TAX LAW FOR BUSINESS
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Review of remedies against tax assessment

THERE are various ways by which the tax authority can obtain information regarding the correctness of tax payments made by taxpayers. The most common of this is the exercise by the commissioner of his power under the Tax Code to authorize the examination of any taxpayer and the assessment of the correct amount of tax.

It must be noted though that an examination of a taxpayer's books must be preceded by the issuance of a letter of authority (LOA). As held by the Supreme Court in G.R. No. 178697, November 17, 2010, there must be a grant of authority before any officer can conduct an examination or assessment. And the revenue officer so authorized must not go beyond the authority given. In the absence of such an authority or in excess of authority, the assessment or examination is a nullity.

The examination of books is followed by the issuance of deficiency-tax assessment. In the issuance of tax assessment, there are various stages to be observed. The rules of the Bureau of Internal Revenue (BIR) describe these stages as due-process requirements in the issuance of deficiency-tax assessment. The taxpayer is initially informed in writing of the discrepancy or discrepancies in the payment of his internal-revenue tax through a notice for informal conference. The findings of discrepancies that remain unsettled are elevated to the Assessment Division or to the Commissioner. If the reviewing officer determines that there exists sufficient basis to assess the taxpayer for any deficiency tax, a preliminary assessment notice (PAN) is issued.

In both the notice for informal conference and the PAN, the taxpayer is given an opportunity to present his side of the case. To afford the taxpayer this opportunity, he must be informed of the discrepancies noted and the proposed assessment. Thus, the issuance of the notice for informal conference and the preliminary assessment notice are mandatory. This was confirmed by the Supreme Court in G.R. No. 185371, December 8, 2010, where the court ruled that the sending of a PAN to a taxpayer to inform him of the assessment made is but part of the due-process requirement in the issuance of deficiency-tax assessment, the absence of which renders nugatory any assessment made by the tax authorities.

On the part of the taxpayer, while the notice for informal conference and the issuance of the PAN give him an opportunity to contest the assessment before any formal assessment is issued, his failure to do so or to respond within the period stated in the notice will not result in him losing his right to further contest the assessment. Neither does it make the proposed assessment final and executory. This will only give the tax authority reason to issue formal letter of demand and assessment notice.

But once the formal letter of demand and assessment notice are issued, the observance of the periods becomes crucial. Upon receipt of the assessment notice, the taxpayer must file a protest within 30 days from receipt. Otherwise, the formal letter of demand and assessment notice become final, executory and demandable.

The final decision on disputed assessment (FDDA) on the protest may not always be favorable to the taxpayer. In case of an unfavorable FDDA, and the taxpayer decides to further contest the assessment, where should he go or what are his remedies? Is he required to file a judicial appeal or a petition for review with the Court of Tax Appeals to prevent the assessment from attaining finality?

Ordinarily, the taxpayer should file a petition for review with the CTA within 30 days from receipt of the FDDA to prevent it from becoming final and executory. As an alternative, the taxpayer may seek the intervention of the commissioner through a motion for reconsideration. However, before a taxpayer can exercise this alternative, the identification of the person who issued the FDDA is necessary. In G.R. No. 179343, January 21, 2010, the Supreme Court held that a motion for reconsideration of the denial of the administrative protest does not toll the 30-day period to appeal to the CTA. But in a number of cases decided by the CTA and recently in CTA EB No. 608, October 25, 2011, the court ruled that the filing of a motion for reconsideration with the commissioner tolls the running of the 30-day period to appeal to the CTA. The difference is that in the first mentioned case, it was the commissioner himself who issued the FDDA. So a motion for reconsideration to the same office is not allowed. In the latter case, it was a representative of the commissioner who issued the FDDA. It appears that under this scenario, a motion for reconsideration before the commissioner prevents the assessment from attaining finality.

The tax authorities cannot disregard the rules required in the issuance of an assessment. Taxpayers, on the other hand, cannot disregard the prescribed procedures in contesting an assessment. While getting subjected to tax examination is a process many taxpayers would like to avoid, this is inescapable. It follows that receiving an assessment is inevitable. Taxpayers should be aware and exercise their rights and remedies to avoid losing properties on mere technicalities.

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