CTA Form No. 8

22-000425-0006

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

CTA CRIM. CASE NO. O-929

PEOPLE OF THE PHILIPPINES,
Plaintiff,

- versus -

ANTONIO VALERIANO M. BERNARDO (A.V.M. BERNARDO ENGINEERING) (AT-LARGE: Address: No. 604 T. Santiago St., Lingunan, Valenzuela City, Metro Manila),
Accused.

NOTICE OF RESOLUTION

To:

PROSECUTOR GENERAL BENEDICTO A. MALCONTENTO
SENIOR ASSISTANT STATE PROSECUTOR MA. CRISTINA A. MONTERA-BAROT
Department of Justice
Padre Faura Street Ermita, Manila 1000

COMMISSIONER OF INTERNAL REVENUE
Thru:Prosecution Division
Bureau of Internal Revenue
BIR National Office Building
BIR Road, Diliman, Quezon City

URBANO LAW OFFICE
Suite 1105, Future Point Plaza I
112 Panay Avenue, Quezon City

ATTY. CATHERINE ROSE R. TORTOLES
ATTY. MERRISSA CAGAMPAN-TALATALA
Bureau of Internal Revenue
Room 704, 7th Floor, Prosecution Division
BIR National Office Building
BIR Road, Diliman, Quezon City

GREETINGS:

You are hereby notified by these presents that on **February 8, 2023,** a Resolution was rendered in the above-entitled case, copy of which is attached hereto.

Quezon City, Philippines, **February 13, 2023.**

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-929** (NPS Docket No. XVI-INV-16B-00056) For: Violation of Section 255 of the NIRC of 1997, as amended
-versus-	**Members:**
ANTONIO VALERIANO M. BERNARDO, (A.V.M. BERNARDO ENGINEERING), (AT-LARGE: Address: No. 604 T. Santiago St., Lingunan, Valenzuela City, Metro Manila), *Accused.*	**DEL ROSARIO,** *PJ, Chairperson,* **MANAHAN, and REYES-FAJARDO** *JJ.* Promulgated: FEB 08 2023 ; 8:44 AM.

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RESOLUTION

On November 28, 2022, the Court issued a Resolution, dismissing the case in the following fashion:

> **WHEREFORE**, the Court finds no probable cause to issue a warrant of arrest against accused Antonio Valeriano M. Bernardo, on the ground of prescription of the offense charged. Likewise, on the same ground, the instant Information docketed as CTA Crim. Case No. O-929, is **DISMISSED.**
>
> **SO ORDERED**.

On December 27, 2022, the prosecution filed a Formal Entry of Appearance with Motion for Reconsideration.[1] In its motion, the prosecution finds erroneous the ruling that the criminal action filed against the accused is already barred by the statute of limitations.

[1] With accused's Opposition/Comment (On Plaintiff's Motion for Reconsideration dated December 27, 2022) filed on January 25, 2023.

Section 281 of the National Internal Revenue Code (NIRC), as amended, provides among others that the five (5)-year prescriptive period for tax offenses commences from discovery thereof and institution of judicial proceedings for its investigation and punishment, and shall be suspended when proceedings are instituted against the persons guilty of the transgression.

For the prosecution, prescription has not set in as the prescriptive period, in this case, began to run on February 18, 2016 when the Bureau of Internal Revenue (BIR) filed a complaint for violation of Sections 254 and 255 of the NIRC of 1997 against accused Antonio Valeriano M. Bernardo with the DOJ, but was likewise interrupted for the same reason that proceedings were instituted on the same date.

The instant Motion must be denied.

Item III (2)(c) of the Revised Guidelines for Continuous Trial of Criminal Cases provides:

> III. Procedure
>
> xxx xxx xxx
>
> 2. Motions
>
> xxx xxx xxx
>
> (c) Meritorious Motions. - Motions that allege plausible grounds supported by relevant documents and/or competent evidence, except those that are already covered by the Revised Guidelines, are meritorious motions, xxx:
>
> xxx xxx xxx
>
> The motion for reconsideration of the resolution of a meritorious motion shall be filed within a non-extendible period of five (5) calendar days from receipt of such resolution, xxx.
>
> Motions that do not conform to the requirements stated above shall be considered unmeritorious and shall be denied outright.

From the foregoing, the party aggrieved by the Resolution of the Court is conferred a non-extendible period of five (5) calendar days, reckoned from receipt thereof, within which to file a motion for reconsideration, lest the same shall be denied.

As admitted,[2] the prosecution received the Resolution dated November 28, 2022, dismissing the present case on the ground of prescription on December 12, 2022. Consistent with the above rule, the prosecution had a non-extendible period of five (5) calendar days or until December 17, 2022 to seek reconsideration of the adverse ruling. The prosecution's Motion for Reconsideration having been belatedly posted only on December 27, 2022, the Court is left with no other recourse but to deny the same.

Further, even assuming that the motion is timely filed, said motion shall likewise be denied for lack of merit.

As extensively discussed in the Resolution dated November 28, 2022, the Revised Rules of the Court of Tax Appeals explicitly provides that the institution of the criminal action shall interrupt the running of the period of prescription. The prescription of the tax offense, in this case, began to run from the discovery and institution of proceedings for its investigation on February 18, 2016. Thus, the right of the government to institute the case against accused had already prescribed when the Information was filed before this Court on September 6, 2022.

WHEREFORE, the prosecution's Motion for Reconsideration is **DENIED**.

The Formal Entry of Appearance of the Deputized Special Prosecutors for the Bureau of Internal Revenue as counsel for plaintiff is hereby **NOTED.**

SO ORDERED.

ROMAN G. DEL ROSARIO
Presiding Justice

[2] Page 2, Paragraph No. 5, Prosecution's Motion for Reconsideration.

Catherine T. Manahan

CATHERINE T. MANAHAN
Associate Justice

Marian Ivy F. Reyes-Fajardo

MARIAN IVY F. REYES-FAJARDO
Associate Justice