19-000317-0010

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

CTA CRIM. CASE NO. O-752

PEOPLE OF THE PHILIPPINES,
Plaintiff,

- versus -

NOTICE OF RESOLUTION

EVANGELINE M. SERTESA,
Accused.

To:

SR. DEPUTY STATE PROS. RICHARD ANTHONY FADULLON
ASST. STATE PROSECUTOR JOHN R. RESADO
Department of Justice
Padre Faura Street, Ermita
Manila 1000

COMMISSIONER OF INTERNAL REVENUE
Thru: Prosecution Division
Room 704, BIR National Office Building
Sen. Miriam P. Defensor-Santiago Avenue
Diliman, Quezon City

DIRECTOR
National Bureau of Investigation
Taft Avenue, Ermita, Manila

PNP CHIEF
Thru: CIDG
Philippine National Police
National Headquarters
Camp General Rafael Tagle Crame
EDSA, Quezon City

CHIEF, WARRANT AND SUBPOENA SECTION
Quezon City Police District
Camp BGen Tomas Karingal
Sikatuna Village, Diliman
Quezo City

GREETINGS:

You are hereby notified by these presents that on **January 31, 2024,** a Resolution was rendered in the above-entitled case, copy of which is attached hereto.

Quezon City, Philippines, **February 1, 2024.**

Atty. Maria Johoanna F. Chan-Te
Executive Clerk of Court II

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff,

-versus-

EVANGELINE M. SERTESA (F. Salvador, Jordan Plains Subd., Sta. Monica, Novaliches, Quezon City),
Accused.

CTA CRIM. CASE NO. O-752
For: Violation of Section 255 of the NIRC of 1997, as amended

Members:

DEL ROSARIO, *P.J., Chairperson,*
BACORRO-VILLENA, *and*
CUI-DAVID, *JJ.*

Promulgated:

JAN 31 2024 2:30PM

x- -x

RESOLUTION

On July 16, 2019, the prosecution filed an Information[1] charging accused **Evangeline M. Sertesa** for willful failure to pay taxes under Section 255 of the National Internal Revenue Code (NIRC) of 1997, as amended, allegedly committed as follows:

> That on about June 22, 2012, and thereafter, in Quezon City, and within the jurisdiction of this Honorable Court, accused EVANGELINE M. SERTESA, doing business under the name E.M.S. Enterprises, a sole proprietorship with registered address at F. Salvador, Jordan Plains Subd., Sta. Monica, Novaliches, Quezon City, required by law to file Value-Added Tax (VAT) Returns and to pay corresponding VAT, did then and there, knowingly, consciously and willfully fail to pay the aggregate deficiency VAT in the amount of Ten Million One Hundred Thirty Two [sic] and Two Hundred Thirty Two Pesos and Thirty Six Centavos (Php10,132,232,036.00) [sic], exclusive of interests, surcharges and penalties, corresponding to the four (4) quarters of taxable year 2007,

[1] Docket, p. 6.

> despite receipt of the Preliminary Assessment Notice (PAN) and Final Assessment Notice (FAN) issued after tax investigation, including prior and post-notices and final demands to pay, the latest of which being in the nature of demand before suit issued on June 22, 2012 and her failure to file any protest on said deficiency tax assessment within the prescribed period, to the damage and prejudice of the Government of the Republic of the Philippines.
>
> CONTRARY TO LAW.

In the Resolution promulgated on July 31, 2019, the Court found probable cause to issue a warrant of arrest against accused with a bail bond for her provisional liberty fixed at ₱20,000.00.[2]

On August 5, 2019, a Warrant of Arrest and thereafter,[3] on October 4, 2019, an Alias Warrant of Arrest[4] were issued against accused.

On August 26, 2020, the Court archived the case as it appeared from the records that the Warrant of Arrest issued against accused had been returned unserved since "accused could not be found at said given address despite diligent efforts exerted" and in order that the case shall not remain pending for an indefinite period.[5]

Meanwhile, upon periodic review of archived cases and their factual antecedents, the Court finds that this case should be dismissed on the ground of prescription.

Section 281 of the NIRC of 1997, as amended, governs the prescriptive period for filing a criminal action for violation of the Tax Code, to wit:

> SEC. 281. *Prescription for Violations of any Provision of this Code.* — **All violations of any provision of this Code shall prescribe after five (5) years**.
>
> **Prescription shall begin to run from the day of the commission of the violation of the law**, and if the same be not known at the time, from the discovery thereof **and the institution of judicial proceedings for its investigation and punishment.**

[2] *Id.*, pp. 52-54.
[3] *Id.*, p. 55.
[4] *Id.*, p. 61.
[5] Resolution, Docket, p. 64.

> **The prescription shall be interrupted when proceedings are instituted against the guilty persons and shall begin to run again if the proceedings are dismissed for reasons not constituting jeopardy.**
>
> The term of prescription shall not run when the offender is absent from the Philippines. (*Emphasis supplied*)

The foregoing provision presents two (2) modes for the commencement of the period of prescription:

1. *First Mode*: From the *day of the commission* of the violation of the law; or

2. *Second Mode*: When the day of the commission is unknown, from the *discovery* of the commission and the institution of judicial proceedings for its investigation and punishment.

In *Emilio E. Lim, Sr. et al. vs. Court of Appeals, et al.* (*Lim*),[6] the Supreme Court discussed that in willful refusal to pay deficiency taxes, the prescription runs from the finality of assessment, *viz.*:

> Relative to Criminal Cases Nos. 1788 and 1789 which involved petitioners' **refusal to pay the deficiency income taxes due**, again both parties are in accord that by their nature, the violations as charged **could only be committed after service of notice and demand for payment of the deficiency taxes upon the taxpayers**. Petitioners maintain that the five-year period of limitation under Section 354 should be reckoned from April 7, 1965, the date of the original assessment while the Government insists that it should be counted from July 3, 1968 when the final notice and demand was served on petitioners' daughter-in-law.
>
> We hold for the Government. Section 51 (b) of the Tax Code provides:
>
>> "(b) Assessment and payment of deficiency tax. — After the return is filed, the Commissioner of Internal Revenue shall examine it and assess the correct amount of the tax. *The tax or deficiency in tax so discovered shall be paid upon notice and demand from the Commissioner of Internal Revenue.*" (*Emphasis on the original*)

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[6] G.R. Nos. L-48134-37, October 18, 1990.

> **Inasmuch as the *final* notice and demand for payment of the deficiency taxes was served on petitioners on July 3, 1968, it was only then that the cause of action on the part of the BIR accrued.** This is so because prior to the receipt of the letter-assessment, no violation has yet been committed by the taxpayers. **The offense was committed only after receipt was coupled with the willful refusal to pay the taxes due within the allotted period. The two criminal informations, having been filed on June 23, 1970, are well-within the five-year prescriptive period and are not time-barred.** (*Emphasis supplied*)

The Bureau of Internal Revenue (BIR) circularized the pronouncement in *Lim* through the issuance of Revenue Memorandum Circular (RMC) No. 101-90,[7] which states:

> For the information and guidance of all concerned, the following are the salient features of the decision promulgated by the Supreme Court on October 19, 1990, in the case entitled "*Emilio E. Lim, Sr. et al. vs. Court of Appeals, et al.*," G.R. Nos. L-48134-37.
>
> 1. *When cause of action for willful failure to pay deficiency tax occurs.*
>
>   The cause of action for willful failure to pay deficiency tax occurs when the final notice and demand for the payment thereof is served on the taxpayer. Prior thereto, no violation is committed. The offense is ***committed*** only after receipt is coupled with refusal to pay the tax within the allotted period.
>
> 2. *Prescription under Section 280 of the Tax Code.*
>
>   (a) **The 5-year prescriptive period in** an offense or **willful failure to pay a deficiency tax assessment commences to *run* only after the receipt of the final notice and demand by the taxpayer, and he refuses to pay.** (*Emphasis supplied*)

As to what interrupts prescription, Section 281 of the NIRC of 1997, as amended, provides that it is "when proceedings are instituted against the guilty persons." This is explained in *Lim* to mean the time when the information is filed with the Court.

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[7] SUBJECT: *Determination of When Cause of Action for Willful Failure to Pay Deficiency Tax Occurs; and Prescription under Section 280 of the Tax Code.*

On November 22, 2005, the Supreme Court approved A.M. No. 05-11-07-CTA, otherwise known as the Revised Rules of the Court of Tax Appeals (RRCTA), declaring that the institution of criminal action is done by filing an information with the Court, which, in turn, interrupts the prescriptive period:

> RULE 9
> PROCEDURE IN CRIMINAL CASES
>
> ... ...
>
> SEC. 2. *Institution of criminal actions.* — **All criminal actions before the Court in Division** in the exercise of its original jurisdiction **shall be instituted by the filing of an information in the name of the People of the Philippines.** In criminal actions involving violations of the National Internal Revenue Code and other laws enforced by the Bureau of Internal Revenue, the Commissioner of Internal Revenue must approve their filing. In criminal actions involving violations of the Tariff and Customs Code and other laws enforced by the Bureau of Customs, the Commissioner of Customs must approve their filing.
>
> **The institution of the criminal action shall interrupt the running of the period of prescription**. [*Emphasis supplied*]

Reading the law, jurisprudence, and rules altogether, when the offense charged involves a taxpayer's refusal to pay the taxes due, the five (5)-year prescriptive period begins to run from the time the payment period had lapsed without any payment or appeal being made by the taxpayer. Simply put, the prescription runs when the assessment notice becomes final and executory and continues to run until the filing of the Information in Court.

As alleged in the Joint Complaint-Affidavit filed by the revenue officers of the BIR, the Final Assessment Notice (FAN) dated April 1, 2011 was sent to accused through registered mail.[8] Under prevailing regulations, service of the FAN may be made through registered mail, and there is created a disputable presumption that such assessment notices were received by the addressee in the regular course of the mail.[9]

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[8] Par. 10, Joint Complaint-Affidavit, Docket, p. 28; Department of Justice Resolution dated April 1, 2018, Docket, p. 12.
[9] *Commissioner of Internal Revenue v. T Shuttle Services, Inc.*, G.R. No. 240729 (Resolution), August 24, 2020.

The estimated turnaround time for such registered mail to be delivered is seven (7) working days.[10] Even if the Court assumes that the FAN was received by accused thirty (30) days from its mailing, or on May 1, 2011, and no protest was filed within thirty (30) days from such date, the assessment became final and executory on June 1, 2011.

Plaintiff had five (5) years from June 1, 2011, or until **June 1, 2016** to file an information in Court. Clearly, when the present Information was filed on July 16, 2019, the government's right to institute a criminal action had already prescribed by more than three (3) years.

WHEREFORE, premises considered, CTA Crim. Case No. O-752 is **WITHDRAWN** from the archives and is **DISMISSED** on the ground of prescription.

The Alias Warrant of Arrest dated October 4, 2019 issued against accused is **RECALLED** and **SET ASIDE**.

SO ORDERED.

ROMAN G. DEL ROSARIO
Presiding Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

LANEE S. CUI-DAVID
Associate Justice

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[10] Philippine Postal Corporation, Post Office Delivery Lead Time, Estimated Turn Around Time for Domestic Mail Services, available at https://phlpost.gov.ph/postal-office-delivery-lead-time (last accessed on January 29, 2024).