly income taxes paid, the excess amount shown on its final adjustment return may be carried over and credited against the estimated quarterly income tax liabilities for the taxable quarters of the succeeding taxable years. **Once the option to carry-over and apply the excess quarterly income tax against income tax due for the taxable quarters of the succeeding taxable years has been made, such option shall be considered irrevocable for that taxable period and no application for cash refund or issuance of a tax credit certificate shall be allowed therefor.** (Emphasis supplied)

⁶ *Commissioner of Internal Revenue v. PL Management International Philippines, Inc.*, supra note 4.

