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TAX LAW FOR BUSINESS

*BDB Law's "Tax Law for Business" appears in the opinion section of **Business Mirror** every Thursday.*

Balancing the presumption of regularity with the right to be informed

Section 228 of the National Internal Revenue Code (NIRC) of 1997 codifies an integral right of the taxpayer to due process. It is the provision that mandates the Bureau of Internal Revenue (BIR) to inform any taxpayer found to have allegedly failed to pay proper taxes, of the law and the facts on which the BIR's assessment was made. This is an important provision, as it ensures that the spirit of fair play is upheld, and that the taxpayer is given a fighting chance of disproving the BIR's findings. The violation of this provision shall invalidate the BIR's assessment for failure to afford the taxpayer its right to due process.

Given the value of the rights being preserved by Section 228 of the NIRC of 1997, as amended, it is therefore imperative that taxpayers are clearly aware of what the provision grants them. In a recent decision of the Court of Tax Appeals (CTA) en banc, the Court had the occasion to explain what Section 228 of the NIRC of 1997, as amended, required from the BIR. In CTA EB 1338, the Tax Court struck down an assessment for failure to "provide details on how the figure assessed came about." Going further, the Court en banc declared that "the details of discrepancies reveals that the assessments were made 'based on information' without any elaboration as to the kind of information and how the figures were arrived at." Reading the decision, it appears that the CTA en banc is not satisfied with just the computation

of the alleged deficiency. The numbers stated by the BIR must be duly substantiated with details explaining where the figures were taken from.

This pronouncement of the CTA en banc helps counterbalance the presumption of correctness in favor of the BIR. Before such a presumption may be invoked, it must first be proved that the assessment has, in the words of the Court, “rational basis”. The same rule also applies to allegations of fraud. The BIR may not impute fraud on taxpayers, for purposes of extending the prescriptive period of assessments, without factual basis. Also in the case of CTA EB 1338, the CTA EB said: “In civil tax fraud cases, the burden of proof is always on the CIR [Commissioner of internal revenue] to prove that the taxpayer committed fraud intentionally.” In the said case, the taxpayers were imputed with fraud for failure to report income received through check payments.

However, it was later found that the checks in question could not be linked to the taxpayer. The CTA en banc was not satisfied with this finding as basis for imputing fraud. The Court expressly declared that there was failure to establish fraud committed by the taxpayer.

One important takeaway from the CTA en banc decision is that there are certain, immutable rights granted to taxpayers under the law. These rights, when properly invoked, will be honored by the Courts.

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