Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

SECOND DIVISION

FIRST LEPANTO TAISHO INSURANCE CORPORATION,
Petitioner,

- versus -

COMMISIONER OF INTERNAL REVENUE,
Respondent.

C.T.A. CASE NO. 7002

Members:

CASTAÑEDA JR., *Chairperson*
UY, and
PALANCA-ENRIQUEZ, *JJ.*

Promulgated:
OCT 05 2005 G/Apolinario

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RESOLUTION

This resolves:

1.) petitioner's "Motion for Early Resolution of the Issue of Prescription" filed on June 7, 2005;
2.) respondent's "Opposition to the Motion for the Cancellation of the Assessments on the Ground of Prescription" filed on July 6, 2005; and
3.) petitioner's "Rejoinder to Respondent's Opposition/Comment (to Petitioner's Motion for Early Resolution of the Issue of Prescription" filed on July 13, 2005.

On June 16, 2004, petitioner filed the present Petition for Review seeking to annul and set aside the findings of respondent holding petitioner liable for deficiency taxes for the taxable year 1999 in the amount of P3,017,022.50. One of the issues raised therein is prescription. Petitioner asserts that the subject

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deficiency tax assessments are not valid because they were issued beyond the Statute of Limitations provided by law.

Petitioner now moves that the issue of prescription be first resolved by the Court in as much as the other issues in the case would be rendered moot and academic once it is established that respondent's right to assess taxes has prescribed. In support of its motion, petitioner cites, among others, the decision of the Supreme Court in *Philippine Journalists, Inc. vs. Commissioner of Internal Revenue* (G.R. 162852, December 16, 2004) and BIR Revenue Memorandum Order (RMO) No. 20-90.

After a careful examination of the questioned Waiver of Statute of Limitations, the Court finds the same not valid, for failure to comply with the prescribed requirements of RMO No. 20-90.

Pursuant to RMO No. 20-90, there is a valid waiver when the following requirements are present:

> "2. The waiver shall be signed by the taxpayer himself or his duly authorized representative. In the case of a corporation, the waiver must be signed by any of its responsible officials.
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> Soon after the waiver is signed by the taxpayer, the **Commissioner of Internal Revenue or the revenue official authorized by him, as hereinafter provided, shall sign the waiver indicating that the Bureau has accepted and agreed to the waiver. The date of such acceptance by the Bureau should be indicated. Both the date of execution by the taxpayer and date of acceptance by the Bureau should be before the expiration of the period of prescription or before the lapse of the period agreed upon in case a subsequent agreement is executed.**
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> 3. The following revenue officials are authorized to sign the waiver.

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A. In the National Office

1.	ACIRs for Collection, Special Operations, National Assessment, Excise and Legal on tax cases pending before their respective offices. In the absence of the ACIR, the Head Executive Assistant may sign the Waiver.	For tax cases involving not more than P500,000.00
2.	Deputy Commissioner	For tax cases Involving more than P500,000.00 but not More than P1M
3.	Commissioner	For tax cases involving More than P1M

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4. The waiver must be executed in three (3) copies, the original copy to be attached to the docket of the case, the second copy for the taxpayer and the third copy for the Office accepting the waiver. **The fact of receipt by the taxpayer of his/her file copy shall be indicated in the original copy.**

5. **The foregoing procedures shall be strictly followed**. Any revenue official found not to have complied with this Order resulting on the prescription of the right to assess/collect shall be administratively dealt with."

In the case at bench, a perusal of the subject waiver shows that it failed to state both the date of execution by the taxpayer, and the date of acceptance by the respondent. By express mandate of the aforequoted RMO, both the date of execution by the taxpayer and the date of acceptance by the Bureau of the waiver should be made before the expiration of the period of prescription.

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This is because when the period of prescription has expired, then there will be no more need to execute a waiver as there is nothing more to extend. Evidently, in the case at bar, the date of acceptance and the date of execution by the Bureau were not indicated. There is no way to determine with certainty that the waiver was actually accepted before the expiration of the three-year prescriptive period.

Records further show that petitioner was not furnished a copy of the waiver. Under RMO No. 20-90, the waiver must be executed in three copies, the original copy to be attached to the docket of the case, the second copy for the taxpayer, and the third copy for the Office accepting the waiver. When petitioner's representative signed the waiver, it was not yet complete and final because the BIR has not agreed thereto. The law is explicit that the taxpayer must receive a copy of the waiver after the BIR has accepted and agreed to the waiver. The requirement to furnish the taxpayer with a copy of the waiver is not only to give notice of the existence of the document, but also of the acceptance by the BIR and the perfection of the agreement. To adopt respondent's view that petitioner cannot impugn the validity of the agreement by the simple expediency of denying knowledge of the acceptance will render naught the requirement of the RMO that the BIR furnish the taxpayer with a copy of the waiver assented to by the BIR.

Finally, under RMO 20-90, after the waiver is signed by the taxpayer, the Commissioner of Internal Revenue or the designated Revenue Official shall sign the waiver indicating that the Bureau has accepted and agreed to the waiver. As this case involves taxes amounting to more than One Million Pesos (P1,000,000.00), the first waiver signed by the Assistant Commissioner of the Large Taxpayers Service, is in violation of RMO 20-90. RMO No. 20-90 explicitly requires the Commissioner of Internal Revenue to sign the waiver for the BIR where the amount of tax is more than One Million Pesos (P1,000,000.00).

For all the foregoing, We find the first waiver to be suffering from legal infirmities and, as such, the same is null and void, and is hereby declared without force and effect. Hence, there is no valid extension of the period within which the respondent may issue an assessment notice.

WHEREFORE, premises considered, the assessment for deficiency taxes for taxable year 1999 in the amount of Php3,017,022.50, including interests and penalties, is hereby **CANCELLED and SET ASIDE** for having been issued way beyond the prescriptive period.

SO ORDERED.

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice

ERLINDA P. UY
Associate Justice

OLGA PALANCA-ENRIQUEZ
Associate Justice

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