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Remedies against 'Oplan Kandado'

'Oplan Kandado" is perhaps one of the programs of the Bureau of Internal Revenue (BIR) most feared by taxpayers. Under Oplan Kandado, a business may be suspended or temporarily closed due to noncompliance with essential value-added tax (VAT) requirements, such as the issuance of receipts, filing of returns, declaration of taxable transactions, taxpayer registration and payment of the correct amount of taxes. A significant number of business establishments have been closed under this program and, for this year, the BIR has included the strengthening of the implementation of Oplan Kandado as one of its priority programs.

Having said that, it must be emphasized that a business establishment cannot just be closed down without affording the taxpayer due process or the opportunity to refute the findings of the BIR.

Revenue Memorandum Order (RMO) 3-2009, which lays down the guidelines for the implementation of Oplan Kandado, provides that a taxpayer shall receive two notices: the 48-hour notice and the five-day VAT compliance notice (VCN). If a report of a revenue officer recommending suspension or closure of a business is approved, a 48-hour notice shall be issued to the taxpayer requiring him to explain why he should not be sanctioned administratively, by suspension of his business or temporary closure of his establishment, and, criminally, for violation of the Tax Code. The remedy of the taxpayer in this instance is to file an "explanation under oath" within 48 hours from receipt of the 48-hour notice.

Upon submission of the said explanation or the nonsubmission thereof, the BIR shall then decide whether to terminate the case or to pursue the administrative or criminal action. If the BIR decides to do the latter, the five-day VCN shall be issued to the taxpayer. The remedy of the taxpayer at this juncture is to file a “response” or “protest” within two days from receipt of the five-day VCN. A response shall be issued by the BIR either granting the taxpayer’s protest or denying the same.

What then is the recourse of the taxpayer if his protest to the five-day VCN is denied? The answer to this has been the subject of a recent decision of the Court of Tax Appeals (CTA). In Commissioner of Internal Revenue (CIR) v. Elric Auxiliary Services/Sacred Heart Gas Station, CTA EB 1174, March 8, the CTA ruled that it has jurisdiction over a denial of a taxpayer’s protest to the five-day VCN. The CTA stressed that its jurisdiction is not limited to decisions of the CIR on assessments or refunds. It, likewise, has jurisdiction over decisions of the CIR on “other matters arising from the National Internal Revenue Code or other laws or part of the law administered by the BIR.” This means that upon receipt of the denial of the protest to the five-day VCN, the remedy of the taxpayer is to elevate the same to the CTA within 30 days from receipt of the denial letter.

Note also that part of the due- process requirement is that the notices must state the factual and legal bases of the BIR’s findings. RMO 3-2009 expressly provides that the five-day notice must state that particular provisions of the Tax Code that was violated. Further, in the above-cited case, the CTA stressed that the 48-hour notice and the five-day VCN cannot just contain the result of the surveillance, which resulted to the VAT liability. The notices must disclose the basis of the BIR’s findings. The BIR must describe how the surveillance was conducted and explain the methods used in arriving at their estimates. Absent these, such notices can be declared null and void.

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