

TAX ALERT

August 2022

COURT OF TAX APPEALS (“CTA”) DECISIONS

THE PERIOD OF PRESCRIPTION TO INSTITUTE A CRIMINAL ACTION FOR VIOLATION OF THE NATIONAL INTERNAL REVENUE CODE IS 5 YEARS. The period of prescription for a tax case begins to run from the discovery and institution of proceedings for its investigation and shall only be tolled by the filing of an information therefor with this Court. In this case, the said Information was filed only on March 1, 2019, or only after more than six (6) years and ten (10) months from the filing of the Joint Complaint-Affidavit on April 26, 2012, which was way beyond the prescriptive period of 5 years under Section 281 of the NIRC of 1997, as amended, and as interpreted by the Supreme Court in *Emilio E Lim, Sr., et al. vs. CA*. Hence, the criminal case against the accused was dismissed on the ground of prescription. No civil liability as well. *People vs. Remedios de Juan Pensotes, CTA Crim. Case No. O-685 dated August 22, 2022.*

IN TAX CASES, DETERMINATION OF THE COURT’S JURISDICTION OVER A PARTICULAR CASE NOT ONLY AVOIDS PREMATURE DETERMINATION ON THE CASE’S MERITS WITHOUT ADMINISTRATIVE REMEDIES BEING EXHAUSTED BUT LIKEWISE, PREVENTS PETITIONER’S FINAL AND EXECUTORY DECISIONS FROM BEING RE-OPENED. *Commissioner of Internal Revenue vs. Ruben U. Yu, CTA EB No. 2352 (CTA Case No. 9595) dated August 16, 2022.*

SECTION 3, RULE 14 OF THE REVISED RULES OF THE CTA PROVIDES THAT AN AMENDED DECISION IS ONE WHICH MODIFIES OR REVERSES THE FINDING/S IN THE ORIGINAL DECISION. Thus, it is virtually a new decision distinct from the original one. Therefore, the party aggrieved by an amended decision must timely file a motion for reconsideration or new trial thereto, lest the Amended Decision shall become final and executory. The fact that an “amended decision” is eventually issued does not necessarily alter its nature as a resolution of a motion for reconsideration. *SM Investments Corporation vs. Commissioner of Internal Revenue, CTA EB 2597 (CTA Case No. 9569) dated August 16, 2022.*

AS A GENERAL RULE, FAILURE TO ATTEND THE PRE-TRIAL CONFERENCE WHEN ORDERED BY THE COURT UPON DUE NOTICE SHALL CAUSE THE DISMISSAL OF THE ACTION WITH PREJUDICE. The non-appearance by the plaintiff and his or her counsel in the pre-trial shall cause the dismissal of the case. More so, the failure to file the pre-trial brief shall have the same effect as the non-appearance of the party. However, non-appearance of a duly notified party may be excused if there appears a valid cause. *Avalog Philippines Operating Headquarters vs. Commissioner of Internal Revenue, CTA Case No. 10617 dated August 5, 2022.* However, by way of exception, the non-appearance of a party and counsel may be excused due to: (a) acts of God; or (b) *force majeure*; or (c) duly substantiated physical inability in accordance with Section 4, Rule 18 of the Amended 1997 Rules of

Procedure. *Philweb Corporation vs. Commissioner of Internal Revenue, CTA Case No. 10563 dated August 2, 2022.*

PRESENTATION OF FORGOTTEN EVIDENCE IS DISALLOWED BECAUSE IT RESULTS IN A PIECEMEAL PRESENTATION OF EVIDENCE, A PROCEDURE THAT IS NOT IN ACCORD WITH ORDERLY JUSTICE AND SERVES ONLY TO DELAY THE PROCEEDINGS. Forgotten evidence are evidence already in existence or available before or during a trial; known to and obtainable by the party offering it; and could have been presented and offered in a seasonable manner, were it not for the sheer oversight or forgetfulness of the party or the counsel. A contrary ruling may open the floodgates to an endless review of decisions, whether through a motion for reconsideration or for a new trial, in the guise of newly discovered evidence. *First Gen Hydro Power Corporation vs. Commissioner of Internal Revenue, CTA EB No. 2456 (CTA Case No. 9889) dated August 18, 2022.*

DETERMINATION OF TAX DEFICIENCY IS DISTINCT AND SHOULD NOT BE INTERTWINED TO A TAXPAYER'S ENTITLEMENT TO REFUND. The CIR argues that respondent's tax liability should be computed and deducted from any refundable amount. The CTA held that to automatically hold respondent liable for the alleged tax deficiencies against the claim for refund pertaining to the same category of tax would be unjust as it would deprive respondent the opportunity to dispute the same in the proper venue, and not afford respondent the defenses available under the law. More importantly, it is stressed that the CTA has no assessment power like that of petitioner CIR. It is only empowered to determine whether the proper tax was paid by the taxpayer-claimant, or whether the taxpayer-claimant has paid a certain kind of tax that he or she is not subject to but failed to pay the proper tax that he/she is liable to pay. In such case, the issue of claim for tax refund is intertwined with the issue of proper taxes that are due from the taxpayer. *Commissioner of Internal Revenue vs. Kurimoto (Philippines) Corporation, CTA EB No. 2190 (CTA Case No. 9417) dated August 11, 2022.*

ATTRIBUTION OF THE INPUT VALUE-ADDED TAX (VAT) TO ZERO-RATED SALES NEED NOT ALWAYS BE DIRECT. Creditable input taxes which cannot be directly or entirely attributable to any sale transaction (i.e., zero-rated or effectively zero-rated sale and taxable or exempt sale of goods of properties or services), shall be allocated proportionately on the basis of the volume of sales. The attribution of the input VAT to the zero-rated sales need not always be direct. *Commissioner of Internal Revenue vs. Philippine Geothermal Production Company, Inc., CTA EB No. 2453 (CTA Case Nos. 9440, 9501, 9534 & 9588) dated August 17, 2022.*

IN A CLAIM FOR TAX REFUND OR TAX CREDIT, THE APPLICANT MUST PROVE NOT ONLY ENTITLEMENT TO THE GRANT OF THE CLAIM UNDER SUBSTANTIVE LAW BUT MUST ALSO SHOW SATISFACTION OF ALL THE DOCUMENTARY AND EVIDENTIARY REQUIREMENTS FOR ADMINISTRATIVE CLAIM FOR REFUND OR TAX CREDIT. *Yilan Holdings Co., Inc. vs. Commissioner of Internal Revenue, CTA EB No. 2307 (CTA Case No. 9665) dated August 10, 2022.*

AN ERROR OF LAW IS NOT TANTAMOUNT TO FRAUD. *People of the Philippines vs. Ian Christopher Miguel Y Bayoneta and Marcelo N. Gomez, CTA Crim Case No. A-7 dated August 10, 2022.*

MERE ENTRY OF WRONG INFORMATION IN TAX RETURNS DUE TO MISTAKE, CARELESSNESS, OR IGNORANCE, WITHOUT INTENT TO EVADE TAX, DOES NOT CONSTITUTE FALSE RETURN. Hence, mere stamping of “Tentative Exempt Organization” on a taxpayer’s Income Tax Return is not sufficient evidence to prove its intention to evade tax. *Commissioner of Internal Revenue vs. United Church of Christ in the Philippines, CTA EB 2346 (CTA Case No. 9134) dated August 2, 2022.*

BASIC IS THE RULE THAT BEFORE REVENUE OFFICERS CAN ISSUE ASSESSMENT NOTICES, THEY SHOULD FIRST BE ARMED WITH A LETTER OF AUTHORITY (“LOA”). The requirement of an LOA is indispensable under tax assessments. This is a principle undeterred under our tax laws. An LOA is an instrument of due process for the protection of taxpayers. It guarantees that tax agents will act only within the authority given them in examining a taxpayer. A mere Letter of Notice cannot ensure the observance of this due process guarantee. It is clear, therefore, that before an assessment can be made, a revenue officer must first be duly authorized to perform said assessment. This would allow such revenue officer to examine or investigate a taxpayer's books of accounts for purposes of ascertaining the tax liability. *Commissioner of Internal Revenue vs. Geniographics, Inc., CTA EB No. 2357 (CTA Case No. 9712) dated August 8, 2022.*

THERE IS A DEFINITE AMOUNT OF TAX LIABILITY AS LONG AS THERE IS A DUE DATE CONTAINED IN THE ASSESSMENT NOTICE. With the clear due dates, the clear basic deficiency tax, and the computation of the applicable interests up to the applicable due date, then there is a definite amount of tax liability. The interest, and only the interest, may be adjusted if the taxpayer pays after the due date. What is important is that there is a due date contained in the assessment notice. *Commissioner of Internal Revenue vs. Robinsons True Serve Hardware Philippines, Inc., CTA EB No. 2293 (CTA Case No. 9418) dated August 3, 2022.*

INDEPENDENT CERTIFIED PUBLIC ACCOUNTANT’S (ICPA) REPORT IS ONLY PERSUASIVE IN NATURE AND NOT CONCLUSIVE UPON THE COURT. *Ammex I-Support Corporation vs. Commissioner of Internal Revenue, CTA Case No. 10147 dated August 2, 2022.*

BIR ISSUANCES

CLARIFYING REVENUE REGULATIONS NO. 6-2022 RELATIVE TO THE REMOVAL OF THE FIVE (5) – YEAR VALIDITY PERIOD ON RECEIPTS/INVOICES. All taxpayers who are/will be using Principal and Supplementary Receipts/Invoices shall be covered by the recently issued Revenue Regulations No. 6-2022, or taxpayers with/who will apply for any of the following: (a) Authority to Print (“ATP”); (b) Registration of Computerized Accounting System or Computerized Books of Accounts and/or its Components; and (c) Permit to Use Cash Register Machines or Point-of-Sale Machines and Other Sales Receiving Software.

All receipts or invoices which have expired on or before July 15, 2022 are no longer valid for use. The taxpayer shall surrender all unused and expired receipts or invoices together with an inventory listing to the RDO where the Head Office or Branch is registered on or before the 10th day after the validity period of the expired receipts or invoices for the destructions of the same. *Revenue Memorandum Circular No. 123-2022 dated August 30, 2022.*

UPDATING OF REGISTRATION INFORMATION RECORD OF TAXPAYERS WHO WILL ENROLL IN THE BUREAU'S ONLINE REGISTRATION AND UPDATE SYSTEM. All taxpayers who intend to transact online with the Bureau thru the Online Registration and Update System, once available, and those who are currently transacting manually for their registration-related transactions, shall update their registration records, such as e-mail address and contact information. The designated e-mail address should be the taxpayer's official e-mail address. This shall be used in serving BIR Orders, notices, letters and other processes or communications to the taxpayers. *Revenue Memorandum Circular No. 122-2022 dated August 18, 2022.*

Note: The information provided herein is general and may not be applicable in all situations. It should not be acted upon without specific legal advice based on particular situations. If you have any questions, please feel free to send us an email at mail@baniquedlaw.com.

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