



TAX LAW FOR BUSINESS
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Protesting a tax assessment

It has been said that taxes are the lifeblood of the government. It is the means by which a country or state supports itself, to pay for and render basic services to its people. It is therefore essential that the government be armed with the necessary tools to be able to collect the proper amount of taxes from delinquent taxpayers.

One such tool available to the government is the examination of the books of accounts and accounting records and the subsequent issuance of an assessment notice to the taxpayer if the findings warrant the assessment of taxes. An assessment refers to the official action of an administrative officer in determining the amount of tax due from a taxpayer. It must contain the amount which the officer believes to be the liability of the taxpayer, as well as a demand to pay the same within a stated period of time.

This assessment is usually issued by the BIR after it has conducted an audit and examination of the books of account and other accounting records. If after such audit, it is determined by the revenue officer that the taxpayer is liable for deficiency taxes, the BIR informs the taxpayer through the issuance of a Preliminary Assessment Notice (PAN).

This PAN must show in detail the facts and the laws, rules and regulations on which the assessment is based. A taxpayer is then given a period of 15 days within which to file a reply. If the BIR is not satisfied with the reply filed by the taxpayer, a Formal Assessment Notice (FAN) together with a letter of demand is issued to the taxpayer. A taxpayer who is issued a FAN need not despair. He is still given 30 days by tax law within which to file a protest.

For a protest to be valid, it must contain the following particulars:

- a. Name and address of the taxpayer;
- b. Nature of the request, whether it is a reinvestigation or reconsideration;
- c. Taxable periods covered;
- d. Assessment number;
- e. Date of receipt of assessment notice or letter of demand;
- f. Itemized statement of the findings to which the taxpayer agrees to be a basis for computing the tax due, which amount should be paid immediately upon the filing of the protest;
- g. Itemized schedule of the adjustments with which the taxpayer does not agree; and
- h. Statement of facts and/or law in support of the protest.

In preparing the protest, the nature of such protest, whether it be in the form of a request for reinvestigation or a request for reconsideration, must be meticulously and strictly evaluated. The option chosen by the taxpayer is significant since it would affect the running of the prescriptive period for the collection of the assessed tax.

A request for reconsideration refers to a plea for a re-evaluation of an assessment on the basis of existing records without need for additional evidence. It may involve both a question of fact, law, or both. On the other hand, a request for reinvestigation refers to a plea for re-evaluation of an assessment on the basis of newly-discovered evidence or additional evidence that a taxpayer intends to present in the investigation. It may also involve a question of fact or law or both.

The Supreme Court, in the case of Commissioner of Internal Revenue (CIR) vs. Philippine Global Communications, Inc. (G.R. No. 167146 dated October 31, 2006), had the occasion to rule that the main difference between these two types of protests lies in the records or evidence to be examined by internal revenue officers, whether these are existing records or newly discovered or additional evidence. A re-evaluation of existing records which results from a request for reconsideration does not toll the running of the prescription period for the collection of an assessed tax. The suspension of the running of the statute of limitations is limited to instances when reinvestigation is requested by a taxpayer and is granted by the CIR. A reinvestigation, which entails the reception and evaluation of additional evidence will take more time than a reconsideration of a tax assessment, which will be limited to the evidence already at hand. This is why the former can suspend the running of the statute of limitations on collection of the assessed tax, while the latter cannot. (*Bank of the Philippine Islands vs. Commissioner of Internal Revenue*, GR No. 139736 dated October 17, 2005)

With these considerations, it is necessary that taxpayers should, in filing protests against assessments, determine whether a request for reinvestigation or reconsideration should be the proper mode.