



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

## **Due process in tax-assessment cases**

AS an attribute of sovereignty, the power of taxation rests upon necessity. The main purpose of which is to raise revenue to defray the expenses of the government ultimately culminating in the promotion of the general welfare.

Clothed with the power to assess and collect all national internal revenue taxes, fees and charges, the Bureau of Internal Revenue (BIR) has been instrumental in the realization of this objective. Throughout the years, it has stepped up its game as a collecting arm of the government with much zeal. Noteworthy as this may be, the increasing number of tax-assessment cases and antagonized taxpayers cannot be left unnoticed.

An assessment refers to a written notice addressed to the taxpayer containing a demand for the payment of taxes due to the government (De Leon, 2009). Its validity would depend on several factors but mainly on the observance of due process. Generally speaking, the law requires that the taxpayer must be informed in writing of the law and the facts on which the assessment is made; otherwise, the assessment is considered void. Revenue Regulations 12-99 specifically enumerates the due process requirements in the issuance of deficiency tax assessments.

For instance, the failure of the BIR to send a preliminary assessment notice (PAN) informing the taxpayer of his/her liabilities would render a deficiency-tax assessment invalid and worthless. The sending of a PAN is not merely a formal requirement but a substantive one. Such was the ruling in the case of *Commissioner of Internal Revenue v. Metro Star Superama Inc.* (GR 185371, December 8, 2010).

The same principle was reiterated in the subsequent case of *Laurence Lee Luang v. Hon. Sixto Esquivias IV* (CTA Case 7969, January 5, 2012). In that case, the taxpayer protested the final assessment notice (FAN) issued by the BIR for deficiency taxes due to the latter's failure to send a PAN. On its part, the BIR argued that the absence of a PAN does not render the assessment void as long as the taxpayer is able to file a protest against the FAN within the reglamentary period.

Having found that no PAN was sent to the petitioner, the CTA ruled in favor of the taxpayer and held that failure to comply with the requirements in the issuance of deficiency tax assessments is tantamount to a denial of due process.

Aside from the issuance of the PAN, the law also requires that a FAN be sent to the taxpayer. The CTA held in the case of *Golden Harvest Corp. v. BIR* (CTA Case 7503, September 18, 2009) that where there is no FAN, there is no failure to pay; hence the taxpayer cannot be considered delinquent.

These cases show that the sending of PAN and FAN are crucial in a tax-assessment process. It should be emphasized, however, that the essence of due process is the opportunity to be heard. Just because a PAN or FAN was issued and sent by the BIR does not mean that the latter has fulfilled this constitutional requirement. The taxpayer should be given the chance to object to the assessment and present his/her case.

As an example, RR 12-99 provides that the FAN and letter of demand calling for payment of deficiency tax or taxes shall state the facts, the law, rules or jurisprudence on which the assessment is based, otherwise the formal letter of demand and assessment notice shall be void. It has been held that both the PAN and FAN should state the legal and factual bases of the assessment, which should be sufficient enough to inform the taxpayer of his/her liabilities and allow him/her to make an intelligent protest (*BASF Phils. Inc. v. CIR*; CTA 8128, November 22, 2011).

Oliver Wendell Holmes Jr. once said, "taxes are what we pay for civilized society." By its very nature, the power of taxation is indispensable. To some extent, it may even be considered unlimited. Be that as it may, taxpayers are not left without recourse. The foregoing cases illustrate that taxpayers are given protection against the taxing power of the state. At the end of the day, the constitutional rights of citizens prevail over the state's power to tax.

\* \* \* \*

The author is an apprentice 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 us at [info@bdblaw.com.ph](mailto:info@bdblaw.com.ph) or call 403-2001