CTA Form No. 8 (For DCC)

22-000206-0012

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

CTA CRIM. CASE NO. O-906

PEOPLE OF THE PHILIPPINES,
Plaintiff,

- versus -

NOTICE OF RESOLUTION

MAVIMA GROUP, INC. AND
ROMEO B. VINCO,
Accused.

To:

PROSECUTOR GENERAL BENEDICTO A. MALCONTENTO
SR. DEPUTY STATE PROSECUTOR RICHARD ANTHONY D. FADULLON
PROSECUTION ATTY. JANUARY L. TRIA-LLARENA
Department of Justice
Padre Faura Street, Ermita, Manila

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

DIRECTOR
National Bureau of Investigation
Taft Avenue, Ermita, Manila

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

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

GREETINGS:

You are hereby notified by these presents that on **February 2, 2024,** a Resolution was rendered in the above-entitled case, copy of which is attached hereto.

Quezon City, Philippines, **February 5, 2024.**

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

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

PEOPLE OF THE PHILIPPINES, *Plaintiff,*	**CTA CRIM. CASE NO. O-906** For: Violation of Section 255, in relation to Sections 253 and 256 of the National Internal Revenue Code of 1997, as amended.
- versus -	*Members:* **DEL ROSARIO**, *P.J., Chairperson,* **BACORRO-VILLENA**, *and* **CUI-DAVID**, *JJ.*
MAVIMA GROUP, INC. and ROMEO B. VINCO, *Accused.*	Promulgated: FEB 02 2024; 10:15AM

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RESOLUTION

On May 5, 2022, the prosecution filed an *Information* charging accused **Mavima Group, Inc**. and its President, **Romeo B. Vinco**, for violation of Section 255, in relation to Sections 253(d) and 256 of the National Internal Revenue Code (NIRC) of 1997, as amended, allegedly committed as follows:

> "That on or about July 2012, and thereafter, in Quezon City, Philippines, and within the jurisdiction of this Honorable Court, accused **Mavima Group, Inc.** and **Romeo B. Vinco**, President of Mavima Group, Inc., registered with the Bureau of Internal Revenue with Tax Identification No. 000-406-811-000, a domestic corporation required by law to pay Value Added Tax, did then and there, willfully, unlawfully and knowingly fail to pay basic deficiency Value Added Tax in the amount of Twelve Million One Hundred Forty Seven Thousand Seventy Eight Pesos and 51/100 (Php12,147,078.51), exclusive of increments, despite final assessment notice, including prior and post notices and demands to pay and demand before suit issued by BIR in 24 September 2018, to

> the damage and prejudice of the Government of the Republic of the Philippines.
>
> CONTRARY TO LAW."

In the Resolution promulgated on May 20, 2022,[1] the Court found probable cause to issue a warrant of arrest against accused **Romeo B. Vinco** and set the bail bond for his provisional liberty at P60,000.00.

Despite the issuance of a Warrant of Arrest on May 24, 2022, and the subsequent issuance of an Alias Warrant of Arrest on July 7, 2022, accused remains at large. Thus, in order that this case may not remain pending in the Court's docket for an indefinite period, the Court ordered this case to be archived in the Resolution dated January 20, 2023.[2]

Meanwhile, the Court noted that several cases have been archived, given the authorities' failure to cause the arrest of the accused. The number of archived cases and the successive dismissal of recent cases on the ground of prescription prompted the Court to review such cases to determine whether they were filed within the prescribed period as provided under Section 281 of the NIRC of 1997, as amended.

Section 281 of the NIRC of 1997, as amended, governs the prescriptive period for filing criminal actions for violations of the 1997 NIRC, to wit:

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

[1] Docket, pp. 63-66.
[2] Docket, p. 91.

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

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

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

In the case of *Emilio E. Lim, Sr. and Antonia Sun Lim v. Court of Appeals and People of the Philippines*[3] (*Lim case*), the Supreme Court elucidated the point when a prescription for criminal violation of the provisions of the NIRC involving taxpayer's refusal to pay the deficiency income taxes due, commences, *viz.*:

> "Relative to Criminal Case Nos. 1788 and 1789 which involved **petitioners' refusal to pay the deficiency income taxes due**, again both parties are in accord that by their nature, **the violations as charged could only be committed after service of notice and demand for payment of the deficiency taxes upon the taxpayers**. Petitioners maintain that the five-year period of limitation under Section 354 should be reckoned from April 7, 1965, the date of the original assessment while **the Government insists that it should be counted from July 3, 1968 when the final notice and demand was served** on petitioners' daughter-in-law.
>
> **We hold for the Government**. Section 51 (b) of the Tax Code provides:
>
> > '(b) Assessment and payment of deficiency tax. — After the return is filed, the Commissioner of internal Revenue shall examine it and assess the correct amount of the tax. *The tax or deficiency in tax so discovered shall be paid upon notice and demand from the Commissioner of Internal Revenue.' (Emphasis Supplied)*
>
> **Inasmuch as the final notice and demand for payment of the deficiency taxes was served on petitioners on July 3, 1968, it was only then that the cause of action on the part of the BIR accrued**. This is so because prior to the receipt of the letter-assessment, no violation has yet been committed by the taxpayers. **The offense was committed only after receipt was coupled with the willful refusal to pay the taxes due within the allotted period. The two criminal informations, having been filed on June 23, 1970, are well-within the five-**

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

> **year prescriptive period and are not time-barred.**" (*Boldfacing supplied*)

The foregoing pronouncement was even circularized through the issuance of Revenue Memorandum Circular (RMC) No. 101-90,[4] which stated:

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

As to what interrupts prescription, Section 281 of the NIRC of 1997, as amended, provides that it is "*when proceedings are instituted against the guilty persons.*" This is explained in *Lim, Sr. et al. v. Court of Appeals and People* (*Lim*)[5] as the time when the information is filed with the Court.

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

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

[5] *Supra*, Note 3.

RULE 9
PROCEDURE IN CRIMINAL CASES

... ...

SEC. 2. *Institution of criminal actions.* — **All criminal actions before the Court in Division** in the exercise of its original jurisdiction **shall be instituted by the filing of an information in the name of the People of the Philippines.** In criminal actions involving violations of the National Internal Revenue Code and other laws enforced by the Bureau of Internal Revenue, the Commissioner of Internal Revenue must approve their filing. In criminal actions involving violations of the Tariff and Customs Code and other laws enforced by the Bureau of Customs, the Commissioner of Customs must approve their filing.

The institution of the criminal action shall interrupt the running of the period of prescription. [*Emphasis supplied*]

Clearly, when the offense charged involves a taxpayer's refusal to pay the taxes due, the date of commission of which is known, the five (5)-year prescriptive period begins to run from the date the assessment notices became final and executory and continues to run until the filing of the *Information* in Court.

In the *Joint Complaint-Affidavit*[6] filed by revenue officers of the Bureau of Internal Revenue before the Department of Justice, it was alleged that the Formal Letter of Demand with Details of Discrepancies and Assessment Notices No. 040-B241-12, all dated January 15, 2016, assessing Mavima Group, Inc. of deficiency Income Tax (IT), Value-Added Tax (VAT), and Expanded Withholding Tax (EWT) were served *via* registered mail at accused's registered address as evidenced by Registry Receipt No. 837, dated **January 25, 2016.**

Pursuant to Section 228[7] of the NIRC of 1997, as amended, Mavima Group, Inc. had thirty (30) days from January 25, 2016,

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[6] Docket, pp. 16-23.

[7] 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:

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.

or until February 24, 2016, within which to file its protest. Allegedly, Mavima Group, Inc. failed to file its protest. [8] Thus, the assessments issued against it became final and executory on **February 25, 2016**.

On **June 23, 2016**, a Preliminary Collection Letter was issued to respondent Mavima Group, Inc., to demand the settlement of the deficiency taxes.[9]

Based on the foregoing and following the ruling in *Lim*, the five (5)-year prescriptive period to indict accused for failure to pay tax lapsed on **February 25, 2021**. Thus, the right of the government to institute the case against the accused had already prescribed when the *Information* was filed before this Court on **May 5, 2022.**

Even if the period is counted from the issuance of the Preliminary Collection Notice, plaintiff would have five (5) years from June 23, 2016, or until **June 23, 2021**, to file the *Information* in Court. Hence, the filing of the *Information* on **May 5, 2022,** is beyond the prescriptive period.

Indeed, the failure of the prosecution to timely file the *Information* in Court within the five-year (5) prescriptive period as provided under Section 281 of the NIRC of 1997, as amended, is fatal to its cause.

WHEREFORE, premises considered, CTA Crim. Case No. O-906 is hereby **WITHDRAWN** from the archives and accordingly **DISMISSED** by reason of prescription of the offense charged.

The *Alias Warrant of Arrest* issued against the accused is hereby **RECALLED and SET ASIDE**.

SO ORDERED.

ROMAN G. DEL ROSARIO
Presiding Justice

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. *xxx*

[8] Paragraph 13, Joint Complaint-Affidavit, Docket, pp. 16-23.

[9] Paragraph 14, Joint Complaint-Affidavit, Docket, pp. 16-23.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

LANEE S. CUI-DAVID
Associate Justice