Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

FIRST DIVISION

UNIVERSITY OF THE PHILIPPINES SYSTEM ADMIN, Petitioner,	**CTA Case No. 8397** For: Assessment
	Members:
-versus-	**DEL ROSARIO, P.J., *Chairperson*** **UY, and** **MINDARO-GRULLA, JJ.**
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: MAR 1 9 2018 / 10:05 a.m.

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DECISION

MINDARO-GRULLA, J.:

This resolves the Petition for Review filed by University of the Philippines System Admin, as petitioner, against the Commissioner of Internal Revenue, as respondent, pursuant to Section 7(a)(1)[1] of Republic Act (RA) No. 1125[2], as amended, as well as Section 3(a)(1)[3] of Rule 4 and Section 4(a)[4] of Rule 8 of the Revised Rules of the Court of Tax Appeals, as amended.

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[1] Sec. 7. *Jurisdiction.* - The CTA shall exercise:
(a) Exclusive appellate jurisdiction to review by appeal, as herein provided:
(1) Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue; xxx.

[2] Act Creating the Court of Tax Appeals.

[3] Sec. 3. *Cases within the jurisdiction of the Court in Division.* – The Court in Division shall exercise:
(a) Exclusive original over or appellate jurisdiction to review by appeal the following:
(1) Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue.

[4] Sec. 4. *Where to appeal; mode of appeal.* –

Petitioner seeks the cancellation and withdrawal of the Final Assessment Notice (FAN)/Formal Letter of Demand (FLD) No. 39-124 dated January 15, 2010 and the Final Decision on the disputed assessment dated November 3, 2011, involving assessments of deficiency value-added tax (VAT) and expanded withholding tax (EWT) for taxable year (TY) 2006 in the amounts of ₱6,218,134.35 and ₱3,120,830.48, respectively, and for the declaration of petitioner as exempt from VAT and EWT pursuant to Act No. 1870 and exempt from "all revenues and assets of the University of the Philippines used for educational purposes or in support thereof" under Republic Act (R.A.) No. 9500.[5]

Petitioner herein is denominated as University of the Philippines System Admin.

For the record, the University of the Philippines (UP) was founded on June 18, 1908 through Act No. 1870 of the Philippine Assembly. Over the past 100 years much has changed in UP. On April 29, 2009, then President Gloria Macapagal Arroyo signed the new UP Charter or Republic Act (R.A.) 9500.

Section 4 of R.A. 9500 reads –

> "SEC. 4. *The University System.* – The University of the Philippines is a university system and shall be composed of constituent universities established solely by its Board of Regents upon the recommendation of the President of the University. The University of the Philippines System is composed of its existing constituent universities, as follows: University of the Philippines Diliman; University of the Philippines Manila; University of the Philippine Los Baños; University of the Philippines Visayas; University of the Philippines Mindanao; University of the Philippine Baguio; University of the Philippines Open University; and those that may be created in the future. It is referred to in this law as the "National University."

(a) An appeal from a decision or ruling or the inaction of the Commissioner of Internal Revenue on disputed assessments or claim for refund of internal revenue taxes erroneously or illegally collected, the decision or ruling of the Commissioner of Customs, the Secretary of Finance, the Secretary of Trade & Industry, the Secretary of Agriculture, and the Regional Trial Court in the exercise of their original jurisdiction, shall be taken to the Court by filing before it a petition for review as provided in Rule 42 of the Rules of Court. The Court in Division shall act on the appeal.

[5] Par. I, Statement of the Case, Pre-Trial Order, Docket, vol. II, p. 526

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We quote –

> "The governance of the national university is vested in a board of regents known as the "**Board of Regents of the University of the Philippines System**," hereinafter referred to as the "Board," the composition of which includes the President of the University of the Philippines System as Co-Chairperson. Included in the offices under the supervision of the UP President is the Office of the Vice President for Administration.
>
> The Office of the Vice President for Administration was created when the Board approved the reorganization of the central administration of the University. The BOR resolution stated that the Vice President for Administration shall be appointed by the Board on recommendation of the President, and directly responsible for administrative operations. The following offices and divisions were placed under the direct supervision and control of the Vice President for Administration:
>
> 1. Office of Administrative Personnel Services (OAPS)
> 2. Physical Plant Office (PPO)
> 3. Security Division
> 4. Property Division
> 5. Cash Division
> 6. Internal Audit Division
> 7. Accounting Division"

To repeat, petitioner is denominated as the University of the Philippines System Admin (must refer to Administration) since the registered taxpayer is identified in the subject documents as the University of the Philippines System Administration, with principal address at the Quezon Hall, Diliman, Quezon City, with the Bureau of Internal Revenue (BIR) with Taxpayer Identification Number (TIN) 000-864-006.[6]

On the other hand, respondent is the duly appointed Commissioner of the BIR who has the power to decide disputed assessments, refunds of internal revenue taxes, fees or other charges,

[6] Par. 1, Facts Admitted by the Parties, Amended Joint Stipulation of Facts and Issues (AJSFI), Docket, vol. II, p. 515

penalties imposed in relation thereto or other matters arising under the National Internal Revenue Code (NIRC) or other laws or portions thereof administered by the BIR. He holds office at 5th Floor, BIR National Office Building, Agham Road, Diliman, Quezon City.

On September 7, 2007, respondent issued Letter of Authority (LOA) No. LOA 2001 00065623, authorizing revenue officers to examine petitioner's books of accounts and other accounting records for all internal revenue taxes covering the period from January 1 to December 31, 2006.[7] As such, respondent requested petitioner to present its accounting records.[8] Then, respondent invited petitioner for an informal conference in order to give the latter an opportunity to present its side as regards the report of investigation made pursuant to the afore-mentioned LOA.[9]

As a result of the tax audit/investigation, respondent issued a Preliminary Assessment Notice (PAN) with Details of Discrepancies[10] dated December 18, 2009, which assessed petitioner for alleged deficiency VAT and EWT for TY 2006 in the respective amounts of ₱6,093,433.49 and ₱3,058,456.15, detailed as follows:

I. Deficiency Value-Added Tax				
Sales/receipts per value added tax (VAT) returns				₱ 22,012,922.39
Add: Adjustments per investigation:				
Sales/receipts not subjected to VAT				32,143,936.02
Taxable sales/receipts per investigation				₱ 54,156,858.41
Output tax due thereon:				
	Taxable Sales/Receipts (TS/R)	**VAT rate**	**VAT**	
January	₱ 4,413,755.10	10%	₱ 441,375.51	
February-December	49,743,103.31	12%	5,969,172.40	₱ 6,410,547.91
Less: Allowable tax credits/payments				
Payment			₱ 1,957,561.13	
Creditable VAT withheld per return			595,714.45	2,553,275.58
Deficiency Value-Added Tax				₱ 3,857,272.33
Add: 20% Interest p.a. (01.26.07 to 12.18.09)				2,236,161.16
TOTAL AMOUNT DUE				**₱ 6,093,433.49**
II. Deficiency Expanded Withholding Tax				
	Amount		**EWT Rate**	**EWT Due**
Professional fees	₱ 1,365,973.15		15%	₱ 204,895.97
Rental	8,612,553.25		5%	430,627.66
Janitorial services	64,692,579.11		2%	1,293,851.58
Deficiency expanded withholding tax				₱ 1,929,375.21

[7] Exhibit "R-2", BIR records, p. 15
[8] Exhibits "R-3" and "R-4", BIR records, pp. 14 and 16, respectively
[9] Exhibit "R-5", BIR records, p. 52
[10] Exhibit "R-10", BIR records, pp. 299 to 301

Add: 20% Interest p.a. (01.16.07 to 12.18.09)				1,129,080.94
TOTAL AMOUNT DUE				**₱ 3,058,456.15**

Petitioner protested the PAN on February 16, 2010.[11] However, respondent replied to the Protest Letter in July 2010 and petitioner received a copy of the same on August 20, 2010, stating that the former had already issued a Final Assessment Notice (FAN)/Formal Letter of Demand (FLD).[12]

In the FAN/FLD issued on January 15, 2010, respondent assessed petitioner for alleged deficiency VAT and EWT covering TY 2006 in the respective amounts of ₱6,218,134.35 and ₱3,120,830.48, to wit:[13]

I. Deficiency Value-Added Tax				
Sales/receipts per value added tax (VAT) returns				₱ 22,012,922.39
Add: Adjustments per investigation:				
Sales/receipts not subjected to VAT				32,143,936.02
Taxable sales/receipts per investigation				₱ 54,156,858.41
Output tax due thereon:				
	Taxable Sales/Receipts (TS/R)	**VAT rate**	**VAT**	
January	₱ 4,413,755.10	10%	₱ 441,375.51	
February-December	49,743,103.31	12%	5,969,172.40	₱ 6,410,547.91
Less: Allowable tax credits/payments				
Payment			₱ 1,957,561.13	
Creditable VAT withheld per return			595,714.45	2,553,275.58
Deficiency Value-Added Tax				₱ 3,857,272.33
Add: 20% Interest p.a. (01.26.07 to 02.15.10)				2,360,862.02
TOTAL AMOUNT DUE				**₱ 6,218,134.35**
II. Deficiency Expanded Withholding Tax				
	Amount		**EWT Rate**	**EWT Due**
Professional fees	₱ 1,365,973.15		15%	₱ 204,895.97
Rental	8,612,553.25		5%	430,627.66
Janitorial services	64,692,579.11		2%	1,293,851.58
Deficiency expanded withholding tax				₱ 1,929,375.21
Add: 20% Interest p.a. (01.16.07 to 02.15.10)				1,191,455.27
TOTAL AMOUNT DUE				**₱ 3,120,830.48**

Petitioner stated through a Letter dated August 31, 2010 and received by respondent on September 2, 2010, that it would like to file a protest on the said FAN and FLD.[14]

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[11] Exhibit "R-1", BIR records, p. 317; Annex "D", Petition for Review, Docket, vol. I, p. 43
[12] Exhibit "R-1", BIR records, p. 333; Annex "E", Petition for Review, Docket, vol. I, p. 51
[13] Exhibits "R-11", BIR records, pp. 302 to 306
[14] Exhibit "R-1", BIR records, p. 332; Annex "F", Petition for Review, Docket, vol. I, p. 52

Thereafter, petitioner transmitted on November 11, 2010 the supporting documents in connection with the Post Reporting Notice.[15]

Through a letter dated December 10, 2010, petitioner submitted a reply to the notice and attached supporting schedules.[16]

Subsequently, respondent issued the Final Decision on the Disputed Assessment on November 3, 2011, which petitioner received on November 17, 2011, demanding payment of the assessed deficiency taxes.[17]

Petitioner filed the instant Petition for Review[18] before this Court on December 16, 2011.

In the Answer[19] filed on February 20, 2012, respondent interposed the following special and affirmative defenses:

> "9. All presumptions are in favor of the correctness of the Assessment;
>
> 10. The Assessment/Demand Letter No. F-39-124 dated 15 January 2010 for the year 2006 against the petitioner was issued in compliance with the provisions of section 228 of the National Internal Revenue Code and in accordance to existing Revenue Rules and Regulations relative to the right of the taxpayer/petitioner to be informed of the factual and legal bases upon which the assessment was made.
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> 11. The herein Petitioner was fully appraised of the facts and the law on which the Final Assessment was issued. The Final Assessment Notice, Demand Letter and Details of Discrepancies which were all together sent at the same time to the Petitioner, contained, in detail, the manner of computation, the facts on which the assessment was based and the provisions of the law used in arriving at such deficiency assessment.

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[15] Exhibit "R-1", BIR records, p. 348
[16] Exhibit "R-1", BIR records, p. 344
[17] Exhibit "R-1", BIR records, p. 370; Annex "B", Petition for Review, Docket, vol. I, p. 40
[18] Docket, vol. I, pp. 6 to 34
[19] Docket, vol. I, pp. 423 to 426

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12. The subject assessment has already become final, unappealable, executory and demandable by reason of the failure of the petitioner to file a timely protest against the same;

13. The protest letter dated 10, December 2010 allegedly filed by petitioner on December 9, 2010 directed against the Final Assessment Notice dated 15 January 2010 was filed well beyond the period allowed by law;

14. The petitioner was already aware and informed of the assessment issued against the same as early as August 31, 2010 when it even expressed its intention to file a protest against the Final Assessment issued by the Bureau of Internal Revenue;

15. The failure of the petitioner to timely file a protest against the assessment is vital to cases of this nature, failing such the assessment becomes incontestable;

16. The pronouncement/directive of the regional director informing the petitioner of their option to appeal the decision to the Court of Tax Appeals contained in the letter dated 3 November 2011 notwithstanding, the assessment has become final and executory. The jurisprudence is clear that the assessment must be protested within the period prescribed by law;

17. Verification disclosed that the total taxable sales/receipts per financial statements was not fully subjected to value-added tax therefore assessed pursuant to Section 106 and 108 of the Tax Code;

18. The petitioner failed to fully subject income payments to expanded withholding tax as required under RR No. 2-98;

19. The exemption granted to the petitioner as a government educational institution does not cover the herein assessments against the petitioner.

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20. The 20% interest per annum has been imposed pursuant to the provisions of Section 249 (B) of the NIRC.

21. The 25% surcharge must be imposed pursuant to the provisions of Section 248 (A) of the NIRC."

On February 22, 2012, respondent released a First Notice Before Issuance of Warrant of Distraint and Levy.[20]

Petitioner moved for the suspension of the collection of its alleged deficiency taxes on March 19, 2012.[21] However, petitioner and respondent manifested that the latter's counsel expressed during a hearing that there would be no collection of the subject taxes during the pendency of the instant case;[22] thus, the motion for suspension of collection of tax was deemed moot and academic.[23]

The parties then submitted their Joint Stipulation of Facts and Issues[24] on April 2, 2012, and amended the same on October 15, 2017.[25] Consequently, the Court issued a Pre-Trial Order[26] on November 13, 2012.

To prove its allegation, petitioner presented Ms. Jennifer M. Tolentino, Ms. Candelaria A. Bachini, Ms. Cecilia J. Morales, Ms. Joan E. Singson, Ms. Lauren H. Sandoval, Ms. Janet A. Robledo, Ms. Joan E. Mendoza, Ms. Cecile G. Dangawen, Ms. Salvacion T. Agupitan, Ms. Jannette Kintanar Lepiten, Ms. Zenaida G. Calatrava, and Ms. Charito Dupio as its witnesses.

Thereafter, petitioner formally offered its documentary and testimonial evidence via Formal Offer of Exhibits filed on August 12, 2014, sans any comment on the part of respondent. In the Resolution[27] issued on October 21, 2014, the Court admitted Exhibits "A and series", "CCCC" to "GGGG", "PPPP" to "PPPP-11", "QQQQ",

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[20] Exhibit "R-13", BIR records, p. 376
[21] Motion for Suspension of Collection of Tax, Docket, vol. I, pp. 454 to 462
[22] Joint Manifestation, Docket, vol. I, pp. 473 to 475
[23] Resolution dated April 10, 2012, Docket, vol. I, pp. 481 to 482
[24] Docket, vol. I, pp. 476 to 479
[25] Amended Joint Stipulation of Facts and Issues, Docket, vol. II, pp. 515 to 520
[26] Docket, vol. II, pp. 526 to 531
[27] Resolution dated October 21, 2014, Docket, vol. VI, pp. 3195 to 3204

"QQQQ-a", "QQQQ-1" to "SSSS-16-e", "SSSS-28" to "TTTT-38", "TTTT-40", "TTTT-41" to "TTTT-112", "TTTT-114 and series", "UUUU" to "UUUU-5", "UUUU-106 and series", "VVVV-78 and series", "WWWW-74 and series", "YYYY-24 and series", "ZZZZ-47 and series", "AAAAA" to "AAAAA-4", and "AAAAAA-6"; but denied Exhibits "TTTT-39", "B", "B-1", "B-2 to B-3", "C", "C-1", "C-2 to C-3", "D-1" (BIR Tax Payment Deposit Slip), "D-2" (Authority to Debit Agency Bank Account to BIR Tax Payments), "E" to "L-5", "M-1" to "M-7", "N" to "P-2", "Q", "Q-2", "Q-3", "Q-4", "R" to "SSS-2", "TTT", "TTT-1", "TTT-2", "TTT-3", "UUU" to "BBBB-3", "SSSS-16-f" to "SSSS-27-g", "UUUU-6" to "UUUU-105", "VVVV" to "VVVV-77", "WWWW" to "WWWW-73", "XXXX" to "YYYY-23", "ZZZZ" to "ZZZZ-46", "TTTT-113", "D-1" (Letter dated 17 October 2008), "D-2" (Attachment to letter dated 17 October 2008), "D-3" to "D-5", and "I-1" to "I-3".

EXH. NO.	DESCRIPTION
"A" and series	Judicial Affidavit of Jennifer Tolentino
"CCCC" and series	Judicial Affidavit of Canndelaria A. Bachini
"DDDD"	Letter dated 3 Nov. 2011
"EEEE"	Preliminary Assessment Notice
"FFFF"	Letter dated 20 July 2010
"GGGG"	Letter dated 15 Oct. 2010
"PPPP"	Tax Remittance Advice dated 2-1-2006
"PPPP-1"	Tax Remittance Advice dated 3-1-2006
"PPPP-2"	Tax Remittance Advice dated 4-1-2006
"PPPP-3"	Tax Remittance Advice dated 5-2-2006
"PPPP-4"	Tax Remittance Advice dated 5-31-2006
"PPPP-5"	Tax Remittance Advice dated 6-30-2006
"PPPP-6"	Tax Remittance Advice dated 8-1-2006
"PPPP-7"	Tax Remittance Advice dated 9-1-2006
"PPPP-8"	Tax Remittance Advice dated 10-2-2006
"PPPP-9"	Tax Remittance Advice dated 10-2-2006
"PPPP-10"	Tax Remittance Advice dated 12-4-2006
"PPPP-11"	Tax Remittance Advice dated 1-2-2007
"QQQQ"	BIR Form No. 1601-E dated 1-2006
"QQQQ-a"	PNB Payment Slip
"QQQQ-1"	BIR Form No. 1601-E dated 2-2006
"QQQQ-1-a"	PNB Payment Slip
"QQQQ-2"	BIR Form No. 1601-E dated 3-2006
"QQQQ-2-a"	PNB Payment Slip
"QQQQ-3"	BIR Form No. 1601-E dated 4-2006
"QQQQ-3-a"	PNB Payment Slip
"QQQQ-4"	BIR Form No. 1601-E dated 5-2006
"QQQQ-4-a"	PNB Payment Slip
"QQQQ-5"	BIR Form No. 1601-E dated 6-2006
"QQQQ-5-a"	PNB Payment Slip
"QQQQ-6"	BIR Form No. 1601-E dated 7-2006

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"QQQQ-6-a"	PNB Payment Slip
"QQQQ-7"	BIR |Form No. 1601-E dated 8-2006
"QQQQ-7-a"	PNB Payment Slip
"QQQQ-8"	BIR Form No. 1601-E dated 9-2006
"QQQQ-8-a"	PNB Payment Slip
"QQQQ-9"	BIR Form No. 1601-E dated 10-2006
"QQQQ-9-a"	PNB Payment Slip
"QQQQ-10"	BIR Form No. 1601-E dated 11-2006
"QQQQ-10-a	PNB Payment Slip
"QQQQ-11"	BIR form No. 1601-E dated 12-2006
"QQQQ-11-a"	PNB Payment Slip
"QQQQ-12 and series	Amended Judicial Affidavit of Joan E. Singson
"RRRR"	BIR Form 1601-E dated 1-2006
"RRRR-1"	BIR Form 1601-E dated 1-2006
"RRRR-2"	BIR Form 1601-E dated 2-2006
"RRRR-3"	BIR Form 1601-E dated 2-2006
"RRRR-4"	BIR Form 1601-E dated 3-2006
"RRRR-5"	BIR Form 1601-E dated 3-2006
"RRRR-6"	BIR Form 1601-E dated 4-2006
"RRRR-7"	BIR Form 1601-E dated 4-2006
"RRRR-8"	BIR Form 1601-E dated 5-2006
"RRRR-9"	BIR Form 1601-E dated 5-2006
"RRRR-10"	BIR Form 1601-E dated 6-2006
"RRRR-11"	BIR Form 1601-E dated 6-2006
"RRRR-12"	BIR Form 1601-E dated 7-2006
"RRRR-13"	BIR Form 1601-E dated 7-2006
"RRRR-14"	BIR Form 1601-E dated 8-2006
"RRRR-15"	BIR Form 1601-E dated 8-2006
"RRRR-16"	BIR Form 1601-E dated 9-2006
"RRRR-17"	BIR Form 1601-E dated 9-2006
"RRRR-18"	BIR Form 1601-E dated 10-2006
"RRRR-19"	BIR Form 1601-E dated 10-2006
"RRRR-20"	BIR Form 1601-E dated 11-2006
"RRRR-21"	BIR Form 1601-E dated 11-2006
"RRRR-22"	BIR Form 1601-E dated 12-2006
"RRRR-23"	BIR Form 1601-E dated 12-2006
"RRRR-23-a"	Judicial Affidavit of Cecilia J. Morales
"RRRR-24"	Tax Remittance Advice dated Jan. 9, 2006
"RRRR-25"	PNB Payments Slip dated Jan. 2006
"RRRR-26"	Tax Remittance Advice dated Mar. 10, 2006
"RRRR-27"	PNB Payment Slip dated Feb. 2006
"RRRR-28"	Tax Remittance Advice dated Apr. 10, 2006
"RRRR-29"	PNB Payments Slip dated Mar. 2006
"RRRR-30"	Tax Remittance Advice dated May10, 2006
"RRRR-31"	PNB Payments Slip dated Apr. 2006
"RRRR-32"	Tax Remittance Advice dated June 10, 2006
"RRRR-33"	PNB Payments Slip dated May 2006
"RRRR-34"	Tax Remittance Advice dated July 10, 2006
"RRRR-35"	PNB Payments Slip dated June 2006
"RRRR-36"	Tax Remittance Advice dated Aug. 10, 2006

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"RRRR-37"	PNB Payments Slip dated July 2006
"RRRR-38"	Tax Remittance Advice dated Sept. 10, 2006
"RRRR-39"	PNB Payments Slip dated Aug. 2006
"RRRR-40"	Tax Remittance Advice dated Oct. 2006
"RRRR-41"	PNB Payments Slip dated Sept. 2006
"RRRR-42"	Tax Remittance Advice dated Nov. 10, 2006
"RRRR-43"	PNB Payments Slip dated Oct. 2006
"RRRR-44"	Tax Remittance Advice dated Dec. 10, 2006
"RRRR-45"	PNB Payments Slip dated Nov. 2006
"RRRR-46"	Tax Remittance Advice dated Jan.10, 2006
"RRRR-47"	PNB Payments Slip dated Dec. 2006
"RRRR-48"	Supplemental Judicial Affidavit of Cecilia J. Morales
"RRRR-49"	Monthly Remittance Return of VAT for Jan. 2006
"RRRR-49-a"	Monthly Remittance Return of VAT for Jan. 2006
"RRRR-49-b"	Monthly Remittance Return of VAT for Feb. 2006
"RRRR-49-c"	Monthly Remittance Return of VAT for Feb. 2006
"RRRR-49-d"	Monthly Remittance Return of VAT for Mar. 2006
"RRRR-49-e"	Monthly Remittance Return of VAT for Mar. 2006
"RRRR-49-f"	Monthly Remittance Return of VAT for Apr. 2006
"RRRR-49-g"	Monthly Remittance Return of VAT for Apr. 2006
"RRRR-49-h"	Monthly Remittance Return of VAT for May 2006
"RRRR-49-i"	Monthly Remittance Return of VAT for May 2006
"RRRR-49-j"	Monthly Remittance Return of VAT for June 2006
"RRRR-49-k"	Monthly Remittance Return of VAT for June 2006
"RRRR-49-l"	Monthly Remittance Return of VAT for July 2006
"RRRR-49-m"	Monthly Remittance Return of VAT for July 2006
"RRRR-49-n"	Monthly Remittance Return of VAT for Aug. 2006
"RRRR-49-o"	Monthly Remittance Return of VAT for Aug. 2006
"RRRR-49-p"	Monthly Remittance Return of VAT for Sept. 2006
"RRRR-49-q"	Monthly Remittance Return of VAT for Sept. 2006
"RRRR-49-r"	Monthly Remittance Return of VAT for Oct. 2006
"RRRR-49-s"	Monthly Remittance Return of VAT for Oct. 2006
"RRRR-49-t"	Monthly Remittance Return of VAT for Nov. 2006
"RRRR-49-u"	Monthly Remittance Return of VAT for Nov. 2006
"RRRR-49-v"	Monthly Remittance Return of VAT for Dec. 2006
"RRRR-49-w"	Monthly Remittance Return of VAT for Dec. 2006
"RRRR-50"	Tax Remittance Advice for Jan. 2006
"RRRR-50-a"	PNB Payment Slip for Jan. 2006
"RRRR-50-b"	Tax Remittance Advice for Feb. 2006
"RRRR-50-c"	PNB Payment Slip for Feb. 2006
"RRRR-50-d"	Tax Remittance Advice for Mar. 2006
"RRRR-50-e"	PNB Payment Slip for Mar. 2006
"RRRR-50-f"	Tax Remittance Advice for Apr. 2006
"RRRR-50-g"	PNB Payment Slip for Apr. 2006
"RRRR-50-h"	Tax Remittance Advice for May 2006
"RRRR-50-i"	PNB Payment Slip for May 2006
"RRRR-50-j"	Tax Remittance Advice for June 2006
"RRRR-50-k"	PNB Payment Slip for June 2006
"RRRR-50-l"	Tax Remittance Advice for July 2006
"RRRR-50-m"	PNB Payment Slip for July 2006
"RRRR-50-n"	Tax Remittance Advice for Aug. 2006

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"RRRR-50-o"	PNB Payment Slip for Aug. 2006
"RRRR-50-p"	Tax Remittance Advice for Sept. 2006
"RRRR-50-q"	PNB Payment Slip for Sept. 2006
"RRRR-50-r"	Tax Remittance Advice for Oct. 2006
"RRRR-50-s"	PNB Payment Slip for Oct. 2006
"RRRR-50-t"	Tax Remittance Advice for Nov. 2006
"RRRR-50-u"	PNB Payment Slip for Nov. 2006
"RRRR-50-v"	Monthly Remittance Return dated 10 Dec. 2006
"RRRR-50-w"	Monthly Remittance Return dated 10 Dec. 2006
"RRRR-51" and series	Amended Judicial Affidavit of Cecilia J. Morales
"SSSS"	BIR Form 1601-E dated Jan. 2006
"SSSS-1"	Tax Remittance Advise dated 2 Feb. 2006
"SSSS-2"	Monthly Remittance Return dated 1 Jan. 2006
"SSSS-3"	Monthly Remittance Return dated 1 Jan. 2006
"SSSS-4"	Monthly Remittance Return dated 1 Jan. 2006
"SSSS-5"	BIR Form 1601-E dated Feb. 2006
"SSSS-5-a"	Tax Remittance Advice dated 2 March 2006
"SSSS-5-b"	Monthly Remittance Return dated 2 Feb. 2006
"SSSS-5-c"	Monthly Remittance Return dated 2 Feb. 2006
"SSSS-6"	BIR Form 1601-E dated March 2006
"SSSS-6-a"	Tax Remittance Advice dated 4 Apr. 2006
"SSSS-6-b"	Monthly Remittance Return dated 3 Mar. 2006
"SSSS-6-c"	Monthly Remittance Return dated 3 Mar. 2006
"SSSS-6-d"	Monthly Remittance Return dated 3 Mar. 2006
"SSSS-7"	BIR Form No. 1601-E dated Apr. 2006
"SSSS-7-a"	Tax Remittance Advice dated 5 May 2006
"SSSS-7-b"	Monthly Remittance Return dated 4 Apr. 2006
"SSSS-7-c"	Monthly Remittance Return dated 4 Apr. 2006
"SSSS-7-d"	Monthly Remittance Return dated 4 Apr. 2006
	BIR Form No. 1601-E April 2006-TF Php 58,446.71
"SSSS-8"	BIR Form 1601-E dated May 2006
"SSSS-8-a"	Tax Remittance Advice dated 2 June 2006
"SSSS-8-b"	Monthly Remittance Return dated 5 May 2006
"SSSS-8-c"	Monthly Remittance Return dated 5 May 2006
"SSSS-9"	BIR Form 1601-E dated June 2006
"SSSS-9-a"	Tax Remittance Advice dated 5 July 2006
"SSSS-9-b"	Monthly Remittance Return dated 6 June 2006
"SSSS-9-c"	Monthly Remittance Return dated 6 June 2006
"SSSS-9-d"	Monthly Remittance Return dated 6 June 2006
"SSSS-10"	BIR Form 1601-E dated July 2006
"SSSS-10-a"	Tax Remittance Advice dated 4 Aug. 2006
"SSSS-10-b"	Monthly Remittance Return dated 7 July 2006
"SSSS-10-c"	Monthly Remittance Return dated 7 July 2006
"SSSS-10-d"	Monthly Remittance Return dated 7 July 2006
"SSSS-11"	BIR Form 1601-E dated Aug. 2006
"SSSS-11-a"	Tax Remittance Advice dated 6 Sept. 2006
"SSSS-11-b"	Monthly Remittance Return dated 8 Aug. 2006
"SSSS-11-c"	Monthly Remittance Return dated 8 Aug. 2006
"SSSS-11-d"	Monthly Remittance Return dated 8 Aug. 2006
"SSSS-12"	BIR Form 1601-E dated Sept. 2006

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"SSSS-12-a"	Tax Remittance Advice dated 6 Oct. 2006
"SSSS-12-b"	Monthly Remittance Return dated 9 Sept. 2006
"SSSS-12-c"	Monthly Remittance Return dated 9 Sept. 2006
"SSSS-12-d"	Monthly Remittance Return dated 9 Sept. 2006
"SSSS-13"	BIR Form 16-01-E dated Oct. 2006
"SSSS-13-a"	Tax Remittance Advice dated 8 Nov. 2006
"SSSS-13-b"	Monthly Remittance Return dated 10 Oct. 2006
"SSSS-13-c"	Monthly Remittance Return dated 10 Oct. 2006
"SSSS-13-d"	Monthly Remittance Return dated 10 Oct. 2006
"SSSS-14"	BIR Form 1601-E dated Nov. 2006
"SSSS-14-a"	Tax Remittance Advice dated 6 Dec. 2006
"SSSS-14-b"	Monthly Remittance Return dated 11 Nov. 2006
"SSSS-14-c"	Monthly Remittance Return dated 11 Nov. 2006
"SSSS-14-d"	Monthly Remittance Return dated 11 Nov. 2006
"SSSS-15"	BIR Form No. 1601-E dated Dec. 2006
"SSSS-15-a"	Tax Remittance Advice dated 5 Jan. 2007
"SSSS-15-b"	Monthly Remittance Return dated 12 Dec. 2006
"SSSS-15-c"	Monthly Remittance Return dated 12 Dec. 2006
"SSSS-15-d"	Monthly Remittance Return dated 12 Dec. 2006
"SSSS-16"	Tax Remittance Advise for Jan. 2006
"SSSS-16-a"	Monthly Remittance Return of VAT dated Jan. 2006
"SSSS-16-b"	PNB's Confirmation No. 00067973
"SSSS-16-c"	Monthly Remittance Return of VAT dated Jan. 2006
"SSSS-16-d"	PNB's Confirmation No. 00067978
"SSSS-16-e"	Monthly Remittance Return of VAT dated Jan. 2006
"SSSS-28"	PNB's Confirmation No. 00067971
"SSSS-29"	PNB's Confirmation No. 00067962
"SSSS-30"	PNB's Confirmation No. 00067954
"SSSS-31"	PNB's Confirmation No. 00070274
"SSSS-32"	PNB's Confirmation No. 00070277
"SSSS-33"	PNB's Confirmation No. 00072184
"SSSS-34"	PNB's Confirmation No. 00072197
"SSSS-35"	PNB's Confirmation No. 00072148
"SSSS-36"	PNB's Confirmation No. 00075560
"SSSS-37"	PNB's Confirmation No. 00075517
"SSSS-38"	PNB's Confirmation No. 00075474
"SSSS-39"	PNB's Confirmation No. 00077789
"SSSS-40"	PNB's Confirmation No. 00077770
"SSSS-41"	PNB's Confirmation No. 00080113
"SSSS-42"	PNB's Confirmation No. 00080109
"SSSS-43"	PNB's Confirmation No. 00080117
"SSSS-44"	PNB's Confirmation No. 00082724
"SSSS-45"	PNB's Confirmation No. 00082741
"SSSS-46"	PNB's Confirmation No. 00082728
"SSSS-47"	PNB's Confirmation No. 00085411
"SSSS-48"	PNB's Confirmation No. 00085409
"SSSS-49"	PNB's Confirmation No. 00085410
"SSSS-50"	PNB's Confirmation No. 00088148
"SSSS-51"	PNB's Confirmation No. 00088192
"SSSS-52"	PNB's Confirmation No. 00088141
"SSSS-53"	PNB's Confirmation No. 00090408

"SSSS-54"	PNB's Confirmation No. 00090414
"SSSS-55"	PNB's Confirmation No. 00090387
"SSSS-56"	PNB's Confirmation No. 00092790
"SSSS-57"	PNB's Confirmation No. 00092755
"SSSS-58"	PNB's Confirmation No. 00092780
"SSSS-59"	PNB's Confirmation No. 00095121
"SSSS-60"	PNB's Confirmation No. 00095119
"SSSS-61"	PNB's Confirmation No. 00095120
"TTTT"	BIR Form 1601-E dated Jan. 2006
"TTTT-1"	Tax Remittance Advice dated 2 Feb. 2006
"TTTT-1-a"	PGH Remittance Listings ETW dated Jan. 2006
"TTTT-1-b"	PGH Remittance Listings ETW dated Jan. 2006
"TTTT-2"	BIR Form 1601-E dated 1 Jan. 2006
"TTTT-3	BIR Form 1601-E dated Feb. 2006
"TTTT-3-a"	Tax Remittance Advice dated 3Mar. 2006
"TTTT-3-b"	PGH Remittance Listings ETW dated Feb. 2006
"TTTT-3-c	PGH Remittance Listings ETW dated Feb. 2006
"TTTT-4"	BIR Form 1601-E dated Feb. 2006
"TTTT-5"	BIR Form 1601-E dated Mar. 2006
"TTTT-5-a"	Tax Remittance Advice dated 4 Apr. 2006
"TTTT-5-b"	PGH Remittance Listings ETW dated Mar. 2006
"TTTT-5-c"	PGH Remittance Listings ETW dated Mar. 2006
"TTTT-5-d"	PGH Remittance Listings ETW dated Mar. 2006
"TTTT-6"	BIR Form 1601-E dated Mar. 2006
"TTTT-7"	BIR Form 1601-E dated Mar. 2006
"TTTT-8"	BIR Form 1601-E dated Apr. 2006
"TTTT-8-a"	Tax Remittance Advice dated 4 May 2006
"TTTT-8-b"	PGH Remittance Listings ETW dated Apr. 2006
"TTTT-9"	BIR Form 1601-E dated March 2006
"TTTT-10"	BIR Form 1601-E dated May 2006
"TTTT-10-a"	Tax Remittance Advice dated 31 May 2006
"TTTT-10-b"	PGH Remittance Listings ETW dated May 2006
"TTTT-10-c"	PGH Remittance Listings ETW dated May 2006
"TTTT-11"	BIR Form 1601-E dated May 2006
"TTTT-12"	BIR Form 1601-E dated June 2006
"TTTT-12-a"	Tax Remittance Advice dated 30 June 2006
"TTTT-12-b"	PGH Remittance Listings ETW dated June 2006
"TTTT-12-c"	PGH Remittance Listings ETW dated June 2006
"TTTT-13"	BIR Form 1601-E dated June 2006
"TTTT-14"	BIR Form 1601-E dated July 2006
"TTTT-14-a"	Tax Remittance Advice dated 31 July 2006
"TTTT-14-b"	PGH Remittance Listings ETW dated July 2006
"TTTT-14-c"	PGH Remittance Listings ETW dated July 2006
"TTTT-15"	BIR Form 1601-E dated July 2006
"TTTT-16"	BIR Form 1601-E dated August 2006
"TTTT-16-a"	Tax Remittance Advice dated 31 Aug. 2006
"TTTT-16-b"	PGH Remittance Listings ETW dated Aug. 2006
"TTTT-16-c"	PGH Remittance Listings ETW dated Aug. 2006
"TTTT-17"	BIR Form 1601-E dated August 2006
"TTTT-18"	BIR Form 1601-E dated Sept. 2006
"TTTT-18-a"	Tax Remittance Advice dated 30 Sept. 2006

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"TTTT-18-b"	PGH Remittance Listings ETW dated Sept. 2006
"TTTT-18-c"	PGH Remittance Listings ETW dated Sept. 2006
"TTTT-19"	BIR Form 1601-E dated Sept. 2006
"TTTT-20"	BIR Form 1601-E dated Oct. 2006
"TTTT-20-a"	Tax Remittance Advice dated 31 Oct. 2006
"TTTT-20-b"	PGH Remittance Listings ETW dated Oct. 2006
"TTTT-21"	BIR Form 1601-E dated Oct. 2006
"TTTT-22"	BIR Form 1601-E dated Nov. 2006
"TTTT-22-a"	Tax Remittance Advice dated 30 Nov. 2006
"TTTT-22-b"	PGH Remittance Listings ETW dated Nov. 2006
"TTTT-22-c"	PGH Remittance Listings ETW dated Nov. 2006
"TTTT-23"	BIR Form 1601-E dated Nov. 2006
"TTTT-24"	BIR Form 1601-E dated Dec. 2006
"TTTT-24-a"	Tax Remittance Advice dated 29 Dec. 2006
"TTTT-24-b"	PGH Remittance Listings ETW dated Dec. 2006
"TTTT-25"	BIR Form 1601-E dated Dec. 2006
"TTTT-26"	PNB Payment Slip dated Jan. 2006
"TTTT-27	PNB Payment Slip dated Feb. 2006
"TTTT-28	PNB Payment Slip dated Mar. 2006
"TTTT-29"	PNB Payment Slip dated Mar. 2006
"TTTT-30"	PNB Payment Slip dated Apr. 2006
"TTTT-31"	PNB Payment Slip dated May 2006
"TTTT-32"	PNB Payment Slip dated June 2006
"TTTT-33"	PNB Payment Slip dated July 2006
"TTTT-34"	PNB Payment Slip dated Aug. 2006
"TTTT-35"	PNB Payment Slip dated Sept. 2006
"TTTT-36"	PNB Payment Slip dated Oct. 2006
"TTTT-37"	PNB Payment Slip dated Nov. 2006
"TTTT-38"	PNB Payment Slip dated Dec. 2006
"TTT-40"	Tax Remittance Advice for Jan. 2006
"TTTT-41"	Monthly Remittance Return of VAT for Jan. 2006
"TTTT-42"	Monthly Remittance Return of VAT for Jan. 2006
"TTTT-43"	Tax Remittance Advice for Feb. 2006
"TTTT-44"	Monthly Remittance Return of VAT for Feb. 2006
"TTTT-45"	Tax Remittance Advice for Mar. 2006
"TTTT-46"	Monthly Remittance Return of VAT for Mar. 2006
"TTTT-47"	Monthly Remittance Return of VAT for Mar. 2006
"TTTT-48"	Tax Remittance Advice for Apr. 2006
"TTTT-49"	Monthly Remittance Return of VAT for Apr. 2006
"TTTT-50"	Monthly Remittance Return of VAT for Apr. 2006
"TTTT-51"	Tax Remittance Advice for May 2006
"TTTT-52"	Monthly Remittance Return of VAT for May 2006
"TTTT-53"	Monthly Remittance Return of VAT for May 2006
"TTTT-54"	Tax Remittance Advice for June 2006
"TTTT-55"	Monthly Remittance Return of VAT for June 2006
"TTTT-56"	Monthly Remittance Return of VAT for June 2006
"TTTT-57"	Tax Remittance Advice for July 2006
"TTTT-58"	Monthly Remittance Return of VAT for July 2006
"TTTT-59"	Monthly Remittance Return of VAT for July 2006
"TTTT-60"	Tax Remittance Advice for Aug. 2006
"TTTT-61"	Monthly Remittance Return of VAT for Aug. 2006

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"TTTT-62"	Monthly Remittance Return of VAT for Aug. 2006
"TTTT-63"	Tax Remittance Advice for Sept. 2006
"TTTT-64"	Monthly Remittance Return of VAT for Sept. 2006
"TTTT-65"	Tax Remittance Advice for Oct. 2006
"TTTT-66"	Monthly Remittance Return of VAT for Oct. 2006
"TTTT-67"	Tax Remittance Advice for Nov. 2006
"TTTT-68"	Monthly Remittance Return of VAT for Nov. 2006
"TTTT-69"	Tax Remittance Advice for Dec. 2006
"TTTT-70"	Monthly Remittance Return of VAT for Dec. 2006
"TTTT-71"	PNB Payment Slip for Jan. 2006
"TTTT-72"	PNB Payment Slip for Jan. 2006
"TTTT-73"	Monthly Remittance Return of VAT for Jan. 2006
"TTTT-74"	Monthly Remittance Return of VAT for Jan. 2006
"TTTT-75"	PNB Payment Slip for Feb. 2006
"TTTT-76"	Monthly Remittance Return of VAT for Feb. 2006
"TTTT-77"	PNB Payment Slip for Feb. 2006
"TTTT-78"	Monthly Remittance Return of VAT for Feb. 2006
"TTTT-79"	PNB Payment Slip for Mar. 2006
"TTTT-80"	Monthly Remittance Return of VAT for Mar. 2006
"TTTT-81"	PNB Payment Slip for Mar. 2006
"TTTT-82"	Monthly Remittance Return of VAT for Mar. 2006
"TTTT-83"	PNB Payment Slip for Apr. 2006
"TTTT-84"	Monthly Remittance Return of VAT for Apr. 2006
"TTTT-85"	PNB Payment Slip for Apr. 2006
"TTTT-86"	Monthly Remittance Return of VAT for Apr. 2006
"TTTT-87"	PNB Payment Slip for May 2006
"TTTT-88"	Monthly Remittance Return of VAT for May 2006
"TTTT-89"	PNB Payment Slip for May 2006
"TTTT-90"	Monthly Remittance Return of VAT for May 2006
"TTTT-91"	PNB Payment Slip for June 2006
"TTTT-92"	Monthly Remittance Return of VAT for June 2006
"TTTT-93"	PNB Payment Slip for June 2006
"TTTT-94"	Monthly Remittance Return of VAT for June 2006
"TTTT-95"	PNB Payment Slip for July 2006
"TTTT-96"	Monthly Remittance Return of VAT for July 2006
"TTTT-97"	PNB Payment Slip for July 2006
"TTTT-98"	Monthly Remittance Return of VAT for July 2006
"TTTT-99"	PNB Payment Slip for Aug. 2006
"TTTT-100"	Monthly Remittance Return of VAT for Aug. 2006
"TTTT-101"	PNB Payment Slip for Aug. 2006
"TTTT-102"	Monthly Remittance Return of VAT for Aug. 2006
"TTTT-103"	PNB Payment Slip for Sept. 2006
"TTTT-104"	Monthly Remittance Return of VAT for Sept. 2006
"TTTT-105"	PNB Payment Slip for Sept. 2006
"TTTT-106"	Monthly Remittance Return of VAT for Sept. 2006
"TTTT-107"	PNB Payment Slip for Oct. 2006
"TTTT-108"	Monthly Remittance Return of VAT for Oct. 2006
"TTTT-109"	PNB Payment Slip for Nov. 2006
"TTTT-110"	Monthly Remittance Return of VAT for Nov. 2006
"TTTT-111"	PNB Payment Slip for Dec. 2006
"TTTT-112"	Monthly Remittance Return of VAT for Dec. 2006

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"TTTT-113"	PNB Payment Slip for Sept. 2006
"TTTT-22-c"	PGH Remittance Listings ETW dated Nov. 2006
"TTTT-22-a"	Tax Remittance Advice dated 30 Nov. 2006
"TTTT-22-b"	PGH Remittance Listings ETW dated Nov. 2006
"TTTT-22-c"	PGH Remittance Listings ETW dated Nov. 2006
"TTTT-114 and series	Amended Judicial Affidavit of Lauren H. Sandovall
"UUUU"	Monthly Remittance Return of EWT BIR Form No. 1601-E January 2006-PCC -Php 413.42
"UUUU-1"	Monthly Remittance Return of EWT BIR Form No. 1601-E January 2006-SRF - P15,579.76
"UUUU-2"	Monthly Remittance Return of EWT BIR Form No. 1601-E January 2006-TF P191,531.07
"UUUU-3"	BIR Tax Payments Deposit Slip January 2006 Php413.42
"UUUU-4"	BIR Tax Payments Deposit Slip January 2006 - Php 15,579.76
"UUUU-5"	BIR Tax Payments Deposit Slip January 2006 – Php191,531.07
"UUUU-106' and series	Amended Judicial Affidavit of Joan E. Mendoza
"VVVV-78" and series	Judicial Affidavit of Cecile G. Dangawen
"WWWW-74 and series	Judicial Affidavit of Salvacion T. Agupitan
"YYYY-24" and series	Judicial Affidavit of Zenaida G. Calatrava
"ZZZZ-47 and series	Judicial Affidavit of Jannette Kintanar Lepiten
"AAAAA"	(EVAT) Demand No. F39-124 dated 15 Jan. 2010
"AAAAA-1"	(EWT) Demand No. F39-124 dated 15 Jan. 2010
"AAAAA-2"	Formal Letter of Demand No. F-39-124 Date Issued: 15 Jan. 2010; Due Date: 15 Feb. 2010
"AAAAA-3"	- do – Page 2
"AAAAA-4"	- do – Page 3
"AAAAAA-6" and series	Judicial Affidavit of Jennifer M. Tolentino

On the other hand, respondent presented the following witnesses to disprove petitioner's material allegations: Revenue Officer Shirley S. Ruiz and Revenue Officer Margarita R. Jose. Then, respondent formally offered his documentary and testimonial evidence, which the Court all admitted in the Resolution[28] dated January 6, 2017.

The Court declared the instant case submitted for decision on March 27, 2017,[29] considering the Memorandum (For the Respondent)[30] filed on March 15, 2017 and the Records Verification[31]

[28] Resolution dated January 6, 2017, Docket, vol. VI, pp. 3320 to 3321
[29] Resolution, Docket, vol. VI, pp. 3336
[30] Docket, vol. VI, pp. 3326 to 3331
[31] Docket, vol. VI, p. 3332

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dated March 20, 2017 issued by this Court's Judicial Records Division stating that petitioner failed to file a memorandum.

The following issues[32] were interposed by the parties for the Court's consideration:

1. Whether or not the assessment against the petitioner was issued within the period prescribed by law;

2. Whether or not the assessment against the petitioner for taxable year 2006 has become final and executory;

3. Whether or not petitioner is liable to pay the questioned deficiency value-added tax (VAT) and expanded withholding tax (EWT) for taxable year 2006;

4. Whether or not petitioner enjoys tax exemptions under the 1987 Philippine Constitution, the 1995 Tax Code and other Regulations and Orders; and

5. Whether or not petitioner failed to submit documents in support of their protest.

The foregoing issues may be summarized into three main issues, to wit:

1. Whether the assessment against petitioner for TY 2006 has become final and executory;

2. Whether the assessment against petitioner was issued within the period prescribed by law; and

3. Whether petitioner is tax-exempt under the 1987 Philippine Constitution, the 1997 Tax Code, and other Regulations and Orders.

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[32] Issues, AJSFI, Docket, vol. II, p. 517

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The Court's Ruling

The FAN/FLD has become final and executory for petitioner's failure to file a timely protest

Respondent contends that the FAN/FLD has become final, executory, and demandable for failure of petitioner to timely file a protest against the said FAN/FLD. According to respondent, petitioner has alleged that it received for the first time a copy of the FAN/FLD only during the informal conference held at the Revenue District Office on November 11, 2010. Respondent points out that the receipt of such FAN/FLD is not in question but the date when petitioner actually received it is in dispute. Respondent asserts that petitioner received the FAN/FLD at an earlier date.

On the other hand, petitioner insists that it actually received for the first time a copy of the FAN/FLD during the informal conference held on November 11, 2010. As such, petitioner allegedly disputed the FAN/FLD on December 9, 2010 and attached therein the supporting schedules and other supporting documents. And petitioner points out that it received a copy of the Final Decision on November 17, 2011, stating that the tax liability mentioned in the FAN/FLD should be paid immediately.

Section 228 of the National Internal Revenue Code of 1997, as amended, provides:

> "SEC. 228. *Protesting of Assessment.* – When the Commissioner or his duly authorized representative finds that proper taxes should be assessed, he shall first notify the taxpayer of his findings: *Provided, however,* That a preassessment notice shall not be required in the following cases:
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> xxx xxx xxx

The taxpayers shall be informed in writing of the law and the facts on which the assessment is made; otherwise, the assessment shall be void.

Within a period to be prescribed by implementing rules and regulations, the taxpayer shall be required to respond to said notice. If the taxpayer fails to respond, the Commissioner or his duly authorized representative shall issue an assessment based on his findings.

Such assessment may be protested administratively by filing a request for reconsideration or reinvestigation within thirty (30) days from receipt of the assessment in such form and manner as may be prescribed by implementing rules and regulations. Within sixty (60) days from filing of the protest, all relevant supporting documents shall have been submitted; otherwise, the assessment shall become final.

If the protest is denied in whole or in part, or is not acted upon within one hundred eighty (180) days from submission of documents, the taxpayer adversely affected by the decision or inaction may appeal to the Court of Tax Appeals within thirty (30) days from receipt of the said decision, or from the lapse of the one hundred eighty (180)-day period; otherwise, the decision shall become final, executory and demandable."

It is clear from the foregoing provision that the taxpayer has thirty (30) days from receipt of the assessment to protest the said assessment. Likewise, the taxpayer has sixty (60) days from the filing of the protest within which to submit all relevant supporting documents, otherwise, the assessment shall become final.

Records show that the parties admitted, via joint stipulations, the existence and receipt by petitioner of the Preliminary Assessment Notice and the Letter dated July 2010, the Final Assessment Notice and Formal Letter of Demand No. 39-124 dated January 15, 2010, the Letter dated October 15, 2010 and Letter dated November 5, 2010, and the Letter dated November 3, 2011. The parties also made stipulation on the existence and receipt by respondent of the Letter

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dated August 31, 2010.[33] However, they did not stipulate on the actual date of receipt of the FAN/FLD.

Thus, the Court must determine the material fact as to the actual receipt of the FAN and FLD and the date of filing of petitioner's protest and supporting documents.

A careful scrutiny and evaluation of the records shows that through a Letter dated July 2010, which petitioner received on August 20, 2010, petitioner was informed that a FAN/FLD was issued against it, to wit:

> "Please be informed that we have issued the Final Assessment Notice/Formal Letter of Demand in order to protect the interest of the government considering the proximity of the prescription of assessments. In view thereof, we will give you fifteen (15) days from receipt hereof to file a protest based on Final Assessment Notice/Formal Letter of Demand. Otherwise, the case will be forwarded to the Collection Division for enforcement of collection."[34]

Notwithstanding, there is no indication in the afore-mentioned letter that a copy of the FAN/FLD was attached to the said letter.

Petitioner categorically expressed its intention to protest the FAN/FLD made against it for TY 2006 through a Letter dated August 31, 2010, the pertinent portion of which is quoted hereunder:[35]

> "This is in connection with the assessment made on the internal revenue tax liabilities for the taxable year 2006 of the University of the Philippines System Administration. We would like to file a protest on the Final Assessment Notice/Formal Letter of Demand issued to us by the Bureau of Internal Revenue."

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[33] Pars. 4, 5, 6, 7, and 8, Facts Admitted by the Parties, AJSFI, Docket, vol. II, p. 516
[34] Exhibit "R-1", BIR records, p. 333; Annex "E", Petition for Review, Docket, vol. I, p. 51
[35] Exhibit "R-1", BIR records, p. 332; Annex "F", Petition for Review, Docket, vol. I, p. 52

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It can be inferred from the foregoing that petitioner had already received or secured a copy of the FAN before the filing of the said letter.

Further, the tenor of petitioner's Letter dated November 11, 2010 indicates that it had already seen the FAN/FLD prior to the Informal Conference held on November 11, 2010, because it has submitted pertinent documents with regard to the issue on the withholding tax for professional fees, janitorial expenses, and rent expense for TY 2006 in connection with the Post Reporting Notice (ref: L/A No. 00065623), to wit:[36]

> "In connection with the Post Reporting Notice (ref: L/A No. 00065623), the following are our response to the issue on the Withholding Tax for Professional Fees, Janitorial Expenses and Rent Expense for CY 2006:"

Apparently, the subject of the Post Reporting Notice is the FAN/FLD.

Even though both parties stipulated on and admitted the existence and receipt of the FAN/FLD by petitioner, they have not presented any evidence to prove such actual date of receipt.

The Court reiterates that it could infer from the Letter dated August 31, 2010 filed by petitioner on September 2, 2010 that petitioner had already received or secured a copy of the FAN/FLD. Thus, in the absence of any evidence to the contrary, the Court will consider that petitioner received the said FAN/FLD on September 2, 2010. Accordingly, the reckoning date of the thirty-day period within which to file a protest is from September 2, 2010.

Furthermore, the Court deems the Letter dated November 11, 2010 as petitioner's Protest Letter for two reasons. *First*, the letter was submitted after the filing of the Letter dated August 31, 2010; and *second*, petitioner attached therein relevant supporting documents

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[36] Exhibit "R-1", BIR records, p. 348

pertaining to the assessment on the deficiency withholding tax for professional fees, janitorial expenses, and rent expense for TY 2006.

On the other hand, the Court cannot give credence to petitioner's allegation that petitioner received the FAN/FLD on November 11, 2010 and seasonably protested the same on December 9, 2010.

It is noteworthy that petitioner's alleged protest letter on the FAN/FLD filed on December 9, 2010 and the supporting schedules and other documents were not submitted by petitioner before this Court or formally offered as evidence.

Nevertheless, the Letter dated December 10, 2010[37] has formed part of the BIR records[38], and in the said letter, there is still no mention when the FAN/FLD was received by petitioner to reckon the thirty-day period to file a protest, to wit:

> "In connection with the notice received by the University of the Philippines from the Bureau of Internal Revenue (ref: L/A No. 00065623) for the assessment made on the Internal Revenue Tax Liabilities for taxable year 2006, we are submitting our reply and the attached supporting schedules for your consideration since there is no legal/factual basis for the assessment."

It is a well-settled rule that the party who alleges a fact has the burden of proving it. Section 1 of Rule 131 of the Rules of Court defines "burden of proof" as "the duty of a party to present evidence on the facts in issue necessary to establish his claim or defense by the amount of evidence required by law." In civil cases, the burden of proof rests upon the plaintiff, who is required to establish his case by a preponderance of evidence. Once the plaintiff establishes his case, the burden of evidence shifts to the defendant, who, in turn, bears the burden to establish his defense.[39]

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[37] Exhibit "R-1", BIR records, p. 344
[38] Exhibit "R-1", BIR records
[39] *Oliver vs. Philippine Savings Bank*, G.R. No. 214567, April 4, 2016

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Applying the provision of Section 228 of the NIRC of 1997, as amended, petitioner had thirty days from September 2, 2010 within which to protest the FAN/FLD or until October 2, 2010.

Since petitioner filed its protest letter only on November 11, 2010 together with the relevant supporting documents, the FAN/FLD has become final and executory.

Petitioner failed to prove that respondent's right to assess petitioner has prescribed

Petitioner alleges that respondent's right to assess petitioner for deficiency VAT and EWT for TY 2006 had already prescribed. Petitioner posits that for purposes of determining whether the tax assessment was validly issued within the three-year prescriptive period provided under Section 203 of the NIRC of 1997, as amended, the Court of Tax Appeals (CTA) has held in previous cases that it is the actual receipt by the taxpayer of such assessment which is the determining and relevant fact. The FAN/FLD was allegedly received by petitioner on November 11, 2010.

For the sake of argument that the FAN/FLD has not become final and executory, it appears that the right of respondent to assess petitioner for deficiency VAT and EWT for TY 2006 has already prescribed except for the 4th quarter and December of 2006, respectively.

Section 203 of the NIRC of 1997, as amended, states:

> "SEC. 203. *Period of Limitation Upon Assessment and Collection.* – Except as provided in Section 222, internal revenue taxes shall be assessed within three (3) years after the last day prescribed by law for the filing of the return, and no proceeding in court without assessment for the collection of such taxes shall be begun after the expiration of such period: *Provided*, That in a case where a return is filed beyond the period prescribed by law, the three (3)-year period shall be counted from the day the return was filed. For purposes of this

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Section, a return filed before the last day prescribed by law for the filing thereof shall be considered as filed on such last day."

In relation thereto, Section 114 of the NIRC of 1997, as amended, and Section 2.58(2)(a) of Revenue Regulations (RR) No. 2-98 provide:

"SEC. 114. *Return and Payment of Value-added Tax.* –

(A) *In General.* – Every person liable to pay the value-added tax imposed under this Title shall file a quarterly return of the amount of his gross sales or receipts within twenty-five (25) days following the close of each taxable quarter prescribed for each taxpayer: *Provided, however,* That VAT-registered persons shall pay the value-added tax on a monthly basis."

"SECTION 2.58. *Returns and Payment of Taxes Withheld at Source.* –

xxx xxx xxx

(2) *WHEN TO FILE.* –

(a) The withholding tax return, whether creditable or final, shall be filed and payments should be made within ten (10) days after the end of each month except for taxes withheld for December which shall be filed on or before January 25 of the following year."

This Court takes into consideration the ruling of the Supreme Courtl in the case of *Barcelon, Roxas Securities, Inc. (now known as UBP Securities, Inc.) vs. Commissioner of Internal Revenue*[40] that an assessment notice is considered made within the prescriptive period if such notice was issued within the period even though the receipt of the same was beyond the prescriptive period, to wit:

"Under Section 203 of the National Internal Revenue Code (NIRC), respondent had three (3) years from the last day

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[40] G.R. No. 157064, August 7, 2006

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for the filing of the return to send an assessment notice to petitioner. In the case of *Collector of Internal Revenue v. Bautista*, this Court held that an assessment is made within the prescriptive period if notice to this effect is released, mailed or sent by the CIR to the taxpayer within said period. Receipt thereof by the taxpayer within the prescriptive period is not necessary. At this point, it should be clarified that the rule does not dispense with the requirement that the taxpayer should actually receive, even beyond the prescriptive period, the assessment notice which was timely released, mailed and sent."

In the instant case, the FAN and FLD are dated January 15, 2010. In the absence of any contrary evidence, the Court considers the FAN/FLD as issued on such date, pursuant to Section 3(m) of Rule 131 of the Rules of Court stating the presumption of regularity in the performance of official duty.

A thorough perusal of the records reveals the following pertinent dates as to Quarterly VAT Returns:

QUARTERLY VAT RETURNS	DATE FILED	LAST DAY TO ASSESS	DATE OF ISSUANCE OF THE FAN/FLD
1st Quarter VAT Return[41]	April 25, 2006	April 25, 2009	January 15, 2010
2nd Quarter VAT Return[42]	July 25, 2006	July 25, 2009	
3rd Quarter VAT Return[43]	October 23, 2006	October 23, 2009	
4th Quarter VAT Return[44]	January 25, 2007	January 25, 2010	

As regards the right of respondent to assess petitioner for deficiency EWT, the Monthly Remittance Returns of Creditable Income Taxes Withheld (Expanded) for TY 2006 are required to be filed on the following dates and respondent's right to assess would prescribe as follows:

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[41] Exhibit "R-1", BIR records, pp. 43 to 45
[42] Exhibit "R-1", BIR records, pp. 35 to 37
[43] Exhibit "R-1", BIR records, pp. 26 to 28
[44] Exhibit "R-1", BIR records, pp. 17 to 19

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<table>
<tr><th>MONTHLY REMITTANCE RETURN OF CREDITABLE INCOME TAXES WITHHELD (EXPANDED)</th><th>DATE REQUIRED TO FILE AS PRESCRIBED BY LAW</th><th>LAST DAY TO ASSESS</th><th>DATE OF ISSUANCE OF THE FAN/FLD</th></tr>
<tr><td>January 2006</td><td>February 10, 2006</td><td>February 10, 2009</td><td rowspan="12">January 15, 2010</td></tr>
<tr><td>February 2006</td><td>March 10, 2006</td><td>March 10, 2009</td></tr>
<tr><td>March 2006</td><td>April 10, 2006</td><td>April 10, 2009</td></tr>
<tr><td>April 2006</td><td>May 10, 2006</td><td>May 10, 2009</td></tr>
<tr><td>May 2006</td><td>June 10, 2006</td><td>June 10, 2009</td></tr>
<tr><td>June 2006</td><td>July 10, 2006</td><td>July 10, 2009</td></tr>
<tr><td>July 2006</td><td>August 10, 2006</td><td>August 10, 2009</td></tr>
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<tr><td>November 2006</td><td>December 10, 2006</td><td>December 10, 2009</td></tr>
<tr><td>December 2006</td><td>January 25, 2007</td><td>January 25, 2010</td></tr>
</table>

Applying the above-stated provisions, respondent's right to assess petitioner for deficiency VAT and EWT for TY 2006 has already prescribed except for the 4th quarter and December of TY 2006, respectively.

Petitioner presented and formally offered several documentary evidence, however, most of the said pieces of evidence were denied either due to failure to submit the duly marked exhibits or failure to submit the originals for comparison.[45] Likewise, petitioner failed to present before this Court any schedule/summary or supporting documents for the Court to determine which portion of the amount assessed pertains to the prescribed period.

Accordingly, since the Court cannot ascertain which of the amount assessed refers to the prescribed period due to failure of petitioner to submit sufficient evidence to prove the same, the Court is constrained to uphold the whole assessed amount as pertaining to the unprescribed period.

Petitioner failed to present sufficient evidence to prove that the items subject of the assessment are tax-exempt

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[45] Resolution dated October 21, 2014, Docket, vol. VI, pp. 3195 to 3204

in accordance with Section 30(I) of the NIRC of 1997, as amended, and Section 25 of R.A. No. 9500

Petitioner made the following computation to refute the deficiency VAT assessment for taxable year 2006:

Sales/receipts per Financial Statements		₱ 54,156,858.41
Sales/receipts not subject to VAT and subject of the assessment for deficiency VAT:		
House rental of UP employees ranging from ₱1,000 to ₱4,000 per month	₱22,842,350.67	
Collections from rental of dormitories and other student-related educational activities	5,706,461.60	
Collection from the lease agreement with International Rice Research Institute (IRRI)	3,595,093.63	₱ 32,143,935.90
Sales/receipts per VAT Returns		₱ 22,012,922.51

According to petitioner, the amount of ₱32,143,935.90, which was not subjected to VAT, represents rental income which is either exempt from VAT or subject to zero percent (0%) VAT. Petitioner claims that the lease of residential units with a monthly rental per unit not exceeding ten thousand pesos (₱10,000.00), regardless of the amount of aggregate rentals received by the lessor during the year, is exempt from VAT. Petitioner further states that the rental income from lease of dormitories are exempt from VAT pursuant to Section 109(Q) of the NIRC of 1997, as amended, in relation to Section 4.109-1(B)(1) of RR No. 16-2005. Likewise, collections from student-related educational activities are purportedly exempt from VAT under Section 109(H) of the NIRC of 1997, as amended. Similarly, the alleged rental income derived from the lease of real property to the International Rice Research Institute (IRRI) is subject to zero percent VAT in accordance with Section 108(B)(3) of the NIRC of 1997, as amended, in relation with Article 5(1) of Presidential Decree No. 1620.

With respect to deficiency EWT assessment, petitioner asserts that the income payments in the amounts of ₱1,365,973.15,

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₱8,612,553.25, and ₱64,698,579.11 representing professional fee, rental, and janitorial services, respectively, pertained to the income payments of the seven (7) Constituent Universities (CU) under the UP System. Petitioner explains that the said income payments were already subjected to EWT by the CUs that incurred the expense, and the correspondent EWTs were remitted and paid to the BIR Regional District Office (RDO) where the said CUs are registered.

Petitioner contends that tax exemptions granted to it under R.A. No. 9500 are express, patent, and unambiguous. Allegedly, the grant is exceedingly extensive that it provided for exemption from all taxes and duties vis-à-vis all its revenues and assets, as well as 0% VAT for all transactions. Petitioner insists that its revenues, profits, and all the moneys that it received and will be receiving, will go entirely to petitioner as a premier educational institution and as the National University.

As earlier resolved, the assessment has already become final and executory; thus, the Court will not delve into the propriety of the assessment. Nevertheless, the Court shall discuss whether petitioner should enjoy the alleged tax-exemption benefits.

Section 30(I) of the NIRC of 1997, as amended, provides:

> "SEC. 30. *Exemptions from Tax on Corporations.* – The following organizations shall not be taxed under this Title in respect to income received by them as such:
>
> xxx xxx xxx
>
> (I) Government educational institution;
>
> xxx xxx xxx
>
> Notwithstanding the provisions in the preceding paragraphs, the **income of whatever kind and character of the foregoing organizations from any of their properties, real or personal, or from any of their activities conducted for profit regardless of the**

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disposition made of such income, shall be subject to tax imposed under this Code." (*Emphasis supplied*)

Based on the foregoing provision, all incomes of government educational institutions are tax-exempt, except their income of whatever kind and character from any of their properties, real or personal, or from any of their activities conducted for profit regardless of the disposition made of such income, which are then subject to tax.

Pertinent thereto is Section 25 of Republic Act No. 9500[46] which provides for petitioner's tax exemption privileges. However, Congress likewise limits its tax exemption to the following:

> "SEC. 25. *Tax Exemptions.* – The provisions of any general or special law to the contrary notwithstanding:
>
> (a) All revenues and assets of the University of the Philippines used for educational purposes or in support thereof shall be exempt from all taxes and duties;
>
> (b) Gifts and donations of real and personal properties of all kinds shall be exempt from the donor's tax and the same shall be considered as allowable deductions from the gross income of the donor, in accordance with the provisions of the National Internal Revenue Code of 1997, as amended: *Provided*, That the allowable deductions shall be equivalent to 150 percent of the value of such donation. Valuation of assistance other than money shall be based on the acquisition cost of the property. Such valuation shall take into consideration the depreciated value of property in case said property has been used;
>
> (c) Importation of economic, technical, vocational, scientific, philosophical, historical and cultural books, supplies and materials duly certified by the Board, including scientific and educational computer and software equipment, shall be exempt from customs duties;

[46] An Act to Strengthen the University of the Philippines as the National University

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(d) The University shall only pay 0% value-added tax for all transactions subject to this tax; and

(e) All academic awards shall be exempt from taxes."

The well settled rule is that legal provisions providing for tax exemption are to be construed strictly against the grant and liberally in favor of the taxing power.[47]

Based on Section 25 of R.A. No. 9500 not all of petitioner's income are exempted from taxation, but only those income above-enumerated are tax-exempt. Therefore, income not included in the enumeration is subject to tax.

This Court takes into consideration the case of *Commissioner of Internal Revenue vs. Court of Appeals, Court of Tax Appeals and Young Men's Christian Association of the Philippines*[48], where the Supreme Court held that since taxes are the lifeblood of the government, the doctrine of strict interpretation and construction of provisions granting tax exemption must be applied. Likewise, the claimed exemption must expressly be granted in a statute stated in a language too clear to be mistaken, *viz*:

> "**Because taxes are the lifeblood of the nation, the Court has always applied the doctrine of strict in interpretation in construing tax exemptions.** Furthermore, a claim of statutory exemption from taxation should be manifest, and unmistakable from the language of the law on which it is based. Thus, the **claimed exemption 'must expressly be granted in a statute stated in a language too clear to be mistaken.'**
>
> xxx xxx xxx
>
> It is axiomatic that where the language of the law is clear and unambiguous, its express terms must be applied.

[47] *The Philippines International Fair, Inc. vs. The Collector of Internal Revenue, et al.*, G.R. Nos. L-12928 and L-12932, March 31, 1962
[48] G.R. No. 124043, October 14, 1998

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> Parenthetically, a consideration of the question of construction must not even begin, particularly when such question is on whether to apply a strict construction or a liberal one on statutes that grant tax exemptions to 'religious, charitable and educational propert[ies] or institutions.'" *(Emphasis supplied)*

Furthermore, the pronouncement of the Supreme Court in the case of *Commissioner of Internal Revenue vs. De La Salle University Inc.*[49] is highly instructive, thus:

> "xxx To avail of the exemption, the taxpayer must ***factually prove*** that it used actually, directly and exclusively for educational purposes the revenues or income sought to be exempted."

Applying the foregoing to the instant case, it is petitioner's duty to discharge such burden of proof that the assessed deficiency taxes fall under the afore-mentioned circumstances which are tax-exempt. Failure to do so, the Court is constrained to uphold such assessment. And as observed by this Court, most of petitioner's documentary evidence were denied either due to failure to submit the duly marked exhibits or failure to submit the originals for comparison.[50] The Court also finds that there is no evidence presented to prove that the items subject of the assessment are tax-exempt.

WHEREFORE, premises considered, the instant Petition for Review is **DENIED** for lack of merit.

SO ORDERED.

Cielito N. Mindaro-Grulla
CIELITO N. MINDARO-GRULLA
Associate Justice

[49] G.R. Nos. 196596, 198841, and 198941, November 9, 2016
[50] Resolution dated October 21, 2014, Docket, vol. VI, pp. 3195 to 3204

WE CONCUR:

(INHIBITED)
ROMAN G. DEL ROSARIO
Presiding Justice

ERLINDA P. UY
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, 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.

ROMAN G. DEL ROSARIO
Presiding Justice
Chairperson, 1st Division