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Another rule on technicality

THERE have been several tax cases filed in court that were dismissed for mere technical lapses. In claims for the refund of unutilized input taxes attributable to zero-rated sales, for instance, not a few cases were denied for failure to comply with the prescriptive period for claiming a refund under Section 112 of the National Internal Revenue Code (NIRC) of 1997, as amended. Also, many assessment cases did not attain victory due to the taxpayer's failure to properly protest the assessment and for failure to comply with the procedural requirements laid down under Section 228 of the NIRC and its pertinent regulations.

Recently, the Bureau of Internal Revenue (BIR) issued Revenue Memorandum Circular (RMC) 39-2013, which prescribes additional requirements in protesting internal revenue assessment cases issued by the bureau against the taxpayers. The circular laid down technical procedures in protesting cases, which, when not properly observed, could lead to the taxpayer's serious disadvantage.

Paragraph II (4) of RMC 39-2013 requires that a letter of protest, request for reinvestigation/reconsideration, or other similar communication must be duly recorded in the database of the Office of the Commissioner, otherwise, the protest shall be deemed as not officially filed with the bureau. Pursuant to the new circular, a protest not duly recorded with the database of the bureau shall not be used as basis for the grant of any request for reinvestigation/reconsideration of any Final Assessment Notice (FAN) or Final Decision on Disputed Assessment (FDDA) issued against the taxpayer. RMC 39-2013 especially attains significance in filing a protest against FAN issued to the taxpayers.

In several decisions of the Court of Tax Appeals and the Supreme Court, the rules of protesting assessment cases under Section 228 of the NIRC are part of the due-process requirements, which should be complied with properly, otherwise, the assessment will fail. Under Section 228 of the NIRC, the date of filing of the protest against the FAN is especially significant in at least three instances, to wit:

1. The protest must be filed within 30 days from the taxpayer's receipt of the FAN, otherwise, the assessment shall become final.
2. The 60-day period within which to submit the relevant documents supporting the protest is reckoned from the filing of the protest.
3. The filing of the protest is the reckoning point of the 180-day period for the BIR to act on the protest (in cases where no supporting documents are filed subsequent to the filing of the protest).

Note that under the same Section 228 of the NIRC, if the protest is denied in whole or in part, or is not acted upon within 180 days from submission of the relevant supporting documents, the taxpayer adversely affected by the decision or inaction may appeal to the Court of Tax Appeals within 30 days from receipt of the decision, or from the lapse of the 180-day period, otherwise, the decision shall become final, executory and demandable.

As so provided, the date of the filing of the protest against the FAN is significant date as it directly affects the taxpayer's right to elevate the case with the Court of Tax Appeals. With the issuance of RMC 39-2013, there seems now to be an issue in cases where the protest to the FAN is actually filed on time by the taxpayer with the bureau, but for one reason or another, the same is not recorded in the bureau's database. This would be fatal to the taxpayer's cause as the protest is deemed not officially filed.

The non-existence of the fact of filing of the protest with the bureau's database is fatal to the taxpayer's cause, whether the non-recording of the protest is due to the inadvertence of the receiving officer, or otherwise. With this circular, the non-recording of the filing of the protest with the bureau's database, which is not within the control of the taxpayer, could, in fact, lead to the taxpayer's defeat in an assessment case.

Hence, taxpayers filing a protest with the bureau are cautioned to remind the receiving personnel to record the fact of filing of the protest in the bureau's record book, or better yet, secure a certification from the receiving officer that such a protest has actually been filed.

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