18-000146-0033

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

CTA CRIM. CASE NO. O-672

PEOPLE OF THE PHILIPPINES,
Plaintiff,

- versus -

NOTICE OF RESOLUTION

DIEGO G. MARTINEZ,
Accused.

To:

PROSECUTOR GENERAL BENEDICTO A. MALCONTENTO
ASSISTANT STATE PROSECUTOR MARY ANN S. PARONG
Department of Justice
Padre Faura Street, Malate, Manila

ATTY. OSCAR A. AGUILAR
Bureau of Internal Revenue - Revenue Region No. 7,
5th Floor, Legal Division, Fishermall (Roofdeck),
Quezon Avenue corner Roosevelt Junction, 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

CHIEF, WARRANT AND SUBPOENA SECTION
Pasig City Police Station
C. Raymundo Avenue, Brgy. Caniogan, Pasig City

GREETINGS:

You are hereby notified by these presents that on **January 25, 2024,** a Resolution was rendered in the above-entitled case, copy of which is attached hereto.

Quezon City, Philippines, **January 26, 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-672** *For: Violation of Section 255 of the National Internal Revenue Code, as amended*
- versus -	
DIEGO G. MARTINEZ, Twinpeaks Shell Service Center, No. 184 Katipunan Road, Blueridge, Quezon City,	Members: **DEL ROSARIO**, *P.J.*, *Chairperson*, **BACORRO-VILLENA**, and **CUI-DAVID**, *JJ.*
OR	
Twinkpeaks Shell Service Center I & II, Marcos Highway, Santolan, Pasig City Accused.	Promulgated: JAN 25 2024; 2:35PM

x - x

RESOLUTION

On April 6, 2018, an Information against accused, **DIEGO G. MARTINEZ**, was filed before the Court, the accusatory portion of which reads:

> "That on or about December 2013 and thereafter, in Quezon City, and within the jurisdiction of this Honorable Court, accused DIEGO G. MARTINEZ, proprietor of TwinPeaks Shell Service Center which is registered at BIR Revenue District Office No. 40 – Cubao, Quezon City with Tax Identification No. 148-792-224-000, did then and there, willfully, unlawfully and feloniously fail to pay the income tax deficiencies for taxable year 2006 in the amount of One Million Four Hundred Sixty-Five Thousand Thirteen Pesos and Eight Centavos (PHP 1,465,013.08), exclusive of surcharge and interest, despite final assessment, including prior and post notices, the latest being in the nature of demand before suit issued in December 2013, to the damage and prejudice of the government.
>
> **CONTRARY TO LAW.**"[1]

[1] Docket, p. 6.

In a Resolution dated April 30, 2018, the Court found probable cause for the issuance of Warrant of Arrest against accused, and set the amount of bail at ₱20,000.00.[2] Thus, on May 9, 2018, the Warrant of Arrest was issued.[3]

On February 7, 2019, the Court issued a Resolution archiving the case considering that more than six (6) months have lapsed from the time the Warrant of Arrest was issued, and that accused still remained at large.[4]

Subsequent actions and resolutions of the Court dealt with the Returns of Warrant of Arrest filed by the authorities, and the Court's order for the latter to enforce the outstanding Alias Warrant of Arrest issued on August 9, 2019, and to exert diligent efforts to ascertain the whereabouts of accused.

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 National Internal Revenue Code (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 two <u>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*)

[2] Docket, pp. 61-62.
[3] Docket, pp. 63-66.
[4] Docket, p. 79.
[5] G.R. Nos. L-48134-37, October 18, 1990.

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* ("*Tupaz*"),[6] where it was held 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."

As alleged in the Joint Complaint-Affidavit filed by the revenue officers of the Bureau of Internal Revenue, the Formal Letter of Demand and Final Assessment Notice (FLD/FAN) was sent to accused through registered mail on **November 26, 2009**.[7] Under prevailing regulations, service of the FLD/FAN may be made through registered mail, and there is created a disputable presumption that such assessment notices were received by the addressee in the regular course of the mail.[8]

The FLD/FAN were posted via registered mail to accused on **November 26, 2009**. The estimated turnaround time for such registered mail to be delivered is seven (7) working days.[9] Even if the Court assumes that the FLD/FAN were received by accused thirty (30) days from its mailing, or on **December 26, 2009**, and no protest was filed within thirty (30) days from such date, the assessment became final and executory on **January 26, 2010**

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.
>
> 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.

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[6] G.R. No. 127777, October 1, 1999.
[7] Docket, p. 28.
[8] *Commissioner of Internal Revenue vs. T Shuttle Services, Inc.*, G.R. No. 240729, August 24, 2020.
[9] Philippine Postal Corporation, *Post Office Delivery Lead Time*, available at https://phlpost.gov.ph/postal-office-delivery-lead-time/.

The term of prescription shall not run when the offender is absent from the Philippines."

Plaintiff had five (5) years from January 26, 2010, or until **January 26, 2015**, within which to **file the Information in court**. Again, the present Information was filed only on **April 6, 2018**, 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:

> "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 beyond the five (5)-year prescriptive period, thus there is 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.[10] Here, the circumstances show that the crime has prescribed resulting in extinguishment of accused's criminal liability, if any.

WHEREFORE, premises considered, CTA Crim. Case No. O-672 is hereby **WITHDRAWN** from the archives and accordingly **DISMISSED** by reason of prescription of the offense charged.

The Alias Warrant of Arrest issued against accused is 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

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