CTA Form No. 8 (For DCC)

22-000608-0017

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

CTA CRIM. CASE NO. O-985

PEOPLE OF THE PHILIPPINES,
Plaintiff,

- versus -

NOTICE OF RESOLUTION

FAIVO PASCUAL BARTOLOME,
Accused.

To:

PROSECUTOR GENERAL BENEDICTO A. MALCONTENTO
ASST. STATE PROS. MA. RICHELLE Q. OLIVIA
Department of Justice
Padre Faura Street, Ermita, Manila 1000

ATTY. JAMAICA KAY S. DELA CRUZ
Bureau of Internal Revenue
Room 704, Prosecution Division, BIR National Office Bldg.,
BIR Road, Diliman, Quezon City

FAIVO BARTOLOME Y PASCUAL
No. 22 MJ. Guerrero Street
Brgy. 21, Laoag City
Ilocos Norte

GREETINGS:

You are hereby notified by these presents that on **January 12, 2024,** a Resolution was rendered in the above-entitled case, copy of which is attached hereto.

Quezon City, Philippines, **January 15, 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-985** For: Violation of Section 255 of the NIRC of 1997, as amended
	Members:
-versus-	**DEL ROSARIO,** *P.J., Chairperson,* **BACORRO-VILLENA,** *and* **CUI-DAVID,** *JJ.*
FAIVO PASCUAL BARTOLOME, *Accused.*	Promulgated: JAN 12 2024 11:15 am

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RESOLUTION

For resolution is the plaintiff's *Motion for Reconsideration (of the Resolution dated August 9, 2023)* filed through registered mail on August 30, 2023, without the accused's comment, as per Records Verification dated October 16, 2023.

Plaintiff prays that the Court reverse and set aside its Resolution dated August 9, 2023 (assailed Resolution), which disposed of the case as follows:

> **WHEREFORE**, premises considered, CTA Crim. Case No. O-985 is **DISMISSED** on the ground of prescription.
>
> **SO ORDERED**.

Plaintiff insists that the criminal action was instituted within the five (5)-year prescriptive period, considering that prescription commenced on February 4, 2016, when the assessment against the accused became final and executory and when the complaint for preliminary investigation was filed with the Department of Justice (DOJ) on October 23, 2020. Plaintiff disagrees with the Court's ruling that "prescription continues to run until the filing of the Information in Court" and cites *Tupaz v. Ulep*[1] and Section 1, Rule 110 on Prosecution of Offenses of the Revised Rules of Criminal Procedure.

In dismissing this criminal case, *i.e.*, for the willful failure of the accused to pay deficiency value-added tax (VAT) for taxable year 2012, on the ground of prescription, the Court is guided by *Lim, Sr. et al. v. Court of Appeals, et al.*[2] (*Lim*), which similarly involves a taxpayer's refusal to pay deficiency taxes. The material dates, as laid down in *Lim,* are as follows:

Date	**Incident**
July 3, 1968	The final notice and demand for payment was served on petitioners through their daughter-in-law.
September 1, 1969	Since no payment was forthcoming from the delinquent taxpayers, the BIR referred the matter to the Manila Fiscal's Office for investigation and prosecution.
June 23, 1970	Four (4) separate criminal informations were filed against petitioners in the then Court of First Instance of Manila, Branch VI, for violation of Sections 45 and 51 in relation to Section 73 of the National Internal Revenue Code (NIRC).

Further, *Lim* explained that the prescription for the offense of willful failure to pay taxes commenced only after receipt was coupled with the willful refusal to pay the taxes due within the allotted period and that the filing of information with the Court is material in determining whether the 5-year prescriptive period is met as the same tolls the prescriptive period, *viz.*:

> Inasmuch as the final notice and demand for payment of the deficiency taxes was served on petitioners **on <u>July 3, 1968</u>**, 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 alloted period**. The two criminal informations, **having been filed on <u>June 23, 1970</u>, are well-within the five-year prescriptive period and are not time-barred.**
>
> ... ...
>
> ... As Section 354 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**

[1] G.R. No. 127777, October 1, 1999.
[2] G.R. Nos. L-48134-37, October 18, 1990.

> **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.** [*Emphasis supplied*]

This ruling is consistent with Section 2, Rule 9 of the Revised Rules of the Court of Tax Appeals (RRCTA),[3] which provides that the institution of the criminal action (*i.e.*, filing of Information) interrupts the prescriptive period:

> SEC. 2. *Institution of Criminal Actions.* — **All criminal actions** before the Court in Division in the exercise of its original jurisdiction **shall be instituted by the filing of an information in the name of the People of the Philippines.** In criminal actions involving violations of the National Internal Revenue Code and other laws enforced by the Bureau of Internal Revenue, the Commissioner of Internal Revenue must approve their filing. In criminal actions involving violations of the Tariff and Customs Code and other laws enforced by the Bureau of Customs, the Commissioner of Customs must approve their filing.
>
> **The institution of the criminal action shall interrupt the running of the period of prescription.** [*Emphasis supplied*]

Following *Lim* and the RRCTA, the period of prescription for a criminal tax case begins to run from the commission of the violation of the law and, if the same is not known at the time, from the discovery and institution of proceedings for its investigation and shall only be tolled by the filing of information with the Court.

Thus, for the accused's failure to file a valid protest and/or pay within thirty (30) days from receipt of the Formal Letter of Demand and Final Assessment Notice (FLD/FAN) on January 5, 2016, the violation was committed on February 5, 2016. Thus, the right of the government to institute the case against the accused had already prescribed when the Information was filed with this Court on December 6, 2022, or six (6) years and ten (10) months late.

WHEREFORE, premises considered, the plaintiff's *Motion for Reconsideration (of the Resolution dated August 9, 2023)* is **DENIED** for lack of merit.

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[3] A.M. No. 05-11-07-CTA, November 22, 2005.

SO ORDERED.

ROMAN G. DEL ROSARIO
Presiding Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

LANEE S. CUI-DAVID
Associate Justice