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

June 11, 2014

REVENUE MEMORANDUM CIRCULAR NO. 54-2014

SUBJECT : Clarifying Issues Relative to the Application for Value Added Tax (VAT) Refund/Credit under Section 112 of the Tax Code, as amended

TO : All Internal Revenue Officers and Others Concerned

Clarification on the issues concerning the application for VAT refund/tax credit has been made by the Supreme Court in Commissioner of Internal Revenue vs. San Roque Power Corporation[1] and in Mindanao II Geothermal Partnership vs. Commissioner of Internal Revenue.[2] As such, this Circular is issued to summarize the rules on filing and processing of applications for VAT refund/tax credit.

I. Prescriptive Period within which Administrative Claim for Refund or Tax Credit of Input Taxes shall be Made

Section 112 (A) of the Tax Code, as amended, provides that any VAT-registered person whose sales are zero-rated or effectively zero-rated, may within two (2) years after the close of the taxable quarter when sales were made, apply for the issuance of tax credit certificate or refund of creditable input tax due or attributable to such sales, except transitional input tax, to the extent that such input tax has not been applied against output tax. As such, the taxpayer can file his administrative claim for VAT refund or credit at anytime within two-year prescriptive period.

The Commissioner shall have one hundred twenty (120) days from the date of submission of complete documents to decide whether or not to grant the claim for refund or issuance of the Tax Credit Certificate (TCC) for creditable input taxes. If the claim for VAT refund or credit is not acted upon by the Commissioner within 120-day period as required by law, such "inaction shall be deemed a denial" of the application for tax refund or credit.

II. Filing and Processing of Administrative Claims —

The application for VAT refund/tax credit must be accompanied by complete supporting documents as enumerated in Annex "A" hereof. In addition, the taxpayer shall attach a statement under oath attesting to the completeness of the submitted documents (Annex "B"). The affidavit shall further state that the said documents are the only documents which the taxpayer will present to support the claim. If the taxpayer is a juridical person, there should be

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[1] GR Nos. 187485, 196113 and 197156 dated February 12, 2013.
[2] GR Nos. 193301 and 194637.

a sworn statement that the officer signing the affidavit (i.e., at the very least, the Chief Financial Officer) has been authorized by the Board of Directors of the company.

Upon submission of the administrative claim and its supporting documents, the claim shall be processed and no other documents shall be accepted/required from the taxpayer in the course of its evaluation. A decision shall be rendered by the Commissioner based only on the documents submitted by the taxpayer. The application for tax refund/tax credit shall be denied where the taxpayer/claimant failed to submit the complete supporting documents. For this purpose, the concerned processing/investigating office shall prepare and issue the corresponding Denial Letter to the taxpayer/claimant.

III. Mandatory 120+30 Day Period —

In case of full or partial denial of the claim for tax refund or tax credit, or the failure on the part of the Commissioner to act on the application within the period prescribed above, the taxpayer affected may, within thirty (30) days from the receipt of the decision denying the claim or after the expiration of the one hundred twenty (120) day-period, appeal the decision or the unacted claim with the CTA. Verily, a judicial claim must be filed with the CTA within 30 days from the receipt of the Commissioner's decision denying the administrative claim or from the expiration of the 120-day period without any action from the Commissioner, as the case may be. In this regard, the taxpayer/claimant is required to observe the 120+30 day rule before lodging a petition for review with the CTA.

In sum, the taxpayer can file the appeal in one of two ways: (1) file the judicial claim within thirty days after the Commissioner denies the claim within the 120-day period, or (2) file the judicial claim within thirty days from the expiration of the 120-day period if the Commissioner does not act within the 120-day period.[3]

IV. Exception to the Mandatory and Jurisdictional Nature of the 120+30 day Period (BIR Ruling No. DA-489-03 dated 10 December 2003)

As an exception to the mandatory and jurisdictional 120+30 day period, it was emphasized that from the time of issuance of BIR Ruling No. DA-489-03 on December 10, 2003 up to its reversal by the Supreme Court in the Aichi case on October 6, 2010 (or a period of almost 7 years), taxpayers/claimant ***need not wait*** for the lapse of the 120-day period before it could seek judicial relief with the CTA by way of Petition for Review. This exception, however, is limited to cases of premature filing (filing of judicial claim prior to the lapse of the120-day period) and *does not extend to late filing of a judicial claim*.[4]

V. Pending Administrative Claim

In cases where the taxpayer has filed a "petition for review" with the CTA, the Commissioner loses jurisdiction over the administrative claim. However, the Processing Office of the Administrative Agency shall still evaluate internally the administrative claim for purposes of intelligently opposing the taxpayer's judicial claim.

Indubitably, failure to file a judicial claim with the CTA within thirty (30) days from the expiration of the 120-day period rendered the Commissioner's decision, or inaction "deemed

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[3] Commissioner of Internal Revenue vs. Mindanao II Geothermal, G.R, No, 191498, January 15, 2014.
[4] *Ibid.*

a denial", final and unappealable.[5] This applies to all currently pending administrative claim for refund/tax credit.

All other issuances inconsistent herewith are hereby repealed or modified accordingly.

All concerned are hereby enjoined to be guided accordingly and give this Circular as wide a publicity as possible.

This Circular shall take effect immediately.

(Original Signed)
KIM S. JACINTO-HENARES
Commissioner of Internal Revenue

[5] *Supra* Note 1.