SECOND DIVISION

G.R. No. 206526 – WINEBRENNER & IÑIGO INSURANCE BROKERS, INC., v. COMMISSIONER OF INTERNAL REVENUE.

Promulgated:
JAN 2 8 2015

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DISSENTING OPINION

LEONEN, *J.*:

I disagree with the ponencia that the submission of quarterly income tax returns of the succeeding year is not indispensable in a claim for refund of the previous year's excess or unutilized creditable withholding taxes.

Section 76 of the 1997 National Internal Revenue Code is clear and categorical that once the taxpayer chooses to carry over and apply its income tax overpayments against the income tax due for the quarters of the succeeding taxable year, such option shall be considered irrevocable. The taxpayer can no longer make a turnaround and claim instead a refund of the overpayments. I submit that **both** the quarterly income tax returns (for the first to third quarters) and the income tax return/final adjustment return (ITR/FAR) of the succeeding year are indispensable proofs to show whether the taxpayer availed of the carry-over option or not.

It must be emphasized that this is the first time that the indispensability of presenting the quarterly returns in tax refund claims in light of Section 76 of the 1997 National Internal Revenue Code is raised.

The cases cited in the ponencia, namely, *Philam Asset Management, Inc. v. Commissioner of Internal Revenue*,[1] *State Land Investment*

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[1] 514 Phil. 147 (2005) [Per J. Panganiban, Third Division]. In **G.R. No. 156637**, *Philam* paid excess income tax for 1997. It did not indicate its option to carry over or refund said excess income tax in its income tax return for 1997. On September 11, 1998, however, it filed a claim for refund of the same. In **G.R. No. 162004**, *Philam* incurred a net loss in 1998 and had unapplied excess creditable income tax for the same period in the amount of ₱459,756.07. In its income tax return for the succeeding year of 1999, *Philam* reported a tax due of only ₱80,042.00, creditable withholding tax of ₱915,995.00, and excess credit carried over from 1998 of ₱459,756.07. On November 14, 2000, Philam filed a claim for tax refund, alleging that its tax liability for 1999 was deducted from its creditable withholding tax for the

Corporation v. Commissioner of Internal Revenue,[2] *Commissioner of Internal Revenue v. PERF Realty Corporation*,[3] *and Commissioner of Internal Revenue v. Mirant (Philippines) Operations Corporation*[4] are not squarely in point.

Philam's ruling in G.R. No. 156337[5] that the presentation to the Bureau of Internal Revenue of the ITR/FAR of the succeeding year has no legal basis was premised on the old provision (Section 69 of the 1977 National Internal Revenue Code), which did not yet contain the "irrevocable clause." Instead, the old provision merely provided that "[i]n case the corporation is entitled to a refund of the excess estimated quarterly income taxes paid, the refundable amount shown on its final adjustment return may be credited against the estimated quarterly income tax liabilities for the taxable quarters of the succeeding taxable year."

Section 69 provides:

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same taxable period, leaving its excess tax credit carried over from 1998 still unapplied.

2 566 Phil. 113, 120–121 (2008) [Per J. Sandoval-Gutierrez, First Division].

3 579 Phil. 442 (2008) [Per J. Reyes, R.T., Third Division].

4 G.R. No. 171742, June 15, 2011, 652 SCRA 80 [Per J. Mendoza, Second Division].

5 The issue in G.R. No. 156637 of *Philam* was whether the presentation of the ITR/FAR of the succeeding year is necessary. This court, in ruling that the 1998 ITR/FAR is not required in requesting a refund of excess taxes withheld in 1997, reasoned:

1) Section 76 does not mandate it. The law merely requires the filing of the FAR for the preceding — not the succeeding — taxable year.
2) Section 5 of Revenue Regulation No. 12-94, amending Section 10(a) of Revenue Regulation No. 6-85,[5] merely provides that claims for refund shall be given due course only (a) if it is shown on the income tax return that the income payment received is being declared part of the taxpayer's gross income; and (b) when the fact of withholding is established by copy of the withholding tax statement, duly issued by the payor to the payee and showing the amount paid and the income tax withheld from that amount.
3) The Bureau of Internal Revenue must "have on file its own copies of *Philam*'s [1998] FAR, on the basis of which it could rebut the assertion that there was no subsequent credit of the excess income tax payments for [1997]."
4) The Court of Tax Appeals should have taken judicial notice of the fact of filing and the pendency of *Philam*'s subsequent claim for a refund of excess creditable taxes withheld for 1998.

   It appears, though, that *Philam* presented its quarterly returns for 1998, as evident from the following findings of the court:

   In the present case, although petitioner did not mark the refund box in its 1997 FAR, neither did it perform any act indicating that it chose a tax credit. On the contrary, it filed on September 11, 1998 an administrative claim for the refund of its excess taxes withheld in 1997. **In none of its quarterly returns for 1998 did it apply the excess creditable taxes.** Under these circumstances, petitioner is entitled to a tax refund of its 1997 excess tax credits in the amount of □522,092.00.

> Section 69[6]. *Final Adjustment Return.* -- Every corporation liable to tax under Section 24 shall file a final adjustment return covering the total net 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 net income of that year[,] the corporation shall either:
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> (a) Pay the excess tax still due; or
> (b) Be refunded the excess amount paid, as the case may be.
>
> In case the corporation is entitled to a refund of the excess estimated quarterly income taxes paid, the refundable amount shown on its final adjustment return may be credited against the estimated quarterly income tax liabilities for the taxable quarters of the succeeding taxable year.

On the other hand, Section 76 included that "[o]nce the option to carry-over and apply the excess quarterly income tax against 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."

Moreover, the presentation in *Philam* of the 1998 ITR/FAR was not necessary because the taxpayer had apparently submitted its quarterly returns for 1998 showing it did not carry over and apply its 1997 excess creditable taxes, coupled with the filing of its administrative claim for refund on September 11, 1998 even before the year's end.

State Land was likewise decided on the basis of Section 69 of the 1977 National Internal Revenue Code. This court held that "if the excess income taxes paid in a given taxable year have not been entirely used by a . . . corporation against its quarterly income tax liabilities for the next taxable year, the unused amount of the excess may still be refunded, provided that the claim for such a refund is made within two years."[7] Accordingly, the amount of State Land's excess tax credit in 1997 that was not used in 1998 was allowed to be refunded. In this regard, this court further held that it was not necessary on the part of State Land to file its 1999 income tax return because pursuant to then Section 69, it could not utilize its 1997 excess credits beyond 1998.[8]

PERF was similarly decided on the basis of the old tax provision. This court held that PERF's failure to indicate its option in its income tax

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6 *Philam* stated that Section 69 reappeared in the National Internal Revenue Code (or Tax Code) of 1997 as Section 76.

7 *State Land Investment Corporation v. Commissioner of Internal Revenue*, 566 Phil. 113, 120–121 (2008) [Per J. Sandoval-Gutierrez, First Division].

8 Id. at 121.

return to avail of either the tax refund or tax credit was not fatal to its claim for refund.[9] Moreover, it was determined that there was no need to rule on the admissibility of the income tax return for the succeeding year (1998 income tax return) because it had actually been attached to PERF's Motion for Reconsideration before the Court of Tax Appeals and had formed part of the records of the case. The income tax return showed that the excess credits in 1997 were not carried over and applied in 1998.[10]

On the other hand, while *Mirant* was decided on the basis of Section 76 of the 1997 National Internal Revenue Code, it did not touch on the issue of presenting the quarterly income tax returns. Understandably, because in that case, Mirant opted to carry over its tax overpayment for 1999 by ticking the box in the return signifying that the overpayment was "to be carried over as tax credit next year/quarter."[11] This court held that pursuant to the irrevocability rule in Section 76, Mirant was barred from applying for the refund/issuance of tax credit certificate of the overpayments.[12]

In all of these cases — *Philam, State Land, PERF,* and *Mirant* — the issue on the indispensability of presenting the quarterly income tax returns of the succeeding year in a refund claim was never raised especially in light of the "irrevocability rule" that was added by Republic Act No. 8424 in Section 76. Here, this question was squarely raised as the core issue.

The ponencia is of the view that the presentation of the quarterly income tax returns for 2004 is not indispensable because petitioner already submitted its 2004 income tax return.

I submit that the presentation of **both** the quarterly income tax returns and the income tax return of the succeeding year is indispensable in a refund claim. This is implicit in Section 76:

> **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:
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> (A) Pay the balance of tax still due; or
> (B) Carry-over the excess credit; or

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9 *Commissioner of Internal Revenue v. PERF Realty Corp.,* 579 Phil. 442, 448 (2008) [Per J. Reyes, R.T., Third Division].

10 Id. at 448–454.

11 *Commissioner of Internal Revenue v. Mirant (Philippines) Operations, Corporation,* G.R. No. 171742, June 15, 2011, 652 SCRA 80, 93–94 [Per J. Mendoza, Second Division].

12 Id. at 100.

> (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, *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 the excess quarterly income tax against 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 therefore.*** (Emphasis supplied)

Section 76 introduced two significant changes in the National Internal Revenue Code: *first,* once the taxpayer has chosen the carry-over option, such option is irrevocable; and *second,* the excess tax payments may be carried over and applied against the income tax liabilities for the succeeding quarters of the succeeding taxable years until fully utilized.

This court elucidated the differences between the two provisions in *Asiaworld Properties Philippine Corporation v. Commissioner of Internal Revenue*:[13]

> Under [Section 69 of the old National Internal Revenue Code], the option to carry-over the excess or overpaid income tax for a given taxable year is limited to the immediately succeeding taxable year only. In contrast, under Section 76 of the 1997 NIRC, the application of the option to carry-over the excess creditable tax is not limited only to the immediately following taxable year but extends to the next succeeding taxable years. The clear intent in the amendment under Section 76 is to make the option, once exercised, irrevocable for the "succeeding taxable years."
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> Thus, once the taxpayer opts to carry-over the excess income tax against the taxes due for the succeeding taxable years, such option is irrevocable for the whole amount of the excess income tax, thus, prohibiting the taxpayer from applying for a refund for that same excess income tax in the next succeeding taxable years. The unutilized excess tax credits will remain in the taxpayer's account and will be carried over and applied against the taxpayer's income tax liabilities in the succeeding taxable years until fully utilized.[14]

Section 76 is clear and categorical that once the carry-over option is chosen, it shall be considered *irrevocable* for the whole amount of the excess income tax and no application for a tax refund or issuance of a tax credit

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[13] *Asiaworld Properties Philippine Corporation v. Commissioner of Internal Revenue,* 640 Phil. 230 (2010) [Per J. Carpio, Second Division].

[14] Id. at 237.

certificate shall then be allowed.[15] It has been held that "the irrevocable rule was evidently added to keep the taxpayer from flip-flopping on its options, and avoid confusion and complication as regards the taxpayer's excess tax credit."[16]

In *Philippine Bank of Communications v. Commissioner of Internal Revenue*,[17] this court ruled that a corporation must signify in its ITR/FAR (by marking the option box provided in the Bureau of Internal Revenue form) its intention, whether to request for a refund or claim for an automatic tax credit for the succeeding taxable year. Item 31 of the income tax return (BIR Form No. 1702) indicates that "if overpayment, mark one box only: (once the choice is made, the same is irrevocable)."[18]

Accordingly, when a taxpayer has marked the carry-over option box in its ITR/FAR, it is not entitled to a refund even though the excess tax credit was not utilized.[19] The question of whether the taxpayer was able to actually apply the tax credit is irrelevant. In such case, since the taxpayer is automatically barred from claiming a refund of the overpayment, there is no need to look at the ITR/FAR or the quarterly returns for the succeeding year.

However, while a taxpayer is required to mark its choice (i.e., carry over, refund, or issuance of tax credit) in the ITR/FAR, this requirement is only for the proper management of claims for refund or tax credit.[20] Hence, failure to signify one's intention in the ITR/FAR does not mean outright barring of a valid request for a refund, should one still choose this option later on.[21]

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15 *United International Pictures AB v. Commissioner of Internal Revenue,* G.R. No. 168331, October 11, 2012, 684 SCRA 23 [Per J. Peralta, Third Division]; *Commissioner of Internal Revenue v. PL Management International Philippines, Inc.,* 662 Phil. 431 (2011) [Per J. Bersamin, Third Division]; *Belle Corporation v. Commissioner of Internal Revenue*, 654 Phil. 102 (2011) [Per J. Del Castillo, First Division]; *Commissioner of Internal Revenue v. The Philippine American Life and General Insurance Co*., 646 Phil. 161 (2010) [Per J. Carpio, Second Division]; *Systra Philippines, Inc. v. Commissioner of Internal Reven*ue, 560 Phil. 261 (2007) [Per J. Corona, First Division].

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

17 361 Phil. 916 (1999) [Per J. Quisumbing, Second Division].

18 Id.

19 *Asiaworld Properties Philippine Corporation v. Commissioner of Internal Revenue,* 640 Phil. 230, 235 (2010) [Per J. Carpio, Second Division].

20 *Commissioner of Internal Revenue v. McGeorge Food Industries, Inc.*, 648 Phil. 413 (2010) [Per J. Carpio, Second Division].

21 *Philam Asset Management, Inc. v. Commissioner of Internal Revenue*, 514 Phil. 147 (2005) [Per J. Panganiban, Third Division]; *Paseo Realty & Development Corporation v. Court of Appeals,* 483 Phil. 254 (2004) [Per J. Tinga, Second Division].

It may also happen that a taxpayer may have marked the refund box in its return but nevertheless may have actually applied its excess tax payments to the taxable quarters of the succeeding taxable year by filling out the portion "prior year's excess credits" in any of its first, second, or third quarterly income tax returns.[22] In such case, the taxpayer is deemed to have effectively negated its previous intention to claim for a refund. Consequently, since it had effectively opted to carry over its overpayments, the taxpayer can no longer revert back to its original choice.

Therefore, in both cases — when the taxpayer failed to mark its chosen option or when it marked the refund option — the examination of the quarterly income tax returns and the ITR/FAR of the subsequent taxable year becomes significant, in order to determine the taxpayer's compliance with the explicit and categorical requirement under Section 76, i.e., that it did not actually carry over its excess tax credit to the succeeding quarters of the succeeding taxable year.

True, petitioner's 2004 income tax return shows that it did not carry over its claimed unutilized creditable withholding taxes to the succeeding taxable year 2004 because the item "prior year's excess credits" was left blank. However, this is not enough to conclude that petitioner did not apply the said excess or unutilized creditable withholding taxes against the income tax due for the first three quarters of 2004. The 2004 quarterly returns would have shown if petitioner effectively opted to carry over the 2003 excess or unutilized creditable withholding taxes to the subsequent taxable year. If petitioner applied the said excess or unutilized creditable withholding taxes against the income tax due for the first three quarters of taxable year 2004, it therefore effectively exercised the option to carry over the 2003 excess or unutilized creditable withholding taxes to the succeeding year 2004. Thus, its claim for refund should be denied.

Indeed, Section 75 of the National Internal Revenue Code requires corporate taxpayers to file quarterly income tax returns showing "a quarterly summary declaration of its gross income and deductions on a cumulative basis for the preceding quarter or quarters upon which the income tax shall be paid." Section 76 allows excess tax payments to be applied against estimated quarterly tax liabilities. Therefore, the earliest opportunity when taxpayers may carry over and apply their previous year's excess tax payments would be the first quarter of the succeeding year.

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[22] In G.R. No. 162004 of *Philam*, this court held that the fact that the taxpayer filled out the portion "Prior Year's Excess Credits" in its subsequent final adjustment return shows that it has effectively chosen the carry-over option. This court noted that the line that preceded the phrase in the Bureau of Internal Revenue form clearly stated "Less: Tax Credits/Payments." It further stated that if an application for a tax refund has been or will be filed, that portion of the Bureau of Internal Revenue form should necessarily be blank, even if the final adjustment return of the previous taxable year already shows an overpayment in taxes.

It is granted that the taxes computed in the quarterly returns are mere estimates such that Section 76 requires the filing of the final adjustment return covering the total taxable income for the whole year. Section 232 of the National Internal Revenue Code requires that the books of accounts of companies or persons with gross quarterly sales or earnings exceeding □150,000.00 be audited and examined yearly by an independent Certified Public Accountant and their income tax return be accompanied by certified balance sheets, profit and loss statements, schedules listing income producing properties and the corresponding incomes therefrom, and other related statements. Hence, the figures of gross receipts and deductions in the quarterly income tax returns are subject to audit and adjustment by the end of the year in the final adjustment return.[23]

This means that a taxpayer may realize a net income in the first quarter but incur an estimated loss in the succeeding quarters resulting in a net loss by the end of the year.[24] It may happen then that the previous year's overpayments, which a taxpayer seeks to be refunded by the end of the year, was actually carried over and included as "prior years' excess credits" in the first quarter of the succeeding year. As such, the refund claim by the end of the year cannot prosper because having exercised the carry-over option in the first quarter, the taxpayer is bound by the irrevocable rule. This is the significance of requiring the presentation of the quarterly returns in addition to the ITR/FAR of the succeeding year.

While a taxpayer is allowed to modify or amend its quarterly income tax returns or annual income tax return under Section 6 of the National Internal Revenue Code,[25] an exception would be the irrevocable rule under

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[23] Rep. Act No. 8424 (1997), An Act Amending the National Internal Revenue Code, as Amended, and for Other Purposes.

[24] *See Commissioner of Internal Revenue v. TMX Sales, Inc.,* G.R. No. 83736, January 15, 1992, 205 SCRA 184 [Per J. Gutierrez, Jr., En Banc]. That case involved a claim for refund of overpaid income taxes. TMX Sales, Inc. filed its quarterly income tax return for the first quarter of 1981, declaring an income of □571,174.31 and consequently paying an income tax thereon of □247,010.00 on May 15, 1981. During the subsequent quarters, however, TMX Sales, Inc. suffered losses so that when it filed on April 15, 1982 its annual income tax return for the year ended December 31, 1981, it declared a gross income of □904,122.00 and total deductions of □7,060,647.00, or a net loss of □6,156,525.00. TMX Sales, Inc. sought to refund the amount of □247,010.00 that it paid in the first quarter of 1981.

[25] Rep. Act No. 8424 (1997), An Act Amending the National Internal Revenue Code, as Amended, and for Other Purposes.
Section 6. *Power of the Commissioner to Make assessments and Prescribe additional Requirements for Tax Administration and Enforcement*. -
(A) *Examination of Returns and Determination of Tax Due*. - After a return has been filed as required under the provisions of this Code, the Commissioner or his duly authorized representative may authorize the examination of any taxpayer and the assessment of the correct amount of tax: Provided, however; That failure to file a

Section 76 such that a taxpayer which opted to carry over its previous year's overpayments in the succeeding first, second, or third quarterly returns can no longer change its previous intention to carry over.

To reiterate, the 2004 ITR/FAR alone is not sufficient proof that petitioner did not exercise the carry-over option in any of the quarters of 2004. The best evidence to prove that it did not exercise the carry-over option in any of the quarters would be the quarterly returns.

Thus, petitioner's failure to present sufficient evidence to justify its claim for refund is fatal to its cause. After all, it is axiomatic that a claimant has the burden of proof to establish the factual basis of its claim for tax credit or refund. Tax refunds, like tax exemptions, are construed strictly against the taxpayer.[26] "The taxpayer is charged with the heavy burden of proving that [it] has complied with and satisfied **all the statutory and administrative requirements** to be entitled to the tax refund."[27]

Even if the claim for refund was filed within the two-year prescriptive period, the fact of withholding of creditable taxes by the withholding agents was proven and the income upon which the withholding taxes were withheld was included as part of the gross income and was reflected in the preceding income tax return, nonetheless, the taxpayer should prove that the excess creditable withholding tax was not carried over to the taxable quarters of the succeeding taxable years. Hence, the taxpayer-claimant must necessarily present the quarterly income tax returns and final adjustment return of the succeeding taxable year. "Entitlement to a tax refund is for the taxpayer to prove and not for the government to disprove."[28]

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return shall not prevent the Commissioner from authorizing the examination of any taxpayer.

The tax or any deficiency tax so assessed shall be paid upon notice and demand from the Commissioner or from his duly authorized representative.

Any return, statement of declaration filed in any office authorized to receive the same shall not be withdrawn: *Provided*, **That within three (3) years from the date of such filing, the same may be modified, changed, or amended:** *Provided, further*, That no notice for audit or investigation of such return, statement or declaration has in the meantime been actually served upon the taxpayer. (Emphasis supplied)

[26] *Far East Bank & Trust Co. v. Court of Appeals*, 513 Phil. 148 (2005) [Per J. Azcuna, First Division]; *Paseo Realty & Development Corporation v. Court of Appeals,* 483 Phil. 254 (2004) [Per J. Tinga, Second Division].

[27] *Commissioner v. Team Sual Corporation*, G.R. No. 194105, February 5, 2014, 715 SCRA 478, 503 [Per J. Reyes, First Division], *citing Commissioner of Internal Revenue v. Eastern Telecommunications Philippines, Inc.*, 638 Phil. 334 (2010) [Per J. Brion, Third Division].

[28] *Commissioner of Internal Revenue v. Far East Bank & Trust Company*, 629 Phil. 405, 406 (2010) [Per J. Del Castillo, Second Division].

Parenthetically, it would be faster to process claims for refund if all the pieces of information necessary to verify the veracity of the taxpayer's claims were furnished by the taxpayer-claimant, including the quarterly returns and income tax return of the succeeding year than to have the Bureau of Internal Revenue search for these documents in its files. Given the limited manpower of the Bureau of Internal Revenue to investigate all returns and requests, expediency necessitates that evidentiary matters be within the control of the taxpayer claiming a refund. The Bureau's primary function of tax collection should not be unduly delayed or hampered by incidental matters. Requiring the taxpayer to submit sufficient evidence ensures a more prompt action on its claim for refund and promotes a more efficient outcome.

Efficiency is achieved when tasks, which necessarily entail costs, are allocated to those who could best bear them. A party that could best bear the cost is not necessarily the one who could do the task with the least cost, but a party's opportunity costs[29] should also be taken into consideration. This concept is known as *comparative* advantage.[30] This is contrasted with *absolute* advantage,[31] which does not take into consideration the opportunity costs.

At first glance, it might seem that the Bureau of Internal Revenue is in a better position to assess if a taxpayer has already selected to carry over excess income tax payments. It could be said that the Bureau of Internal Revenue has the *absolute* advantage over gaining this information, considering that the returns are filed with it. However, the Bureau of Internal Revenue does not have *comparative* advantage over producing a

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[29] PAUL A. SAMUELSON, ECONOMICS 746 (18th ed., 2006).
Opportunity cost is defined as "the value of the next-best use (or opportunity) for an economic good, or the value of the sacrificed alternative."

[30] Id. at 296 and 733.
The law of comparative advantage was devised by economist David Ricardo in order to explain optimal production of goods for purposes of international trade. Comparative advantage is "when a nation should specialize in producing and exporting those commodities which it can produce at *relatively* lower cost. . . ."

To illustrate the concept of comparative advantage, for example, there are two individuals who are very good in doing laundry: Aling Nena and Manny Pacquiao. Manny Pacquiao is better at doing laundry than Aling Nena. He could wash three more loads of laundry in a day than Aling Nena. In this case, Manny Pacquiao has an *absolute* advantage over Aling Nena. However, Manny Pacquiao also happens to be an excellent boxer. If he chooses to do laundry, it means foregoing training hours and matches as a boxer. Hence, even if Manny Pacquiao is better at doing laundry, the costs he will bear in doing laundry is much higher than Aling Nena. Hence, Aling Nena has a comparative advantage in doing laundry over Manny Pacquiao.

[31] Id. at 296 and 731.
David Ricardo considers a country that is able to have greater output per unit of input as a country with absolute advantage. However, it does not take into consideration the opportunity costs of creating the output.

single taxpayer's previous returns for purposes of tax refund. The Bureau of Internal Revenue manages millions of taxpayers' returns. Assessing if a taxpayer's claim for refund has not yet been subject to carry over will entail the opportunity cost of the other functions of the Bureau of Internal Revenue.

On the other hand, the taxpayer manages only its own taxes. The taxpayer is aware of whether it has selected the option to carry over or the option to refund in its adjusted returns. Requiring the taxpayer to present the adjusted returns does not entail substantial opportunity costs to it. Hence, the allocation of the burden of proof to the taxpayer is more efficient than requiring the Bureau of Internal Revenue to do the same task.

Indeed, why petitioner failed to present such a vital piece of evidence even during the trial phase of this case confounds this court. The delay in this case could altogether have been avoided had it presented its quarterly income tax returns for 2004. The "[non-production] of a document which courts almost invariably expect will be produced 'unavoidably throws a suspicion over the cause.'"[32] Negligence consisting of the unexplained failure to offer a material document should not be rewarded with undeserved leniency.

Finally, it must be emphasized that there would be no unjust enrichment to the government in the event of denial of the claim for refund under such circumstances because there would be no forfeiture of any amount favoring the government. The amount being claimed as a refund would remain in the account of petitioner creditable against its future income tax liabilities until fully utilized.[33]

ACCORDINGLY, I vote to **DENY** the Petition. The Decision dated March 22, 2013 of the Court of Tax Appeals En Banc should be **AFFIRMED**.

MARVIC M.V.F. LEONEN
Associate Justice

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[32] *Republic v. Sandiganbayan*, 325 Phil. 762, 810 (1996) [Per J. Francisco, Third Division].

[33] *Commissioner of Internal Revenue v. McGeorge Food Industries, Inc.*; 648 Phil. 413 (2010) [Per J. Carpio, Second Division]; *Asiaworld Properties Philippine Corporation v. Commissioner of Internal Revenue,* 640 Phil. 230 (2010) [Per J. Carpio, Second Division]. *Systra Philippines, Inc. v. Commissioner of Internal Revenue*, 560 Phil. 261 (2007) [Per J. Corona, First Division]; *Commissioner of Internal Revenue v. Bank of the Philippine Islands,* 609 Phil. 678 (2009) [Per J. Chico-Nazario, Third Division].