



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

## **Waiver of the statute of limitations**

THE Tax Code provides that for an assessment to be valid, it must be made within three years from the last day prescribed by law for the filing of the tax return or from the day the return was filed, whichever is later. Except in cases involving tax fraud, the Bureau of Internal Revenue (BIR) has a longer period of 10 years from the date of discovery of such fraud within which to make the assessment.

After the lapse of the applicable period, the BIR's right to assess the taxpayer is deemed to have prescribed, unless the taxpayer executes a waiver of the statute of limitations prior to the prescriptive period.

A waiver of the statute of limitations is a signed statement whereby the taxpayer conveys his agreement to extend the period within which the bureau may validly issue an assessment for deficiency taxes. When a taxpayer executes this waiver, he is, in effect, allowing the BIR to continue with its investigation and to issue an assessment even after the prescription. The taxpayer thereby waives his right to invoke the defense of prescription for the assessments issued after the reglementary period.

When a taxpayer is being audited, he is obliged to present for investigation his books of accounts, schedules, documents and other related accounting records that may be required by the revenue officer. If the revenue officer cannot finish the audit within the prescriptive period but the taxpayer wants to give him more time, the latter, upon request of the former, normally executes a waiver of the statute of limitations.

An authorized revenue officer may issue a tax assessment without the benefit of complete or partial audit in instances when he believes that the assessment will be jeopardized by delay caused by the taxpayer's failure to comply with the investigation requirements.

Even without the presentation of the books, the BIR can issue an assessment based on the "best evidence obtainable" rule and these assessments are normally accorded with validity by the courts because of the presumption of regularity given to the government's official actions. Once the assessment is issued, the burden of proving that the assessment is wrong is then shifted to the taxpayer. Thus, in cases like these, the execution of the waiver by the taxpayer is encouraged to avoid the issuance of an assessment without the benefit of a full

audit. In many cases already decided by the courts, it was emphasized that a waiver to be valid must strictly conform to the requirements of Revenue Memorandum Order (RMO) 20-90 issued on April 4, 1990, and RDAO 05-01 issued on August 2, 2001. Failure to comply with these requirements invalidates the waiver, which also invalidates the assessment if such was issued after the prescriptive period.

RMO 20-90 mandates the following requirements for a valid waiver:

The waiver must be in the proper form prescribed by RMO 20-90. The phrase “but not after \_\_\_\_\_ 19 \_\_,” which indicates the expiry date of the period agreed upon to assess/collect the tax after the regular three-year period of prescription, should be filled out.

The taxpayer himself or his duly authorized representative must sign the waiver. In the case of a corporation, the waiver must be signed by any of its responsible officials. In case the taxpayer delegates this authority to a representative, such delegation should be in writing and duly notarized.

The waiver should be duly notarized.

The CIR or the revenue official authorized by him must sign the waiver indicating that the BIR has accepted and agreed to the waiver. The date of such acceptance by the BIR should be indicated. However, before signing the waiver, the CIR or the revenue official authorized by him must make sure that the waiver is in the prescribed form, duly notarized and executed by the taxpayer or his duly authorized representative.

Both the date of execution by the taxpayer and date of acceptance by the bureau should be before the expiration of the period of prescription or before the lapse of the period agreed upon in case a subsequent agreement is executed.

The waiver must be executed in three copies, the original copy to be attached to the docket of the case, the second copy for the taxpayer and the third copy for the office accepting the waiver. The fact of receipt by the taxpayer of his/her file copy must be indicated in the original copy to show that the taxpayer was notified of the acceptance of the BIR and the perfection of the agreement.

In one case, the Supreme Court ruled that a waiver of the statute of limitations, being a derogation of the taxpayer’s right to security against prolonged and unscrupulous investigations, must be carefully and strictly construed and the detailed procedure as enumerated above must be strictly followed by the BIR.

Noncompliance of the requirements cited would render the waiver invalid and would not extend the period to assess. For the revenue officer, there is also a corresponding administrative liability when he is found not to have complied with the procedure provided in RMO 20-90 resulting in prescription of the right to assess/collect.

\*\*\*\*

The author is a junior associate of Du-Baladad and Associates Law Offices (BDB Law), a member-firm of World Tax Services (WTS) Alliance.

The article is for general information only and is not intended, nor should be construed as a substitute for tax, legal or financial advice on any specific matter. Applicability of this article to any actual or particular tax or legal issue should be supported therefore by a professional study or advice. If you have any comments or questions concerning the article, you may e-mail the author at [veart.pomarin@bdblaw.com.ph](mailto:veart.pomarin@bdblaw.com.ph) or call 403-2001 local 311.