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Amusement tax

With the Filipinos's penchant for singing, dancing and entertaining, it is no wonder that karaoke bars have sprouted like mushrooms all over the country. And the Bureau of Internal Revenue (BIR) has not lost sight on this, as it started chasing some taxpayers seemingly or likely engaged in these activities for a profit, in light of the provisions of Revenue Memorandum Circular (RMC) 18-2010, in relation to Section 125(b) of the 1997 Tax Code, as amended.

Section 125(b) of the Tax Code, as amended, authorizes the imposition of amusement tax from the proprietor, lessee or operator of cabarets, night or day clubs, among others. In implementing the mandate of Section 125(b) of the Tax Code, the BIR, under RMC 18-2010, defines night and day clubs as drinking, dancing and entertainment venues, which oftentimes serve food and provide entertainment. Cabarets, on the other hand, are defined as restaurants or clubs where liquor and food are served, with a stage provided for performances by musicians, dancers or comedians, including a venue for dancing by patrons/customers, similar to that of nightclubs. Other amusement places that offer the same pleasurable diversion entertainment and function, including videoke bars, karaoke bars, karaoke televisions, karaoke boxes and music lounges, are included in the coverage of the 18-percent amusement tax under RMC 18-2010.

In CTA Case 9279, the BIR assessed a taxpayer for the 18-percent amusement tax following the provisions of RMC 18-2010. The BIR claimed that the taxpayer is an amusement place within the definition of night and day club and cabaret under RMC 18-2010 mainly because it serves liquor and food to its customers, with stage performances by musicians and dancers. It is also a venue for dancing, which encourages prolonged stay resulting in more revenue from sales of food and drinks to customers. Being a place of amusement, the BIR argued that the taxpayer is subject to amusement tax on its gross sales of food, refreshment, services and merchandise served to customers, pursuant to Section 125(b) of the Tax Code, as amended.

In disposing of the case, the Court of Tax Appeals cancelled the assessment on the basis that the taxpayer does not fall within the scope or coverage of cabarets and/or night or day clubs under Section 125(b) of the Tax Code. For a business entity to be deemed a cabaret, or night and day club, it must be established that its operations involve dancing as the main business and customers patronize the place in order to dance either with their own partners or with professional hostesses engaged by the establishment for that purpose.

In this case, there is no indication that the taxpayer's customers frequent the establishment to dance, either with their own partners, or with professional hostesses. The taxpayer provides entertainment to its customers through live bands and singers, but these are incidental to the main restaurant business of providing food and drinks to its diners, and are merely for the purpose of advertisement and promotion of the restaurant business. Also, no tickets are sold by the establishment to its customers to view the live band, as it is but a part of the service to customers as they dine.

Following RMC 18-2010, the terms cabarets, night and day clubs expressly include other amusement places, such as videoke bars, karaoke bars, karaoke televisions, karaoke boxes and music lounges, for the purpose of imposing the 18-percent amusement tax. However, the tax court gave no weight to the provisions of RMC 18-2010 since, according to the tax court, it unilaterally changed and expanded or widened the scope or meaning of cabarets, night and day clubs under the contemplation of the 1997 Tax Code and existing jurisprudence.

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