

TAX ALERT

July 1-31, 2022

Court of Tax Appeals Decisions

FOR PURPOSES OF VAT ZERO-RATING UNDER SECTION 108(8)(2) OF THE TAX CODE, THE CLAIMANT MUST ESTABLISH THE TWO COMPONENTS OF ITS CLIENT'S STATUS AS A NON-RESIDENT FOREIGN CORPORATION, NAMELY: (1) IT IS NOT A DOMESTIC CORPORATION; AND (2) IT IS NOT ENGAGED IN TRADE OR BUSINESS IN THE PHILIPPINES, BOTH OF WHICH MAY BE PROVEN BY ANY COMPETENT EVIDENCE. A SEC Certification of Non-Registration is adequate to prove that an entity is a foreign corporation; and the Articles of Association/ Certificates of Incorporation are sufficient to prove that an entity is not doing business in the Philippines. Nevertheless, taxpayers are not precluded from adducing other competent evidence to prove an entity's status as a non-resident foreign corporation; the articles of association/certificates of incorporation only serves as example of what constitutes *prima facie* evidence, and that it can utilize other pieces of evidence to prove that its clients are not engaged in trade or business in the Philippines. In all cases, these public documents must be authenticated per Rule 132 of the Revised Rules on Evidence. *Deutsche Knowledge Services Pte. Ltd. v. Commissioner of Internal Revenue, C.T.A. E.B. No. 2423 (C.T.A. Case No. 7921), dated July 1, 2022; Ammex I-Support Corp. v. Commissioner of Internal Revenue, C.T.A. Case No. 9773, dated July 14, 2022.*

SWORN STATEMENTS WHICH ARE ACKNOWLEDGED BEFORE A NOTARY PUBLIC BECOME PUBLIC DOCUMENTS. THUS, THEY ARE ADMISSIBLE IN EVIDENCE EVEN WITHOUT FURTHER PROOF OF THEIR DUE EXECUTION AND GENUINENESS. *Deutsche Knowledge Services Pte. Ltd. v. of Internal Revenue, C.T.A. E.B. No. 2423 (C.T.A. Case No. 7921), dated July 1, 2022.*

SERVICE OF AN ASSESSMENT TO THE TAXPAYER'S NIECE IS INVALID UNLESS THE BIR IS ABLE TO PROVE THE EXISTENCE OF AN AGENCY BETWEEN THE TAXPAYER AND NIECE. In the service of the Final Assessment Notice/Formal Letter of Demand ("FAN/FLD") to the niece of the taxpayer, the BIR has the burden to prove that a valid agency existed between them. In case it fails to do so, the FAN/FLD shall be invalid. *People of the Phil. v. Mendoza, C.T.A. Crim. Case Nos. O-819 and O-820, dated July 6, 2022.*

THE FAN/FLD'S FAILURE TO PROVIDE THE DATE WHEN THE TAXES SHALL BE DUE RESULTS IN ITS INVALIDITY. *People of the Phil. v. Mendoza, C.T.A. Crim. Case Nos. O-819 and O-820, dated July 6, 2022.*

AN ASSESSMENT PREPARED BY A REVENUE OFFICER AND GROUP SUPERVISOR WHOSE AUTHORITY STEMMED FROM A MEMORANDUM OF ASSIGNMENT THAT IS NEITHER SIGNED BY THE COMMISSIONER OR A REGIONAL DIRECTOR SHALL BE VOID. *Tricom Systems (Phil.), Inc. v. Commissioner of Internal Revenue, C.T.A. Case No. 9514 dated July 7, 2022; Commissioner of Internal Revenue v. Nyk-Filjapan Shipping Corp., C.T.A. E.B. No. 2402 (C.T.A. Case No. 9120) dated July 7, 2022; Commissioner of Internal Revenue v. OMYA Chemical Merchants, C.T.A. E.B. No. 2384 (C.T.A. Case No. 9047) dated July 12, 2022.*

UNDER SEC. 246 OF THE TAX CODE, REVERSALS OF BIR RULINGS, CIRCULARS, RULES, AND REGULATIONS ISSUED BY THE CIR OR A DELEGATED DEPUTY COMMISSIONER HAS NO RETROACTIVE APPLICATION IF THE SAME WOULD BE PREJUDICIAL TO THE TAXPAYER, SAVE FOR THE FOLLOWING EXCEPTIONS: (1) WHERE THE TAXPAYER DELIBERATELY MISSTATES OR OMITTS MATERIAL FACTS FROM ITS RETURN OR IN ANY DOCUMENT REQUIRED OF HIM BY THE BIR; (2) WHERE THE FACTS SUBSEQUENTLY GATHERED BY THE BIR ARE MATERIALLY DIFFERENT FROM THE FACTS ON WHICH THE RULING IS BASED; OR (3) WHERE THE TAXPAYER ACTED IN BAD FAITH. *Commissioner of Internal Revenue v. Meridien East Realty & Dev't Corp., C.T.A. E.B. No. 2287 (C.T.A. Case No. 9130) dated July 14, 2022.*

A TAXPAYER ENJOYING ZERO-RATED PREFERENCE, SUCH AS ONE CERTIFIED BY THE PHILIPPINE BOARD OF INVESTMENTS, MUST NOT BE CHARGED OUTPUT VAT BY ITS DOMESTIC SUPPLIERS. IN CASE OUTPUT VAT WAS ERRONEOUSLY PASSED ON, THE TAXPAYER'S REMEDY IS TO CLAIM FROM ITS SUPPLIERS AND NOT FROM THE GOVERNMENT. *Carmen Copper Corp. v. Commissioner of Internal Revenue, C.T.A. Case No. 10201 dated July 15, 2022.*

FAILURE TO SUBMIT THE VAT PAYMENT CERTIFICATION IN THE ADMINISTRATIVE REFUND LEVEL DOES NOT FORESTALL ITS ADMISSIBILITY AS EVIDENCE IN THE JUDICIAL REFUND CASE IF THE DELAYED ISSUANCE WAS BEYOND THE CONTROL OF THE TAXPAYER. *Carmen Copper Corp. v. Commissioner of Internal Revenue, C.T.A. Case No. 10201 dated July 15, 2022.*

THE PRESUMPTION OF CORRECTNESS OF TAXES APPLIES ONLY WHEN THE ASSESSMENT IS BASED ON FACT. For the Court to apply the presumption of correctness of the assessment, it is incumbent upon the CIR to present evidence that would show that his assessment is based on fact through the submission of sufficient evidence establishing the rational basis and foundation of the deficiency assessment, as well as establishing the propriety of the imposition of compromise penalty. Failure to provide such evidence renders the inapplicability of the presumption. *Commissioner of Internal Revenue v. Iconic Beverages Inc., C.T.A. E.B. No. 2345 (C.T.A. Case No. 9657) dated July 21, 2022.*

AN ASSESSMENT MADE BY REVENUE OFFICERS WHOSE AUTHORITY STEMS FROM A MISSION ORDER IS INVALID. THE LAW REQUIRES THE ISSUANCE OF A LETTER OF AUTHORITY SIGNED BY THE CIR OR HIS REPRESENTATIVE.

Commissioner of Internal Revenue v. Autostrada Motore, Inc., C.T.A. E.B. No. 2375 (C.T.A. Case No. 9624) dated July 21, 2022.

A FOREIGN CORPORATION WITH A BRANCH OFFICE IS DEEMED TO BE DOING BUSINESS IN THE PHILIPPINES. IT CANNOT BE CLASSIFIED AS A NON-RESIDENT FOREIGN CORPORATION FOR PURPOSES OF TAXATION REGARDLESS OF THE BRANCH'S PARTICIPATION IN THE TRANSACTION. AS THE FOREIGN CORPORATION IS DEEMED TO BE DOING BUSINESS IN THE PHILIPPINES THROUGH ITS BRANCH OFFICE, THE SERVICES RENDERED TO IT WOULD NOT QUALIFY FOR VAT ZERO-RATING. *Maxima Machineries Inc. v. Commissioner of Internal Revenue, C.T.A. E.B. No. 2485 (C.T.A. Case No. 9838) dated July 25, 2022.*

DELAYED SUBMISSION OF THE AUTHORITY TO RELEASE IMPORTED GOODS (“ATRIG”) DOES NOT WARRANT SEIZURE. Delayed submission of the ATRIG should not warrant the seizure of goods considering that the ATRIG can still be processed even though the shipments have already arrived as long as such requirement is issued prior to release of the excisable product from the customhouse according to Revenue Regulations No. 2-2016. *Gamma Gray Marketing. v. Bureau of Customs, C.T.A. Case No. 9855 dated July 27, 2022.*

THE IMPORTER'S FAILURE TO OBTAIN A BIR PERMIT TO OPERATE PRIOR TO COMMENCEMENT OF BUSINESS AND TO SUBMIT A CERTIFIED TRUE COPY OF THE IMPORTER'S SWORN STATEMENT UPON FILING OF THE IMPORT ENTRY/SINGLE ADMINISTRATIVE DOCUMENT RESULTS IN THE EXISTENCE OF A PROBABLE CAUSE FOR THE VALID ISSUANCE OF WARRANTS OF SEIZURE AND DETENTION AGAINST THE IMPORTED GOODS FOR POSSIBLE VIOLATION OF SEC. 1400 OF THE CUSTOMS MODERNIZATION AND TARIFF ACT. *Gamma Gray Marketing. v. Bureau of Customs, C.T.A. Case No. 9855 dated July 27, 2022.*

THE BIR'S ISSUANCE OF A RESPONSE TO THE TAXPAYER'S PROTEST TO THE PRELIMINARY ASSESSMENT NOTICE ON THE SAME DAY OF THE SUBMISSION OF THE SAID PROTEST VIOLATES THE TAXPAYER'S DUE PROCESS AND RENDERS THE ASSESSMENT VOID. The BIR's response issued on the same day it received the latter's protest) that its protest violates the taxpayer's opportunity to be heard. *Commissioner of Internal Revenue v. Rural Bank of Bacnotan (La Union) Inc., C.T.A. E.B. No. 2436 (C.T.A. Case No. 9118) dated July 28, 2022.*

BIR Issuances

PUBLISHING FISCAL INCENTIVES REVIEW BOARD (FIRB) RESOLUTION NO. 017-22 - GRANT OF AUTHORITY TO IMPLEMENT A 70:30 WORK-FROM-HOME (WFH) ARRANGEMENT FOR REGISTERED BUSINESS ENTERPRISES (RBES) IN THE INFORMATION TECHNOLOGY- BUSINESS PROCESS MANAGEMENT (IT-BPM) SECTOR. The Resolution mandates that for RBEs in the IT-BPM sector, a Work From Home arrangement is allowed as long as employees who are working remotely at any given period shall

not exceed 30% of the workforce. *Revenue Memorandum Circular No. 102-2022 issued on July 19, 2022.*

LIFTING THE SUSPENSION ON THE ISSUANCE OF MISSION ORDERS FOR THE CONDUCT OF TAX COMPLIANCE VERIFICATION DRIVE (TCVD). The suspension of the issuance of Mission Orders (MOs) insofar as authorizing Revenue Officers to conduct TCVD, which includes verification of complaints involving alleged violation of the I 997 National Internal Revenue Code as amended, was lifted. Nevertheless, the issuance of MOs other than for TCVD purposes shall remain suspended until further notice. *Revenue Memorandum Circular Nos. 115-2022, issued on July 28, 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 contact us at mail@baniquedlaw.com. Past issues of our Tax Alert are available at our website at www.baniquedlaw.com