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SECOND DIVISION

[G.R. No. 206517. May 13, 2024]

STABLEWOOD PHILIPPINES, INC. [FORMERLY ROLLS-ROYCE PHILIPPINES, INC., (FORMERLY ORCA ENERGY, INC.)], *Petitioner*, *v.* **COMMISSIONER OF INTERNAL REVENUE,** *Respondent*.

D E C I S I O N

KHO, JR., *J.*:

Before the Court is a Petition for Review on *Certiorari*[1] under Rule 45 of the Rules of Court assailing the Decision[2] dated October 8, 2012 and the Resolution[3] dated March 22, 2013 of the Court of Tax Appeals (CTA) *En Banc* (EB) in CTA EB Case No. 794, which affirmed the Decision[4] dated January 31, 2011 of the CTA Third Division (CTA Division) in CTA Case No. 7704, denying petitioner Stablewood Philippines, Inc.'s (Stablewood) claim for tax refund or issuance of tax credit certificate (TCC) of creditable withholding tax (CWT) for taxable year (TY) 2005 in the amount of PHP 65,085,905.82.

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1 *Rollo*, pp. 94–147.

2 *Id.* at 149–164. Penned by Associate Justice Cielito N. Mindaro-Grulla and concurred in by Presiding Justice Ernesto D. Acosta and Associate Justices Juanita C. Castañeda, Jr., Lovell R. Bautista, Erlinda P. Uy, Caesar A. Casanova, Olga Palanca-Enriquez, and Esperanza R. Fabon-Victorino of the En Banc, Court of Tax Appeals, Quezon City. Associate Justice Amelia R. Cotangco-Manalastas was on leave.

3 *Id.* at 165–168. Penned by Associate Justice Cielito N. Mindaro-Grulla and concurred in by Associate Justices Juanito C. Castañeda, Jr., Lovell R. Bautista, Erlinda P. Uy, Caesar A. Casanova, Esperanza R. Fabon-Victorino, and Amelia R. Cotangco-Manalastas. Presiding Justice Roman G. Del Rosario was on leave.

4 *Id.* at 170–183. Penned by Associate Justice Amelia Cotangco-Manalastas and concurred in by Associate Justices Lovell R. Bautista and Olga Palanca-Enriquez of the Third Division, Court of Tax Appeals, Quezon City.

The Facts

Stablewood is a domestic corporation duly organized and existing under the laws of the Republic of the Philippines and registered with the Securities and Exchange Commission (SEC).[5]

From January 1998 to July 2007, Stablewood, then carrying the name "Orca Energy, Inc." (Orca), was registered with the Bureau of Internal Revenue (BIR) Revenue Region No. 8, Revenue District Office (RDO) No. 50 (South Makati). Later, it moved to RDO No. 47 (East Makati) due to a change of address.[6]

On April 7, 2006, Stablewood electronically filed its Annual Income Tax Return (ITR) for TY 2005, which reflected CWT overpayment in the amount of PHP 76,245,344.99.[7] On the said ITR, Stablewood marked the choice "To be issued a Tax Credit Certificate" in relation to its unutilized CWT for TY 2005.[8]

Subsequently, Stablewood carried over the tax overpayment indicated in its TY 2005 Annual ITR in its Quarterly Income Tax Returns for the first, second, and third quarters of the TY 2006.[9]

On November 24, 2006, Stablewood filed an administrative claim for refund of its excess CWT for TY 2005 in the amount of PHP 65,085,905.82 with BIR Revenue Region No. 8.[10] Thereafter, Stablewood filed its Annual ITR for TY 2006 electronically on April 2, 2007, and manually on April 12, 2007. In its TY 2006 Annual ITR, Stablewood indicated that it did not carry-over its unutilized CWT from TY 2005.[11]

The Commissioner of Internal Revenue (CIR) failed to act on Stablewood's administrative claim for refund. Hence, Stablewood

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[5] *Id.* at 171.

[6] *Id.* at 99.

[7] *Id.* at 172.

[8] *Id.* at 180.

[9] *Id.* at 180–181.

[10] *Id.* at 172.

[11] *Id.* at 349.

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filed a Petition for Review before the CTA on November 13, 2007.[12]

In its Answer, the CIR argued that taxes paid and collected are assumed to be in accordance with laws and regulations, and not refundable or creditable if the taxpayer fails to demonstrate that the tax was erroneously or illegally collected. The CIR added that it was incumbent on Stablewood to show that it complied with the provisions of Sections 204(C) in relation to Section 229 of the National Internal Revenue Code (NIRC), as amended, which enumerate the requirements for refund or issuance of a tax credit certificate for taxes erroneously paid or illegally collected. The CIR argued that Stablewood failed to discharge its duty to prove that it is entitled to a refund or tax credit.[13]

The CTA Division Ruling

In a Decision[14] dated January 31, 2011, the CTA Division held that Stablewood was not entitled to a refund of its alleged overpaid CWT. In so ruling, the CTA Division found that Stablewood had chosen to carry over this tax overpayment to its subsequent Quarterly Income Tax Returns for the first, second, and third quarters of the TY 2006, which has become irrevocable pursuant to the irrevocability rule under Section 76 of the NIRC.

The CTA Division further pointed out that when Stablewood filed its Annual ITR for TY 2005 on April 7, 2006, it marked the choice "To be issued a Tax Credit Certificate." Notwithstanding this, Stablewood carried over the tax overpayment indicated in its TY 2005 Annual ITR in the amount of PHP 76,245,344.99—which includes the PHP 65,085,905.82 covered by its claim for refund—in its Quarterly Income Tax Returns for the first, second, and third quarters of the succeeding TY 2006.[15] Thus, the CTA Division stated that Stablewood's original choice—refund or tax credit certificate—was negated by this act of carrying over the

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[12] *Id.* at 172.

[13] *Id.* at 172–173.

[14] *Id.* at 170–183.

[15] *Id.* at 180–181.

refundable amount. Consequently, Stablewood cannot seek the refund of the amount of PHP 65,085,905.82, even if the same was not utilized in TY 2006.[16]

Stablewood filed a Motion for Reconsideration and New Trial.[17] To justify their Motion for a new trial, Stablewood invoked their dissolution, arguing that the documents proving such dissolution only came to exist after the trial.[18] According to Stablewood: (a) after its judicial claim for refund was submitted for decision on February 24, 2010,[19] while the case was pending resolution, Stablewood's Board of Directors amended its Articles of Incorporation to shorten its corporate term on December 10, 2010;[20] (b) a notice of Stablewood's dissolution was published in Malaya Business Insight's December 17, 23, and 30, 2010 issues. Thereafter, on December 31, 2010, the stockholders and directors of Stablewood approved the corporation's dissolution;[21] (c) in a Letter dated January 7, 2011, Stablewood informed the BIR of the corporation's dissolution and applied for a tax clearance certification;[22] and (d) two years prior, in a Report dated January 20, 2008, the City of Makati's Business Tax Division stated that upon inspection of Stablewood's business premises, they found that the business is closed and had ceased to exist since December 31, 2008.[23]

The Motion for Reconsideration and New Trial was denied by the CTA Division in a Resolution[24] dated June 9, 2011. The CTA Division stressed that a motion for new trial necessitated newly ***discovered*** evidence. Evidence that did not yet exist at

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16 *Id.* at 181.

17 *Id.* at 671–684.

18 *Id.* at 40.

19 *Id.* at 103.

20 *Id.* at 108.

21 *Id.*

22 *Id.*

23 *Id.* at 109.

24 *Id.* at 185–192.

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the time of the trial cannot be newly "discovered."[25] Aggrieved, Stablewood filed a Petition for Review[26] with the CTA EB.

The CTA *En Banc* Ruling

In a Decision[27] dated October 8, 2012, the CTA EB affirmed the CTA Division's dismissal of Stablewood's claim for refund of CWT. In its ruling, the CTA EB cited *Systra Philippines, Inc. v. Commissioner of Internal Revenue*,[28] which held that if the option under Section 76 of the NIRC to carry over the excess tax credit is exercised, the same shall be irrevocable for the taxable period. According to the CTA EB, the phrase "such option shall be considered irrevocable for that taxable period" means that the option to carry over the excess tax credits of a particular taxable year can no longer be revoked. Otherwise stated, once the option to carry over the excess credit is exercised, no application for a tax refund or issuance of a tax credit certificate shall then be allowed.[29]

In this regard, the CTA EB rejected Stablewood's assertion that it could still file a claim for refund or issuance of a tax credit certification, considering that it did not actually use the CWT it carried over from TY 2005 to the first to third quarters of TY 2006. Since Stablewood categorically availed itself of the carry-over option in its Quarterly Income Tax Returns for TY 2006, such choice can no longer be revoked regardless of whether the claimed amount has actually been utilized or not.[30] The CTA EB further dismissed Stablewood's argument that it is entitled to a refund because it is now impossible to utilize the said excess credits considering that its shareholders and board of directors already approved the dissolution of its corporate existence effective December 31, 2010, and as such, Stablewood should be allowed to claim for refund its TY 2005 unutilized CWT.[31]

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[25] *Id.* at 41.

[26] *Id.* at 209–219.

[27] *Id.* at 149–164.

[28] 560 Phil. 261 (2007) [Per J. Corona, First Division].

[29] *Rollo*, p. 156.

[30] *Id.* at 157.

[31] *Id.* at 158.

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The CTA EB invoked *Systra* again and emphasized that when a corporation permanently ceases its operations before full utilization of the tax credits it opted to carry over, the irrevocability rule ceases to apply and the taxpayer may then be allowed to claim the refund of the remaining tax credits.[32] However, the CTA EB cited one of its own rulings, in *IMPSA Construction Corporation v. Commissioner of Internal Revenue*,[33] to stress that the taxpayer must prove that the termination of its business operation is permanent in nature and not merely temporary;[34] and that compliance with Sections 52 (C) and 235 of the NIRC is necessary before a taxpayer may be entitled to a refund of unutilized CWT,[35] to wit:

> SEC. 52. *Corporation* Returns. –
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> . . . .
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> (C) *Return of Corporation Contemplating Dissolution or Reorganization*. – Every corporation shall, within thirty (30) days after the adoption by the corporation of a resolution or plan for its dissolution, or for the liquidation of the whole or any part of its capital stock, including a corporation which has been notified of possible involuntary dissolution by the Securities and Exchange Commission, or for its reorganization, render a correct return to the Commissioner, verified under oath, setting forth the terms of such resolution or plan and such other information as the Secretary of Finance, upon recommendation of the commissioner, shall, by rules and regulations, prescribe.
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> The dissolving or reorganizing corporation shall, prior to the issuance by the Securities and Exchange Commission of the Certificate of Dissolution or Reorganization, as may be defined by rules and regulations prescribed by the Secretary of Finance, upon recommendation of the Commissioner, secure ***a certificate of tax clearance from the Bureau of Internal Revenue*** which certificate shall be submitted to the Securities and Exchange Commission.
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> . . . .

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[32] *Id.* at 158–159.

[33] CTA EB No. 685, May 24, 2011 *available at* https://cta.judiciary.gov.ph/home/download/7a830aa545af2bcc3a8d1772a93f5ead (last accessed on April 25, 2024).

[34] *Rollo*, p. 159.

[35] *Id.*

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SEC. 235. *Preservation of Books and Accounts and Other Accounting Records*. – . . . .

(e) . . . ***Corporations and partnerships contemplating dissolution must notify the Commissioner and shall not be dissolved until cleared of any tax liability***. . . . (Emphases Supplied)

Thus, the CTA EB opined that if a corporation permanently ceases its operations before full utilization of the tax credits it opted to carry over, it may be allowed to claim the refund ***only after*** it has secured a tax clearance certificate from the CIR, which shall then be submitted to the SEC for the issuance of a certificate of dissolution.[36] In this case, Stablewood failed to present a tax clearance certificate from the BIR and a certificate of dissolution from the SEC in order to prove that it had been cleared of tax liability.[37]

Undaunted, Stablewood filed a Motion for Reconsideration, but was denied in a Resolution[38] dated March 22, 2013. Hence the present Petition.[39]

The Issue Before the Court

The issue for the Court's resolution is whether Stablewood is entitled to a refund of its excess CWT for TY 2005 in the amount of PHP 65,085,905.82.

Stablewood's Arguments

Stablewood asserts in its petition, *firstly*, that nothing in Sections 52(C) and 235 of the NIRC requires that a BIR tax clearance certificate is a pre-requisite to the CWT refund or tax credit certificate claim of a corporation that has dissolved or permanently ceased its business operations.[40] Even assuming tax clearance is required, Stablewood has performed all the necessary acts within

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[36] *Id.* at 161.

[37] *Id.* at 162.

[38] *Id.* at 165–168.

[39] *Id.* at 94–147.

[40] *Id.* at 111–112.

its power to obtain a tax clearance certificate and has nothing more to do but to wait for the CIR to issue the certification.[41] The issuance of a tax clearance certificate depends on the discretion of the CIR, and therefore, the CIR could delay the issuance of the certification and substantially control all pending refund cases by simply delaying the issuance of a tax clearance certificate.[42]

Secondly, Stablewood argues that it indicated in its TY 2005 Annual ITR that its choice was to refund/obtain a tax credit certificate for its unutilized CWT for TY 2005, and that the election of this option on the ITR is irrevocable per Section 76 of the NIRC, regardless of the fact that Stablewood inadvertently carried over its TY 2005 CWT to the first to third quarters of TY 2006.[43] It argued that a taxpayer filing a claim for refund constitutes sufficient proof that it did not carry over its excess CWT.[44]

Thirdly, Stablewood claims that the irrevocability doctrine ceases to apply once a corporation has permanently ceased operations.[45] At the time the instant Petition was filed, Stablewood was in the process of its dissolution and had performed acts in relation thereto, including the publication of its notice of dissolution in the Malaya Business Insight's December 17, 23, and 30, 2010 issues, and inspection of Stablewood's business premises by the City of Makati's Business Tax Division, which allegedly found that Stablewood was already closed and inexistent on December 31, 2008.[46]

Finally, Stablewood maintains that it complied with all the requisites for the refund of its unutilized excess CWT, that is:

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41 *Id.* at 116–117.

42 *Id.* at 117.

43 *Id.* at 124–125.

44 *Id.* at 126, *citing Commissioner of Internal Revenue v. Team (Philippines) Energy Corporation*, CTA EB Case No. 425, April 15, 2009 *available at* https://cta.judiciary.gov.ph/home/download/fc75a443f699db2c1b4573ea02c56fe6 (last accessed on April 25, 2024).

45 *Id.* at 127–128.

46 *Id.* at 109.

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(1) Stablewood filed its claim for refund within the two year prescriptive period under Sections 204(c) and 229 of the NIRC; (2) Stablewood's gross income declared in its TY 2005 Annual ITR included income payments subject to the withholding tax it seeks to refund. Stablewood's TY 2005 Annual ITR includes income payments of San Miguel Corporation (SMC), Coca-Cola Bottlers Philippines, Inc. (Coca-Cola), and Absolute Chemicals, Inc. (Absolute) from which the CWT it seeks to refund was withheld; and (3) Stablewood was able to present as evidence CWT Certificates which contain all the requisite information for a valid CWT Certificate, namely, the name of Orca as payee, the names of the payors (SMC, Coca-Cola, and Absolute), the amount of income payments made to Orca, as well as the amount of CWT withheld.[47]

The CIR's Argument

The CIR, for its part, argues that the courts do not limit themselves to the indication made by the taxpayer on its ITR.[48] The CIR cited *Commissioner of Internal Revenue v. Bank of the Philippine Islands*,[49] where this Court held that it can go beyond the option provided under the taxpayer's Annual ITR and take into consideration the evidence submitted by the parties and the circumstances surrounding the taxpayer's option to carry over or claim for refund. The option chosen by the taxpayer is generally a matter of evidence. The CTA Division and EB grounded their Decisions on the evidence presented and the circumstances surrounding Stablewood's unmistakable act of carrying over any excess CWT. Stablewood is belaboring a technicality, insisting that it should be granted a refund based on the marking it made in its ITR. The fact that Stablewood's excess CWT was not fully utilized does not change the fact that it eventually exercised the option to carry over its excess CWT. The CIR reiterates that Stablewood has the burden to prove that the cessation of its operations was not

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[47] *Id.* at 128–138.

[48] *Id.* at 842.

[49] 609 Phil. 678 (2009) [Per J. Chico-Nazario, Third Division].

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only temporary but permanent, and it has failed to discharge this burden.[50]

The Court's Ruling

The Petition has no merit.

Under Section 76 of the NIRC, there are two options available to the corporation whenever it overpays its income tax for the taxable year: (1) to carry over and apply the overpayment as tax credit against the estimated quarterly income tax liabilities of the succeeding taxable years (also known as automatic tax credit) until fully utilized (meaning, there is no prescriptive period); and (2) to apply for a cash refund or issuance of a tax credit certificate within the prescribed period. Such overpayment of income tax is usually occasioned by the over-withholding of taxes on the income payments to the corporate taxpayer.[51]

Relatedly, the last paragraph of the said provision lays down the irrevocability rule, to wit:

> SEC. 76. *Final Adjustment Return*. – Every corporation liable to tax under Section 27 shall file a final adjustment return covering the total taxable income for the preceding calendar or fiscal year. If the sum of the quarterly tax payments made during the said taxable year is not equal to the total tax due on the entire taxable income of that year, the corporation shall either:
>
> (A) Pay the balance of tax still due; or
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> (B) Carry-over the excess credit; or
>
> (C) Be credited or refunded with the excess amount paid, as the case may be.
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> In case the corporation is entitled to a tax credit or refund of the excess estimated quarterly income taxes paid during the year, the excess amount shown on its final adjustment return may be carried over and credited against the estimated quarterly income tax liabilities for the taxable quarters of the succeeding taxable years. *Once the option to carry-over and apply*

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[50] *Rollo*, pp. 842–844.

[51] *University Physicians Services, Inc. – Management, Inc. v. Commissioner of Internal Revenue*, 827 Phil. 376, 388 (2018) [Per J. Martires, Third Division].

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the said excess quarterly income taxes paid against the income tax due for the taxable quarters of the succeeding taxable years has been made, such option shall be considered irrevocable for that taxable period and no application for cash refund or issuance of a tax credit certificate shall be allowed therefor[.] (Emphasis supplied)

Interpreting the above provision, the Court has held that a "perfunctory reading of the law unmistakably discloses that ***the irrevocable option referred to is the carry-over option only***. There appears nothing therein from which to infer that the other choice, i.e., cash refund or tax credit certificate, is also irrevocable. If the intention of the lawmakers was to make such option of cash refund or tax credit certificate also irrevocable, then they would have clearly provided so. In other words, ***the law does not prevent a taxpayer who originally opted for a refund or tax credit certificate from shifting to the carry-over of the excess creditable taxes to the taxable quarters of the succeeding taxable years. However, in case the taxpayer decides to shift its option to carry-over, it may no longer revert to its original choice due to the irrevocability rule.*** As Section 76 [of the NIRC] unequivocally provides, once the option to carry over has been made, it shall be irrevocable. Furthermore, the provision seems to suggest that ***there are no qualifications or conditions attached to the rule on irrevocability***."[52]

Thus, considering the express provision of Section 76 of the NIRC, the fact that Stablewood indicated in its TY 2005 Annual ITR that its choice was to refund/obtain a tax credit certificate for its unutilized CWT for TY 2005 does not make this choice irrevocable. The subsequent carry-over of Stablewood's unutilized CWT for TY 2005 to the first to third quarters of TY 2006—which, to recall, is admitted by Stablewood, but which it claims to be a mistake or inadvertently done—was allowable. Moreover, as discussed above, once a taxpayer changes its choice from refund/tax credit certificate to carry-over of unutilized tax, the choice of carry-over becomes irrevocable.

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[52] *Id.* at 388–389.

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When the carry-over option is made, actually or constructively, it is ***irrevocable*** regardless of whether the excess tax credits were actually or fully utilized.[53] Once the option of carry-over has been chosen, it does not matter whether the taxpayer has benefited from the carry-over.[54] Hence, Stablewood's contention that its choice to carry-over had not become final because it had not actually used the carried over CWT, is untenable. It is of no moment that Stablewood's TY 2006 Annual ITR indicates that it did not carry-over its unutilized CWT from TY 2005. Although it is true that the Court has characterized an Annual ITR as "the most reliable firsthand evidence of corporate acts pertaining to income taxes,"[55] neither Section 76 nor any other provision of the NIRC says that it is conclusive in so far as the option elected by a taxpayer regarding its unutilized CWT is concerned. As correctly argued by the CIR, the option chosen by the taxpayer is generally a matter of evidence; thus, the Court may go beyond what is indicated in the Annual ITR.[56]

Stablewood admitted, and the CTA EB and Division concurrently held, that it had filled out the portion for "prior Year's Excess Tax Credits" in its first, second, and third Quarterly Tax Returns for TY 2006. Thus, as correctly ruled by both the CTA EB and Division, the inevitable conclusion is that Stablewood categorically availed itself of the carry-over option. It is hard to believe that Stablewood would make the same "mistake" of carrying over its excess CWT from TY 2005 in three separate quarterly returns filed months apart. Notably, Stablewood's Annual ITR for TY 2006 was filed electronically on April 2, 2007, and manually on April 12, 2007,[57] ***after*** Stablewood had

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[53] *Systra Philippines, Inc. v. Commissioner of Internal Revenue*, 560 Phil. 261, 274 (2007) [Per J. Corona, First Division].

[54] *University Physicians Services, Inc. – Management, Inc. v. Commissioner of Internal Revenue*, 827 Phil. 376, 397 (2018) [Per J. Martires, Third Division].

[55] *Republic of the Philippines v. Team (Phils.) Energy Corporation*, 750 Phil. 700, 710 (2014) [Per J. Bersamin, First Division].

[56] *Commissioner of Internal Revenue v. Bank of the Philippine Islands*, 609 Phil. 678, 693 (2009) [Per J. Chico-Nazario, Third Division].

[57] *Rollo*, p. 349.

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already filed its administrative claim for refund on November 24, 2006. It would appear, therefore, that Stablewood's TY 2006 tax documents only began to state that it did not carry over its excess CWT for TY 2005, after it had filed its administrative claim for refund. Being in the nature of a claim for exemption, refund is construed in *strictissimi juris* against the entity claiming the refund and in favor of the taxing power.[58] It would be in violation of this basic principle of taxation to allow a taxpayer to belatedly create evidence or basis which would support its claim for refund, after it had already filed its administrative claim.

Likewise, Stablewood's contention that the irrevocability rule no longer applies since it has already permanently ceased its business operations is also untenable.

First, Stablewood continues to exist. Under Section 120 of Batas Pambansa Blg. 68, otherwise known as the Corporation Code of the Philippines—the law on corporations applicable at the time of Stablewood's dissolution—"[a] voluntary dissolution may be effected by amending the articles of incorporation to shorten the corporate term pursuant to the provisions of this Code. A copy of the amended articles of incorporation shall be submitted to the Securities and Exchange Commission in accordance with this Code. Upon approval of the amended articles of incorporation of the expiration of the shortened term, as the case may be, the corporation shall be deemed dissolved without any further proceedings, subject to the provisions of this Code on liquidation." Stated differently, if a corporation elects to voluntarily dissolve by shortening its corporate term, it is not considered dissolved until the SEC approves its amendment of its Articles of Incorporation, and the period in the amended Articles of Incorporation subsequently lapses. Here, nothing in the records suggest that the SEC approved the proposed amendment to shorten the corporate term; thus, insofar as the records show, Stablewood is still an existing corporation. As Stablewood itself admits, it is still in the process of dissolution.

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[58] *Winebrenner & Iñigo Insurance Brokers, Inc. v. Commissioner of Internal Revenue*, 752 Phil. 375, 387–388 (2015) [Per J. Mendoza, Second Division].

Second, even assuming, *arguendo*, that Stablewood has already been dissolved, still, it is not entitled to a refund on the basis of its dissolution.

The Court has held that when a corporation permanently ceases its operations before full utilization of the tax credits it opted to carry over, it may be allowed to claim the refund of the remaining tax credits.[59] However, this is on the premise that the taxpayer's dissolution had made it impossible to carry-over the taxpayer's remaining tax credits.[60] As such, it follows that if a taxpayer had the opportunity to carry-over its unutilized CWT prior to its dissolution, the irrevocability rule under Section 76 of the NIRC remains applicable.

In this case, as earlier established, Stablewood had already carried over its unutilized CWT for TY 2005 in its Quarterly Tax Returns for the first, second and third quarters of TY 2006. To reiterate, if a taxpayer had the opportunity to carry-over its unutilized CWT prior to its dissolution, the irrevocability rule under Section 76 of the NIRC remains applicable. The Board Resolution to amend the Articles of Incorporation to shorten Stablewood's corporate term was issued only on December 10, 2010; thus, between TY 2005 when the unutilized CWT accrued, and TY 2010, Stablewood had ample opportunity to carry-over it's unutilized CWT from TY 2005. As such, the irrevocability rule under Section 76 of the NIRC is applicable.

Considering the foregoing, it is not even relevant whether Stablewood has obtained a tax clearance certification from the BIR, and whether Stablewood presented the evidence necessary for refund of unutilized CWT. When Stablewood filled out the portion for "prior Year's Excess Tax Credits" in its first, second, and third Quarterly Tax Returns for TY 2006, it had made the irrevocable choice to carry-over its unutilized CWT for TY 2005. As such, Stablewood is barred from recovering its TY 2005 excess CWT through refund or TCC.

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[59] *Systra Philippines, Inc. v. Commissioner of Internal Revenue*, 560 Phil. 261, 274 (2007) [Per J. Corona, First Division].

[60] *Id.*

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ACCORDINGLY, the Petition is **DENIED**. The assailed Decision dated October 8, 2012 and the Resolution dated March 22, 2013 of the Court of Tax Appeals *En Banc* in CTA EB Case No. 794 are hereby **AFFIRMED**.

SO ORDERED.

Lazaro-Javier (Acting Chairperson), M. Lopez, and *J. Lopez, JJ.*, concur.

Leonen, S.A.J. (Chairperson), on official business.

APPEARANCES OF COUNSEL

Follosco Morallos & Herce for petitioner.
Office of the Solicitor General for respondent.