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# How Irrevocable is Irrevocable

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Top of Mind  
December 4 2018

**A single click  
can make  
temporary  
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thought of as  
permanent.**

The past indeed influences the future. Actions from the former provide ripples felt by the latter. When things go wrong, you cannot go back and alter the past. Instead you can concentrate on the present and mold the future. In the world of taxation, however, an amendment of a tax return is the remedy taxpayers can avail of to change what has been submitted. But what if, even amendments cannot do something to change what has been done? Things when chosen can never be withdrawn.

Section 76 of the National Internal Revenue Code (NIRC) of 1997, as amended, provides two options available to the corporation whenever the sum of the quarterly tax payments made during the taxable year exceeds the total tax due on the entire taxable income of the same year, as follows:

- A. Carry over the excess credit; or
- B. Be credited or refunded with the excess amount paid, as the case may be.

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 therefor.

The question is “does the irrevocability rule also apply to the second option?” Let’s look at the case of University Physicians Services, Inc. – Management, Inc. (UPSI-MI) (petitioner) vs. Commissioner of Internal Revenue (CIR) (respondent) G.R. No. 205955 dated 07 March 2018. The said petition seeks to reverse the previous decision made by Court of Tax Appeals (CTA) En Banc (CTA-EB Case No. 828) denying UPSI-MI’s application for tax refund or issuance of Tax Credit Certificate (TCC) for the amount of Php2.97M.

The facts of the case revealed that the petitioner elected the option “to be issued a tax credit certificate” in its 2006 Annual Income Tax Return (“AITR”) representing unutilized creditable withholding taxes (“CWT”) in 2006 for the above-mentioned amount. Afterwards, the petitioner filed an AITR for short period fiscal year (“FY”) ended 31 March 2007 wherein the total amount reported under the line “prior year’s excess credits” included the amount subject to the request for TCC issuance in 2006. However, the petitioner filed an amended AITR for FY 2007 on the same date to remove the amount of the instant claim, reducing by Php2.97M the amount carried-over to 2007.

Hence, the petitioner asked for a tax refund for the said unutilized CWT. The petitioner argued that since the option to be refunded was first elected in its 2006 ITR, such option was allegedly considered irrevocable. UPSI-MI added that although it was credited in the 2007 original ITR, such mistake was immediately rectified in the amended 2007 return thus as if the unutilized CWT for 2006 was never carried over and claimed as credit in 2007. Therefore, UPSI-MI insisted that what should control is its election of the option "to be issued a tax credit certificate" in its 2006 ITR.

The petitioner supported its claim of irrevocability of the option of refund by citing *Philam Asset Management, Inc vs. CIR* case (514 Phil. 147 2005) that "The controlling factor for the operation of the irrevocability rule is that the taxpayer chose an option; and once it had already done so, it could no longer make another one." Petitioner also pointed-out what the AITR states, "If overpayment, mark "X" one box only (Once choice is made, the same is irrevocable)"

However, the Supreme Court held that the case cited did not make an express declaration that the option of cash refund or TCC, once made, is irrevocable. The Court cited aforementioned Section 76 of the NIRC, as amended stating that "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 therefor." The said law clearly discloses that the irrevocability rule only applies to the carry-over option. The Court also added that crediting the amount intended to be refunded is an implied decision of shifting its option to carry-over, which once done, may no longer be reverted to its original choice due to the said rule. Further, the irrevocability rule admits of no qualifications or conditions making the amendment of the return argument inadmissible.

The Supreme Court also highlighted Section 228 of NIRC, as amended, that a pre-assessment notice shall not be required when a taxpayer who opted to claim a refund or tax credit of excess creditable withholding tax for a taxable period was determined to have carried over and automatically applied the same amount claimed against the estimated tax liabilities for the taxable quarter or quarters of the succeeding taxable year. Additionally, the taxpayer shall be informed in writing of the law and the facts on which the assessment is made; otherwise, the assessment shall be void.

The Court interpreted the above case as, since the Bureau has an acceptable remedy in case a taxpayer has a pending application for refund or issuance of TCC and subsequently carried over its excess creditable tax in the taxable quarters of the succeeding taxable year, the lawmakers never intended to make option for tax refund irrevocable, otherwise the law would clearly express so.

Therefore, the Court ruled that the petitioner should be denied on its application for tax refund, though benefit of carry-over still remains. Hence, the unutilized CWT of Php2.97M may still be credited in the succeeding taxable years as prior year's excess credits.

To conclude, the above case recognizes that a tax refund option can still be changed to a carry-over option. But a carry-over option, once elected, cannot be changed to a tax refund option.

This case showed us, taxpayers, to be more cautious in filling out our returns. Taxpayers may want to thoroughly review prior to submitting its tax returns. A single click can cost thousands and even millions of pesos. A single click can make temporary the things you once thought of as permanent.

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