REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

THIRD DIVISION

PEOPLE OF THE PHILIPPINES, Plaintiff, - versus - **QNX SOLUTIONS, INCORPORATED,** and its responsible corporate officers **ANGELO R. BALILI (President), SANTIAGO T. PULIDO (Treasurer)** and **GERTRUDES S. TAMAYO (Corporate Secretary),** (Unit 1607, Herrera Tower, Valero Street, Salcedo Village, Makati City), (At-Large), Accused.	**CTA CRIM. CASE NO. O-989** For: Violation of Section 255 in relation to Sections 253 and 256 of R.A. No. 8424, as amended (Willful Failure to Pay Tax) Members: **RINGPIS-LIBAN,** *Chairperson,* **MODESTO-SAN PEDRO,** and **FERRER-FLORES,** *JJ.* Promulgated: JAN 25 2023 4:14 p.m.

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RESOLUTION

Records show that, on December 6, 2022, the prosecution filed the Information dated February 7, 2020 against herein accused QNX Solutions, Incorporated and its responsible corporate officers, Angelo R. Balili (President), Santiago T. Pulido (Treasurer) and Gertrudes S. Tamayo (Corporate Secretary), for violation of Section 255, in relation to Sections 253 and 256 of R.A. No. 8424 or the National Internal Revenue Code (NIRC), as amended, committed as follows:

> "That on or about 06 January 2014 and thereafter, in Makati City, Philippines, and within the jurisdiction of this Honorable Court, the said accused, **QNX Solutions, Incorporated**, and **Angelo R. Balili**, **Santiago T. Pulido** and **Gertrudes S. Tamayo**, its president, treasurer and corporate secretary, respectively, and, therefore, it's responsible corporate officers, with Tax Identification No. 206-266-184-000, to whom notices and demands were made by the Bureau of

Internal Revenue (BIR) to pay the company's **income tax** obligations for the year 2010, to wit: Five Million Six Hundred Seventeen Thousand Seventy Pesos and Thirty-Four Centavos **(Php5,617,070.34)**, exclusive of surcharge and interest, under BIR Assessment Notice No. IT-ELA52039-10-13-0347, did then and there willfully, unlawfully, knowingly and feloniously fail, refuse and neglect to pay the BIR the said amount despite due notice and demand and without formally protesting and appealing the same with the proper authority, which demand has already become final, to the damage and prejudice of the government.

CONTRARY TO LAW."

Pursuant to Section 4 of Rule 9 of the 2005 Revised Rules of the Court of Tax Appeals, as amended,[1] the Court shall determine the existence or non-existence of probable cause.

Accordingly, the prosecution submitted the following supporting documents for examination of the Court:

1. Certified xerox copy of the original of the Resolution dated February 7, 2020 issued by the Department of Justice;

2. Original copy of the Investigation Data Form with NPS Docket No. XVI-INV-19D-00121;

3. *Photocopy* of the Referral Letter of the Commissioner of Internal Revenue dated April 11, 2019; and

4. Original copy of the Joint Complaint-Affidavit of Zenaida E. Reyes and Racquel A. Manalang dated April 11, 2019, with the attached annexes which are all certified true copies.

After a careful consideration of the allegations in the Information and personally examining and evaluating the supporting documents submitted, the Court finds that the right to institute the criminal action has already prescribed.

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[1] SEC. 4. *Warrant of arrest.* – Within ten days from the filing of the information, the Division of the Court to which the case was raffled shall evaluate the resolution of the public prosecutor and its supporting evidence. The Division may immediately dismiss the case if it finds that the evidence on record clearly fails to establish probable cause. If the Division finds probable cause, it shall issue a warrant of arrest signed by the Chairperson of the Division. In case of doubt on the existence of probable cause, the Division may order the prosecutor to present additional evidence, *ex parte*, within five days from notice.

In resolving the issue of prescription of the offense charged, the following should be considered: (1) the period of prescription for the offense charged; (2) the time the period of prescription starts to run; and (3) the time the prescriptive period was interrupted.[2]

Section 281 of the NIRC of 1997, as amended, provides:

> "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.
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> **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." *(Emphases supplied)*

Based on the afore-cited provision, the period of prescription for the offense charged is five (5) years. Likewise, the prescription shall begin to run from the day of the commission of the violation of the law, or if the same be not known at the time, from the discovery thereof and the institution of judicial proceedings for its investigation and punishment.

This Court takes into consideration the case of *Tupaz vs. Ulep,*[3] which similarly involves the offense of failure to pay tax despite demand, where the Supreme Court determined the day of the commission of the violation of the law and prescription of the criminal action in this manner:

> "Petitioner was charged with failure to pay deficiency income tax after repeated demands by the taxing authority. In *Lim, Sr. vs. Court of Appeals,* we stated that by its nature **the violation could only be committed after service of notice and demand for payment of the deficiency taxes upon the taxpayer.**

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2 *Romualdez vs. Marcelo,* G.R. Nos. 165510-33, July 28, 2006, citing the case of *Domingo vs. Sandiganbayan.*

3 G.R. No. 127777, October 1, 1999.

> Hence, it cannot be said that the offense has been committed as early as 1980, upon filing of the income tax return. This is so because prior to the finality of the assessment, the taxpayer has not committed any violation for nonpayment of the tax. **The offense was committed only after the finality of the assessment coupled with taxpayer's willful refusal to pay the taxes within the allotted period**. In this case, when the notice of assessment was issued on July 16, 1984, the taxpayer still had thirty (30) days from receipt thereof to protest or question the assessment. Otherwise, the assessment would become final and unappealable. As he did not protest, the assessment became final and unappealable on August 16, 1984. Consequently, when the complaint for preliminary investigation was filed with the Department of Justice on June 8, 1989, the criminal action was instituted within the five (5) year prescriptive period." (*Emphases supplied.*)

The allegation in the Information and its supporting documents bares that the Formal Assessment Notice (FAN) was issued on September 9, 2013 and became final and executory, and demandable after the accused failed to file its protest, within thirty (30) days from September 13, 2013, when accused received the FAN. Hence, the assessment attained finality on October 14, 2013. The records further show that after the issuance of the Preliminary Collection Letter on December 17, 2013, complainant Bureau of Internal Revenue then issued the Final Notice Before Seizure dated January 6, 2014, indicating that the accused refused to pay its tax liability despite demand.

Clearly, when the Referral Letter and the Joint Complaint-Affidavit for preliminary investigation was filed before the Department of Justice on April 11, 2019, and the Information dated February 7, 2020 was filed before this Court on December 6, 2022, the five-year prescriptive period provided under Section 281 of the 1997 NIRC, as amended, has already lapsed.

WHEREFORE, CTA Criminal Case No. O-989 is **DISMISSED** on the ground of prescription.

SO ORDERED.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

CORAZON G. FERRER-FLORES
Associate Justice