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TAX LAW FOR BUSINESS

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Compromise and Abatement Remedies to the Court

The law protects you from excessive and bloated assessments by providing ways that you can question the same. Normally, you file a protest against a final assessment that you think is wrong.

But like any other normal route, there is always a detour. You may apply for a compromise or for abatement while the normal assessment process is ongoing, or you may choose to just apply for a compromise or abatement and disregard the normal assessment process. You may file for a compromise on the following grounds: a) doubtful validity; or b) financial incapacity. On the other hand, you may file for abatement on the ground of: a) unjust or excessive assessment; or b) the cost of collection does not justify the collection of the amount due.

Just recently, the revenue commissioner issued Revenue Memorandum Order 4-2016 which simplified the processing of application for compromise settlements and abatement cases. According to the RMO, once the Revenue Regional Office denies the application for compromise or abatement, it shall be considered final. What happens when your application for compromise or abatement is denied? What is your remedy? In a recent case (CTA Case

8816), the Court of Tax Appeals explained that it has jurisdiction to rule on the validity of the denial of an application for abatement. Although it has not ruled on its jurisdiction as regards applications for compromise, it seems that the court will also take jurisdiction of the same. According to the court, it has jurisdiction on all decisions of the commissioner on “other matters” arising under the Tax Code. Apparently, other matters include decisions on applications for abatement and applications for compromise.

But we all know that a compromise must be consensual. In other words, both parties must approve the terms of the compromise for it to prosper. But questions will arise on whether the court can impose on the commissioner to accept an application for compromise. Can the court determine for the commissioner that the tax assessment has doubtful validity or that the company is financially incapacitated? If the court can take a second look at a decision of the commissioner on “other matters”, then the answer is yes. The taxpayer, though, must present evidence that it qualifies under the two stated grounds and that there is a grave abuse of discretion by the commissioner in denying the application.

Like any other detour, elevating a denial of an application for compromise or abatement to the court has its own consequences. How the decision of the commissioner will be questioned and the level of proof required to overturn the commissioner’s discretion is a novel matter. But what is important is that taxpayers are given more remedies to protect themselves against unjust tax assessments.

What is clear is that the power to deny or approve an application for abatement and compromise is not absolute. The commissioner cannot just deny applications out of whim because the court will have the final say whether the commissioner has exercised her discretionary power judiciously.

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