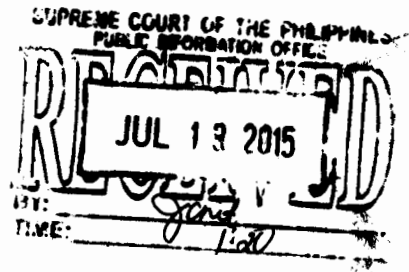




REPUBLIC OF THE PHILIPPINES  
SUPREME COURT  
Manila

SECOND DIVISION

NOTICE



Sirs/Mesdames:

Please take notice that the Court, Second Division, issued a Resolution dated **17 June 2015** which reads as follows:

**G.R. No. 205190 (Winebrenner & Iñigo Insurance Brokers, Inc. v. Commissioner of Internal Revenue).**

Before the Court is a petition for review on *certiorari* under Rule 45 of the Rules of Court assailing the December 11, 2012 Decision<sup>1</sup> of the Court of Tax Appeals *En Banc* (CTA EB), in CTA-EB No. 824. The factual antecedents as summarized by the CTA EB are as follows:

Petitioner is a domestic corporation duly organized and existing under Philippine laws, with principal office at Suite 803, 88 Corporate Centre, Sedeño corner Valero Streets, Salcedo Village, Makati City. It is registered with the Bureau of Internal Revenue (BIR) and was issued Tax Identification Number (TIN) 000-151-714-000 and BIR Certificate of Registration No. 9RC0000185715.

Respondent, on the other hand, is the duly appointed Commissioner of the Bureau of Internal Revenue empowered to perform the duties of said office including, among others, the power to decide, approve, and grant refunds or tax credits of erroneously or excessively paid taxes.

On the following dates, petitioner filed with the BIR its Annual Income Tax Return, First Amended Annual ITR and Second Amended Annual ITR, to wit:

Annual Income Tax Return (2005)	Date of Filing
Original Annual ITR	April 17, 2006
First Amended Annual ITR	May 9, 2006
Second Amended Annual ITR	May 15, 2006

On April 9, 2008, petitioner filed with the BIR Revenue District Office No. 50 an administrative claim for refund of excess and unutilized creditable withholding taxes for taxable year 2005 in the amount of ₱4,312,694.00. Thereafter, petitioner filed a Petition for Review before the former First Division of the Court of Tax Appeals on April 14, 2008 docketed as CTA Case No. 7764.

<sup>1</sup> *Rollo*, pp. 57-73. Penned by Associate Justice Erlinda P. Uy with Presiding Justice Ernesto D. Acosta and Associate Justices Juanito C. Castañeda, Jr., Lovell R. Bautista, Caesar A. Casanova, Olga Palanca-Enriquez, Cielito N. Mindaro-Grulla Amelia R. Cotangco-Manalastas, concurring and Associate Justice Esperanza R. Fabon-Victorino, dissenting.

*mlg*

An Answer was filed thereto by the Commissioner of Internal Revenue (CIR) on June 19, 2008, interposing the special and affirmative defense, among others, that petitioner is not entitled to a refund or tax credit because it opted to carry-over its excess creditable withholding tax for 2005 in its Amended Annual Income Tax Return filed on May 9, 2006, which option is allegedly considered irrevocable and cannot be altered by filing an amended annual income tax return pursuant to Section 76 of the 1997 Tax Code.

After the pre-trial conference held on July 4, 2008, the parties filed their Joint Stipulation of Facts and Issues on July 29, 2008. The same was approved by the Court *a quo* in the Resolution dated July 31, 2008.

During trial, petitioner presented its evidence, and formally offered Exhibits "A" to "E12," inclusive, which were admitted in the Resolutions dated June 19, 2009 and September 4, 2009. Thereafter, respondent presented in evidence Exhibits "1" and "1-A" to oppose petitioner's refund claim, which were admitted in the Resolution dated November 16, 2009.

Meanwhile, pursuant to CTA Administrative Circular No. 01-2011 dated January 5, 2010, implementing the fully expanded membership in the Court of Tax Appeals, CTA Case No. 7764 was transferred from the First Division to the Third Division of this Court (Court in Division). On March 12, 2010, the case was submitted for decision before the Court in Division, considering petitioner's Memorandum filed on February 17, 2010, and the report of the Court's Records Division that respondent failed to file a memorandum.

On February 16, 2011, the Court in Division rendered its Decision denying petitioner's claim for refund of its alleged excess or unutilized creditable income taxes withheld for taxable year 2005 in the amount of P4,312,694.00 for lack of merit. The Court *a quo* ruled that the Petition for Review in CTA Case No. 7764 should be denied considering that, although petitioner did not apply to any tax liability the 2005 unutilized excess tax credits of P4,312,694.00, as may be verified in its 2006 Annual Income Tax Return, the fact remains that petitioner's choice to carry over is still irrevocable.

Citing the case of *Commissioner of Internal Revenue vs. Bank of the Philippine Islands*, G.R. No. 178490, July 7, 2009, the Court in Division explained that once the carry-over option had already been made by petitioner, it is already bound by the irrevocability rule under Section 76 of the National Internal Revenue Code (NIRC) of 1997, as amended; and therefore, petitioner can no longer seek a refund of its 2005 excess tax credits even if the same were not utilized in the succeeding year 2006. Petitioner should just apply the 2005 excess tax credits to the succeeding quarters/years until the same are fully utilized.

Petitioner filed a Motion for Reconsideration of the said Decision before the Court *a quo*, through registered mail, on March 8, 2011. In said motion, petitioner argues that it had chosen the option to be refunded of or issued a TCC for its excess CWT, to the exclusion of the option to carry over its excess CWT as tax credit; that its primordial intent and subsequent acts clearly showed its intention to claim the refund or TCC of its excess and unutilized CWT; and that it did not carry over and apply the 2005 unutilized CWT to successive quarters/years. According to petitioner, the irrevocability rule under Section 76 of the NIRC of 1997, as amended, applies not only to the option to carry-over but also to the option to refund or be issued a tax credit certificate.

Although the Court *a quo* found merit in petitioner's foregoing arguments, nevertheless, it denied petitioner's Motion for Reconsideration in the assailed Resolution dated August 17, 2011, due to petitioner's non-compliance with the following legal requirements: (1) 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 (2) that the income upon which the taxes were withheld were included in the return of the recipient.

In his Separate Opinion dated August 17, 2011, the Honorable Justice Lovell R. Bautista, Chairperson of the Third Division, stated his concurrence with the majority's conclusion to deny petitioner's claim for refund but elucidated that Section 76 remains clear and unequivocal, that is: once the carry-over option is taken, actually or constructively, it becomes irrevocable. Thus, when the law is clear, it is not susceptible to interpretation and must be applied regardless of who may be affected, even if the law may be harsh or onerous.

Hence, petitioner filed the instant Petition for Review before the Court *En Banc* praying that the assailed Resolution dated August 17, 2011 of the Court in Division be reversed and set aside, and that a new decision be rendered ordering respondent to refund petitioner the amount of P4,312,694.00, allegedly pertaining to its excess and unutilized creditable withholding tax for taxable year 2005.

In its Decision, dated December 11, 2012, the CTA EB denied the petition for review filed by Winebrenner & Iñigo Insurance Brokers, Inc. (*petitioner*) for lack of merit. It explained that the last sentence of Section

76<sup>2</sup> of the National Internal Revenue Code (*NIRC*) clearly and unequivocally refers to the option to “carry-over.” Petitioner, having chosen to carry-over its excess quarterly income tax in its First Amended Annual Income Tax Return (First Annual ITR), could not thereafter choose to apply for a cash refund or for the issuance of a tax credit certificate for the amount representing its overpayment. The dispositive portion of the decision reads:

**WHEREFORE**, in light of the foregoing considerations, the Petition for Review is hereby **DENIED** for lack of merit.

**SO ORDERED.**<sup>3</sup>

Hence, this petition for review.

Petitioner argues that the CTA EB erred in denying its claim for refund and applying the irrevocability rule pursuant to Section 76 of the *NIRC* to its case.

The Court, however, finds no reversible error warranting the exercise of its appellate jurisdiction.

In *Commissioner of Internal Revenue v. Mirant (Philippines) Operations, Corporation*,<sup>4</sup> it has been held that under the plain and clear provision of Section 76 of the *NIRC*, once the taxpayer exercises the option to carry over its excess income tax payment, the said option becomes irrevocable. In turn, the carry-over option, once exercised, precludes the taxpayer to, later on, convert the same to a claim for refund.

In sum, absent any imprudent exercise of authority on the part of the CTA EB, the Court finds no compelling reason to deviate or depart from its findings.

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<sup>2</sup> Section 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 refund of the excess estimated quarterly income taxes paid, the refundable amount shown on its final adjustment return may be 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 tax refund or issuance of a tax credit certificate shall be allowed therefor. (Underscoring supplied.)

<sup>3</sup> Id. at 72.

<sup>4</sup> 667 Phil. 208 (2011).

**WHEREFORE**, the petition is **DENIED**. (*Leonen, J., on official leave, Jardeleza, J., designated Acting Member, per Special Order No. 2056, dated June 10, 2015*)

**SO ORDERED.**

Very truly yours,

*MA. LOURDES C. PERFECTO*  
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 Division Clerk of Court *1/12*

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