

## Lack of TIN in BIR Form No. 2307 may lead to the denial of CWT refund

Under the National Internal Revenue Code, as amended (Tax Code), filing a claim for refund/issuance of tax credit certificate (TCC) is one of the options available for corporate taxpayers with excess Creditable Withholding Tax (CWT) credits.

In order to be entitled for a refund or issuance of TCC, prevailing jurisprudence provided the following requirements that must be complied with: 1) The claim for refund/issuance of TCC should be filed within two years as prescribed under the Tax Code. 2) The income payments received are included as part of the gross income declared in the return of the taxpayer. And 3) 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.

### TOP OF MIND



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In connection with the third requisite, a BIR Form No. 2307 is normally required to be presented as supporting document to establish the fact of withholding. In the case of *Commissioner of Internal Revenue vs Philippine Bank of Communications (PBCom)*, CTA EB No. 1421 dated May 23, the CTA partially granted PBCom's claim for CWT refund. The CTA, however, denied certain CWTs which are supported by BIR Form No. 2307 issued in favor of PBCom that do not indicate PBCom's Tax Identification Number (TIN).

In supporting the denial, the CTA opined that the TIN serves as identification of taxpayers in relation to their payment with the BIR. The CTA further ruled that it cannot be verified if indeed the taxpayer paid the correct amount of tax to the government if the BIR Form No. 2307s do not indicate its TIN. Thus, for failure of the BIR Form No. 2307 to indicate the TIN of PBCom, the related CWT credits were denied outright by the CTA.

One of the CTA justices in his dissenting opinion cited the ruling of the Supreme Court in a 2007 decision and opined that the BIR Form No. 2307 which do not bear PBCom's TIN should not be denied outright considering that the same are complete in relevant details necessary to aid the court in evaluating the refund. He further opined that PBCom's name and address appearing on said BIR Form No. 2307, albeit without its TIN, may be cross-referenced to PBCom's BIR Certificate of Registration.

In an earlier case of *RCD Realty Marketing Corporation vs Commissioner of Internal Revenue*, the CTA in division granted the claim for refund filed by the taxpayer-claimant with regard to its excess CWTs notwithstanding the lack of TIN in its BIR Form No. 2307. The CTA reasoned that there is sufficient compliance with the requirement of the law as long as the BIR Form No. 2307 clearly show the information regarding the payor, the payee, the amount paid and the related income tax withheld.

The CTA further ruled in the RCD case that the taxpayer-claimant has the burden of proving its entitlement to refund. However, once the taxpayer-claimant has submitted all the required documents, it is the function of the BIR to assess the documents with purposeful dispatch.

In connection thereto, it must be emphasized that while it is true that tax refunds are in the nature of tax exemptions which must be construed strictissimi juris against the claimant, it is also a well-entrenched principle that the State is not exempt from the application of unjust enrichment. Under prevailing jurisprudence, the Supreme Court consistently ruled that in the field of taxation where the State exacts strict compliance upon its citizens, the State must likewise deal with taxpayers with fairness and honesty. After all, since taxpayers owe honesty to government, it is but just that government renders fair services to the taxpayers.

Ergo, unless this issue is finally resolved by the Supreme Court, it is advisable on the part of the taxpayers to ensure that BIR Form No. 2307 received from their withholding agents are duly accomplished. This simple control will help taxpayers avoid bigger tax problems in the future. After all, taxpayers may find it unacceptable for their CWT refund to be denied on the sole basis that the corresponding BIR Form No. 2307 do not reflect their TIN.

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