

Significant Supreme Court Decisions April 2018

The irrevocability rule applies only to the option of carry-over. If the taxpayer opts to carry over excess creditable tax after electing refund or issuance of TCC, the carry-over option is irrevocable. The taxpayer cannot revert to its original choice of refund or issuance of TCC.

The taxpayer initially opted to be refunded of its excess creditable tax for 2006 through the issuance of a tax credit certificate. The taxpayer 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 filed with the BIR a claim for refund and/or issuance of a TCC for the alleged excess credit for 2006. This was later elevated to the Court of Tax Appeals (CTA). Both CTA Division and CTA *En Banc* ruled that the taxpayer effectively exercised the carry-over option when it included the excess tax credit for 2006 in the original ITR for 2007. The taxpayer contended that the option to be refunded through the issuance of a TCC is irrevocable. Thus, 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. The irrevocability rule is limited only to the option of carry-over. There is nothing in the law which prevents the taxpayer who originally opted for a refund or TCC to shift to the carry-over of the excess creditable taxes to the taxable quarters of the succeeding taxable years. However, if the taxpayer decides to shift its option to carry-over, it may no longer revert to its original choice due to the irrevocability rule. Here, the taxpayer is barred from recovering its excess creditable tax for 2006 through refund or TCC since it constructively chose the option of carry-over 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. (*University Physicians Services, Inc. – Management, Inc. v. Commissioner of Internal Revenue*, G.R. No. 205955, 7 March 2018)

Note: It is now clear that a claim for refund is revocable. The taxpayer may still opt to carry-over its excess tax credits after it has initially chosen to tick the refund option. But what if a taxpayer who filed a claim for refund with the CTA and was denied by the court, can he still choose to carry-over the amount being refunded?