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TAX LAW FOR BUSINESS

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Assessment based only on Letter Notice is void

Due to technological advances, taxpayers can actually find themselves under the scrutiny by the Bureau of Internal Revenue (BIR), even though no detailed examination of the books and records is conducted. This is possible through the BIR's Reconciliation of Listing for Enforcement (Relief) System, which can detect possible tax leaks by matching the information available to the BIR from different sources. If the matching of data reveals discrepancies, the BIR may issue what is called a "Letter Notice (LN)."

Basically, LN is a notice that informs the taxpayer of discrepancies on their reported information, such as sales and purchases, a result of matching said information with the data received from other sources, such as the customers and suppliers. This is to be distinguished from the statutorily required a Letter of Authority (LOA), which is the authority given to a revenue officer, empowering him to examine the books of account and other accounting records of a taxpayer.

Using the Relief System, there are numerous instances where the BIR has proceeded to issue a Preliminary Assessment Notice and then the Final Assessment Notice. There are a number of instances where, even in the absence of a LOA, the BIR issued assessment notices simply on the basis of the discrepancies gathered through the Relief System and summarized through LN. And fortunately for the BIR, the Tax Court, in a number of decisions, agreed with the approach taken by the BIR. According to the Tax Court, the absence of a LOA does not invalidate the assessment if there is no examination of the taxpayer's books of accounts. A finding of discrepancies with the aid of matching of computer data with other information or returns filed by the taxpayer or by third parties is deemed sufficient to initiate the assessment process against the taxpayer.

On April 5, however, the Supreme Court (SC), in GR 222743, ruled that LOA cannot be dispensed with just because none of the financial books or records being physically kept was examined. The SC opined that the statutory requirement of issuance of a LOA is not dependent on whether the taxpayer may be required to physically open his books or financial records, but only on whether a taxpayer is being subject to examination. A LN is issued only for the purpose of notifying the taxpayer that a discrepancy is found based on the BIR's Relief System and nothing more.

The Court also took note of Revenue Memorandum Order (RMO) 32-2005, which states that in case the discrepancies shown in the LN remained unresolved within 120 days from issuance of the LN, the revenue officer shall recommend the issuance of a LOA to replace the LN. Thus, following this RMO, due process requires that the revenue officer should secure first a LOA before proceeding with the further examination and assessment of a taxpayer. The Court cannot convert or treat the LN into the LOA required under the law. If no LOA is secured, the assessment on the basis of LN is void.

In essence, the discrepancies noted through the Relief System and communicated to the taxpayer through LN is only an indicator that a taxpayer could have possibly reported incorrect information. Thus, it should not result in the outright issuance of assessment. Instead, if the BIR so desires, it may issue a LOA to conduct further investigation on the possible tax leak.

While technology should be adopted to strengthen the tax-enforcement capacity of the BIR, the use of such innovative methods of examining taxpayers should not compromise the taxpayer's right to due process. With this SC ruling, it is hoped that assessments be made in accordance with and within the limits of the law, and in a manner that respects the rights of taxpayers.

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