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TAX LAW FOR BUSINESS

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Evolution of taxpayer's rights and remedies

It is true that the power to tax is so powerful that if abused, it can destroy enterprises and even lives. That is why law and jurisprudence have tried to set up safeguards to prevent possible abuses. In recent years, these safeguards have continuously evolved. Some for the better, and some for the worse.

First, the initial letter given by the Bureau of Internal Revenue (BIR) is either a Letter Notice (LN) or a Letter of Authority (LOA). The LN notifies a taxpayer that there is a discrepancy in the BIR data on its sale and purchases as compared to its third-party suppliers or clients. The LOA, on other hand, notifies a taxpayer that an examination will be conducted for a particular taxable year. Both letters will notify the taxpayer that there will be an examination for possible tax deficiency, and the name of the examiners assigned to conduct the same. It has been a practice by some examiners to treat an LN and an LOA as one and the same. In a recent decision, the Supreme Court (SC) was categorical in saying the only valid letter that authorizes an examiner to conduct an investigation is an LOA. LN does not. It cannot be used as a substitute of an LOA.

Second, the BIR, in order to expedite reassignments of dockets, only issue a memorandum of assignment (MOA) instead of issuing a new LOA. If an examiner is only armed with a MOA, his authority to examine the books of account of a taxpayer is defective. His tax assessments will be considered void. The court, in many decisions, made it clear that a MOA cannot take the place of an LOA.

Third, Preliminary Assessment Notice (PAN) is mandatory. Absence of a PAN makes an assessment void. Not only that, a taxpayer must be given an inviolable period of 15 days to reply to the PAN. Failure to observe this period will make an assessment void. For example, if a taxpayer received a PAN on June 1, then he or she has until June 16 to file a reply. If the BIR issues a Final Assessment Notice (FAN) on June 14 and the taxpayer received it on June 17, due process is not observed. In other words, the BIR must not prepare the FAN within the 15-day period that is given to a taxpayer to reply to the PAN.

Fourth, the FAN must indicate a definite due date. There is a Court of Tax Appeals (CTA) ruling (CTA Case 8227), which says that a definite date for payment in a FAN is not necessary as the due date can be derived, i.e, until when the interest is computed. The SC recently made it clear that this is not enough. A definite due date must be indicated in the FAN for it to be considered valid.

Last, the CTA recently ruled that service of PAN, through registered mail, must be received by the taxpayer or its agent. If the taxpayer denies receipt, the burden of proof of receipt shifts to the BIR. In a recent CTA Case (CTA Case 9039), the assessment against Mrs. Dionesia Pacquiao was declared void since the BIR failed to prove that Analyn Abrera, who received the registered mail, is an agent of Mrs. Pacquiao. The BIR also failed to prove that Abrera lives in Mrs. Pacquiao's registered address. In other words, the BIR must prove not only that the PAN was mailed at the registered address of the taxpayer, but also that his or her authorized agent received the mail.

Taxpayer's rights and remedies continuously evolve with jurisprudence. Unfortunately, it also means that some of these rights and remedies are not cast in stone. They change over time.

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