

**SIGNIFICANT DECISIONS OF THE COURT OF TAX APPEALS
July 2014**

Assessment

1. When taxpayer denies receipt of the formal letter of demand, it becomes incumbent upon the BIR to overcome the denial.

As main defense against the Warrant of Dstraint and/or Levy and collection of an alleged deficiency tax assessment, taxpayer denied having received formal assessment notice. According to the Court, based on Section 228 of the 1997 Tax Code and Section 3 of Revenue Regulations No. 12-99, the issuance of a valid formal assessment is a substantive prerequisite to tax collection. It contains not only a computation of tax liabilities but also a demand for payment within a prescribed period, thereby signaling the time when penalties and interests begin to accrue against the taxpayer and enabling the latter to determine his remedies therefor. Due process requires that it must be served on and received by the taxpayer. When taxpayer denies receipt of the formal letter of demand, it becomes incumbent upon the BIR to overcome the denial. (*Southern Entertainment Gallery, Inc. vs. Commissioner of Internal Revenue, CTA Case No. 8257, July 9, 2014*)

2. Failure to comply with the transitory provision of RR 16-2005 requiring the submission of inventory of billed but uncollected sales of services becoming liable to VAT for the first time under RA No. 9337 becomes liable to VAT upon collection.

Taxpayer was assessed for VAT on sales adjustments relative to its sales of generated electricity for the period December 25, 2003 to October 31, 2005 for its failure to submit the required inventory within 30 days after the effectivity of RA No. 9337. The CTA agreed with the assessment, holding that failure to comply with the conditions prescribed under paragraph (c)(i) of the Transitory and Other Provisions of RR No. 16-2005 makes the gross receipts representing the rate adjustments derived from sale of electricity prior to the effectivity of RA No. 9337 makes the gross receipts VATable. (*KEPCO Ilijan Corporation vs. The Commissioner of Internal Revenue, CTA EB No. 988, July 10, 2014*)

3. An assessment cannot be considered valid if it does not indicate a specific period or due date within which the alleged tax liabilities shall be paid.

An assessment must be sent to and received by a taxpayer, and must demand payment of taxes described therein within a specific period. In other words, assessment is a notice to the effect that the amount therein stated is due as a tax and a demand for the payment thereof. It fixes and determines the tax liability of a taxpayer. In the Audit Result/Assessment Notice in this case, there is no indicia of any due dates. The due dates in the assessment notices were left

blank. Thus, in effect, the FAN does not amount to a formal demand but a mere request for payment. For lack of a definite and unequivocal demand for payment of a certain date and for want of due process, the assessment is void. (***Commissioner of Internal Revenue vs. Fitness By Design, Inc. CTA EB No. 970, July 14, 2014***)

4. Satellite airtime fees for services rendered by providing satellite communication time are considered income for services rendered within the Philippines.

This case involves an assessment for final withholding tax (FWT) on service fees paid arising from an Air Time Purchase Agreement with a non-resident foreign corporation. Said agreement granted the taxpayer the right to purchase satellite communications time from which taxpayer furnishes and sells to its subscribers, the consideration for which is the payment to the non-resident seller of satellite airtime fees. Taxpayer was assessed FWT since allegedly the satellite service fees are income from services rendered within the Philippines. In defense, the taxpayer argues that the services required in providing satellite airtime were performed outside the Philippines and as such, the airtime fees derived from the services should be considered as income from sources outside the Philippines which should not be subjected to Philippine income tax.

In resolving the contentions of the parties, the Court noted that the taxpayer pays the non-resident supplier airtime fees only when the satellite airtime is delivered to taxpayer and to its subscribers and subsequently utilized by them in the Philippines for a voice or data call, excluding satellite utilization time for call set-up, unanswered calls and incomplete calls. In other words, the activity that produces income is the undertaking of providing satellite communication time to be delivered by the non-resident supplier and utilized by taxpayer and its subscribers in the Philippines. Therefore, the activity which produced the income takes place in the Philippines. Accordingly, the BIR is correct in imposing FWT on the service fees which are considered income from sources within the Philippines. (***Aces Philippines Cellular Satellite Corporation vs. Commissioner of Internal Revenue, CTA Case No. 8567, July 23, 2014***)

VAT Refund

5. The relevant supporting documents that a taxpayer must submit in support of its administrative claim pertain to documents that the taxpayer deems necessary to sufficiently bolster its claim.

On December 2, 2011, taxpayer filed its administrative claim for the refund of its unused input tax related to zero-rated sales for the year 2010. Together with the filing of its administrative claim, it submitted some supporting documents. On April 27, 2012, taxpayer filed its appeal/judicial claim with the Court of Tax Appeals. Among others, the BIR argued that taxpayer failed to exhaust administrative remedies with the submission of all necessary and relevant documents in support of its administrative claim. According to the BIR, a letter of authority (LOA) was issued on February 23, 2012 containing the checklist of requirements for tax investigation. Also, on April 24, 2012, the BIR sent to the taxpayer First Notice for the presentation of books and other accounting records and on June 14, 2012, taxpayer received Second and Final Notice for presentation of books and accounting records. In all these cases, BIR claimed that the taxpayer did not submit the complete supporting documents. Further, it argued that the submission of complete documents in support of the administrative claim is required before the 120-day period shall apply and before the taxpayer could avail of judicial remedies.

The CTA disagreed with the BIR. According to the CTA, the taxpayer was able to prove its submission of supporting documents attached to the administrative claim notwithstanding the BIR's request for additional documents. Taxpayer exhausted the available administrative remedy when it filed the administrative claim together with the attached supporting documents it perceived to be sufficient and complete. The relevant supporting documents that a taxpayer must submit in support of its administrative claim pertain to documents that the taxpayer deems necessary to sufficiently bolster its claim. While the BIR is allowed to request the submission of additional documents from the taxpayer, it cannot dictate what documents to submit. It is the taxpayer's choice to either (1) elevate its refund to the CTA after the lapse of the 120-day period from the submission of what it considered to be complete documents or (2) comply with the BIR's request and submit additional documents. If taxpayer chooses to comply with the BIR's request and submit additional documents prior to the filing of the judicial claim, then the counting of the 120-day period shall be reckoned from the time it submits the additional document. [***Nokia (Philippines), Inc. vs. Commissioner of Internal Revenue, CTA Case No. 8481, July 2, 2014***]

LOCAL TAXES/JURISDICTION

6. An RTC of the City of Makati does not have jurisdiction over an action for injunction where the acts sought to be enjoined are outside its territorial jurisdiction.

Taxpayer filed before the RTC of Makati City a case to assail the decision of the City Treasurer of the City of Tuguegarao, Cagayan which denied its protest contesting the demand letter and statement of account for alleged local franchise taxes. The RTC dismissed the appeal on the ground of lack of jurisdiction. On appeal to the CTA, the latter ruled that based on the allegations and reliefs sought in taxpayer's petition/appeal filed before the RTC of Makati City, it is not simply a case seeking review of the decision of the City Treasurer. It is essentially an action for injunction where the taxpayer seeks to control the acts of the City Treasurer of the City of Tuguegarao. Considering that the petition/appeal prayed that the City Treasurer be ordered to perform certain acts and also to refrain from doing a certain act, and considering the allegations laid down by taxpayer in the petition/appeal concerning its rights under the Local Government Code and ordinance, the case is essentially a principal action for injunction. The Court which has jurisdiction over the action is the regional trial court belonging to the Second Judicial Region. The RTC of Makati City did not err in dismissing the case because it has no jurisdiction over an action for injunction where the acts sought to be enjoined are outside its territorial region. (***Philippine Long Distance Telephone Co., Inc. vs. City of Tuguegarao CTA AC No. 103, July 11, 2014***)