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TAX LAW FOR BUSINESS

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Right to remain silent?

Any form of business visitation in execution of letters of authority/electronic letters of authority/audit notices, letter notices, or mission orders, including activities connected directly in the implementation of letters of authority pertaining to Run After Tax Evader (RATE) Program is now resumed, following the issuance of Revenue Memorandum Circulars (RMCs) 91-2016 and 89-2016, which both lifted the suspension of field audit and other field operations of the Bureau of Internal Revenue (BIR) under RMC 70-2016.

More aggressive collection effort of the BIR is expected to be in place in the days ahead in an attempt to raise the much-needed fund to defray the anticipated increase in government spending for infrastructure projects and to fund the pay hike of some government workers as promised by the President, in an effort to clean up the country of corruption and drug mess.

In line with this, taxpayers are reminded of their due process rights to be informed of the factual and legal bases of the assessments issued against them with their corresponding right to answer such assessments or the right to remain silent on such assessment, if I may say so.

Basic is the right of the taxpayer to receive assessment notices by himself or herself or his or her duly authorized representative, with the corresponding right to answer thereto.

In CTA EB 1260, the Court of Tax Appeals (CTA) en banc voided an assessment issued by the BIR to a taxpayer due to the apparent violation of the taxpayer's right to due process well guaranteed under the Constitution. In this case, the taxpayer failed to reply to a preliminary assessment notice (PAN) issued by the BIR to the taxpayer via personal service. The PAN was served to a person who turned out to be not connected at all to the taxpayer. Although the PAN was served in the office of the taxpayer, the receipt of the same does not bind the taxpayer as the person who received it was not duly authorized. The BIR failed to prove that the person who received the PAN is an employee or an authorized representative of the taxpayer. Hence, the subject PAN was considered not properly served to the taxpayer. Consequently, the assessment must fail.

Interestingly, in another case, the Court of Tax Appeals in CTA Case 8654 sustained the validity of an assessment despite the fact that the final assessment notice (FAN) issued against the taxpayer was not received by a person who was neither an employee of the taxpayer nor designated as authorized representative. In this case, although the FAN was not duly served to the taxpayer's authorized representative, the CTA ruled in favor of the BIR. The CTA ruled that the subsequent act of the taxpayer in filing an administrative protest on the FAN has the effect of ratifying the authority of the person who received the FAN.

Had the case been disposed of differently if the taxpayer failed to file a protest to the FAN, or, shall I say, the taxpayer opted to remain silent on such FAN? I believe so.

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