



TAX LAW FOR BUSINESS
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Prescription of BIR's Right to Assess

With the Bureau of Internal Revenue's mandate to meet its target and address revenue shortfall, it is not surprising if the Commissioner exercises all avenues within his power to intensify the collection of taxes. Among the powers of the Commissioner is his authority to authorize the examination of any taxpayer for the purpose of assessing the correct amount of tax.

This authority, however, is not without limitations. Among these limitations is the period fixed by law for the issuance of an assessment in order that the same may be considered valid, referred to as the prescriptive period or the statute of limitations. Such period is important because if the assessment is made after the lapse of the prescriptive period, the assessment may be considered ineffectual.

As a rule, the BIR has a period of three (3) years after the last day prescribed by law for the filing of the return within which to issue an assessment. The three-year period is counted from the date prescribed by law for the filing of the return. Hence, the prescribed filing date is crucial in determining whether or not an assessment is issued on time.

There is no uniform date for the reckoning of the prescriptive period for all types of taxes. Considering the different periods for the filing of various tax returns, the reckoning for the counting of the prescriptive period differs for each type of tax. For instance, for withholding taxes, the three-year period shall be counted from the date required for the filing of the monthly return and for value added tax, it shall be the prescribed filing date of the quarterly returns. For income tax, while a quarterly return is required to be filed, the prescriptive period is counted from the required filing date for the annual income tax return.

The law is also clear though that in case the return is filed beyond the period prescribed by law, the three (3)-year period shall be counted from the day the return was filed. Thus, if the return is filed later than the deadline for filing, the three-year period is counted from the date of actual filing.

What if an original return is filed and later amended? Should the running of the prescriptive period commence from the filing of the original return or the amended return?

The Courts have made a distinction. If the amended return is substantially different from the original return, the period of limitation of the right to issue assessment is counted from the filing of the amended return. However, the prescriptive period for assessment starts to run from the filing of the original return if the same is sufficiently complete to enable the Commissioner to intelligently determine the proper amount of tax to be assessed. The fact that amended returns are filed later neither starts anew the running of the statute of limitations nor extend the prescriptive period. I believe that these precedents still apply even with some modifications in the law.

There are, however, exceptions to the three-year prescriptive period. For instance, if before the expiration of the time prescribed for the assessment of the tax, both the Commissioner and the taxpayer agree in writing to the assessment after such time, the tax may be assessed within the period agreed upon. This is usually referred to as the waiver of the statute of limitations.

Does this mean that the prescriptive period is automatically extended once a taxpayer executes a waiver of the statute of limitations? Again, jurisprudence has taught us that the issuance of the waiver is not a unilateral act on the part of the taxpayer or on the part of the tax authority. Neither is a waiver a relinquishment of the taxpayer's right to invoke prescription unequivocally. It is in fact a bilateral agreement between the taxpayer and the tax authority that the period to issue an assessment is extended to a date certain.

As such, the waiver should comply with the procedures and requirements provided under Revenue Memorandum Order No. 20-90, which the BIR itself issued to implement the provisions of the tax law relating to the period of prescription for the assessment of taxes. If the waiver is not executed in accordance with the procedures prescribed in the said Order, the waiver is ineffective and does not extend the running of the prescriptive period.

While it is the prerogative of the BIR to conduct examination on taxpayers, the same must be exercised within the period prescribed in the law. The law prescribing the statute of limitations provides assurance to the taxpayer that after the lapse of the period, it will no longer be subjected to further investigation. Thus, for taxpayers, it is always important to determine whether or not an assessment notice is issued within the period allowed by law.