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## **Due process revised**

ONE of the most potent defenses against a tax assessment is the failure of the Bureau of Internal Revenue (BIR) to observe due process. Many tax assessments have been canceled because one of the procedures prescribed in Revenue Regulation (RR) 12-99 was not followed by the BIR. RR 12-99 has been amended, so in order to protect his or her interest, a taxpayer must be aware of the following changes that were introduced by RR 18-2013.

1. One level of the due-process requirement under RR 12-99 has been deleted. Under the old rule, a notice of informal conference is required before a Preliminary Assessment Notice (PAN) may be issued. Now, this is no longer the case, as the first notice a taxpayer will receive is already the PAN.
2. It appears that it is mandatory for the BIR to issue the Final Assessment Notice (FAN) 15 days after it receives the taxpayer's reply to the PAN. Under the old rule, the mandatory issuance of the FAN after 15 days from the date of the reply to the PAN is discretionary. There were even instances that the FAN was issued months or years after the reply to the PAN was received by the BIR. Since the tone of the rule indicates that the 15-day period for the BIR to issue the FAN is mandatory, does it mean that a FAN is void if the BIR issued it beyond the 15-day period?

3. Under the new rule, a taxpayer must state, in his or her protest, whether or not he or she is availing himself or herself the option to request for reinvestigation or reconsideration. Making this option is important, since the two remedies have different effects on the prescriptive period for the BIR to collect a tax. A request for reinvestigation tolls the running of the five-year prescriptive period for the BIR to collect, while a request for reconsideration does not.
4. It is now mandatory to state the nature of the protest and the date of the assessment notice.
5. In a request for reinvestigation, there is a need to specify the new evidence and additional documents that will be presented.
6. The old rule only states that the taxpayer has 60 days from the filing of his or her protest to submit relevant documents. The new rule clarifies that the 60-day period to submit additional documents only applies to the request for reinvestigation.
7. If a request for a reinvestigation is specified in the protest and no relevant supporting documents are submitted within 60 days, the assessment becomes final.
8. If the protest is denied, in whole or in part, by the commissioner's duly authorized representative, the taxpayer may either appeal to the Court of Tax Appeals within three days from the date of receipt of the said decision or elevate his or her protest through the request for reconsideration to the commissioner within 30 days from the date of receipt of the decision of the duly authorized representative.
9. It must be noted that the submission of additional documents is not allowed in an administrative appeal to the commissioner.
10. Under the new rule, notices may be served through the following:
  - a. Personal service to the taxpayer, wherever he or she may be found.
  - b. The different procedures on substituted service, including the mandatory witnesses, i.e., barangay officials.
  - c. The service may now be made by a reputable courier service, so mail by registered service is not the only primary option; the option to send notices through ordinary mail can be availed of if registered mail and other courier service are not available in the locality. There are also formalities that must be observed by the person mailing. He or she is required to accomplish the bottom portion of the notice of mail. He or she shall also write a report under oath before a notary public or any person authorized to administer oath, as amended, setting forth the manner, place and date of service, the name of the person or barangay official/professional courier-service company that received the same and such other relevant information. The registry receipt issued by the post office or the official receipt issued by the professional courier company containing sufficiently identifiable details of the transaction shall constitute sufficient proof of mailing and shall be attached to the case docket.

d. Service to the tax agent or practitioner is service to the taxpayer.

Knowledge of these new rules must be used by a taxpayer to his or her advantage. For example, if a FAN is issued beyond the 15-day period, then he or she must insist that this FAN is already void. If the FAN was sent by mail, but the formalities required were not observed, he or she must also insist that the FAN is void for not having been properly served. The BIR must have thought that the changes it introduced are to its advantage. Sometimes, it feels good to bite the snake on its tail.

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