CTA Form No. 8 (For DCC)

21-000460-0052

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

CTA CASE NO. 10687

ALTIMAX BROADCASTING CO., INC.,
Petitioner,

- versus -

NOTICE OF RESOLUTION

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

To:

OFFICE OF THE SOLICITOR GENERAL
134 Amorsolo Street, Legazpi Village
Makati City

ATTY. OSCAR A. AGUILAR
ATTY. ALVIN N. STO. DOMINGO
Bureau of Internal Revenue
Legal Division, Revenue Region No.7B
25th Floor, The Podium West Tower, ADB Ave.
Ortigas Center, Mandaluyong City

SALVADOR LLANILLO & MIJARES
Units 1706-1711, 17th Floor, Tower One & Exchange Plaza
Ayala Triangle, Ayala Avenue
1226 Makati City

GREETINGS:

You are hereby notified by these presents that on **February 10, 2025,** a Resolution was rendered in the above-entitled case, copy of which is attached hereto.

Quezon City, Philippines, **February 12, 2025.**

Atty. Margarette Y. Guzman
Executive Clerk of Court III

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

ALTIMAX BROADCASTING CO., INC., *Petitioner,*	**CTA CASE NO. 10687**
	Members:
-versus-	**DEL ROSARIO,** *P.J., Chairperson,* **BACORRO-VILLENA,** *and* **CUI-DAVID,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	Promulgated: FEB 10 2025; 10:00AM

x- x

RESOLUTION

CUI-DAVID, J.:

This resolves respondent's *Motion for Reconsideration (Decision dated 21 August 2024)* filed on September 13, 2024, *via* registered mail and on September 12, 2024, *via* electronic mail (e-mail), with petitioner's *Comment (Re: Motion for Reconsideration dated September 9, 2024)* filed on October 15, 2024, by personal filing and *via* e-mail on October 16, 2024. Respondent moves for the reversal and setting aside of the Decision dated August 21, 2024 (assailed *Decision*), with the following dispositive portion:

> **WHEREFORE**, in light of the foregoing considerations, the present *Petition for Review* is **GRANTED**. Accordingly, the FLD and *Assessment Notice*, all dated December 6, 2019, assessing petitioner for deficiency income tax for taxable year 2016, are **CANCELLED** and **SET ASIDE**. Furthermore, the FDDA dated October 22, 2021, assessing petitioner for deficiency income tax for taxable year 2016 in the total amount of **₱21,597,097.96**, inclusive of interest, is **REVERSED** and **SET ASIDE**.
>
> Consequently, respondent is **ENJOINED** and **PROHIBITED** from collecting the said amount against petitioner.

SO ORDERED.

Respondent disagrees with the Court's finding that petitioner's right to due process was violated on the ground that respondent merely reiterated the same findings as stated in the Preliminary Assessment Notice (PAN) without giving reasons for rejecting the refutations and explanations made by petitioner. Citing Section 3.1.1 of Revenue Regulations (RR) No. 12-99, as amended by RR No. 18-13, respondent argues that "it is not mandatory for respondent to reply to the PAN filed by petitioner"

Respondent asserts that "assuming respondent replied to the PAN," the outcome of the assessment would remain the same. The factual and legal bases of the assessment were fully disclosed to petitioner, and the reiteration of the findings of respondent does not equate to a violation of due process. Respondent reiterated the findings in the Final Decision on Disputed Assessment to justify its deficiency assessment as having factual and legal bases.

Petitioner counters that no less than the Supreme Court made a categorical pronouncement that the requirement of factual and legal bases upon which an assessment is based should be written in the assessment notice. The explanation in the Details of Discrepancies that were attached to the PAN and Final Assessment Notice/Formal Letter of Demand (FAN/FLD) only cited Section 34(A)(1) of the Tax Code without adequately addressing their explanations regarding disallowed management fees. Citing *Commissioner of Internal Revenue v. Avon Products Manufacturing, Inc.* (*Avon*),[1] petitioner submits that "a fair and reasonable opportunity to explain one's side" is one aspect of due process. Another aspect is the due consideration given by the decision-maker to the arguments and evidence submitted by the affected party.

Petitioner adds that the deficiency income tax assessment lacks factual and legal basis in the face of the official receipts and other commercial documents presented by petitioner to prove that the management fees are ordinary and necessary expenses deductible from its gross income.

The instant *Motion for Reconsideration (Motion)* lacks merit.

MR

[1] G.R. Nos. 201398-99 & 201418-19, October 3, 2018 [Per J. Leonen, Third Division].

At the outset, the Court notes respondent's repeated references to the PAN in his *Motion,* stating that respondent, the Commissioner of Internal Revenue, replies or responds to the PAN. The Court clarifies that respondent issues – but does not respond to – the PAN. While this misstatement does not materially affect the outcome of the case, the Court reminds respondent to exercise greater care and be more circumspect in preparing and filing motions and other court submissions.

The Supreme Court has emphasized the significance of the PAN stage in the tax assessment process. It provides both taxpayers and the Bureau of Internal Revenue (BIR) with an opportunity to resolve disputes early, potentially avoiding the need for a FAN.[2] This not only facilitates the assessment process but also helps avoid litigation.

While Section 228 of the Tax Code does not require taxpayers to respond to a PAN, it is imperative for the BIR to wait for[3] and consider any replies received[4] within the prescribed fifteen (15)-day period. A meaningful consideration of taxpayers' arguments goes beyond mere procedural compliance; it is essential for upholding the due process rights of taxpayers and facilitating a more efficient resolution of assessment disputes. Given that petitioner replied to the PAN, it is incumbent upon respondent to carefully consider the arguments in petitioner's reply when preparing the FAN/FLD.

As established in *Avon*, due process encompasses two (2) fundamental aspects: (1) providing taxpayers with a fair and reasonable opportunity to present their case and (2) ensuring that the BIR gives due consideration to the arguments and evidence submitted by taxpayers. Failing to fulfill the second component renders any explanations ineffective and can result in wasted time and resources for all parties. Thus, it is crucial that the BIR carefully considers the taxpayers' responses to the PAN before issuing a final assessment rather than proceeding without adequately reflecting on those arguments.

The Court discussed in the assailed Decision that respondent's failure to engage meaningfully with petitioner's reply to the PAN undermined the legality of the FAN/FLD,

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2 See *Prime Steel Mill, Incorporated v. Commissioner of Internal Revenue*, G.R. No. 249153, September 12, 2022 [Per J. Dimaampao, Third Division], citing *Commissioner of Internal Revenue v. Transitions Optical Philippines, Inc.*, G.R. No. 227544, November 22, 2017 [Per J. Leonen, Third Division].

3 *Commissioner of Internal Revenue v. Yumex Philippines Corporation*, G.R. No. 222476, May 5, 2021 [Per C.J. Gesmundo, First Division].

4 *Supra* note 1.

rendering the assessment void. Respondent failed to successfully rebut this finding in the present motion.

WHEREFORE, the instant *Motion for Reconsideration (Decision dated 21 August 2024)* is **DENIED** for lack of merit.

SO ORDERED.

LANEE S. CUI-DAVID
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice