



Tax Law  
for  
Business

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*BDB Law's "Tax Law for Business" appears in the opinion section of **Business Mirror** every Thursday.*

## Discerning contempt!

WHO wouldn't forget the 26th day of Chief Justice Corona's impeachment trial when Atty. Vitaliano Aguirre was cited for contempt for "disrespect" of the court? By now, the infamous private prosecutor who covered his ears while the feisty lady senator-judge was lecturing prosecutors is already immortalized in the memory of Filipinos intently watching as the plot thickens and further developments of the ongoing politikaserye unravel.

While the Supreme Court is busy preparing for the oath-taking of the new members of the legal profession, and the Senate with its impeachment proceedings, the Bureau of Internal Revenue (BIR) is earnestly and diligently running after the tax evaders in the country. Parallel to the Impeachment Court's power of contempt, the BIR is also vested with power to cite a taxpayer for contempt.

By definition, contempt of court is a defiance of the authority, justice or dignity of the court, such conduct tends to bring the authority and administration of the law into disrespect or to interfere with or prejudice parties, litigant or their witnesses during litigation. Any law student would know that there are two kinds of contempt punishable by law: direct and indirect contempt.

In the audit process and collection of delinquent accounts, several remedies are granted to the BIR to effectively perform its functions. So what are the means available to the BIR to compel a taxpayer to produce his books of accounts and other records? A taxpayer shall be requested, in writing, not more than two (2) times, to produce his books of accounts and other pertinent accounting records, for inspection. If, after the taxpayer's receipt of the second written request, he still fails to comply with the requirements of the notice, the bureau shall then issue a subpoena duces tecum.

If, after the taxpayer fails, refuses or neglects to comply with the requirements of the subpoena duces tecum, the bureau has the option to either: (a) file a criminal case against the taxpayer for violation of Section 5 as it relates to Sections 14 and 266 of the National Internal Revenue Code (NIRC), as amended; and/or (b) initiate proceedings to cite the taxpayer for contempt, under Section 3(f), Rule 71 of the Revised Rules of Court (ROC).

Section 5 of the NIRC pertains to the power of the commissioner to obtain information, and to summon, examine, and take testimony of persons, whereas Section 14 discusses her authority to administer oaths and take testimony regarding matters within the jurisdiction of the bureau.

In fine, Section 266 of the NIRC provides: “Section 266. Failure to Obey Summons.—Any person who, being duly summoned to appear to testify, or to appear and produce books of accounts, records, memoranda or other papers, or to furnish information as required under the pertinent provisions of this Code, neglects to appear or to produce such books of accounts, records, memoranda or other papers, or to furnish such information, shall, upon conviction, be punished by a fine of not less than P5,000 but not more than P10,000 and suffer imprisonment of not less than one [1] year but not more than two [2] years.”

On the other hand, failure to obey a subpoena duly served may be punished for indirect contempt under Section 3(f), Rule 71 of the ROC.

In the front page of almost all newspapers and other publication in the country as of press time is the criminal complaint filed against the eight-time boxing champion and neophyte lawmaker Manny Pacquiao for failure to submit documents to investigators looking into his 2010 tax returns.

Angered by Pacquiao’s alleged refusal to cooperate with an investigation into his financial affairs, and skipping a February 7 deadline to hand over details of his assets, account books and records of his earnings from fights against Antonio Margarito and Joshua Clottey, the BIR officials initiated contempt proceedings against him. BIR Regional Director Rozil Lozares says a complaint was filed on March 1 after Pacquiao allegedly failed to submit the requested documents despite three notices and a subpoena.

Considering the bureau’s unwavering efforts to stifle tax evasion in the country, it would seem that the world’s 24th richest athlete for the year 2011 according to Forbes is not spared.

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