REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

LBC EXPRESS – VIS, INC.,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 11926

Members:

BACORRO-VILLENA, *Chairperson, and*
CUI-DAVID, *JJ.*

Promulgated:

________________ 4:10 pm

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RESOLUTION

CUI-DAVID, J.:

For the Court's resolution is petitioner's ***Very Urgent Motion to Suspend Tax Collection (with Prayer for the Issuance of a Temporary Suspension Order and/or a Preliminary Injunction and Dispensing of Bond),*** filed on August 7, 2025, with respondent's ***Comment/Opposition [on Petitioner's Very Urgent Motion to Suspend Tax Collection (with Prayer for the Issuance of a Temporary Suspension Order and/or a Preliminary Injunction and Dispensing of Bond)],*** filed on September 5, 2025.

In its *Very Urgent Motion to Suspend Tax Collection*, petitioner alleges that the Final Assessment Notice and Formal Letter of Demand (**FAN/FLD**) are void for having been issued beyond the prescriptive period and for failing to state a definite due date. Petitioner also states that respondent's resort to summary administrative remedies is premature, as the taxes are not yet delinquent.

Petitioner also states that all the requisites for the issuance of a writ of preliminary injunction are present. It claims that the collection of the assessed amount of ₱46,208,043.87 would be "more than enough to inflict irreparable injury to petitioner."

In his *Comment/Opposition*, respondent contends that petitioner is not legally entitled to the suspension of collection of taxes. Citing resolutions of the Court of Tax Appeals (**CTA**), respondent argues that the failure to pay the amounts assessed in the FAN/FLD notwithstanding the timely filing of protests or appeals, still renders the taxes delinquent. Respondent likewise argues that petitioner failed to prove that the collection of taxes will jeopardize its interest.

The Court resolves.

As a general rule, the collection of taxes cannot be restrained by injunction. Section 218 of the National Internal Revenue Code (**NIRC**) of 1997, as amended, provides:

> Section 218. *Injunction not Available to Restrain Collection of Tax.* - No court shall have the authority to grant an injunction to restrain the collection of any national internal revenue tax, fee, or charge imposed by this Code.

However, by way of exception, Section 11 of Republic Act (**RA**) No. 1125,[1] as amended by RA No. 9282,[2] empowers the CTA to suspend the collection of taxes when, in its opinion, such collection may jeopardize the interests of the Government and/or the taxpayer, to wit:

> Section 11. *Who May Appeal; Mode of Appeal; Effect of Appeal.* –
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> . . . .
>
> No appeal taken to the CTA from the decision of the Commissioner of Internal Revenue or the Commissioner of Customs or the Regional Trial Court, provincial, city or municipal treasurer or the Secretary of Finance, the Secretary of Trade and Industry or the Secretary of Agriculture, as the case may be, shall suspend the payment, levy, distraint, and/or sale of any property of the taxpayer for the satisfaction

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1 AN ACT CREATING THE COURT OF TAX APPEALS.

2 AN ACT EXPANDING THE JURISDICTION OF THE COURT OF TAX APPEALS (CTA), ELEVATING ITS RANK TO THE LEVEL OF A COLLEGIATE COURT WITH SPECIAL JURISDICTION AND ENLARGING ITS MEMBERSHIP, AMENDING FOR THE PURPOSE CERTAIN SECTIONS OF REPUBLIC ACT NO. 1125, AS AMENDED, OTHERWISE KNOWN AS THE LAW CREATING THE COURT OF TAX APPEALS, AND FOR OTHER PURPOSES.

> of his tax liability as provided by existing law: Provided, however, That **when in the opinion of the Court the collection by the aforementioned government agencies may jeopardize the interest of the Government and/or the taxpayer** the Court [at] any stage of the proceeding may suspend the said collection *and* require the taxpayer either to deposit the amount claimed or to file a surety bond for not more than double the amount with the Court. (Emphasis supplied)

Corollary thereto, Rule 10, Sections 1 and 2 of the Revised Rules of the Court of Tax Appeals (**RRCTA**) state:

> *Section 1. No suspension of collection of tax, except as herein prescribed.* – No appeal taken to the Court shall suspend the payment, levy, distraint, or sale of any property of the taxpayer for the satisfaction of tax liability as provided under existing laws, except as hereinafter prescribed.
>
> *Section 2. Who may file.* — Where the collection of the amount of the taxpayer's liability, sought by means of a demand for payment, by levy, distraint or sale of any property of the taxpayer, or by whatever means, as provided under existing laws, **may jeopardize the interest of the Government or the taxpayer**, an interested party may file a motion for the suspension of the collection of the tax liability. (Emphasis supplied)

In essence, when, in the opinion of the CTA, the collection of taxes by the BIR may jeopardize the interests of either the Government or the taxpayer, the CTA may, as an exception to the "no injunction rule" under Section 11 of RA No. 1125, as amended: (1) suspend the collection of the tax; and (2) require the taxpayer either to deposit the amount claimed or to file a surety bond for not more than double the amount claimed.

To warrant the suspension of tax collection, the taxpayer bears the burden of proving that the continued collection of the tax would jeopardize its interests or those of the government. Absent such proof, the motion cannot be granted.

In support of its *Very Urgent Motion to Suspend Tax Collection*, petitioner offered in evidence its most recent Audited Financial Statements (AFS)[3] available at the time of filing. The AFS reflects a cash balance of ₱2,389,303 and current assets of ₱23,774,573. A perusal of petitioner's AFS further shows that

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[3] Docket, p. 185.

its current liabilities of ₱49,187,155 exceed its current assets of ₱23,774,573.

Meanwhile, the Final Decision on Disputed Assessment (**FDDA**) seeks to collect ₱46,208,043.87 from petitioner, an amount equivalent to 19.3 times its cash balance and 1.9 times its total current assets.

Clearly, petitioner's argument that it "would not only be forced to liquidate its other assets and fatally disrupt its operations" is well-founded. Petitioner has sufficiently demonstrated the prejudice it would suffer should respondent's collection efforts proceed. Accordingly, petitioner's prayer for the suspension of the collection of taxes is meritorious.

Petitioner likewise invokes Sections 205 and 207 of the NIRC of 1997, as amended, and Revenue Regulations (**RR**) No. 4-2019 in support of its postulate that the taxes are not yet delinquent.

It bears noting that petitioner timely filed its *Petition for Review* before this Court within the reglementary period. In *Commissioner of Internal Revenue v. Stradcom Corporation* ***(Stradcom)***,[4] the Supreme Court emphasized that the BIR may resort to summary administrative remedies such as distraint, levy, or garnishment, **only when the taxes sought to be collected have become delinquent:**

> [T]he 1997 NIRC provides two types of remedies to enforce the collection of unpaid taxes: (a) *summary administrative remedies*, such as the distraint and/or levy of taxpayer's property; and/or (b) *judicial remedies* ... However, before the CIR can avail of the summary administrative collection remedies, it must first be established that the taxes sought to be collected have become **delinquent**. (Emphasis supplied, citation omitted)

The Supreme Court further explained that a delinquent account arises only from a legally demandable tax liability, thus:

> As to the concept of **delinquent account**, the Court, citing Revenue Regulations (RR) No. 17-86, has held that this refers to the amount of tax due from a taxpayer who failed to pay the same within the time prescribed for its payment, that arises from (1) a self-assessed tax, whether or not a tax return

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[4] *Commissioner of Internal Revenue v. Stradcom Corporation*, G.R. No. 255520, April 21, 2025 [Per J. Caguioa, Third Division].

> was filed, or (2) **a deficiency assessment issued by the BIR which has become <u>final and executory</u>**.[5] (Emphasis supplied, citations omitted)

Consistent with this principle, the Supreme Court also cited RR No. 4-2019 and reiterated that delinquency presupposes a final and demandable assessment, explaining that a **delinquent account** pertains to a tax liability arising from an assessment that has become final and executory, such as when the taxpayer fails to protest the assessment or fails to appeal an adverse decision within the prescribed periods:

> Under <u>RR No. 4-2019</u>, a delinquent account is defined as a tax due from an assessment that has **become final and executory**. While this definition is framed within the context of <u>Republic Act No. 11213</u>, or the <u>Tax Amnesty Act</u>, it reflects long-standing and widely accepted principles of tax law, particularly the requirement that delinquency must be based on a final and demandable liability. <u>RR No. 4-2019</u> provides that a tax becomes delinquent in the following instances:
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>> Section 2. *Definition of Terms.* — For purposes of these Regulations, the words used herein shall be defined as follows:
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>> A. **Delinquent Account — shall pertain to a tax due from a taxpayer arising from the audit of the Bureau of Internal Revenue (BIR) which had been issued <u>Assessment Notices that have become final and executory</u> due to the following instances:**
>>
>> 1. Failure to pay the tax due on the prescribed due date provided in the Final Assessment Notice (FAN)/Formal Letter of Demand (FLD) and for which no valid Protest, ... , has been filed within thirty (30) days from receipt thereof;
>>
>> 2. Failure to file an appeal to the Court of Tax Appeals (CTA) or an administrative appeal before the Commissioner of Internal Revenue (CIR) within thirty (30) days from receipt of the decision denying the request for reinvestigation or reconsideration; or

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[5] *Id.*

> 3. Failure to file an appeal to the CTA within thirty (30) days from receipt of the Decision of the CIR denying the taxpayer's administrative appeal to the Final Decision on Disputed Assessment (FDDA).
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> Based on the foregoing, without an assessment that has gone through any of the above stages and has become final and executory, a tax cannot be deemed delinquent. [6] (Emphasis supplied)

In *Stradcom*, the Supreme Court ultimately cautioned the BIR that summary collection remedies are not to be exercised indiscriminately, stressing that they may be invoked only when the taxes sought to be collected have already become delinquent:

> [T]he administrative remedies for tax collection, such as distraint, levy, and garnishment, are not tools to be wielded at will. **They may be invoked only when the taxes sought to be collected have already become <u>delinquent</u>**, whether by the taxpayer's own admission or by virtue of a valid formal assessment.[7] (Emphasis supplied)

Guided by the foregoing pronouncements and considering that the disputed assessments in the present case remain under judicial review, the Court finds sufficient basis to suspend the collection of the alleged tax liabilities pending final determination of this case.

With respect to the prayer for dispensation of bond, the law generally requires the taxpayer to deposit the amount claimed or file a surety bond as a condition for the suspension of tax collection. However, jurisprudence recognizes exceptions.

In *Spouses Pacquiao v. The Court of Tax Appeals – First Division (**Spouses Pacquiao**)*,[8] the Supreme Court affirmed that the CTA may restrain tax collection and dispense with the bond requirement when the method employed by the Commissioner of Internal Revenue is patently in violation of law and prejudicial to the taxpayer. The rule is intended not only to avert prejudice but, more importantly, to prevent the absurd situation wherein the Court would declare "that the collection by the summary methods of distraint and levy was violative of law, and then, in

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6 *Id.*
7 *Id.*
8 G.R. No. 213394, April 6, 2016 [Per J. Mendoza, Second Division].

the same breath require petitioner to deposit or file a bond as a prerequisite for the issuance of a writ of injunction."[9]

Similarly, in *Privatization and Management Office v. Court of Tax Appeals* (***Privatization and Management Office***),[10] the Supreme Court emphatically ruled that the bond requirement applies only when collection processes are carried out in accordance with law—not when they are patently unlawful:

> [T]he requirement of the bond as a condition precedent to the issuance of the writ of injunction applies only in cases where the processes by which the collection sought to be made by means thereof are carried out in consonance with the law for such cases provided and **not when said processes are obviously in violation of the law to the extreme that they have to be suspended for jeopardizing the interests of taxpayer**. (Emphasis supplied, citation omitted)

Accordingly, the Court must determine whether the collection sought by respondent constitutes a "violation of the law to the extreme."

The issuance of a valid formal assessment is a substantive prerequisite to the collection of taxes.[11] As held in *Commissioner of Internal Revenue v. Pascor Realty and Development Corporation*,[12] an assessment must include both a computation of tax liabilities and a **demand for payment within a prescribed period**. The Supreme Court explained:

> **An assessment contains not only a computation of tax liabilities, but also a demand for payment within a prescribed period**. It also signals the time when penalties and interests begin to accrue against the taxpayer. To enable the taxpayer to determine his remedies thereon, due process requires that it must be served on and received by the taxpayer. (Emphasis supplied)

Further, *Commissioner of Internal Revenue v. Fitness by Design, Inc.* (*Fitness by Design*),[13] unequivocally provides that, for a tax assessment to be valid, it must contain a **demand for payment** and a **definite due date**, *viz.*:

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[9] *Collector of Internal Revenue v. Reyes*, G.R. No. L-8685, January 31, 1957 [Per J. Felix, *En Banc*].
[10] G.R. No. 211839, March 18, 2019 [Per J. Reyes, Jr., J., Second Division].
[11] *Commissioner of Internal Revenue v. Menguito*, G.R. No. 167560, September 17, 2008 [Per J. Austria-Martinez, Third Division].
[12] G.R. No. 128315, June 29, 1999 [Per J. Panganiban, Third Division]. See also *Tupaz v. Ulep*, G.R. No. 127777, October 1, 1999 [Per J. Pardo, First Division].
[13] G.R. No. 215957, November 9, 2016 [Per J. Leonen, Second Division].

A final assessment notice provides for the amount of tax due with a demand for payment. ...

. . . .

The issuance of a valid formal assessment is a substantive prerequisite for collection of taxes. Neither the National Internal Revenue Code nor the revenue regulations provide for a "specific definition or form of an assessment." However, the National Internal Revenue Code defines its explicit functions and effects. **An assessment does not only include a computation of tax liabilities; it also includes a demand for payment within a period prescribed. Its main purpose is to determine the amount that a taxpayer is liable to pay.**

. . . .

A final assessment is a notice "to the effect that the amount therein stated is due as tax and a demand for payment thereof." This demand for payment signals the time "when penalties and interests begin to accrue against the taxpayer and enabling the latter to determine his remedies[.]" Thus, it must be "sent to and received by the taxpayer, and must demand payment of the taxes described therein within a specific period."

The disputed Final Assessment Notice is not a valid assessment.

First, **it lacks the definite amount of tax liability** for which respondent is accountable. It does not purport to be a demand for payment of tax due, which a final assessment notice should supposedly be. An assessment, in the context of the National Internal Revenue Code, is a "written notice and demand made by the [Bureau of Internal Revenue] on the taxpayer for the settlement of a due tax liability that is there definitely set and fixed." **Although the disputed notice provides for the computations of respondent's tax liability, the amount remains indefinite. It only provides that the tax due is still subject to modification, depending on the date of payment.** ...

. . . .

Second, **there are no due dates in the Final Assessment Notice.** This negates petitioner's demand for payment. Petitioner's contention that April 15, 2004 should be regarded as the actual due date cannot be accepted. The last paragraph of the Final Assessment Notice states that the due dates for payment were supposedly reflected in the attached assessment: ... (Emphasis supplied, citations omitted)

In line with the foregoing doctrine, the Supreme Court has consistently invalidated assessments that lack a **definite due date,**[14] as such deficiency renders the demand for payment legally ineffective.

The importance of a due date is underscored in Section 249(C) of the NIRC, which fixes delinquency interest based on the due date stated in the assessment. Without a valid due date, the imposition of such interest cannot be properly determined. Section 249(C) provides, in part:

> SEC. 249. – *Interest.* ...
>
> (C) Delinquency Interest. - In case of failure to pay:
>
> . . . .
>
> (3) A deficiency tax, or any surcharge or interest thereon **<u>on the due date appearing in the notice and demand of the Commissioner</u>**, there shall be assessed and collected on the unpaid amount, interest at the rate prescribed in Subsection (A) hereof until the amount is fully paid, which interest shall form part of the tax. (Emphasis supplied)

Under the NIRC, an assessment is a "written **notice** and **demand** made by the BIR on the taxpayer for the settlement of a due tax liability that is there definitely set and fixed."[15] In *Fitness by Design*, the Supreme Court emphasized that a final assessment must be "sent to and received by the taxpayer, and must demand payment of the taxes described therein within a specific period." This "specific period" must refer to a **future due date** that affords the taxpayer a real and reasonable opportunity to comply. A due date that has already lapsed at the time of receipt deprives the taxpayer of this opportunity and thus violates the taxpayer's due process rights.

In the present case, the FAN, which was formally offered in evidence by petitioner in support of the instant ***Very Urgent Motion to Suspend Tax Collection*** and duly admitted by the Court,[16] was issued on **September 9, 2024**, but indicated a due date of **July 31, 2024.**[17] Petitioner, however, received the FAN/FLD only on **September 10, 2024**, after the lapse of the stated due date.

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[14] *Republic v. First Gas Power Corporation*, G.R. No. 214933, February 15, 2022 [Per J. Lopez, J. First Division]; *Commissioner of Internal Revenue v. T Shuttle Services, Inc.*, G.R. No. 240729, August 24, 2020 [Per J. Inting, Second Division].

[15] *Adamson v. Court of Appeals*, G.R. Nos. 120935 & 124557, May 21, 2009 [Per C. J. Puno, First Division].

[16] Resolution dated March 25, 2026.

[17] Docket, pp. 370-374, Exhibits "P-18", "P-19", "P-20", and "P-21.

The pivotal issue, therefore, is whether a FAN/FLD received after the lapse of its stated due date may still be considered a valid assessment. Stated differently, **may the BIR validly impose a due date that has already passed at the time the assessment is received?**

The answer is in the negative.

A demand for payment that requires compliance on a date that has already passed is not merely unreasonable, it is **legally impossible**. It deprives the taxpayer of any meaningful opportunity to comply, thereby violating due process.

Accordingly, a past-due date fails to satisfy the essential requirement that an assessment must contain a demand for payment within a prescribed period—one that necessarily refers to a future date.

Such a defect is not a mere procedural or curable irregularity. It goes to the very essence of a valid assessment—a definite and enforceable demand for payment. Absent a lawful due date, the assessment cannot give rise to any enforceable obligation and is therefore void *ab initio*. Corollarily, it undermines the computation of delinquency interest under Section 249(C) of the NIRC, which presupposes the existence of a valid due date from which interest may lawfully accrue.

Applying these principles, the FAN's indication of a due date that had already lapsed before its issuance cannot constitute a valid demand for payment. As such, the assessment is fatally defective and must be declared void.

Permitting such a retroactive due date would result in the unjust accrual of delinquency interest even before the taxpayer is notified of the obligation. This outcome is manifestly inequitable and cannot be countenanced.

Ultimately, this defect renders the assessment null and void. Consequently, respondent's resort to collection measures lacks legal basis. This fundamental infirmity not only warrants the suspension of tax collection and the dispensation of the bond requirement, but also compels the grant of the *Petition for Review*.

Finally, the Court finds it proper to resolve the *Petition for Review* at this stage pursuant to Section 6, Rule 10 of the RRCTA, which provides:

> SECTION 6. *Hearing of the Motion.* — The movant shall, upon receipt of the opposition, set the motion for hearing at the next available motion day, and the Court shall give preference to the motion over all other cases, except criminal cases. At the hearing, both parties shall submit their respective evidence. If warranted, the Court may grant the motion if the movant shall deposit with the Court an amount in cash equal to the value of the property or goods under dispute or filing with the Court of an acceptable surety bond in an amount not more than double the disputed amount or value. However, **for the sake of expediency, the Court, *motu proprio* or upon motion of the parties, may consolidate the hearing of the motion for the suspension of the collection of the tax with the hearing on the merits of the case.** (Emphasis supplied)

In the present case, during the hearing of petitioner's *Very Urgent Motion to Suspend Tax Collection*, both parties were fully heard and afforded the opportunity to present their respective evidence. From the evidence on record, it has already been sufficiently established that the assessment is **void for failure to state a valid and enforceable due date**.

Given the dispositive nature of this defect, **no further proceedings are necessary**. Petitioner is entitled not only to the suspension of tax collection and the waiver of the bond requirement, but also to the outright grant of the *Petition for Review*, as no valid assessment exists to support respondent's claim.

Accordingly, in the interest of justice and in adherence to the constitutional mandate on the speedy disposition of cases, the Court deems it proper to resolve the *Petition for Review* based on the evidence already presented and to grant the reliefs prayed for. Further trial would serve no useful purpose and would only delay the disposition of a case whose outcome is already clear.

WHEREFORE, premises considered, the Court resolves as follows:

1. The *Petition for Review* filed by petitioner on May 13, 2025, is **GRANTED**;

2. The Final Assessment Notices and Formal Letter of Demand dated September 9, 2024, are **CANCELLED** and **SET ASIDE** for being null and void;

3. The Final Decision on Disputed Assessment dated April 10, 2025, is **REVERSED** and **SET ASIDE**; and

4. Respondent, his representatives, agents, and all persons acting on his behalf are **ENJOINED** from enforcing, implementing, or giving effect to any Warrant of Distraint and/or Levy, Warrant of Garnishment, or any administrative collection measure relating to the alleged deficiency taxes subject of this case.

In view of the grant of the *Petition for Review,* petitioner's *Very Urgent Motion to Suspend Tax Collection (with Prayer for the Issuance of a Temporary Suspension Order and/or a Preliminary Injunction and Dispensing of Bond)* is hereby declared **MOOT AND ACADEMIC**.

SO ORDERED.

LANEE S. CUI-DAVID
Associate Justice

I CONCUR:

JEAN MARIE A. BACORRO-VILLENA
Associate Justice