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TAX LAW FOR BUSINESS

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Only five years to collect

THERE are two important prescriptive periods in the Tax Code that taxpayers must be aware of, i.e., the three-year period to assess and the five-year period to collect by the Bureau of Internal Revenue (BIR). Unfortunately, the five-year prescriptive period to collect, is less used and less understood by many.

Internal revenue taxes must generally be assessed within three years counted from the period fixed by law for the filing of the tax return or the actual date of filing, whichever is later. With regard to collection of taxes, the BIR has only five years following the assessment to enforce collection.

Since tax is the lifeblood of the country, the Tax Code provides that no court shall have the authority to stop or to restrain the collection of any national internal revenue tax. Only the Court of Tax Appeals (CTA) may issue an order for the suspension of collection of tax only upon payment by the taxpayer of a bond that is double the amount that is being assessed.

Once a Final Assessment Notice (FAN) has been issued, the five-year period to collect starts to run (CTA EB Case 1204, April 16, 2014). There is no court that will prevent the BIR from enforcing collection, except the CTA.

The question arises when a case is elevated to the CTA and there is no order for suspension of collection of tax, as well as payment by the taxpayer of a bond that is double the amount. Does the five-year prescriptive period to collect still run?

The Supreme Court (SC) in *Protector Services Inc. v Court of Appeals* GR 118176, April 12, 2000, cited in CTA Case 8507, ruled that the filing of action before the courts validly suspended the running of the prescriptive period to collect taxes because it, in effect, prohibits the tax authorities from collecting taxes.

There appears to be a contradiction on this pronouncement by the SC that the filing of action before the courts suspends the running of the prescriptive period because the Tax Code is categorical in saying that no court can restrain the collection of tax. If no court issues a suspension order, there is nothing that prohibits the tax authorities from enforcing the same.

Taxpayers must also be aware that upon issuance of the FAN, a taxpayer is entitled to file a protest letter to question the FAN. If the tax authorities do not agree with the protest, then a Final Decision on Disputed Assessment (FDDA) will be issued, where the taxpayer has the right to elevate the case to the CTA. But taxpayers must be aware that if the BIR does not issue an FDDA five years from the issuance of the FAN, the BIR's right to collect is lost. (CTA Case EB 1204, April 16, 2016)

In other words, once a FAN is issued, the five-year period to collect starts to run. The mere filing of a case in court does not prohibit the tax authorities from enforcing collection because no court can enjoin the collection of tax. There must be a suspension order and it must come from the CTA. But this view seems to be contrary to the above pronouncement of the SC, where it held that a mere filing of a case in court by a taxpayer suspends the running of the period to collect by the BIR.

Because it is less understood and less discussed by jurisprudence, the defense of late collection must be further explored, so that any confusion will be clarified and conflicting provisions of law will be reconciled.

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