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Atty. Ayesha Hania B. Matanog
TAX LAW FOR BUSINESS

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Payment under protest: Local business tax

Local government units (LGUs) are constitutionally granted the power to generate their own sources of revenues. This power necessarily includes devising procedures and remedies aimed at providing means for the effective and efficient collection of taxes. Such rules, however, which are enacted through local tax ordinances, should be made in accordance with the guidelines and limitations set by Congress through the Local Government Code (LGC) of 1991, and its amendments.

Controversies usually arise when there are differences between the guidelines provided in the LGC and in the local tax ordinance. One area where differences are usually encountered is with respect to the remedies available to taxpayers in contesting tax assessments issued by LGUs. There is no doubt that under the LGC, when an LGU issues a notice of assessment, the concerned taxpayer may contest the assessment by filing a written protest within a prescribed number of days from the receipt of the assessment. The same rule had been incorporated in the local revenue codes of LGUs.

The controversy lies on the requirement by some local revenue codes for the payment under protest, before said protest can be entertained. With respect to real-property taxes, this is not an issue since the LGC is explicit on this matter. To be specific, Section 252 of the said code provides that no protest shall be entertained unless the taxpayer first pays the tax. This is very specific to real property-tax assessment.

There is no similar provision insofar as local business-tax assessment is concerned. In the absence of a specific provision in the LGC, some LGUs have applied the same rule required in protesting real property-tax assessment. These local governments contend that since there is no prohibition in applying the rules in real property-tax assessment, the LGU is not prohibited from extending the same requirement in local business-tax assessment. To them, this is part of the power granted to the LGUs to devise means to accomplish tax collection in an effective manner. Hence, some local revenue codes include provision similar to real property-tax assessment requiring payment as a condition for the validity of a protest against local business-tax assessment.

This is one of the issues brought before the Court of Tax Appeals in C.T.A. AC 139, promulgated on August 11. In this case, the city treasurer of Davao refused to act on the protest of the taxpayer assailing the assessment of deficiency local business taxes. The city treasurer did not act on the protest because there was no prior payment as required by the Revenue Code of the city. The court ruled that payment under protest is not required for local business taxes. The court reminded the basic rule that all ordinances should be in conformity with the law. Since payment under protest is not required under the LGC, a local ordinance cannot require such prior payment. In fact, the court held that the city of Davao should not supply additional requirements onerous to the taxpayer. The provision in the Revenue Code of Davao has no legal basis.

With this ruling, it is hoped that the issue will be finally put to rest. Requiring payment under protest in contesting real property-tax assessment is acceptable and reasonable and with legal basis, but certainly not for local business-tax assessments.

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The author is a junior associate of Du-Baladad and Associates Law Offices (BDB Law), a member- firm of World Tax Services (WTS) Alliance.