CTA Form No. 8 (For DCC)

22-000634-0011

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

CTA CRIM. CASE NO. O-1007

PEOPLE OF THE PHILIPPINES,
Plaintiff,

- versus -

LLOYD NEILSEN BATBATAN CHIONG,
Green Dot Boutique, Unit AXS06
MCS Annex, C-4 Road, Longos,
Malabon City,
Accused.

NOTICE OF RESOLUTION

To:

PROSECUTOR GENERAL BENEDICTO A. MALCONTENTO
ASST. STATE PROS. MICHAEL JOHN M. HUMARANG
DEPARTMENT OF JUSTICE
Padre Faura Street, Ermita
1000 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 General Rafael Tagle Crame
EDSA, Quezon City

CHIEF, WARRANT AND SUBPOENA SECTION
Malabon City Police Station
F. Sevilla Boulevard
Malabon City

GREETINGS:

You are hereby notified by these presents that on **August 5, 2024,** a Resolution was rendered in the above-entitled case, copy of which is attached hereto.

Quezon City, Philippines, **August 6, 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-1007** For: Violation of Section 255 of the NIRC of 1997, as amended
	Members:
-versus-	**DEL ROSARIO,** *P.J.*, *Chairperson,* **BACORRO-VILLENA,** and **CUI-DAVID,** *JJ.*
LLOYD NEILSEN BATBATAN CHIONG, (At-Large), Green Dot Boutique, Unit AXS06 MCS Annex, C-4 Road, Longos Malabon City *Accused.*	Promulgated: AUG 05 2024; 2:10PM

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RESOLUTION

In the *Resolution* promulgated on 10 January 2023,[1] the Court ordered the issuance of a warrant of arrest against accused **Lloyd Neilsen Batbatan Chiong** upon a finding of the existence of a probable cause that he committed the crime of violation of Section 255 of the National Internal Revenue Code (**NIRC**) of 1997, as amended.

On 7 March 2023, an Alias Warrant of Arrest was issued against accused.

After a second hard look at the *Information, Resolution, Joint Complaint-Affidavit,* and supporting documents filed or submitted by the Prosecution Attorney in the instant case, the Court finds that the offense charged has already prescribed.

We discuss.

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[1] Docket, pp. 78-81.

In the Information filed on 6 December 2022, accused was charged with violation of Section 255 of the NIRC of 1997, as amended, allegedly committed as follows:

> "That on or about 8 February 2018, in Malabon City and within the jurisdiction of this Honorable Court, the above-named accused, who is the sole proprietor of Green Dot Boutique and engaged in the business of retail of RTW and related goods, with Tax Identification No. 406-518-388, and who is required by law, rules, and regulations to pay the correct amount of income tax, did then and there, knowingly, willfully and unlawfully fail and refuse to pay his deficiency income tax in the amount of One Million Nine Hundred Thirty One Thousand Two Hundred Forty-Five and 40/100 (PHP1,931,245.40) Pesos, exclusive of interests and surcharges, for the taxable year 2014, despite receipt of assessment notices and repeated demands to pay the said deficiency tax, without filing any protest to the damage and prejudice of the Government of the Republic of the Philippines in the aforesaid amount."
>
> **CONTRARY TO LAW**."

In support of the indictment, the prosecution attached the following documents:

1. *Resolution* issued by the Department of Justice – Manila, dated 19 January 2022;
2. Undated *Referral Letter*, signed by Commissioner of Internal Revenue Caesar R. Dulay, recommending the criminal prosecution of accused;
3. *Joint Complaint-Affidavit* of Cheryl Arbues, Jeserie F. Dela Cueva and Sancho D. Maducdoc dated 27 May 2021, with the following annexes and attachments:
   a. *Letter of Authority* No. eLA201100098659 dated 19 May 2016;
   b. *First Request for Presentation of Records* dated 16 June 2016;
   c. *Second and Final Request for Presentation of Records* dated 6 September 2016;
   d. *Subpoena Duces Tecum* addressed to accused, dated 6 October 2016;
   e. *Undated Memorandum* forwarding the entire docket to the Regional Director signed by Revenue District Officer Alfredo P. Santos;
   f. *Preliminary Assessment Notice* dated 30 June 2017;
   g. *Formal Letter of Demand and Assessment Notices* dated 31 August 2017;
   h. *Preliminary Collection Letter* dated 7 December 2017;
   i. *Final Notice Before Seizure* dated 14 February 2018;
   j. *Warrants of Garnishment* addressed to various banks, dated 12 July 2018, and,
   k. *Demand Before Suit* dated 10 September 2019.

Prescription in criminal cases is a matter of substantive law.[2] Although prescription has not been raised as an issue, it is well-settled that if the pleadings or the evidence on record show that the claim is barred by prescription, the Court may *motu proprio* order its dismissal on said ground.[3]

Section 281 of the National Internal Revenue Code (**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. [*Emphasis and underscoring supplied.*]

To reiterate, in this case, accused was charged with violation of Section 255 of the NIRC of 1997, as amended, or willful failure to pay tax.

In the case of *Emilio E. Lim, Sr. and Antonia Sun Lim vs. Court of Appeals* ("*Lim*"),[4] 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

[2] *Reodica v. Court of Appeals*, G.R. No. 125066, 8 July 1998, 354 SCRA 90-111.
[3] *Commissioner of Internal Revenue v. Nippon Express (Phils.) Corp.*, G.R. No. 212920, 16 September 2015, 769 SCRA 861-871
[4] G.R. Nos. 48134-37, October 18, 1990, 268 PHIL 680-692.

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

The BIR circularized the pronouncement in *Lim* through the issuance of Revenue Memorandum Circular (**RMC**) No. 101-90,[5] which states:

> For the information and guidance of all concerned, the following are the salient features of the decision promulgated by the Supreme Court on October 19, 1990, in the case entitled "*Emilio E. Lim, Sr. et al. vs. Court of Appeals, et al.*," G.R. Nos. L-48134-37.
>
> 1. *When cause of action for willful failure to pay deficiency tax occurs.*
>
> The cause of action for willful failure to pay deficiency tax occurs when the final notice and demand for the payment thereof is served on the taxpayer. Prior thereto, no violation is committed. <u>The offense is ***committed*** only after receipt is coupled with refusal to pay the tax within the allotted period.</u>
>
> 2. *Prescription under Section 280 of the Tax Code.*
>
> (a) **The 5-year prescriptive period in** an offense or **willful failure to pay a deficiency tax assessment commences to *run* only <u>after the receipt of the final notice and demand by the taxpayer, and he refuses to pay.</u>** [*Emphasis supplied*]

This interpretation was applied by the Supreme Court in *Petronila C. Tupaz v. Honorable Benedicto B. Ulep, Presiding Judge of RTC Quezon City, Branch 105, and People of the Philippines*,[6] where it was ruled that the crime of willful failure to pay tax, "by its nature[,] the violation could only be committed after service of notice and demand for payment of the deficiency taxes upon the taxpayer."

In a *Resolution* dated March 3, 2023, in CTA Crim Case No. O-966,[7] the Court, citing *Lim*, declared the indispensability of actual receipt of final notice and demand, to wit:

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[5] SUBJECT: *Determination of When Cause of Action for Willful Failure to Pay Deficiency Tax Occurs; and Prescription under Section 280 of the Tax Code.*

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

[7] *People of the Philippines vs.Ciref Enterprises, Inc., Alfredo V. Pagarigan and Luz N. Pagarigan (Km. 326 Willarey Avenue, Urbano Velasco Extension, Pinagbuhatan, Pasig City).*

> ... absent any proof that the final notice and demand for payment was received by the taxpayer, it cannot be said that the offense has been committed because prior to the receipt of the letter-assessment, no violation has yet been committed.

In the *Complaint-Affidavit,*[8] it was alleged that the Final Assessment Notice and Formal Letter of Demand (**FAN/FLD**) was issued to accused on August 31, 2017, that it was served by way of substituted service, and that a certain Jeanne Leen De Guzman, the alleged "store-in-charge," received it on September 6, 2017.[9] The FAN would have attained finality *upon the lapse* of thirty (30) days from receipt of said notice in accordance with Section 228 of the NIRC of 1997, as amended.[10] Thus, following the allegations of plaintiff, the assessment would have become final on **October 7, 2017**.

In counting the prescriptive period provided under Section 281 of the NIRC of 1997, as amended, *Lim,* as quoted above, is instructive that the filing of the criminal information must fall within the five (5)-year prescriptive period.

The Supreme Court enunciated in *Lim* that tax criminal cases are basically imprescriptible. However, violations shall nevertheless prescribe if more than five (5) years have lapsed from the time of the commission of the offense if known, and as applicable in this case, *i.e.*, the date of finality of the FAN/FLD, up to the date of filing of the *Information* before the Court.

This Court is aware that the *Lim* case interpreted Section 354 of the 1939 Tax Code.[11] However, such provision was subsequently reproduced in Section 281 of the NIRC of 1997, as amended. We compare:

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[8] Docket, pp. 18-22.
[9] Joint Complaint-Affidavit, par 8.8.
[10] 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: Provided, however, That a pre-assessment notice shall not be required in the following cases:

... ...

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. Within sixty (60) days from filing of the protest, all relevant supporting documents shall have been submitted; otherwise, **the assessment shall become final**.
[11] Commonwealth Act No. 466, June 15, 1939.

Section 354 of the 1939 Tax Code	**Section 281 of the NIRC of 1997**
SECTION 354. Prescription for Violations of Any Provisions of this Code. – All violations of any provisions of this Code shall prescribe after five 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.	*SECTION 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.

Considering that the wording of Section 354 of the 1939 NIRC was adopted and reproduced in Section 281 of the 1997 NIRC, the legislature is presumed to have adopted the construction placed upon such provision by the Supreme Court in *Lim.*[12]

Thus, pursuant to *Lim*, plaintiff had five (5) years counted from October 7, 2017, or until **October 7, 2022**, to file the *Information* before the Court. The *Information* dated January 19, 2022, was filed with this Court only on **December 6, 2022**.

Clearly, when the present *Information* was filed on **December 6, 2022**, the government's right to institute a criminal action against accused had already prescribed for *almost two (2) months*.

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[12] *People v. Castillo*, CTA *EB* Crim. Case No. 053 (CTA Crim Case No. O-663) (Resolution), June 8, 2021.

In *People v. Moran,*[13] cited in *Romualdez v. Marcelo,*[14] the Supreme Court discussed:

> ... Here the State is the grantor, surrendering by act of grace its rights to prosecute, and declaring the offense to be no longer the subject of prosecution. **The statute is not a statute of process, to be scantily and grudgingly applied, but an amnesty, declaring that after a certain time oblivion shall be cast over the offense; ...that from henceforth[,] he may cease to preserve the proofs of his innocence, for the proofs of his guilt are blotted out.** Hence[,] it is that statutes of limitation are to be liberally construed in favor of the defendant, not only because such liberality of construction belongs to all acts of amnesty and grace, but because the very existence of the statute, is a recognition and notification by the legislature of the fact that time, while it gradually wears out proofs of innocence, has assigned to it fixed and positive periods in which it destroys proofs of guilt. Independently of these views, it must be remembered that delay in instituting prosecutions is not only productive of expense to the State, but of peril to public justice in the attenuation and distortion, even by mere natural lapse of memory, of testimony. It is the policy of the law that prosecutions should be prompt, and that statutes, enforcing such promptitude should be vigorously maintained. They are not merely acts of grace, but checks imposed by the State upon itself, to exact vigilant activity from its subalterns, and to secure for criminal trials the best evidence that can be obtained."
>
> Indeed, there is no reason why we should deny petitioner the benefits accruing from the liberal construction of prescriptive laws on criminal statutes. Prescription emanates from the liberality of the State. ...Any doubt on this matter must be resolved in favor of the grantee thereof, the accused. [*Emphasis supplied.*]

WHEREFORE, premises considered, CTA Crim. Case No. O-1007 is **DISMISSED** on the ground of prescription of the offense charged.

The Alias Warrant of Arrest issued against accused **Lloyd Nielsen Batbatan Chiong** is **RECALLED** and **SET ASIDE**.

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[13] G.R. No. 17905, January 27, 1923, 44 PHIL 387-437, quoting Wharton on Criminal Pleading & Practice, 9th ed., 1889.
[14] G.R. Nos. 165510-33 (Resolution), July 28, 2006, 529 PHIL 90-119.

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SO ORDERED.

ROMAN G. DEL ROSARIO
Presiding Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

LANEE S. CUI-DAVID
Associate Justice