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TAX LAW FOR BUSINESS

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Revisiting the irrevocability rule

More often than not, the sum of the quarterly tax payments made by a corporation during the taxable year is more than the total tax due on the entire taxable income of that year. In simpler terms, corporations have overpaid their income-tax liability as adjusted at the close of the taxable year. This is mostly due to the excess withholding taxes on income payments.

In such case, our Tax Code provides the corporate taxpayer with two options. First, the corporation can be credited or refunded with the excess amount paid. This would involve filing a claim for refund or issuance of a tax credit certificate (TCC). Second and last, the corporation can carry over such overpayment to the succeeding taxable quarters. The overpayment shall be applied as tax credit against income-tax due.

It is settled in jurisprudence that once the option to carry over the excess and apply the excess quarterly income-tax payments 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 TCC shall be allowed. The unutilized 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.

Notably, nowhere in its decisions has the Supreme Court (SC) ruled on whether the irrevocability rule also applies to the option to claim refund or issuance of TCC, that is, not until its most recent landmark ruling in the case of *University Physicians Services, Inc.—Management Inc.* v. *Commissioner of Internal Revenue* (GR 205955, March 7, 2018).

In the said case, the taxpayer filed its annual income-tax return (ITR) for the year ended December 31, 2006, reflecting an income-tax overpayment. In the said ITR, the taxpayer elected the option "*To be issued a tax credit certificate*." Thereafter, the taxpayer filed an annual ITR for the short period fiscal year ended March 31, 2007. The said ITR reflected the income-tax overpayment from the previous period as "*prior year's excess credit*." On the same day, the taxpayer amended the annual ITR to remove the excess credit for 2006. Petitioner later filed with the Bureau of Internal Revenue a claim for refund and/or issuance of a TCC for the alleged excess credit for 2006. The claim was later elevated to the Court of Tax Appeals (CTA). Both CTA Division and CTA *En Banc* ruled that the taxpayer effectively exercised the carryover option when it included the excess tax credit for 2006 in the original ITR for 2007.

Before the SC, the taxpayer contended that the option to be refunded through the issuance of a TCC is, likewise, irrevocable. Following this novel theory, it argued that when it indicated in its annual ITR for 2006 the option "*To be issued a tax credit certificate*," such choice precluded the other option to carry over. The SC disagreed and ruled against the taxpayer.

According to the SC, the irrevocability rule is limited only to the option of carryover. The Court held that there is nothing in the law which prevents the taxpayer who originally opted for a refund or TCC to shift to the carryover of the excess creditable taxes to the taxable quarters of the succeeding taxable years. However, if the taxpayer decides to shift its option to carryover, it may no longer revert to its original choice due to the irrevocability rule. The SC also clarified that when it declared in its previous decisions the words "the options are alternative" or "the choice of one precludes the other," the Court meant that the taxpayer cannot avail of both refund and carryover at the same time. The SC did not lay down any doctrinal rule that the option of refund or TCC is irrevocable.

Applying this landmark doctrine, the SC ruled that the taxpayer in the said case is barred from recovering its excess creditable tax for 2006 through refund or TCC. The taxpayer constructively chose the option of carryover when, despite its initial option to refund, it subsequently indicated in its 2007 ITR that it carried over the 2006 excess creditable tax and applied the same against income-tax due for 2007. The taxpayer can no longer revert to its initial choice. The SC held, however, that the taxpayer remains entitled to the benefit of carryover and may apply the 2006 excess credit in succeeding taxable years until fully exhausted.

In view of the SC's ruling in the University Physicians Services case, the rules can now be summarized as follows:

Once a taxpayer chooses the option to carry over, such option shall be considered irrevocable. It can no longer opt for a refund or issuance of TCC;

If the taxpayer elected refund or issuance of TCC, such option is revocable. The taxpayer is free to change its choice and opt for carryover; and

If the taxpayer opts to carry over such excess creditable tax after electing refund or issuance of TCC, the carryover option is, likewise, irrevocable. The taxpayer cannot revert to its original choice of refund or issuance of TCC.

These rules should serve as a guide to taxpayers as they determine their course of action on their excess tax credits and as they now evaluate the propriety of past actions taken in this regard.

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