REPUBLIC OF THE PHILIPPINES
DEPARTMENT OF FINANCE
BUREAU OF INTERNAL REVENUE
Quezon City

RA No. 10149; Banco Filipino Savings and Mortgage Bank vs. Court of Appeals; Zuellig Pharma Corporation vs. Commissioner of Internal Revenue		DEC 14 - 2022 JAN 17 2022

Person to Contact: Chief, Law Division
Tel Nos. 926-55-36 / 927-09-63

APO-UGEC Security Printing Joint Venture
LIMA Technology Center
Lot 3, Blk 16, A. Mabini St.
Malvar, Batangas

Attention: **Mr. Michael Dalumpines**
President and Chairman of the Board
APO Production Unit, Inc.

Jacqueline Ann A. Tan
President and Chairman of the Board
United Graphic Expression Corp.

Gentlemen:

This refers to your letter dated February 26, 2019 requesting on behalf of the **APO-UGEC SECURITY PRINTING JOINT VENTURE** (the "Joint Venture") that it be allowed to: (1) use the creditable withholding tax (CWT) certificates issued in the name of APO Production Unit, Inc. ("APO") as proof of the Joint Venture's entitlement to such tax credits, and (2) benefit from the deduction of the input value-added tax (VAT) expense or the charging against cost of the unrecoverable input VAT relating to government transactions.

It is represented that APO is a government instrumentality with corporate powers/government corporate entity by virtue of Republic Act (RA) No. 10149 and is a recognized government printer (RGP). United Graphic Expression Corporation (UGEC) is a corporation duly organized and existing in accordance with Philippine laws. On November 27, 2014, APO and UGEC signed a joint venture agreement (JVA) and formed an unincorporated or contractual joint venture following the procedure laid out in the Revised Guidelines and Procedures for Entering into Joint Venture (JV) Agreements between Government and Private Entities issued by the National Economic and Development Authority in 2013 (JV Guidelines). The Joint Venture was formed for the twin purpose of upgrading APO's security printing plant in LIMA Technology Center, Batangas and of operating the same as a going business concern. The Joint Venture is registered as a taxpayer in LIMA Technology Center, Lipa, Batangas.

Anent the third requirement, in ***Banco Filipino Savings and Mortgage Bank vs. Court of Appeals***[1], the Supreme Court held:

> *"In fine, the document which may be accepted as evidence of the third condition, that is, the fact of withholding, must emanate from the payor itself, and not merely from the payee, and must indicate the name of the payor, the income payment basis of the tax withheld, the amount of the tax withheld and the nature of the tax paid."*

Thus, it is clear from the foregoing that a document evidencing the withholding of taxes must clearly state the name of the payor and payee in order to properly identify the parties thereof and if the CWT was correctly remitted to the government. This principle was further illustrated in ***Zuelling Pharma Corporation vs. Commissioner of Internal Revenue***[2], wherein the Court of Tax Appeals ruled in this wise:

> *"xxx xxx xxx ... There is nothing in Banco Filipino that declares that the elements enumerated are exclusively and solely indispensable in proving the fact of withholding.* ***Identifying the claimant with the proper and correct TIN in the CWT Certificate is indispensable and fundamental because it answers the question, "On whose behalf was the CWT remitted to the government by the payor?"*** *that the lack of emphasis thereof in the Banco Filipino case does not diminish its importance.*
>
> *This Court has previously discussed why CWT certificates without the claimant's TIN are properly disallowed. In the case of Commissioner of Internal Revenue vs. Philippine Bank of Communication, the Court en banc declared:*
>
> *"x x x [A] claim for tax refund or credit, like a claim for tax exemption, is construed strictly against the taxpayer.* ***It must be kept in mind that the TIN serves as identification of taxpayers in relation to their payment with the BIR. Absent this, even with the taxpayer's name, it cannot be verified if indeed the taxpayer paid the correct amount to the government.*** *Well entrenched in our jurisprudence is that tax refunds are in the nature of tax exemptions. As such, they are regarded as in derogation of sovereign authority and to be construed strictissimi juris against the person or entity claiming the exemption. Accordingly, the claimant has the burden of proof to establish the factual basis of his or her claim for tax credit or refund.*
>
> *Thus, the certificates with corrections not properly countersigned and with incomplete details, such as absence of PBCom's TIN, are properly disallowed."*
>
> *Thus, We uphold the Court in Division's ruling to disallow petitioner's CWT in the amount of P for being supported by CWT certificates with incorrect TIN."* (Underscoring and emphasis ours)

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[1] GR No. 155682, March 27, 2007
[2] CTA Case No. 8801, October 1, 2019

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The mere fact that the CWT Certificates were in the name of APO, it follows that the taxpayer identification number (TIN) in the said Certificates also reflects the TIN of APO, not that of the Joint Venture Corporation. Moreover, it bears stressing that since the CWT Certificates were issued to APO, it is presumed that the official receipts issued to the governments clients is in the name of APO. Hence, the receipts of payments by APO shall be considered its revenues.

Therefore, in view of the foregoing discussions, the Joint Venture is not entitled to use the tax credits evidenced by the CWT Certificates issued in the name of APO.

With regard to the deduction of the input tax expenses relating to government transactions, this Office believes that the Joint Venture may not deduct the same or benefit thereof since the sales invoices were issued and is in the name of APO. Based on the recording of sales in the books of the Joint Venture and APO, it appears that APO is the client of the former. It is unclear if the Joint Venture Corporation issues official receipts to APO in recording its sales. Thus, this Office believes that the Joint Venture may not benefit from the deduction of the input VAT expense or the charging against the cost of the unrecoverable input VAT due to lack of legal basis. It is a common principle in taxation that claims for tax refund, which are in the nature of tax exemptions, must be construed in *strictissimi juris* against the claimant, so the latter must prove that it is entitled to the refund sought.

This ruling is issued on the basis of the facts as represented. However, if upon investigation it shall be disclosed that the actual facts are different, then this ruling shall be without force and effect insofar as the herein parties are concerned.

Very truly yours,

CAESAR R. DULAY
Commissioner of Internal Revenue

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