CTA Form No. 8 (For DCC)

24-000081-0003

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

CTA CRIM CASE NO. O-1132

PEOPLE OF THE PHILIPPINES,
Plaintiff,

- versus -

EUGENIO DELA MERCED in his capacity as proprietor of ECD BUILDING RENOVATION SERVICES, 211 J. Manuel Street, Pag-ibig ng Nayon, Brgy. 105, Caloocan City,
Accused.

NOTICE OF RESOLUTION

To:

OIC MA. AILEEN D. GUNO
SR. ASST. CITY PROSECUTOR JOHN QUINCY D. CARANDANG
Office of the City Prosecutor
3rd Floor, Judicial Complex
10th Avenue, Caloocan City

ATTY. LORNA SB CRUZ
ATTY. LEI ADRIAN V. GAPOY
Bureau of Internal Revenue - Revenue Region No. 5
Regional Office Building
10 Concepcion Street, Brgy. 134
Caloocan City

GREETINGS:

You are hereby notified by these presents that on **March 20, 2024,** a Resolution was rendered in the above-entitled case, copy of which is attached hereto.

Quezon City, Philippines, **March 21, 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-1132** For: Violation of Section 255, in relation to Sections 253(d) & 256 of the NIRC of 1997, as amended
-versus-	*Members:*
EUGENIO DELA MERCED, in his capacity as proprietor of ECD BUILDING RENOVATION SERVICES, 211 J. Manuel Street, Pag-ibig ng Nayon, Brgy. 105, Caloocan City (AT LARGE), *Accused.*	**DEL ROSARIO,** *P.J., Chairperson,* **BACORRO-VILLENA,** *and* **CUI-DAVID,** *JJ.* Promulgated: MAR 20 2024; 2:30PM

x- -x

RESOLUTION

On February 19, 2024, the prosecution filed an Information charging accused **Eugenio Dela Merced** of ECD Building Renovation Services for willful failure to pay taxes under Section 255, in relation to Sections 253(d) and 256 of the National Internal Revenue Code (NIRC) of 1997, as amended, allegedly committed as follows:

> That sometime in the **year 2014**, in Caloocan City, Metro Manila, and within the jurisdiction of this Honorable Court, the above-named accused, a duly registered taxpayer and sole proprietor of ECD Building Renovation Services, did then and there, willfully, unlawfully, and feloniously fail to pay the following taxes to wit:
>
> Income Tax - - - - - - - - Php87,012.88
> Value Added Tax - - - - 1,046,946.67
>
> with an aggregate total of Php1,133,959.55 more or less, exclusive of interests, surcharges and penalties to the Bureau of Internal Revenue for the taxable year 2009, to the damage and prejudice of the government in the aforementioned amounts.

CONTRARY TO LAW.

In support thereof, the following documents were attached to said Information:

1. Review Manifestation dated July 8, 2021, issued by the Office of the City Prosecutor, Caloocan City;

2. Resolution dated December 14, 2020, issued by Senior Assistant City Prosecutor John Quincy D. Carandang, recommending that accused be charged for violation of Section 255 of the NIRC of 1997, as amended;

3. Department of Justice (DOJ) National Prosecution Service Investigation Data Form dated June 19, 2019;

4. Authority and approval for the filing and institution of criminal action against the accused issued by the Regional Director of Revenue Region No. 5 – Caloocan City dated April 30, 2019; and

5. Joint Complaint-Affidavit of Revenue Officers Marites Esguerra, Marites Baladad and Khaterine S. Capa dated June 20, 2019, with the following attachments:

   a. Letter of Authority dated March 18, 2013;
   b. Final Notice Before Seizure dated February 13, 2015;
   c. First Notice for Presentation of Records dated May 22, 2013;
   d. Second and Final Request for Presentation of Records before the Issuance of Subpoena Duces Tecum dated June 18, 2013;
   e. Five (5) Day Notice Before Issuance of Subpoena Duces Tecum dated October 18, 2013;
   f. Subpoena Duces Tecum dated March 19, 2014;
   g. Affidavit of Service of Subpoena Duces Tecum dated March 26, 2014;
   h. Preliminary Assessment Notice dated September 24, 2014;
   i. Assessment Notice and Formal Letter of Demand dated November 4, 2014; and
   j. Preliminary Collection Letter dated January 30, 2015.

After a judicious review of the records filed by the City Prosecutor, the Court finds sufficient basis to dismiss the case.

Section 281 of the NIRC of 1997, as amended, governs the prescriptive period for filing a criminal action for violation of the Tax Code, to wit:

> SEC. 281. *Prescription for Violations of any Provision of this Code.* — **All violations of any provision of this Code shall prescribe after five (5) years.**
>
> **Prescription shall begin to run from the day of the commission of the violation of the law**, and if the same be not known at the time, from the discovery thereof **and the institution of judicial proceedings for its investigation and punishment.**
>
> **The prescription shall be interrupted when proceedings are instituted against the guilty persons and shall begin to run again if the proceedings are dismissed for reasons not constituting jeopardy.**
>
> The term of prescription shall not run when the offender is absent from the Philippines. (*Emphasis supplied*)

The foregoing provision presents two (2) modes for the commencement of the period of prescription:

1. *First Mode*: From the *day of the commission* of the violation of the law; or

2. *Second Mode*: When the day of the commission is unknown, from the *discovery* of the commission and the institution of judicial proceedings for its investigation and punishment.

In *Lim, Sr. et al. v. Court of Appeals, et al.* (*Lim*),[1] failure to pay tax is committed only after receipt of the final notice and demand for payment, coupled with the willful refusal to pay the taxes due within the allotted period. The Supreme Court ruled as follows:

> **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 criminal informations, having been filed on June 23, 1970, are well-within the five-year prescriptive period and are not time-barred.** (*Emphasis supplied*)

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[1] G.R. Nos. L-48134-37, October 18, 1990.

This doctrine was reiterated in *Tupaz v. Ulep*,[2] where the Supreme Court ruled that the willful failure to pay tax "could only be committed after service of notice and demand for payment of the deficiency taxes upon the taxpayer."

As to what interrupts prescription, Section 281 of the NIRC of 1997, as amended, provides that it is "when proceedings are instituted against the guilty persons." This is explained in *Lim* to mean the time when the information is filed with the Court.

Consequently, the Supreme Court approved A.M. No. 05-11-07-CTA, otherwise known as the Revised Rules of the Court of Tax Appeals (RRCTA), declaring that the institution of criminal action is done by filing an information with the Court, which, in turn, interrupts the prescriptive period:

> RULE 9
> PROCEDURE IN CRIMINAL CASES
>
> ... ...
>
> 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*)

Reading the law, jurisprudence, and rules together, when the offense charged involves a taxpayer's refusal to pay the taxes due, the five (5)-year prescriptive period begins to run from the time the payment period lapses without any payment or appeal being made by the taxpayer. Simply put, the prescription runs when the assessment notice becomes final and executory and continues until the Information in Court is filed.

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[2] G.R. No. 127777, October 1, 1999.

As alleged in the Joint Complaint-Affidavit filed with the DOJ on June 19, 2019, the Final Assessment Notice and Formal Letter of Demand (FAN/FLD) dated November 4, 2014, was served to accused *via* registered mail at his registered business address.[3] However, nothing in the records and the FAN/FLD indicates the accused's receipt date.

Under prevailing regulations, service of the FAN/FLD 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.[4] The estimated turnaround time for such registered mail to be delivered is seven (7) working days.[5] Even if the Court assumes that the FAN was received by accused thirty (30) days from its mailing, or on December 4, 2014, and no protest was filed within thirty (30) days from such date, or until January 3, 2015, the assessment became final and executory on **January 4, 2015**, in accordance with Section 228[6] of the NIRC of 1997, as amended.

The Joint Complaint-Affidavit also alleged that the FAN/FLD had become final and executory for accused's failure to make a timely protest.[7] For that reason, a Preliminary Collection Letter dated January 30, 2015, and a Final Notice Before Seizure dated February 13, 2015 were issued to accused to demand payment of his deficiency taxes.[8] Thus, following plaintiff's allegations, the assessment became final on **January 4, 2015**.

Considering the foregoing, plaintiff had five (5) years from January 4, 2015, or until **January 4, 2020,** to file an information in Court. Clearly, when the present Information was filed on February 19, 2024, the government's right to institute a criminal action had already prescribed for more than **four (4) years**.

[3] Joint Complaint-Affidavit, par. 5.5; DOJ Resolution dated December 14, 2020, par. 6.
[4] *Commissioner of Internal Revenue v. T Shuttle Services, Inc.*, G.R. No. 240729 (Resolution), August 24, 2020.
[5] Philippine Postal Corporation, Post Office Delivery Lead Time, Estimated Turn Around Time for Domestic Mail Services, available at https://phlpost.gov.ph/postal-office-delivery-lead-time.
[6] SEC. 228. *Protesting of Assessment.* - The taxpayers shall be informed in writing of the law and the facts on which the assessment is made; otherwise, the assessment shall be void.

Within a period to be prescribed by implementing rules and regulations, the taxpayer shall be required to respond to said notice. If the taxpayer fails to respond, the Commissioner or his duly authorized representative shall issue an assessment based on 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.
[7] Joint Complaint-Affidavit, pars. 5.6-5.7.
[8] Joint Complaint-Affidavit, par. 5.8.

WHEREFORE, premises considered, the Information filed on February 19, 2024 is **DISMISSED.**

SO ORDERED.

ROMAN G. DEL ROSARIO
Presiding Justice

ON LEAVE
JEAN MARIE A. BACORRO-VILLENA
Associate Justice

LANEE S. CUI-DAVID
Associate Justice