



Tax Law
for
Business

Atty. Filamer D. Miguel

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

Revolutionary rule!

IT'S just a few more days before Christmas and this is probably the reason families, friends and officemates are squeezing in the eight days still available to them their get together-cum-holiday parties left and right. The busyness of the season brings so much hype and yes headache too, when it comes to budgeting the presents, home décors and the Noche Buena. We may not feel the winter breeze in this tropical country but surely the Yuletide cheer lifts everyone's poignant spirit, more so when Christmas carols are heard and when the iconic stout and bearded man in the red suit is seen.

Amid the colorful glittering lights of the urban areas and as the close of the year 2012 draws near, I am confounded with thoughts not of the holidays but of the cases I am handling. Like my fellow litigators, I will be among those directly affected by the implementation of the Judicial Affidavit Rule (AM 12-8-8-SC) effective on January 1, 2013. This revolutionary rule mandates that direct testimony of witnesses will now be in the form of judicial affidavits with attached documentary evidence to be submitted no later than five days before pre-trial or preliminary conference or scheduled hearing. Obviously, the manifest intention is to expedite proceedings considering that cases are resolved only after several years.

While the objective of the Judicial Affidavit Rule is quite noble, I just have some reservations with respect to certain novel provisions introduced, in particular, on Sections 8 and 10 thereof. Section 8 provides that upon the termination of the testimony of the last witness, a party shall immediately make an oral offer of evidence of his documentary or object exhibits, piece by piece, in their chronological order, stating the purpose or purposes for which he offers the particular exhibit. Then after each piece of exhibit is offered, the adverse party shall state the legal ground for his objection, if any, to its admission, and the court shall immediately make its ruling respecting that exhibit.

Under the rule at present, it's a common practice that formal offer of evidence (FOE) is done in writing and filed with the court usually within 15 or 30 days after the presentation of the last witness. The adverse party is given usually 10 or 15 days within which to comment. Thereafter, the court will rule on the FOE.

With the Judicial Affidavit Rule, an oral FOE shall immediately ensue after the presentation of the last witness. This might pose a problem in the Court of Tax Appeals (CTA) since tax cases normally entail voluminous documentary evidence such as invoices, official receipts, tax returns, certifications etc., hence, the need to commission an independent certified public accountant. If litigants were to present numerous boxes of documentary evidence, how do you expect counsels to present them orally and piece by piece? And if there be objections from the opposing counsel to each document, one case might consume the court's entire day to hear and rule on the FOE alone, which essentially defeats the ultimate purpose of this new rule.

Moreover, it's a prevailing practice before the CTA that when a judicial affidavit is not filed three days before the hearing, the affidavit will still be received but the opposing counsel may opt to defer the cross-examination of the witness. Under the Judicial Affidavit Rule, however, failure to submit the required judicial affidavits and exhibits on time shall be deemed a waiver. Nonetheless, the court may allow only once the late submission of the same provided the delay is for a valid reason and would not unduly prejudice the opposing party, and the defaulting party pays a fine of P1,000 up to P5,000, at the court's discretion.

Surprisingly, in Section 10(b), the court shall not consider the affidavit of any witness who for whatever reason fails to appear at the scheduled hearing. But when it is the counsel who fails to appear without valid cause despite notice, he shall be deemed to have waived his client's right to cross-examine. Finally, even if judicial affidavits are filed but do not conform with the content and attestation requirements, it will not be admitted.

In view of the above stringent innovations, I fervently hope the Supreme Court would take some time to revisit and refine this new rule.

* * * *

The author is a senior associate of Du-Baladad and Associates Law Offices, a member-firm of World Tax Services 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 filamer.miguel@bdblaw.com.ph, or call 403-2001, local 360.