REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL SECOND DIVISION

ELMER S. MIGUEL, ORLANDO A. DELA CRUZ, JOSEPH C. SY, RONALYN H. YU, LEVEL-UP HOLDINGS INC., DUNCAN HOLDINGS INC., ARGOSY CONSULTING PARTNERS, INC., FLEMING ENERGY SOLUTIONS INC., HOME FUNDING (SPC) INC., ARGOSY PROPERTIES INC., MINERVA PARTNERS INC., CMC-AC INFOCOMMS (PHILIPPINES), INC., EXETER BERKELEY CORPORATION, DAVIES ENERGY SYSTEMS, INC., LINDA T. SANCHEZ, G2K REALTY CORPORATION, ARGOSY FINANCE CORP., BUILDER'S CHOICE INCORPORATED, BUILDERS CHOICE PROPERTY AND DEVELOPMENT CORP., MICHAEL T. SANCHEZ, ELISA I. TOREJA, JOSE E. TOREJA, REALSOUND CORPORATION, M2K MUSIC LICENSING CORP., MA. CRISTINA S. LLAMO (IN-A-JIFFY ENTERPRISES), MA. OLIVIA S. DIMARANAN, MOBILE ELECTRONIC VENTURES & SOLUTIONS INC., SIMPLICIA C. GRAVADOR, ST. ANNE REALTY CO. INC., WOW2K HOLDINGS CORPORATION,

CTA Case No. 10415

Members:

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

x - x

GLOBAL FOUNDATION FOR ASIAN COMMUNITY EMPOWERMENT, BLOOMING FIELDS MANAGEMENT AND CONSULTANCY SERVICES, INC., AND ACCESSUS LENDING COMPANY INC.,
Petitioners,

- versus -

BUREAU OF INTERNAL REVENUE,
Respondent.

Promulgated:
OCT 16 2023 4:43 pm

x - x

DECISION

BACORRO-VILLENA, J.:

At bar is a Petition for Review[1] filed by petitioners Elmer S. Miguel et al., (**petitioners**) pursuant to Section 3[2], Rule 65[3] of the Rules of Court (**ROC**) as amended[4], in relation to Section 7(a)(1)[5] of Republic Act (**RA**)

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1 Filed on 04 December 2020, Division Docket, Volume I, pp. 7-30.

2 **SEC. 3.** *Petition for Mandamus.* — When any tribunal, corporation, board, officer or person unlawfully neglects the performance of an act which the law specifically enjoins as a duty resulting from an office, trust, or station, or unlawfully excludes another from the use and enjoyment of a right or office to which such other is entitled, and there is no other plain, speedy and adequate remedy in the ordinary course of law, the person aggrieved thereby may file a verified petition in the proper court, alleging the facts with certainty and praying that judgment be rendered commanding the respondent, immediately or at some other time to be specified by the court, to do the act required to be done to protect the rights of the petitioner, and to pay the damages sustained by the petitioner by reason of the wrongful acts of the respondent.

The petition shall also contain a sworn certification of non-forum shopping as provided in the third paragraph of Section 3, Rule 46.

3 *Certiorari, Prohibition and Mandamus.*

4 A.M. No. 19-10-20-SC.

5 **SEC.** 7. Jurisdiction. — The CTA shall exercise:
(a) Exclusive appellate jurisdiction to review by appeal, as herein provided:
(1) Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation

No. 1125[6] as amended by RA 9282.[7] It seeks to compel respondent Bureau of Internal Revenue (**respondent/BIR**) to issue a Certificate of Tax Delinquency/Tax Liabilities (**CTD**) and an Acceptance Payment Form (**APF**) to petitioners.

PARTIES OF THE CASE

Petitioners are taxpayers, consisting of individuals and corporations (duly existing and organized under the laws of the Republic of the Philippines). They are availing the benefits of RA 11213.

Respondent, on the other hand, is a government agency with the power, among others, to administer the implementation of amnesty programs under RA 11213[8] or the Tax Amnesty Act (**TAA**), incident to its mandate to assess and collect all internal revenue taxes, fees or other charges, penalties imposed in relation thereto or other matters arising under the National Internal Revenue Code (**NIRC**) of 1997, as amended, and holds office at BIR National Office Building, BIR Road, Diliman, Quezon City.

FACTS OF THE CASE

Petitioners claim benefit from the TAA, enacted and approved on 14 February 2019, and aimed to enhance revenue collection by providing a tax amnesty on delinquencies that will minimize administrative costs in pursuing tax cases and declog the dockets of the BIR and the courts.[9] Section 17[10] thereof provides for Tax Amnesty on Delinquencies whereas Section 19 provides the procedure for availing the said tax amnesty, *viz:*

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thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue[.]

...

6 AN ACT CREATING THE COURT OF TAX APPEALS.

7 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.

8 AN ACT ENHANCING REVENUE ADMINISTRATION AND COLLECTION BY GRANTING AN AMNESTY ON ALL UNPAID INTERNAL REVENUE TAXES IMPOSED BY THE NATIONAL GOVERNMENT FOR TAXABLE YEAR 2017 AND PRIOR YEARS WITH RESPECT TO ESTATE TAX, OTHER INTERNAL REVENUE TAXES, AND TAX ON DELINQUENCIES.

9 See Section 2(c) of Republic Act No. 11213.

10 **Sec. 17.** *Coverage.* - There is hereby authorized and granted a tax amnesty herein called the Tax Amnesty on Delinquencies, which shall cover all national internal revenue taxes such as, but not

> ...
>
> **Sec. 19.** *Availment of the Tax Amnesty on Delinquencies; When and Where to File and Pay.* - Any person, natural or juridical, who wishes to avail of the Tax Amnesty on Delinquencies shall, within one (1) year from the effectivity of the Implementing Rules and Regulations of this Act, file with the appropriate office of the Bureau of Internal Revenue, which has jurisdiction over the residence or principal place of business of the taxpayer, a sworn Tax Amnesty on Delinquencies Return accompanied by a Certification of Delinquency. The payment of the amnesty tax shall be made at the time the Return is filed:
>
> *Provided,* That the Revenue District Officer shall issue and endorse an Acceptance Payment Form, in such form as may be prescribed in the Implementing Rules and Regulations of this Act authorizing the authorized agent bank, or in the absence thereof, the revenue collection agent or municipal treasurer concerned, to accept the amnesty tax payment:
>
> *Provided, further,* That the availment of the Tax Amnesty on Delinquencies and the issuance of the corresponding Acceptance Payment Form do not imply any admission of criminal, civil or administrative liability on the part of the availing taxpayer.
>
> ...

In wanting to avail the benefits of the TAA, petitioners collated various documents which showed their alleged delinquent accounts and tax liabilities:

Annex	Taxpayer	Tax Type	Amount
34[11]	Elmer S. Miguel	Value Added Tax (VAT)	₱ 425,888.16
35[12]	Orlando A. Dela Cruz	Documentary Stamp Tax (**DST**)	20,589.89
36[13]	Joseph C. Sy	Income Tax (**IT**), VAT	0.00
37[14]	Ronalyn H. Yu	Registration Fee (**RF**)	1,000.00

limited to, income tax, withholding tax, capital gains tax, donor's tax, value-added tax, other percentage taxes, excise tax and documentary stamp tax collected by the Bureau of Internal Revenue, including value-added tax and excise taxes collected by the Bureau of Customs for taxable year 2017 and prior years.

[11] Division Docket, Volume I, pp. 115-116.

[12] Id., pp. 118-119.

[13] Id., p. 120.

[14] Id., pp. 121-122.

38[15]	Level-Up Holdings, Inc.	Withholding Tax Compensation (WTC)	0.00
39[16]	Duncan Holdings, Inc.	WTC	0.00
40[17]	Argosy Consulting Partners, Inc.	WTC	0.00
41[18]	Fleming Energy Solutions, Inc.	WT, Expanded Withholding Tax (EWT)	0.00
42[19]	Home Funding (SPC), Inc.	DST	24,374.33
43[20]	Argosy Properties, Inc.	WTC	0.00
44[21]	Minerva Partners, Inc.	WTC	0.00
45[22]	CMC-AC Infocomms (Philippines) Inc.	VAT	0.00
46[23]	Exeter Berkeley Corp.	WTC	0.00
47[24]	Davies Energy Systems, Inc.	EWT	750.75
48[25]	Linda T. Sanchez	DST	50,000.00
49[26]	G2K Realty Corp.	DST	3,000.00
50[27]	Argosy Finance Corp.	WTC	0.00
51[28]	Builder's Choice Inc.	DST	200,000.00
52[29]	Builder's Choice Property and Development Corp.	DST	6,500.00
53[30]	Michael T. Sanchez	DST	438,246.00
54[31]	Elisa I. Toreja	RF EWT	1,000.00 3,300.00
55[32]	Jose E. Toreja	RF EWT	1,000.00 2,731.58
56[33]	RealSound Corp.	DST	1,250.00

15 Id., p. 123.
16 Id., pp. 124-125.
17 Id., p. 126.
18 Id., pp. 127-128.
19 Id., p. 129.
20 Id., p. 130.
21 Id., p. 131.
22 Id., pp. 132-134.
23 Id., p. 135.
24 Id., pp. 136-138.
25 Id., p. 139.
26 Id., p. 140.
27 Id., p. 141.
28 Id., p. 142.
29 Id., p. 143.
30 Id., pp. 144-148.
31 Id., pp. 149-153.
32 Id., pp. 154-157.
33 Id., p. 158.

57[34]	M2K Music Licensing Corp.	VAT, EWT, WTC	0.00
58[35]	Ma. Cristine S. Llamo (In-a-Jiffy Enterprises)	DST TC	428,246.00 25,000.00
59[36]	Ma. Olivia S. Dimaranan	DST	428,246.00
60[37]	Mobile Electronic Ventures & Solutions, Inc.	DST	12,500.00
61[38]	Simplicia C. Gravador	VAT, EWT, WTC, IT	0.00
62[39]	St. Anne Realty Co., Inc.	DST, WTC, EWT	0.00
63[40]	WOW2k Holdings Corp.	VAT, DST, WTC, EWT	125,000.00
64[41]	Global Foundation for Asian Community Empowerment	EWT, WTC, IT	0.00
65[42]	Blooming Fields Management Consultancy Services, Inc.	WTC	0.00
66[43]	Accessus Lending Company, Inc.	EWT	0.00

Through separate written requests[44], petitioners demanded from respondent the issuance of their respective CTDs and their APFs.[45] Despite their demands, petitioners failed to obtain them.

PROCEEDINGS BEFORE THE COURT

Aggrieved, petitioners filed the instant Petition for Review before this Court praying that it orders respondent to issue the CTDs and APFs to them.

34 Id., pp. 159-169.
35 Id., pp. 170-174.
36 Id., pp. 175-179.
37 Id., pp. 180-181.
38 Id., pp. 182-293.
39 Id., pp. 294-304.
40 Id., pp. 305-327.
41 Id., pp. 328-393.
42 Id., pp. 394-405.
43 Id., p. 406.
44 Id., pp. 407-502; id., Volume II, pp. 503-692.
45 See par. 10, Petition for Review, id., Volume 1, pp. 19-21.

In a Resolution dated 29 December 2020[46], the Court directed respondent to file its comment thereto. However, respondent failed to comply with the said directive.[47] Noting respondent's non-compliance, petitioners moved that the case be submitted for resolution.[48]

On 06 September 2021, the Court ruled that petitioners failed to indicate the dates of their receipt of respondent's denials of their requests. They also failed to attach copies thereof. Due to these lapses, the Court could not determine whether the Petition for Review was timely filed. However, in the interest of justice and for an orderly procedure, the Court directed petitioners to submit copies of BIR's denials to remedy the aforementioned infirmities.[49]

In compliance with the above directive, on 28 February 2022, petitioners submitted ten (10) letter-denials. In explaining the incompleteness of their submission, they averred that respondent did not issue any response to the other petitioners and merely ignored their requests to issue CTDs and APFs.[50]

On 28 April 2022, the Court noted petitioners' compliance. Additionally, acting on the latter's motion to submit the case for resolution, the Court directed petitioners' counsel to take appropriate actions anent respondent's failure to file its comment and to manifest whether to present oral testimonies of witnesses whose judicial affidavits were attached to the petition, or to file their memorandum.[51] Petitioners opted for the latter recourse.[52]

Later, the Court ordered the parties to file their respective memoranda.[53] Respondent filed its Memorandum *Ad Cautelam* on 30 September 2022.[54] Following petitioners' failure to file their

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46 Id., Volume II, p. 694.
47 See Records Verification dated 10 February 2021, id., p. 695.
48 See Motion to Submit Case for Resolution filed on 22 July 2021, id., pp. 696-698.
49 See Resolution dated 06 September 2021, id., pp. 700-704.
50 See Compliance filed on 28 February 2022, id., pp. 706-708.
51 See Resolution dated 28 April 2022, id., pp. 725-727.
52 See Compliance filed on 26 July 2022, id., pp. 731-732.
53 See Resolution dated 16 August 2022, id., pp. 735-736.
54 Id., pp. 739-753.

memorandum within the allowed period[55], the Court submitted the case for decision.[56]

ISSUES

As culled from the pleadings, the issues for this Court's resolution are as follows:

I.
WHETHER THIS COURT HAS JURISDICITION OVER THE INSTANT PETITION; AND,

II.
WHETHER *MANDAMUS* MAY LIE TO COMPEL RESPONDENT BUREAU OF INTERNAL REVENUE (BIR) TO ISSUE THE CERTIFICATIONS OF DELINQUENCIES (CTDs) AND ACCEPTANCE PAYMENT FORMS (APFs) TO PETITIONERS.

ARGUMENTS

In support of the above issues, petitioners claim that open stop-filer cases are considered delinquent accounts under Revenue Memorandum Order (**RMO**) No. 71-2010[57]; thus, they are qualified to avail the benefits of the TAA. Insisting that they have a clear legal right to be issued with CTDs and APFs, petitioners aver that respondent has the ministerial duty to comply with the provisions of the TAA (specially Section 19 thereof).

Petitioners also argue that respondent's basis for the denial of their requests (for the issuance of CTDs and APFs) is merely a BIR issuance, *i.e.*, Revenue Memorandum Circular (**RMC**) No. 57-2019[58]; hence, it cannot amend nor restrict the provisions of RA 11213. Citing *Commissioner of Internal Revenue v. Central Luzon Drug Corporation*[59]

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55 See Records Verification dated 04 October 2022, id., p. 755.
56 See Resolution dated 12 October 2022, id., p. 756.
57 Guidelines and Procedures for the Conversion of Accounts Receivables/Delinquent Accounts (ARs/DAs) into the Accounts Receivables Conversion System (ARCS).
58 Clarifies Certain Issues on Tax Amnesty on Delinquencies under Revenue Regulations No. 4-2019 which Implemented Title IV of Republic Act No. 11213 or the Tax Amnesty Act.
59 G.R. No. 159647, 15 April 2005.

they aver that RMC No. 57-2019 should be declared null and void for being contradictory to the enabling law.

On the other hand, respondent counters that this Court has no jurisdiction over the petition. A perusal of the contents and the reliefs prayed therein reveals that petitioners are mainly seeking to nullify RMC No. 57-2019 (its basis for denying the request for issuances of CTDs and APFs). According to respondent, a collateral attack on a valid administrative issuance is not allowed.

Furthermore, respondent contends that the decisions it makes, including the denial of application for tax amnesty, are discretionary on its part, hence are not subject to review (even by the Court). Moreover, a denial of a taxpayer's application for amnesty does not fall under the instances provided in the TAA where the Court can assume jurisdiction.

In bolstering its stand, respondent cites the cases of *Smart Communications, Inc. v. National Telecommunications Commission (NTC)*[60] and *British American Tobacco v. Jose Isidro N. Camacho, et al.*[61], and avers that the nullification of an administrative rule or regulation issued through an agency's quasi-legislative function (such as the concerned RMC) is within the ambit of jurisdiction of the Regional Trial Court (**RTC**) being a court of general jurisdiction and not this Court (which is a court of special jurisdiction).

Assuming arguendo that the Court has jurisdiction, respondent stresses that petitioners failed to allege that it has a compelling legal duty to approve and issue the CTDs and APFs in their favor. It maintains that it properly denied the applications since open stop-filer cases are expressly excluded in the TAA's scope. Bereft of any cause of action, petitioners' instant petition should then be dismissed.

<u>RULING OF THE COURT</u>

Before going into the merits of the case, this Court shall first resolve whether We have jurisdiction over the instant petition.

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60 G.R. No. 151908, 12 August 2003.
61 G.R. No. 163583, 20 August 2008.

THE COURT HAS SUBJECT-MATTER JURISDICTION OVER THE INSTANT PETITION FOR REVIEW (WITH A PRAYER FOR THE ISSUANCE OF A WRIT OF *MANDAMUS*).

Section 7(a)(1) of RA 1125, as amended by RA 9282, provides:

> ...
> SEC. 7. *Jurisdiction.* — The CTA shall exercise:
>
> (a) Exclusive appellate jurisdiction to review by appeal, as herein provided:
>
> (1) Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or **other matters arising under the National Internal Revenue Code <u>or other laws administered by the Bureau of Internal Revenue</u>**[.][62]
>
> ...

Likewise, Section 3(a)(1), Rule 4 of the Revised Rules of the Court of Tax Appeals[63] (**RRCTA**) provides:

> ...
>
> SEC. 3. *Cases within the jurisdiction of the Court in Division.* — The Court in Divisions shall exercise:
>
> (a) Exclusive original over or appellate jurisdiction to review by appeal the following:
>
> (1) Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or **other matters arising under the National Internal Revenue Code or <u>other laws administered by the Bureau of Internal Revenue</u>**[.][64]
>
> ...

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62 Emphasis and underscoring supplied.
63 A.M. No. 05-11-07-CTA.
64 Emphasis and underscoring supplied.

The subject matter of the instant petition involves a special tax law, *i.e.*, RA 11213 or the TAA, which respondent administers as can be gleaned from the following provisions of the said law:

> ...
>
> TITLE II
> *Estate Tax Amnesty*
>
> ...
>
> SECTION 6. *Availment of the Estate Tax Amnesty; When and Where to File and Pay.* — The executor or administrator of the estate, or if there is no executor or administrator appointed, the legal heirs, transferees or beneficiaries, who wish to avail of the Estate Tax Amnesty shall, within two (2) years from the effectivity of the Implementing Rules and Regulations of this Act, file with the Revenue District Office of the **Bureau of Internal Revenue**, which has jurisdiction over the last residence of the decedent, a sworn Estate Tax Amnesty Return, in such forms as may be prescribed in the Implementing Rules and Regulations...[.]
>
> ...
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> TITLE III
> *General Tax Amnesty*
>
> ...
>
> SECTION 12. *Availment of the General Tax Amnesty; When and Where to File and Pay.* — Any person, natural or juridical, who wishes to avail of the General Tax Amnesty shall, within one (1) year from the effectivity of the Implementing Rules and Regulations, file with the appropriate office of the **Bureau of Internal Revenue**, which has jurisdiction over the taxpayer, a sworn General Tax Amnesty Return accompanied by a notarized Statement of Total Assets or notarized Statement of Assets, Liabilities, and Networth, as the case may be, as of December 31, 2017. The payment of the amnesty tax shall be made at the time the Return is filed[.]
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> ...
>
> TITLE IV
> *Tax Amnesty on Delinquencies*
>
> ...
>
> SECTION 19. *Availment of the Tax Amnesty on Delinquencies; When and Where to File and Pay.* — Any person, natural or juridical, who wishes to avail of the Tax Amnesty on Delinquencies shall, within one (1) year from the effectivity of the Implementing Rules and Regulations of this Act, file with the appropriate office of the **Bureau of Internal Revenue**, which has jurisdiction over the residence or

> principal place of business of the taxpayer, a sworn Tax Amnesty on Delinquencies Return accompanied by a Certification of Delinquency. The payment of the amnesty tax shall be made at the time the Return is filed[.][65]
>
> ...

Clearly from the foregoing, the Court has jurisdiction over the present petition.

Incidentally, in view of the allegations in paragraphs 4, 13 to 22 of the petition[66], this case likewise partakes of the nature of a special civil action of *mandamus* under Section 3, Rule 65[67] of the ROC, as amended.

In the case of *Golden Donuts, Inc. v. Commissioner of Internal Revenue*[68] (**Golden Donuts**), the Supreme Court, citing *The City of Manila, et al. v. Hon. Caridad H. Grecia-Cuerdo, et al.*[69] (**Grecia-Cuerdo**) ruled that the Court of Tax Appeals (**CTA**), having exclusive jurisdiction to resolve all tax problems, may take cognizance of a petition for *certiorari* to determine whether there is grave abuse of discretion amounting to lack or excess of jurisdiction committed by the BIR in issuing a Letter of Authority (**LOA**) against therein taxpayer as well as the subpoena *duces tecum*, to wit:

> ...
>
> In the case of *City of Manila v. Grecia-Cuerdo (City of Manila)*, this Court for the first time recognized the CTA's jurisdiction over petitions for *certiorari* under Rule 65 of the Rules of Court over interlocutory orders issued by the Regional Trial [C]ourt in a local tax case. Thus:
>
> ...
>
>> ... [W]hile there is no express grant of such power, with respect to the CTA, Section 1, Article VIII of the 1987 Constitution provides, nonetheless, that **judicial power shall be vested in one Supreme Court and in such lower courts as may be established by law** and that **judicial power includes the duty of the courts of justice** to settle actual controversies involving rights which are legally

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65 Emphasis supplied.
66 Supra at note 1.
67 Supra at notes 2 and 3.
68 G.R. No. 252816, 03 February 2021 (Resolution); Citations omitted, italics in the original text, and emphasis and underscoring supplied.
69 G.R. No. 175723, 04 February 2014.

> demandable and enforceable, and <u>**to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government**</u>.
>
> ...
>
> Indeed, <u>**in order for any appellate court to effectively exercise its appellate jurisdiction, it must have the authority to issue, among others, a writ of *certiorari*.**</u> **In transferring exclusive jurisdiction over appealed tax cases to the CTA, it can reasonably be assumed that the law intended to transfer also such power as is deemed necessary, if not indispensable, in aid of such appellate jurisdiction.** There is no perceivable reason why the transfer should only be considered as partial, not total.
>
> ...
>
> Furthermore, **Section 6, Rule 135** of the present Rules of Court **provides that** <u>**when by law, jurisdiction is conferred on a court or judicial officer, all auxiliary writs, processes and other means necessary to carry it into effect may be employed by such court**</u> or officer.
>
> ...
>
> Under Section 7 of R.A. 9282 which expanded the jurisdiction of the CTA, the latter is given exclusive appellate jurisdiction over "Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue or other laws administered by the Bureau of Internal Revenue." **Following the ruling of the Court in *City of Manila*, the CTA may take cognizance of a petition for *certiorari* to determine whether there is grave abuse of discretion amounting to lack or excess of jurisdiction committed by the BIR in issuing the 2017 LOA against GDI as well as the subpoena *duces tecum* considering that a previous investigation of the same taxable year 2007 was already conducted pursuant to the 2008 LOA and GDI has already settled its tax liabilities arising out of said investigation.**
>
> ...

Similarly, in the case of *Banco de Oro, et al. v. Republic of the Philippines, et al.*[70] (**BDO**), the Supreme Court echoed its pronouncement in *Grecia-Cuerdo*, where it declared in no uncertain terms that petitions for *certiorari* against the acts and omissions of

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70 G.R. No. 198756, 16 August 2016 (Resolution); Citations omitted, italics in the original text, and emphasis supplied.

quasi-judicial agencies, including the CIR, should be filed with the CTA, *viz*:

> ...
>
> Section 7 of Republic Act No. 1125, as amended, is explicit that, except for local taxes, **appeals from the decisions of quasi-judicial agencies (Commissioner of Internal Revenue**, Commissioner of Customs, Secretary of Finance, Central Board of Assessment Appeals, Secretary of Trade and Industry) **on tax-related problems must be brought *exclusively* to the Court of Tax Appeals.**
>
> In other words, within the judicial system, **the law intends the Court of Tax Appeals to have exclusive jurisdiction to resolve all tax problems. Petitions for writs of *certiorari* against the acts and omissions of the said quasi-judicial agencies should, thus, be filed before the Court of Tax Appeals.**
>
> ...

Although what is involved in the above cases is a petition for *certiorari*, the Supreme Court clarified that under Section 6, Rule 135[71] of the ROC, as amended, the Court's authority extends to the issuance of all auxiliary writs, including writ of *mandamus*, to effectively exercise its appellate jurisdiction.

Moreover, while an ordinary appeal or petition for review and a petition for *mandamus* are distinct legal remedies with different requirements and purposes, a petition for review may be treated as a petition for *mandamus* if it appears from an examination of the allegations and the relief sought therein that it is a petition for *mandamus*. What determines the nature of the action and which court has jurisdiction over it are the allegations of the complaint and the character of the relief sought.[72] The cause of action in a complaint is not what the designation of the complaint states, but what the allegations in the body of the complaint define or describe.[73]

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71 *Powers and Duties of Courts and Judicial Officers*

...

Sec. 6. *Means to carry jurisdiction into effect.* — When by law jurisdiction is conferred on a court or judicial officer, all auxiliary writs, processes and other means necessary to carry it into effect may be employed by such court or officer; and if the procedure to be followed in the exercise of such jurisdiction is not specifically pointed out by law or by these rules, any suitable process or mode of proceeding may be adopted which appears conformable to the spirit of said law or rules.

72 *Patricio A. Villena v. Patricio S. Payoyo*, G.R. No. 163021, 27 April 2007.

73 *Ake Hernudd, et al. v. Lars E. Lofgren, et al.*, G.R. No. 140337, 27 September 2007, citing *Esperanza P. Sumulong, represented by Mario P. Sumulong v. Hon. Court of Appeals and Inland Trailways, Inc.*, G.R. No. 108817, 10 May 1994.

Here, petitioners pray for *mandamus* in their Petition for Review[74], specifically to mandate the issuance of the requested CTDs and APFs under the TAA in their favor. Hence, there is basis to treat the instant Petition for Review as a Petition for *Mandamus*.

We shall now determine the timeliness of the instant petition.

THERE IS NO SHOWING THAT THE INSTANT PETITION FOR REVIEW (TREATED AS A PETITION FOR *MANDAMUS*) WAS TIMELY FILED.

Since the present petition is treated as a Petition for *Mandamus* involving a special tax law, *i.e.*, the TAA, which falls under the "other matters" jurisdiction of the CTA, its timeliness is governed by Section 4, Rule 65 of the ROC, as amended, to wit:

> ...
> Sec. 4. *When and Where to File the Petition*. -The petition shall be filed not later than **sixty (60) days from notice of the judgment, order or resolution**. In case a motion for reconsideration or new trial is timely filed, whether such motion is required or not, the petition shall be filed not later than sixty (60) days counted from the notice of the denial of the motion.[75]
> ...

Based on the foregoing provision, all Rule 65 petitions must be filed not later than sixty (60) days from notice of judgment, order or resolution.

Pertinently, in the case of *Blue Eagle Management, Inc., et al. v. Jocelyn L. Naval*[76], citing *Isabelita C. Vinuya, et al. v. The Honorable Executive Secretary Alberto G. Romulo, et al.*[77], the Supreme Court has emphasized that to establish the timeliness of a Rule 65 petition, the date of receipt of the assailed judgment, final order, or resolution must be stated in the petition; otherwise, the petition *must* be dismissed, *viz*:

74 Prayer, Petition for Review, Division Docket, Volume I, p. 25.
75 Emphasis supplied.
76 G.R. No. 192488, 19 April 2016; Citation omitted, italics and emphasis in the original text, and underscoring supplied.
77 G.R. No. 162230, 12 August 2014.

...

The Court, in *Vinuya v. Romulo*, expounded on the importance of stating the material dates in a petition for *certiorari*:

> As the rule indicates, the 60-day period starts to run from the date petitioner receives the assailed judgment, final order or resolution, or the denial of the motion for reconsideration or new trial timely filed, whether such motion is required or not. To establish the timeliness of the petition for *certiorari*, the date of receipt of the assailed judgment, final order or resolution or the denial of the motion for reconsideration or new trial must be stated in the petition; otherwise, the petition for *certiorari* must be dismissed. The importance of the dates cannot be understated, for such dates determine the timeliness of the filing of the petition for *certiorari*. As the Court has emphasized in *Tambong v. R. Jorge Development Corporation*:
>
>> There are three essential dates that must be stated in a petition for *certiorari* brought under Rule 65. First, the date when notice of the judgment or final order or resolution was received; *second*, when a motion for new trial or reconsideration was filed; and *third*, when notice of the denial thereof was received. **Failure of petitioner to comply with this requirement shall be sufficient ground for the dismissal of the petition. Substantial compliance will not suffice in a matter involving strict observance with the Rules.**

...

Clearly, a party's failure to state the material dates in a petition for *mandamus* is a sufficient ground for the dismissal thereof under Section 3, Rule 46[78], in relation to Rule 65, of the ROC, as amended.

Here, petitioners failed to demonstrate that the instant Petition for Review (which is treated as a Petition for *Mandamus*) was filed within the prescribed 60-day period. Considering that the petition was

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[78] *Original Cases*

...

Sec. 3. *Contents and Filing of Petition; Effect of Non-Compliance with Requirements.* — ...

...

In actions filed under Rule 65, the petition shall further indicate the **material dates** showing when notice of the judgment or final order or resolution subject thereof was received, when a motion for new trial or reconsideration, if any, was filed when notice of the denial thereof was received.

...

The failure of the petitioner to comply with any of the foregoing requirements shall be **sufficient ground for the dismissal of the petition**. (Emphasis supplied) filed on 04 December 2020, the 60-day period must have commenced on 05 October 2020. However, there is no proper allegation on the relevant act or omission, or the judgment, order or resolution and the date of receipt thereof from which to determine whether it was filed within the said 60-day period. Noteworthy is the fact that *per* testimony of petitioners' witnesses, Evangeline Santos[79] and Gina Mandigma[80], they received letters denying petitioners' request for issuance of CTDs and APFs. Under Section 3, Rule 46[81], in relation to Rule 65, of the ROC, as amended, it is incumbent upon petitioners to indicate the material dates. They should have presented the denial letters and offered the same as pieces of evidence. Even though petitioners submitted copies of the denial letters (*albeit* only with respect to eleven [11] out of the 33 petitioners[82]), petitioners still failed to mention the dates of receipt of the denial letters from which to reckon the 60-day reglementary period. As to the other 22 other petitioners, finding their failure to submit the copies of the denial letters, the presumption that evidence willfully suppressed would be adverse if produced, therefore, arises.[83]

From the foregoing, following petitioners' failure to indicate the material dates in the instant Petition for Review, it becomes dismissible pursuant to Section 4, Rule 65, in relation to the second paragraph of Section 3, Rule 46, of the ROC, as amended.

Assuming that the dates of the denial letters correspond to petitioners' date of receipt, the instant petition would still be considered filed out of time, as shown below:

Petitioner	**Date of Denial Letter**	**60-day reglementary period**	**Date of the filing of the petition**
Elmer Miguel	27 August 2019[84]	26 October 2019	04 December 2020
Orlando dela Cruz	06 July 2020[85]	04 September 2020	

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79 Judicial Affidavit, Evangeline Santos, Division Docket, Volume I, p. 36.
80 Judicial Affidavit, Gina Mandigma, id., p. 45.
81 Supra at note 78.
82 Division Docket, Volume II, pp. 709 to 722.
83 See *Rodolfo Tigno, et al. v. Court of Appeals, et al.*, G.R. No. 110115, 08 October 1997.
84 Division Docket, Volume II, pp. 709-710.
85 Id., pp. 711-712.

Linda Sanchez	28 February 2020[86]	28 April 2020	
G2K Realty Corporation	19 December 2019[87]	17 February 2020	
Mobile Electronic Ventures & Solutions, Inc.	19 December 2019[88]	17 February 2020	
Builder's Choice, Inc.	28 February 2020[89]	28 April 2020	04 December 2020
Real Sound Corporation	20 December 2019[90]	18 February 2020	
Ma. Olivia Dimaranan	29 May 2019[91]	26 October 2019	
Simplicia Gravador	14 August 2020[92]	13 October 2020	
St. Anne Realty Co., Inc.	20 December 2019[93]	18 February 2020	
WOW2K Holdings Corporation	20 December 2019[94]	18 February 2020	

Additionally, even if the instant petition was timely filed, it must still be dismissed for lack of merit on the grounds essayed below.

PETITIONERS HAVE NO CLEAR LEGAL RIGHT TO BE ISSUED WITH THE CERTIFICATIONS OF TAX DELINQUENCIES/TAX LIABILITIES (CTDs) AND ACCEPTANCE PAYMENT FORMS (APFs).

Petitioners contend that since they allegedly have delinquent accounts, they have a clear legal right to be issued with the CTDs and APFs under Section 17(a) of the TAA, which reads as follows:

86 Id., p. 713.
87 Id., pp. 714-715.
88 Id.
89 Id., p. 716.
90 Id., p. 717.
91 Id., pp. 718-719.
92 Id., p. 720.
93 Id., p. 721.
94 Id., p. 722.

...

SEC. 17. *Coverage.* — There is hereby authorized and granted a tax amnesty herein called the Tax Amnesty on Delinquencies, which shall cover all national internal revenue taxes such as, but not limited to, income tax, withholding tax, capital gains tax, donor's tax, value-added tax, other percentage taxes, excise tax and documentary stamp tax collected by the Bureau of Internal Revenue, including value-added tax and excise taxes collected by the Bureau of Customs for taxable year 2017 and prior years.

For purposes of [RA 11213 or the TAA], the Tax Amnesty on Delinquencies may be availed of in the following instances:

(a) **Delinquencies and assessments, which have become final and executory**, including delinquent tax account, where the application for compromise has been requested on the basis of: (1) doubtful validity of the assessment; or (2) financial incapacity of the taxpayer, but the same was denied by the Regional Evaluation Board or the National Evaluation Board, as the case may be, on or **before the Implementing Rules and Regulations take effect;**
(b) Pending criminal cases with the Department of Justice or the courts for tax evasion and other criminal offenses under Chapter II of Title X and Section 275 of the National Internal Revenue Code of 1997, as amended, with or without assessments duly issued;
(c) Tax cases subject of final and executory judgment by the courts on or before the Implementing Rules and Regulations take effect; and
(d) Withholding tax agents who withheld taxes but failed to remit the same to the Bureau of Internal Revenue.[95]

...

Section 2 of Revenue Regulation (**RR**) No. 4-2019[96], or the Implementing Rules and Regulations (**IRR**) of RA 11213, defines the terms "delinquent account" and "assessment notice" as follows:

...

SECTION 2. *Definition of Terms.* — For purposes of these Regulations, the words used herein shall be defined as follows:

[95] Emphasis supplied.
[96] Implementing Rules and Regulations of Republic Act No. 11213, Otherwise Known as the "Tax Amnesty Act," Providing for the Guidelines on the Processing of Tax Amnesty Application on Tax Delinquencies.

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 Assessment Notices that have become final and executory** 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, whether a request for reconsideration or reinvestigation, 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
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).

B. **Assessment Notice — refers to a notice issued to a taxpayer stating the amount and basis of the deficiency tax assessed. This term includes FAN/FLD and FDDA.**[97]

...

To prove that petitioners have delinquent accounts, they attached as annexes to their petition a letter issued by a Revenue District Officer (**RDO**), unfiled BIR Forms, reports, schedules and information returns, and/or amended returns showing interest and penalties.[98] Petitioners argue that notwithstanding the absence of an assessment from the BIR, they have made voluntary assessments which is also considered as delinquent accounts.

Petitioners' contention is devoid of legal mooring.

RMC No. 57-2019[99] defines who is qualified to avail of the tax amnesty on delinquencies, to wit:

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97 Emphasis in the original text and supplied.
98 Division Docket, Volume I, pp. 115-406.
99 Supra at note 58.

...

Q1. Who are qualified to avail of the Tax Amnesty on Delinquencies?

A1. All persons, whether natural or juridical, with delinquent internal revenue tax liabilities covering taxable year 2017 and prior years, **on or before April 24, 2019**, may avail of Tax Amnesty on Delinquencies within one year from the effectivity of RR No. 4-2019, under any of the following instances:

A. Delinquent accounts:
1. **Delinquent Accounts, whether without or with application for compromise settlement...**
2. **Delinquent withholding tax liabilities arising from non-withholding of tax**; and

...

D. Withholding tax liabilities of withholding agents arising from their failure to remit withheld taxes. (Section 3, RR No. 4-2019)

...

Q3. If the assessment notices pertain to penalties only (*i.e.*, without basic tax assessed), can the taxpayer avail of the tax amnesty?

A3. The taxpayer can avail of the tax amnesty if the penalties pertain to taxable year 2017 and prior years and the assessment notices have **become final and executory on or before April 24, 2019.**

The taxpayer shall follow the prescribed manner of availment under Section 5 of RR No. 4-2019. However, since the required tax amnesty amount is based on the basic tax assessed, there shall be no amount due for payment.

...

Q7. Can a taxpayer avail of the tax amnesty for 2017 tax liabilities which are <u>currently under investigation pursuant to a Letter of Authority (LOA)</u>?

A7. Since the investigation pursuant to the letter of authority is still on-going, the tax liability, if any, is **not yet considered delinquent account and therefore cannot be the subject of tax amnesty on delinquencies.**

The requirement that tax liabilities must be delinquent accounts prior to effectivity of RR No. 4-2019, however, **does not apply to tax liabilities of withholding agents pertaining to failure to remit withheld taxes for taxable**

> **year 2017 and prior years which may be the subject of tax amnesty on delinquencies at any stage/time of investigation for as long the amount of tax liabilities are properly determined by the BIR.**
>
> Q8. **If the taxpayer is amenable to the deficiency tax resulting from the audit conducted pertaining to taxable year 2017 and prior years, as presented during the informal conference, can the tax liabilities be settled through availment of tax amnesty on delinquencies?**
>
> A8. **The tax liabilities as informed during the informal conference are not yet considered delinquent** and cannot be the subject of tax amnesty on delinquencies except when the tax liability pertains to unremitted withheld taxes.
>
> Q9. **Can tax amnesty on delinquencies be availed of even if there is no Final Assessment Notice (FAN)/Formal Letter of Demand (FLD)/Final Decision on Disputed Assessment (FDDA) that has become final and executory on or before April 24, 2019?**
>
> A9. Tax amnesty on delinquencies can be availed of even if there is **no FAN/FLD/FDDA that has become final and executory** if the tax liabilities fall under any of the following instances:
>
> (1) The tax liabilities are related to the pending criminal cases with the DOJ/Prosecutor's Office or the courts for tax evasion and other criminal offenses under Chapter II of Title X and Section 275 of the Tax Code as amended; and
> (2) **The tax liabilities pertain to unremitted tax withheld by withholding agents.**[100]
>
> ...

As can be gleaned from the TAA, its IRR[101] and RMC No. 57-2019, only tax delinquencies and assessments that have become final and executory on or before RR No. 4-2019 took effect, *i.e.*, on 24 April 2019, can be the subject of a tax amnesty on delinquencies. Such requirement, however, does not apply to: (1) the tax liabilities related to the pending criminal cases with the Department of Justice (**DOJ**) or the Prosecutor's Office or the courts for tax evasion and other criminal offenses under

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100 Emphasis in the original text, underscoring and supplied.
101 Supra at note 96.

Chapter II[102] of Title X[103] and Section 275[104] of the NIRC of 1997, as amended; and, (2) the tax liabilities that pertain to unremitted taxes withheld by withholding agents.

In this case, it is undisputed that petitioners only received and/or have a letter issued by an RDO requiring one of the petitioners to reconcile the noted differences, unfiled BIR Forms, reports, schedules and information returns, and/or amended returns showing interest and penalties. This means that, as of that date, the tax investigation has yet to progress into an issuance of assessment notice. Since respondent has yet to issue any assessment notice against any of the petitioners, no assessment notice could have had become final and executory against them and, as such, no tax could have had been due from them. Certainly, the tax liabilities of petitioners could not yet be deemed as delinquent and, thus, cannot be the proper subject of tax amnesty on delinquencies under the TAA.

Moreover, there is no showing that the aforesaid tax liabilities fall under any of the exceptions mentioned in RMC No. 57-2019 such as: (1) those related to pending criminal cases with the DOJ or the Prosecutor's Office for tax evasion and other criminal offenses; and, (2) those that pertain to unremitted taxes withheld.

With the foregoing, the Court finds that petitioners failed to establish a clear legal right to the issuance of the CTDs and APFs.

THE ISSUANCE OF A CERTIFICATE OF TAX DELINQUENCIES/ TAX LIABILITIES (CTD) AND AN ACCEPTANCE PAYMENT FORM (APF) IS A *DISCRETIONARY* FUNCTION OF RESPONDENT, NOT A MINISTERIAL ONE.

It is a well-recognized rule that *mandamus* only lies to enforce the performance of a ministerial act or duty and not to control the performance of a *discretionary* power. Similarly, it is settled that the

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102 CRIMES, OTHER OFFENSES AND FORFEITURES.
103 STATUTORY OFFENSES AND PENALTIES.
104 SEC. 275. *Violation of Other Provisions of this Code or Rules and Regulations in General.*

courts could not interfere with the performance of purely administrative and discretionary functions.[105] A purely ministerial act or duty, in contradiction to a discretional act, is one which an officer or tribunal performs in a given state of facts, in a prescribed manner, in obedience to the mandate of a legal authority without regard to or the exercise of his own judgment, upon the propriety or impropriety of the act done. If the law imposes a duty upon a public officer, and gives him the right to decide how or when the duty shall be performed, such duty is discretionary and not ministerial.[106]

RR No. 4-2019, as amended by RR No. 15-2020[107], which implements the TAA and has the force and effect of a law, lays down the guidelines for the issuance of a CTD, an APF and a Notice of Issuance of Authority to Cancel Assessment (**NIATCA**), to wit:

> ...
>
> **SECTION 5. MANNER OF AVAILMENT OF TAX AMNESTY ON TAX DELINQUENCIES.** ...
>
> A. **DOCUMENTARY REQUIREMENTS** — The taxpayer shall submit the following:
>
> 1. Tax Amnesty Return (TAR) (BIR Form No. 2118-DA, Annex "A"), completely and accurately accomplished and made under oath;
> 2. Acceptance Payment Form (APF) (BIR Form No. 0621-DA, Annex "B") duly validated by the Authorized Agent Banks (AABs) or APF duly stamped "received" with accompanying bank deposit slip duly validated by the concerned AABs or Revenue Official Receipt (ROR) issued by the Revenue Collection Officers (RCOs);
> 3. **Certificate of Tax Delinquencies/Tax Liabilities** issued by concerned BIR offices (Annex "C"); and
> 4. In case of applications under Section 3(A)(2) of these Regulations, a copy of the assessment found in the FAN/FDDA: *Provided that,* in cases of applications under Section 3(D), either delinquent account or not, with or without FAN/FDDA, the Preliminary Assessment Notice (PAN)/Notice for Informal Conference or equivalent document is sufficient.
>
> ...

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105 *Meralco Securities Corporation (now First Philippine Holdings Corporation) v. Hon. Victorino Savellano, et al.*, G.R. No. L-36181, 23 October 1982.

106 *Serafin Sanson v. Conrardo Barrios, et al.*, G.R. No. L-45086, 20 July 1936; *Eliseo B. Lemi v. Brigudo Valencia, et al.*, G.R. No. L-20768, 29 November 1968.

107 Further Amendments to Revenue Regulations No. 4-2019, as Amended, on Tax Amnesty on Delinquencies.

C. **PROCEDURES** — The taxpayer-applicant shall:

Step 1. Secure the Certificate of Delinquencies/Tax Liabilities from the concerned BIR Office as specified below:

Nature of Tax Liabilities	**Large Taxpayer**	**Non-Large Taxpayer**
Delinquent tax cases, including withholding tax liabilities of withholding agents arising from failure to remit withheld taxes and those with pending or denied application for compromise settlement.	Large Taxpayers Division (Cebu or Davao)/Large Taxpayers Collection Enforcement Division (LTCED)	a. Regional Collection Division — For taxpayer-applicants under the jurisdiction of Revenue Region (RR) Nos. 5, 6, 7 and 8 (Caloocan, Manila, Quezon City and Makati, respectively); b. Revenue District Office (RDO) where the taxpayer-applicant is registered — For other taxpayer-applicants including RDO No. 36 (Puerto Princesa).

...

<u>The concerned BIR Office receiving the request for Certificate of Delinquencies/Tax Liabilities shall issue said Certificate of Delinquencies/Tax Liabilities to the taxpayer within three (3) working days from the date of the request.</u> **<u>Should the concerned BIR Office find that said Certificate of Delinquencies/Tax Liabilities cannot be issued, said BIR Office must state in writing the legal and factual basis for its denial.</u>**

Step 2. Present the duly accomplished TAR made under oath and APF, together with the other required documents, to the concerned RDO/LTD/LTCED for endorsement of the APF and pay the tax amnesty amount with the AABs or RC[O]s, whichever is applicable, by presenting the RDO/LTD/LTCED-endorsed or approved APF: *Provided*, that if no payment is required as in the case when assessment consists only of unpaid penalties due to either late filing or payment, the phrase "no payment required" shall be indicated in the APF. <u>*Provided, further*, that the concerned RDO/LTD/LTCED shall</u>

endorse said duly accomplished TAR and APF within one (1) working day from receipt of complete documents.

Step 3. Submit/file immediately to the RDO/LTD/LTCED where the taxpayer is registered, in triplicate copies, the duly accomplished TAR, made under oath, together with the complete documentary requirements and proof of payment, which in no case shall be beyond the availment period set forth under Section 3 of these Regulations. The taxpayer/applicant shall be furnished with a copy, stamped as "received", of said TAR and APF.

Availment of Tax Amnesty on Delinquencies shall be considered fully complied with upon completion of the above-enumerated steps within the period set forth under Section 3 of these Regulations.

SECTION 6. ISSUANCE OF AUTHORITY TO CANCEL ASSESSMENT (ATCA) AND LIFTING OF THE VALIDITY OF THE ISSUED NOTICES AND WARRANTS. — The Notice of Issuance of Authority to Cancel Assessment (NIATCA) shall be issued by the BIR to the taxpayer availing of the Tax Amnesty on Delinquencies within fifteen (15) calendar days from submission of the APF and TAR. Otherwise, the stamped- "received" duplicate copies of the APF and TAR shall be deemed as sufficient proof of availment.

Insofar as the tax delinquencies covered by the TAR is concerned, any notice, attachment and/or warrant of garnishment issued against the taxpayer by the concerned BIR office shall be set aside pursuant to the lifting of the said notices and warrants issued by the concerned BIR Office.[108]

...

Moreover, RMO No. 23-2019[109] provides:

...

II. POLICIES AND GUIDELINES

...

3. The endorsement and **approval of the Acceptance Payment Form (APF) by the RDOs/LTDs/LTCED** shall be made within the day of **presentation of the complete and duly accomplished documentary requirements**, provided that the same is presented

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108 Emphasis supplied and underscoring in the original text.

109 Policies, Guidelines and Procedures in the Processing of Applications for Tax Amnesty on Delinquencies Pursuant to Republic Act (RA) No. 11213 Otherwise Known as the "Tax Amnesty Act".

> before the daily cut-off time of 12:00 noon. Otherwise, the endorsement and approval shall be made on the next working day.[110]
>
> ...

Based on the foregoing provisions, the law imposes a duty upon the concerned BIR officers to evaluate whether a CTD and an APF may be issued. Such duty includes determining who is qualified to avail of the tax amnesty under the TAA, which is a discretionary function and not merely a ministerial one.

As held in *Danilo A. Lihaylihay v. The Treasurer of the Philippines Roberto C. Tan, et al.*[111], a determination that requires a review of evidentiary matters and an application of the law and administrative guidelines is considered a discretionary, quasi-judicial function, demanding an exercise of independent judgment on the part of certain public officers, and which cannot be the subject of *mandamus*, *viz*:

> ...
>
> A writ of mandamus may issue in either of two (2) situations: first, "when any tribunal, corporation, board, officer or person unlawfully neglects the performance of an act which the law specifically enjoins as a duty resulting from an office, trust, or station"; second, "when any tribunal, corporation, board, officer or person . . . unlawfully excludes another from the use and enjoyment of a right or office to which such other is entitled."
>
> The first situation demands a concurrence between a clear legal right accruing to petitioner and a correlative duty incumbent upon respondents to perform an act, this duty being imposed upon them by law.
>
> **Petitioner's legal right must have already been clearly established.** It cannot be a prospective entitlement that is yet to be settled. In *Lim Tay v. Court of Appeals*, this Court emphasized that "[m]andamus will not issue to establish a right, but only to enforce one that is already established." In *Pefianco v. Moral*, this Court underscored that a writ of *mandamus* "never issues in doubtful cases."
>
> Respondents must also be shown to have *actually* neglected to perform the act mandated by law. Clear in the text of Rule 65, Section 3 is the requirement that respondents "unlawfully *neglect*" the

110 Emphasis and underscoring supplied.
111 G.R. No. 192223, 23 July 2018; Citations omitted, italics in the original text, and emphasis supplied.

performance of a duty. The mere existence of a legally mandated duty or the pendency of its performance does not suffice.

The duty subject of mandamus must be ministerial rather than discretionary. A court cannot subvert legally vested authority for a body or officer to exercise discretion. In *Sy Ha v. Galang*:

> [M]andamus will not issue to control the exercise of discretion of a public officer where the law imposes upon him the duty to exercise his judgment in reference to any matter in which he is required to act, because it is his judgment that is to be exercised and not that of the court.

This Court distinguished discretionary functions from ministerial duties, and related the exercise of discretion to judicial and quasi-judicial powers. In *Sanson v. Barrios*:

> **Discretion, when applied to public functionaries, means a power or right conferred upon them by law of acting officially, under certain circumstances, according to the dictates of their own judgments and consciences, uncontrolled by the judgments or consciences of others.** A purely ministerial act or duty, in contradistinction to a discretional act, is one which an officer or tribunal performs in a given state of facts, in a prescribed manner, in obedience to the mandate of legal authority, without regard to or the exercise of his own judgment, upon the propriety or impropriety of the act done. If the law imposes a duty upon a public officer, and gives him the right to decide how or when the duty shall be performed, such duty is discretionary and not ministerial. The duty is ministerial only when the discharge of the same requires neither the exercise of official discretion nor judgment. . . . Mandamus will not lie to control the exercise of discretion of an inferior tribunal . . ., when the act complained of is either judicial or quasi-judicial. . . . It is the proper remedy when the case presented is outside of the exercise of judicial discretion.

***Mandamus*, too, will not issue unless it, is shown that "there is no other plain, speedy and adequate remedy in the ordinary course of law." This is a requirement basic to all remedies under Rule 65, i.e., certiorari, prohibition, and mandamus.**

...

Petitioner's entitlement to an informer's reward is not a ministerial matter. Quite the contrary, **its determination requires a review of evidentiary matters and an application of statutory principles and administrative guidelines. Its determination is a discretionary, quasi-judicial function, demanding an exercise of independent judgment on the part of certain public officers.**

...

Since the determination of who are qualified to avail of the tax amnesty involves respondent's discretionary duties, *mandamus* may not lie to compel it to issue the CTD and sign the APF in favor of petitioners for that would be tantamount to a usurpation of executive functions.

As stated, courts could not interfere with the *discretionary* executive acts of the executive branch unless there is a clear showing of grave abuse of discretion amounting to lack or excess of jurisdiction. Verily, an action for *mandamus* does not lie against the legislative and executive branches or their members acting in the exercise of their official discretionary functions. This emanates from the respect accorded by the judiciary to said branches as co-equal entities under the principle of separation of powers.[112]

It bears stressing that the grant of a tax amnesty, similar to a tax exemption, must be construed strictly against the taxpayer and liberally in favor of the taxing authority. It is never favored nor presumed in law. This is because a tax amnesty is a general pardon or the intentional overlooking by the State of its authority to impose penalties on persons otherwise guilty of violation of a tax law. It partakes of an absolute waiver by the government of its right to collect what is due it and to give tax evaders who wish to relent a chance to start with a clean slate.[113]

In sum, the Court finds that respondent cannot be compelled by *mandamus* to issue in favor of petitioners the requested CTDs and APFs, since the determination of the latter's entitlement to avail of the tax amnesty on delinquencies under the TAA is a discretionary function. And needless to say, respondent did not commit grave abuse of discretion in refusing to issue the same as, indeed, petitioners are not qualified to avail of the said tax amnesty on delinquencies.

WHEREFORE, in view of the foregoing, the Petition for Review filed by petitioners is hereby **DISMISSED** for lack of jurisdiction. Assuming that the Court has successfully acquired jurisdiction, it is nevertheless dismissed for lack of merit.

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112 *Knights of Rizal v. DMCI Homes, Inc., et al.*, G.R. No. 213948, 25 April 2017.

113 *Philippine Banking Corporation (Now: Global Business Bank, Inc.) v. Commissioner of Internal Revenue*, G.R. No. 170574, 30 January 2009.

SO ORDERED.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

I CONCUR:

LANEE S. CUI-DAVID
Associate Justice

ATTESTATION

I attest that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice
Special 2nd Division Acting Chairperson

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, and the Special 2nd Division Acting Chairperson's Attestation, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

MA. BELEN M. RINGPIS-LIBAN
Acting Presiding Justice