



**Atty. Ayesha Hania B. Matanog**

**TAX LAW FOR BUSINESS**

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## **Procedural due process in assessing national and local taxes**

OF the three inherent powers of the State, the power to tax is often referred to as the strongest. (Sison Jr. v Ancheta, 130 SCRA 655). It is also said to be unlimited in nature. In the old case of Tio v Videogram Regulatory Board (GR L-75697, June 18, 1987), the Supreme Court said the power to impose taxes is so unlimited in force and so searching in extent that the courts scarcely venture to declare that it is subject to any restriction, except those that rest on the discretion of the authority exercising it. Nevertheless, the 1987 Constitution has placed restrictions on the power to tax to prevent abuses. One of these restrictions is the compliance with due process, both substantive and procedural.

Section 1, Article III of the Constitution provides that no person shall be deprived of life, liberty or property without due process of law. Substantive due process requires that a tax statute must be within the constitutional authority of Congress, and that it be fair, reasonable and just. It must not be oppressive. On the other hand, procedural due process dictates that there must be notice and opportunity to be heard before judgment is rendered.

For the notice requirement, Section 228 of the National Internal Revenue Code of 1997 (Nirc) requires that when the internal-revenue commissioner, or her duly authorized representative, finds that proper taxes should be assessed, she shall first notify the taxpayer of her findings. The taxpayer shall be informed, in writing, of the law and the facts on which the assessment is made; otherwise, the assessment shall be void. Based on existing rules, this notice is referred to as the preliminary assessment notice (PAN). The sending of a PAN to a taxpayer to inform him or her of the assessment made is but part of the due-process requirement in the issuance of a deficiency-tax assessment, the absence of which renders nugatory any

assessment made by the tax authorities. The use of the word “shall” in subsection 3.1.2 of Revenue Regulation 12-99 describes the mandatory nature of the service of a PAN.

The persuasiveness of the right to due process reaches both substantial and procedural rights and the failure of the Bureau of Internal Revenue to strictly comply with the requirements laid down by law and its own rules is a denial of a taxpayer’s right to due process. (Commissioner of Internal Revenue v Metro Star Superama Inc.)

However, the rule is not the same in the assessment of local taxes. In a recent case—Court of Tax Appeals Case AC-108, June 18, 2014—the taxpayer claimed that he was deprived of due process, since the assessment notice issued against him did not satisfy the requisites of a valid notice of assessment, as provided for in Section 228 of the Nirc.

The Court held that Section 228 of the Nirc is not applicable, since the case involves an assessment issued by the local government. The applicable law is Section 195 of the Local Government Code of 1991 (LGC), which provides that when the local treasurer, or his or her duly authorized representative, finds that correct taxes, fees or charges have not been paid, he or she shall issue a notice of assessment stating the nature of the tax, fee or charge; the amount of deficiency; the surcharges; the interests; and penalties.

Evidently, there is a difference in the issuance of assessment and the filing of protest under the NIRC and the LGC. Section 228 provides the remedy for assessments issued by the internal-revenue commissioner or her duly authorized representatives, while Section 195 of the LGC pertains to assessments issued by the local treasurer of the local government unit concerned. In fact, the only condition that Section 195 of the LGC requires with regard to the notice of assessment is that this notice should state the nature of the tax, fee or charge; the amount of deficiency; the surcharges; interests; and penalties. In so far as national tax is concerned, Section 228 of the NIRC requires more.

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The author is a junior associate of Du-Baladad and Associates Law Offices, a member-firm of the World Tax Services Alliance.

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