



TAX LAW FOR BUSINESS
Atty. Fulvio D. Dawilan

*BDB Law's "Tax Law For Business" appears in the opinion section of **Business Mirror** every Thursday.*

Refund of income taxes

We had the occasion to discuss in this column the rules applicable to the refund of income taxes arising from excess quarterly income-tax payments or unutilized creditable withholding taxes. At the time, however, we noted that the application of the irrevocability rule was still unclear, as shown by the number of refund claims denied by the courts.

The rule is very simple. If there is excess income-tax payment, the taxpayer has only two options—claim for tax refund (cash refund or the issuance of tax-credit certificate) or avail himself of a tax credit by carrying over and applying against the income taxes due in future years. A choice made by the taxpayer is irrevocable.

Notwithstanding its clarity, the rule evoked many questions, sometimes resulting in the denial of claims for refund. For instance, if a refund choice is indicated by the taxpayer in his income-tax return, would an actual carryover invalidate such choice? And is there even a need to present the subsequent years' income-tax returns to prove that no actual carryover has been made?

The recent decisions of the courts hopefully clarified these questions. The facts in CTA (Court of Tax Appeals) Case No. 7711, March 23, 2011, show that the taxpayer indicated in his annual income-tax return that the unutilized creditable withholding tax appearing in return was "to be refunded." Nonetheless, the taxpayer actually carried over the excess tax payment to the succeeding quarters.

If the earlier decisions were to be followed, the claim would have been denied by the mere fact that the same claim was forwarded in the subsequent quarters. In fact, this was the position espoused in the dissenting opinion. This time, however, the majority noted that the inclusion of the unutilized creditable withholding tax as "prior year's excess credits" in the quarterly returns of the subsequent years was merely a lapse in judgment. In arriving at this decision, the Court stressed that the two options provided in the law are in the alternative, thus, the choice of one precludes the other. It further stated that the controlling factor for the operation of the irrevocability rule is that the taxpayer chooses an option; and once it had done so, it could no longer make another one.

While this is a decision of a division, the full Court is even doing away with the presentation of the returns of the subsequent periods as proof that the subject of the claim was not actually carried over in future returns. In CTA EB 597, March 17, 2011, the taxpayer marked the box corresponding to the option "To be refunded" in his income-tax return to signify his intention to avail himself of such option. In his claim for refund, he did not present the subsequent quarterly income-tax returns.

Again, if we refer to previous decisions, the claim would have been denied on the ground that the taxpayer failed to present the quarterly income-tax returns of the following year. In fact, the division where the case originated denied the claim precisely on this ground. The division ruled that the taxpayer failed to sufficiently prove that he did not carry over the claimed creditable withholding taxes to the succeeding quarters. By failing to present these quarterly income-tax returns, there is no way for Court to determine whether the taxpayer effectively opted to carry over the excess creditable withholding taxes to the subsequent taxable quarters.

The full Court, however, viewed otherwise. As in CTA Case No. 7711, the Court ruled that under the law, the availment of one remedy precludes the other. As such, the choice of the taxpayer to be refunded of his excess tax credits precludes the choice of the same excess tax credits from being carried over to the income tax due for the taxable quarters of the succeeding taxable years. Thus, although the taxpayer has not presented and offered in evidence his quarterly income-tax returns of the subsequent year, the option to be refunded must be respected. There is no need for the Court to refer to the subsequent returns to determine whether the taxpayer effectively opted to carry over the excess creditable withholding to the succeeding quarters.

A reading of these decisions would show that the irrevocability rule applies to both options, i.e., the choice of either a claim for refund or a carryover is irrevocable. What is controlling is what the taxpayer signifies as his choice in the income-tax return where the excess income tax arises. If he chooses to apply for refund, that is irrevocable, and this choice is not affected by what he does in his subsequent returns. With that, the presentation of subsequent year's returns serves no purpose. We hope that this ratiocination remains undisturbed.

The author is a senior partner of Du-Baladad and Associates Law Offices, a member-firm of World Tax Services Alliance.

The article is for general information only and is not intended, nor should be construed as a substitute for tax, legal or financial advice on any specific matter. Applicability of this article to any actual or particular tax or legal issue should be supported therefore by a professional study or advice. If you have any comments or questions concerning the article, you may e-mail the author at fulvio.dawilan@bdblaw.com.ph or call 403-2001, local 310.