



Tax Law
for
Business

Atty. Julie Karen Paganaje

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

Validity of the extension of the statute of limitations

TO limit the power of the tax authority to examine taxpayers' books and assess taxes found to be due, the Tax Code cleverly limited the issuance of an assessment to only 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 came last. Once the three years have lapsed, the issuance will no longer be valid, unless it falls within the exceptions to the period of limitation as provided in the law.

One exception is when both the tax commissioner and the taxpayer agree in writing, before the three-year period expires, to the issuance of an assessment after that period. The period they agreed upon may be extended further by a subsequent written agreement/s made before that period expires.

Indeed, the period fixed by law may be extended through an agreement executed by the tax authority and the taxpayer. At present, this extension is done by executing a waiver of the statute of limitations, to be signed by the taxpayer or his authorized representative and the authorized representatives of the Bureau of Internal Revenue (BIR). Names of the authorized representatives of the latter are spelled out in its own issuances, such that if the signatory is not one of those authorized, the waiver cannot be said to have been validly executed.

When a taxpayer signifies his agreement to the waiver, he loses certain rights. In effect, he is waiving the lesser period within which the bureau may validly issue an assessment for deficiency taxes. He allows the BIR to continue its investigation and to issue an assessment, even after the supposed prescription.

Be that as it may, it is not always disadvantageous on the part of the taxpayer to agree to the extension of the period of limitation. Sometimes, it is necessary for the taxpayer to buy more time to allow him to comply with his own obligation in relation to the audit process.

That being said, there are formalities that need to be observed in executing the waiver of the statute of limitations, in addition to complying with the authorized signatory on the part of both the taxpayer and the BIR. Again, these are outlined by the BIR itself through its own issuances,

specifically Revenue Memorandum Order (RMO) 20-90 and Revenue Delegation Authority Order 05-01.

Based on these issuances, among the requirements for the validity of an extension of the statute of limitations are:

- The waiver must be in the proper form prescribed by RMO 20-90. The phrase “but not after _____ 20 ____,” which indicates the expiry date of the period agreed upon to assess/collect the tax after the original three-year period of prescription, should be filled out.
- The waiver should be duly notarized.
- The commissioner of Internal Revenue (CIR) or the revenue official authorized by him must sign the waiver indicating that the BIR accepts and agrees to the waiver. The date of such acceptance by the BIR should be indicated. However, before signing the waiver, the CIR or the authorized revenue official must make sure 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 the 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 is to be attached to the docket of the case; the second, for the taxpayer; and the third, for the office accepting the waiver. The fact of receipt by the taxpayer of his file copy must be indicated in the original to show that the taxpayer was notified of the acceptance of the BIR and the perfection of the agreement.

Cases decided by the Supreme Court, beginning with *Philippine Journalists Inc. vs Commissioner of Internal Revenue*, GR 162852, promulgated on December 16, 2004, had invalidated waivers due to the failure to comply with these requirements.

Indeed, according to the High Court, a waiver of the statute of limitations under the Tax Code is not an ordinary agreement, as it is, to a certain extent, a derogation of the taxpayer’s right to security against his right to security against prolonged and unscrupulous investigations and must, therefore, be carefully and strictly construed. It is governed not by the general provisions of the New Civil Code, but by the National Internal Revenue Code, following the basic principle in statutory construction that a special law prevails over the general law (*Commissioner of Internal Revenue vs East Asia Power Resources Corp.*, Court of Tax Appeals EB 887). Thus, if these detailed procedures are not followed, it is assured that you are still protected by the statute of limitations.

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 neither 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 by professional study or advice. If you have comments or questions about the article, you may e-mail the author at juliekaren.paganaje@bdbl.com.ph or call 403-2001 local 311.