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TAX LAW FOR BUSINESS

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Last-minute local tax reminders

SECTION 167 of the Local Government Code (LGC) of 1991 mandates the payment of all local taxes, fees and charges within the first 20 days of January or of each subsequent quarter, as the case may be. The sanggunian concerned may, for a justifiable reason or cause, extend the time for payment of such taxes, fees, or charges without surcharges or penalties, but only for a period not exceeding six months. So, by this time, all business enterprises must have been able to pay at least a quarter of their business taxes due for the year, otherwise, an interest and surcharge for late payment must have begun to accrue.

Some local government units (LGUs) do extend the time for payment of such taxes, fees, or charges without surcharges or penalties. One crucial point taxpayers should consider in cases where there is such an extension for payment is that, the extension must be authorized by the sanggunian concerned through a duly enacted ordinance. The local treasurer or the local chief executive is not authorized to extend the payment of such taxes without the authority of the sanggunian concerned.

Local taxation, like national taxation, is legislative in nature. Section 132 of the LGC vests upon the local sanggunian the power to impose a tax, fee, or charge or to generate revenue through an appropriate ordinance. I must emphasize that what the LGC requires is an ordinance and not merely a resolution as the terms ordinance and resolution are not synonymous. An ordinance is a law, but a resolution is merely a declaration of the sentiment or opinion of a lawmaking body on a specific matter. An ordinance possesses a general and permanent character, but a resolution is temporary in nature (GR 156684).

We should be watchful on this as some authorities may be in a hurry to grant relief to some taxpayers without going through the regular process, all for the sake of getting a favorable image in time for the May 2016 elections. Of course, this will pose a big problem later on, especially if the incumbent officials will not have a good fortune this coming election. Certainly, they will be subjected to close scrutiny by their successors.

Another significant point which is often violated by local tax authorities is the determination of the tax base of the imposable Local Business Tax (LBT). I know of some local tax authorities who withhold the issuance of business permits if the declared tax base is lower than the amount declared in the preceding year. This is without basis as the LGC is categorical that business tax should be based on the taxpayer's gross receipts for the preceding calendar year (See Section 143 of LGC).

It must be pointed out that for the purpose of determining the proper LBT imposed under the LGC, gross sales or receipts include payments actually or constructively received by the taxpayer (Section 131[n], LGC). Some local tax authorities require the submission of the taxpayer's financial statements (FS) and the LBT is computed on the basis thereof. It must be pointed out that the FS is not necessarily the correct basis in determining the LBT since FS is generally prepared following the accrual basis of accounting. Under the LGC, the basis of LBT especially for service providers is gross receipts and not gross revenue.

While the LGC authorizes the imposition of LBT on the taxpayer's gross receipts in the preceding calendar year, in at least one case, however (CTA Case EB 501), the CTA allowed the so called Presumptive Income Level of Assessment Approach (PILAA) as basis for the imposition of LBT.

The PILAA is based on "presumptive income" which is a presumed or assumed income based on known or proven factors including information from the industry such as average customers per day, inventory turnover and mark-ups, and other measurable and verifiable indicators specific to the nature of business. However, the court said that PILAA may be used only if the taxpayer is unable to provide proof of its income. The PILAA does not give the local government unit a carte blanche authority to increase the gross sales/receipts of the taxpayers within its jurisdiction and on that basis, assess the local business tax.

And again, the use of PILAA should be authorized by an ordinance, otherwise, its use is illegal.

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