CTA Form No. 8 (For DCC)

22-000620-0030

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

CTA CRIM. CASE NO. O-996

PEOPLE OF THE PHILIPPINES,
Plaintiff,

- versus -

AUTOMATED SYSTEMS & EQUIPMENT CORPORATION and RACQUEL R. SALDAJENO,
Accused.

NOTICE OF RESOLUTION

To:

PROSECUTION GENERAL BENEDICTO A. MALCONTENTO
ASST. STATE PROSECUTOR XERXES U. GARCIA
Department of Justice
Padre Faura Street, Ermita, Manila 1000

ATTY. WILMER B. DEKIT
ATTY. FRANCIS GIDEON G. NAPUTO
Bureau of Internal Revenue
BIR Legal Division, Revenue Region No. 8B
2nd Floor, BIR Revenue Regional Office Building
No. 313, Gil Puyat Ave., Makati City

MS. RACQUEL ROQUE SALDEJENO
Unit 22-G, San Lorenzo Place, Tower 1
EDSA cor. Chino Roces Ave., Bangkal, Makati City 1231

ZAMBRANO GRUBA CAGANDA AND ADVINCULA (ZG LAW)
27/F, 88 Corporate Center
Sedeño corner Valero Streets
Salcedo Village, 1227 Makati City

GREETINGS:

You are hereby notified by these presents that on **February 27, 2024,** a Resolution was rendered in the above-entitled case, copy of which is attached hereto.

Quezon City, Philippines, **February 28, 2024.**

Atty. Margarette Y. Guzman
Executive Clerk of Court III

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
Quezon City

FIRST DIVISION

PEOPLE OF THE PHILIPPINES, Plaintiff,	CTA CRIM CASE NO. **O-996**
	Members:
- versus -	**DEL ROSARIO**, P.J., *Chairperson*, **BACORRO-VILLENA**, *and* **CUI-DAVID**, JJ.
AUTOMATED SYSTEMS AND EQUIPMENT CORPORATION and **RACQUEL R. SALDAJENO**, Accused.	Promulgated: FEB 27 2024 2:00PM

x - x

RESOLUTION

In an Order[1] dated 15 November 2023, the Court noted a standing legal question of whether or not the period to file the present criminal action has already prescribed. Considering the existence of this issue, the Court ordered the parties to submit their respective memoranda for its immediate resolution.

In compliance, accused Racquel R. Saldajeno (**Saldajeno**) filed her Memorandum on 30 November 2023[2], while plaintiff filed its Memorandum on 06 December 2023.[3]

It will be recalled that on 06 December 2022, an Information[4] was filed charging accused Automated Systems & Equipment Corporation (**ASEC**), Florentino A. Roque (**Roque**) and Saldajeno, as its President and Treasurer, respectively, with violation of Section 255[5], in relation

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1 Division Docket, pp. 338-340.
2 Id., pp. 342-354.
3 Received by the Court on 14 December 2024; Id., pp. 362-366.
4 Id., pp. 5-7.
5 **Sec. 255.** *Failure to File Return, Supply Correct and Accurate Information, Pay Tax, Withhold and Remit Tax and Refund Excess Taxes Withheld on Compensation.* - Any person required under this

to Sections 253[6] and 256[7], of the National Internal Revenue Code (**NIRC**) of 1997, as amended, for their alleged willful failure to pay deficiency income tax (**IT**) for taxable year (**TY**) 2008. The Information reads:

> . . .
>
> That on or about the 29th day of July 2013, and thereafter, in Pasay City and within the jurisdiction of this Honorable Court, accused FLORENTINO A. ROQUE and RACQUEL R. SALDAJENO, being the president and treasurer, respectively, of accused AUTOMATED SYSTEMS & EQUIPMENT CORPORATION, a domestic corporation engaged in trading business, with Tax Identification No. 000-107-791-000, and at that time required by Section 23 of the National Internal Revenue Code of 1997, as amended, its rules and regulations to pay income tax for the said corporation, did then and there, willfully and knowingly fail to pay its income tax deficiency for the taxable year 2008, despite prior notices, including formal assessment notice and preliminary collection letter,

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Code or by rules and regulations promulgated thereunder to pay any tax, make a return, keep any record, or supply correct and accurate information, who willfully fails to pay such tax, make such return, keep such record, or supply such correct and accurate information, or withhold or remit taxes withheld, or refund excess taxes withheld on compensation, at the time or times required by law or rules and regulations shall, in addition to other penalties provided by law, upon conviction thereof, be punished by a fine of not less than Ten thousand pesos (P10,000) and suffer imprisonment of not less than one (1) year but not more than ten (10) years.

. . .

6 **SEC. 253**. *General Provisions.* -

(a) Any person convicted of a crime penalized by this Code shall, in addition to being liable for the payment of the tax, be subject to the penalties imposed herein: *Provided,* That payment of the tax due after apprehension shall not constitute a valid defense in any prosecution for violation of any provision of this Code or in any action for the forfeiture of untaxed articles.

(b) Any person who willfully aids or abets in the commission of a crime penalized herein or who causes the commission of any such offense by another shall be liable in the same manner as the principal.

(c) If the offender is not a citizen of the Philippines, he shall be deported immediately after serving the sentence without further proceedings for deportation. If he is a public officer or employee, the maximum penalty prescribed for the offense shall be imposed and, in addition, he shall be dismissed from the public service and perpetually disqualified from holding any public office, to vote and to participate in any election. If the offender is a Certified Public Accountant, his certificate as a Certified Public Accountant shall, upon conviction, be automatically revoked or cancelled.

(d) In the case of associations, partnerships or corporations, the penalty shall be imposed on the partner, president, general manager, branch manager, treasurer, officer-in-charge, and the employees responsible for the violation.

(e) The fines to be imposed for any violation of the provisions of this Code shall not be lower than the fines imposed herein or twice the amount of taxes, interests and surcharges due from the taxpayer, whichever is higher.

7 **SEC. 256.** *Penal Liability of Corporations.* - Any corporation, association or general co-partnership liable for any of the acts or omissions penalized under this Code, in addition to the penalties imposed herein upon the responsible corporate officers, partners, or employees shall, upon conviction for each act or omission, be punished by a fine of not less than Fifty thousand pesos (P50,000) but not more than One hundred thousand pesos (P100,000).

> the latest being in the nature of final notice before seizure issued by the Bureau of Internal Revenue, to the damage and prejudice of the Government in terms of income tax deficiency in the amount of Sixteen Million Two Hundred Forty Thousand Nine Hundred Thirty-Four Pesos and 34/100 (Php16,240,934.34), exclusive of surcharge and interest.
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> . . .

In a Resolution[8] dated 28 September 2023, the Court, after receiving proof of accused Roque's death, dropped him as an accused as his criminal liability has been extinguished by reason of his death.

As for accused Saldajeno, in her Memorandum, she contends that the criminal offense charged against her and ASEC has already prescribed considering that more than five (5) years have already lapsed from the crime's alleged commission up to the filing of the Information before the Court on **<u>06 December 2022</u>**.

On the other hand, plaintiff simply contends that the Bureau of Internal Revenue's (**BIR**'s) service of a Warrant of Distraint and/or Levy (**WDL**) on 04 October 2013 against the accused tolled the running of the prescriptive period. To support this contention, plaintiff cites Section 223 of the NIRC of 1997, as amended, in this exact manner:

> . . .
>
> "SEC. 223. **Suspension of Running of Statute of Limitations.** - The running of the Statute of Limitations provided in Section[s] 203 and 222 on the making of assessment **<u>and the beginning of distraint or levy or a proceeding in court for collection</u>**, in respect of any deficiency, shall be suspended xxx xxx xxx; when the **<u>warrant of distraint or levy is duly served upon the taxpayer</u>**, his authorized representative, or a member of his household with sufficient discretion, and **<u>no property could be located</u>**; xxx."
>
> . . .

We resolve.

Upon further study of the case records, the Court is convinced that the present Information filed against the remaining accused should be dismissed on the ground of prescription.

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8 Division Docket, pp. 323-325.

Section 281 of the NIRC of 1997, as amended, which governs the prescriptive period for criminal tax actions, 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**.
>
> 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.[9]
>
> ...

The above provision is clear that the period of prescription for the offense charged is five (5) years. As to the time the period of prescription starts to run, the above provision states that 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. It shall be interrupted when proceedings are instituted against the offender and shall run again if the proceedings are dismissed for reasons not constituting jeopardy. The prescriptive period shall not run when the offender is not in the country.

In construing when the prescriptive period for crimes punishable under the NIRC of 1997, as amended, is suspended, it is proper to interpret the provision with reference to its context, *i.e.*, that every part of the statute must be considered together with the other parts and kept subservient to the general intent of the whole enactment.[10] The second paragraph of Section 281 of the NIRC of 1997, as amended, speaks of "judicial proceedings", which means that the "proceedings" referred to in the third paragraph likewise pertains to proceedings which are judicial in nature, *i.e.*, the filing of criminal information with the court.

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[9] Italics in the original text, emphasis and underscoring supplied.

[10] *Philippine International Trading Corporation v. Commission on Audit*, G.R. No. 183517, 22 June 2010.

In the case of *Emilio E. Lim, Sr., et al. v. Court of Appeals, et al.*[11] (**Emilio E. Lim, Sr.**), the Supreme Court interpreted Section 354 of the NIRC of 1939, as amended, (which contains the exact provision as the present Section 281 of the NIRC of 1997, as amended), to wit:

> . . .
>
> **Inasmuch as the final notice and demand for payment of the deficiency taxes was served on petitioners on July 3, 1968, it was only then that the cause of action on the part of the BIR accrued. This is so because prior to the receipt of the letter-assessment, no violation has yet been committed by the taxpayers. The offense was committed only after receipt was coupled with the willful refusal to pay the taxes due within the allotted period.** The two criminal informations, having been filed on June 23, 1970, are well-within the five-year prescriptive period and are not time-barred.
>
> . . .
>
> Not only that. **The Solicitor General stresses that Section 354 [now, Section 281] speaks not only of discovery of the fraud but also institution of judicial proceedings. Note the conjunctive word "and" between the phrases "the discovery thereof" and "the institution of judicial proceedings for its investigation and proceedings." In other words, in addition to the fact of discovery, there must be a judicial proceeding for the investigation and punishment of the tax offense before the five-year limiting period begins to run.** It was on September 1, 1969 that the offenses subject of Criminal Cases Nos. 1790 and 1791 were indorsed to the Fiscal's Office for preliminary investigation. **Inasmuch as a preliminary investigation is a proceeding for investigation and punishment of a crime, it was only on September 1, 1969 that the prescriptive period commenced.**
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> . . .
>
> The Court is inclined to adopt the view of the Solicitor General. For while that particular point might have been raised in the Ching Lak case, the Court, at that time, did not give a definitive ruling which would have settled the question once and for all. **As Section 354 [now, Section 281] stands in the statute book (and to this day it has remained unchanged) it would indeed seem that tax cases, such as the present ones, are practically imprescriptible for as long as the period from the discovery *and* institution of judicial proceedings for its investigation and punishment, *up to* the filing of the information in court does not exceed five (5) years.**
>
> . . .
>
> **Unless amended by the legislature, Section 354 [now, Section 281] stays in the Tax Code as it was written during the days of the Commonwealth. And as it is, must be applied regardless of its apparent one-sidedness in favor of the**

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

> **Government.** In criminal cases, statutes of limitations are acts of grace, a surrendering by the sovereign of its right to prosecute. They receive a strict construction in favor of the Government and limitations in such cases will not be presumed in the absence of clear legislation.[12]
>
> . . .

Following *Emilio E. Lim, Sr.* and considering that the charges brought against the accused are for willful failure to pay taxes, the day of the crimes' commission would be the day immediately after the expiration of the period to pay as contained in the final demand that the BIR issued. Pursuant to Section 281 of the NIRC of 1997, as amended, in such cases, the 5-year period shall begin to run from the date of the offense's commission and shall only be interrupted by filing an Information for the offense in court.

The Information dated 16 September 2019 filed against the accused alleged a commission date of 29 July 2013. It was filed with the Court on 06 December 2022. Thus, the right of the government to institute the case against the accused has already prescribed considering that more than nine (9) years had already elapsed from the alleged date of the crime's commission to the filing of the Information in court.

Jurisprudence has it that the waiver or loss of the right to prosecute the offender is automatic and by operation of law.[13] Evidently, in this case, prescription has automatically set in when the plaintiff failed to file the present Information within the 5-year prescriptive period provided under Section 281 of the NIRC of 1997, as amended.

Furthermore, plaintiff's argument that service of the WDL suspended the prescriptive period of the offense is gravely misplaced. Section 223 of the NIRC of 1997, as amended, states in full:

> . . .
> **SEC. 223. *Suspension of Running of Statute of Limitations.*** - The running of the Statute of Limitations provided in Sections 203 and 222 on the making of assessment and the beginning of distraint or levy or a proceeding in court for collection, in respect of any deficiency, shall be suspended for the period during which the Commissioner is prohibited from making the assessment or

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12 Citation omitted, emphasis supplied and italics in the original text.

13 *Rafael Yapdiangco v. The Hon. Concepcion B. Buencamino, et al.*, G.R. No. L-28841, 24 June 1983.

beginning distraint or levy or a proceeding in court and for sixty (60) days thereafter; when the taxpayer requests for a reinvestigation which is granted by the Commissioner; when the taxpayer cannot be located in the address given by him in the return filed upon which a tax is being assessed or collected: Provided, That, if the taxpayer informs the Commissioner of any change in address, the running of the Statute of Limitations will not be suspended; when the warrant of distraint or levy is duly served upon the taxpayer, his authorized representative, or a member of his household with sufficient discretion, and no property could be located; and when the taxpayer is out of the Philippines.

...

In relation thereto, Sections 203 and 222 provide:

...

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

...

SEC. 222. ***Exceptions as to Period of Limitation of Assessment and Collection of Taxes***.-

(a) In the case of a false or fraudulent return with intent to evade tax or of failure to file a return, the tax may be assessed, or a proceeding in court for the collection of such tax may be filed without assessment, at any time within ten (10) years after the discovery of the falsity, fraud or omission: Provided, That in a fraud assessment which has become final and executory, the fact of fraud shall be judicially taken cognizance of in the civil or criminal action for the collection thereof.

(b) If before the expiration of the time prescribed in Section 203 for the assessment of the tax, both the Commissioner and the taxpayer have agreed in writing to its assessment after such time, the tax may be assessed within the period agreed upon. The period so agreed upon may be extended by subsequent written agreement made before the expiration of the period previously agreed upon.

(c) Any internal revenue tax which has been assessed within the period of limitation as prescribed in paragraph (a) hereof may be collected by distraint or levy or by a proceeding in court within five (5) years following the assessment of the tax.

(d) Any internal revenue tax, which has been assessed within the period agreed upon as provided in paragraph (b) hereinabove, may be collected by distraint or levy or by a proceeding in court within the period agreed upon in writing before the expiration of the five (5) -year period. The period so agreed upon may be extended by subsequent written agreements made before the expiration of the period previously agreed upon.

(e) Provided, however, That nothing in the immediately preceding and paragraph (a) hereof shall be construed to authorize the examination and investigation or inquiry into any tax return filed in accordance with the provisions of any tax amnesty law or decree.

. . .

Clearly, the above Sections of the NIRC of 1997, as amended, deal with the prescriptive periods for assessment, collection, and when the running of such period is tolled. As previously mentioned, it is Section 281 of the NIRC of 1997, as amended, which governs the statute of limitations for criminal tax offenses. Unfortunately, there is nothing in Section 223 that even comes close to plaintiff's interpretation that the service of a WDL suspends the running of prescription of the offense.

The Court observes that plaintiff attempts to find a sliver of legal ground to stand on by seemingly cherry-picking phrases in Section 223 of the NIRC of 1997, as amended, and insists on the (erroneous) prosecution of the case. The Court, however, could not countenance such attempt and rather finds such attempt, very misleading. Section 8, Canon II of the Code of Professional Responsibility and Accountability[14] states:

. . .

CANON II
PROPRIETY

. . .

Sec. 8. *Prohibition against misleading the court, tribunal, or other government agency.* — A lawyer shall not misquote, misrepresent, or mislead the court as to the existence or the contents of any document, argument, evidence, law, or other legal authority, or pass off as one's own the ideas or words of another, or assert as a fact that which has not been proven.

. . .

[14] A.M. No. 22-09-01-SC, 11 April 2023.

To the Court's mind, Atty. Francis Gideon G. Naputo's (plaintiff's counsel) representation (or distortion) of the law, removes it from its context. It appears malicious and may be chargeable with indirect contempt.[15]

WHEREFORE, in light of the foregoing considerations, this case is hereby **DISMISSED** on the ground of prescription.

Atty. Francis Gideon G. Naputo, special counsel for the plaintiff, is **WARNED** sternly that a repeated conduct on his end will be dealt with more severely.

SO ORDERED.

ROMAN G. DEL ROSARIO
Presiding Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

ON OFFICIAL BUSINESS
LANEE S. CUI-DAVID
Associate Justice

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15 **Rule 71**
Contempt

...

Section 3. *Indirect contempt to be punished after charge and hearing.* — After a charge in writing has been filed, and an opportunity given to the respondent to comment thereon within such period as may be fixed by the court and to be heard by himself or counsel, a person guilty of any of the following acts may be punished for indirect contempt;

...

(d) Any improper conduct tending, drectly or indirectly, to impede, obstruct, or degrade the administration of justice[.]

...

See also: Bank of Commerce v. Joaquin T. Borromeo, G.R. No. 205632, 02 June 2020.