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TAXPAYER BILL OF RIGHTS: PROTECTING THE LIFEBLOOD OF THE NATION



by

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While taxes and death are both certain and inevitable, there is absolutely no reason to relate death with where taxes emanate – taxpayers. The comparison, which first appeared in the literary works of Christopher Bullock (1716) and Daniel Defoe (1726) but was made famous by Benjamin Franklin in a letter to Jean Baptiste Leroy back in 1789, underscores if not eerily exaggerates the importance of exacting dues in any form from the people to finance the operations and expenditure of the government.

But taxpayers need life more than anguish and death. In the contemporary world, where civilized and humane regimes have overtaken governments that were founded upon tyranny and dictatorship, the context of rights and protection pertinent to taxation has significantly evolved. Various jurisdictions are starting to shift their focus from the government's inherent right to collect taxes to insulating the taxpayers from abuse and undue discretions by tax authorities. This is anchored on the notion that government and its taxpayers must co-exist. Without the other, either or both would be irrelevant and thus, devoid of its main sense of purpose.

Taxpayer Rights as Human Rights

According to Thomas Jefferson, *a bill of rights is what the people are entitled to against every government on earth, general or particular; and what no just government should refuse, or rest on inferences.* This is cited in a 2013 paper by the United States Taxpayer Advocate Nina E. Olson, entitled, "Toward A More Perfect Tax System: A Taxpayer Bill Of Rights As A Framework For Effective Tax Administration". The author says that at the core, taxpayer rights are human rights and serves as a defense against the tendencies of tax authorities' – like the U.S. Internal Revenue Service (IRS) – to arrange things in ways that are convenient for them, but are otherwise dehumanizing¹. It affirms that taxpayer rights help ensure that taxpayers are treated in a humane manner.

¹ Paper presented by National Taxpayer Advocate Nina E. Olson at the Lawrence Neal Woodworth Memorial Lecture, May 9, 2013.

In 1988, the Organization for Economic Co-operation and Development (OECD) conducted a survey among its member countries, particularly inquiring about their systems of taxpayer rights and obligations. The study, which was published in 1990, found that although most countries did not have an explicit charter or bill of rights, there were certain basic rights present in all tax systems that responded to:

1. The right to be informed, assisted, and heard;
2. The right to appeal;
3. The right to pay no more than the correct amount of tax;
4. The right to certainty;
5. The right to privacy; and
6. The right to confidentiality and secrecy.

The OECD also identifies certain "behavioral norms" that governments expect of taxpayers and are essential to the proper functioning of tax administration. These taxpayer responsibilities include:

1. The obligation to be honest;
2. The obligation to be cooperative;
3. The obligation to provide accurate information and documents on time;
4. The obligation to keep records; and
5. The obligation to pay taxes on time.

The Taxpayer Advocate's paper² cites the OECD finding that many countries have already adopted taxpayer charters that officially codify taxpayer rights and obligations. It says that the charters vary, as some consist of general statements of broad principles while others offer detailed explanations of taxpayer rights for each stage of the tax process. It further explains that according to the OECD, most taxpayer charters are mere guide to the legal rights a taxpayer already has and they generally do not create additional rights that are not granted by legislation.

The Canada Revenue Agency (CRA), for instance, has adopted and published a Taxpayer Bill of Rights (TBOR) as well as a Commitment to Small

Business, which consists of 15 provisions, including:

1. The right to have the law applied consistently;
2. The right to expect CRA to be accountable;
3. The right to be treated professionally, courteously, and fairly; and
4. The right to expect CRA to warn you about questionable tax schemes in a timely manner.

The Australian Taxation Office (ATO) also has created and adopted a Taxpayer Charter, which outlines not only a taxpayer's rights and obligations, but also what the taxpayer can expect from the ATO and what a taxpayer can do if he or she is not satisfied³.

The United Kingdom, on the other hand, has a taxpayer charter that outlines what taxpayers can expect from Her Majesty's Revenue and Customs (HMRC), including the expectation to be treated as honest and with respect. The United Kingdom charter, which includes three taxpayer obligations, also commits HMRC to do everything it can to keep the cost of dealing with HMRC as low as possible⁴.

Moreover, several states, including New York⁵, Pennsylvania⁶, Indiana⁷, Kentucky, Montana, and Nebraska all have some version of a Taxpayer Bill of Rights⁸. While these charters differ in scope, all contain most of the fundamental components identified by the OECD and several outline taxpayer obligations in addition to rights. New York State also has a Consumer Bill of Rights Regarding Tax Preparers, which protects taxpayers that use tax return preparers from unfair treatment.

Adopting A Framework for Taxpayer Rights

Noteworthy in the Taxpayer Advocate's study is the admission that the U.S. Internal Revenue Code already includes specific provisions that are crafted to ensure a fair and just tax system that would protect all taxpayers from potential IRS abuse. However, it laments that the Code contains no organizing principles or formal acknowledgement of the fundamental taxpayer rights from which these statutory rights derive. This has prompted the author to previously recommend in numerous avenues the formal codification of a statement of taxpayer rights or a Taxpayer Bill of Rights. Taxpayer Advocate

2 Olson, Nina E. "Toward A More Perfect Tax System: A Taxpayer Bill Of Rights As A Framework For Effective Tax Administration", November 4, 2013.

3 Gascon, Rechilda B. "Briefer on Bill of Rights to Taxpayers". February 22, 2017. Submitted to Senator Sonny Angara, Chairperson, Senate Committee on Ways and Means.

4 Ibid

5 N.Y Tax Law 3000. See <http://tax.ny.gov/tra/rights.htm>

6 2Pa.Stat. Ann 3310-101 (1996).

7 See Indiana Department of Revenue, The Taxpayer Bill of Rights, <http://www.in.gov/dor/3660.htm>.

8 The IRS has adopted a Taxpayer Bill of Rights as proposed by National Taxpayer Advocate Nina Olson. It applies to all taxpayers in their dealings with the IRS. The Taxpayer Bill of Rights groups the existing rights in the tax code into ten fundamental rights, and makes them clear, understandable, and accessible. <https://taxpayeradvocate.irs.gov/taxpayer-rights>

Olson said that while codifying a TBOR would require Congressional action, the IRS can articulate these rights by adopting such TBOR.

Taxpayer Advocate Olson further contends that though Congress has passed multiple pieces of legislation with the title of "Taxpayer Bill of Rights," none of these laws provide for a foundational, general description of taxpayer rights. The author favors the adoption of a TBOR to enable taxpayers to understand their basic rights without having to consult a multitude of Code sections that apply in specific circumstances. She argues that a TBOR would enhance, for instance, the understanding of taxpayers on their basic right to appeal when facing a collection action such as a levy, even if they do not know the specific information in the Code regarding Collection Due Process hearings. A TBOR, she concludes, would make taxpayers aware of the general rights they already have and it does not create new rights, but rather provides organizing principles – a framework – for statutory rights.

The National Taxpayer Advocate has used OECD's guidance to develop a list of taxpayer rights and responsibilities to be included in the TBOR. The following comprise the ten (10) TBOR as proposed by the U.S. National Taxpayer Advocate:

1. **The Right to Be Informed.** Taxpayers have the right to know what they need to do to comply with tax laws. They are entitled to clear explanations of the law and IRS procedures in all tax forms, instructions, publications, notices, and correspondence. They have the right to be informed of IRS decisions about their tax accounts and to receive clear explanations of the outcomes.
2. **The Right to Quality Service.** Taxpayers have the right to receive prompt, courteous, and professional assistance in their dealings with the IRS, to be spoken to in a way they can easily understand, to receive clear and easily understandable communications from the IRS, and to have a way to file complaints about inadequate service.
3. **The Right to Pay No More than the Correct Amount of Tax.** Taxpayers have the right to pay only the amount of tax legally due and to have the IRS apply all tax payments properly.
4. **The Right to Challenge the IRS's Position and Be Heard.** Taxpayers have the right to raise objections and provide additional documentation in response to IRS actions or proposed actions, to expect that the IRS will consider their objections and documentation promptly and impartially, and to receive a written response if the IRS finds them insufficient.
5. **The Right to Appeal an IRS Decision in an Independent Forum.** Taxpayers are entitled to a prompt and impartial administrative appeal of IRS actions and have the right to receive a written response explaining the Appeals Division's decision. Taxpayers generally have the right to take their cases to court to challenge an adverse final determination.
6. **The Right to Finality.** Taxpayers have the right to know the maximum amount of time they have to challenge the IRS's position as well as the maximum amount of time the IRS has to audit a particular tax year. Taxpayers have the right to know when the IRS has finished an audit.
7. **The Right to Privacy.** Taxpayers have the right to expect that any IRS inquiry, examination, or enforcement action will comply with the law and be no more intrusive than necessary, and will respect all due process rights, including search and seizure protections and a collection due process hearing where applicable.
8. **The Right to Confidentiality.** Taxpayers have the right to expect that any information they provide to the IRS will not be disclosed unless authorized by the taxpayer or by law. Taxpayers have the right to expect the IRS to investigate and take appropriate action against its employees, return preparers, and others who wrongfully use or disclose taxpayer return information.
9. **The Right to Retain Representation.** Taxpayers have the right to retain an authorized representative of their choice to represent them in their dealings with the IRS. Taxpayers have the right to be told that if they cannot afford to hire a representative they may be eligible for assistance from a Low Income Taxpayer Clinic.
10. **The Right to a Fair and Just Tax System, Including Access to the Taxpayer Advocate Service.** Taxpayers have the right to expect the tax system to consider facts and circumstances that might affect their underlying liabilities, ability to pay, or ability to provide information timely. Taxpayers have the right to receive assistance from the Taxpayer Advocate Service if they are experiencing financial difficulty or if the IRS has not resolved their tax issues properly and timely through its normal channels.

Along with taxpayer rights, the author also recommends five (5) taxpayer responsibilities, namely:

1. **The Responsibility to Be Honest.** Taxpayers have the responsibility to be truthful in preparing their tax returns and in all other dealings with the IRS.
2. **The Responsibility to Provide Accurate Information.** Taxpayers have the responsibility to answer all relevant questions completely and honestly, to provide all required information on a timely basis, and to explain all relevant facts and circumstances when seeking guidance from the IRS.
3. **The Responsibility to Keep Records.** Taxpayers have the responsibility to maintain adequate books and records to fulfill their tax obligations, preserve them during the time they may be subject to IRS inspection, and provide the IRS with access to those books and records when asked so the IRS can examine their tax liabilities to the extent required by law.
4. **The Responsibility to Pay Taxes on Time.** Taxpayers have the responsibility to pay the full amount of taxes they owe by the due date and to pay any legally correct additional assessments in full. If they cannot pay in full, they have the responsibility to comply with all terms of any full or partial payment plans the IRS agrees to accept.
5. **The Responsibility to Be Courteous.** Taxpayers have the responsibility to treat IRS personnel politely and with respect.

According to the Confederation Fiscale Europeenne⁹, *"the rights and obligations of a taxpayer are to be taken together, with each given appropriate weight such that one does not override the other."* In a presentation to the members of Platform for Tax and Governance in February 2014, the organization laid down the overriding purposes of a Taxpayer Charter, which are to foster a relationship of mutual trust, respect and responsibility between taxpayers and the State, ensuring that taxpayers fulfill their obligations to the State, and that the State's position as to the rights of taxpayers and the behavior and duties of the tax administration are codified. It affirms that through such means, the costs of compliance should be reduced, voluntary compliance increased, and all taxpayers treated equally, without bias or preference.

The US Internal Revenue Service (IRS) Taxpayer Bill of Rights¹⁰

On June 10, 2014, after years of lobbying by National Taxpayer Advocate Nina E. Olson, the U.S. Internal Revenue Service (IRS) finally adopted a codified Taxpayer Bill of Rights (TBOR)¹¹. As originally endorsed by Olson, the TBOR is perceived to be a cornerstone document to provide the nation's taxpayers with a better understanding of their rights. It takes the multiple existing rights embedded in the tax code and groups them into ten (10) broad categories, making them more visible and easier for taxpayers to find on its website, www.irs.gov.

According to IRS Commissioner John A. Koskinen, the Taxpayer Bill of Rights contains fundamental information to help taxpayers. He said that these core concepts, which taxpayers should be aware of, are summarized in a clearer, more understandable format than ever before. "This information is critically important for taxpayers to read and understand," Koskinen maintained. "We encourage people to take a moment to read the Taxpayer Bill of Rights, especially when they are interacting with the IRS. While these rights have always been there for taxpayers, we think the time is right to highlight and showcase these rights for people to plainly see", he stressed.

Since 2007, adopting a Taxpayer Bill of Rights has been a goal of National Taxpayer Advocate Olson and it was listed as the Advocate's top priority in her most recent Annual Report to Congress. She disclosed that although Congress has passed multiple pieces of legislation with the title of 'Taxpayer Bill of Rights', taxpayer surveys conducted by her office indicated that most taxpayers do not believe they have rights before the IRS and even fewer can name their rights. She believes that the list of core taxpayer rights in the TBOR will help taxpayers better understand their rights in dealing with the tax system.

In promoting the TBOR, the IRS has created a special section of IRS.gov to highlight the ten (10) rights. The website will continue to be updated with information as it becomes available and taxpayers will be able to easily find the Bill of Rights from the front page. The IRS internal website for employees is also adding a special section to allow people inside the IRS to have easy access as well.

⁹ http://ec.europa.eu/taxation_customs/sites/taxation/files/resources/documents/taxation/gen_info/good_governance_matters/platform/meeting_20140610/cfe.pdf

¹⁰ <https://www.irs.gov/uac/newsroom/irs-adopts-taxpayer-bill-of-rights-10-provisions-to-be-highlighted-on-irsgov-in-publication-1>

¹¹ The recently adopted Taxpayer Bill of Rights (TBOR) by the U.S. government and mandated through the Internal Revenue Service (IRS) has adopted all the ten (10) proposed taxpayer rights by the National Taxpayer Advocate Nina Olson.

Ordaining a Taxpayer's Bill of Rights in the Philippines

In the Philippines, the 1987 Philippine Constitution as well as other statutes already affirm the rights of taxpayers by setting tax power limitations, pursuing equity and fairness in taxation policies and providing reliefs and remedies to taxpayers' complaints and grievances with regards to their tax liabilities. Article VI, Section 28(1) of the supreme law states, to wit:

"SEC. 28. (1) The rule of taxation shall be uniform and equitable. The Congress shall evolve a progressive system of taxation."

Further, Article VIII, Section 5(2)(b) of the Constitution provides, to wit:

"SEC 5. The Supreme Court shall have the following powers:

XXX

(2) Review, revise, reverse, modify or affirm on appeal or certiorari, as the law or the Rules of Court may provide, final judgments and orders of lower courts in:

XXX

b) All cases involving the legality of any tax, impost, assessment, or toll or any penalty imposed in relation thereto. (underscoring provided)

Republic Act No. 8424, otherwise known as the Internal Revenue Code of 1997, as amended, likewise mandates the rights and protection of taxpayers. Such provisions, which are discussed in various chapters of the Tax Code, are summarized in the website of the Bureau of Internal Revenue (BIR) in the link "Taxpayer Bill of Rights" and under the subtitle "Taxpayer Obligations and Privileges", to wit:

TAXPAYER'S OBLIGATIONS AND PRIVILEGES¹²

16. *What is required of a taxpayer who is being audited? A Taxpayer who is being audited is obliged to:*

Duly acknowledge his receipt of the appropriate Letter of Authority upon its presentation by the Revenue Officer authorized to conduct the audit by affixing in the Letter of Authority the name of the recipient and the date of receipt.

Present within a reasonable period of time, his books of accounts and other related accounting records that may be required by the Revenue Officer; and

Submit the necessary schedules as may be requested by the Revenue Officer within a reasonable amount of time from his (Taxpayer's) receipt of the Letter of Authority.

17. *What is the recourse of a Taxpayer who cannot submit the documents being required of him within the prescribed period of time? If a Taxpayer, believing that he cannot present his books of accounts and/or other accounting records, intends to request for more time to present these documents in order to avoid the issuance of a Jeopardy Assessment, the Taxpayer may execute what is referred to as a Waiver of the Statute of Limitations.*

18. *What is a Waiver of the Statute of Limitations? The Waiver of the Statute of Limitations is a signed statement whereby the Taxpayer conveys his agreement to extend the period within which the Bureau may validly issue an assessment for deficiency taxes. If a Taxpayer opts to execute a Waiver of the Statute of Limitations, he shall likewise be, in effect, waiving his right to invoke the defense of prescription for assessments issued after the reglementary period.*

No Waiver of the Statute of Limitations shall be considered valid unless it is accepted by a duly authorized Bureau official.

19. *If a Taxpayer does not agree with the assessment made following an audit, can he protest this Assessment? Yes, he can. A Taxpayer has the right to contest an assessment, and may do so by filing a letter of protest stating in detail his reasons for contesting the assessment.*

20. *What are the characteristics of a valid protest? A protest is considered valid if it satisfies the following conditions:*

It is made in writing, and addressed to the Commissioner of Internal Revenue;

It contains the information, and complies with the conditions required by Sec. 6 of Revenue Regulations No. 12-85; to wit:

a) *Name of the taxpayer and address for the immediate past three (3) taxable year.*

¹² <http://www.bir.gov.ph/index.php/taxpayer-bill-of-rights.html#taxpayer's-obligations-and-privileges>

- b) *Nature of request whether reinvestigation or reconsideration specifying newly discovered evidence he intends to present if it is a request for investigation.*
- c) *The taxable periods covered.*
- d) *Assessment number.*
- e) *Date of receipt of assessment notice or letter of demand.*
- f) *Itemized statement of the findings to which the taxpayer agrees as a basis for computing the tax due, which amount should be paid immediately upon the filing of the protest. For this purpose, the protest shall not be deemed validly filed unless payment of the agreed portion of the tax is paid first.*
- g) *The itemized schedule of the adjustments with which the taxpayer does not agree.*
- h) *A statement of facts and/or law in support of the protest.*

The taxpayer shall state the facts, applicable law, rules and regulations or jurisprudence on which his protest is based, otherwise, his protest shall be considered void and without force and effect in the event the letter of protest submitted by the taxpayer is accepted, the taxpayer shall submit the required documents in support of his protest within sixty (60) days from date of filing of his letter of protest, otherwise, the assessment shall become final, executory and demandable.

It is filed within thirty (30) days from the Taxpayer's receipt of the Notice of Assessment and formal Letter of Demand.

21. *In the event the Commissioner's duly authorized representative denies a Taxpayer's protest, what alternative course of action is open to the Taxpayer? If a protest filed by a Taxpayer is denied by the Commissioner's duly authorized representative, the Taxpayer may request the Commissioner for a reconsideration of such denial and that his tax case be referred to the Bureau's Appellate Division. The Appellate Division serves as a "Court", where both parties, i.e. the Revenue Officer on one hand, and the Taxpayer on the other, can present testimony and evidence before a Hearing Officer, to support their respective claims.*

22. *What recourse is open to a Taxpayer if his request for reconsideration is denied or his protest is not acted?*

Should the Taxpayer's request for reconsideration be denied or his protest is not acted upon within 180 days from submission of documents by the Commissioner, the Taxpayer has the right to appeal with the Court of Tax Appeals (CTA).

Any appeal must be done within thirty (30) days from the date of the Taxpayer's receipt of the Commissioner's decision denying the request for reconsideration or from the lapse of the 180 day period counted from the submission of the documents. (Sec. 228 of the Tax Code, as amended).

23. *If the Taxpayer is not satisfied with the CTA's decision, can he appeal the decision to a higher Court? Yes, he can. Decisions of the Court of Tax Appeals may be appealed with the Court of Appeals within fifteen (15) days from the Taxpayer's receipt of the CTA's decision. In the event that the Taxpayer is likewise unsatisfied with the decision of the Court of Appeals, he may appeal this decision with the Supreme Court.*

24. *Can a Taxpayer claim a refund or tax credit for erroneously or illegally collected taxes? Yes, he can. The Taxpayer may file such a claim with the Commissioner of Internal Revenue (Sec.229, NIRC), within two (2) years from the payment of the tax or penalty sought to be refunded. Failure of the Taxpayer to file such a claim within this prescribed period shall result in the forfeiture of his right to the refund or tax credit.*

25. *If a Taxpayer has filed a claim for refund and the Bureau has yet to render a decision on this claim, can the Taxpayer elevate his claim to the CTA?" Yes, he can , if two (2) year period stated above is about to end, ad the Commissioner has yet to render a decision on the claim. (Gibbs v. Collector, L-13453, February 21, 1960).*

Proposed Measures Ordaining A Taxpayer's Bill Of Rights

In this 17th Congress, there are three (3) bills pending in the Senate, which seek to enhance further

the pursuit and protection of taxpayers' rights and privileges, namely:

- 1) Senate Bill No. 132, entitled: "AN ACT AMENDING SECTION 3 OF THE NATIONAL INTERNAL REVENUE CODE OF 1997, AS AMENDED, ESTABLISHING A TAXPAYER ASSISTANCE SERVICE IN THE BUREAU OF INTERNAL REVENUE AND FOR OTHER PURPOSES" (Senator Sonny Angara);
- 2) Senate Bill No. 303, entitled: "AN ACT CREATING THE OFFICE OF THE NATIONAL TAXPAYER ADVOCATE TO SAFEGUARD THE RIGHTS OF THE TAXPAYERS AND FOR OTHER PURPOSES" (Senator Sonny Angara); and
- 3) Senate Bill No. 815, entitled: "AN ACT ORDAINING A BILL OF RIGHTS FOR TAXPAYERS" (Senator Ralph G. Recto).

The following are the salient features of the proposals:

1) Senate Bill No. 132

- a) The measure seeks to amend and add new provisions to Section 3 of the NIRC of 1997, as amended, establishing a taxpayer assistance service in the Bureau of Internal Revenue (BIR), which reads:

"Section 3. Chief Officials of the Bureau of Internal Revenue. – The Bureau of Internal Revenue hereinafter referred to as the Commissioner and four (4) assistant chiefs to be known as Deputy Commissioner.

TO ENSURE ADEQUATE FISCAL RESOURCES THRU PROPER COMPLIANCE TO TAX LAWS AND RULES AND REGULATIONS AND FACILITATE SIMPLE AND STRAIGHTFORWARD TAX ADMINISTRATION, A TAXPAYER ASSISTANCE SERVICE IS HEREBY ESTABLISHED UNDER THE OFFICE OF THE COMMISSIONER, THE TAXPAYER ASSISTANCE SERVICE SHALL HAVE THE FOLLOWING FUNCTIONS:

- A) ASSIST TAXPAYERS QUERIES AND CONCERNS RELATIVE TO COMPLIANCE TO TAX LAWS AND RULES AND REGULATIONS;
- B) ANSWER INQUIRIES RELATED TO PUBLIC ASSISTANCE INCLUDING TAXPAYER REGISTRATION, TAX

PAYMENTS AND FILING OF TAX RETURNS;

- C) RECEIVE AND/OR REFER TAXPAYER COMPLAINTS, QUERIES AND CONCERNS TO OTHER OFFICES WITHIN THE BUREAU AND MONITOR THE RESOLUTION OF THE SAME;
- D) PREPARES LISTINGS AND STANDARD ANSWERS TO FREQUENTLY ASKED QUESTIONS OF TAXPAYERS;
- E) PREPARE, PUBLICIZE AND CIRCULATE POLICIES, PROGRAMS, STANDARDS, GUIDELINES AND PROCEDURES RELATIVE TO PUBLIC INFORMATION AND EDUCATION PROGRAMS ON TAXATION;
- F) PREPARES, PRESCRIBED REPORTS FOR SUBMISSION TO OTHER CONCERNED OFFICERS; AND
- G) PERFORM SUCH OTHER FUNCTIONS AS MAY BE ASSIGNED."

2) Senate Bill No. 303

The bill likewise seeks the creation of the Office of the National Taxpayer Advocate under the supervision and direction of the National Taxpayer Advocate to protect and promote the rights of Filipino taxpayers. The powers, functions and the responsibilities of the Office of the National Taxpayers Advocate are similar to provisions of SBN 815.

3) Senate Bill No. No. 815

- a) The bill seeks to ordain a bill of rights for the taxpayers in addition to the legal rights¹³ and remedies provided under the National Internal Revenue Code (NIRC), as amended, and the Customs Modernization and Tariff Act (CMTA), which provide the taxpayer's basic rights¹⁴ and rights in both civil and criminal cases.
- b) With the intent of protecting taxpayers' rights, the bill seeks to create the position of National Taxpayer Advocate with a rank of undersecretary and whose office shall be attached to the Office of the President for administrative purposes only. He/She shall have the following functions:
 - *Assist taxpayers in resolving problems with the BIR and the BOC;*
 - *Identify areas in which taxpayers have*

¹³ Section 204(A) and (B) of the NIRC, as amended, grants the BIR Commissioner the power to compromise or abate any tax liability.

¹⁴ The Department of Finance (DOF) Order No. 07-2002 (May 7, 2002) provides for the implementing rules on the exercise of the power of the Secretary of Finance to review the rulings of the Commissioner the Internal Revenue (CIR). The order covers the procedures and compliance requirements on request for review of an adverse ruling received by a taxpayer from the Commissioner of Internal Revenue,

problems in dealings with the BIR and the BOC;

- Propose changes, to the extent possible, in the administrative practices of the BIR and the BOC with the end in view of mitigating problems identified under the preceding paragraph;
- Identify potential legislative changes which may be appropriate to mitigate such problems;
- Issue taxpayer assistance orders upon application filed by a taxpayer with the Office of the National Taxpayer Advocate, the latter may issue a Taxpayer Assistance Order when: (i) it is determined that the taxpayer is suffering or about to suffer a significant hardship as a result of the manner in which the internal revenue laws are being administered by the BIR, BOI or the local treasurer; or (ii) the taxpayer meets such other requirements as are set forth in the implementing rules and regulations of the Act. For purposes of this paragraph, a significant hardship shall include (i) an immediate threat of adverse action; (ii) any action that will violate the right to privacy of a taxpayer; (iii) a delay of more than thirty (30) days in resolving taxpayer account problems; (iv) the taxpayer will incur significant and unnecessary costs, including fees for professional representation, if relief is not granted; or (v) irreparable injury to, or a long-term adverse impact on, the taxpayer if relief is not granted;
- In cases where any tax authority employee is not following the laws, rules and regulations or any applicable published administrative guidance, the National Taxpayer Advocate shall construe the factors taken into account in determining whether to issue a Taxpayer Assistance Order in the manner most favorable to the taxpayer;
- Any Taxpayer Assistance Order issued by the National Taxpayer Advocate under this section may be modified or rescinded only by the National Taxpayer Advocate, only if a valid written explanation was submitted by the Commissioner of Revenue or the Commissioner of Customs, as the case may be, and the reasons for the modification or rescission are specifically stated by the National Taxpayer Advocate

in the rescission or modification order;

- The duration of any period of limitation with respect to any action for which a Taxpayer Assistance Order has been issued shall be suspended for the period beginning on the date of the taxpayer's application under subsection C and ending on the date of the National Taxpayer Advocate's decision with respect to such application and any period specified by the National Taxpayer Advocate in a Taxpayer Assistance Order issued pursuant to such application.

Conclusion

The enhancement and codification in a simplified framework of the various provisions in the Tax Code and other laws mandating taxpayers' rights is necessary, relevant and practical. The increasing global interest in the pursuit of an extensive yet understandable taxpayer's manual in a condensed form is an insinuation for the Philippine government to eventually conform and oblige.

On March 13 and 14, 2017, the 2nd International Conference on Taxpayer Rights was held in Vienna, Austria¹⁵. More than 150 individuals from more than 40 countries attended the conference, which connects government official, scholars and practitioners from around the world to explore how taxpayer rights globally serve as the foundation for effective tax administration. This further manifests the grave concern of various jurisdictions regarding the promotion and protection of taxpayer rights.

We may already have sets of provisions protecting the rights of taxpayers but these are scattered through separate pages of various statutes. Moreover, some sectors contend that such provisions are not sufficient enough to cover all the concerns of taxpayers particularly in the collection and assessment made by local government units (LGUs).¹⁶

The passage of Republic Act No. 10021 or the "Exchange of Information on Tax Matters Act of 2009", which granted the Bureau of Internal Revenue (BIR) with enhanced authority to inquire on tax-related information in favor of the state, may have compromised to a certain level the privacy and rights of taxpayers. The passage of the proposed bills creating the Office of the National Taxpayer Advocate and adopting a Taxpayers Bill of Rights, along with corresponding obligations, would compensate for such concern and could balance the rights of the government with the rights of those considered as the lifeblood of the nation – the taxpayers.

¹⁵ Roberson, Andrew, R. "Taxpayer Rights Around the World (Part 1). March 22, 2017. Taxcontroversy360.com. <http://www.taxcontroversy360.com/2017/03/taxpayer-rights-around-the-world-part-1/>. Retrieved March 22, 2017

¹⁶ Comments of Tax Management Association of the Philippine (TMAP) during the public hearing by the Senate Committee on Ways and Means on bills adopting a Taxpayer's Bill of Rights and creating the Office of the National Taxpayer Advocate.



On the Local Government Code (LGC).



"Ours is a grossly unequal economy, and that inequality can be drawn along geographic lines.

"More than 26 years have passed since Congress enacted the Local Government Code. Its review is long-overdue. It is now imperative to institute reforms so it can truly fulfill its main objective which is to equally distribute growth in the country through autonomy grounded on decentralized and devolved public functions."

(Sen. Sonny Angara FB Account, 2 March 2017)



On Access To Mental Health Care.

"Our numbers are quite dated, pointing to two dimensions of our problem: 1) that our institutions are ill-equipped to keep track and treat the mental health of Filipinos; and 2) that because of this inability, many cases possibly go undiagnosed," said Angara, one of the authors of the bill.

"According to the Philippine Psychiatric Association, there are only 490 psychiatrists serving in the country today or roughly 50 qualified psychiatrists for every 10 million Filipinos.

"Very few of our general practitioners, guidance counselors-not to mention barangay health workers or even jail wardens-are trained on early assessment and management of common mental health problems.

"At times, the only course of action we know is to chain up the mentally ill and isolate them from the rest of society," the senator added." (Sen. Sonny Angara re SB 1354 Sponsorship Speech, 2 March Press Release)



*

Prepared by: Mr. Clinton S. Martinez, SLSO II, ODG

- Photo credits:

- Bagong Aurora, Website ng Bayan, <http://bagongaurora.com/?cat=4>
- Medical Observer, <http://medicalobserverph.com/news-mental-health-act-pushed-in-online-campaign/>

TAX NEWS DIGEST

“World Bank prods gov’t on infra spending hike”



“The government’s plan to ramp up infrastructure spending will support sustained robust economic growth in the near term, according to the World Bank.

“Separately, debt watcher S&P Global Ratings, in a report released Wednesday, slightly raised its gross domestic product (GDP) growth projection for 2016 and 2017 to 6.6 percent and 6.4 percent, respectively, from 6.5 percent and 6.3 percent previously.

“The government will announce the 2016 GDP growth figure on Jan. 26. The Duterte administration targets a 6-to 7-percent GDP expansion last year and further growth of 6.5-7.5 percent this year.

“S&P also projected the Philippine economy to grow by 6.2 percent in 2018 and 6.3 percent in 2019, below the government’s annual growth target range of 7-8 percent from 2018 to 2022.

“S&P kept the country’s “BBB” investment-grade credit rating with a “stable” outlook that “balances the Philippines’ lower middle-income economy and diminished policy stability, predictability and accountability against its strong external position, which features rising foreign exchange reserves and low and declining external debt.”

“As it announced in September last year, a higher rating for the Philippines was “unlikely over our two-year ratings horizon,” S&P said.

“We may raise the ratings if continued fiscal improvements under the new administration boost investment and economic growth prospects, or if improvements in the policy environment lead us to a better assessment of institutional and governance effectiveness. We may lower the ratings if, under the new administration, the reform agenda stalls or if there is a reversal of the recent gains in the Philippines’ fiscal or external positions,” S&P said.

“In a report titled “Global Economic Prospects: Weak Investment in Uncertain Times,” the World Bank said that among large commodity importers, the Philippines as well as Vietnam “continues to have the strongest growth prospects, although capacity constraints will likely limit acceleration in the medium term and could cause overheating pressures.”

“In the Philippines, growth is projected to accelerate to 6.8 percent on average in 2017-19, supported by ongoing infrastructure projects, strong consumption, buoyant inflows of remittances and strong revenue from services exports,” the report read.” (PDI, 12 January 2017)



By: Mr. Clinton S. Martinez, SLSO II

Photo credit:

- Philstar, <http://www.philstar.com/business/2016/12/16/1653746/world-bank-upgrades-philippine-growth-forecasts>

“External uncertainties may slow PH growth”



Priyanka Kishore¹

“The Philippines will continue to post the fastest growth among emerging Asian economies this year, although the lack of election-related spending as well as external uncertainty may slow the momentum, UK-based Oxford Economics said.

“Excluding China, Japan and India, we expect the contribution of domestic demand to growth in Asia to rise to 3.4 percent from 3.2 percent in 2016, with overall GDP (gross domestic product) growth remaining stable. Within this grouping, the Philippines will continue to be the fastest growing economy, although we expect its growth momentum to moderate,” Oxford Economics lead Asia economist Priyanka Kishore said in the 2017 Regional Economic Outlook for Asia-Pacific report.

“Across the region, “the risks to our baseline stem from both global developments, particularly in the US, and domestic politics and policies,” Kishore said.

“Recent months have witnessed rising political concerns in South Korea and the Philippines. Policy tensions have mounted in India and China. Upcoming national elections in Korea, Malaysia and Thailand and state elections in India are likely to be closely monitored by investors ... Uncertainty is set to be the buzzword for 2017,” Kishore noted.” (PDI, 16 January 2017)



“IMF raises PH growth forecast”



International Monetary Fund²

“The International Monetary Fund (IMF) has raised its gross domestic product (GDP) growth forecast for the Philippines for 2017, hinged on the government’s plan to ramp up spending on public goods and services, especially infrastructure.



Shanaka Jayanath Peiris³

“The Philippines is expected to maintain its strong GDP growth momentum registered in 2016 into 2017 at a pace of about 6.8 percent, supported by a fiscal stimulus as the budget deficit widens toward 3 percent of GDP target,” IMF resident representative Shanaka Jayanath Peiris said in an e-mail to reporters Monday.

“The IMF’s previous 2017 economic growth projection for the Philippines was 6.7 percent.

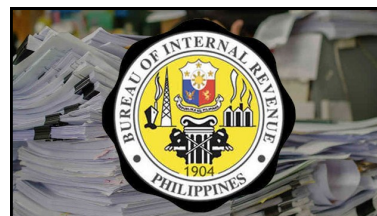
“Exports are also anticipated to recover, reflecting the pick-up in global growth and commodity prices,” Peiris added.

“Moving forward, Peiris said the growth outlook in the medium term “would depend on the more uncertain global economic outlook and the passage of the administration’s tax reform proposals that would be important to continue to raise public infrastructure investment and social spending to benefit from the demographic dividend.”

“In its World Economic Outlook Update report released also Monday, it said that “after a lackluster outturn in 2016, economic activity is projected to pick up pace in 2017 and 2018, especially in emerging market and developing economies.” (PDI, 17 January 2017)



“BIR eyes new taxpayer categories. Agency says segmenting to facilitate focused collection drive”



Bureau of Internal Revenue⁴

“The Bureau of Internal Revenue (BIR) plans to further subdivide the categories of taxpayers and designate specific offices that will oversee taxpayer compliance to further expand the tax base.

Photo credits:

¹ Priyanka Kishore, Lead Asia Economist at Oxford Economics, Business Today in, <http://www.businesstoday.in/opinion/interviews/india-gdp-growth-in-fy16-was-5.8-per-cent-and-not-7.6-per-cent/story/236196.html>.

² International Monetary Fund, <http://www.imf.org/en/Countries/ResRep/PHL>

³ Shanaka Jayanath Peiris, IMF resident representative, International Monetary Fund, <http://www.imf.org/en/Countries/ResRep/PHL>

⁴ Rappler.com, <http://www.rappler.com/nation/158421-new-agency-replacement-bir-proposed-arroyo>

“At last week’s House ways and means committee hearing, Internal Revenue Commissioner Caesar R. Dulay said that besides the existing Large Taxpayers Service, the agency also planned to introduce new categories such as the small and medium taxpayers units.

“For medium taxpayers, we will designate them to the regional directors so they can focus on them. For small taxpayers, we’ll delegate them to the revenue district officers,” Dulay said. He, however, did not define the distinction between small and medium taxpayers.

“Segmenting the taxpayer profiles would facilitate a more focused tax campaign and collection effort, the BIR chief said. “We can capture more into the tax net.”

“At present, the BIR defines large taxpayers as corporations with authorized capitalization of at least P300 million registered with the Securities and Exchange Commission; multinational enterprises with authorized capitalization or assigned capital of at least P300 million; publicly listed corporations; universal, commercial and foreign banks; taxpayers with an authorized capitalization of at least P100 million belonging to the banking, insurance, petroleum, telecommunications, utilities, alcohol and tobacco industries, and corporate taxpayers engaged in production of metallic minerals.” (PDI, 24 January 2017)



Philippine Finance Secretary Carlos Dominguez and China's Commerce Minister Gao Hucheng address reporters after their meeting.¹

“In a statement, the Department of Finance said that during last week’s meeting between President Duterte’s economic managers and their Chinese counterparts, they had agreed to again hold the JCETC in the Philippines “to ensure close coordination and further promote bilateral cooperation between the two countries.”

“In a meeting between Dominguez and China’s Commerce Minister Gao Hucheng on Jan. 23, the Chinese official reportedly said their government “would like to continue to enhance the mutual trust and the mutual understanding with our Filipino colleagues in order to further expand and deepen our practical cooperation.”

“Gao also said China sought a ‘healthy and stable development’ of the bilateral relations between the two countries that will benefit both countries and their people,” the DOF said.

“China ‘attaches great importance’ to the list of priority projects submitted by the Philippine delegation,” the DOF further quoted Gao as saying.

“In all, the economic managers presented to officials in China a total of 40 “small and large” infrastructure projects for possible financing during the two-day mission.

“For his part, Dominguez said the speedy pace of cooperation between Manila and Beijing “reaffirms our strong commitment to pursue long-term, comprehensive, stable and cooperative relationship with China grounded on mutual respect, sincerity, equality and mutual benefit for the advancement of peace, security and prosperity of our two countries.”

“Preparations for the JCETC meeting kicked off in November last year when the Department of Trade and Industry hosted a 14-member delegation from Beijing led by Wu Zhengping, director of general for Asia in China’s Ministry of Commerce.” (PDI, 2 February 2017)



“PH, China reviving trade body”

“Philippine and Chinese economic ministers will meet this month to reconvene the two countries’ Joint Commission on Economic and Trade Cooperation (JCETC) after six years since its last meeting in 2011.

¹ Manila Bulletin, <http://business.mb.com.ph/2017/01/23/china-ph-agree-to-cooperate-on-30-projects-worth-3-7-b/>



Commissioner of Internal Revenue, *Petitioner*, v. Puregold Duty Free, Inc., *Respondent*, G.R. No. 202789, June 22, 2015 (VELASCO JR., J.)



Facts:

The pertinent background of the case, as delivered by the Supreme Court (SC), provides:

"Puregold is engaged in the sale of various consumer goods exclusively within the Clark Special Economic Zone (CSEZ), and operates its store under the authority and jurisdiction of Clark Development" Corporation (CDC) and CSEZ.

"As an enterprise located within CSEZ and registered with the CDC, Puregold had been issued Certificate of Tax Exemption No. 94-4, later superseded by Certificate of Tax Exemption No. 98-54, which enumerated the tax incentives granted to it, including tax and duty-free importation of goods. The certificates were issued pursuant to Sec. 5 of Executive Order No. (EO) 80, extending to business enterprises operating within the CSEZ all the incentives granted to enterprises within the Subic Special Economic Zone (SSEZ) under RA 7227, otherwise known as the "Bases Conversion and Development Act of 1992."

"Notably, Sec. 12 of RA 7227 provides duty-free importations and exemptions of businesses within the SSEZ from local and national taxes. Thus, in accordance with the tax exemption certificates granted to respondent Puregold, it filed its Annual Income Tax Returns and paid the five percent (5%) preferential tax, in lieu of all other national and local taxes for the period of January 1998 to May 2004.

"On July 25, 2005, in *Coconut Oil Refiners v. Torre*, however, this Court annulled the adverted Sec. 5 of EO 80, in effect withdrawing the preferential tax treatment heretofore enjoyed by all businesses located in the CSEZ.

"On November 7, 2005, then Deputy Commissioner for Special Concerns/OIC-Large Taxpayers Service of the Bureau of Internal Revenue (BIR) Kim Jacinto-Henares issued a Preliminary Assessment Notice regarding unpaid VAT and excise tax on wines, liquors and tobacco products imported by Puregold from January 1998 to May 2004. In due time, Puregold protested the assessment.

"Pending the resolution of Puregold's protest, Congress enacted RA 9399, specifically to grant a tax amnesty to business enterprises affected by this Court's rulings in *John Hay People's Coalition v. Lim* and *Coconut Oil Refiners*. Under RA 9399, availment of the tax amnesty relieves the qualified taxpayers of any civil, criminal and/or administrative liabilities arising from, or incident to, nonpayment of taxes, duties and other charges.

"X x x.

On July 27, 2007, Puregold availed itself of the tax amnesty under RA 9399, filing for the purpose the necessary requirements and paying the amnesty tax.

"Nonetheless, on October 26, 2007, Puregold received a formal letter of demand from the BIR for the payment of Two Billion Seven Hundred Eighty Million Six Hundred Ten Thousand One Hundred Seventy-Four Pesos and Fifty-One Centavos (P2,780,610,174.51), supposedly representing deficiency VAT and excise taxes on its importations of alcohol and tobacco products from January 1998 to May 2004.

"In its response-letter, Puregold, thru counsel, requested the cancellation of the assessment on the ground that it has already availed of the tax amnesty under RA 9399. This notwithstanding, the BIR issued on June 23, 2008 a Final Decision on Disputed Assessment stating that the availment of the tax amnesty under RA 9399 did not relieve Puregold of its liability for deficiency VAT, excise taxes, and inspection fees under Sec. 131(A) of the 1997 National Internal Revenue Code (1997 NIRC).

"On July 22, 2008, Puregold filed a Petition for Review with the CTA questioning the timeliness of the assessment and arguing that the doctrines of operative fact and non-retroactivity of rulings bar the Commissioner of Internal Revenue (CIR) from assessing it of deficiency VAT and excise taxes. More importantly, Puregold asserted that, by virtue of its availment of the tax amnesty granted by RA 9399, it

has been relieved of any civil, criminal and/or administrative liabilities arising from or incident to non-payment of taxes, duties and other charges.

"Answering, the CIR argued that pursuant to Sec. 131(A) of the 1997 NIRC, only importations of distilled spirits, wines, and cigarettes to the freeports in Subic, Cagayan, and Zamboanga, as well as importations by government-owned duty free shops, are exempt from the payment of VAT and excise taxes.

"Following an exchange of motions, the CTA 2nd Division issued on November 25, 2010 a Resolution ordering the cancellation of the protested assessment against Puregold in view of its availment of tax amnesty under RA 9399.

"X x x.

On December 15, 2010, the CIR moved for reconsideration reiterating her previous argument that the national and local impositions mentioned in RA 9399 do not cover the deficiency taxes being assessed against Puregold. By Resolution of January 20, 2011, the CTA 2nd Division denied CIR's Motion for Reconsideration.

"X x x.

"On February 25, 2011, the CIR filed a Petition for Review with the CTA en banc assailing the adverted Resolutions of the CTA 2nd Division, predicating her recourse on the same arguments earlier presented. On May 9, 2012, the CTA en banc promulgated its Decision denying the CIR's petition."

The MR of the CIR was also denied by the CTA En Banc on the ground that it was a "mere rehash" of earlier allegations (July 18, 2012).

Issue/s:

The CIR raised the ensuing posers:

"THE HONORABLE CTA EN BANC GRAVELY ERRED IN LIMITING THE REQUIREMENTS UNDER REPUBLIC ACT NO. 9399 FOR THE AVAILMENT OF TAX AMNESTY OF (i) FILING OF NOTICE AND RETURN FOR TAX AMNESTY WITHIN SIX (6) MONTHS FROM EFFECTIVITY OF THE LAW AND (ii) PAYMENT OF THE TAX AMNESTY TAX OF PHP 25,000.00, AND TOTALLY AND DELIBERATELY DISREGARDING THE MATERIAL AND SUBSTANTIAL FACT THAT PUREGOLD'S PLACE OF BUSINESS IS IN METRO MANILA AND NOT CLARK FIELD, PAMPANGA, AS STATED IN ITS ARTICLES OF

INCORPORATION; THUS, PUREGOLD IS NOT ENTITLED TO THE BENEFITS UNDER RA 9399.

“ASSUMING WITHOUT ADMITTING THAT RESPONDENT IS A DULY CSEZ REGISTERED ENTERPRISE WITH PRINCIPAL PLACE OF BUSINESS IN CLARK FIELD, PAMPANGA, STILL THE CTA EN BANC GRAVELY AND SERIOUSLY ERRED, AS ITS RULING IS CONTRARY TO THE INTENT OF RA 9399 WHICH EXCLUDES DEFICIENCY TAX; THUS, PUREGOLD REMAINS TO BE LIABLE FOR EXCISE TAXES ON ITS WINE, LIQUOR, AND TOBACCO IMPORTATIONS.”

Held:

The SC declared that the CIR's petition is “bereft of merit.” In a nutshell, the High Court said:

“The allegation of the CIR regarding the principal place of business of Puregold cannot be considered on appeal; Puregold is entitled to avail of the tax amnesty under RA 9399. In her petition, the CIR has introduced an entirely new matter, i.e., based on its Articles of Incorporation, Puregold's principal place of business is in Metro Manila for which reason it cannot avail itself of the benefits extended by RA 9399.

“It is well settled that matters that were neither alleged in the pleadings nor raised during the proceedings below cannot be ventilated for the first time on appeal and are barred by estoppel. To allow the contrary would constitute a violation of the other party's right to due process, and is contrary to the principle of fair play.”

On the other issue being raised by the CIR, the SC decided:

“Anent the second error raised by petitioner, it is worth noting that the CTA has ruled that the amnesty provision of RA 9399 covers the deficiency taxes assessed on Puregold and rejected the arguments raised on the matter by the CIR. It cannot be emphasized enough that the findings of the CTA merit utmost respect, considering that its function is by nature dedicated exclusively to the consideration of tax problems. X x x. The issue on the coverage and applicability of RA 9399 to Puregold has already been addressed and disposed of by the CTA when it pointed out that RA 9399 covers all applicable tax and

duty liabilities, inclusive of fines, penalties, interests and other additions thereto. X x x. As adopted by the dissent, it is the CIR's position that even without the aforesaid rulings, respondent as a non-chartered SEZ remains liable for the payment of VAT and excise taxes on its importation of alcohol and tobacco products from January 1998 to May 2004.

“We cannot sanction the CIR's position as it would amount to nothing less than an emasculation of an otherwise clear and valid law RA 9399. Clearly, if the Court would uphold the CIR's argument that even before the rulings in John Hay and Coconut Oil, respondent's duty-free privileges were already withdrawn by the 1997 NIRC, this Court would in effect be negating the remedial measure contemplated in RA 9399 against these rulings.

“In other words, without Our ruling in Coconut Oil, Puregold would have had continued to enjoy tax-free importation of alcohol and tobacco products into the CSEZ. It cannot, therefore, be gainsaid that the subject deficiency taxes first assessed by the BIR in November 2005, just months after the promulgation of Coconut Oil, accrued because of such ruling. Hence, with more reason, these deficiency taxes are encompassed by the remedial measure that is RA 9399.

“A holding to the contrary, as proposed by the dissent, will only perpetuate the nauseating, revolting, and circuitous exercise of governmental departments limiting, offsetting, and ultimately cancelling each other's official acts and enactments. Consider: in Coconut Oil, this Court annulled Sec. 5 of EO 80; then, Congress enacted RA 9399 to offset the full effect of such annulment by granting an amnesty; and, now, the petition would have this Court nullify the amnesty in RA 9399 by withdrawing the protection extended by the law to CSEZ operators from its liabilities for the period prior to the promulgation of John Hay and Coconut Oil.

“It need not be emphasized that stability and predictability are the key pillars on which our legal system must be founded and run to guarantee a business environment conducive to the country's sustainable economic growth. Hence, this Court is duty-bound to protect the basic expectations taken into account by businesses under relevant laws, such as RA 9399.

“For this reason, this Court subscribes to the doctrine of operative fact, which recognizes that a judicial declaration of invalidity may not necessarily obliterate all the effects and consequences of a void act prior to such declaration. X x x.”

Finally, the Court emphasized: *“It has been declared that “the power to tax is not the power to destroy while this Court sits.” This Court cannot now shirk from such responsibility. It must at all times protect the right of the people to exist and subsist despite taxes.”*

The SC cancelled and set aside the assessment against respondent Puregold Duty Free, Inc.



Clark Investors and Locators Association, Inc., Petitioner, v. Secretary Of Finance and Commissioner of Internal Revenue, Respondents, G.R. No. 200670, July 06, 2015 (Villarama, Jr., J.)



Fact/s:

Succinctly put, this case involves the following circumstances:

“This is a petition for certiorari with a prayer for the issuance of a temporary restraining order and/or writ of preliminary injunction to annul and set aside Revenue Regulations No. 2-2012 (RR 2-2012) issued by the Department of Finance (DOF) on February 17, 2012 upon recommendation of the Bureau of Internal Revenue (BIR). Petitioner Clark Investors and Locators Association, Inc. claims that RR 2-2012,

which imposes Value Added Tax (VAT) and excise tax on the importation of petroleum and petroleum products from abroad into the Freeport or Economic Zones, is void and contrary to Republic Act (RA) No. 7227, otherwise known as the Bases Conversion and Development Act of 1992, as amended by RA No. 9400.”

X x x.

“Based on Section 12 (c) x x x, in lieu of national and local taxes, all businesses and enterprises operating within the Subic Special Economic Zone shall pay a preferential gross income tax rate of five percent (5%). In addition, Section 12 (b) also provides that such businesses and enterprises shall be exempt from the payment of all taxes and duties on the importation of raw materials, capital, and equipment into the Subic Special Economic Zone. Meanwhile, on March 20, 2007, Congress enacted RA No. 9400 which extended the aforementioned tax and fiscal incentives under RA No. 7227 to the Clark Freeport Zone.”

Issue:

“Petitioner filed the instant petition alleging that respondents acted with grave abuse of discretion in issuing RR 2-2012. It argues that by imposing the VAT and excise tax on the importation of petroleum and petroleum products from abroad and into the Freeport or Economic Zones, RR 2-2012 unilaterally revoked the tax exemption granted by RA No. 7227 and RA No. 9400 to the businesses and enterprises operating within the Subic Special Economic Zone and Clark Freeport Zone.”

Held:

The Supreme Court (SC) stressed that for a special civil action for certiorari to prosper, the following requisites must concur:

“(1) it must be directed against a tribunal, board, or officer exercising judicial or quasi-judicial functions; (2) the tribunal, board, or officer must have acted without or in excess of jurisdiction or with grave abuse of discretion amounting to lack or excess of jurisdiction; and (3) there is no appeal or any plain, speedy, and adequate remedy in the ordinary course of law.”

The SC further elucidated:

“Conformably with our ruling in BPI Leasing Corporation that the application of

Section 244 of the NIRC is an exercise of quasi-legislative or rule-making powers of the Secretary of Finance, and since RR 2-2012 was issued by the Secretary of Finance based on Section 244 of the NIRC, such administrative issuance is therefore quasi-legislative in nature which is outside the scope of a petition for certiorari. "Secondly, while this case is styled as a petition for certiorari, there is, however, no denying the fact that, in essence, it seeks the declaration by this Court of the unconstitutionality and illegality of the questioned rule, **thus partaking the nature, in reality, of one for declaratory relief over which this Court has only appellate, not original, jurisdiction.** Section 5, Article VIII of the 1987 Philippine Constitution provides: Sec. 5. The Supreme Court shall have the following powers:

"(1) Exercise original jurisdiction over cases affecting ambassadors, other public ministers and consuls, and over petitions for certiorari, prohibition, mandamus, quo warranto, and habeas corpus. (2) Review, revise, reverse, modify, or affirm on appeal or certiorari as the law or the Rules of Court may provide, final judgments and orders of lower courts in: "(a) All cases in which the constitutionality or validity of any treaty, international or executive agreement, law, presidential decree, proclamation, order, instruction, ordinance, or regulation is in question. x x x x

"Accordingly, **this petition must fail because this Court does not have original jurisdiction over a petition for declaratory relief even if only questions of law are involved.** The special civil action of declaratory relief falls under the exclusive jurisdiction of the Regional Trial Courts. The Rules of Court is explicit that such action shall be brought before the appropriate Regional Trial Court." (Emphasis supplied)

The High Court decided not to further tackle the case as it proclaimed:

"Lastly, although this Court, the Court of Appeals and the Regional Trial Courts have concurrent jurisdiction to issue writs of certiorari, prohibition, mandamus, quo warranto, habeas corpus and injunction, such concurrence does not give the petitioner unrestricted freedom of choice of court forum. X x x.

"The rationale for this rule is two-fold: (1) it would be an imposition upon the precious time of this Court; and (2) it would cause an

inevitable and resultant delay, intended or otherwise, in the adjudication of cases, which in some instances had to be remanded or referred to the lower court as the proper forum under the rules of procedure, or as better equipped to resolve the issues because this Court is not a trier of facts. We thus affirm the judicial policy that we shall not entertain a direct resort to this Court unless the remedy cannot be obtained in the appropriate courts, and exceptional and compelling circumstances, such as cases of national interest and of serious implications, justify the availment of the extraordinary remedy of writ of certiorari. In *Chamber of Real Estate and Builders Association, Inc. (CREBA) v. Secretary of Agrarian Reform*, we provided examples of such exceptional and compelling circumstances, to wit:

"Exceptional and compelling circumstances were held present in the following cases: (a) *Chavez v. Romulo*, on citizens' right to bear arms; (b) *Government of [the] United States of America v. Hon. Purganan*, on bail in extradition proceedings; (c) *Commission on Elections v. Judge Quijano-Padilla*, on government contract involving modernization and computerization of voters' registration list; (d) *Buklod ng Kawaning EIBB v. Hon. Sec. Zamora*, on status and existence of a public office; and (e) *Hon. Fortich v. Hon. Corona*, on the so-called "Win-Win Resolution" of the Office of the President which modified the approval of the conversion to agro-industrial area.

"In the case at bar, petitioner failed to allege such exceptional and compelling circumstances which justify a direct resort to this Court. In view of the serious procedural and technical defects of the petition, we see no need for this Court to resolve the other issues raised by the petitioner."

Petition was dismissed by the Court.





**Technical Working Group (TWG) Meeting
on the exemption of BIR and BOC from the Salary Standardization Law**

Senate of the Philippines, Committee Room 1
March 29, 2017



Tax Management Association of the Philippines (TMAP) General Membership Meeting and Tax Seminar

I'M Hotel, Kalayaan Ave. Makati City
March 30, 2017



STSR's Director General, Atty. Rodelio T. Dascil, Resource Person and Speaker before the Tax Management Association of the Philippines (TMAP) General Membership Meeting and Tax Seminar on Updates on Tax Reform for Acceleration.



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