16-000303-0020

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

CTA CRIM CASE NO. O-593

PEOPLE OF THE PHILIPPINES,
Plaintiff,

- versus -

NOTICE OF RESOLUTION

KRISTINE B. RUBIO,
Accused.

To:

PROSECUTOR GENERAL BENEDICTO A. MALCONTENTO
PROS. ATTY. LOVERHETTE JEFFREY P. VILLORDON
Department of Justice
Padre Faura St., 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
Philippine National Police
National Headquarters
Camp General Rafael Tagle Crame
EDSA, Quezon City

CHIEF, WARRANT AND SUBPOENA SECTION
Muntinlupa City Police District
Argana Building formerly LTO beside Muntinlupa City Hall Annex
National Road Putatan, Muntinlupa City

GREETINGS:

You are hereby notified by these presents that on **January 24, 2024,** a Resolution was rendered in the above-entitled case, copy of which is attached hereto.

Quezon City, Philippines, **January 25, 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-593** *For: Violation of Section 255 of the National Internal Revenue Code, as amended*
- versus -	Members: **DEL ROSARIO**, *P.J., Chairperson,* **BACORRO-VILLENA**, and **CUI-DAVID**, *JJ.*
KRISTINE B. RUBIO, (At-Large. 14 Havana St., Camella Homes II-D, Brgy. Putatan, Muntinlupa City), Accused.	Promulgated: JAN 24 2024; 9:25 AM

x - x

RESOLUTION

On July 13, 2016, an Information against accused, **KRISTINE B. RUBIO**, was filed before the Court, the accusatory portion of which reads:

> "That on or prior to 28 October 2010, and thereafter, and within the jurisdiction of this Honorable Court, accused Powerlux Multi-Resources & Development Corporation, a domestic corporation registered with the BIR under Tax Identification Number 000-138-716-000, and KRISTINE B. RUBIO, as the Corporate Secretary / Treasurer of said corporation, with registered address at Unit 827, Cityland Condominium, SSH, Bangkal, Makati City, required by law to file value-added tax returns and to pay the corresponding value-added tax, did then and there wilfully, unlawfully, and feloniously fail to pay deficiency value-added tax in the amount of Four Million Ninety Four Thousand Seven Hundred Ninety Three and 29/100 Pesos (₱4,094,793.29), exclusive of surcharges and interest, for taxable year 2006, despite final assessment notice, including prior and post notices and demands to pay the last of which being in the nature of final demand to pay before suit issued on 28 October 2010, to the damage and prejudice of the Government of the Republic of the Philippines.
>
> **CONTRARY TO LAW.**"[1]

[1] Docket, p. 6.

On September 20, 2016, the Court issued a Resolution finding probable cause for the issuance of a warrant of arrest against accused, and setting the bail amount at ₱20,000.00.[2]

Despite issuance of a Warrant of Arrest,[3] and successive Alias Warrants of Arrest,[4] the accused remains at large.

Meanwhile, the Court noted that several cases have been archived in view of the authorities' failure to cause the arrest of the accused. The number of archived cases, as well as 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.

In *Emilio E. Lim, Sr. and Antonia Sun Lim vs. Court of Appeals and People of the Philippines* ("*Lim*"),[5] the Supreme Court ruled that the crime of failure to pay tax is committed only after receipt of the final notice and demand for payment, coupled with the wilful refusal to pay the taxes due within the allotted period, *viz*.:

> "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 <u>two criminal informations</u>, having been filed on June 23, 1970, are well within the five-year prescriptive period and are not time-barred.**" (*Boldfacing and underscoring supplied*)

This interpretation was further applied by the Supreme Court in *Petronila C. Tupaz vs. Honorable Benedicto B. Ulep, Presiding Judge of RTC Quezon City, Branch 105, and People of the Philippines*,[6] where it was ruled that the crime of wilful failure to pay tax, "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] Docket, pp. 122-124.
[3] Docket, pp. 126-126.
[4] Docket, pp. 140-141.
[5] G.R. Nos. L-48134-37, October 18, 1990.
[6] G.R. No. 127777, October 1, 1999.

Here, the accusatory portion of the Information alleged that accused committed the crime "on or prior to **October 28, 2010**".

In the Joint Complaint-Affidavit filed by revenue officers of the Bureau of Internal Revenue before the DOJ, it was alleged that the Formal Assessment Notice was served upon Powerlux Multi-Resources and Development Corporation (which accused is the Corporate Secretary/Treasurer) on **June 7, 2010**.[7] Since no protest was filed within thirty (30) days from June 7, 2010, the assessment became final and executory on **July 8, 2010**.

Section 281 of the National Internal Revenue Code (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.
>
> 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*)

Verily, plaintiff had five (5) years from July 8, 2010, the date of commission of the crime, or until **July 8, 2015**, within which to **file the Information in court**. Even if the Court uses the date **October 8, 2010** as provided for in the accusatory portion of the Information, the period to file the Information lapsed on **October 8, 2015.**

Again, the present Information was filed only on **July 13, 2016**, or way beyond the five (5)-year prescriptive period under Section 281 of the NIRC of 1997, as amended.

Relevantly, Section 2, Rule 9 of the Revised Rules of the Court of Tax Appeals (RRCTA), as amended, provides:

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[7] Docket, p. 96.

> "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**." (*Boldfacing supplied*)

Under the Supreme Court's pronouncement in *Lim* and the above-quoted provision of the RRCTA, the prescriptive period to file a criminal case is tolled only when the Information is filed before the court. In this case, the Information was filed way beyond the five (5)-year prescriptive period, thus there can be no interruption of said period.

To be sure, criminal offenses for violations of the NIRC of 1997, as amended, including those the commission of which are known, are not intended to be imprescriptible. If the prescription is interrupted when proceedings for preliminary investigation are instituted before the DOJ, it would mean that there is no timeline within which the Information must be filed in court. Effectively, the crime will never prescribe once a complaint is filed with the DOJ, which in turn is given the discretion when to act thereon, thereby allowing the potential use of the rule on prescription as a weapon to torment, harass and molest taxpayers suspected of committing a tax offense.

Stated otherwise, prescription protects taxpayers who are at the mercy of the taxing and prosecuting authorities from unreasonable, long drawn out or abusive investigations. In a sense, it acts a check valve against unscrupulous public officials from abusing powers inherent in their position, including the not so improbable conduct of instituting vexatious, capricious and oppressive investigations.

It is the rule that in the interpretation of the law on prescription of crimes, that which is more favorable to the accused is to be adopted.[8] Here, the circumstances show that the crime has prescribed resulting in the extinguishment of criminal liability, if any, of accused.

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[8] *People of the Philippines vs. Arturo F. Pacificador*, G.R. No. 139405, March 13, 2001.

WHEREFORE, premises considered, CTA Crim. Case No. O-593 is hereby **WITHDRAWN** from the archives and accordingly **DISMISSED** by reason of prescription of the offense charged.

The Alias Warrants of Arrest issued against accused are hereby **RECALLED and SET ASIDE.**

SO ORDERED.

ROMAN G. DEL ROSARIO
Presiding Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

LANEE S. CUI-DAVID
Associate Justice