CTA Form No. 8 (For DCC)

20-000085-0013

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

CTA CRIM. CASE NO. O-822

PEOPLE OF THE PHILIPPINES,
Plaintiff,

- versus -

NOTICE OF RESOLUTION

MAJESTY GUARDS INC.,
REYNALDO M. ESOGON,
Accused.

To:

PROSECUTOR GENERAL BENEDICTO A. MALCONTENTO
ASST. STATE PROS. ANTONIO A. ARQUIZA, JR.
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
Thru: CIDG
Philippine National Police
National Headquarters
Camp BGen. Rafael Tagle Crame
EDSA, Quezon City

CHIEF, WARRANT & SUBPOENA SECTION
Mandaluyong City Police Station
Maysilo Circle
Mandaluyong City

GREETINGS:

You are hereby notified by these presents that on **August 15, 2024,** a Resolution was rendered in the above-entitled case, copy of which is attached hereto.

Quezon City, Philippines, **August 16, 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-822**
	For: Violation of Section 255, in relation to Sections 253 and 256 of the NIRC of 1997, as amended
- versus -	Members: **DEL ROSARIO**, P.J., *Chairperson*, **BACORRO-VILLENA**, *and* **CUI-DAVID**, JJ.
MAJESTY GUARDS INC., REYNALDO M. ESOGON, Accused.	Promulgated: AUG 15 2024 1:35PM

x - x

RESOLUTION

On 03 March 2020, the plaintiff filed an Information[1] against herein accused **MAJESTY GUARDS INC.** and its President, **REYNALDO M. ESOGON** (collectively "**accused**"/**MGI** and **Esogon**), for violation of Section 255[2], in relation to Sections 253[3] and 256[4], of

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1 Division Docket, pp. 5-6.

2 **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 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 (PhP10,000) and suffer imprisonment of not less than one (1) year but not more than ten (10) years. (Emphasis supplied)

3 **SEC. 253**. *General Provisions.* —

...

(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 employees responsible for the violation.

4 **SEC. 256**. *Penal Liability of Corporations.* — ...

the National Internal Revenue Code (**NIRC**) of 1997, as amended. The accusatory portion of which reads:

> ...
>
> "That sometime in November 2018, and thereafter, in the City of Mandaluyong and within the jurisdiction of this Honorable Court, the above-named accused REYNALDO M. ESOGON, being the president and responsible corporate officer of MAJESTY GUARDS, INC., did then and there willfully and unlawfully fail to pay deficiency in Value Added Tax for taxable year 2010, in the amount of One Million Four Hundred Ninety Five Thousand Nine Hundred Seventy Two 62/100 (P1,495,972.62), exclusive of charges and penalties, despite final assessment notice, including prior and post notices and demand before suit issued by the Bureau of Internal Revenue on November 28, 2018, to the damage and prejudice of the government."
>
> **CONTRARY TO LAW.**[5]
>
> ...

The plaintiff attached the following supporting documents to the Information for the Court's examination:

1. Certified True Copy of the Resolution dated 09 July 2019, signed by Assistant State Prosecutor Antonio A. Arquiza, Jr., with recommending approval of Senior Deputy State Prosecutor Miguel F. Gudio, Jr., and approved by Prosecutor General Benedicto A. Malcontento;[6]

2. Certified True Copy of the Referral Letter dated 13 December 2018 of then Bureau of Internal Revenue (**BIR**) Commissioner Caesar R. Dulay, addressed to then Secretary of Justice Menardo I. Guevarra;[7] and,

3. Certified True Copy of the Joint Complaint-Affidavit dated 13 December 2018[8] of Revenue Officers (**ROs**) Alvin N. Sto. Domingo (**Sto. Domingo**), Ma. Pacita S. Sanchez (**Sanchez**) and Solita C. Mauricio (**Mauricio**), with attached Annexes "A" to "V-1", inclusive of sub-markings.[9]

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5 Emphasis in the original text.
6 Division Docket, pp. 7-11.
7 Id., pp. 12-13.
8 Id., pp. 14-21.
9 Id., pp. 22-54.

In compliance with the Court's directive *per* the Resolution dated 02 June 2020[10], plaintiff also filed a Compliance on 09 July 2020,[11] attaching thereto a Certified True Copy of the Subpoena dated 14 March 2019 issued to accused Esogon.[12]

In a Resolution dated 27 July 2020[13], the Second Division found probable cause and ordered the issuance of a Warrant of Arrest against Esogon. It also fixed the bail bond for his provisional liberty in the amount of ₱60,000.00.

As the accused had not been apprehended after the lapse of approximately five (5) months, the Second Division issued an Alias Warrant of Arrest[14] on 04 January 2021. Even after a considerable period, accused remained at large. Hence, the instant case was archived, subject to revival upon the arrest of accused.[15]

In the meantime, following the reorganization of the different divisions of the Court, the case was transferred to the First Division.[16] In an effort to speedily dispose the cases and to de-clog court dockets, an inventory of archived cases was made thereafter.

After a second hard look and a thorough consideration of the allegations in the Information[17], and personal evaluation of the supporting documents[18] submitted, this Court, however, finds that **the right to institute the criminal action has already prescribed**.

In resolving the issue of prescription of the offense charged, the following should be considered: (**1**) the period of prescription for the offense charged; (**2**) the time the period of prescription starts to run; and, (**3**) the time the prescriptive period was interrupted.[19]

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10 Id., p. 56.
11 Id., p. 57.
12 Id., p. 58.
13 Id., p. 60-61.
14 Id., p. 71.
15 Id., p. 74.
16 Id., p. 75.
17 Supra at note 1.
18 Supra at notes 6-9 and 12.
19 *Benjamin ("Kokoy") T. Romualdez v. Hon. Simeon V. Marcelo, in his official capacity as the Ombudsman, and Presidential Commission on Good Government*, G.R. Nos. 165510-33, 28 July 2006, citing *Panfilo O. Domingo v. The Sandiganbayan (Second Division) and The People of the Philippines*, G.R. No. 109376, 20 January 2000.

In *Emilio E. Lim, Sr. and Antonia Sun Lim v. Court of Appeals and People of the Philippines*[20] (**Lim**), 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 willful refusal to pay the taxes due within the allotted period:

> ...
>
> 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 allot[t]ed 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.**
>
> ...

This interpretation was further applied by the Supreme Court in *Petronila C. Tupaz v. Honorable Benedicto B. Ulep Presiding Judge of RTC Quezon City, Branch 105, and the People of the Philippines*[21], where it was held that the offense of failure to pay deficiency income tax can only be deemed committed after the taxpayer has been served a notice and demand for payment of the deficiency taxes, *viz*:

> ...
>
> We agree with the Solicitor General that the offense has not prescribed. Petitioner was charged with **failure to pay deficiency income tax** after repeated demands by the taxing authority. In *Lim, Sr. v. Court of Appeals*, we stated that[,] **by its nature[,] the violation could only be committed after service of notice and demand for payment of the deficiency taxes upon the taxpayer**. Hence, it cannot be said that the offense has been committed as early as 1980, upon filing of the income tax return. This is so because **prior to the finality of the assessment, the taxpayer has not committed any violation for nonpayment of the tax. The offense was committed only after the finality of the assessment coupled with taxpayer's willful refusal to pay the taxes within the allotted period.** ...
>
> ...

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[20] G.R. Nos. L-48134-37, 18 October 1990; Emphasis and underscoring supplied.

[21] G.R. No. 127777, 01 October 1999; Citations omitted, emphasis supplied and italics in the original text.

In this case, the records show that the pertinent Formal Letter of Demand (**FLD**)[22] with attached Details of Discrepancies[23], together with the Assessment Notices[24] (**ANs**), all dated **26 August 2014**, were received by the accused's authorized representative, Annie Santos, on the same day.[25] The FLD and ANs indicated that the deficiency taxes should be paid on or before 26 September 2014.

As alleged in the Joint Complaint-Affidavit[26], despite receipt of the FLD and ANs, accused failed to timely file a valid protest to the FAN in accordance with Section 228[27] of the NIRC of 1997, as amended, as implemented by Revenue Regulations (**RR**) No. 12-99.[28] Thus, the FAN became final and unappealable on **<u>26 September 2014</u>** (the next working day after the 30-day deadline on 25 September 2014, for filing a protest against the FLDs and ANs), and on such date, the offense is "committed" for purposes of the five (5)-year prescriptive period.

Section 281 of the NIRC of 1997, as amended, which governs the prescriptive period for criminal tax actions, reads as follows:

> . . .
> **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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22 Annex "I", Division Docket, p. 38.
23 Id., p. 39.
24 Annexes "I-1" and "I-2", id., pp. 40-41.
25 As indicated in the stamp receipt in the FLD, ANs, and Details of Discrepancies.
26 Supra at note 8, p. 17.
27 **SEC. 228.** *Protesting of Assessment.* — When the Commissioner or his duly authorized representative finds that proper taxes should be assessed, he shall first notify the taxpayer of his findings:
. . .
Such assessment may be protested administratively by filing a request for reconsideration or reinvestigation within thirty (30) days from receipt of the assessment in such form and manner as may be prescribed by implementing rules and regulations. ...
28 Implementing the Provisions of the National Internal Revenue Code of 1997 Governing the Rules on Assessment of National Internal Revenue Taxes, Civil Penalties and Interest and the Extra-Judicial Settlement of a Taxpayer's Criminal Violation of the Code Through Payment of a Suggested Compromise Penalty.

> The term of prescription shall not run when the offender is absent from the Philippines.[29]
>
> . . .

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.

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.[30] The <u>second paragraph</u> of Section 281 speaks of "judicial proceedings", which means that the "proceedings" referred to in the <u>third paragraph</u> likewise pertains to proceedings which are judicial in nature, *i.e.*, the filing of criminal information with the court.

In the case of *Lim*, 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 mean that tax cases 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, *viz*:

> . . .
>
> 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

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29 Emphasis supplied and italics in the original text.

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

> 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.**
>
> ...
>
> 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 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.[31]
>
> ...

The Court *En Banc* also recently applied *Lim* in *People of the Philippines v. Ulysses Palconet Consebido.*[32] In that case, the Complaint-Affidavit subject thereof was filed with the Department of Justice (**DOJ**) on 30 January 2014; hence, the five (5)-year prescriptive period ended on 30 January 2019. However, the pertinent Informations were filed with this Court only on 18 March 2019. The Court *En Banc* thus ruled:

> ...
>
> As explained in the *Lim* case, while tax cases are practically imprescriptible, such doctrine only applies 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".*** Conversely, where the period from the institution of judicial proceedings for the investigation until the filing of the information in court exceeds five (5) years, then the government's right to institute criminal action has prescribed. As discussed earlier, considering that in the instant case, the period

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[31] Supra at note 20; Citation omitted, emphasis supplied and italics in the original text.

[32] CTA EB Crim. No. 076, 27 January 2021.

> from the filing of the preliminary investigation with the DOJ up to the filing of the *Informations* before the Court in Division exceeded five (5) years, petitioner is barred from instituting the subject tax cases against respondent.
>
> Such being the case, We see no cogent reason to deviate from the findings and conclusions of the Court in Division in dismissing CTA Crim. Case Nos. 0-700, 0-702 and 0-703 on the ground of prescription.[33]
>
> . . .

Plaintiff had five (5) years from 26 September 2014 (*i.e.*, the day after the deadline for filing a protest against the FANs and ANs), or until **25 September 2019**, within which to file the Information in court. Since the subject Information was filed only on **03 March 2020**, the criminal action had already been *prescribed for five (5) months and seven (7) days* from **25 September 2019** (*i.e.*, the last day of the five [5]-year prescriptive period). Evidently, plaintiff's right to file the subject criminal action has already prescribed.

Relevantly, Section 2, Rule 9 of the 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.**[34]
>
> . . .

Verily, pursuant to 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.

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[33] Emphasis, italics and underscoring in the original text.

[34] Emphasis supplied and italics in the original text.

To be sure, criminal offenses for violations of the NIRC of 1997, as amended, including known offenses, are not intended to be imprescriptible. However, if the prescriptive period is interrupted once preliminary investigation proceedings are instituted before the DOJ, it suggests that there is no fixed deadline for filing an Information in court. As a result, the offense could indefinitely remain actionable once a complaint reaches the DOJ. This grants the DOJ discretionary power over when to act, potentially allowing the misuse of the rule on prescription as a means to intimidate, harass, and disrupt taxpayers suspected of tax violations.[35]

Stated otherwise, prescription protects taxpayers who are at the mercy of the taxing and prosecuting authorities from unreasonable, long drawn out or abusive investigations. It serves as a safeguard against the abuse of power by unscrupulous public officials, including the possibility of initiating vexatious, arbitrary, and oppressive investigations.[36]

Again, given that the Information[37] was filed on **03 March 2020**, beyond the five (5)-year prescriptive period under Section 281 of the NIRC of 1997, as amended, that ended on **25 September 2019**, plaintiff's right to initiate this case against the named accused had already expired by the time of filing. Consequently, this justifies the dismissal of the case on the ground of prescription.

Jurisprudence has it that the waiver or loss of the right to prosecute the offender is automatic and by operation of law.[38] Evidently, in this case, prescription has automatically set in when the plaintiff failed to file the present Information[39] within the five (5)-year prescriptive period provided under Section 281 of the NIRC of 1997, as amended.

It is also 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.[40] Here, the circumstances show that the crime has prescribed resulting in extinguishment of accused's criminal liability, if any.

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35 See *People of the Philippines v. Diego G. Martinez*, CTA Crim. Case No. O-672, 25 January 2024.
36 Id.
37 Supra at note 1.
38 *Rafael Yapdiangco v. The Hon. Concepcion B. Buencamino and Hon. Justiniano Cortez*, G.R. No. L-28841, 24 June 1983.
39 Supra at note 1.
40 *People of the Philippines v. Arturo F. Pacificador*, G.R. No. 139405, 13 March 2001.

WHEREFORE, in light of the foregoing considerations, CTA Criminal Case No. O-822 is hereby **DISMISSED** on the ground of prescription.

SO ORDERED.

ROMAN G. DEL ROSARIO
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

ON OFFICIAL BUSINESS
LANEE S. CUI-DAVID
Associate Justice