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THIRD DIVISION

[G.R. No. 209755. November 9, 2020]

I-REMIT, INC. (FOR ITSELF AND ON BEHALF OF JPSA GLOBAL SERVICES, CO., JTKC EQUITIES, INC. AND SUREWELL EQUITIES, INC.), *Petitioner*, *v.* **COMMISSIONER OF INTERNAL REVENUE,** *Respondent*.

SYLLABUS

1. TAXATION; NATIONAL INTERNAL REVENUE CODE (NIRC); PERCENTAGE TAXES; EACH SALE OF SHARES OF STOCK IN CLOSELY HELD CORPORATIONS THROUGH INITIAL PUBLIC OFFERING IS TAXED; TYPES OF SALES INVOLVED.— A plain reading of Section 127(B) shows that tax is imposed on "*every sale*, barter, exchange or other disposition through initial public offering of shares of stock in closely held corporations": . . .

The word "every" precedes the word "sale." The use of such word is clear and leaves no room for interpretation. *Each sale* of shares of stock in closely held corporations through initial public offering is taxed under Section 127(B).

The tax on every sale under Section 127 (B) is in turn based on the "gross selling price or gross value in money of shares of stock sold, bartered, exchanged or otherwise disposed in accordance with the proportion of shares of stock sold, bartered, exchanged or otherwise disposed to the total outstanding shares of stock after the listing."

Since tax is imposed on every sale of shares of stock, there is a need to determine which sales are covered in the sale of shares through initial public offering. On this score, the second paragraph of Section 127(B) precisely provides for the types of sales involved: sale by the issuing corporation in primary offering, and sale by each of the corporation's shareholders in secondary offering: . . .

Thus, every sale in Section 127(B) is referenced to the seller, *i.e.*, the issuing corporation in case of primary offering,

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and each of the selling shareholders of the corporation in case of secondary offering. The sale contemplated is not a lone, lump sum sale, as suggested by the petitioner, since more than one sale may transpire under Section 127(B).

2. ID.; ID.; ID.; ID.; THE "SHARES" CONTEMPLATED UNDER SECTION 127(B) IS NOT LUMP SUM IN THAT IT INCLUDES ALL THE SHARES SOLD DURING THE INITIAL PUBLIC OFFERING; STATUTORY CONSTRUCTION; A STATUTE MUST BE SO CONSTRUED AS TO HARMONIZE AND GIVE EFFECT TO ALL OF ITS PROVISIONS.— In arguing that Section 127(B) provides for a joint computation of tax on sale of shares in primary and secondary offerings, I-Remit focuses only on the phrase "shares of stock sold, bartered, exchanged or otherwise disposed in accordance with the proportion of shares of stock sold, bartered, exchanged or otherwise disposed to the total outstanding shares of stock after the listing." It chooses to disregard the rest of the provision, contrary to the principle that "[a] statute must be so construed as to harmonize and give effect to all its provisions whenever possible."

Yet even this oft-quoted phrase of petitioner indicates the intent to differentiate the computation of tax on sale of shares in primary and secondary offerings. The word "total" is used to describe the outstanding shares after the listing (or the divisor in the computation), while the same word is noticeably not used in describing the "shares" offered during the initial public offering (or the dividend in the computation). Obviously, the "shares" contemplated is not lump sum in that it includes all the shares sold during the initial public offering, otherwise the word "total" would have also been used to describe it.

3. ID.; ID.; ID.; ID.; WHILE THE TAX ON SALE OF SHARES IN PRIMARY OFFERING SHOULD BE FILED AND PAID BY THE ISSUING CORPORATION WITHIN THIRTY (30) DAYS FROM THE DATE OF LISTING, THE TAX ON SALE OF SHARES IN SECONDARY OFFERING SHOULD BE COLLECTED AND REMITTED BY THE STOCK BROKER WITHIN FIVE (5) BANKING DAYS FROM THE DATE OF COLLECTION THEREOF.— [T]he distinction is readily apparent from a reading of Section 127 (C) of the NIRC, which expressly provides for a separate time and manner of payment of tax in primary and secondary offerings as well as the party liable to pay the corresponding tax: . . .

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While the tax on sale of shares in primary offering should be filed and paid by the *issuing corporation* within *thirty (30) days from the date of listing* of the shares of stock in the local stock exchange, the tax on sale of shares in secondary offering should be collected and remitted by the *stock broker* within *five (5) banking days from the date of collection* thereof.

It cannot be any clearer from the foregoing that the sale of shares in primary offering is treated separately from the sale in secondary offering. Necessarily, the corresponding tax for every sale is likewise computed separately.

4. ID.; ID.; ID.; REVENUE REGULATION (RR) 06-2008 OF THE COMMISSIONER OF INTERNAL REVENUE; IN ILLUSTRATING HOW THE PERCENTAGE TAX IS COMPUTED FOR SHARES OFFERED IN PRIMARY AND SECONDARY OFFERINGS, SECTION 6(C) OF RR 06-2008 IS CONSISTENT WITH SECTION 127(B) OF THE NIRC.— To implement Section 127(B), RR 06-2008 was issued by the CIR on April 22, 2008, months *after* petitioner's initial public offering on October 17, 2007. Section 6(C) illustrates how the tax under Section 127 (B) shall be *separately* computed for shares offered in primary and secondary offerings. . . .

Petitioner argues that the illustration in Section 6(C) is a departure from Section 127(B). It contends that an administrative rule such as RR 06-2008 may not supplant nor modify the law it seeks to implement.

However, Section 6(C) did *not* supplant or modify Section 127(B). As discussed above, Section 127(B) is clear in requiring a separate computation of tax on shares offered in primary and secondary offerings. Thus, Section 6(C), in illustrating how the tax should be computed separately, is consistent with Section 127(B).

5. ID.; ID.; ID.; THE PERCENTAGE TAX RETURN FOR TRANSACTIONS UNDER SECTION 127(B) REQUIRES A SEPARATE COMPUTATION.— There should be no confusion as to the separate computation. Aside from the clarity of Section 127(B), it is also clear from the Percentage Tax Return for transactions under Section 127(B) that a separate computation of the tax due is required. Bureau of Internal Revenue (BIR) Form No. 2552 (July 1999 version) provides separate fields

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for computation of tax on sale of shares in primary and secondary offerings. . . .

Interestingly, when petitioner used the same form to report the tax on its sale of shares during the October 17, 2007 initial public offering, petitioner used the fields in primary offering to compute for the tax on sale of shares in *both* primary and secondary offerings. It deliberately ignored the fields for secondary offering. . . .

Given the specificity of BIR Form No. 2552, petitioner should not have jointly computed the tax on sale of shares in primary and secondary offerings.

6. ID.; ID.; ID.; AN ERRONEOUS INTERPRETATION OF SECTION 127(B) CANNOT BE A SOURCE OF ANY VESTED RIGHT.— I-Remit argues that it has the right to rely on the favorable pronouncement of the CTA Second Division in its May 23, 2011 Decision. To recall, the Second Division of the Tax Court stated that "a joint computation, using the total number of shares sold during the IPO, should determine the IPO tax rate to be used." However, the pronouncement was an erroneous interpretation of Section 127(B) from which no vested right may arise. Thus, it cannot be the source of any vested right in favor of petitioner — more so in this case where the said pronouncement was reversed and reconsidered by the same court in its August 18, 2011 Resolution.

In fine, we rule that the tax on sale of shares of stock in closely held corporations sold or exchanged through initial public offering under Sec. 127 (B) is *separately* computed as to shares offered in primary and secondary offerings.

APPEARANCES OF COUNSEL

Tan Venturanza Valdez for petitioner.
Office of the Solicitor General for respondent.

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D E C I S I O N

HERNANDO, *J.*:

This Petition for Review[1] assails the April 16, 2013 Decision[2] and October 30, 2013 Resolution[3] of the Court of Tax Appeals *En Banc* (CTA *En Banc*) in CTA EB No. 822.

In its assailed Decision, the CTA *En Banc* dismissed the Petition for Review filed by petitioner I-Remit, Inc. (I-Remit) for refund of excess taxes from respondent Commissioner of Internal Revenue (CIR).[4] In its assailed Resolution, the CTA *En Banc* denied petitioner's Motion for Reconsideration for lack of merit.[5]

This case involves the interpretation of Section 127 (B) of the National Internal Revenue Code (NIRC), specifically on the computation of tax on sale of shares of stock sold or exchanged through initial public offering. Section 127 (B) provides:

SEC. 127. Tax on Sale, Barter or Exchange of Shares of Stock Listed and Traded through the Local Stock Exchange or through Initial Public Offering. —

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(B) ***Tax on Shares of Stock Sold or Exchanged Through Initial Public Offering.*** — There shall be levied, assessed and collected on every sale, barter, exchange or other disposition through initial public

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[1] *Rollo*, pp. 22-53.

[2] *Id.* at 55-65; penned by Associate Justice Amelia R. Cotangco-Manalastas and concurred in by Associate Justices Juanito C. Castañeda, Jr., Lovell R. Bautista, Erlinda P. Uy, Caesar A. Casanova, Esperanza R. Fabon-Victorino, and Cielito N. Mindaro-Grulla. Associate Justice Ma. Belen M. Ringpis-Liban penned a Dissenting Opinion; Presiding Justice Roman G. Del Rosario, on leave.

[3] *Id.* at 8-10.

[4] *Id.* at 22-53; 61.

[5] *Id.* at 8-10.

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offering of shares of stock in closely held corporations, as defined herein, a tax at the rates provided hereunder based on the gross selling price or gross value in money of the shares of stock sold, bartered, exchanged or otherwise disposed in accordance with the proportion of shares of stock sold, bartered, exchanged or otherwise disposed to the total outstanding shares of stock after the listing in the local stock exchange:

Up to twenty-five percent (25%)	4%
Over twenty-five percent (25%) but not over thirty-three and one third percent (33 1/3%)	2%
Over thirty-three and one third percent (33 1/3%)	1%

The tax herein imposed shall be paid by the issuing corporation in primary offering or by the seller in secondary offering.

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Petitioner argues that the tax on sale of shares of stock sold or exchanged through initial public offering should be *jointly* computed for both sale of shares in *primary* offering, where the shares are offered by the issuing corporation, and in *secondary* offering, where the shares are offered by the selling shareholders of the corporation.[6]

Respondent CIR counters that the tax should be *separately* computed for the sale for shares in the primary and secondary offerings.[7]

The antecedents.

Petitioner I-Remit is a domestic corporation listed with the Philippine Stock Exchange.[8] It is principally engaged in the business of fund transfer and remittance services.[9]

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[6] *Id.* at 28-32.

[7] *Id.* at 246-257.

[8] *Id.* at 23.

[9] *Id.* at 108-109.

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JPSA Global Services Co. (JPSA), JTKC Equities, Inc. (JTKC), and Surewell Equities, Inc. (Surewell), all constituted under the laws of the Philippines, are shareholders of petitioner and have constituted the latter as their attorney-in-fact for their claim for refund.[10]

Respondent CIR is vested with the authority to decide, approve and/or grant refund of national internal revenue taxes.[11]

On October 17, 2007, petitioner offered to the public 140,604,000 shares by way of an initial public offering at the offer price of ₱4.68 each share.[12] Of these shares, 107,417,000 shares were offered in primary offering by petitioner as the issuing corporation, and 33,187,000 shares were offered in secondary offering by JTKC, JPSA, and Surewell, as selling shareholders of petitioner.[13]

On November 19, 2007, in compliance with Section 127 (B) requiring payment of tax in accordance with the "shares of stock sold, bartered, exchanged or otherwise disposed" in proportion to the "total outstanding shares of stock after the listing," petitioner paid the tax in the amount of ₱26,321,069.00, computed as follows:[14]

Tax Base	=	Shares of stock sold, bartered, exchanged or otherwise disposed / Total outstanding shares of stock after listing
	=	140,604,000
	=	562,417,000
	=	24.999%
Tax	=	4% (Corresponding tax rate to 24.999%

[10] *Id.* at 23.

[11] *Id.*

[12] *Id.* at 24.

[13] *Id.*

[14] *Id.* at 25.

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Rate		based on the schedule in Section 127 (B)[15])
Amount of Tax	=	(Shares of stock sold, bartered, exchanged or otherwise disposed) (Offer Price) (Tax Rate)
	=	(₱140,604,000) (₱4.68) (4%)
	=	₱26,321,069.00

The dividend used by I-Remit in arriving at the corresponding tax rate of 4% was 140,604,000, which was the *total* amount of shares sold to the public in *both* primary and secondary offerings.[16] The divisor used was 562,417,000, which was obtained after adding 50,000 treasury shares to petitioner's 562,367,000 outstanding shares of stock.[17]

On April 18, 2008, petitioner filed a claim for refund with the Revenue District Office No. 43 of Pasig City, and thereafter with the respondent.[18] Petitioner believed that there was an overpayment in the amount of ₱13,160,534.06 resulting from the use of the 4% tax rate, which was in turn due to the addition of the 50,000 treasury shares to the 562,367,000 outstanding shares of stock.[19] By excluding the 50,000 treasury shares from the divisor, the resulting tax rate would only be 2%.[20]

On November 13, 2009, petitioner filed a Petition for Review before the CTA after the respondent failed to act on the claim for refund and in order to toll the running of the prescriptive period.[21] Petitioner argued that the treasury shares should be

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[15] The schedule provides:

Up to twenty-five percent (25%)	4%
Over twenty-five percent (25%) but not over thirty-three and one third percent (33 1/3%)	2%
Over thirty-three and one third percent (33 1/3%)	1%

[16] *Rollo*, p. 25.

[17] *Id.*

[18] *Id.* at 25-26.

[19] *Id.* at 57.

[20] *Id.*

[21] *Id.* at 26.

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excluded from the divisor.[22] Further, petitioner stated that the tax under Section 127 (B) should be based on the *total* shares sold in primary and secondary offerings in proportion to the total outstanding shares of stock of the corporation after listing.[23]

Ruling of the CTA Second Division:

In its May 23, 2011 Decision,[24] the CTA Second Division agreed with petitioner that the 50,000,000 treasury shares should have been excluded from the divisor, which ruling settled the issue on the exclusion of the treasury shares.[25] Nevertheless, the CTA Second Division still denied the Petition for Review for petitioner's failure to prove its status of being a closely held corporation.[26]

Notably, the CTA Second Division affirmed petitioner's position that the dividend should be the *total* number of shares sold during the initial public offering, **regardless of whether they are offered in primary or secondary offering**:[27]

> Petitioner alleges that in determining the tax rate to be used, Section 127 of the NIRC does not distinguish whether the shares of stocks sold or otherwise disposed of is covered by primary or secondary offering. The law is clear that the tax rate shall depend on the proportion of shares of stock sold, bartered or exchanged to the total outstanding shares of stock after listing, or based on the following formula: shares of stock sold, bartered or otherwise disposed divided by the total outstanding shares of stock after the listing in the local stock exchange. While the law provides a distinction on who shall pay the IPO tax (i.e., issuing corporation in 'primary offering' and selling shareholder in 'secondary offering'), it does not provide for separate computations

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[22] CTA Second Division records, p. 6.

[23] *Id.*

[24] *Rollo*, pp. 108-119; penned by Associate Justice Caesar A. Casanova and concurred in by Associate Justices Juanito C. Castañeda, Jr. and Cielito N. Mindaro-Grulla.

[25] *Id.* at 116.

[26] *Id.* at 117-118.

[27] *Id.* at 116-117.

for the taxes to be paid and the tax rates to be used for each type of taxpayer or 'offering' during the same IPO. Thus, a joint computation, using the total number of shares sold during the IPO, should determine the IPO tax rate to be used.[28] (Emphasis retained)

The dispositive portion of the May 23, 2011 Decision of the CTA Second Division reads:

WHEREFORE, premises considered, the Petition for Review is hereby **DENIED** for insufficiency of evidence.

SO ORDERED.[29]

On June 10, 2011, petitioner filed a Motion for Reconsideration, essentially arguing that Section 127 (B) does not require petitioner to prove that it is a closely held corporation before it can be entitled to the refund of tax in question.[30]

In its August 18, 2011 Resolution,[31] the CTA Second Division reconsidered and reversed its earlier ruling that petitioner needed to prove that it was a closely held corporation.[32] **Nevertheless, it still denied the claim for refund on the basis of Section 6 (C) of Revenue Regulations (RR) No. 06, series of 2008**[33] **(RR 06-2008) which provided an illustration on how the tax should be *separately* computed for shares in primary and secondary offerings**.[34] The CTA Second Division deemed it proper to apply RR 06-2008 retroactively pursuant to the

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[28] *Id.*

[29] *Id.* at 118.

[30] *Id.* at 120-131.

[31] *Id.* at 133-144; penned by Associate Justice Caesar A. Casanova and concurred in by Associate Justices Juanito C. Castañeda, Jr. and Cielito N. Mindaro-Grulla.

[32] *Id.* at 135-138.

[33] Consolidated Regulations Prescribing The Rules On The Taxation Of Sale, Barter, Exchange Or Other Disposition Of Shares Of Stock Held As Capital Assets (2008).

[34] *Rollo*, pp. 139-144.

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principle that an administrative rule interpretative of a statute and not declarative of certain rights and corresponding obligations, is given retroactive effect as of the date of effectivity of the statute.[35]

The dispositive portion of the August 18, 2011 Resolution reads:

WHEREFORE, premises considered, the Motion for Reconsideration is hereby **DENIED** for lack of merit.

SO ORDERED.[36]

Unsatisfied with the August 18, 2011 Resolution, petitioner elevated the matter to the CTA *En Banc* through a Petition for Review.[37]

Ruling of the CTA *En Banc*:

In its assailed Decision, the CTA *En Banc*, by a majority vote, dismissed the Petition for Review and held that the tax on sale of shares in primary offering should be separately computed from the tax on sale of shares in secondary offering.[38] The dispositive portion of the assailed Decision reads:

WHEREFORE, premises considered, the instant Petition for Review is hereby **DISMISSED** for lack of merit.[39]

Petitioner moved for reconsideration, which was, however, denied for lack of merit by the CTA *En Banc* in its assailed Resolution.[40]

Hence, this Petition.

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[35] *Id.* at 141-142.

[36] *Id.* at 144.

[37] *Id.* at 145-163.

[38] *Id.* at 55-61.

[39] *Id.* at 61.

[40] *Id.* at 8-10.

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Issue

The sole issue in this case is whether the tax on sale of shares of stock sold or exchanged through initial public offering under Section 127 (B) is *separately* computed for shares in primary and secondary offerings.

Our Ruling

We rule in the affirmative.

Every sale of shares under Section 127 (B) taxed.

A plain reading of Section 127 (B) shows that tax is imposed on "*every sale*, barter, exchange or other disposition through initial public offering of shares of stock in closely held corporations":

SEC. 127. ***Tax on Sale, Barter or Exchange of Shares of Stock Listed and Traded through the Local Stock Exchange or through Initial Public Offering***. —

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(B) Tax on Shares of Stock Sold or Exchanged Through Initial Public Offering. — There shall be levied, assessed and collected on **every sale, barter, exchange or other disposition through initial public offering of shares of stock in closely held corporations**, as defined herein, a tax at the rates provided hereunder based on the gross selling price or gross value in money of the shares of stock sold, bartered, exchanged or otherwise disposed in accordance with the proportion of shares of stock sold, bartered, exchanged or otherwise disposed to the total outstanding shares of stock after the listing in the local stock exchange:

Up to twenty-five percent (25%)	4%
Over twenty-five percent (25%) but not over thirty-three and one third percent (33 1/3%)	2%
Over thirty-three and one third percent (33 1/3%)	1%

The word "every" precedes the word "sale." The use of such word is clear and leaves no room for interpretation. *Each sale*

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of shares of stock in closely held corporations through initial public offering is taxed under Section 127 (B).

The tax on every sale under Section 127 (B) is in turn based on the "gross selling price or gross value in money of shares of stock sold, bartered, exchanged or otherwise disposed in accordance with the proportion of shares of stock sold, bartered, exchanged or otherwise disposed to the total outstanding shares of stock after the listing."

Since tax is imposed on every sale of shares of stock, there is a need to determine which sales are covered in the sale of shares through initial public offering. On this score, the second paragraph of Section 127 (B) precisely provides for the types of sales involved: sale by the issuing corporation in primary offering, and sale by each of the corporation's shareholders in secondary offering:

> The tax herein imposed shall be paid by the issuing corporation in primary offering or by the seller in secondary offering.

Thus, every sale in Section 127 (B) is referenced to the seller, *i.e.*, the issuing corporation in case of primary offering, and each of the selling shareholders of the corporation in case of secondary offering. The sale contemplated is not a lone, lump sum sale, as suggested by the petitioner, since more than one sale may transpire under Section 127 (B).

In arguing that Section 127 (B) provides for a joint computation of tax on sale of shares in primary and secondary offerings, I-Remit focuses only on the phrase "shares of stock sold, bartered, exchanged or otherwise disposed in accordance with the proportion of shares of stock sold, bartered, exchanged or otherwise disposed to the total outstanding shares of stock after the listing." It chooses to disregard the rest of the provision, contrary to the principle that "[a] statute must be so construed as to harmonize and give effect to all its provisions whenever possible."[41]

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[41] *Blay v. Baña*, G.R. No. 232189, March 7, 2018, citing *Chavez v. Judicial and Bar Council*, 691 Phil. 173, 200-201 (2012).

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Yet even this oft-quoted phrase of petitioner indicates the intent to differentiate the computation of tax on sale of shares in primary and secondary offerings. The word "total" is used to describe the outstanding shares after the listing (or the divisor in the computation), while the same word is noticeably not used in describing the "shares" offered during the initial public offering (or the dividend in the computation). Obviously, the "shares" contemplated is not lump sum in that it includes all the shares sold during the initial public offering, otherwise the word "total" would have also been used to describe it.

Further, the distinction is readily apparent from a reading of Section 127 (C) of the NIRC, which expressly provides for a separate time and manner of payment of tax in primary and secondary offerings as well as the party liable to pay the corresponding tax:

(C) Return on Capital Gains Realized from Sale of Shares of Stocks. —

(1) Return on Capital Gains Realized from Sale of Shares of Stock Listed and Traded in the Local Stock Exchange. - It shall be the duty of every stock broker who effected the sale subject to the tax imposed herein to collect the tax and remit the same to the Bureau of Internal Revenue within five (5) banking days from the date of collection thereof and to submit on Mondays of each week to the secretary of the stock exchange, of which he is a member, a true and complete return which shall contain a declaration of all the transactions effected through him during the preceding week and of taxes collected by him and turned over to the Bureau of Internal Revenue.

(2) Return on Public Offerings of Shares of Stock. - In case of primary offering, the corporate issuer shall file the return and pay the corresponding tax within thirty (30) days from the date of listing of the shares of stock in the local stock exchange. In the case of secondary offering, the provision of Subsection (C) (1) of this Section shall apply as to the time and manner of the payment of the tax. (Emphasis supplied)

While the tax on sale of shares in primary offering should be filed and paid by the *issuing corporation* within *thirty (30) days from the date of listing* of the shares of stock in the local

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stock exchange,[42] the tax on sale of shares in secondary offering should be collected and remitted by the *stock broker* within *five (5) banking days from the date of collection* thereof.[43]

It cannot be any clearer from the foregoing that the sale of shares in primary offering is treated separately from the sale in secondary offering. Necessarily, the corresponding tax for every sale is likewise computed separately.

Section 6 (C) of RR 06-2008 is consistent with Section 127(B).

To implement Section 127 (B), RR 06-2008 was issued by the CIR on April 22, 2008, months *after* petitioner's initial public offering on October 17, 2007. Section 6 (C) illustrates how the tax under Section 127 (B) shall be *separately* computed for shares offered in primary and secondary offerings:

> **SEC. 6. SALE, BARTER OR EXCHANGE, OR ISSUANCE OF SHARES OF STOCK THROUGH IPO.** — There shall be levied, assessed and collected on every sale, barter, exchange or other disposition through initial public offering (IPO) of shares of stock in closely held corporations, as defined in Sec. 2(q) hereof, under the following rules:
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> x x x x x x x x x
>
> (c) Determination of the Persons Liable to Pay the Tax. —
>
> (c.1) Primary Offering. — The tax herein imposed shall be paid by the issuer corporation with respect to the Shares of Stock corresponding to the Primary Offering.
>
> (c.2) Secondary Offering. — The tax herein imposed shall be paid by the selling shareholder(s) with respect to the Shares of Stock corresponding to the Secondary Offering.
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> (c.3) Illustration. — RFB Corporation, a closely-held corporation, has an authorized capital stock of 100,000,000 shares with par value of Php1.00/share as of January 1, 2008.

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[42] NATIONAL INTERNAL REVENUE CODE (1997), Sec. 127 (C) (2).

[43] NATIONAL INTERNAL REVENUE CODE (1997), Sec. 127 (C) (2) in relation to Sec. 127 (C) (1).

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Of the 100,000,000 authorized shares, 25,000,000 thereof is subscribed and fully paid up by the following stockholders:

Mr. Estoy B. Zabala	5,000,000
Mrs. Rowena V. Posadas	5,000,000
Mr. Conrado G. Cruz	5,000,000
Mr. Benedict O. Sison	5,000,000
Mrs. Linda O. Evangelista	5,000,000
Total Shares Outstanding	**25,000,000**

RFB Corporation finally decides to conduct an IPO and initially offers 25,000,000 of its unissued shares to the investing public. After the IPO in March 2008, RFB Corporation's total issued shares increased from 25,000,000 to 50,000,000 shares.

At the IPO, one of the existing stockholders, Mrs. Linda O. Evangelista, has likewise decided to sell her entire 5,000,000 shares to the public. Thus, 25,000,000 shares have been offered in the primary offering and 5,000,000 shares in the secondary offering.

Computation of the percentage to be used. —

(i) Total Number of Shares Outstanding

Number of Shares issued by RFB prior to IPO	25,000,000 shares
Add: Number of Additional Shares Through Primary Offering for IPO	25,000,000 shares
Total Shares Outstanding after Listing at the Stock Exchange or IPO	**50,000,000 shares**

(ii) Computation of Percentage Ratio to the Total Outstanding Shares

(ii.a) For Primary Offering:

Number of Shares offered by RFB Corporation to the public	25,000,000 shares
Divide by the number of shares outstanding after the Listing at the Stock Exchange	50,000,000 shares
Ratio of Percentage	**50%**

Percentage Ratio is 50% which is over 33 1/3% so the Rate of Tax to be used for Primary Offering (IPO) of shares is 1%.

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(ii.b) For Secondary Offering:

Number of Shares offered by existing Stockholder of RFB Corporation to the public	5,000,000 shares
Divide by the number of shares outstanding after the Listing at the Stock Exchange	50,000,000 shares
Ratio of Percentage	**10%**

Percentage Ratio is 10% which is under 25% so the Rate of Tax to be used for Secondary Offering (IPO) of shares is 4%.

(iii) Computation of the Tax

(iii.a) RFB Corporation newly issued shares
(25,000,000 shares x Php1.50/share x 1%) = Php375,000

(iii.b) Mrs. Linda O. Evangelista's shares
(5,000,000 shares x Php1.50/share x 4%) = Php300,000

If in June 2008, RFB Corporation again decides to increase capitalization by offering another 30,000,000 of unissued shares to the public at Php2.00/share consequently bringing the total issued shares to 80,000,000 shares, such follow-on/follow-through sale which are shares issued subsequent to IPO shall no longer be taxed pursuant to Section 6 hereof. The transaction, however, is subject to Documentary Stamp Tax similar to the transaction covered by Primary Offering as well as Secondary Offering of shares of stock.

Nonetheless, in case another existing shareholder decides to offer his existing shares to the public subsequent to IPO, as in the above illustration, if Mr. Benedict O. Sison ever decides to sell his 5,000,000 shares to the public at Php2.00 per share (for the Php10,000,000 he received as consideration for the shares he sold), he shall be taxed pursuant to Section 127(A) of the Tax Code as implemented by Sec. 5 of these Regulations which is ½ of 1% of the gross selling price or Php50,000 (*i.e.*, 5,000,000 shares x Php2.00/share = Php10,000,000 x ½ of 1%).

Petitioner argues that the illustration in Section 6 (C) is a departure from Section 127 (B).[44] It contends that an

[44] *Rollo*, pp. 36-39.

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administrative rule such as RR 06-2008 may not supplant nor modify the law it seeks to implement.[45]

However, Section 6 (C) did *not* supplant or modify Section 127 (B). As discussed above, Section 127 (B) is clear in requiring a separate computation of tax on shares offered in primary and secondary offerings. Thus, Section 6 (C), in illustrating how the tax should be computed separately, is consistent with Section 127 (B).

We also find as misplaced petitioner's argument that RR 06-2008 may not be applied retroactively when it will affect vested rights.[46] While the CTA Second Division indeed applied RR 06-2008 retroactively in its August 18, 2011 Resolution, a reading of the CTA *En Banc*'s assailed Decision shows that the CTA *En Banc* did not apply RR 06-2008 in deciding petitioner's case.[47] Its ruling was anchored on the clarity of Section 127 (B) in that the tax on sale of shares in primary and secondary offerings shall be separately computed.[48] Since it is the CTA *En Banc*'s assailed Decision which is the subject of the instant Petition, petitioner's argument on retroactive application fails.

RR No. 03, series of 1995[49] (RR 03-1995) considers as separate transactions the sale of shares in primary and secondary offerings.

We now look at RR 03-1995, the implementing rule of Section 124-A of the old Tax Code from which Section 127

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[45] *Id.* at 38.

[46] *Id.* at 39.

[47] *Id.* at 58-61.

[48] *Id.*

[49] Implementing Republic Act No. 7717, An Act Imposing a Tax on the Sale, Barter or Exchange of Shares of Stock Listed and Traded Through the Local Stock Exchange or Through Initial Public Offering, Amending for the Purpose the National Internal Revenue Code, as Amended, by Inserting a New Section and Repealing Certain Subsections Thereof.

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of the NIRC was lifted. RR 03-1995 was the prevailing rule during petitioner's initial public offering on October 17, 2007. It is apparent from a plain reading of RR 03-1995 that the sale of shares in primary and secondary offerings are separately treated. Section 7, in relation to Section 5 (b),[50] provides:

> **SECTION 7. Transactions Covered.** —
>
> (a) Sale, barter or exchange or other disposition of shares of stock listed and traded through the local stock exchange;
>
> (b) Sale, barter or exchange or other disposition of shares of stock in closely-held corporations through **initial/primary public offering** (IPO); and
>
> (c) Sale, barter or exchange or other disposition of shares of stock in closely-held corporations through **secondary offering**. (Emphasis supplied)

By expressly differentiating between the sale of shares in primary and secondary offerings, RR 03-1995 made it clear that the corresponding tax shall also be separately computed. Thus, even during the effectivity of the old Tax Code and RR 03-1995, the tax on sale of shares in primary and secondary offerings have always been separately computed.

The Percentage Tax Return corresponding to Section 127 (B) requires a separate computation.

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[50] RR 03-1995, Sec. 5. It reads:

SECTION 5. Imposition of the Tax. —

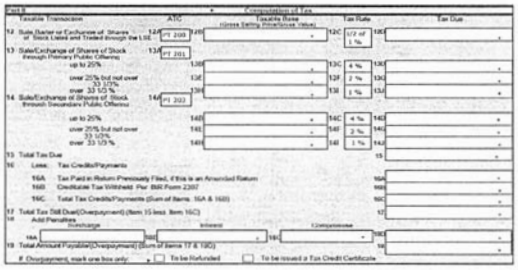
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(b) On sales of shares of stock in a closely-held corporation by the issuing corporation, through initial public offering (IPO) or by the seller in secondary offering. — A tax at the rates provided hereunder based on the gross selling price or gross value in money of the shares of stock sold, bartered, exchanged, or otherwise disposed in accordance with the proportion of shares of stock sold, bartered, exchanged, or otherwise disposed in accordance with the proportion of shares of stock sold, bartered, exchanged, or otherwise disposed to the total outstanding shares to stock after the listing in the local stock exchange[.]

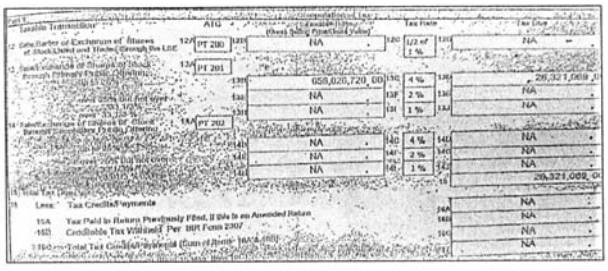
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There should be no confusion as to the separate computation. Aside from the clarity of Section 127 (B), it is also clear from the Percentage Tax Return for transactions under Section 127 (B) that a separate computation of the tax due is required. Bureau of Internal Revenue (BIR) Form No. 2552 (July 1999 version)[51] provides separate fields for computation of tax on sale of shares in primary and secondary offerings:



Interestingly, when petitioner used the same form to report the tax on its sale of shares during the October 17, 2007 initial public offering, petitioner used the fields in primary offering to compute for the tax on sale of shares in *both* primary and secondary offerings.[52] It deliberately ignored the fields for secondary offering, as can be seen below:



[51] The January 2018 version of BIR Form No. 2552 adopted the separate computation of tax on sale of shares in primary and secondary offerings.

[52] CTA *En Banc* records, p. 79.

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Given the specificity of BIR Form No. 2552, petitioner should not have jointly computed the tax on sale of shares in primary and secondary offerings.

A vested right may not spring from a wrong construction of law.

Finally, I-Remit argues that it has the right to rely on the favorable pronouncement of the CTA Second Division in its May 23, 2011 Decision.[53] To recall, the Second Division of the Tax Court stated that "a joint computation, using the total number of shares sold during the IPO, should determine the IPO tax rate to be used."[54]

However, the pronouncement was an erroneous interpretation of Section 127 (B) from which no vested right may arise.[55] Thus, it cannot be the source of any vested right in favor of petitioner — more so in this case where the said pronouncement was reversed and reconsidered by the same court in its August 18, 2011 Resolution.

In fine, we rule that the tax on sale of shares of stock in closely held corporations sold or exchanged through initial public offering under Sec. 127 (B) is *separately* computed as to shares offered in primary and secondary offerings.

WHEREFORE, the Petition for Review is **DENIED**. The April 16, 2013 Decision and October 30, 2013 Resolution of the CTA *En Banc* in CTA EB No. 822 are hereby **AFFIRMED**.

SO ORDERED.

Leonen (Chairperson), Delos Santos, and *Rosario, JJ.*, concur.

Inting, J., on official leave.

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[53] *Rollo*, p. 35.

[54] *Id.* at 117.

[55] *Hilado v. Collector of Internal Revenue*, 100 Phil. 288, 295 (1956); *see Zapata Marine Services, Ltd., S.A. v. Court of Tax Appeals*, G.R. No. 80046, April 18, 1988.