CTA Form No. 8 (For DCC)

22-000642-0010

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

CTA CRIM. CASE NO. O-1016

PEOPLE OF THE PHILIPPINES,
Plaintiff,

- versus -

LUISA CHUAHIONG y GOCHECO,
Accused.

NOTICE OF RESOLUTION

To:

PROSECUTOR GENERAL BENEDICTO A. MALCONTENTO
SR. ASST. STATE PROSECUTOR TOFFE G. AUSTRIA
Department of Justice
Padre Faura, Ermita
1000 Manila

COMMISSIONER OF INTERNAL REVENUE
Thru: Prosecution Division
Bureau of Internal Revenue
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 General Rafael Tagle Crame
EDSA, Quezon City

CHIEF, WARRANT AND SUBPOENA SECTION
Manila Police District
United Nations Avenue, Ermita
Manila

GREETINGS:

You are hereby notified by these presents that on **January 17, 2024,** a Resolution was rendered in the above-entitled case, copy of which is attached hereto.

Quezon City, Philippines, **January 18, 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,

- versus -

LUISA CHUAHIONG y GOCHECO,
Accused.

CTA CRIM. CASE NO. **O-1016**

For: Violation of Section 225 of the NIRC of 1997, as amended (Failure to Pay Correct Income Tax)

Members:

DEL ROSARIO, *P.J.*, *Chairperson*,
BACORRO-VILLENA, *and*
CUI-DAVID, *JJ.*

Promulgated:
JAN 17 2024 9:15AM

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RESOLUTION

On 06 December 2022, an Information[1] was filed with the Court against accused, Luisa Chuahiong y Gocheco for violation of Section 225 of the National Internal Revenue Code (**NIRC**) of 1997, as amended. The Information reads:

> ...
> That in February 2011 and thereafter, in Manila City and within the jurisdiction of this Honorable Court, accused LUISA CHUAHIONG y GOCHECO, owner and proprietress of El'a Commercial, a business entity engaged in the trading of general merchandise, who is required by law to file annual Income Tax Return and to pay the corresponding correct income tax, did then and there, willfully and unlawfully fail to pay deficiency income tax in the amount of One Million Four Hundred Eighty-Eight Thousand Six Hundred Six Pesos and Seventy-Five Centavos (Php1,488,606.75), exclusive of interest, surcharge and penalties, for taxable year 2007, despite her receipt of the Final Assessment Notice and the corresponding Formal Letter of Demand with Details of

[1] Division Docket, pp. 5-6.

Discrepancies issued in February 2011, including prior and post-notices and demands to pay, and her failure to file any protest on said assessment within the prescribed period after fifty percent (50%) of her claimed expenses were disallowed due to her failure to present her books of accounts and other pertinent accounting records, thereby resulting to deficiency income tax in the afore-stated amount, to the damage and prejudice of the Government of the Republic of the Philippines.

CONTRARY TO LAW.

. . .

Upon an initial evaluation of the records of the case, the Court issued a Warrant of Arrest[2] (**WOA**) against herein accused on 09 February 2023. As the WOA remained unserved, an Alias WOA was issued on 12 May 2023.[3] It remained unserved since accused's whereabouts are unknown. However, a closer look at the records of the case prompts this Court to reconsider its prior action.

Section 281 of the NIRC of 1997, as amended, provides:

. . .

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.[4]

. . .

The foregoing provision impels a dismissal of the instant case due to prescription.

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2 Id., p. 84.
3 Id., p. 92.
4 Italics in the original text, emphasis and underscoring supplied.

The period of prescription for the offense herein 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.

The period of prescription commences to run from the day of the perpetration of the offense, and if not known, from its discovery 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. The prescriptive period shall not run when the offender is not in the country.

In construing when the prescriptive period for crimes punishable under the NIRC of 1997, as amended, is to be 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.[5] The second paragraph of Section 281 of the NIRC of 1997, as amended, speaks of "judicial proceedings", which means that the "proceedings" referred to in the third paragraph likewise pertains to proceedings which are judicial in nature, *i.e.*, the filing of criminal information with the court.

In the case of *Emilio E. Lim, Sr., et al. v. Court of Appeals, et al.*[6] (**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 wit:

> ...
>
> **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.

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

6 G.R. Nos. L-48134-37, 18 October 1990.

> ...
>
> 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 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.[7]
>
> ...

Following *Lim* and considering that the charge brought against the accused herein is for willful failure to pay taxes, the day of the crime's commission would be the day immediately after the expiration of the period to pay as contained in the final demand issued by Bureau of Internal Revenue (**BIR**). Pursuant to Section 281 of the NIRC of 1997, as amended, in such cases, the 5-year period shall

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7 Citation omitted, emphasis supplied and italics in the original text.

begin to run from the date of the commission of the offense and shall only be interrupted by filing an Information for the offense in court.

In the present Information dated 28 February 2020, it is alleged that the crime charged was committed sometime in February 2011. The Information was filed with the Court on **06 December 2022**. Thus, the right of the government to institute the case against the accused has already prescribed considering that almost eleven (11) years had already elapsed from the alleged date of the crimes' commission to the filing of the Information on 06 December 2022. Therefore, it is only proper that the present criminal Information be dismissed.

Jurisprudence has it that the waiver or loss of the right to prosecute the offender is automatic and by operation of law.[8] Evidently, in this case, prescription has automatically set in when the plaintiff failed to file the present Information within the 5-year prescriptive period provided under Section 281 of the NIRC of 1997, as amended.

WHEREFORE, in light of the foregoing considerations, this case is hereby **DISMISSED** on the ground of prescription. Accordingly, the Warrant of Arrest dated 09 February 2023 and Alias Warrant of Arrest issued against accused on 12 May 2023 are hereby **RECALLED** and **SET ASIDE**. This case is accordingly deemed **CLOSED** and **TERMINATED**.

SO ORDERED.

ROMAN G. DEL ROSARIO
Presiding Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

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8 *Rafael Yapdiangco v. The Hon. Concepcion B. Buencamino, et al.*, G.R. No. L-28841, 24 June 1983.

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LANEE S. CUI-DAVID
Associate Justice