REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

THIRD DIVISION

GINEBRA SAN MIGUEL, INC., *Petitioner,*	**CTA Case No. 11052**
- versus -	Members: **MANAHAN,** *Chairperson,* **REYES-FAJARDO,** *and* **ANGELES,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	**Promulgated:** MAR 21 2025 3:30 p.m.

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DECISION

REYES-FAJARDO, J.:

The fundamental issue in this case concerns the effectivity date of Republic Act No. 11467, which increased the excise tax on distilled spirits from ₱24.34 to ₱42.00 per proof liter under Section 141 of the National Internal Revenue Code (Tax Code), as amended. If the effectivity date is January 23, 2020, as contended by the Commissioner of Internal Revenue (CIR), the excise taxes relative to the period from January 23, 2020 to February 9, 2020 were imposed with legal basis. If the law became effective on February 10, 2020, upon its publication in the Official Gazette in printed form, as asserted by petitioner, then petitioner is entitled to a refund.

The Court finds for petitioner. A law takes effect only after its complete publication in the Official Gazette or a newspaper of general circulation unless a different effectivity date is explicitly provided.

Before the Court is a Petition for Review[1] filed by Ginebra San Miguel, Inc. (GSMI or petitioner) requesting for the refund of the amount of ₱66,370,125.28, representing alleged illegally paid excise taxes relative to the period from January 23, 2020 to February 9, 2020,

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[1] Docket, pp. 6-33.

computed based on the increased rates under Republic Act (RA) No. 11467.[2] GSMI also seeks to invalidate Revenue Memorandum Circular (RMC) No. 065-20[3] and the amendment thereto, which declared that the increased excise tax rates in RA No. 11467 already took effect on January 23, 2020, prior to actual publication of the law on the Official Gazette on February 10, 2020.

FACTS

The Law

RA No. 11467 increased the excise tax rate on distilled spirits from ₱24.34, as provided in Section 141 of the National Internal Revenue Code (Tax Code), as amended by RA No. 8424,[4] to ₱42.00 per proof liter, *viz.*:

> CHAPTER III
>
> EXCISE TAX ON ALCOHOL PRODUCTS
>
> SEC. 141. Distilled Spirits. — On distilled spirits, subject to the provisions of Section 133 of this Code, an excise tax shall be levied, assessed and collected based on the following schedules:
>
> (A) Effective January 1, 2020
>
> (1) An ad valorem tax equivalent to twenty-two percent (22%) of the net retail price (excluding the excise tax and the value-added tax) per proof; and
>
> (2) In addition to the ad valorem tax herein imposed, a specific tax of Forty-two pesos (P42.00) per proof liter. x x x

RA No. 11467 was a consolidation of House Bill No. 1026 and Senate Bill No. 1074; it was passed by the House of Representatives and the Senate of the Philippines on December 19, 2019 and transmitted to the Office of the President on December 23, 2019.

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2 Amendments to R.A. No. 8424, Republic Act No. 11467, January 22, 2020.

3 Subject: Circularizing the Effectivity Date of Republic Act (RA) No. 11467 Entitled "An Act Amending Sections 109, 141, 142, 143, 144, 147, 152, 263, 263-A, 265, and 288-A, and Adding a New Section 290-A to Republic Act No. 8424, as Amended, Otherwise Known as the National Internal Revenue Code of 1997, and for Other Purposes", June 22, 2020.

4 Tax Reform Act of 1997, December 11, 1997.

The amendments introduced in the law were set to take effect on January 1, 2020, after its complete publication, *viz.*:

> SECTION 15. Effectivity. — This Act shall take effect on January 1, 2020 after its complete publication either in the Official Gazette or in a newspaper of general circulation.

While the law specified an intended effectivity date, it was contingent upon compliance with the publication requirement. The key events surrounding its enactment are as follows:

- January 22, 2020 – President Rodrigo Roa Duterte signed RA No. 11467 into law.
- January 23, 2020 – The law was uploaded to the Official Gazette website.[5]
- January 27, 2020 – The CIR claimed that the law was published in a newspaper of general circulation.
- February 10, 2020 – RA No. 11467 was published in printed form in the Official Gazette.[6]

Following the enactment of RA No. 11467, the CIR issued two successive Revenue Memorandum Circulars (RMCs), each declaring a different effectivity date for the law:

1. RMC No. 065-20 (June 22, 2020) - Declared January 27, 2020 as the effectivity date, citing an alleged publication in a newspaper of general circulation; and

2. RMC No. 113-20 (October 14, 2020) - Corrected the effectivity date to January 23, 2020, based on its online publication on the Official Gazette website.

These issuances formed the bases for the Bureau of Internal Revenue's (BIR) assessment and collection of excise taxes for the period January 23 to February 9, 2020.

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[5] See https://www.officialgazette.gov.ph/2020/01/22/republic-act-no-11467/ Last accessed on February 4, 2025.

[6] Vol. 116, No. 6, p. 813, Official Gazette. Also see Certifications issued by the National Printing Office and Malacañang Records Office, Exhibits "P-3" and "P-4" Docket, p. 282-283.

RMC No. 065-20 dated June 22, 2020.

RMC No. 065-20 is based on Memorandum dated January 29, 2020 from the Secretary of Finance. Again, RA No. 11467 provided that amendments introduced in the law were set to take effect on January 1, 2020, after its complete publication. The memorandum recognized that RA No. 11467 could not have taken effect on January 1, 2020, as originally intended. Firstly, the President signed the law only on January 22, 2020; and secondly, the publication requirement still had to be complied with.

The Secretary of Finance identified two dates of publication: first, on the Official Gazette website on January 23, 2020 and, subsequently, in a newspaper of general circulation on January 27, 2020.

Thus, the Secretary of Finance opined that RA No. 11467 shall take effect on January 27, 2020, immediately after its publication in a newspaper of general circulation. Citing Garcillano v. House of Representatives Committees on Public Information (Garcillano Case),[7] that publication through the Official Gazette website is not compliance with the publication requirement, to wit:

> 17. As to whether the publication through the website of the Official Gazette is considered as compliance with the publication requirement, the Supreme Court held in the case of Garcillano v. House of Representatives, et al. that publication through the internet is insufficient, to wit:
>
> > "The invocation by the respondents of the provisions of R.A. No. 8792, otherwise known as the Electronic Commerce Act of 2000, to support their claim of valid publication through the internet is all the more incorrect. R.A. 8792 considers an electronic data message or an electronic document as the functional equivalent of a written document only for evidentiary purposes. In other words, the law merely recognizes the admissibility in evidence (for their being the original) of electronic data messages and/or electronic documents. It does not make the internet a medium for publishing laws, rules and regulations."

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[7] G.R. Nos. 170338 & 179275, December 23, 2008, 595 Phil 775-844.

RECOMMENDATION

18. Based on the foregoing discussion, it is our considered view that RA No. 11467 became effective last 27 January 2020, immediately after its publication in a newspaper of general circulation pursuant to Section 15 of RA No. 11467.

> If the Secretary approves, we also recommend that the Department informs the Bureau of Internal Revenue on its position on the date of effectivity of RA No. 11467 in its entirety including the commencement of the VAT exemption of the sale or importation of prescription drugs and medicines for diabetes, high cholesterol, and hypertension on 28 January 2020. In the event of any VAT refund, we recommend that the same be refunded pursuant to Joint Circular No. 001-2018.

For the Secretary's consideration. Thank you.

APPROVED:

(SGD.)
CARLOS G. DOMINGUEZ
Secretary of Finance

The tax authorities relied on RMC No. 065-20 and the DOF Memorandum; they implemented the increased excise tax rates in RA No. 11467 as of January 27, 2020.

RMC No. 113-20 dated October 14, 2020.

In a DOF Letter dated August 18, 2020 addressed to the CIR, the Secretary Finance clarified that RA No. 11467 shall take effect upon its complete publication in the website of the Official Gazette on January 23, 2020. This amended the January 27, 2020 effectivity date set previously in DOF Memorandum dated January 29, 2020.

On October 14, 2020, the CIR issued RMC No. 113-20[8] to circularize the amended effectivity date, *viz.*:

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[8] SUBJECT: Publishing the Full Text of the Letter from the Department of Finance (DOF) to Amend the Effectivity Date of Republic Act (R.A.) No. 11467, as Circularized under Revenue Memorandum Circular No. 65-2020.

REVENUE MEMORANDUM CIRCULAR NO. 113-20

SUBJECT : Publishing the Full Text of the Letter from the Department of Finance (DOF) to Amend the Effectivity Date of Republic Act (R.A.) No. 11467, as Circularized under Revenue Memorandum Circular No. 65-2020

TO : All Internal Revenue Officers and Others Concerned

For the information and guidance of all internal revenue officers, employees and others concerned, attached herewith as Annex "A" is the letter dated August 18, 2020 letter from Antonette C. Tionko, Undersecretary for Revenue Operations Group of the DOF, clarifying that R.A. No. 11467 was published in the Official Gazette on January 23, 2020 through its website, which medium is intended for said purpose and that the requirement on publication of laws has been complied with.

This amends RMC No. 65-2020, which circularized that the effectivity of R.A. No. 11467 falls on January 27, 2020.

All concerned are hereby enjoined to be guided accordingly and give this Circular as wide a publicity as possible.

(SGD.) CAESAR R. DULAY
Commissioner of Internal Revenue

Proceedings at the administrative level.

1. *Original Notice of Discrepancy.*

The Bureau of Internal Revenue (BIR)[9] issued a Notice of Discrepancy dated July 6, 2020[10] addressed to GSMI regarding the latter's use of the old excise tax rates under RA No. 8424, instead of the new excise tax rates under RA No. 11467, in the computation of its excise tax liability arising from the removal of alcohol products for the period from January 27 to February 9, 2020. As a result, the BIR found deficiency excise tax due from GSMI amounting to ₱39,578,563.97, inclusive of interest.

After receiving the Notice of Discrepancy on July 22, 2020 (Original Notice of Discrepancy), GSMI refuted the BIR's findings through a letter dated August 5, 2020.[11] It asserted that RA No. 11467

[9] Through Manuel V. Mapoy, OIC-Assistant Commissioner, Large Taxpayers Service.
[10] Exhibit "P-5," Docket, pp. 284-285.
[11] Exhibit "P-6," Docket, pp. 289-290.

took effect only on February 10, 2020, after its publication in the *printed form* of the Official Gazette. Further, there is no existing record of the law's publication in any newspaper of general circulation on January 27, 2020, as referred to in the DOF Memorandum.

In a letter-reply dated September 18, 2020,[12] the BIR[13] pointed out that RA No. 11467 was effective upon its upload on the Official Gazette *website* on January 23, 2020.

2. *Amended Notice of Discrepancy.*

The BIR issued a Notice of Discrepancy dated September 18, 2020 (Amended Notice of Discrepancy),[14] increasing the total amount due to ₱71,710,429.11, inclusive of interest. In its revised computation, the BIR reckoned the application of RA No. 11467 from January 23, 2020, instead of January 27, 2020, as in its previous computation in the Original Notice of Discrepancy, *viz.*:

	Notice of Discrepancy	
	Original	**Amended**
Period of Removals		
From	**January 27, 2020**	**January 23, 2020**
To	February 9, 2020	February 9, 2020
Specific Tax Rate used per proof liter (p.l.)		
Should be	₱42.00	₱42.00
per eFPS Filing	24.34	24.34
Difference	₱17.66	₱17.66
Multiplied by Volume of Removals[a]	1,939,045.57	3,448,653.65
Specific Tax Due	₱34,243,544.77	₱60,903,223.46
Ad Valorem Tax Rate used based on the Net Retail Price (NRP) per Proof		
Should be	₱0.22	₱0.22
per eFPS Filing	0.20	0.20
Difference	₱0.02	₱0.02
Multiplied by NRP per Proof Liter	156,689,611.61	273,345,090.90
Ad Valorem Tax Due	₱3,133,792.23	₱5,466,901.82
Excise Tax Due	₱37,377,337.00	**₱66,370,125.28**
Add: Interest	2,201,226.97[b]	5,340,303.84[c]
Total Amount Due	₱39,578,563.97	₱71,710,429.12[d]

[a] In proof liters.
[b] Computed up to July 31, 2020.
[c] Computed as of September 30, 2020.
[d] This is the correct amount. Total Amount Due in the Amended Notice of Discrepancy is ₱71,710,429.11.

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12 Exhibit "P-7," Docket, pp. 298-299.

13 Through Manuel V. Mapoy, OIC-Assistant Commissioner, Large Taxpayers Service.

14 Exhibit "P-7," Docket, pp. 300-301.

In a letter dated October 22, 2020,[15] GSMI reiterated that it is not liable for deficiency excise tax for removals between January 23, 2020 to February 9, 2020. Contrary to the BIR's position, the internet is not a medium for publishing laws, rules and regulations.

The BIR[16] responded through a letter dated November 6, 2020[17] and stood firm as to RA No. 11476's January 23, 2020 effectivity date, citing the recently-issued RMC No. 113-20 as basis. It reiterated that the total amount due in the Amended Notice of Discrepancy must be settled within 15 days from receipt thereof.

3. *Payment Under Protest.*

On December 29, 2020, GSMI paid under protest[18] the amount of ₱66,370,125.28, representing the basic deficiency excise tax portion under the Amended Notice of Discrepancy.

GSMI and the BIR maintained their respective positions in the letters dated January 8, 2021[19] and January 19, 2021,[20] respectively.

4. *Administrative Claim for Refund.*

On August 3, 2021, through a Letter dated July 29, 2021, GSMI requested[21] for the refund the excise taxes amounting to ₱66,370,125.28 paid under protest on December 29, 2020, representing alleged illegally collected excise tax payments for the period January 23, 2020 to February 9, 2020.

The case was later forwarded to the BIR's Legal Service Division for resolution and issuance of a clarificatory ruling.[22]

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[15] Exhibit "P-8," Docket, pp. 317-324.
[16] Through Manuel V. Mapoy, OIC-Assistant Commissioner, Large Taxpayers Service.
[17] Exhibit "P-9," Docket, p. 325.
[18] Through the BIR Electronic Filing and Payment System (eFPS) using Payment Form (BIR Form No. 0605), with Reference No. 292000039338243. See Exhibits "P-10," "P-10-1," and "P-10-2," Docket, pp. 326-329; Exhibit "P-19," Docket, p. 357.
[19] Exhibit "P-11," Docket, pp. 330-334.
[20] Exhibit "P-20," Docket, p. 358.
[21] Through a Letter dated July 29, 2021. Exhibit "P-13," Docket, pp. 336-344.
[22] Par. 6, Stipulated Facts, Joint Stipulation of Facts and Issues, Docket, p. 212; Exhibit "P-15," Docket, p. 356.

On December 23, 2022, GSMI filed BIR Form No. 1914 (Application for Tax Credits/Refunds)[23] relative to its refund request. GSMI's Letter-request and BIR Form No. 1914 shall be hereinafter referred to collectively as "Administrative Claim."

Proceedings before the Court.

GSMI filed the present Petition for Review on December 28, 2022 (Judicial Claim).[24]

The CIR's Answer[25] was posted on May 27, 2023. Meanwhile, it transmitted the BIR Records[26] of this case on July 31, 2023.

After the parties' submission of their respective pre-trial briefs,[27] Pre-Trial Conference was set and held on July 26, 2023. Pre-trial was deemed terminated[28] upon the submission and approval of the parties' Joint Stipulation of Facts and Issue.[29] The Court issued its Pre-Trial Order on October 3, 2023.[30]

During trial, GSMI offered the testimonies of William Ray B. Manuel, GSMI Tax Manager.[31] Subsequently, the Court resolved GSMI's Formal Offer of Evidence[32] and admitted all of petitioner's offered exhibits.

For its part, the CIR manifested[33] that he will no longer present testimonial evidence considering that there was no report of investigation forwarded to their office.

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23 Exhibit "P-14-1," Docket, p. 355.
24 Docket, pp. 6-40.
25 Docket, pp. 147-153.
26 Respondent's *Compliance* dated July 31, 2023, Docket, pp. 206-208.
27 Docket, pp. 175-193.
28 Notice of Pre-Trial Conference dated April 4, 2023, Docket, pp. 158 to 160; Minutes of the hearing held on, and Order dated, July 26, 2023, Docket, pp. 195 and 198 to 200, respectively.
29 Docket, pp. 211-220.
30 Docket, pp. 228-235.
31 Exhibits "P-16" and "P-21," Docket, pp. 120-135 and 168-172; Minutes of the hearing held on, and Order dated, October 4, 2023, Docket, pp. 241-243.
32 Docket, pp. 244-254.
33 Embodied in respondent's Comment with Manifestation (On Petitioner's Formal Offer of Evidence), Docket, pp. 360-362.

Both parties were allowed a period of 30 days[34] to file their respective Memoranda. However, only GSMI filed its Memorandum.[35] In view of respondent's failure to file a Memorandum within the time given, the case was deemed submitted for decision on March 22, 2024.[36]

ARGUMENTS

GSMI's Arguments

Petitioner GSMI primarily asserts that RA No. 11467 took effect on February 10, 2022, the date of the printed publication of the law on the Official Gazette. As such, the increased excise tax rates on distilled spirits introduced by RA No. 11467 to Section 141 of the NIRC of 1997 were not yet applicable for the period covering January 23, 2020 to February 9, 2020.

GSMI further contends that the online publication of RA No. 11467 on the Official Gazette website did not satisfy the publication requirement for the effectivity of the law. It argues that internet publication cannot substitute for the formal requirement of publication in the Official Gazette in printed form or in a newspaper of general circulation.

Moreover, petitioner points out that respondent's imposition of excise taxes was made without authority to conduct an audit examination for taxable year 2020, hence, petitioner's right to due process was violated when the Original and Amended Notices of Discrepancy have been issued without a previously-issued LOA.

Finally, petitioner concludes that it is entitled to the refund of excise tax erroneously paid because:

1. It timely filed both its administrative and judicial claims for refund of illegally collected excise taxes within the two -year prescriptive period,
2. It made a categorical demand for reimbursement, and

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[34] Counted from the parties' respective receipt of the Resolution dated January 23, 2024.
[35] Docket, pp. 371-400.
[36] Minute Resolution dated March 22, 2024, Docket, p. 403.

3. There is clear proof of payment of the erroneously or illegally collected taxes.

The CIR's Arguments

In his Answer, respondent contends that petitioner is liable to pay the deficiency excise tax in the amount of ₱66,370,125.28.

The CIR asserts that the petitioner's claim lacks merit and that RA No. 11467 was validly enforced beginning January 23, 2020, as set forth in RMC No. 113-20.

The CIR further argues that GSMI failed to establish a valid ground for refund, insisting that the excise taxes were properly assessed and collected. He contends that the tax was imposed in accordance with the effectivity dates set in the revenue issuances and that there is no legal basis for granting a refund of the amounts paid.

ISSUES

The parties submitted the following issue for the Court's resolution is:

> WHETHER OR NOT PETITIONER IS ENTITLED TO ITS CLAIM FOR REFUND OF THE ALLEGED DEFICIENCY EXCISE TAXES, IN THE AMOUNT OF PHP66,370,125.28, PAID ON DISTILLED SPIRITS IN CONNECTION WITH THE REMOVALS OF ALCOHOL PRODUCTS FOR THE PERIOD COVERING JANUARY 23, 2020 TO FEBRUARY 9, 2020.

Resolution of the issue of GSMI's entitlement to the refund of excise taxes alleged to have been collected illegally turns upon the following questions:

1. Did RA No. 11476 take effect as intended on January 1, 2020?

2. When was the publication requirement of RA No. 11476 complied with?

    a. on the publication of its *digital copy* on the Official Gazette *website* on January 23, 2020,

b. on its *purported* publication in *a newspaper of general circulation* on January 27, 2020, or

c. on its publication on the *Official Gazette* in *printed form* on February 10, 2020?

3. Are RMC Nos. 065-20 and 113-20 valid? May the Court of Tax Appeals touch upon the issue of the validity of revenue issuances in the course of adjudicating refund cases?

4. Were the requisites under Section 229 of the National Internal Revenue Code, as amended (Tax Code), complied with?

   a. Were GSMI's administrative and judicial claim filed within the two-year reglementary period?

   b. Was the payment of excise tax relative to removals of alcohol products between January 23, 2020 to February 9, 2020 erroneous/illegal, and, thus, subject to refund?

   c. If the payment of excise tax had been erroneous/illegal, did petitioner establish its entitlement to the refund thereof?

OUR RULING

The Petition for Review is meritorious.

January 1, 2020 is not the effectivity date.

The effectivity clause of RA No. 11467 states:

> SECTION 15. Effectivity. — This Act shall take effect on January 1, 2020 after its complete publication either in the Official Gazette or in a newspaper of general circulation.

It is undisputed that January 1, 2020, as the intended effectivity date, was never legally operative. Since the law was signed only on January 22, 2020, RMC No. 065-20 explains why the statute could not be retroactively applied on January 1, 2020:

1 January 2020 is not the effective date

1. As a general rule, laws shall have only a prospective effect and must not be applied retroactively. This is expressed in the familiar legal maxim lex prospicit, non respicit, the law looks forward and not backward.

2. The abovementioned principle finds its application in Article 4 of the New Civil Code of the Philippines ("Civil Code"), which provides that "[l]aws shall have no retroactive effect, unless the contrary is provided." The rule is intended to the tendency of retroactive legislation to be unjust and oppressive on account of its liability to punish individuals for violations of laws not yet enacted, unsettle vested rights or disturb the legal effect of prior transactions.

3. In determining whether retroactive legislation for taxation is acceptable, we must look at its nature. In the case of Mactan Cebu International Airport Authority vs. Marcos, the Supreme Court recognized the power of taxation as a "destructive power which interferes with the personal and property for the support of the government. Accordingly, tax statutes must be construed strictly against the government and liberally in favor of the taxpayer."

4. Furthermore, the Supreme Court has consistently emphasized the inherent necessity to publish laws. In Tanada v. Tuvera ("Tanada"), the Supreme Court held that publication is essential to give effect to the principle ignorantia legis non excusat, ignorance of the law excuses no one from compliance therewith. The Supreme Court further held that "it would be the height of injustice to punish or otherwise burden a citizen for the transgression of a law of which he had no notice whatsoever, not even a constructive one."

5. RA No. 11467 is a tax measure that imposes higher tax rates on certain products. **As such, the retroactive application of RA No. 11467 to 1 January 2020 cannot be applied since it will be unjust against the affected taxpayers whose liabilities and responsibilities are increased. Taxpayers who relied in good faith and paid the correct taxes at the time when the law is yet to be published should not be required to pay additional taxes.** (Emphasis supplied)

More importantly, it is basic that publication is a pre-requisite to the effectivity of all laws; it is an element of due process in our jurisdiction, to ensure that, indeed, ignorance of the law shall not be an excuse.[37]

The publication requirement for Republic Act No. 11467 was complied with only on February 10, 2020, when the law was published in printed form in the Official Gazette.

Only the publication in the Official Gazette in its printed form meets the publication requirement for the effectivity of RA No. 11467. The fact of RA No. 11467's print publication in the Official Gazette on February 10, 2020 is supported by certifications by both the Malacañang Records Office[38] and the National Printing Office.[39]

The Civil Code provides:

> ART. 2. Laws shall take effect after fifteen days following the completion of their publication in the Official Gazette, **unless it is otherwise provided**. This Code shall take effect one year after such publication. (Boldfacing supplied)

As a general rule, laws shall take effect 15 days *after* publication in the Official Gazette; by exception, *the new statute may otherwise provide* the medium of publication and the exact date of effectivity after the publication requirement is complied with. Thus, in the landmark case of *Tañada v. Tuvera,*[40] the Supreme Court held:

> x x x In a long line of decisions, this Court has ruled that publication in the Official Gazette is necessary in those cases where the legislation itself does not provide for its effectivity date — for then the date of publication is material for determining its date of effectivity, which is the fifteenth day following its publication — **but not when the law itself provides for the date when it goes into effect.** (Citations omitted and boldfacing supplied)

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[37] See *Villafuerte v. Cordial, Jr.*, G.R. No. 222450, July 7, 2020.
[38] Exhibit "P-3," Docket, p. 282. Certifies that RA No. 11467 was published in Volume 116 No. 6 issue of the Official Gazette on February 10, 2020.
[39] Exhibit "P-4," Docket, p. 283. Certifies that RA No. 11467 was published in Volume 116 No. 6 issue of the Official Gazette on February 10, 2020.
[40] G.R. No. 63915, April 24, 1985, 220 Phil 422-444.

1. *Newspaper publication could have sufficed. However, there was no proof of the newspaper publication; hence, the same cannot be the basis for the effectivity date of RA No. 11467.*

Following RMC No. 065-20, the CIR declared that the law took effect upon its January 27, 2020 newspaper publication. Hence, the CIR applied the new excise tax rates under RA No. 11467 and assessed GSMI for deficiency excise tax for the period from January 27, 2020 to February 9, 2020. The CIR changed its position in RMC No. 113-20, recognizing the January 23, 2020 digital publication as the effectivity date instead. The CIR is wrong on both counts.

The CIR failed to establish the fact of newspaper publication on January 27, 2020. There is nothing in the Court records that proves that RA No. 11467 was actually published in print on the said date. Furthermore, the issuance of RMC No. 113-20 shows that the CIR abandoned this initial view.

2. *The internet publication relied upon by the CIR <u>does not comply</u> with the publication requirement.*

The Official Gazette website, on which RA No. 11467's digital copy was uploaded on January 23, 2020, is not a valid medium of publication, in the context of effectivity of laws. Foremost, Section 15 of RA No. 11467 does not expressly allow internet publication as a medium of publication. Section 15's reference to the publication in the "Official Gazette" must be construed as that in printed form, not merely through its website. The Supreme Court already declared in the *Garcillano Case*[41] that publication *via* digital media (e.g., internet) does not meet the publication requirement:

> Respondents justify their non-observance of the constitutionally mandated publication by arguing that the rules have never been amended since 1995 and, despite that, they are published in booklet form available to anyone for free, and accessible to the public at the Senate's internet web page.

[41] G.R. Nos. 170338 & 179275, December 23, 2008, 595 Phil 775-844.

> **The Court does not agree.** The absence of any amendment to the rules cannot justify the Senate's defiance of the clear and unambiguous language of Section 21, Article VI of the Constitution. The organic law instructs, without more, that the Senate or its committees may conduct inquiries in aid of legislation only in accordance with duly published rules of procedure, and does not make any distinction whether or not these rules have undergone amendments or revision. **The constitutional mandate to publish the said rules prevails over any custom, practice or tradition followed by the Senate.**
>
> Justice Carpio's response to the same argument raised by the respondents is illuminating:
>
> **The publication of the Rules of Procedure in the website of the Senate, or in pamphlet form available at the Senate, is not sufficient under the Tañada vs. Tuvera ruling which requires publication either in the Official Gazette or in a newspaper of general circulation.** The Rules of Procedure even provide that the rules 'shall take effect seven (7) days after publication in two (2) newspapers of general circulation,' precluding any other form of publication. Publication in accordance with the due process requirement because the Rules of Procedure put a person's liberty at risk. A person who violates the Rules of Procedure could be arrested and detained by the Senate. (Boldfacing supplied)

RMC Nos. 065-20 and 113-20 are invalid; the Court has ample authority to pass upon the validity of revenue issuances in the course of adjudicating refund cases.

Verily, the CIR has the power to promulgate interpretative rules relative to the Tax Code and other tax laws,[42] as well as recommend to the Secretary of Finance all rules and regulations necessary for the effective enforcement thereof.[43] However, administrative issuances must be germane with the law it seeks to implement. "When the application of an administrative issuance modifies existing laws or exceeds the intended scope, the issuance becomes void, not only for being *ultra vires*, but also for being unreasonable."

Administrative interpretative rules and executive issuances are not binding upon courts. "[I]nterpretations placed upon a statute by the executive officers, whose duty is to enforce it, are not conclusive and will be ignored if judicially found to be erroneous as the courts

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[42] Section 4, Tax Code.
[43] Section 244, Tax Code.

will not countenance administrative issuances that override, instead of remaining consistent and in harmony with, the law they seek to apply and implement."[44]

In *Banco De Oro v. Republic*,[45] the Supreme Court held that the Court of Tax Appeals, as the exclusive adjudicator of tax issues, may take cognizance of the issue of the revenue issuance's validity, whether in an action that directly assails its validity or in a refund or assessment case, where validity is put in issue collaterally by the taxpayer for its defense:

> **The Court of Tax Appeals has undoubted jurisdiction to pass upon the constitutionality or validity of a tax law or regulation when raised by the taxpayer as a defense in disputing or contesting an assessment or claiming a refund.** It is only in the lawful exercise of its power to pass upon all matters brought before it, as sanctioned by Section 7 of Republic Act No. 1125, as amended.
>
> This Court, however, declares that the Court of Tax Appeals may likewise take cognizance of cases directly challenging the constitutionality or validity of a tax law or regulation or administrative issuance (revenue orders, revenue memorandum circulars, rulings).
>
> Section 7 of Republic Act No. 1125, as amended, is explicit that, except for local taxes, appeals from the decisions of quasi-judicial agencies (Commissioner of Internal Revenue, Commissioner of Customs, Secretary of Finance, Central Board of Assessment Appeals, Secretary of Trade and Industry) on tax-related problems must be brought *exclusively* to the Court of Tax Appeals.
>
> In other words, within the judicial system, the law intends the Court of Tax Appeals to have exclusive jurisdiction to resolve all tax problems. Petitions for writs of *certiorari* against the acts and omissions of the said quasi-judicial agencies should, thus, be filed before the Court of Tax Appeals.

That said, We reiterate that the publication requirement for RA No. 11467 was complied with when it was published in the Official Gazette only on February 10, 2020. RMC Nos. 065-20 and 113-20 insisted on the law taking effect on earlier dates (i.e., January 27 and January 23, 2020) without complete publication; these are clear deviations from the letter and intent of the law; RMC Nos. 065-20 and

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[44] *Petron Corp. v. Commissioner of Internal Revenue*, G.R. No. 255961, March 20, 2023.
[45] G.R. No. 198756 (Resolution), August 16, 2016.

113-20 are invalid on account of its *ultra vires* directives on RA No. 11467's effectivity date.

This ruling is consistent with *San Miguel Brewery, Inc. v. Commissioner of Internal Revenue*,[46] where the Court of Tax Appeals First Division nullified the assailed RMCs insofar as they provide an erroneous effectivity date of RA No. 11467.

GSMI established its entitlement to the refund sought.

GSMI's claim is grounded on the alleged erroneous/illegal character of the excise tax paid on the removal of alcohol products, pursuant to Section 229 of the Tax Code:

> SECTION 229. Recovery of Tax Erroneously or Illegally Collected. — No suit or proceeding shall be maintained in any court for the recovery of any national internal revenue tax hereafter alleged to have been **erroneously or illegally assessed or collected**, or of any penalty claimed to have been collected without authority, or of any sum alleged to have been excessively or in any manner wrongfully collected, until a claim for refund or credit has been duly filed with the Commissioner; but such suit or proceeding may be maintained, whether or not such tax, penalty, or sum has been paid under protest or duress.
>
> In any case, no such suit or proceeding shall be filed after the expiration of two (2) years from the date of payment of the tax or penalty regardless of any supervening cause that may arise after payment: Provided, however, That the Commissioner may, even without a written claim therefor, refund or credit any tax, where on the face of the return upon which payment was made, such payment appears clearly to have been erroneously paid. (Emphasis supplied)

A claim founded upon this provision shall be granted only when the administrative and judicial claims have been timely filed *and* the claimant establishes its right to the refund. Entitlement to a Section 229 refund requires proof of the erroneous/illegal character of the tax payment and the fact of payment.[47]

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[46] C.T.A. Case No. 10745, November 18, 2024.

[47] *Commissioner of Internal Revenue v. Interpublic Group of Companies*, Inc., G.R. No. 207039, August 14, 2019.

1. *GSMI's administrative and judicial claims were filed on time.*

Whether or not a claim for refund of erroneously/illegally collected tax was filed on time in accordance with Section 229 of the Tax Code is conditioned upon the following: *first,* an administrative claim must have been filed previously and, *second,* both administrative and judicial claims for refund were filed within two years from the time of payment/remittance of tax.[48]

GSMI seeks to refund the excise tax it paid under protest on December 29, 2020. As shown below, both its administrative and judicial claims were filed two years from the time of payment:

	Exhibit	Date
Payment under protest	P-19	December 29, 2020
Filing of Administrative Claim		
Letter-Request for refund	P-13	August 3, 2021
BIR Form No. 1914	P-14-1	December 23, 2022
Filing of Judicial Claim	N/A	December 28, 2022

2. *Removals of alcohol products for the period in question were <u>not</u> subject to the increased excise tax rate set out in RA No. 11467; the payment computed based on the increased rates was erroneous and illegal.*

While the power to tax is inherent in sovereignty, no tax shall be imposed if there is no law that authorizes such exaction. The collection of taxes without legal justification is an arbitrary and unlawful exercise of the sovereign's taxing power.

The Supreme Court elucidated the rule of strict interpretation of tax laws against the government in *Commissioner of Internal Revenue v. Philippine American Accident Insurance Co., Inc.*:[49]

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[48] *Commissioner of Internal Revenue v. United Cadiz Sugar Farmers Association Multi-Purpose Cooperative,* G.R. No. 209776, December 7, 2016, 802 PHIL 636-659.

[49] G.R. No. 141658, March 18, 2005, 493 Phil 785-803.

> **Unless a statute imposes a tax clearly, expressly and unambiguously, what applies is the equally well-settled rule that the imposition of a tax cannot be presumed.** Where there is doubt, tax laws must be construed strictly against the government and in favor of the taxpayer. This is because taxes are burdens on the taxpayer, and should not be unduly imposed or presumed beyond what the statutes expressly and clearly import. (Boldfacing supplied)

In the present case, the CIR anchors the imposition of the increased excise tax rate on GSMI's removals of alcohol products for the period from January 23, 2020 to February 9, 2020 on RA No. 11467. However, as discussed above, the law relied upon took effect only after its complete publication on February 10, 2020. Certainly, the CIR's *premature* exaction lacked legal basis—thus, erroneous and illegal; it was enforced *prior* to the effectivity of the law that was supposed to authorize such increased rate.[50]

3. *GSMI established the fact of payment.*

The instant refund involves the amount of ₱66,370,125.28, representing the excess of basic excise tax computed using the new excise tax rates over basic excise tax computed using the old rate.

GSMI remitted this amount to the BIR under protest on December 29, 2020. This payment is evidenced by the relevant Payment Form (BIR Form No. 0605),[51] eFPS Payment Summary,[52] and eFPS Payment Detail.[53] The CIR did not deny receipt thereof or assert that it was not in fact made.

In sum, the increased tax rate under RA No. 11467 took effect only on February 10, 2020 after complete publication in the Official Gazette in print form. The imposition and collection of excise taxes based on such increased rate prior to this effectivity date are illegal. Consequently, *first*, RMC Nos. 065-20 and 113-20, which imposed earlier effectivity dates are invalid, and, *second*, GSMI's payment under protest amounting to ₱66,370,125.28, representing the excess of basic excise tax computed using the new excise tax rates over basic excise tax computed using the old rate, is subject to refund.

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[50] See *Petron Corp. v. Commissioner of Internal Revenue*, G.R. No. 255961, March 20, 2023.
[51] Exhibit "P-10," Docket, pp. 326-327.
[52] Exhibit "P-10-1," Docket, p. 328.
[53] Exhibit "P-10-2," Docket, p. 329.

WHEREFORE, in light of the foregoing considerations, the Petition for Review is **GRANTED.** Respondent Commissioner of Internal Revenue is **ORDERED** to refund or issue a tax credit certificate in favor of petitioner GSMI amounting to **₱66,370,125.28**, representing erroneously and illegally collected basic excise tax on the removals of alcohol for the period from January 23, 2020 to February 9, 2020.

SO ORDERED.

Marian Ivy F. Reyes-Fajardo
MARIAN IVY F. REYES-FAJARDO
Associate Justice

WE CONCUR:

Catherine T. Manahan
With Separate Concurring Opinion
CATHERINE T. MANAHAN
Associate Justice

HENRY S. ANGELES
Associate Justice

ATTESTATION

I attest that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

Catherine T. Manahan
CATHERINE T. MANAHAN
Chairperson
Third Division

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, and the Third Division Chairperson's Attestation, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

Ma. Belen M. Ringpis-Liban
MA. BELEN M. RINGPIS-LIBAN
Acting Presiding Justice

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

THIRD DIVISION

GINEBRA SAN MIGUEL, INC.,
Petitioner,

-*versus*-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA Case No. 11052

Members:

MANAHAN, *Chairperson,*
REYES-FAJARDO, *and*
ANGELES, *JJ.*

Promulgated:

MAR 21 2025
3:30 p.m.

x- x

SEPARATE CONCURRING OPINION

The core of the controversy in the present case is the effectivity date of Republic Act (RA) No. 11467 or "An Act Amending Sections 109, 141, 142, 143, 144, 147, 152, 263, 263-A. 265, and 288-A, and Adding a New Section 290-A to RA No. 8424, As Amended, Otherwise Known as the National Internal Revenue Code of 1997, And For Other Purposes."

Respondent adopts the view that RA No. 11467 took effect on the date of its online publication in the Official Gazette on January 23, 2020, thus covering the period January 23, 2020 to February 9, 2020 to apply the new excise tax rates. Petitioner on the other hand opines that RA No. 11467 took effect on February 10, 2020, the date of the printed publication of said law in the Official Gazette implying that the new excise tax rates were not yet applicable during the period January 23, 2020 to February 9, 2020.

Interestingly, the law itself provides for a January 1, 2020 effectivity date in Section 15 thereof which reads, *viz*:

> "Section 15. *Effectivity*. – This Act shall take effect on January 1, 2020 after its complete publication either in the *Official Gazette* or in a newspaper of general circulation." *(Emphasis supplied)*

I respectfully concur with my distinguished colleague, Justice Marian Ivy F. Reyes-Fajardo, that January 1, 2020 is not the effectivity date of RA No. 11467 because then President Rodrigo Roa Duterte only signed the same into law on January 22, 2020 and that publication is an essential element to the effectivity of laws. I would like to add though, that to retroactively apply the law to a period prior to its publication may be rendered unconstitutional.

In the landmark case of *Tañada vs. Tuvera*[1], (*Tañada* case), the Supreme Court highlighted the necessity of publication of laws in the *Official Gazette* even if the law itself provides for the date of effectivity. Citing Section 1 of Commonwealth Act 638, the Supreme Court in this case relates the necessity of publication to the people's right to know the laws that would regulate their actions and conduct as citizens. Quoted below is a portion of the *Tañada* case, to wit:

> "The clear object of the above-quoted provision is to give the general public adequate notice of the various laws which are to regulate their actions and conduct as citizens. Without such notice and publication, there would be no basis for the application of the maxim "ignorantia legis non escusat." It would be the height of injustice to punish or otherwise burden a citizen for the transgression of a law of which he had no notice whatsoever, not even a constructive one."

Article 2 of the New Civil Code has since been amended to include publication in a newspaper of general circulation.[2]

I likewise agree with the *ponencia* that online publication of laws does not fulfill the publication requirement for its effectivity as enunciated in the case of *Garcillano vs. House of Representatives,*[3] where it was ruled, and I quote:

> "In other words, the law merely recognizes the admissibility in evidence (for their being the original) of electronic data message and/or electronic documents. *It does not make the internet a medium for publishing laws, rules and regulations.*"

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[1] G.R. No. L-63915, April 24, 1985.
[2] Executive Order (EO) No. 200 issued by President Corazon Aquino on June 18, 1987.
[3] G.R. No. 170338, December 23, 2008.

The pending bills in Congress attempting to include online publication attests to the fact that the said medium is not yet recognized as a legitimate mode of rendering a law to be effective.

I write this Separate Opinion to emphasize that the requirement is not only limited to publication in the Official Gazette but also publication in a newspaper of general circulation as provided in Article 2 of the New Civil Code, *viz*:

> "**Article 2.** Laws shall take effect after fifteen days following the completion of their publication either in the Official Gazette or in a newspaper of general circulation in the Philippines, unless it is otherwise provided."

It is logical to presume that if determination of the effectivity of a law is in issue and such law was published in both modes of publication, then the earlier publication in either mode, i.e., *Official Gazette* or newspaper of general circulation) would be the reckoning point for the fifteen (15)-day period or its fulfillment such as what is provided in Section 15 of RA No. 11467.

Unfortunately, the allegation of respondent that RA No. 11467 was published in a newspaper of general circulation on January 27, 2020 was not proven and as aptly observed in the *ponencia* "the CIR failed to establish the fact of newspaper publication on January 27, 2020", hence, was not considered in resolving the issue of the effectivity of the law. This eventually led to the conclusion that February 10, 2020 which is the date of the printed publication in the Official Gazette, is the date when RA No. 11467 became effective.

Catherine T. Manahan
CATHERINE T. MANAHAN
Associate Justice