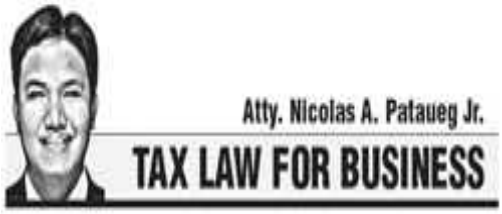

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Two forms of denial in the taxpayer's administrative protest

PROTEST, as used in internal-revenue taxation, is an act by the taxpayer of questioning the validity of any assessment issued by the Bureau of Internal Revenue (BIR), as shown in the notice of assessment and letter of demand.

In the procedure of protesting an assessment, the taxpayer is given 30 days from receipt of the Final Assessment Notice (FAN) to file his or her protest. It should be noted that the taxpayer cannot immediately appeal to the Court of Tax Appeals (CTA). The Tax Code mandates that, before this appeal can be made, a protest must be filed first by the taxpayer with the BIR following the doctrine of exhaustion of administrative remedy. Only when there is a denial of the protest or when there is inaction on the part of the BIR commissioner can the matter be elevated to the CTA.

Now, in denying the protest of the taxpayer, there are two forms of denial: direct and indirect. Direct denial refers to a written denial of the protest specifically saying the protest is denied and that this is the final opinion of the commissioner. Section 3.1.5 of Revenue Regulation 12-99 requires that the decision of the commissioner of Internal Revenue (CIR) or her duly authorized representative must state the facts, the applicable law, rules and regulations or jurisprudence on which the decision is based, and that this decision is final.

On the other hand, indirect denial of a protest is an implied denial that may take the form of an inaction on the protest or an act to proceed with the collection of the amount assessed. Indirect denial can be the basis for administrative appeal. In short, a taxpayer is allowed to elevate a disputed assessment with the courts, based on either a direct or indirect denial.

There are instances where there is a question as to when an indirect denial kicks in for purposes of elevating the case to court. Take, for example, the case of Allied Banking Corp. v Commissioner of Internal Revenue (G.R. 175097, February 5, 2010) where the formal letter of demand with assessment notices was considered by the taxpayer as a final decision of the commissioner, appealable to the courts, because of the words “final decision” and “appeal” appearing in the assessment notice, which, taken together, led the taxpayer to believe that the same is already the final decision of the CIR and that the available remedy was to appeal the same to the CTA.

Also, in the case of Yabes v Flojo (GR 46954, July 20, 1982) and in BIR v Union Shipping Corp. (GR 66160, May 21, 1990), the court also noted that a civil collection can also be considered as denial of the protest filed against an assessment issued by the BIR. The court stated that “what may be considered as [the] final decision or assessment of the commissioner is the filing of the complaint for collection. Further, in the same Union Shipping case, the court explained that the request for reinvestigation and reconsideration was, in effect, considered denied when the BIR filed a civil suit for the collection of deficiency income.

In Republic v Lim Tian Teng Sons (GR L-21731, March 31, 1966), the court also noted that the referral by the CIR of the request for reinvestigation to the solicitor general can also be interpreted as deemed denied by the CIR on the protest filed by the taxpayer. In this case, the CIR did not reply to the request for reinvestigation and, instead, he referred the case to the solicitor general for collection of the tax. The court interpreted this action as the denial of the taxpayer’s request.

The inaction by the commissioner can also be a form of indirect denial of the taxpayer’s protest. Section 228 of the Tax Code provides that inaction of the commissioner after 180 days from the complete submission of documents is a ground to appeal the case to the CTA.

With these rulings promulgated by the court, the taxpayer must update himself or herself with the latest jurisprudence to protect his or her rights, specifically, his or her right to appeal the case in court. Remember that the right to appeal is not a privilege given by law to the taxpayer, but it is a statutory right governed by the rules of procedure, which all taxpayers must yield and bow.

In the final analysis, the court, however, acting as an arbiter between the rights of the government to assess and collect vis-à-vis the right of the taxpayer to contest and appeal, stressed that—the key to effective communication is clarity—the CIR, as well as her duly authorized representative, must indicate clearly and unequivocally to the taxpayer whether an action constitutes a final determination on a disputed assessment or not.

It added that words must be carefully chosen in order to avoid confusion that could adversely affect the rights and interest of the taxpayer (Allied Banking Corp. v CIR, G.R. 175097). After all, this is in the name of fair play, regularity and orderliness in administrative action.

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