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## **Gray areas in claims for VAT refund**

IT is now settled that the filing of the administrative claim and the filing of the judicial claim for value-added tax (VAT) refund have different prescriptive periods that must be observed. An administrative claim for VAT refund should be filed within two years from the end of the quarter when the sales were made.

On the other hand, the judicial claim with the Court of Tax Appeals (CTA) must be filed within 30 days after 120 days from the submission of complete documents have lapsed. Thus, a request letter for refund must be filed with the Bureau of Internal Revenue (BIR) within the two-year period. But the submission of complete documents, which is the reckoning date of the 120-day period, may not be the same date as the filing of the request letter for refund with the BIR. This is one of the gray areas that are yet to be resolved with finality by the courts.

One issue where there are conflicting opinions offered by the court is when the counting of the 120-day period should commence. In one case (CTA EB 776, October 11, 2012), the court ruled that the counting of the 120-day period should start from the filing of the administrative claim for refund and not from the submission of additional documents. The material dates are as follows:

- § May 15, 2008—Filing of administrative claim with the BIR
- § August 28, 2008—Taxpayer submitted additional documents in support of the claim
- § September 12, 2008—End of 120 days, if counted from May 15, 2008
- § October 12, 2008—End of the 150 (120+30) days, if counted from May 15, 2008
- § December 26, 2008—End of 120 days, if counted from the submission of additional documents on August 28, 2008
- § January 23, 2009—Filing of the judicial claim
- § January 25, 2009—End of the 120-30 day period, if commenced from August 28, 2009

In this case, the court denied the claim on the ground that the taxpayer should have counted 120 days from the filing of the administrative claim with the BIR on May 15, 2008, and not when it submitted additional documents in support of the claim.

However, in a more recent case (CTA EB 899, September 10, 2013), the court held that the counting of the 120-day period should commence from the submission of additional documents by the taxpayer. The material dates of this case are as follows:

- § March 11, 2011—Filing of the administrative claim with the BIR
- § July 1, 2011—Taxpayer submitted additional documents in support of the claim
- § July 9, 2011—End of the 120-day period, if counted from March 11, 2011
- § August 8, 2011—End of the 150 (120+30) days to file judicial claim, if counted from June 29, 2011
- § August 8, 2011—Filing of the judicial claim
- § October 28, 2011—End of the 150 (120+30) days, if counted from July 1, 2011

In this case, the court denied the claim on the ground that the counting of the 120-30 day period should be commenced from the submission of additional documents and not from the filing of the administrative claim.

These are two conflicting decisions that highlight the sad predicaments of taxpayers. Should a taxpayer count the 120-30 day period from the filing of its administrative claim with the BIR or from the submission of additional documents? Aside from the issue in the counting of the 120-30 day period, there is also confusion as to how the term “complete documents,” as mentioned in Section 112 of the Tax Code, should be defined.

In one case, the court said the term “complete documents:” should be construed as those documents necessary to support the legal basis of the taxpayer’s application for input VAT refund or credit, as may be determined by the taxpayer. (CTA Case 6960, December 20, 2011). In another case, it was ruled that the BIR examiner can require the taxpayer to submit additional documents, but the examiner cannot demand what type of supporting documents should be submitted. (CTA Case 7846 and 7865, January 16, 2012). It appears that, based on the foregoing CTA decisions, the meaning of “complete documents” is in the hands of the taxpayer.

Until the much anticipated revenue regulation on claims for VAT refund is released by the BIR, the definition of “complete documents” will remain vague.

The rules on the reckoning date of the 120-30 day period, as well as the definition of “complete documents,” are not yet settled by jurisprudence, since the above-mentioned cases are only decisions by the CTA. Until the Supreme Court finally resolves these issues and the BIR revenue regulation, which is currently being finalized, is released, taxpayers have to be very conservative on its policies regarding claims for VAT refund.

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