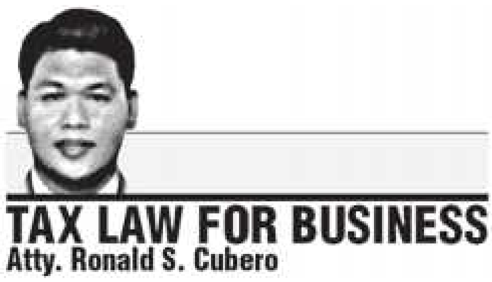

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Final decision appealable to CTA

EXAMINATION of taxpayers is again expected to come into full swing after the suspension of the field audit and other field operations of the Bureau of Internal Revenue (BIR) for the examination of taxpayer's books of accounts and other transactions was lifted.

In every examination, the BIR and its examiners are required to follow the due process requirements in the selection of taxpayers for examination and in the conduct of audit and issuance of audit results. Failure on the part of the BIR to observe the procedures required of it may result in the nullity of the assessment. Just as the BIR is required to observe these procedures, the taxpayer should also observe certain prescribed requirements in contesting an assessment. Failure of the taxpayer to observe the rules in contesting the assessment may result in the assessment becoming final and executory.

One of the remedies of last resort available to taxpayers in contesting an assessment is to appeal a final decision of the commissioner or his authorized representative to the Court of Tax Appeals (CTA). This final decision is usually referred to as Final Decision on Disputed Assessment (FDDA), which is issued after the filing of a protest by the taxpayer. The rule is quite clear in this regard—if the taxpayer wishes to question an unfavorable decision to the CTA, the taxpayer has to appeal to the CTA within 30 days from the receipt of the FDDA.

Following this rule, all that the taxpayer needs to do before elevating its case to the CTA is to wait for the FDDA. There are many instances, however, where no FDDA is issued. Instead, the documents received by the taxpayer after the filing of its protest is any or all of the following: Preliminary Collection Notice (PCN), Final Notice Before Seizure (FNBS), Warrant of Distraint and/or Levy (WDL), subpoena for collection case filed in court, demand letter, among others.

In these instances, which is considered as the final decision that is appealable to the CTA? Apparently, previous decisions of the Courts are not consistent. In a recent decision (CTA Case 8700, August 8, 2016) by the CTA, the said Court cited previous Supreme Court cases involving similar issue. In a 1984 case (GR L-59758, December 26, 1984), the SC considered the date when the final demand letter was issued and not the date of the WDL in determining whether the appeal was timely filed. In this case, the demand letter expressly stated that it is the BIR’s final decision. In a 1988 case (GR L-28896, February 17, 1988), the SC declared that, as a rule, the WDL is the proof of finality of the assessment and is tantamount to an outright denial of the request for reconsideration. Apparently, the pertinent doctrine laid down in this case abandoned the ruling in 1984.

Subsequently, in a 1990 case (GR 66160, May 21, 1990), the SC treated the judicial action for collection instituted by the BIR as the FDDA. The SC emphasized that the BIR should always indicate to the taxpayer in clear and unequivocal language what constitutes a final action on disputed assessment. Seemingly, this case abandoned the 1988 ruling and adopted the doctrine laid down in 1984. The SC, likewise, in 2001 (through GR 135210, July 11, 2001), held that the FNBS is tantamount to a denial of request for reconsideration because the tenor of it indicates that the taxpayer was being given the last opportunity to pay. Clearly, the SC reiterated the earlier doctrine laid down in 1990 and 1984.

Guided by these jurisprudence, the CTA, in its recent ruling, adopted the 2001 SC decision. The Court stated that a WDL standing alone and without declaring that it is the BIR’s final decision, cannot be considered as an FDDA. In this case, after the taxpayer filed its protest, the taxpayer received a FNBS and subsequently a WDL. It is upon the receipt of the WDL that the taxpayer appealed to the CTA.

In deciding the case, the CTA noted that, unlike the PCN, and the Second Notice where the BIR also threatened to initiate collection proceedings against the taxpayer, the title of the document as FNBS is, in itself, an indication that it is not a mere reiteration of the BIR's demand for taxpayer to pay. It is BIR's final decision to hold taxpayer liable to pay.

This recent CTA decision can be used as a guide as to when an appeal should be made to the CTA, if instead of FDDA, other document is issued to a taxpayer, such as PCN, FNBS and WDL. What seems to be considered a final decision appealable to the CTA depends on the tenor of the notice or letter issued by the BIR. This is, however, still subjective and confusing especially to ordinary taxpayers who are not well versed in the developments in jurisprudence. Perhaps, as part of the series of tax-reform programs of the current administration, the rules on appeal to the CTA should be made clearer.

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