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The Proper Party to be served in Assessments

THIS article is meant to supplement my previous article, entitled "Modes of Service in Tax Assessments." In the said article, I discussed the different modes of service of assessment notices as provided under Revenue Regulations (RR) No. 12-99, as amended by RR No. 18-2013. In this article, I will discuss to whom service must be made in assessments.

In *Commissioner of Internal Revenue (CIR) vs. Pascor Realty and Development Corporation*, G.R. No. 128315, June 29, 1999, the Supreme Court stated that, aside from being a computation of tax liabilities, an assessment is a demand for payment within a prescribed period. It signals the time when penalties and interests begin to accrue against the taxpayer. Thus, to enable the taxpayer to determine his remedies thereon, due process requires that it must be served on and received by the taxpayer. This was reiterated in *Estate of the Late Juliana Diez Vda. De Gabriel vs. CIR*, G.R. No. 155541, January 27, 2004, where the Court stressed that assessment notices must be served on and received by the taxpayer, and not merely to and by a disinterested party.

If no Preliminary Assessment Notice or Final Assessment Notice was actually received by the taxpayer, the assessment is void for denial of due process.

Most of time, the service of the assessment notice is not made to the taxpayer himself, but instead upon the taxpayer's employees or authorized agents. The Courts have deemed this as service to the taxpayer. It must be noted, however, that there are instances where the assessment notices were served to and received by persons who are not employees or who are not authorized to do so. This brings us to the case of *Manuel Palaganas vs. CIR, CTA Case No. 8394, September 17, 2014*, where the Court of Tax Appeals (CTA) held that if there is a denial from the taxpayer that the person who received the assessment notices was its employee or authorized agent, it is incumbent upon the BIR to present controverting documentary or testimonial evidence thereto.

In the said case, the BIR argued that the taxpayer received the PAN, Amended PAN and the FAN and that the taxpayer failed to file a protest within thirty days from receipt of the FAN, thus, the assessment has become final, executory, and demandable. The taxpayer alleged that he came to know of the said assessments only when he received the collection letter and saw the BIR records. The taxpayer countered that the PAN was served to a person who is neither known to him, nor his employee or his authorized representative. As to the Amended PAN and FAN, which were allegedly sent by registered mail, the taxpayer contended that the person who received them was neither petitioner nor his authorized representative.

The CTA held that laws, regulations, and jurisprudence require the service of the PAN upon the taxpayer or at least, upon its agent, and not upon any other person. The CTA went on to say that to consider the receipt of the PAN by another person as deemed receipt by the taxpayer itself, despite the lack of prior verification of the former's authority or agency, will put taxpayers in a disadvantageous position and at the mercy of revenue officers. During trial, the CTA found that the BIR merely assumed that the recipient was an employee and was authorized to receive the PAN as said person was the only person in the office at the time. No further effort was exerted by the BIR to determine if the recipient of the PAN was definitely an employee of the taxpayer or its authorized agent.

As to the Amended PAN and FAN allegedly sent by registered mail, the CTA held if there is a denial that that the person who received the mail is an employee or authorized agent, the BIR must prove that the person who signed the Registry Return Receipt is the taxpayer, his employee, or his authorized agent. In the said case, the CTA found, during trial, that the signatures in the Registry Return Receipts were unauthenticated and that the BIR failed to convincingly show that the signatures belong to the taxpayer or at least his authorized representative. As the BIR failed to prove proper service of the PAN, Amended PAN, and FAN, the CTA ruled that the assessment is void.

This should serve as a guide to taxpayers in cases where the BIR alleges their receipt of assessment notices especially for those coursed through alleged employees or authorized agents.

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