



**TAX LAW FOR BUSINESS**  
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## **Corporation's tax violations: Responsibility of officers**

BEFORE the advent of the Run After Tax Evaders (Rate) program, the tax-enforcement policy of the government was focused on the assessment and collection of taxes. Thus, upon payment and collection of the deficiency taxes, the criminal aspects for violations of internal-revenue laws are not pursued.

Realizing that maintaining confidence in the fairness of the tax system is vital to the effective tax administration, the Bureau of Internal Revenue introduced the Rate Program. The name appears to be misleading, though. As the name suggests, it is aimed against tax evaders—thus, under this program, the bureau is tasked to investigate and prosecute taxpayers found to be engaged in tax evasion.

A reference to the cases pursued under the program, however, would show that a number of cases do not refer to tax evasion. Tax evasion pertains to a specific provision of the Tax Code. Perhaps, there should be a change in the name because of its different connotation and because there are a number of violations in the Tax Code constituting criminal offenses, but do not necessarily imply tax evasion. It is unfair for those being prosecuted under these other provisions, yet branded as tax evaders.

In fact, an individual may not be charged in his individual capacity—he can also be charged in his capacity as responsible officer of the corporation he represents. In pursuing the criminal liability for violation of a corporation's tax obligations, the bureau had conveniently used Section 255, in relation to Section 253(d) and 256 of the National Internal Revenue Code. Violations under these provisions may not necessarily constitute tax evasion.

Unlike in other jurisdictions where criminal liability may be imposed on a juridical person, that is not so in this jurisdiction. Under our tax law, it is quite clear that in the case of associations, partnerships or corporations, the penalty shall be imposed on the partner, president, general manager, treasurer, officer in charge, and the employees responsible for the violation. On this basis, the penalty for violation of a corporation's tax obligations, if proven, will be imposed upon the erring officers.

In one case (CTA Crim. Case O-113), the Court explained why the criminal liability is not imposed on the corporation. As articulated by the Court, corporations incur no criminal liability for the same is personal to its officers. This is so because of the difficulty, if not impossibility, of imposing the penal sanction, i.e., imprisonment, to a being that has no corporal existence, and which cannot be thrown in jail. Thus, it is the corporate officers who are made criminally liable.

And who are these supposedly responsible officers who may be made accountable for violation of a corporation's tax obligations? In the same case, the Court considered the president and the chief accountant as responsible officers because their positions have something to do with the responsibility related to the finances of the corporation. In another case (CTA Crim. Case O-028, July 12, 2011), the vice president for finance who is responsible for the finances of the corporation was considered as responsible officer for purposes of prosecution for alleged violation of the tax laws. It would seem that the officers referred to pertain to those responsible in ensuring that the correct taxes are paid.

Being the responsible officer though does not automatically carry with it the criminal responsibility for violations of tax responsibilities of the corporate taxpayer. As stated in the same cases, material to the conviction of the accused is the existence of proof beyond reasonable doubt that he willfully fails, refuses or neglects to pay the required tax obligation of the corporation. It must be definitively shown that the accused, as the employee supposedly responsible for the failure or omission to pay the required taxes of the corporation, does so, knowingly, intentionally, and with the specific intent not to pay the tax liability. In other words, it must be shown that the accused is aware of the obligation to pay the tax liability of the corporation, but nevertheless, voluntarily, knowingly and intentionally fails, neglects or refuses to pay the subject tax liabilities.

Being an officer of a corporation carries with it the duty to ensure that the tax obligation of the corporation is properly discharged, especially those tasked to do so. And to be able to impute knowledge of the corporate obligation to pay tax upon an officer, there must be a clear showing that he is duly notified of the assessments properly issued against the corporation for deficiency taxes. In the absence of willful participation, he should be free from prosecution.

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