"Deemed Denied" is Still Alive: Why the Court of Tax Appeals Continues to Exercise Jurisdiction over Inactions on Refund Claims of Input Tax

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I. INTRODUCTION

Value-added Tax (VAT) is one of the most prevalent business taxes in the country. Almost all transactions in everyday life — from purchases in the supermarket to grooming services in the salon — are touched by VAT. Undeniably, the contribution of VAT to public coffers is substantial. For the past three years, or from 2017 to 2019, VAT comprised around one-fifths of the total tax collection of the Bureau of Internal Revenue (BIR).[1]

VAT is generally imposed on "any person who, in the course of trade or business, sells, barters, exchanges, leases goods or properties, renders services, and any person who imports goods."[2] Even a non-profit entity is required to pay VAT for as long as the transaction is undertaken in the "regular conduct or pursuit of commercial or economic activity."[3] The three transactions where

1. For 2017, VAT comprised 20.51% of the total tax collection of the BIR, in the amount of ₱365.24 billion. *See* Bureau of Internal Revenue, BIR 2017 Annual Report, at 9, *available at* https://www.bir.gov.ph/images/bir_files/annual_reports/annual_report_2017/annual_report/2017annualreport.pdf (last accessed Jan. 8, 2021) [https://perma.cc/2MXK-LB6J].

   For 2018, VAT contribution lowered to 18.25%, with a decrease in collections to ₱358.17 billion. *See* Bureau of Internal Revenue, BIR 2018 Annual Report, at 11, *available at* https://www.bir.gov.ph/images/bir_files/annual_reports/annual_report_2018/BIR%20Year%20in%20Review%202018/BIR%20AR_008e.pdf (last accessed Jan. 8, 2021) [https://perma.cc/Y7Y5-63CF].

   For 2019, VAT contribution increased to 18.57% from the previous year, or ₱406.08 billion in money value. *See* Bureau of Internal Revenue, BIR 2019 Annual Report, at 15, *available at* https://www.bir.gov.ph/images/bir_files/annual_reports/annual_report_2019/dist/assets/bir-2019-annual-report.4d0e1c382d83dfc1504f3eddc27e0ba6.pdf (last accessed Jan. 8, 2021) [https://perma.cc/845K-QUHK].

2. An Act Amending the National Internal Revenue Code [NAT'L INTERNAL REVENUE CODE], Republic Act No. 8424, § 105 (1997) (as amended).

3. NAT'L INTERNAL REVENUE CODE, § 105. *See also* Commissioner of Internal Revenue v. Court of Appeals, G.R. No. 125355, 329 SCRA 237, 244 (2000).

VAT may be imposed under the Tax Code[4] are: (1) sale, barter, or exchange of goods or properties;[5] (2) sale or exchange of services, including the use or lease of properties;[6] and (3) importation of goods.[7] Regarding what kind of VAT is imposed on these types of transactions, the three regimes of VAT are: (1) VAT-able at 12%;[8] (2) VAT zero-rated (0%);[9] and (3) VAT-exempt.[10]

The VAT payable of the VAT-registered entity is the difference between its output tax and input tax. When a VAT-registered entity buys goods from a local VAT-registered seller, input tax is incurred, and when such VAT-registered entity sells goods, there is output tax.[11] However, when there is excess input tax, the taxpayer may use such input tax to credit the output tax in the succeeding taxable periods, or apply for a refund of such input tax.[12] The latter is allowed for a VAT-registered entity which has zero-rated sales of goods or services, or where the output tax is subjected to 0% VAT, and is usual for companies which export to buyers of goods abroad and paid for in acceptable foreign currency,[13] render certain kinds of services to non-resident foreign corporations doing business outside the Philippines,[14] or sell goods to entities located in special economic zones in the country under the so-called "Cross Border Doctrine."[15]

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4. In this Article, the terms "Tax Code," "National Internal Revenue Code," and "NIRC" are used interchangeably referring to Republic Act No. 8424 or the amendatory provisions of Republic Act No. 9337.

5. NAT'L INTERNAL REVENUE CODE, § 106.

6. *Id.* § 108.

7. *Id.* § 107.

8. *Id.* §§ 106-108.

9. *Id.*

10. *Id.* § 109.

11. NAT'L INTERNAL REVENUE CODE, § 110 (as amended by An Act Amending Sections 27, 28, 34, 106, 108, 109, 110, 111, 112, 113, 114, 116, 117, 119, 125, 148, 151, 236, 237, and 288 of the National Internal Revenue Code of 1997, as Amended, and for Other Purposes, Republic Act No. 9337, § 8 (2005)).

12. *Id.*

13. *Id.* § 106 (a) (2).

14. *Id.* § 108 (b) (2).

15. *See* Coral Bay Nickel Corp. v. Commissioner of Internal Revenue, G.R. No. 190506, 793 SCRA 190, 198 (2016). "The provision thereby establishes the fiction that an economic zone is a foreign territory separate and distinct from the customs

Under Sections 112 (a) and (c) of the Tax Code, a VAT-registered entity who has excess and unutilized input tax may apply for a refund of such tax, by first filing an administrative claim for refund with the BIR, and thereafter if denied, by filing a judicial claim with the Court of Tax Appeals (CTA).[16] With the enactment of the Tax Reform for Acceleration and Inclusion (TRAIN),[17] the original period within which the Commissioner of Internal Revenue[18] must decide a refund claim was 120 days, but TRAIN shortened the period to 90 days.[19] TRAIN also removed from the provision any mention of tax credit certificates as an alternative that the Commissioner may issue to the taxpayer, instead of paying actual cash refunds.[20] But what is the most pressing issue subject of discussion in this Article is the deletion by TRAIN in

territory. Accordingly, the sales made by suppliers from a customs territory to a purchaser located within an [economic zone] will be considered as exportations." *Id.*

16. NAT'L INTERNAL REVENUE CODE, § 112 (a) & (c).

17. An Act Amending Sections 5, 6, 24, 25, 27, 31, 32, 33, 34, 51, 52, 56, 57, 58, 74, 79, 84, 86, 90, 91, 97, 99, 100, 101, 106, 107, 108, 109, 110, 112, 114, 116, 127, 128, 129, 145, 148, 149, 151, 155, 171, 174, 175, 177, 178, 179, 180, 181, 182, 183, 186, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 232, 236, 237, 249, 254, 264, 269, and 288; Creating New Sections 51-A, 148-A, 150-A, 150-B, 237-A, 264-A, 264-B, and 265-A; and Repealing Sections 35, 62, And 89; All Under Republic Act No. 8424, Otherwise Known as the National Internal Revenue Code of 1997, as Amended, and for Other Purposes [Tax Reform for Acceleration and Inclusion (TRAIN)], Republic Act No. 10963 (2017).

18. The Commissioner of Internal Revenue shall be referred to as "Commissioner" throughout this Article.

19. Tax Reform for Acceleration and Inclusion (TRAIN), § 36.

20. S. JOURNAL NO. 28, at 535, 17th Cong., 2d Sess. (Oct. 3, 2017).

> Asked on the rationale for the deletion of the phrase 'tax clearance certificates' in Section 24 which amended Section 112 of the Tax Code, thus giving the government the option to pay through tax clearance certificates instead of cash. Senator Angara recalled that the concept of a tax credit certificate was created at the start of the imposition of the VAT in the 1980s when the Philippines did not have enough cash to pay the refunds. He explained that while tax credit certificates became a cash management tool at the time, the bill seeks to bring back refunds to its true form as cash refunds so that the Philippines could be at par with international standards.

Id.

Section 112 (c) of the Tax Code[21] of the phrase "or the failure on the part of the Commissioner to act on the application within the period prescribed above" as one of the grounds for appeal to the CTA.[22] The Supreme Court has definitively ruled in a number of cases pre-TRAIN that the 120-day period for the Commissioner to decide on the administrative refund claim, and the 30-day period within which to appeal to the CTA the denial by the Commissioner of the administrative claim, are both mandatory and jurisdictional before the CTA can take cognizance of the appeal, except in certain instances when the taxpayer has relied on an administrative ruling by the BIR.[23] The Court has likewise ruled that, generally, the taxpayer needs to wait for the Commissioner to act on the refund claim within the 120-day period, otherwise the appeal is considered premature. [24] Only if the Commissioner failed to act within the said period may the taxpayer file an appeal within 30 days from the lapse of the 120-day period, such that the inaction is "deemed a denial" of the administrative claim for refund.[25]

Even with the deletion of "deemed denied" as one of the grounds for appeal to the CTA under Section 112 (c) of the Tax Code,[26] it must be noted, however, that the charter of the CTA still provides that such court exercises jurisdiction over inaction by the Commissioner involving claims for tax refund where the Tax Code provides a for a specific period of action, such as the 90-day period. Thus, the taxpayer is faced with the dilemma of interpreting a legal issue of whether or not he or she can already file a judicial claim for refund upon the lapse of the 90-day period within which the Commissioner must decide the administrative claim for refund. TRAIN became effective on 1 January 2018.[27] Thus, from 2018 up to the present, taxpayers have continued to be in a bind — do they file a judicial claim upon the lapse of the 90-day period, while running the risk that the CTA dismisses the appeal for being premature? Or do they file a judicial claim upon receiving the Commissioner's

21. NAT'L INTERNAL REVENUE CODE, § 112 (c) (as amended by Republic Act No. 9337, § 10).

22. Tax Reform for Acceleration and Inclusion (TRAIN), § 36.

23. San Roque Power Co. v. Commissioner of Internal Revenue, G.R. No. 187485, 690 SCRA 336, 380 (2013).

24. Applied Food Ingredients Co., Inc. v. Commissioner of Internal Revenue, G.R. No. 184266, 709 SCRA 164, 174 (2013).

25. *Id.*

26. NAT'L INTERNAL REVENUE CODE, § 112 (c) (as amended by Republic Act No. 9337, § 10).

27. Tax Reform for Acceleration and Inclusion (TRAIN), § 87.

decision even after the lapse of the 90-day period, and risk the thought that the CTA might rule that their appeal has been filed out of time?

The purpose of this Article is to show that "deemed denied" continues to be a ground for appeal to the CTA, and to help the courts support that view. Part I of this Article discusses the refund process for input tax. Part II traces the history of the VAT system, from its introduction in the Philippines until the amendments introduced by TRAIN, and the legislative history of TRAIN, to ascertain the intent of the authors of the law whether "deemed denied" has really been removed from the statute books. Part III explains the jurisdiction of the CTA, its history, and the prevailing jurisprudence on the CTA's subject matter jurisdiction. Part IV analyzes the previous parts utilizing the methods of statutory construction — textual and historical interpretation, legislative intent, the concept of repeals, and harmonization of laws — to support the view that "deemed denied" persists in law. Lastly, a conclusion is offered to synthesize the discussion in this Article.

II. REFUNDS OF INPUT TAX

Sections 112 (a) and (c) of the Tax Code[28] provide for the procedure by which refund claims of excess and unutilized input tax are filed, as follows —

> Sec. 112. Refunds or Tax Credits of Input Tax.
>
> (a) Zero-rated or Effectively Zero-rated Sales. [—] Any VAT-registered person, whose sales are zero-rated or effectively zero-rated may, within two (2) years after the close of the taxable quarter when the sales were made, apply for the issuance of a tax credit certificate or refund of creditable input tax due or paid attributable to such sales, except transitional input tax, to the extent that such input tax has not been applied against output tax: Provided, however, That in the case of zero-rated sales under Section 106 (a) (2) (a) (1), (2) and (b) and Section 108 (b) (1) and (2), the acceptable foreign currency exchange proceeds thereof had been duly accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP): Provided, further, That where the taxpayer is engaged in zero-rated or effectively zero-rated sale and also in taxable or exempt sale of goods of properties or services, and the amount of creditable input tax due or paid cannot be directly and entirely attributed to any one of the transactions, it shall be allocated proportionately on the basis of the volume of sales. Provided, finally, That for a person making sales that are zero-rated under Section 108 (b) (6), the input taxes shall be allocated ratably between his zero-rated and non-zero-rated sales.

28. NAT'L INTERNAL REVENUE CODE, § 112 (a) & (c) (as amended by Republic Act No. 9337, § 10).

...

> (c) Period within which Refund of Input Taxes shall be Made. — In proper cases, the Commissioner shall grant a refund for creditable input taxes within ninety (90) days from the date of submission of the official receipts or invoices and other documents in support of the application filed in accordance with Subsections (a) and (b) hereof: Provided, That should the Commissioner find that the grant of refund is not proper, the Commissioner must state in writing the legal and factual basis for the denial.
>
> In case of full or partial denial of the claim for tax refund, the taxpayer affected may, within thirty (30) days from the receipt of the decision denying the claim, appeal the decision with the Court of Tax Appeals: Provided, however, That failure on the part of any official, agent, or employee of the BIR to act on the application within ninety (90) days period shall be punishable under Section 269 of this Code.[29]

Sections 204 (c) and 229 of the Tax Code,[30] which pertains to the refund of taxes erroneously or illegally collected, does not apply to refunds of excess and unutilized input tax since creditable input tax is not considered as excessively, erroneously, or illegally collected tax.[31] As held in the case of *Coca-Cola Bottlers Philippines, Inc. v. Commissioner of Internal Revenue*,[32] "[t]he term 'excess' input VAT simply means that the input VAT available as credit exceeds the output VAT, not that the input VAT is excessively collected because it is more than what is legally due."[33] Thus, it is only the circumstance that the taxpayer has excess input tax as a result of its zero-rated sales, and not because it overpaid the government when there is no legal authority to collect.

There have been various and competing precedents laid down by the Supreme Court in interpreting the process behind tax refunds, but recent decisions rendered by the Court have straightened these out. In *San Roque Power Co. v. Commissioner of Internal Revenue*,[34] the Court, sitting *en banc*, was able to harmonize the various jurisprudence and administrative issuances with regard to the filing of refund claims. In *Commissioner of Internal Revenue v.*

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29. *Id.*

30. NAT'L INTERNAL REVENUE CODE, §§ 204 (c) & 229.

31. CE Luzon Geothermal Power Co., Inc. v. Commissioner of Internal Revenue, G.R. No. 197526, 832 SCRA 589, 608 (2017).

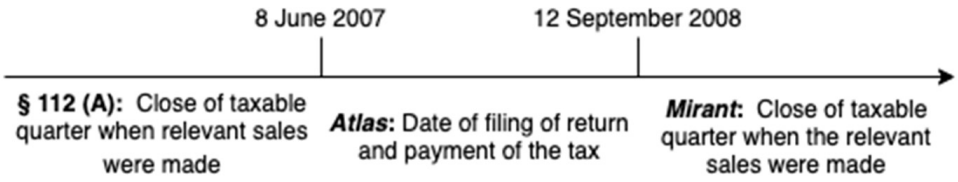
32. Coca-Cola Bottlers Philippines, Inc. v. Commissioner of Internal Revenue, G.R. No. 222428, 856 SCRA 64 (2018).

33. *Id.* at 72-73.

34. San Roque Power Co. v. Commissioner of Internal Revenue, G.R. No. 187485, 690 SCRA 336 (2013).

Mindanao II Geothermal Partnership,[35] the Court illustrated the timeline on the two-year period for the filing of the administrative claim for refund, invoking the discussion in *San Roque Power Co.*, illustrated in the diagram below.

Figure 1. Timeline on the two-year period for the filing of the administrative claim for refund, invoking the discussion in *San Roque*[36]



The Court explained that as per the doctrine laid down in *Atlas Consolidated Mining and Development Corporation v. Commissioner of Internal Revenue*,[37] claims for refund or credit of input VAT must comply with the two-year prescriptive period under Section 229.[38] But the *Atlas* doctrine, as the Court held in *San Roque Power Co.*, should only be effective from its promulgation on 8 June 2007 until its abandonment on 12 September 2008 upon the promulgation of *Commissioner of Internal Revenue v. Mirant Pagbilao Corporation*,[39] which ruled that Section 229 of the Tax Code is inapplicable for refunds of excess and unutilized input tax.[40] Thus, the general rule in the filing of the administrative claim is that the two-year period shall commence from the close of the taxable quarter when the relevant sales were made, except for administrative claims filed from 8 June 2007 to 12 September 2008, the two-year period is counted from the date of filing of the VAT return and the payment of the VAT.[41]

With regard to the "120+30" day period within which the judicial claim must be filed, the

35. Commissioner of Internal Revenue v. Mindanao II Geothermal Partnership, G.R. No. 191498, 713 SCRA 645 (2014).

36. *Id.* at 663.

37. Atlas Consolidated Mining and Development Corporation v. Commissioner of Internal Revenue, G.R. No. 141104, 524 SCRA 73 (2007).

38. *Id.* at 90.

39. Commissioner of Internal Revenue v. Mirant Pagbilao Corporation, G.R. No. 172129, 565 SCRA 154 (2008).

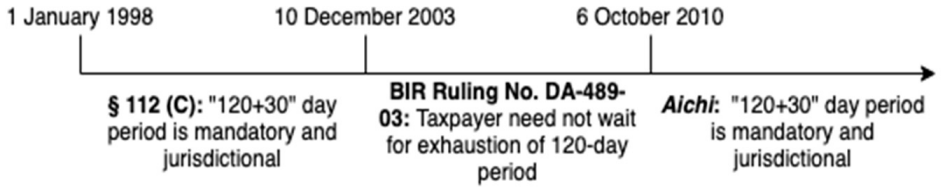
40. *Id.* at 173.

41. *Id.* at 171.

> general rule is that the 120+30 day period is mandatory and jurisdictional from the effectivity of the 1997 NIRC on [1] January 1998, up to the present. As an exception, judicial claims filed from [10] December 2003 to [6] October 2010 need not wait for the exhaustion of the 120-day period.[42]

Thus, as illustrated in a timeline:

Figure 2. Timeline on the "120+30" day period within which the judicial claim must be filed, invoking the discussion in *Visayas Geothermal Power Co*.[43]



San Roque held that BIR Ruling No. DA-489-03 [44] is a general interpretative rule issued under the power of the Commissioner to interpret tax laws under Section 4 of the Tax Code.[45] The said BIR Ruling provided that taxpayers need not wait to exhaust the 120 days within which the Commissioner should decide on the refund claim, so the taxpayer may already file a judicial claim within said period.[46] The Court ruled that the BIR Ruling may be relied upon by taxpayers from the time the rule was issued, until its revocation on 6 October 2010,[47] when the Court rendered the decision in the case of *Commissioner of Internal Revenue v. Aichi Forging Company of Asia, Inc.*[48] That case ruled that the observance of the "120+30" day period is mandatory and jurisdictional.[49] Thus, the Supreme Court, in *San Roque Power Co.*, was able to lay down the general rule with regard to the filing of the administrative and judicial claims for refund, and to carve out exceptions therefrom.

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42. Visayas Geothermal Power Co., v. Commissioner of Internal Revenue, G.R. No. 197525, 725 SCRA 130, 143-44 (2014) (citing CIR v. Visayas Geothermal Power Company, Inc., G.R. No. 181276, 709 SCRA 89, 104 (2013)).

43. The diagram is supplied by the Authors following the ruling in Visayas Geothermal Power Co. *Id.*

44. Bureau of Internal Revenue, Ruling No. DA-489-03 [BIR Ruling No. DA-489-03], (Dec. 10, 2003).

45. *San Roque Power Co.*, 690 SCRA at 401.

46. *Id.*

47. *Id.* at 402-03.

48. Commissioner of Internal Revenue v. Aichi Forging Company of Asia, Inc., G.R. No. 184823, 632 SCRA 422 (2010).

49. *Id.* at 444.

Another landmark decision decided by the Supreme Court *en banc* is the case of *Pilipinas Total Gas, Inc. v. Commissioner of Internal Revenue*,[50] where the Court clarified the issue of the reckoning point within which the "120+30" day period shall commence. Under Section 112 (c) of the Tax Code, the 120-day period within which the Commissioner shall decide on the refund claim commences from the submission of complete documents (now official receipts, invoices, and other supporting documents) in support of the application for refund.[51] The Court ruled that it is the taxpayer who decides on the completeness of the documents supporting the refund claim, as he or she actually has the right and burden to forward such claim.[52] For refund claims filed before 11 June 2014, the taxpayer is entitled 30 days from the filing of the refund claim within which to submit the complete documents.[53] But with the issuance of Revenue Memorandum Circular (RMC) No. 54-2014[54] (carried over to the present under RMC No. 17-2018),[55] all refund claims must be accompanied by complete supporting documents, as no other documents shall be submitted thereafter.[56] But what if a taxpayer files a refund claim, but the BIR insists on requesting the submission of additional supporting documents through the telephone? Would the reckoning point of the "120+30" (now "90+30") day rule be moved? In the recent case of *Zuellig-Pharma Asia Pacific Ltd. Phils. ROHQ v. Commissioner of Internal Revenue*,[57] the Supreme Court ruled that "nowhere in the law does it require that the request for additional documents must always and absolutely be made in written form."[58] For as long as the BIR requests for submission of additional documents, and the taxpayer complies with the request, the commencement

50. Pilipinas Total Gas, Inc. v. Commissioner of Internal Revenue, G.R. No. 207112, 776 SCRA 395 (2015).

51. NAT'L INTERNAL REVENUE CODE, § 112 (c) (as amended by Republic Act No. 9337, § 10).

52. *Pilipinas Total Gas, Inc.*, 776 SCRA at 417.

53. *Id.* at 419.

54. Bureau of Internal Revenue, Revenue Memorandum Circular No. 54-2014 [RMC No. 54-2014], (June 17, 2014).

55. Bureau of Internal Revenue, Revenue Memorandum Circular No. 17-2018 [RMC No. 17-2018], (Mar. 8, 2018).

56. *Pilipinas Total Gas, Inc.*, 776 SCRA at 419.

57. Zuellig-Pharma Asia Pacific Ltd. Phils. ROHQ v. Commissioner of Internal Revenue, G.R. No. 244154, July 15, 2020, *available at* https://sc.judiciary.gov.ph/13050 (last accessed Jan. 8, 2021).

58. *Id.* at 7 (emphasis omitted).

of the prescriptive period continues to move until such time that the taxpayer has deemed himself or herself to have submitted the complete official receipts, invoices and other supporting documents to the BIR.[59]

III. THE "DEEMED DENIED" RULE

The "deemed denied" rule provides that when there is inaction on the part of the Commissioner to act on a refund claim filed by a taxpayer, the inaction of the Commissioner shall be deemed a denial of the claim. This was provided for in Section 112 (d) of the 1997 National Internal Revenue Code[60] but was deleted by TRAIN.[61] Thus, to better appreciate whether such deletion is premised on the intention of the lawmakers to do away with the "deemed denied" rule, an examination of the history of the rule, as well as the deliberations of the legislature, is in order.

A. History of Input Tax Refunds

The VAT system was first introduced in 1987 upon the issuance of Executive Order (E.O.) No. 273[62] to replace the various sales and percentage taxes previously imposed by the Tax Code. Section 106 of the said E.O. provides for the procedure for refunds or credits of input tax, viz.[63] —

> Sec. 106. *Refunds or tax credits of input tax*. — (a) *Export sales*. — An exporter who is a VAT-registered person may, within two years from the date of exportation, apply for the issuance of a tax credit certificate or refund of the input tax attributable to the goods exported, to the extent that such input tax has not been applied to output tax and upon presentation of proof that the foreign exchange proceeds has been accounted for in accordance with the regulations of the Central Bank of the Philippines.
>
> (b) *Zero-rated or effectively zero-rated sales*. — Any person, except those covered by paragraph (a) above, whose sales are zero-rated or are effectively zero-rated may, within two years after the close of the quarter when such sales were made, apply for the issuance of a tax credit certificate or refund of the

59. *Id*. at 9.

60. NAT'L INTERNAL REVENUE CODE, § 112 (d) (repealed in 2018).

61. Tax Reform for Acceleration and Inclusion (TRAIN), § 36.

62. Office of the President, Adopting A Value-Added Tax, Amending For This Purpose Certain Provisions of the National Internal Revenue Code, and For Other Purposes, Executive Order No. 273, Series of 1987 [E.O. No. 273, s. 1987], pmbl. 1 (July 25, 1987).

63. E.O. No. 273, s. 1987, § 106.

> input taxes attributable to such sales to the extent that such input tax has not been applied against output tax.
>
> (c) *Capital goods*. — A VAT-registered person may apply for the issuance of a tax credit certificate or refund of input taxes paid on capital goods imported or locally purchased, to the extent that such input taxes have not been applied against output taxes. The application for refund may be made only after the expiration of two (2) succeeding quarters following the quarter in which the importation or local purchase was made: *Provided*, That a VAT-registered person who is just commencing business may apply for refund of input taxes under this paragraph not earlier than 180 days from the date of registration or actual start of business operations, whichever comes later: *Provided, however*, That the application is filed not later than two (2) years from the dates herein prescribed.
>
> (d) *Cancellation of VAT registration*. — A person whose registration has been cancelled due to retirement from or cessation of business, or due to changes in or cessation of status under Section 100 (c) of this Code may, within [two (] 2[)] years from the date of cancellation, apply for the issuance of a tax credit certificate for any unused input tax which he may use in payment of his other internal revenue taxes.
>
> (e) *Period within which refund of input taxes may be made by the Commissioner*. — The Commissioner shall refund input taxes within 60 days from the date the application for refund was filed with him or his duly authorized representative. No refund of input taxes shall be allowed unless the VAT-registered person files an application for refund within the period prescribed in paragraphs (a), (b)[,] and (c), as the case may be.
>
> (f) *Manner of giving refund*. — Refunds shall be made upon warrants drawn by the Commissioner or by his duly authorized representative without the necessity of being counter-signed by the Chairman, Commission on Audit, the provisions of the Revised Administrative Code to the contrary notwithstanding: *Provided*, That refunds under this paragraph shall be subject to post audit by the Commission on Audit.[64]

The introduction of the VAT system in the country included the procedure by which VAT-registered entities may apply for refunds or credits of their excess input tax. Section 106 of E.O. No. 273 provided for four instances by which refunds of input tax may be claimed, with different reckoning dates within which an administrative claim for refund may be filed:

64. *Id*.

(1) For exporters, within two years from date of exportation;[65]

(2) For VAT zero-rated sellers not considered as exporters, within two years after the close of the quarter when such sales were made;[66]

(3) For importers or purchasers of capital goods, after the expiration of two succeeding quarters following the quarter in which the importation or local purchase was made;[67] and

(4) For entities whose VAT cancellation has been cancelled due to retirement or cessation of business, within two years from the date of said cancellation.[68]

Thereafter, after filing the administrative claim, the Commissioner *shall* refund input taxes within 60 days from the date of application of refund.[69]

As can be seen, there is nothing in the provision that provides for any ground for appeal to the CTA. The Section is silent on whether the denial of a refund application, or the inaction within the 60-day period, is appealable to the CTA. What the provision focuses on is the period within which the administrative claim must be filed, and the period within which the Commissioner must decide on the claim.

This setup would change with the enactment of Republic Act (R.A.) No. 7716 in 1994,[70] which restructured the Philippine VAT system. Section 6 of the said law[71] amended Section 106 of the Tax Code,[72] as follows —

> SEC. 106. *Refunds or tax credits of creditable input tax*. — (a) Any VAT-registered person, whose sales are zero-rated or effectively zero-rated, may, within two (2) years after the close of the taxable quarter when the sales were

65. *Id*. § 106 (a).

66. *Id*. § 106 (b).

67. *Id*. § 106 (c).

68. *Id*. § 106 (d).

69. E.O. No. 273, s. 1987, § 106 (e) (emphasis supplied).

70. An Act Restructuring the Value Added Tax (VAT) System, Widening Its Tax Based and Enhancing Its Administration and for These Purposes Amending and Repealing the Relevant Provisions of the National Internal Revenue Code, As Amended, and for Other Purposes, Republic Act No. 7716 (1994).

71. Republic Act No. 7716, § 6.

72. NAT'L INTERNAL REVENUE CODE, § 106 (as amended by Republic Act No. 7716, § 6).

made, apply for the issuance of a tax credit certificate or refund of creditable input tax due or paid attributable to such sales, except transitional input tax, to the extent that such input tax has not been applied against output tax: *Provided, however*, that in the case of zero-rated sales under Section 100 (a) (2) (a) (i), (ii) and (b) and Section 102 (b) (1) and (2), the acceptable foreign currency exchange proceeds thereof had been duly accounted for in accordance with the regulations of the Bangko Sentral ng Pilipinas (BSP): *Provided, further*, that where the taxpayer is engaged in zero-rated or effectively zero-rated sale and also in taxable or exempt sale of goods or properties or services, and the amount of creditable input tax due or paid cannot be directly and entirely attributed to any one of the transactions, it shall be allocated proportionately on the basis of the volume of sales.

(b) *Capital goods*. — A VAT-registered person may apply for the issuance of a tax credit certificate or refund of input taxes paid on capital goods importer or locally purchased, to the extent that such input taxes have not been applied against output taxes. The application may be made only within two (2) years, after the close of the taxable quarter when the importation or purchase was made.

(c) *Cancellation of VAT-registration*. — A person whose registration has been cancelled due to retirement from a cessation of business, or due to changes in or cessation of status under Section 100 (c) of this Code may, within two (2) years from the date of cancellation, apply for the issuance of a tax credit certificate for any unused input tax which may be used in pursuant of his other internal revenues taxes.

(d) *Period within which refund or tax credit of input taxes shall be made*. — In proper cases, the Commissioner shall grant a refund or issue the tax credit for creditable input taxes within sixty (60) days from the date of submission of complete documents in support of the application filed in accordance with sub-paragraphs (a) and (b) hereof. In case of full or partial denial of the claim for tax refund or tax credit, or the failure on the part of the Commissioner to act on the application within the period prescribed above, the taxpayer affected may, within thirty (30) days from the receipt of the decision denying the claim or after the expiration of the sixty-day period, appeal the decision or the unacted claim with the Court of Tax Appeals.

(e) *Manner of giving refund*. — Refund shall be made upon warrants drawn by the Commissioner or by his duly authorized representative without the necessity of being countersigned by the Chairman Commission on Audit, the provisions of the revised Administrative Code, to the contrary notwithstanding: *Provided*, that refunds under this paragraph shall be subject to post audit by the Commission on Audit.[73]

73. Republic Act No. 7716, § 6.

As can be seen above, R.A. No. 7716 eliminated the specific provision on exporters,[74] and subsumed it to the general class of VAT-registered entities with zero-rated or effectively zero-rated sales. Likewise notable is that for the first time, the Tax Code now specifically mentions, in Section 106 (d) thereof, that when there is denial by the Commissioner of the refund claim, or there is failure by the Commissioner to act on the claim within 60 days from the filing of complete supporting documents, the taxpayer may file a judicial claim with the CTA within 30 days from receipt of the decision denying the application, or after the expiration of the 60-day period.[75] Thus, R.A. No. 7716 introduced,[76] for the first time, the "deemed denied" rule in the statute books.

A subsequent law, R.A. No. 8241, would further amend the VAT provisions of the Tax Code, but it did not touch on Section 106.[77] The next and most consequential law that affected the VAT system came with the enactment of R.A. No. 8424, or the present Tax Code. Section 112 of the Tax Code, as promulgated in 1997, is virtually a word-for-word copy of the provisions of Section 106 as amended by R.A. No. 7716,[78] quoted as follows —

> SEC. 112. Refunds or Tax Credits of Input Tax. —
>
> (a) Zero-rated or Effectively Zero-rated Sales. — any VAT-registered person, whose sales are zero-rated or effectively zero-rated may, within two (2) years after the close of the taxable quarter when the sales were made, apply for the issuance of a tax credit certificate or refund of creditable input tax due or paid attributable to such sales, except transitional input tax, to the extent that such input tax has not been applied against output tax: Provided, however, That in the case of zero-rated sales under Section 106 (a) (2) (a) (1), (2) and (b) and Section 108 (b) (1) and (2), the acceptable foreign currency exchange proceeds thereof had been duly accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP): Provided, further, That where the taxpayer is engaged in zero-rated or effectively zero-rated sale and also in taxable or exempt sale of goods of properties or services, and the amount of creditable input tax due or paid

74. *Id.*

75. *Id.*

76. *Id.*

77. *See* An Act Amending Republic Act No. 7716, Otherwise Known as the Expanded Value-Added Tax Law and Other Pertinent Provisions of the National Internal Revenue Code as Amended, Republic Act No. 8241 (1997).

78. Republic Act No. 7716, § 6.

> cannot be directly and entirely attributed to any one of the transactions, it shall be allocated proportionately on the basis of the volume of sales.
>
> (b) Capital Goods. — A VAT-registered person may apply for the issuance of a tax credit certificate or refund of input taxes paid on capital goods imported or locally purchased, to the extent that such input taxes have not been applied against output taxes. The application may be made only within two (2) years after the close of the taxable quarter when the importation or purchase was made.
>
> (c) Cancellation of VAT Registration. — A person whose registration has been cancelled due to retirement from or cessation of business, or due to changes in or cessation of status under Section 106 (c) of this Code may, within two (2) years from the date of cancellation, apply for the issuance of a tax credit certificate for any unused input tax which may be used in payment of his other internal revenue taxes.
>
> (d) Period within which Refund or Tax Credit of Input Taxes shall be Made. — In proper cases, the Commissioner shall grant a refund or issue the tax credit certificate for creditable input taxes within one hundred twenty (120) days from the date of submission of compete documents in support of the application filed in accordance with Subsections (a) and (a) hereof.
>
> In case of full or partial denial of the claim for tax refund or tax credit, or the failure on the part of the Commissioner to act on the application within the period prescribed above, the taxpayer affected may, within thirty (30) days from the receipt of the decision denying the claim or after the expiration of the one hundred twenty day-period, appeal the decision or the unacted claim with the Court of Tax Appeals.
>
> (e) Manner of Giving Refund. — Refunds shall be made upon warrants drawn by the Commissioner or by his duly authorized representative without the necessity of being countersigned by the Chairman, Commission on audit, the provisions of the Administrative Code of 1987 to the contrary notwithstanding: Provided, That refunds under this paragraph shall be subject to post audit by the Commission on Audit.[79]

With the enactment of the 1997 Tax Code, the period within which the Commissioner must act on the refund claim was doubled from 60 days to 120 days.[80] It likewise carried over the text of R.A. No. 8241 in that failure of the Commissioner to act on the claim within the 120-day period is a ground for appeal to the CTA.[81]

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79. NAT'L INTERNAL REVENUE CODE, § 112.

80. *Id.*

81. Republic Act No. 8241.

Section 112 of the Tax Code would undergo additional changes with the enactment of R.A. No. 9337 in 2005.[82] The amendment added a new proviso in paragraph (a), and deleted paragraph (b) entirely, which dealt on refunds for purchases of capital goods. The new Section is quoted hereunder —

> SEC. 112. Refunds or Tax Credits of Input Tax. —
>
> (a) Zero-Rated or Effectively Zero-Rated Sales. — Any VAT-registered person, whose sales are zero-rated or effectively zero-rated may, within two (2) years after the close of the taxable quarter when the sales were made, apply for the issuance of a tax credit certificate or refund of creditable input tax due or paid attributable to such sales, except transitional input tax, to the extent that such input tax has not been applied against output tax: Provided, however, That in the case of zero-rated sales under Section 106 (a) (2) (a) (1), (2) and (b) and Section 108 (b) (1) and (2), the acceptable foreign currency exchange proceeds thereof had been duly accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP): Provided, further, That where the taxpayer is engaged in zero-rated or effectively zero-rated sale and also in taxable or exempt sale of goods or properties or services, and the amount of creditable input tax due or paid cannot be directly and entirely attributed to any one of the transactions, it shall be allocated proportionately on the basis of the volume of sales: Provided, finally, That for a person making sales that are zero-rated under Section 108 (b) (6), the input taxes shall be allocated ratably between his zero-rated and non-zero-rated sales.
>
> (b) Cancellation of VAT Registration. — A person whose registration has been cancelled due to retirement from or cessation of business, or due to changes in or cessation of status under Section 106 (c) of this Code may, within two (2) years from the date of cancellation, apply for the issuance of a tax credit certificate for any unused input tax which may be used in payment of his other internal revenue taxes.
>
> (c) Period within which Refund or Tax Credit of Input Taxes shall be Made. — In proper cases, the Commissioner shall grant a refund or issue the tax credit certificate for creditable input taxes within one hundred twenty (120) days from the date of submission of complete documents in support of the application filed in accordance with Subsection (a) hereof.
>
> In case of full or partial denial of the claim for tax refund or tax credit, or the failure on the part of the Commissioner to act on the application within the period prescribed above, the taxpayer affected may, within thirty (30) days from the receipt of the decision denying the claim or after the expiration of the one hundred twenty day-period, appeal the decision or the unacted claim with the Court of Tax Appeals.

82. Republic Act No. 9337, § 26.

> (d) Manner of Giving Refund. — Refunds shall be made upon warrants drawn by the Commissioner or by his duly authorized representative without the necessity of being countersigned by the Chairman, Commission on Audit, the provisions of the Administrative Code of 1987 to the contrary notwithstanding: Provided, That refunds under this paragraph shall be subject to post audit by the Commission on Audit.[83]

Section 112 (d) of the original provision in the 1997 Tax Code thus became Section 112 (c) under R.A. No. 9337.[84] But aside from this renumbering, the essence of the provision remained — that the "deemed denied" rule continues to be part of the Tax Code. The same Section 112 (c) is implemented by the BIR under Section 4.112-1 (d) of Revenue Regulations No. 16-2005, or the Consolidated VAT Regulations, as amended.[85] The Regulations clearly provided in no uncertain terms that upon the lapse of the 120-day period within which the Commissioner must decide on the refund claim, the taxpayer may file an appeal to the CTA within 30 days from said lapse.[86] It states —

> SEC. 4.112-1. Claims for Refund/Tax Credit Certificate of Input Tax. —
>
> ...
>
> (d) Period within which refund or tax credit certificate/refund of input taxes shall be made
>
> In proper cases, the Commissioner of Internal Revenue shall grant a tax credit certificate/refund of creditable input taxes within one hundred twenty (120) days from the date of submission of complete documents in support of the application filed in accordance with subparagraph (a) above.
>
> In case of full or partial denial of the claim for tax credit certificate/refund as decided by the Commissioner of Internal Revenue, the taxpayer may appeal to the Court of Tax Appeals (CTA) within thirty (30) days from receipt of said denial, otherwise the decision shall become final. However, if no action on the claim for tax credit certificate/refund has been taken by the Commissioner of Internal Revenue after one hundred twenty (120) day period from the date of submission of the application with complete

83. *Id.* § 10.

84. Republic Act No. 9337, § 10.

85. Bureau of Internal Revenue, Revenue Regulations No. 16-2005 [R.R. No. 16-2005] (Oct. 19, 2005).

86. *Id.* § 4.112-1 (d).

documents, the taxpayer may appeal to the CTA within 30 days from the lapse of the 120-day period.[87]

Then came TRAIN.

TRAIN provides for a whole new paradigm when it comes to the VAT refund system. As has been stated, TRAIN shifted the refund process to a purely cash refund system, where tax credit certificates are now prohibited. TRAIN also removed the VAT zero-rating of certain transactions upon the establishment of the new system.[88] To implement the grant of cash refunds, TRAIN has likewise provided for automatic appropriation of 5% of the total VAT collections for the previous year for the purpose of funding claims for VAT refund.[89] But most importantly for this Article's discussion, TRAIN removed as one of the grounds for appeal to the CTA the failure of the Commissioner to act, within the now reduced 90-day period, on the administrative claim. Section 112 of the Tax Code presently states —

SEC. 112. Refunds or Tax Credits of Input Tax. —

(a) Zero-rated or Effectively Zero-rated Sales. — Any VAT-registered person, whose sales are zero-rated or effectively zero-rated may, within two (2) years after the close of the taxable quarter when the sales were made, apply for the issuance of a tax credit certificate or refund of creditable input tax due or paid attributable to such sales, except transitional input tax, to the extent that such input tax has not been applied against output tax: Provided, however, That in the case of zero-rated sales under Section 106 (a) (2) (a) (1), (2) and (b) and Section 108 (b) (1) and (2), the acceptable foreign currency exchange proceeds thereof had been duly accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP): Provided, further, That where the taxpayer is engaged in zero-rated or effectively zero-rated sale and also in taxable or exempt sale of goods of properties or services, and the amount of creditable input tax due or paid cannot be directly and entirely attributed to any one of the transactions, it shall be allocated proportionately on the basis of the volume of sales: Provided, finally, That for a person making sales that are zero-rated under Section 108 (b) (6), the input taxes shall be allocated ratably between his zero-rated and non-zero-rated sales.

87. *Id.*

88. NAT'L INTERNAL REVENUE CODE, §§ 106 (a) (2) (6) & 108 (b) (as amended by Tax Reform for Acceleration and Inclusion (TRAIN), § 31). *See also* Revenue Reg. No. 13-2018, §§ 4.106-5, 4.108-5.

89. NAT'L INTERNAL REVENUE CODE, §§ 106 (a) (2) (6), 108 (b) (as amended by Tax Reform for Acceleration and Inclusion (TRAIN), § 31). *See also* Revenue Reg. No. 13-2018, § 4.112-1 (g).

> (b) Cancellation of VAT Registration. — A person whose registration has been cancelled due to retirement from or cessation of business, or due to changes in or cessation of status under Section 106 (c) of this Code may, within two (2) years from the date of cancellation, apply for the issuance of a tax credit certificate for any unused input tax which may be used in payment of his other internal revenue taxes.
>
> (c) Period within which Refund or Tax Credit of Input Taxes shall be Made. — In proper cases, the Commissioner shall grant a refund for creditable input taxes within ninety (90) days from the date of submission of the official receipts or invoices and other documents in support of the application filed in accordance with Subsections (a) and (b) hereof: Provided, That should the Commissioner find that the grant of refund is not proper, the Commissioner must state in writing the legal and factual basis for the denial.
>
> In case of full or partial denial of the claim for tax refund, the taxpayer affected may, within thirty (30) days from the receipt of the decision denying the claim, appeal the decision with the Court of Tax Appeals: Provided, however, That failure on the part of any official, agent, or employee of the BIR to act on the application within ninety (90) days period shall be punishable under Section 269 of this Code.
>
> (d) Manner of Giving Refund. — Refunds shall be made upon warrants drawn by the Commissioner or by his duly authorized representative without the necessity of being countersigned by the Chairman, Commission on audit, the provisions of the Administrative Code of 1987 to the contrary notwithstanding: Provided, That refunds under this paragraph shall be subject to post audit by the Commission on Audit.[90]

The provision requires dissection. *First*, there is a new proviso in the first part of Section 112 (c)[91] that requires the Commissioner to state in writing the legal and factual bases in case there is a denial of refund. This proviso provides the taxpayer with the necessary information required to be able to make an intelligent appeal to the CTA, and is even beyond what administrative due process requires.[92] The authors of TRAIN deemed it best to equip the

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90 NAT'L INTERNAL REVENUE CODE, § 112 (as amended by Republic Act No. 9337, § 10 & Tax Reform for Acceleration and Inclusion (TRAIN), § 36).

91. *Id.* § 112 (c) (as amended by Tax Reform for Acceleration and Inclusion (TRAIN), § 36).

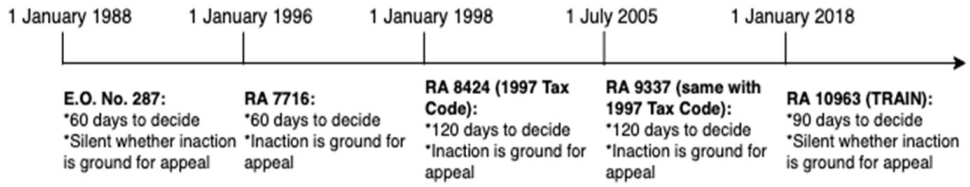
92. Solid Homes, Inc. v. Laserna, G.R. No. 166051, 550 SCRA 613, 627 (2008). The case explains —

> Note that there is no requirement in *Ang Tibay* that the decision must express clearly and distinctly the facts and the law on which it is based. For as long as the administrative decision is grounded on evidence, and

taxpayer with not just the explanation on why the claim was denied, but also the underlying factual and legal bases that supported the explanation. *Second*, TRAIN reduced the period within which the Commissioner must act on the refund claim — from 120 days to 90 days.[93] *Third*, TRAIN removed, as explained above, any mention of tax credit certificates in lieu of actual cash refunds.[94] *Fourth*, there is also a new proviso in the last part of Section 112 (c) that provides for criminal liability to any BIR official, agent or employee who fails to act on the refund application within 90 days.[95] *Lastly*, the new TRAIN amendment removed as one of the grounds for appeal the failure of the Commissioner to act within the prescribed period. Thus, to ascertain the intent of the authors of TRAIN whether such deletion was intended to do away with the "deemed denied" rule completely, the legislative history of TRAIN should be examined.

To summarize, the following is a timeline of the relevant dates regarding the evolution of the VAT refund system:

Figure 3. Timeline of the relevant dates regarding the evolution of the VAT refund system[96]



From the introduction of the VAT system on 1 January 1988,[97] the Tax Code was silent whether inaction of the Commissioner is appealable to the CTA. With the effectivity of the R.A. No. 7716 on 1 January 1996, the Tax Code was amended to explicitly state that inaction of the Commissioner is a

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expressed in a manner that sufficiently informs the parties of the factual and legal bases of the decision, the due process requirement is satisfied.

Id.

93. Tax Reform for Acceleration and Inclusion (TRAIN), § 36 (amending NAT'L INTERNAL REVENUE CODE, § 112 (c)).

94. NAT'L INTERNAL REVENUE CODE, § 112 (d).

95. Tax Reform for Acceleration and Inclusion (TRAIN), § 36 (amending NAT'L INTERNAL REVENUE CODE, § 112 (c)).

96. E.O. No. 273, s. 1987, § 106; Republic Act No. 7716, § 6; & NAT'L INTERNAL REVENUE CODE, § 112 (as amended by Republic Act No. 9337, § 10 & Tax Reform for Acceleration and Inclusion (TRAIN), § 36).

97. E.O. No. 273, s. 1987, § 30.

ground for appeal.[98] Thus, from 1996 up until 2017, before the effectivity of TRAIN, the Tax Code provided inaction as a ground for appeal to the CTA. With the enactment of TRAIN, the Tax Code reverted to silence once again, unsure whether inaction remains a ground for appeal.

B. Legislative History of TRAIN

House Bill No. 5636[99] was the product of the Committee on Ways and Means of the House of Representatives that consolidated 55 bills that tackled amendments to the Tax Code. Interestingly, said House Bill did not propose any amendment to Section 112. Its counterpart in the other chamber of Congress, Senate Bill No. 1592,[100] proposed three amendments to Section 112,[101] namely: (1) requirement for the Commissioner to state in writing the factual and legal bases of the decision in case of denial of the refund claim; (2) removal of any mention of tax credit certificates; and (3) reduction of the period from 120 to 90 days for the Commissioner to decide on the refund claim.[102] In both of these bills, the "deemed denied" rule stayed.

After sponsorship on the floor, further amendments were introduced to H.B. No. 5636, but none of them touched on Section 112. On the other hand, there were major changes made to S.B. No. 1592 that touched on Section 112. The text of S.B. No. 1592, after third and final reading, is as follows —

> SEC. 112. Refunds or Tax Credits of Input Tax. —
>
> ...
>
> (c) Period within which Refund [or Tax Credit] of Input Taxes shall be Made. — In proper cases, the Commissioner shall grant a refund [or issue the tax credit certificate] for creditable input taxes within [one hundred twenty (120)] NINETY (90) days from the date of submission of THE OFFICIAL RECEIPTS OR INVOICES AND OTHER DOCUMENTS [complete documents] in support of the application filed in accordance with Subsections (A) AND (B) hereof: PROVIDED, THAT, SHOULD THE COMMISSIONER FIND THAT THE GRANT OF REFUND IS NOT PROPER, THE COMMISSIONER MUST STATE IN WRITING THE LEGAL AND FACTUAL BASIS FOR THE DENIAL.

98. Republic Act No. 7716, § 6.

99. H.B. No. 5636, 17th Cong., 1st Reg. Sess. (2017).

100. S.B. No. 1592, 17th Cong., 2nd Reg. Sess. (2017).

101. NAT'L. INTERNAL REVENUE CODE, § 112.

102. S.B. No. 1592, § 24.

> In case of full or partial denial of the claim for tax refund [or tax credit, or the failure on the part of the Commissioner to act on the application within the period prescribed above], the taxpayer affected may, within thirty (30) days from the receipt of the decision denying the claim [or after the expiration of the one hundred twenty day-period], appeal the decision [or the unacted claim] with the Court of Tax Appeals: PROVIDED, HOWEVER, THAT FAILURE ON THE PART OF COMMISSIONER TO ACT ON THE APPLICATION WITHIN THE NINETY (90)-DAY PERIOD SHALL AUTOMATICALLY RESULT IN THE APPROVAL OF THE CLAIM FOR REFUND WITHOUT PREJUDICE TO A SUBSEQUENT AUDIT TO BE CONDUCTED BY THE BIR.[103]

As can be seen above, the version of S.B. No. 1592 that the Senate approved on third and final reading deleted the "deemed denied" rule, and instead introduced a new provision that provided for its exact opposite, the "deemed approved" rule.[104] Under this new system, if the Commissioner fails to act within 90 days from the submission of official receipts, invoices and other supporting documents, the refund claim shall automatically be approved.[105] This new provision adds that such automatic approval is without prejudice to a subsequent audit by the BIR, which can be inferred is an intended safeguard that authorizes the BIR to look whether the grant of refund, albeit automatic, was correct and proper.

Since there were conflicting versions of the TRAIN bills of the House of Representatives and the Senate, a bicameral conference committee was called to thresh out those differences.[106] The respective panels of both chambers were headed by the Chairpersons of their respective ways and means committees.

The deliberations of the conference committee would show that there was a concern from the House panel about the "deemed approved" rule as proposed by the Senate panel, cognizant that the said system is prone to abuse and corruption[107] —

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103. *Id.* § 34.

104. *Id.*

105. *Id.*

106. Erwin Colcol, *Bicameral panel reconciles Senate, House versions of tax reform program*, GMA NEWS, Dec. 11, 2017, *available at* https://www.gmanetwork.com/news/money/economy/636175/bicameral-panel-reconciles-senate-house-versions-of-tax-reform-program/story (last accessed Jan. 8, 2021) [https://perma.cc/33FC-2B2D].

107. Bicameral Conference Committee, 17th Cong., 1st Sess. 163 (Dec. 1, 2017).

> CHAIRPERSON CUA. Actually, I [expressed] concern over this to Senator Angara yesterday. *Madaling ma-abuse 'yung* 'deemed approved[,]' *eh*. But all the rest, we have no problem.
>
> CHAIRPERSON ANGARA. ... What is the problem of the Chair ... [?]
>
> CHAIRPERSON CUA. Well, *'yung* deemed approved can be a product of a conspiracy between the taxpayer and the BIR. When an undeserving VAT refund claim is processed just because ... and then because of an arrangement with the BIR, asks him to just sit on it until it expires into approval.
>
> CHAIRPERSON ANGARA. It is inaction ...
>
> CHAIRPERSON CUA. [Yes,] inaction ...
>
> CHAIRPERSON ANGARA. He is paid to be inactive.
>
> CHAIRPERSON CUA. Benefits both of them.
>
> CHAIRPERSON ANGARA. [Yes.]
>
> CHAIRPERSON CUA. And is disadvantageous to the government.[108]

Representative Dakila Carlo Cua, Chairperson of the House panel, was of the view that the "deemed approved" rule may be used by unscrupulous claimants who will file refund claims without merit, bribe the BIR official or employee in charge of the claim to not act on the refund claim, and let the statutory period of 90 days pass so the claim is automatically approved. Subsequent deliberations on "deemed approved" continued, still with the cloud of concern expressed by Representative Cua looming over the Senate's proposed amendment to Section 112, but also showing the intention of the authors to improve the VAT refund system for the benefit of the taxpayer, viz. —

> CHAIRPERSON ANGARA. That is the point of Chairman Cua. I think, ... *may kaunting sabit kasi pagka nagkakuntsaba 'yung nagre-refund at saka 'yung* BIR officer *pwedeng upuan na lang ... 'yung kanyang* application *at* automatically *maga-grant na 'yun*. So how do we resolve that, Your Honors? I think that was the issue ... [.]
>
> SEN. RECTO. Administrative issue.
>
> CHAIRPERSON ANGARA. Yeah.
>
> SEN. RECTO. I think [that is] an administrative issue, [ ] Mr. Chairman. The intention of this is that especially later on once the provision of the law kicks in, that the indirect exporters are now subject to the VAT, and [there is] a refund mechanism, they should be able to get a refund. So [we are]

108. *Id*.

> saying that the BIR should decide on this 90 days so that [there is] comfort on the part of the people getting the refund. It cannot be *na ... walang* limitation ...
>
> CHAIRPERSON ANGARA. [Yes.] I agree, Your Honor. We ... see the point of Senator Recto ... *Ayaw natin na talagang natetengga na lang dun 'yung mga* applications *kasi* ...
>
> SEN. RECTO. Correct.
>
> CHAIRPERSON CUA. You (sic) Honor ...
>
> CHAIRPERSON ANGARA. That is an age[-]old method employed by our civil servants and [it is] really causing us damage to our business reputation.[109]

Thus, to balance the concern of the House panel on the risk brought by the "deemed approved" rule, and the Senate panel's objective of easing the administration of tax refunds, the conference committee continued to discuss the same. Eventually, consensus was reached in not pushing forward with "deemed approved" rule, but instead what came out was the concept of criminal liability that will be imposed on the BIR officer or employee who fails to act on the refund within the prescribed period. This consensus is now reflected in the current text of Section 112,[110] in relation to Section 269,[111] of the Tax Code —

> REP. QUIMBO. How many transactions are we talking about if it will be deemed approved[?]
>
> CHAIRPERSON ANGARA. *Ilan pa iyan*, Director?
>
> CHAIRPERSON CUA. But even if the number is small, it is considering that the system is broken today. Now, we are trying to reform it to have a system that [will] become more efficient. I understand the objective of the Senate panel and I agree the we have to protect the taxpayer[']s right to collect his money *baka naman masyadong* disadvantageous to the government. I think [what] we want to do is police those officials to make sure they release it on time, within the prescribed 90-day period. So, perhaps the penalty for the BIR officials can be upon those metrics, for your consideration, Your Honor.

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109. Bicameral Conference Committee, at 144.

110. NAT'L INTERNAL REVENUE CODE, § 112 (as amended by Republic Act No. 9337, § 10 & Tax Reform for Acceleration and Inclusion (TRAIN), § 36).

111. NAT'L INTERNAL REVENUE CODE, § 269 (as amended by Tax Reform for Acceleration and Inclusion (TRAIN), § 81).

CHAIRPERSON ANGARA. Are you proposing a penalty for BIR officials who fail to decide? Something like that? What does the BIR say to that?

MS. TERESITA M. ANGELES (Director II, Officer-in-charge, Assistant Commissioner for Large Taxpayers Service, Bureau of Internal Revenue). As far as the present situation [is concerned], we have the 120 days for the VAT refund. If not acted upon, the revenue officer may be subjected to administrative cases.

CHAIRPERSON ANGARA. Is that in the law?

MS. ANGELES. No, sir.

...

REP. QUIMBO. ... [A]m I correct in assuming that the objective of the provision is simply to prevent or in fact to compel action within a given period, correct? *Wala ba kayong pweding i-suggest sa amin diyan*, short of something like that, *kasi* we need to be able to address [this issue] because the BIR's record on VAT refund[s] has really been very bad. So, *ano ba iyong* remedy *na puwedeng mai-suggest dito* short of a deemed approved provision[?] Because I personally think that when I was in practice, what happens there really is that the [administrative] agency simply decides it against you or adverse to you just to get rid of the burden. They will just disapprove it and then *a-appeal ka na lang kasi pa-lapse na iyong* period, *eh*. *Iyon ang mangyayari sa akin eh*, as a practitioner *eh*. So *ano ba ang ibang* suggestions *natin diyan* how we can address the untimeliness of BIR in VAT refunds?

MS. ANGELES. As far as the [L]arge [T]axpayers [S]ervice, we are actually acting on the refund within 120 days, Your Honor. Because we will be subjected ... the superiors will not be signing whatever refund that they are recommending. So, ... the consequence would be on the revenue officer. So, they would act on it because they will be subjected to administrative case.

CHAIRPERSON ANGARA. Anyway, I think there is a provision in Section 269 of the NIRC [on] violations committed by government enforcement officer[s]. One option instead of the deemed approved is to carve out to add to this list, the failure to act on refunds within a given period, how about that?

MS. ANGELES. Yes, Your Honor.

CHAIRPERSON ANGARA. Okay. *Sige*. And the cause of action will belong to the person entitled to a refund ...

SEN. RECTO. Excellent, Mr. Chairman.[112]

112. Bicameral Conference Committee, at 149-51.

Thus, both the Senate and House panels agreed to remove the "deemed approved" rule, and replace it with the criminal liability provision. In sum, what the authors of TRAIN intended was to initially replace the "deemed denied" rule with the "deemed approved" rule, but in the end did away with the "deemed approved" rule too, considering that such system is prone to corruption. In the end, the authors did not bring the "deemed denied" rule back to the provision, but instead Section 112, as it now stands, is silent on "deemed denied" as a ground for appeal to the CTA. [113]

IV. JURISDICTION OF THE COURT OF TAX APPEALS

To determine whether "deemed denied" has really been removed as part of law, and considering the silence of the text of Section 112 of the Tax Code, there is a need to analyze another important piece of legislation on the matter, which is the charter of the CTA. Subject matter jurisdiction is the "power to hear and determine the general class to which the proceedings in question belong; it is conferred by law and not by the consent of the or acquiescence of any or all of the parties or by erroneous belief of the court that it exists."[114] Thus, to look into the law creating the CTA is one of the best ways to ascertain whether such court remains to have subject matter jurisdiction over inaction of the Commissioner.

A. Background and History of the Court

The present CTA traces its roots to the CTA created by virtue of R.A. No. 1125 (CTA Charter) in 1954.[115] Back then, the CTA was merely composed of three members: one Presiding Judge and two Associate Judges appointed by the President of the Philippines.[116] The CTA was created as a court of record and part of the judicial department of government, for which it replaced the Board of Tax Appeals, which was created as a mere administrative agency supervised by the Department of Justice.[117]

113. NAT'L INTERNAL REVENUE CODE, § 112 (as amended by Republic Act No. 9337, § 10 & Tax Reform for Acceleration and Inclusion (TRAIN), § 36).

114. Mitsubishi Motors Phils. Corp. v. Bureau of Customs, G.R. No. 209830, 759 SCRA 306, 312 (2015) (citing Philippine Coconut Producers Federation, Inc. v. Republic, G.R. Nos. 177857-58, 663 SCRA 514, 569 (2012)).

115. An Act Creating the Court of Tax Appeals, Republic Act No. 1125 (1954).

116. Republic Act No. 1125, § 1.

117. Office of the President, Creating a Board of Tax Appeals, Executive Order No. 401-A, Series of 1951 [E.O No. 401-A, s. 1951] (Jan. 5, 1951).

The CTA started out as an inferior court whose decisions and final orders were appealable straight to the Supreme Court.[118] However, under the 1997 Rules of Civil Procedure, the decisions of the CTA, together with certain quasi-judicial agencies, became appealable to the Court of Appeals via petition for review.[119]

In 2004, a major change is brought to the CTA with the enactment of R.A. No. 9282.[120] The law elevated the rank of the CTA to a lower collegiate court, similar to the Court of Appeals and Sandiganbayan, enlarged its membership to six justices from three judges, and expanded its special jurisdiction.[121] The CTA, under R.A. No. 9282,[122] was composed of two divisions of three justices each, and most of the cases are brought to the divisions for their decision. Decisions of the divisions, and some appeals brought from the lower courts and administrative agencies, are appealable to the CTA *en banc*, which is composed of all the justices of the said court.[123] The CTA, therefore, is a unique tribunal due to the fact that it is only the statutory court in the country whose judgments decided in division are appealable to the whole court sitting *en banc*. The decisions of the Court of Appeals and Sandiganbayan, which resolve cases in divisions, are appealable directly to the Supreme Court via petition for review on *certiorari*,[124] and in certain instances via appeal.[125] The judgments of the CTA *en banc* are thereafter appealable to the Supreme Court via petition for review on *certiorari*.[126]

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118. Republic Act No. 1125, §§ 18-19.

119. 1997 RULES OF CIVIL PROCEDURE, rule 43, § 1.

120. An Act Expanding the Jurisdiction of the Court of Tax Appeals (CTA), Elevating its Rank to the Level of a Collegiate Court with Special Jurisdiction and Enlarging its Membership, Amending For the Purpose Certain Sections or Republic Act No. 1125, as Amended, Otherwise Known as the law creating the Court of Tax Appeals, and for Other Purposes, Republic Act No. 9282 (2004).

121. *Id.* § 1.

122. *Id.* § 2.

123. *Id.* § 18.

124. RULES OF CIVIL PROCEDURE, rule 45, § 1.

125. 2018 REVISED INTERNAL RULES OF THE SANDIGANBAYAN, A.M. No. 13-7-05-SB, rule XI, § 1 (a) (Nov. 5, 2018).

126. REVISED RULES OF THE COURT OF TAX APPEALS, A.M. No. 05-11-07-CTA, rule 16, § 1 (Nov. 22, 2005).

Then, R.A. No. 9503 was enacted in 2008,[127] which enlarged the membership of the CTA from six to nine justices, and thereby reconfigured the required number of justices for purposes of quorum and voting. Thus, currently the CTA is composed of nine members, one Presiding Justice and eight Associate Justices, appointed by the President from a list of nominees submitted by the Judicial and Bar Council, and who serve until they reach the mandatory retirement age of 70 years.[128]

B. The CTA Charter

Section 7 of R.A. No. 1125, as amended by R.A. No. 9282, provides for the jurisdiction of the CTA.[129] Specifically quoted hereunder is the portion of said Section 7 pertaining to the exclusive original jurisdiction of the CTA over inactions of the Commissioner —

> SEC. 7. *Jurisdiction*. - The CTA shall exercise —
>
> (a) Exclusive appellate jurisdiction to review by appeal, as herein provided —
>
> ...
>
> (2) Inaction by the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relations thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue, where the National Internal Revenue Code provides a specific period of action, in which case the inaction shall be deemed a denial[.][130]

As can be seen in Section 7 (a) (2), the CTA exercises exclusive appellate jurisdiction over "inaction by the Commissioner of Internal Revenue in cases involving ... refund of internal revenue taxes, fees or other charges ... whether the National Internal Revenue Code provides a specific period of action, in which case the inaction shall be deemed a denial."[131] It can be said thus that the "deemed denied" rule originates its nomenclature from Section 7 (a) (2)

127. An Act Enlarging the Organizational Structure of the Court of Tax Appeals, Amending for the Purpose Certain Sections of the Law Creating the Court of Tax Appeals, and for Other Purposes, Republic Act No. 9503 (2008).

128. *Id.* § 1.

129. Republic Act No. 1125, § 7.

130. *Id.*

131. Republic Act No. 1125, § 7 (a) (2) (as amended).

of the CTA Charter, where the "inaction shall be deemed a denial."[132] In relation thereto, Section 11 of the CTA Charter provides —

> SEC. 11. *Who May Appeal; Mode of Appeal; Effect of Appeal.* — Any party adversely affected by a decision, ruling or inaction of the Commissioner of Internal Revenue, the Commissioner of Customs, the Secretary of Finance, the Secretary of Trade and Industry or the Secretary of Agriculture or the Central Board of Assessment Appeals or the Regional Trial Courts may file an appeal with the CTA within thirty (30) days after the receipt of such decision or ruling or after the expiration of the period fixed by law for action as referred to in Section 7 (a) (2) herein.
>
> Appeal shall be made by filing a petition for review under a procedure analogous to that provided for under Rule 42 of the 1997 Rules of Civil Procedure with the CTA within thirty (30) days from the receipt of the decision or ruling or in the case of inaction as herein provided, from the expiration of the period fixed by law to act thereon. A Division of the CTA shall hear the appeal: Provided, however, That with respect to decisions or rulings of the Central Board of Assessment Appeals and the Regional Trial Court in the exercise of its appellate jurisdiction appeal shall be made by filing a petition for review under a procedure analogous to that provided for under rule 43 of the 1997 Rules of Civil Procedure with the CTA, which shall hear the case *en banc*.[133]

Section 11 of the CTA Charter thus provides that in cases of inaction by the Commissioner, it is the CTA in division, not the *en banc*, that possesses jurisdiction over the judicial claim for refund.[134] Such claim must be filed via a petition for review analogous to that under Rule 42 of the Rules of Court,[135] and must be filed within 30 days from the expiration of the period within which the Commissioner should have acted as fixed by law.

Similarly, the Revised Rules of the CTA provides —

> SEC. 3. Cases within the jurisdiction of the Court in Divisions. — The Court in Divisions shall exercise:
>
> (a) Exclusive original or appellate jurisdiction to review by appeal the following:
>
> ...

132. *Id.*

133. Republic Act No. 1125, § 11 (as amended).

134. *Id.*

135. RULES OF CIVIL PROCEDURE, rule 42.

> (2) Inaction by the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue, where the National Internal Revenue Code or other applicable law provides a specific period for action: Provided, that in case of disputed assessments, the inaction of the Commissioner of Internal Revenue within the one hundred eighty day-period under Section 228 of the National Internal revenue Code shall be deemed a denial for purposes of allowing the taxpayer to appeal his case to the Court and does not necessarily constitute a formal decision of the Commissioner of Internal Revenue on the tax case; Provided, further, that should the taxpayer opt to await the final decision of the Commissioner of Internal Revenue on the disputed assessments beyond the one hundred eighty day-period abovementioned, the taxpayer may appeal such final decision to the Court under Section 3[ ](a), Rule 8 of these Rules; and Provided, still further, that in the case of claims for refund of taxes erroneously or illegally collected, the taxpayer must file a petition for review with the Court prior to the expiration of the two-year period under Section 229 of the National Internal Revenue Code[.][136]

Although the last proviso of the aforementioned provision invokes Section 229 of the Tax Code, such is only applicable for recovery of tax erroneously or illegally collected, and not with refunds of input tax, as enunciated by the Supreme Court in *Aichi Forging Company of Asia, Inc.*[137] What the provision prescribes, essentially, is the same as what Sections 7 and 11 of the CTA Charter provide — that the CTA, in division, has exclusive original jurisdiction over inactions by the Commissioner within the prescribed period under the Tax Code.[138]

C. Jurisprudence on Jurisdiction

Aside from the text of the statute, jurisprudence has likewise provided interpretation that clarified the jurisdiction of the CTA. In the case of *City of Manila v. Grecia-Cuerdo*,[139] the Supreme Court ruled that the jurisdiction of the CTA, though not provided in Section 7 of its Charter, includes the power to entertain petitions for *certiorari* over interlocutory orders of trial courts with respect to local tax cases.[140] The Court premised this reasoning from the

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136. REVISED RULES OF THE COURT OF TAX APPEALS, rule 4, § 3 (a) (2).

137. *Aichi Forging Company of Asia, Inc.*, 632 SCRA at 439.

138. Republic Act No. 1125, §§ 7 & 11.

139. City of Manila v. Grecia-Cuerdo, G.R. No. 175273, 715 SCRA 182 (2014).

140. *Id.* at 202.

general grant of judicial power as provided for in Section 1, Article VIII of the Constitution, which includes the authority to determine whether or not there has been grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the government, for which the remedy is through a petition for *certiorari*.[141] The Court likewise reasoned that the grant of appellate jurisdiction includes the "authority to control all auxiliary and incidental matters necessary to the efficient and proper exercise of that jurisdiction."[142] Included in this grant of appellate jurisdiction is the power to resolve issues brought through interlocutory orders, for which *certiorari* is the remedy.

The Supreme Court, in the resolution of the motions for reconsideration in the case of *Banco de Oro v. Republic of the Philippines*,[143] also ruled that the CTA has the power to rule upon the constitutionality or validity of a tax law or regulation in disputing an assessment or claiming a refund. The Court likewise declared that "within the judicial system, the law intends the Court of Tax Appeals to have exclusive jurisdiction to resolve all tax problems."[144]

Then, in the case of *Philippine American Life and General Insurance Company v. Secretary of Finance*,[145] the Court ruled that implied in Section 7 of the CTA Charter is the CTA's jurisdiction to review the decisions of the Secretary of Finance in the exercise of the latter's power of review under Section 4 of the Tax Code. [146] As the Court admitted,

> there is no provision in law that expressly provides where exactly the ruling of the Secretary of Finance under the adverted NIRC provision is appealable to. However, [w]e find that Sec. 7 (a) (1) of [R.A. No.] 1125, as amended, addresses the seeming gap in the law as it vests the CTA, albeit impliedly, with jurisdiction ... as 'other matters' arising under the NIRC or other laws administered by the BIR.[147]

Jurisprudence has *expanded* the jurisdiction of the CTA by not being merely confined within the express text of Section 7 of the CTA Charter.[148]

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141. *Id.* (citing PHIL. CONST. art. VIII, § 1).

142. *Id.* at 204-05.

143. Banco De Oro v. Republic, G.R. No. 198756, 800 SCRA 392 (2016).

144. *Id.* at 419.

145. Philippine American Life and General Insurance Company v. Secretary of Finance, G.R. No. 210987, 741 SCRA 578 (2014).

146. *Id.* at 591-93.

147. *Id.* at 591-92.

148. Republic Act No. 1125, § 7 (emphasis supplied).

The Supreme Court has read not just into the words of the law, but the intent behind the CTA's creation and its design within the judicial system, to effectively delineate its jurisdiction vis-à-vis other courts and bodies.

V. ANALYSIS

After laying down the statutory basis for the "deemed denied" rule, including its history and the deliberations of the authors behind it, and the text of the law and that corresponding jurisprudence that further clarified the jurisdiction of the Tax Court, it is now proper to analyze them utilizing the techniques of statutory interpretation to come up with a "complete, coherent[,] and intelligible system" of law.[149]

A. Legislative Intent

It is a rule in statutory construction that an amendment by the deletion of words or phrases indicates an intention to change the statutory meaning.[150] With the removal of the "deemed denied" rule as found in Section 112 (c) of the Tax Code, it can be said that there was, probably, a legislative intention to remove it as one of the grounds for appeal to the CTA. However, the deletion by itself does not fully capture the context of what the authors of the law actually meant, and the deliberations of the bicameral conference committee on the disagreeing provisions of the TRAIN bills may shed light on such intent.

Verily, the Rules of the Senate provides for the creation of conference committees when there are differences in the versions of the same bill passed by both houses of Congress, and the procedure by which the report of such committees are considered by the chamber.[151] The Rules of the House of Representatives likewise provides for practically the same thing.[152] Moreover, in the leading case of *Tolentino v. Secretary of Finance*,[153] which ruled on the constitutionality of R.A. No. 7716 or the first amendatory law on VAT, it was recognized that the bicameral conference committee is part and parcel of

149. Philippine Economic Zone Authority v. Green Asia Construction & Development Corporation., G.R. No. 188866, 659 SCRA 756, 764 (2011) (citing Honasan II v. The Panel of the Investigating Prosecutors of the Department of Justice, G.R. No. 159747, 427 SCRA 46, 69-70 (2004)).

150. Obiasca v. Basallote, G.R. No. 176707, 613 SCRA 110, 129 (2010) (citing Laguna Metts Corporation v. Caalam, G.R. No. 185220, 594 SCRA 139 (2009)).

151. S. Rules of Procedure, rule XII, § 35, 18th Cong. (July 2020).

152. H. Rules of Procedure, rule X, §§ 62-63, 18th Cong. (June 5, 2020).

153. Tolentino v. Secretary of Finance, G.R. No. 115455, 235 SCRA 630 (1994).

congressional procedure, for which the said committee may in fact propose new amendments not found in the versions approved by both houses, for as long as such amendments are germane to the subject of the bill before the conference committee.[154]

From the deliberations of the conference committee on TRAIN, it can be culled that the Senate panel proposed for the replacement of the "deemed denied" rule with the "deemed approved" rule. However, due to the concerns brought by the House panel that the "deemed approved" rule would be prone to corruption, the Senate panel headed by Senator Juan Edgardo Angara solicited for suggestions in making sure that the BIR faithfully acts on any refund claim within the statutory period of 90 days.[155] The consensus was to make inaction a crime punishable under Section 269 of the Tax Code.[156] Thus, the "deemed approved" proposal was shelved, and in its stead was the introduction of the proviso on criminal liability.

The intent of the authors of TRAIN can be thus be traced — they initially intended to replace "deemed denied" with "deemed approved," but in the end decided to do away with "deemed approved." In deciding not to push through with the "deemed approved" proposal, the deliberations of the conference committee does not show whether the authors of the law intended to institute "deemed denied" back. As can be seen from the text of Section 112 (c), as amended by TRAIN, "deemed denied" was not brought back, but only the proviso on criminal liability was enshrined.[157] It is not definite, therefore, that the authors of TRAIN really meant to do away with "deemed denied" since they too did away with "deemed approved." It must be noted that even with the proviso on criminal liability, the possibility of inaction is still there. That safeguard is not foolproof in ensuring that *all* refund claims are to be acted upon within the 90-day period. An erring BIR officer or employee may still fail to act within such period, and there is thus the question of whether such inaction is reviewable by the CTA.

Plainly, the non-reversion of "deemed denied" only resulted in silence in the text of Section 112 (c).[158] What this means is that the Tax Code does not anymore provide for any provision saying that inaction is ground for appeal to

154. *Id.* at 668.

155. Bicameral Conference Committee, at 149-51.

156. *See* NAT'L INTERNAL REVENUE CODE, § 269.

157. NAT'L INTERNAL REVENUE CODE, § 112 (c) (as amended by Tax Reform for Acceleration and Inclusion (TRAIN), § 36).

158. *Id.*

the CTA. It has been said that the most objective way of ascertaining intent is through the text.[159] As compared to having an express and positive text, i.e., Section 112 (c) explicitly providing that "deemed denied" is not a ground for appeal, what happened to "deemed denied" in TRAIN only resulted in absent text. And when it comes to absent text, the courts are not precluded to decide,[160] especially to interpret the meaning of such silence.

As already discussed, subject matter jurisdiction is provided for by law. In this case, it is not only the Tax Code that is the law on the matter. The CTA Charter, the very law that provides for the jurisdiction of the CTA, remains. Thus, the cardinal rule of statutory construction compels the harmonization between Section 112 (c) of the Tax Code and Section 7 (a) (2) of the CTA Charter. As instructed by the Supreme Court, the "rules of statutory construction enjoins that endeavor should be made to harmonize the provisions of a law or two laws so that each shall be effective."[161]

B. Harmonization Process

Interpretare et concordare legibus est optimus interpretandi means that "every statute must be so construed and harmonized with other statutes as to form a uniform system of jurisprudence."[162] This rule of statutory interpretation, as applied in the case of the "deemed denied" rule, calls for the harmonization of the provisions of Section 112 (c) of the Tax Code and Section 7 (a) (2) of the CTA Charter.

As has been said, the deletion of the "deemed denied" rule in Section 112 of the Tax Code merely resulted in absent text. The words of the Tax Code presently existing do not provide for inaction as one of the grounds for appeal to the CTA. However, Section 7, and additionally Section 11, both of the CTA Charter provide that the CTA in division has jurisdiction over inactions of the Commissioner.[163]

Between an absent text and a positive text, the positive text prevails; between silence and a specific provision of law, the specific provision operates.

159. DANTE B. GATMAYTAN, LEGAL METHOD ESSENTIALS 2.0 44 (2014). "[T]ext is the most obviously authentic embodiment of constitutional truth." *Id.*

160. An Act to Ordain and Institute the Civil Code of the Philippines [CIVIL CODE], Republic Act No. 386, art. 9 (1949). "No judge or court shall decline to render judgment by reason of the silence, obscurity or insufficiency of the laws." *Id.*

161. Valera v. Tuason, Jr., 80 Phil. 823, 827 (1948).

162. *Honasan II*, 427 SCRA at 70.

163. Republic Act No. 1125, §§ 7 & 11.

This is the product of the harmonization process as called for in jurisprudence. To give effect to both Section 112 (c) of the Tax Code and Section 7 (a) (2) of the CTA Charter, the reasonable conclusion is to sustain the view that the "deemed denied" rule continues to exist. Precisely because of the silence of Section 112 (c) of the Tax Code that Section 7 (a) (2) of the CTA Charter governs.

The silence of Section 112 (c) of the Tax Code is telling. Section 112 (c) does not expressly provide that inaction is a ground for appeal, nor does it prohibit it.[164] Jurisprudence provides that "what is not expressly or impliedly prohibited by law may be done, except when the act is contrary to morals, customs and public order."[165] Though jurisdiction requires the positive grant of such authority as contained in statute, the silence of Section 112 (c) did not divest jurisdiction from the CTA, because another law subsists — the CTA Charter — that provides for the said grant of jurisdiction. Simply, the silence of Section 112 (c) is supplied by Section 7 (a) (2) of the CTA Charter.

C. Repeals

It may be argued that the concept of repeals is applicable here, such that the deletion of the "deemed denied" rule in Section 112 (c) of the Tax Code resulted in the repeal of the grant of jurisdiction over inactions of the Commissioner under Section 7 (a) (2) of the CTA Charter.

Jurisprudence provides for two types of repeals, namely: (1) express; and (2) implied. The Supreme Court defines them as follows —

> The lawmakers may expressly repeal a law by incorporating therein a repealing provision which expressly and specifically cites the particular law or laws, and portions thereof, that are intended to be repealed. A declaration in a statute, usually in its repealing clause, that a particular and specific law, identified by its number or title, is repealed is an express repeal; all others are implied repeals.[166]

To examine whether there was an express repeal, reference is made to Section 86 of TRAIN, which is the repealing clause of the said law.[167] Nowhere in the long enumeration of the repealed or modified laws found

164. NAT'L. INTERNAL REVENUE CODE, § 112 (c) (as amended by Tax Reform for Acceleration and Inclusion (TRAIN), § 36).

165. Manila Elec. Co. v. Public Service Commission, 60 Phil. 658, 661 (1934).

166. Mecano v. Commission of Audit, G.R. No. 103982, 216 SCRA 500, 504 (1992) (citing RUBEN E. AGPALO, STATUTORY CONSTRUCTION 289 (1986)).

167. Tax Reform for Acceleration and Inclusion (TRAIN), § 86.

therein is the CTA Charter. Actually, nowhere in TRAIN was there any specific mention of the CTA Charter. Therefore, it can be said that TRAIN did not expressly repeal the CTA Charter, particularly Section 7 (a) (2) thereof.

If there is no express repeal, it may be argued that there was implied repeal. Jurisprudence categorizes two types of implied repeals: (a) implied repeal by irreconcilable inconsistency, which happens when two laws on the same subject matter are in irreconcilable conflict, such that the later law impliedly repeals the earlier one;[168] and (b) repeal by enactment of a new revised law, which happens when the later law covers the whole subject matters of the earlier one and is intended as a substitute, thereby impliedly repealing the earlier law.[169]

Comparing Section 112 (c) of the Tax Code and Section 7 (a) (2) of the CTA Charter, it is clear that no irreconcilable inconsistency exists primarily because Section 112 (c) is silent on "deemed denied," and there still exists a specific provision in Section 7 (a) (2) that provides for jurisdiction over inactions by the Commissioner.[170] Likewise, there is no implied repeal because TRAIN was not intended to be a substitute for the CTA Charter. It is apparent that TRAIN covers amendments to the Tax Code and not the CTA Charter, as such the second category of implied repeal is also inapplicable.[171] Thus, the analysis shows that TRAIN did not expressly or impliedly repeal Section 7 (a) (2) of the CTA Charter, and that inactions of the Commissioner remain to be under the jurisdiction of the Tax Court.

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168. *Mecano*, 216 SCRA at 506.

169. *Id.*

170. NAT'L. INTERNAL REVENUE CODE, § 112 (c) (as amended by Tax Reform for Acceleration and Inclusion (TRAIN), § 36) & Republic Act No. 1125, § 7 (a) (2).

171. *Mecano*, 216 SCRA at 507 (citing People v. Almuete, G.R. No. L-26551, 69 SCRA 410, 414 (1976) & People v. Binuya, 61 Phil. 208 (1935)).

> This is only possible if the revised statute or code was intended to cover the whole subject to be a complete and perfect system in itself. It is the rule that a subsequent statute is deemed to repeal a prior law if the former revises the whole subject matter of the former statute. When both intent and scope clearly evince the idea of a repeal, then all parts and provisions of the prior act that are omitted from the revised act are deemed repealed.

Id.

D. Due Process and Equal Protection

Considerations of due process require that the Tax Court retain its jurisdiction over claims for refunds of input tax that are not acted upon. To deem the "deemed denied" rule obliterated from the statute books would be to deny taxpayers of the right to seek judicial recourse and to recover taxes it might be otherwise entitled to under the law, as specifically provided for under Section 7 (a) (2) of the CTA Charter.[172]

At the outset, it must be noted that the right to appeal before the CTA, being a statutory right, can only be invoked under the requisites prescribed by law.[173] Hence, it may be waived or lost, as when the taxpayer fails to timely file a judicial claim for refund with the CTA within the statutory period. However, when the taxpayer has not been remiss in exercising its right to appeal, or has not committed any act or omission that would warrant the denial thereof, the undue deprivation of its right to appeal would offend the basic tenets of fair play and due process. As the Supreme Court declared, "[a]lthough the right to appeal is statutory, it must be respected and observed because it is an essential component of due process."[174] In the absence therefore of any sufficient ground to deny the same, the taxpayer's right to seek judicial recourse must be upheld and even safeguarded.

It may be tempting to argue that it is precisely the legislative act of removing the "deemed denied" rule which makes the inaction by the Commissioner a legal ground to deny the statutory right to appeal before the CTA. But this being a tautological argument aside, such proposition is also problematic in two ways.

First, it makes the availability or unavailability of the right to appeal within the exclusive prerogative of the BIR. By the mere expediency of perpetually not acting on the taxpayer's claim, the BIR would be able to wield the power of depriving a taxpayer of the option to file a judicial claim for refund under Section 112 (c) of the Tax Code.[175] Entitlement to the judicial remedy thus becomes susceptible to the whims and caprices of administrative officials, in clear contravention of due process of law as guaranteed by the Constitution.

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172. Republic Act No. 1125, § 7 (a) (2).

173. Steag State Power, Inc. (formerly State Power Development Corporation) v. Commissioner of Internal Revenue, G.R. No. 205282, 890 SCRA 257, 271 (2019) (citing *San Roque Power Co.*, 690 SCRA at 336).

174. Sanico v. People, G.R. No. 198753, 754 SCRA 416, 428 (2015).

175. NAT'L INTERNAL REVENUE CODE, § 112 (c) (as amended by Tax Reform for Acceleration and Inclusion (TRAIN), § 36).

Second, divesting the CTA of jurisdiction over inactions of the Commissioner creates a scenario where, on one hand, taxpayers whose administrative claims for input tax refund are denied within the 90-day period may still appeal to the CTA, while on the other hand, taxpayers with similar administrative claims that are not denied — but neither approved — within the 90-day period are left at the mercy of the BIR. This classification may be argued to be violative of the equal protection of laws.

While the constitutional guarantee of equal protection of laws does not call for absolute equality, it demands that legislation which applies only to a specified class be applied alike to all persons within such class, and reasonable grounds must exist for making a distinction between those persons who fall within such class and those who do not.[176] Time and again, it has been held that to make a valid classification, the "test of reasonableness" which has four requisites must be met: (1) the classification rests on substantial distinctions; (2) it is germane to the purpose of the law; (3) it is not limited to existing conditions only; and (4) it applies equally to all members of the same class.[177] The classification of taxpayers whose refund claims are not acted upon does not meet the first two requisites.

On the first requisite, there is no substantial distinction between a taxpayer whose refund claim is not acted upon and a taxpayer whose claim was denied. Both stand before the law as taxpayers seeking the grant of their refund claims. No inherent difference exists between the two as to justify the unavailability of judicial recourse to the former. The only difference lies in the status of their claims, a factor that is entirely contingent on the Commissioner. Plainly, this does not pass the test of reasonableness which is the cornerstone of a valid classification.

As to the second requisite, the indefinite withholding of judicial recourse from taxpayers whose refund claims remain undecided is not germane to the purpose of TRAIN. In fact, it is even contrary to it. To recall, the congressional deliberations on the amendments to Section 112 of the Tax Code reveal that the lawmakers considered three things: *first*, that the BIR has a "very bad" record on acting timely on refund claims; *second*, that there is a need "to protect the taxpayer[']s right to collect his money[;]"and *third*, that the goal of protecting the taxpayer must be balanced with the need to prevent possible collusion between the BIR and the taxpayer to the disadvantage of

176. Ichong, etc., et al. v. Hernandez, etc., and Sarmiento, 101 Phil 1155, 1164 (1957).

177. Biraogo v. Phil. Truth Commission, G.R. No. 192935, 637 SCRA 78, 168 (2010) (citing Beltran v. Secretary of Health, G.R. No. 133640, 476 SCRA 168, 194 (2005)).

the government.[178] Creating a class of taxpayers without remedy against inaction prejudices the same taxpayers the law seeks to protect.

At this juncture, it should be stressed that legislative enactments bear the presumption of constitutionality. Legislators are presumed to enact a "valid, sensible and just law and one which operates no further than may be necessary to effectuate the specific purpose of the law."[179] Hence, where the statute is open to two interpretations, one which goes against constitutional principles and one which advances the same, the latter "must be adopted even though it may be necessary for this purpose to disregard the more usual and apparent import of the language used."[180] All laws, being subservient to the Constitution, must be "construed in harmony with, and not in violation of the fundamental law."[181]

E. Practicality

Aside from the legal viewpoint, there are practical considerations in maintaining that the CTA continues to exercise jurisdiction over the inaction of the Commissioner involving refunds of input tax.

On the part of the taxpayer, it is practical to continue the "deemed denied" rule for his or her own benefit. For example, a corporation which exports goods to foreign buyers applies for refund of its excess and unutilized input tax for the four quarters of calendar year 2020. Say, the corporation was able to file the refund claim with the Commissioner, together with the official receipts, invoices and other supporting documents on June 30, 2021, well within the two-year period from the close of the quarter where the zero-rated sales were made. Under Section 112 (c), the Commissioner has 90 days to act on the claim, or until September 28, 2021.[182] What if two, three, four, or more years passed, and the Commissioner failed to act on the claim, does it mean that the corporation has no recourse but to wait two, three, four, or more years until it receives the decision? Surely, the Commissioner or any BIR officer or employee in charge of the claim may be held liable for violation

178. Bicameral Conference Committee, at 149-51.

179. Fariñas v. Executive Secretary, 463 Phil. 179, 197 (2003).

180. Galman v. Pamaran, G.R. No. 71208, 138 SCRA 294, 327 (1985).

181. Ifurung v. Carpio-Morales, G.R. No. 232131, 862 SCRA 684, 733 (2018) (citing RUBEN E. AGPALO, STATUTORY CONSTRUCTION 266-67 (4th ed. 1998)).

182. NAT'L INTERNAL REVENUE CODE, § 112 (c) (as amended by Tax Reform for Acceleration and Inclusion (TRAIN), § 36).

of Section 269 of the Tax Code,[183] but this is another proceeding separate and distinct from the refund claim. If ever, conviction of the BIR officer or employee does not in itself ensure that the claim should be granted for the two have different causes of action. It is bad in a business sense that legitimate claimants are forced to wait long for them to receive their meritorious refunds. In enterprise planning, cash flow is called the "lifeblood of the firm",[184] and the grant and payment of tax refunds in cash within expected time periods help firms project and forecast their business needs. Precisely, the "deemed denied" rule provides a timely remedy for such claimants in that they only wait a reasonable 90 days for their refund applications to be acted upon, and not two, three, four, or more years, before they can appeal any full or partial denial of the claim. As discussed, the authors of TRAIN were cognizant of the "very bad" reputation of the BIR when it comes to tax refunds. In fact, the Supreme Court has taken judicial notice of the BIR's reputation due to its lethargic manner of acting on tax refunds, viz. —

> In no uncertain terms must we stress that every public employee or servant must strive to render service to the people with utmost diligence and efficiency. Insolence and delay have no place in government service. The BIR, being the government collecting arm, must and should do no less. It simply cannot be apathetic and laggard in rendering service to the taxpayer if it wishes to remain true to its mission of hastening the country's development. We take judicial notice of the taxpayer's generally negative perception towards the BIR; hence, it is up to the latter to prove its detractors wrong.[185]

Maintaining the "deemed denied" rule is also advantageous to the government, especially the BIR. Upon the Commissioner's failure to act on the refund claim within 90 days, the taxpayer already has recourse to the CTA. Since trials in CTA are litigated *de novo*,[186] or as if there is a new trial, there could be an immediate resolution of the case through the judicial channel. Moreover, if a claimant is forced to wait for two, three, four, or more years before he or she receives the decision on the refund claim, such action by the BIR officer or employee exposes the government to allegations of

183. NAT'L. INTERNAL REVENUE CODE, § 269.

184. LAWRENCE J. GITMAN, PRINCIPLES OF MANAGERIAL FINANCE 106 (2009).

185. Philex Mining Corp. v. Commissioner of Internal Revenue, G.R. No. 125704, 294 SCRA 687, 700 (1998).

186. Commissioner of Internal Revenue v. Manila Mining Corp., G.R. No. 153204, 468 SCRA 571, 588-89 (2005). "[T]he CTA is described as a court of record. As cases filed before it are litigated *de novo*, party litigants should prove every minute aspect of their cases." *Id.*

arbitrariness, for which interest may be imposed against the government. As the Supreme Court held —

> [T]he rule is that no interest on refund of tax can be awarded unless authorized by law or the collection of the tax was attended by arbitrariness. An action is not arbitrary when exercised honestly and upon due consideration where there is room for two opinions, however much it may be believed that an erroneous conclusion was reached. Arbitrariness presupposes inexcusable or obstinate disregard of legal provisions.[187]

The BIR official or employee's failure to act within the 90-day period, which the law presumes is a sufficient amount of time to decide refund claims of input tax, may be seen as an inexcusable or obstinate disregard of law that authorizes the imposition of interest. Thus, for example, if a claimant files for a refund claim worth ₱100 million, and receives the decision denying his refund claim five years from the submission of official receipts, invoices and other supporting documents, such failure to act within the prescribed period may be considered by the court as an arbitrary act on the part of the BIR, after finding that the refund claim is meritorious. The government then is exposed not only to the tune of ₱100 million, but also to interest at the legal rate of 6% per annum for five years or an additional ₱30 million.[188] It is thus in the interest of the government to maintain the "deemed denied" rule to minimize its exposure to additional payment of interest by opening up to the taxpayer the remedy of immediately availing recourse to the courts.

F. Comparative Tax Refund Procedures

In spite of the clear language of Section 7 (a) (2) of the CTA Charter vesting jurisdiction to the Tax Court over inactions of the Commissioner,[189] decided cases by the said court and the Supreme Court also shows that inactions by other revenue officials, either in national agencies or local government units, are under the purview of the CTA.

187. Philex Mining Corp. v. Commissioner of Internal Revenue, G.R. No. 120324, 306 SCRA 126, 134 (1999).

188. *See Banco de Oro*, 800 SCRA at 465 (citing Bangko Sentral ng Pilipinas, Rate of Interest in the Absence of Stipulation, Monetary Board Circ. No. 799, Series of 2013 [BSP-MB Circ. No. 799] (July 1, 2013)).

189. Republic Act No. 1125, § 7 (a) (2).

For instance, in the case of *Bureau of Customs v. AGC Flat Glass Philippines, Inc.*,[190] the CTA *en banc* ruled that it has jurisdiction over inactions of the Commissioner of Customs on refund claims of customs duties and taxes.[191] Even though Section 7 (a) (2) of the CTA Charter expressly provides that it is only the inactions of the Commissioner of Internal Revenue that is appealable to the CTA, [192] the Tax Court nevertheless ruled that "the failure or inaction of the Collector of Customs to promptly perform his mandated duty under the Tariff and Customs Code should not be allowed to prejudice the right of the party adversely affected thereby." [193] If the CTA ruled that it has jurisdiction over the inactions of the Commissioner of Customs on tax refund claims even though such is not textually provided in the CTA Charter, what more for the inaction of the Commissioner of Internal Revenue which is expressly provided for in Section 7 (a) (2) thereof.

Moreover, in refund claims of local taxes, Section 196 of the Local Government Code provides that a written claim for refund should first be filed with the local treasurer before a claim for refund is filed with the competent court within two years from the date of payment of such local taxes.[194] Apparently, Section 196 does not provide for a specific period within which the local treasurer should act on the refund claim.[195] However, if the two-year period is about to expire without the local treasurer acting on the refund claim, the taxpayer-claimant need not wait for the decision of the local treasurer, and such inaction is already reviewable by the competent court. As the Supreme Court held in the case of *City of Manila v. Cosmos Bottling Corporation*[196] —

> Section 196 does not expressly provide a specific period within which the local treasurer must decide the written claim for refund or credit. It is, therefore, possible for a taxpayer to submit an administrative claim for refund

190. Bureau of Customs v. AGC Flat Glass Philippines, Inc, CTA Case No. 8752, July 14, 2020, *available at* http://cta.judiciary.gov.ph/home/download/0ef3aa311b50bdc3b77f88abc97321d8 (last accessed Jan. 8, 2021).

191. *Id.*

192. Republic Act No. 1125, § 7 (a) (2).

193. *AGC Flat Glass Philippines, Inc*, CTA Case No. 8752, at 10 (citing Nestle Philippines, Inc. v. Court of Appeals, G.R. No. 134114, 360 SCRA 575, 585 (2001)).

194. An Act Providing for a Local Government Code of 1991 [LOCAL GOV'T CODE], Republic Act No. 7160, § 196 (1991).

195. *Id.*

196. City of Manila v. Cosmos Bottling Corporation, G.R. No. 196681, 868 SCRA 419 (2018).

> very early in the two-year period and initiate the judicial claim already near the end of such two-year period due to an *extended inaction* by the local treasurer. In this instance, the taxpayer cannot be required to await the decision of the local treasurer any longer, otherwise, his judicial action shall be barred by prescription.[197]

VI. CONCLUSION

> *"[H]e is risen."*
>
> — Matthew 28:6 (King James Version)[198]

Just like Jesus Christ who everyone thought had died, the "deemed denied" rule was declared dead when TRAIN was enacted.[199] However, much like the angel in the tomb, this Article has shown, with reason, that the "deemed denied" rule is alive. The analysis presented herein supports the view that "deemed denied" continues to exist in the statute books.

First, the legislative history of TRAIN, as elucidated by the deliberations of the bicameral conference committee, shows that the authors of the law initially wanted to replace the "deemed denied" rule with its total opposite, the "deemed approved" rule, but concerns by other lawmakers garnered shaky support for the latter rule. As such, the "deemed approved" rule was not enacted, and in its stead was institutionalized the criminal liability proviso now found in the last paragraph of Section 112 (c) of the Tax Code.[200] However, in doing away with the "deemed approved" rule, it is unclear whether it was also the intention of Congress not to revert to the "deemed denied" rule, and the result was absent text. Section 112 (c) now is silent as to the inaction of the Commissioner on refund claims of input tax.[201]

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197. *Id.* at 443 (emphasis supplied).

198. *Matthew* 28:6 (King James Version).

199. *See, e.g.*, Karen Mae Calam-Ibañez, *VAT refund claims under the TRAIN Law*, BUSINESSWORLD, June 16, 2019, *available at* https://www.bworldonline.com/vat-refund-claims-under-the-train-law (last accessed Jan. 8, 2021) [https://perma.cc/3HEY-844B] & Eliezer P. Ambatali, *Hoping for the best on VAT refunds under TRAIN*, BUSINESSWORLD, Jan. 23, 2018, *available at* https://www.bworldonline.com/hoping-best-vat-refunds-train (last accessed Jan. 8, 2021) [https://perma.cc/9JT5-N9FT].

200. NAT'L. INTERNAL REVENUE CODE, § 112 (c) (as amended by Tax Reform for Acceleration and Inclusion (TRAIN), § 36).

201. *Id.*

Second, the silence of Section 112 (c) is analyzed vis-à-vis the express grant of jurisdiction over inactions of the Commissioner with the CTA under Section 7 (a) (2) of the CTA Charter.[202] The duty of the courts to harmonize different provisions of law to give effect to each leads to the reasonable conclusion that the positive text of Section 7 (a) (2) of the CTA Charter trumps the silence of Section 112 (c) of the Tax Code.

Third, TRAIN did not expressly repeal Section 7 (a) (2) of the CTA Charter since it is not included in the list of repealed laws enumerated in its repealing clause. Likewise, there is no implied repeal since there exists no irreconcilable inconsistency between Section 112 (c) of the Tax Code and Section 7 (a) (2) of the CTA Charter[203] — the silence of the former creates no contradiction as to the applicability of the latter.

Fourth, considerations of due process and equal protection lead to a reasonable finding that the CTA should continue to exercise jurisdiction over inactions of the Commissioner. Even though the grant of jurisdiction is statutory in nature, such grant under law must always comply with the constitutional tenets under the Bill of Rights, for taxpayers similarly situated who observe the requirements under the law must be treated alike.

Fifth, practicality renders the "deemed denied" rule beneficial to both the interests of the taxpayer and the government because the observance of the "deemed denied" rule supports the overall objective of expediting the VAT refund process.

Sixth, other decided cases show that inactions by revenue officials may be a ground for appeal to the competent courts, what more for the CTA whose jurisdiction over inactions of the Commissioner is expressly provided for under Section 7 (a) (2) of the CTA Charter.[204]

Though there is no case yet decided by the Supreme Court or even the CTA that tackled the "deemed denied" rule, it is hoped that this Article shed some light that may be utilized by the said courts to find a reasonable interpretation of the law when the issue comes to their respective benches.

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202. Republic Act No. 1125, § 7 (a) (2).

203. *See* NAT'L. INTERNAL REVENUE CODE, § 112 (c) (as amended by Tax Reform for Acceleration and Inclusion (TRAIN), § 36) & Republic. Act No. 1125, § 7 (a) (2).

204. Republic Act No. 1125, § 7 (a) (2).