REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

MEDICARD PHILIPPINES, INC., *Petitioner,*	**CTA Case No. 9175**
	Members:
-versus-	**DEL ROSARIO**, *PJ, Chairperson,* **MANAHAN**, *and* **REYES-FAJARDO**, *JJ.*
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	Promulgated: OCT 28 2021 2:40 pm

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DECISION

MANAHAN, *J.:*

The *Petition for Review* prays that the Court render judgment, as follows: a) respondent's right to assess petitioner for any deficiency value added tax (VAT) for taxable year 2008 be declared barred by prescription; b) petitioner is not liable for deficiency VAT for taxable year 2008, in the aggregate amount of ₱485,969,817.68, inclusive of interest and compromise penalty; and c) the withdrawal and cancellation of the subject *Final Assessment Notice* (FAN) and *Final Letter of Demand* (FLD).[1]

THE PARTIES

Petitioner Medicard Philippines, Inc. is a corporation organized and existing under the laws of the Philippines, with office address at 8/F, The World Centre Building, 330 Sen. Gil J. Puyat Avenue, Makati City 1200.[2] It is registered with the Bureau of Internal Revenue (BIR) under Tax Identification No. 000-476-995-000.[3] It has been granted *Clearances to Operate*

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[1] Summary of the Case, Pre-Trial Order dated September 2, 2016, Docket – Vol. 1, p. 378.
[2] Par. 1, Stipulation of Facts, *Joint Stipulation of Facts and Issues* (JSFI), Docket – Vol. 1, p. 346.
[3] Exhibit "P-3", Docket – Vol. 2, p. 730.

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(Nos. IB-NCR-48-01-08 and IB-NCR-48-01-07) a Health Maintenance Organization (HMO) for the period from January 13, 2007 to January 12, 2011 by the Bureau of Health Facilities and Services, Department of Health.[4]

Respondent is the duly appointed Commissioner of Internal Revenue, who holds office address at the BIR National Office Building, Agham Road, Diliman, Quezon City.[5]

THE FACTS

On June 26, 2009, petitioner received the *Letter of Authority* No. 00033664 dated June 23, 2009 from the Makati Large Taxpayers District Office (LTDO), authorizing the examination of petitioner's books of accounts and other financial records for taxable year 2008.[6]

Thereafter, on July 25, 2011, petitioner received a *Notice of Informal Conference* from the Makati LTDO of the BIR Large Taxpayer Services (LTS).[7]

Respondent required petitioner to execute a *Waiver of the Defense of Prescription under the Statute of Limitations of the National Internal Revenue Code (Waiver)* dated October 5, 2011 extending the period to assess to March 31, 2012.[8] The same was signed by Ms. Elizabeth B. Laqui.[9]

Another undated *Waiver* was executed by petitioner extending the period to assess to June 30, 2012, through Ms. Laqui.[10] The same was not notarized, nor was it accepted by the BIR.[11]

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[4] Exhibits "P-4" and "P-4-1", Docket – Vol. 2, pp. 731 to 732.
[5] Par. 2, Stipulation of Facts, JSFI, Docket – Vol. 1, p. 346.
[6] Par. 4, Stipulation of Facts, JSFI, Docket – Vol. 1, p. 347.
[7] Par. 5, Stipulation of Facts, JSFI, Docket – Vol. 1, p. 347; Exhibit "P-9", Docket – Vol. 2, p. 751.
[8] Par. 6, Stipulation of Facts, JSFI, Docket – Vol. 1, p. 347.
[9] Exhibit "P-10", Docket – Vol. 2, p. 752.
[10] Exhibit "P-11", Docket - Vol. 2, p. 753.
[11] Supra.

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On November 28, 2011, petitioner received the *Preliminary Assessment Notice* (PAN) dated November 14, 2011, proposing to assess petitioner deficiency VAT in the aggregate amount of ₱331,661,435.92, inclusive of interest and compromise penalty, for calendar year ending December 31, 2008.[12] In response to the PAN, petitioner sent a letter on December 13, 2011 addressed to Mr. Alfredo V. Misajon, OIC – Assistant Commissioner of the LTS, contesting the proposed assessment of alleged deficiency VAT.[13]

Subsequently, on April 30, 2012, petitioner received the FAN/FLD with *Assessment Notice* No. LTDO-122-VT-2008-00006 and *Details of Discrepancies* dated January 4, 2012, assessing petitioner for alleged VAT deficiency in the aggregate amount of ₱340,364,392.75, inclusive of interest, for calendar year 2008, computed as follows:[14]

Total gross receipts per VAT returns			P2,623,279,607.30
Output Tax due at 12%			P314,793,552.87
Less: Creditable input tax			
Input tax from 2007		P1,023,277.33	
Input tax deferred, beg		1,124,959.99	
Add: Current input tax			
Per return	P37,336,502.70		
Less: unsupported input tax	(1,541,494.82)	35,795,007.88	
TOTAL		P37,943,245.20	
Less: Input tax deferred, end		(1,375,828.37)	36,567,416.83
VAT Payable per audit			P 278,226,136.04
Less: VAT Payments			(68,756,387.04)
Basic deficiency VAT due			209,469,749.00
Add: 20% interest			130,894,643.75
Total			**340,364,392.75**

On May 24, 2012,[15] petitioner protested the FAN/FLD through the letter dated May 22, 2012 addressed to Mr. Alfredo V. Misajon.[16]

On June 3, 2013, petitioner received the *Final Decision on Disputed Assessment* (FDDA) dated March 18, 2013 issued

[12] Par. 7, Stipulation of Facts, JSFI, Docket – Vol. 1, p. 347; Exhibit "P-12", Docket - Vol. 2, pp. 754 to 756.

[13] Par. 8, Stipulation of Facts, JSFI, Docket – Vol. 1, p. 347; Exhibit "P-13", Docket - Vol. 2, pp. 757 to 759.

[14] Par. 9, Stipulation of Facts, JSFI, Docket – Vol. 1, p. 347; Exhibit "P-14", Docket – Vol. 2, pp. 760 to 764.

[15] Exhibit "P-15", Docket – Vol. 2, pp. 765 to 767.

[16] Par. 10, Stipulation of Facts, JSFI, Docket – Vol. 1, p. 348.

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by Mr. Alfredo V. Misajon,[17] denying petitioner's protest and upholding the deficiency VAT assessment.

On July 3, 2013, petitioner elevated the protest to the respondent through a request for reconsideration.[18]

On September 23, 2015, petitioner received the FDDA on even date issued by then Commissioner of Internal Revenue, Ms. Kim S. Jacinto-Henares,[19] denying petitioner's request for reconsideration, and requesting petitioner to pay the aggregate amount of ₱485,969,817.68, as its deficiency VAT liabilities for calendar year 2008.

Petitioner filed the instant *Petition for Review* on October 22, 2015.[20] The case was originally raffled to this Court's Third Division.

Respondent filed his *Answer* on January 11, 2016.[21] Respondent transmitted the *BIR Records* for the instant case on April 1, 2016.[22]

The Pre-Trial Conference was initially set on April 26, 2016,[23] but was reset to, and held on, July 19, 2016.[24] *Respondent's Pre-Trial Brief* and *Pre-Trial Brief for Petitioner* were filed on April 5, 2016,[25] and July 15, 2016,[26] respectively.

On August 2, 2016, the parties submitted their *Joint Stipulation of Facts and Issues.*[27] The Pre-Trial Order dated

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[17] Exhibit "P-16", Docket – Vol. 2, pp. 768 to 773.
[18] Par. 11, Stipulation of Facts, JSFI, Docket – Vol. 1, p. 348; Exhibit "P-17", Docket – Vol. 2, pp. 774 to 790.
[19] Exhibit "P-6", Docket – Vol. 2, pp. 734 to 735.
[20] Docket – Vol. 1, pp. 10 to 37.
[21] Docket – Vol. 1, pp. 109 to 113.
[22] *Compliance/Manifestation (With Profuse Apologies)* dated March 31, 2016Docket – Vol. 1, pp. 126 to 127.
[23] *Notice of Pre-Trial Conference* dated January 21, 2016, Docket – Vol. 1, pp. 115 to 116.
[24] Resolution dated April 6, 2016, Docket – Vol.1, p. 134; Minutes of the hearing held on, and Order dated, July 19, 2016, Docket – Vol. 1, pp. 333, and 338 to 339.
[25] Docket – Vol. 1, pp. 128 to 131.
[26] Docket – Vol. 1, pp. 305 to 331.
[27] Docket – Vol. 1, pp. 346 to 369.

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September 2, 2016 was then subsequently issued,[28] terminating the Pre-Trial.

On October 18, 2016, petitioner filed its *Motion for Preliminary Hearing to Resolve the Issue of Prescription.*[29] Respondent failed to file his comment thereon.[30] In the Resolution dated November 15, 2016,[31] the Court denied the said *Motion* for lack of merit.

Petitioner filed its *Motion for Reconsideration [of Resolution dated November 15, 2016]* on December 5, 2016.[32] Respondent manifested that he would no longer file his comment to petitioner's motion.[33] In the Resolution dated February 9, 2017,[34] the Court denied the said *Motion for Reconsideration* for lack of merit.

During trial, petitioner presented documentary and testimonial evidence. It offered the testimonies of the following individuals, namely: (1) Mr. Sherwin B. Salvador,[35] petitioner's Assistant Accounting Manager; (2) Mr. Mark Vincent Y. Borja,[36] petitioner's Accounting Manager; and (3) Ms. Mary Ann C. Capuchino,[37] the Court-commissioned Independent Certified Public Accountant (ICPA).[38]

On May 23, 2017, the said ICPA submitted her first *Partial ICPA Report and Annexes*;[39] and on June 22, 2017, she

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[28] Docket – Vol. 1, pp. 378 to 385.
[29] Docket – Vol. 1, pp. 387 to 400.
[30] Records of Verification dared November 9, 2016 issued by the Judicial Records Division of this Court, Docket – Vol. 1, p. 406.
[31] Docket – Vol. 1, pp. 408 to 409.
[32] Docket – Vol. 1, pp. 412 to 424.
[33] Refer to the Minutes of the hearing held on, and Order dated, January 16, 2017, Docket – Vol. 1, pp. 434 to 435.
[34] Docket – Vol. 1, pp. 437 to 438.
[35] Exhibit "P-33", Docket – Vol. 2, pp. 877 to 894; Minutes of the hearing held on, and Order dated, November 21, 2016, Docket – Vol. 1, pp. 410 to 411.
[36] Exhibit "P-34", Docket – Vol. 2, pp. 895 to 914; Minutes of the hearing held on, and Order dated, February 13, 2017, Docket – Vol. 1, pp. 439 to 440.
[37] Exhibit "P-62", Docket – Vol. 2, pp. 575 to 580; Minutes of the hearing held on, and Order dated, February 19, 2018, Docket – Vol. 2, pp. 670 to 672.
[38] *Oath of Commission (For a CPA Firm)* dated April 3, 2017, Docket - Vol. 1, p. 471; Minutes of the hearing held on, and Order dated, April 3, 2017, Docket – Vol. 1, pp. 470 and 472, respectively.
[39] The ICPA's letter dated January 3, 2017, Docket – Vol. 1, p. 479.

submitted her second *Partial ICPA Report and Annexes.*[40] Subsequently, on August 18, 2017, the *Final ICPA Report and Annexes* were submitted.[41]

Petitioner filed its *Formal Offer of Evidence* on March 9, 2018.[42] Respondent filed his *Comment (To Petitioner's Formal Offer of Evidence)* on March 12, 2018.[43]

This case was transferred to the Court's First Division, pursuant to the Order dated September 25, 2018.[44]

In the Resolution dated March 11, 2019,[45] the Court admitted the exhibits formally offered by petitioner, *except* for the following:

1. Exhibits "P-3", for failure to correspond with the document actually marked;
2. Exhibit "P-22", for failure to present the original for comparison; and
3. Exhibits "P-46-1-055", "P-48-1-04800", "P-48-1-04944", "P-48-4-08400", "P-48-4-09517" to "P-48-4-09600", "P-48-4-09813" to "P-48-4-09900", "P-48-4-10378" to "P-48-4-10500", "P-48-5-00918", "P-48-5-08603", "P-48-7-00664" to "P-48-7-02400", "P-49-3-05050" to "P-49-05094", "P-49-4-07036" to "P-49-4-07056", "P-49-4-07109" to "P-49-4-07119", "P-49-4-07598", "P-49-4-07645", "P-49-10-008801" to "P-49-10-08850", "P-51-7" to "P-51-8", including sub-markings, "P-52-40477", "P-52-2 to P-52-3", including sub-markings, "P-52-7" to "P-52-8", including sub-markings, "P-52-12", including sub-markings, "P-53-7-0125", "P-54-0247", "P-54-00798" to "P-54-00800", "P-54-0921", "P-54-2277" to "P-54-2278", "P-54-2284", "P-55-4-00235" to "P-55-4-00264", "P-55", including sub-markings, "P-55-6-00823" to "P-55-6-00882", "P-55-9-02310" to "P-55-9-02339", "P-55-10-00901" to "P-55-10-01200", "P-56-1", including sub-markings,

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[40] The ICPA's letter dated June 22, 2017, Docket – Vol. 1, pp. 496 to 523.
[41] Exhibit "P-60", Docket – Vol. 2, pp. 538 to 570.
[42] Docket – Vol. 2, pp. 673 to 706.
[43] Docket – Vol. 2, pp. 915 to 916.
[44] Docket – Vol. 2, p. 944.
[45] Resolution dated March 11, 2019, Docket – Vol. 2, pp. 947 to 950.

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"P-56-4-0701" to "P-56-4-0725", and "P-57", including sub-markings, for not being found in the records.

Petitioner filed its *Motion for Reconsideration (of Resolution dated March 11, 2019)* on April 11, 2019.[46] Relative thereto, petitioner filed its *Manifestation with Submission* on May 14, 2019.[47] Respondent failed to file his comment to said *Motion for Reconsideration.*[48]

In the Resolution dated September 11, 2019,[49] the Court partially granted petitioner's *Motion for Reconsideration*, and accordingly admitted Exhibits "P-3", "P-48-4-08400", "P-48-4-09517" to "P-48-4-09600", "P-48-4-09813" to "P-48-4-09900", "P-48-4-10378" to "P-48-4-10500", "P-48-5-08603", "P-48-7-00664" to "P-48-7-02400", "P-49-3-05050" to "P-49-3-05094", "P-49-4-07036" to "P-49-4-07056", "P-49-4-07109" to "P-49-4-07119", "P-49-4-07598", "P-49-4-07645", "P-49-10-008801" to "P-49-10-08850", "P-54-0247", "P-54-00798" to "P-54-00800", "P-54-0921", "P-54-2277" to "P-54-2278", "P-54-2284", "P-55", including sub-markings (except Exhibits "P-55-5890" and "P-55-6000"), "P-55-10-00901" to "P-55-10-01200", and "P-56-4-0701" to "P-56-4-0725". However, the Court still *denied* the admission of Exhibits "P-49-7-07598", "P-49-9-07645", "P-55-5890", "P-55-6000", "P-55-9-02310" to "P-55-9-02339", and "P-57", including sub-markings, for not being found in the record of the case.

On the other hand, respondent's counsel manifested that upon consultation with her superior, respondent will not present any evidence in view of the recent Supreme Court decision involving the same parties, without stating which Supreme Court decision was referred to.[50] Moreover, respondent's proposed witnesses have already retired from the service, specifically, Revenue Officer Gracita Reyes and Group Supervisor Guia T. Bobis. Thus, both parties were given a

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[46] Docket – Vol. 2, pp. 951 to 960.
[47] Docket – Vol. 2, pp. 969 to 972.
[48] Records Verification dated June 27, 2019 issued by the Judicial Records Division of this Court, Docket – Vol. 2, p. 975.
[49] Docket – Vol. 2, pp. 979 to 982.
[50] Minutes of the hearing held on, and Order dated, February 6, 2020, Docket – Vol. 2, pp. 993 to 997.

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period of thirty (30) days from February 6, 2020, within which to file their respective memoranda.[51]

On March 6, 2020, petitioner filed its *Motion to Admit Attached Memorandum for Petitioner*,[52] attaching therewith its *Memorandum*.[53] In the Resolution dated June 3, 2020,[54] the Court granted the said *Motion to Admit*, and accordingly admitted the *Memorandum for Petitioner*.

Respondent failed to file his memorandum.[55]

On December 1, 2020, this case was submitted for decision.[56]

THE ISSUES

The following issues were stipulated by the parties for this Court's resolution, to wit:

> "A. WHETHER OR NOT THE RIGHT OF THE GOVERNMENT TO ASSESS PETITIONER FOR DEFICIENCY VAT FOR TAXABLE YEAR 2008 HAS PRESCRIBED.
>
> B. WHETHER OR NOT THE ASSESSMENT FOR DEFICIENCY VAT HAS FACTUAL AND LEGAL BASIS.
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> C. WHETHER OR NOT RESPONDENT MAY APPLY RETROACTIVELY THE REVOCATION OF MEDICARD RULING.

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[51] Minutes of the hearing held on, and Order dated, February 6, 2020, Docket – Vol. 2, pp. 993 to 997.
[52] Docket – Vol. 2, pp. 1001 to 1004.
[53] Docket – Vol. 2, pp. 1005 to 1031.
[54] Docket – Vol. 2, p. 1034.
[55] Records Verification dated September 8, 2020 issued by the Judicial Records Division of this Court, Docket – Vol. 2, p. 1050. The Court granted respondent's several motions to extend the period to prepare and file his memorandum for more than six and a half months but the latter still failed to comply. Hence, the Court denied further extension to respondent.
[56] Resolution dated December 1, 2020, Docket – Vol. 2, p. 1065.

D. WHETHER OR NOT PETITIONER IS LIABLE FOR DEFICIENCY VALUE-ADDED TAX FOR TAXABLE YEAR 2008 IN THE AMOUNT OF P485,969,817.68."[57]

Petitioner's arguments:

Petitioner argues that the government's right to assess petitioner for alleged deficiency VAT for taxable year 2008 is already barred by prescription; that the *Waivers* are not valid, since they did not comply with the requisites and formalities of a valid waiver, and hence, the *Waivers* did not have the effect of extending the three-year prescriptive period to assess deficiency taxes; that a waiver of the defense of prescription is a derogation of petitioner's rights and must be strictly construed; that gross receipts derived by petitioner from directly providing medical, dental and hospital services are exempt from VAT; that the retroactive application of Revenue Memorandum Circular (RMC) 39-2010, revoking BIR Ruling No. DA (VAT-054)-529-2008 (*Medicard Ruling*) violates Section 246 of the National of Internal Revenue Code (NIRC) of 1997; that petitioner's taxable gross receipts exclude amounts earmarked for payment to third party healthcare providers; that healthcare services rendered by petitioner to enterprise duly-registered with the Philippine Economic Zone Authority (PEZA) are subject to zero percent VAT; and that the nature of gross receipts, whether exempt, zero-rated and taxable, should not be affected by the manner how the input VAT was attributed or allocated.

Respondent's counter-arguments:

Respondent counters that the ten (10)-year prescriptive period will apply to the subject VAT assessment, pursuant to Section 222(a) of the NIRC of 1997, which states that in case of false return, the tax may be assessed, or a proceeding in court for the collection of such tax may be filed without assessment, at any time within 10 years after the discovery of the falsity; that the judicial admission by the petitioner through its *Petition for Review* that it treats as VAT-exempt gross receipts it derives from directly providing medical, dental

[57] Stipulation of Issue, JSFI, Docket – Vol. 1, p. 348.

and hospital services and that it excludes from taxable gross receipts amounts earmarked for payment to third party healthcare providers for its intermediary services, will require no further proof on the part of the respondent to establish the falsity of petitioner's VAT return, pursuant to Section 4 Rule 129 of the Rules of Court; that petitioner cannot claim good faith since BIR Ruling DA (VAT-054) 529-2008 dated December 15, 2008 was not yet in existence when it filed its Quarterly VAT Returns for the first (1st), second (2nd) and third (3rd) quarters of taxable year 2008; that the first and second *Waivers* are all valid; that the rule on non-retroactivity of rulings is not applicable in the present case and this rule should apply only when there is a valid interpretation made by the Commissioner or his/her representative; that even assuming that BIR Ruling DA (VAT-054) 529-2008 dated December 15, 2008 is valid, the same shall only be given prospective application; and that assessments are *prima facie* presumed correct and made in good faith, and the taxpayer has the duty of proving otherwise.

THE COURT'S RULING

The instant *Petition for Review* is meritorious.

The Second Waiver did <u>not</u> validly extend the three (3)-year prescriptive period to assess.

Section 203 of the NIRC of 1997 reads:

> "SEC. 203. *Period of Limitation upon Assessment and Collection.* — **<u>Except as provided in Section 222</u>, internal revenue taxes shall be assessed within three (3) years after the last day prescribed by law for the filing of the return,** and no proceeding in court without assessment for the collection of such taxes shall be begun after the expiration of such period: *Provided,* That in a case where a return is filed beyond the period prescribed by law, the three-year period shall be counted from the day the return was filed. For purposes of this Section, a return filed before the last day prescribed by law for the filing thereof shall be considered as filed on such last day." *(Emphases and underscoring added)*

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Under the foregoing provision, internal revenue taxes must be assessed within three (3) years counted from the period fixed by law for the filing of the tax return or the actual date of filing, whichever is later. This mandate governs the issue of prescription of the government's right to assess internal revenue taxes primarily to safeguard the interests of taxpayers from unreasonable investigation.[58] Hence, an assessment notice issued after the three (3)-year prescriptive period is not valid and effective.[59]

However, an exception to the three (3)-year prescriptive period on the assessment of taxes is found in Section 222(b) of the NIRC of 1997, which provides as follows:

> "SEC. 222. *Exceptions as to Period of Limitation of Assessment and Collection of Taxes.* —
>
> xxx xxx xxx
>
> (b) **If before the expiration of the time prescribed in Section 203 for the assessment of the tax, both the Commissioner and the taxpayer have agreed in writing to its assessment after such time, the tax may be assessed within the period agreed upon. The period so agreed upon may be extended by subsequent written agreement made before the expiration of the period previously agreed upon.**" *(Emphasis added)*

The above provision authorizes the extension of the original three-year period by the execution of a valid waiver, where the taxpayer and the BIR agreed in writing that the period to issue an assessment and collection of taxes due is extended to an agreed upon date.[60] To be sure, it must be emphasized that a *Waiver of the Defense of Prescription* is a bilateral agreement between a taxpayer and the BIR to extend the period of assessment and collection to a certain date.[61] Moreover, it is clear from the foregoing provision that the period so agreed upon may be extended by subsequent written

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[58] *Commissioner of Internal Revenue vs. FMF Development Corporation*, G.R. No. 167765, June 30, 2008.

[59] *Commissioner of Internal Revenue vs. Next Mobile, Inc.*, G.R. No. 212825, December 7, 2015.

[60] *Commissioner of Internal Revenue vs. FMF Development Corporation*, supra.

[61] *Commissioner of Internal Revenue vs. Avon Products Manufacturing, Inc., etseq.*, G.R. Nos. 201398-99 and 201418-19, October 3, 2018.

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agreement made before the expiration of the period previously agreed upon.

In this case, there are two (2) *Waivers* executed by petitioner, through Ms. Elizabeth B. Laqui, to wit: (1) one dated October 11, 2011, giving the BIR a period of assessment until March 31, 2012;[62] and (2) another, which was *not* specifically dated (albeit the year 2012 is indicated) and *not* notarized, *nor* was accepted by the BIR.[63] Thus, while the first *Waiver* may be considered in existence, there is no second or subsequent *Waiver* to speak of, since the same was not accepted by the BIR. In other words, there was no *"subsequent written agreement"* in this case, as contemplated under the second sentence of Section 222(b) of the NIRC of 1997. Such being the case, there was no subsequent *Waiver* which could have extended the period to assess and/or collect beyond **March 31, 2012**, as previously agreed.

Considering that the subject FAN/FLD with *Assessment Notice* No. LTDO-122-VT-2008-00006 and *Details of Discrepancies* dated January 4, 2012 was received by petitioner only on **April 30, 2012**,[64] the subject VAT assessment was made beyond the period to assess, as the parties agreed in the *Waiver* dated October 11, 2011.

In any event, respondent additionally contends that the 10-year prescriptive period under Section 222(a) of the NIRC of 1997 should apply instead.

The ten-year prescriptive period is not applicable in this case.

Another exception to the three-year prescriptive period on the assessment of taxes is provided under Section 222(a) of the NIRC of 1997, to wit:

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[62] Exhibit "P-10", Docket – Vol. 2, p. 752.
[63] Exhibit "P-11", Docket – Vol. 2, p. 753.
[64] Par. 9, Stipulation of Facts, JSFI, Docket – Vol. 1, p. 347; Exhibit "P-14", Docket – Vol. 2, pp. 760 to 764.

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> "SEC. 222. *Exceptions as to Period of Limitation of Assessment and Collection of Taxes.* —
>
> (a) **In the case of a false or fraudulent return with intent to evade tax or of failure to file a return, the tax may be assessed** or a proceeding in court for the collection of such tax may be filed without assessment, **at any time within ten (10) years after the discovery of the falsity, fraud or omission**: *Provided,* That in a fraud assessment which has become final and executory, the fact of fraud shall be judicially taken cognizance of in the civil or criminal action for the collection thereof.
>
> xxx xxx xxx." *(Emphasis added)*

Based on foregoing provision, in the case of a false or fraudulent return with intent to evade tax or of failure to file a return, a tax may be assessed at any time within ten (10) years after the discovery of the falsity, fraud or omission.

Respondent essentially argues that the ten (10)-year prescriptive period to assess petitioner's VAT liability for taxable year 2008, under Section 222(a) of the NIRC of 1997, shall apply to the instant case, considering that the latter made a false return when it judicially admitted that it treats as VAT-exempt gross receipts it derives from directly providing medical, dental and hospital services, and that it excludes from taxable gross receipts amounts earmarked for payment to third party healthcare providers for its intermediary services in violation of Revenue Regulations (RR) No. 16-2005 and RMC No. 39-2010, which revoked BIR Ruling DA (VAT-054) 529-2008 dated December 15, 2008.

The Court does not agree with respondent. Petitioner cannot be said to have filed a false return in taxable year 2008.

Petitioner submits that its sales of services in directly rendering and performing medical, dental and hospital services to its member-clients is exempt from VAT pursuant to Section 109(1)(G) of the NIRC of 1997, as amended. Similarly, it claims that the amounts earmarked for payment to third party healthcare providers are not subject to VAT as they are excluded from the term "gross receipts" pursuant to Section 4.108-4 of RR No. 16-2005, and BIR Ruling No. DA (VAT-026)

375-08 dated October 31, 2008 as well as BIR Ruling DA (VAT-054) 529-2008 dated December 15, 2008.

Petitioner's reliance on the above provisions is correct.

It is not disputed that petitioner is rendering and performing medical, dental and hospital services directly to its member-clients. Section 109(1)(G) of the NIRC of 1997, as amended, clearly provides that *"medical, dental, hospital and veterinary services except those rendered by professionals"* are considered as one of the transactions exempt from the payment of VAT.

More significantly, Section 4.108-4 of RR No. 16-2005,[65] as amended by RR No. 4-2007,[66] provides as follows:

> "SEC. 4.108-4. *Definition of Gross Receipts*. – ***'Gross receipts'*** refers to the total amount of money or its equivalent representing the contract price, compensation, service fee, rental or royalty, including the amount charged for materials supplied with the services and deposits applied as payments for services rendered and advance payments actually or constructively received during the taxable period for the services performed or to be performed for another person, excluding the VAT, **except those amounts earmarked for payment to unrelated third (3rd) party or received as reimbursement for advance payment on behalf of another which do not redound to the benefit of the payor**.
>
> **A payment is a payment to a third (3rd) party if the same is made to settle an obligation of another person, e.g., customer or client, to the said third party, which obligation is evidenced by the sales invoice/official receipt issued by said third party to the obligor/debtor (e.g., customer or client of the payor of the obligation).**
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> An advance payment is an advance payment on behalf of another if the same is paid to a third (3rd) party for a present or future obligation of said another party which obligation is evidenced by a sales invoice/official receipt

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[65] SUBJECT: Consolidated Value-Added Tax Regulations of 2005 dated September 1, 2005.

[66] SUBJECT: Amending Certain Provisions of Revenue Regulations No. 16- 2005, As Amended, Otherwise Known as the Consolidated Value-Added Tax Regulations of 2005 dated February 7, 2007.

issued by the obligee/creditor to the obligor/debtor (i.e., the aforementioned 'another party') for the sale of goods or services by the former to the latter.

For this purpose 'unrelated party' shall not include taxpayer's employees, partners, affiliates (parent, subsidiary and other related companies), relatives by consanguinity or affinity within the fourth (4th) civil degree, and trust fund where the taxpayer is the trustor, trustee or beneficiary, even if covered by an agreement to the contrary.

xxx xxx xxx." *(Emphasis and underscoring added)*

Based on the foregoing provision, it is clear that the amounts earmarked for payment to unrelated third (3rd) party or received as reimbursement for advance payment on behalf of another which do not redound to the benefit of the payor are not included in the definition of *"gross receipts"* for purpose of the imposition of VAT.

In *Medicard Philippines, Inc. vs. Commissioner of Internal Revenue* (the "*Medicard* case"),[67] the Supreme Court confirmed that the amounts earmarked and paid by petitioner to medical service providers do not form part of gross receipts for VAT purposes, *viz.*:

"The amounts earmarked and eventually paid by MEDICARD to the medical service providers do not form part of gross receipts for VAT purposes

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Since an HMO like MEDICARD is primarily engaged in arranging for coverage or designated managed care services that are needed by plan holders/members for fixed prepaid membership fees and for a specified period of time, then MEDICARD is principally engaged in the sale of services. Its VAT base and corresponding liability is, thus, determined under Section 108(A) of the Tax Code, as amended by Republic Act No. 9337.

Prior to RR No. 16-2005, an HMO, like a pre-need company, is treated for VAT purposes as a dealer in

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[67] G.R. No. 222743, April 5, 2017.

securities whose gross receipts is the amount actually received as contract price without allowing any deduction from the gross receipts. This restrictive tenor changed under RR No. 16-2005. Under this RR, an HMO's gross receipts and gross receipts in general were defined, thus:

> **Section 4.108-3**. x x x
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> x x x x
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> HMO's gross receipts shall be the total amount of money or its equivalent representing the service fee actually or constructively received during the taxable period for the services performed or to be performed for another person, excluding the value-added tax. **<u>The compensation for their services representing their service fee, is presumed to be the total amount received as enrollment fee from their members plus other charges received.</u>**
>
> **Section 4.108-4**. x x x. ***'Gross receipts'*** refers to the total amount of money or its equivalent representing the contract price, compensation, service fee, rental or royalty, including the amount charged for materials supplied with the services and deposits applied as **<u>payments for services rendered</u>**, and advance payments actually or constructively received during the taxable period **<u>for the services performed or to be performed</u>** for another person, excluding the VAT.

In 2007, the BIR issued RR No. 4-2007 amending portions of RR No. 16-2005, including the definition of gross receipts in general.

According to the CTA *en banc*, the entire amount of membership fees should form part of MEDICARD's gross receipts because the exclusions to the gross receipts under RR No. 4-2007 does not apply to MEDICARD. What applies to MEDICARD is the definition of gross receipts of an HMO under RR No. 16-2005 and not the modified definition of gross receipts in general under the RR No. 4-2007.

The CTA *en banc* overlooked that the definition of gross receipts under RR No. 16-2005 merely presumed that the amount received by an HMO as membership fee is the HMO's compensation for their services. As a mere presumption, an HMO is, thus, allowed to establish that a portion of the amount it received as membership fee does NOT actually compensate it but some other person, which in this case are

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the medical service providers themselves. It is a well-settled principle of legal hermeneutics that words of a statute will be interpreted in their natural, plain and ordinary acceptation and signification, unless it is evident that the legislature intended a technical or special legal meaning to those words. The Court cannot read the word 'presumed' in any other way.

It is notable in this regard that the term gross receipts as elsewhere mentioned as the tax base under the NIRC does not contain any specific definition. Therefore, absent a statutory definition, this Court has construed the term gross receipts in its plain and ordinary meaning, that is, gross receipts is understood as comprising the entire receipts without any deduction. Congress, under Section 108, could have simply left the term gross receipts similarly undefined and its interpretation subjected to ordinary acceptation. Instead of doing so, Congress limited the scope of the term gross receipts for VAT purposes only to the amount that the taxpayer received for the services it performed or to the amount it received as advance payment for the services it will render in the future for another person.

In the proceedings below, the nature of MEDICARD's business and the extent of the services it rendered are not seriously disputed. As an HMO, MEDICARD primarily acts as an intermediary between the purchaser of healthcare services (its members) and the healthcare providers (the doctors, hospitals and clinics) for a fee. By enrolling membership with MEDICARD, its members will be able to avail of the pre-arranged medical services from its accredited healthcare providers without the necessary protocol of posting cash bonds or deposits prior to being attended to or admitted to hospitals or clinics, especially during emergencies, at any given time. **Apart from this, MEDICARD may also directly provide medical, hospital and laboratory services, which depends upon its member's choice.**

Thus, in the course of its business as such, MEDICARD members can either avail of medical services from MEDICARD's accredited healthcare providers or directly from MEDICARD. In the former, MEDICARD members obviously knew that beyond the agreement to pre-arrange the healthcare needs of its members, MEDICARD would not actually be providing the actual healthcare service. Thus, based on industry practice, MEDICARD informs its would-be member beforehand that 80% of the amount would be earmarked for medical utilization and only the remaining 20% comprises its service fee. In the latter case, MEDICARD's sale of its services is exempt from VAT under Section 109(G).

The CTA's ruling and CIR's Comment have not pointed to any portion of Section 108 of the NIRC that would extend the definition of gross receipts even to amounts that do not only pertain to the services to be performed: by another person, other than the taxpayer, but even to amounts that were indisputably utilized not by MEDICARD itself but by the medical service providers.

It is a cardinal rule in statutory construction that no word, clause, sentence, provision or part of a statute shall be considered surplusage or superfluous, meaningless, void and insignificant. To this end, a construction which renders every word operative is preferred over that which makes some words idle and nugatory. This principle is expressed in the maxim *Ut magisvaleat quam pereat*, that is, we choose the interpretation which gives effect to the whole of the statute – it's every word.

In *Philippine Health Care Providers, Inc. v. Commissioner of Internal Revenue*,[68] the Court adopted the principal object and purpose object in determining whether the MEDICARD therein is engaged in the business of insurance and therefore liable for documentary stamp tax. The Court held therein that an HMO engaged in preventive, diagnostic and curative medical services is not engaged in the business of insurance, xxx

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In sum, the Court said that the main difference between an HMO and an insurance company is that HMOs undertake to provide or arrange for the provision of medical services through participating physicians while insurance companies simply undertake to indemnify the insured for medical expenses incurred up to a pre-agreed limit. In the present case, the VAT is a tax on the value added by the performance of the service by the taxpayer. It is, thus, this service and the value charged thereof by the taxpayer that is taxable under the NIRC.

To be sure, there are pros and cons in subjecting the entire amount of membership fees to VAT. But the Court's task however is not to weigh these policy considerations but to determine if these considerations in favor of taxation can even be implied from the statute where the CIR purports to derive her authority. This Court rules that they cannot because the language of the NIRC is pretty straightforward and clear. As this Court previously ruled:

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[68] 616 Phil. 387 (2009).

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> What is controlling in this case is the well-settled doctrine of strict interpretation in the imposition of taxes, not the similar doctrine as applied to tax exemptions. The rule in the interpretation of tax laws is that a statute will not be construed as imposing a tax unless it does so clearly, expressly, and unambiguously. **A tax cannot be imposed without clear and express words for that purpose. Accordingly, the general rule of requiring adherence to the letter in construing statutes applies with peculiar strictness to tax laws and the provisions of a taxing act are not to be extended by implication.** In answering the question of who is subject to tax statutes, it is basic that in case of doubt, such statutes are to be construed most strongly against the government and in favor of the subjects or citizens because burdens are not to be imposed nor presumed to be imposed beyond what statutes expressly and clearly import. As burdens, taxes should not be unduly exacted nor assumed beyond the plain meaning of the tax laws. (Citation omitted and emphasis and underlining ours)

For this Court to subject the entire amount of MEDICARD's gross receipts without exclusion, the authority should have been reasonably founded from the language of the statute. That language is wanting in this case. In the scheme of judicial tax administration, the need for certainty and predictability in the implementation of tax laws is crucial. Our tax authorities fill in the details that Congress may not have the opportunity or competence to provide. The regulations these authorities issue are relied upon by taxpayers, who are certain that these will be followed by the courts. Courts, however, will not uphold these authorities' interpretations when clearly absurd, erroneous or improper. **The CIR's interpretation of gross receipts in the present case is patently erroneous for lack of both textual and non-textual support.**

As to the CIR's argument that the act of earmarking or allocation is by itself an act of ownership and management over the funds, the Court does not agree. On the contrary, it is MEDICARD's act of earmarking or allocating 80% of the amount it received as membership fee at the time of payment that weakens the ownership imputed to it. By earmarking or allocating 80% of the amount, MEDICARD unequivocally recognizes that its possession of the funds is not in the

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concept of owner but as a mere administrator of the same. For this reason, at most, MEDICARD's right in relation to these amounts is a mere inchoate owner which would ripen into actual ownership if, and only if, there is underutilization of the membership fees at the end of the fiscal year. Prior to that, MEDICARD is bound to pay from the amounts it had allocated as an administrator once its members avail of the medical services of MEDICARD's healthcare providers.

Before the Court, the parties were one in submitting the legal issue of whether the amounts MEDICARD earmarked, corresponding to 80% of its enrollment fees, and paid to the medical service providers should form part of its gross receipt for VAT purposes, after having paid the VAT on the amount comprising the 20%. It is significant to note in this regard that MEDICARD established that upon receipt of payment of membership fee it actually issued two official receipts, one pertaining to the VAT able portion, representing compensation for its services, and the other represents the non-vatable portion pertaining to the amount earmarked for medical utilization. Therefore, the absence of an actual and physical segregation of the amounts pertaining to two different kinds of fees cannot arbitrarily disqualify MEDICARD from rebutting the presumption under the law and from proving that indeed services were rendered by its healthcare providers for which it paid the amount it sought to be excluded from its gross receipts.

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In fine, the foregoing discussion suffices for the reversal of the assailed decision and resolution of the CTA *en banc* grounded as it is on due process violation. The Court likewise rules that **for purposes of determining the VAT liability of an HMO, the amounts earmarked and actually spent for medical utilization of its members should not be included in the computation of its gross receipts.**

WHEREFORE, in consideration of the foregoing disquisitions, the petition is hereby GRANTED. xxx. **<u>The definition of gross receipts under Revenue Regulations Nos. 16-2005 and 4-2007, in relation to Section 108(A) of the National Internal Revenue Code, as amended by Republic Act No. 9337, for purposes of determining its Value-Added Tax liability, is hereby declared to EXCLUDE the eighty percent (80%) of the amount of the contract price earmarked as fiduciary funds for the medical utilization of its members</u>.** xxx" (*Emphases and underscoring added*)

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Based on the foregoing jurisprudence, it is plain that the amounts earmarked and eventually paid by petitioner to the medical service providers do not form part of gross receipts for VAT purposes.

In this case, it is undisputed that the subject VAT assessment is founded on the position of the BIR that petitioner *"is liable to VAT based on its gross receipts without the benefit of deductions for the amount paid to accredited doctors, hospitals and clinics."* [69] Clearly, on the basis of the aforequoted Section 4.108-4 of RR No. 16-2005, as amended by RR No. 4-2007, and the abovequoted jurisprudential pronouncements, respondent is utterly mistaken. Such being the case, petitioner's Quarterly VAT Returns for taxable year 2008 cannot be treated as false returns. Thus, the ten (10)-year prescriptive period under Section 222(a) of the NIRC of 1997 is *not* applicable in this case.

The revocation of BIR Ruling No. DA (VAT-054) 529-2008 is of no consequence.

According to respondent, RR No. 16-2005 was already in existence when BIR Ruling DA (VAT-054) 529-2008 dated December 15, 2008 was issued — a ruling issued in favor of petitioner,[70] wherein it was declared, *inter alia*, that "*the amount earmarked for medical utilization and which amount does not amount to the benefit of the corporation...shall be excluded from its gross receipts for purposes of VAT. Only gross receipts constituting part of gross income of the recipient shall be subject to VAT.*" Respondent opines that he issued RMC No. 39-2010 dated May 21, 2010, revoking the said BIR Ruling, because the same is a wrong interpretation of the definition of HMO's gross receipts under RR No. 16-2005; and that the rule on non-retroactivity of rulings under Section 246 of the NIRC of 1997 should apply only when there is a valid interpretation made by respondent or his representative.

Respondent is clearly in error.

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[69] Refer to Exhibit "P-6", Docket – Vol. 2, at p. 734.
[70] Exhibit "P-31", Docket – Vol. 2, at p. 820 to 830.

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While it may be true that under the original provisions of RR No. 16-2005, it appears that the amounts earmarked and eventually paid by petitioner to the medical service providers should form part of gross receipts for VAT purposes, the same RR was later amended by the aforequoted RR No. 4-2007 dated February 7, 2007, which took effect on **April 6, 2007**,[71] so as to exclude the said amounts to form part of gross receipts. Correspondingly, beginning April 6, 2007, the same amounts as earmarked shall not form part of petitioner's gross receipts. Such being the case, BIR Ruling DA (VAT-054) 529-2008 issued on **December 15, 2008** is consistent with RR No. 16-2005, as amended by RR No. 4-2007.

In the same vein, as this Court already earlier pointed out, in the *Medicard* case, the Supreme Court has already confirmed that the amounts earmarked and paid by petitioner to medical service providers do not form part of gross receipts for VAT purposes.[72]

Thus, if there is any wrong interpretation, at all, of the definition of the HMOs' gross receipts, it is RMC No. 39-2010 dated May 21, 2010, being relied upon by respondent.

The application then of the rule on non-retroactivity of rulings under Section 246 of the NIRC of 1997 becomes even more reasonable. Said provision reads:

> "SEC. 246. *Non-Retroactivity of Rulings.* – **Any revocation, modification or reversal of** any of the rules and regulations promulgated in accordance with the preceding Sections or **any of the rulings or circulars promulgated by the Commissioner shall not be given retroactive application if the revocation, modification or reversal will be prejudicial to the taxpayers**, except in the following cases:
>
> (a) Where the taxpayer deliberately misstates or omits material facts from his return or any document required of him by the Bureau of Internal Revenue;

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[71] RR No. 4-2007 was published in the Manila Bulletin on March 22, 2007. Thus, counting fifteen (15) days therefrom, the same took effect on April 6, 2007, pursuant to Section 27 thereof.

[72] *Medicard Philippines, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 222743, April 5, 2017.

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(b) Where the facts subsequently gathered by the Bureau of Internal Revenue are materially different from the facts on which the ruling is based; or

(c) Where the taxpayer acted in bad faith." *(Emphases added)*

The foregoing provides that any revocation of a ruling by respondent shall not be given retroactive application if the revocation will prejudice the taxpayer. Clearly, the retroactive application of RMC No. 39-2010 dated May 21, 2010 will prejudice petitioner, as it will be made to pay the assessed VAT, including interests. Thus, no such retroactive application shall be made herein. Furthermore, there is no showing of the existence of any of the exceptions enumerated therein for the retroactive application of such revocation. Hence, the said RMC No. 39-2010 cannot be given a retroactive application. In any case, RMC No. 39-2010 is deemed invalidated by the doctrinal pronouncements in the *Medicard* case.

The subject VAT assessment has prescribed.

The period for the filing of quarterly VAT returns is provided in Section 114(A) of the NIRC of 1997, as amended, which reads:

"SEC. 114. *Return and Payment of Value-added Tax.* —

(A) *In General.* – **Every person liable to pay the value-added tax imposed under this Title shall file a quarterly return of the amount of his gross sales or receipts within twenty-five (25) days following the close of each taxable quarter prescribed for each taxpayer**: *Provided, however,* That VAT-registered persons shall pay the value-added tax on a monthly basis." *(Emphasis added)*

Below is the summary of the dates of filing of petitioner's relevant returns and the corresponding dates within which respondent should assess petitioner for deficiency taxes for the taxable year 2008, as follows:

Period	Actual date of filing of the pertinent tax return	Reckoning date of the 3-year prescriptive period[73]	End of the three-year prescriptive period
1st Quarter 2008	April 22, 2008[74]	April 25, 2008	April 25, 2011
2nd Quarter 2008	July 25, 2008[75]	July 25, 2008	July 25, 2011
3rd Quarter 2008	October 23, 2008[76]	October 25, 2008	October 28, 2011
4th Quarter 2008	January 26, 2009[77]	January 26, 2009	January 26, 2012

Even taking into consideration the *Waiver* dated October 11, 2011, which extended the period of assessment and/or collection until March 31, 2012, petitioner received the subject FAN only on **April 30, 2012**,[78] which is clearly beyond the three (3)-year prescriptive period under Section 203 of the NIRC of 1997, and the agreed upon period under the *Waiver*.

Thus, respondent's right to assess petitioner for any deficiency VAT for taxable year 2008 is already barred by prescription, when petitioner received the subject VAT assessment. Consequently, the subject FLD/FAN is void.

The Court cannot countenance the tax authorities' non-performance of their duties in the present case. The law provides for a statute of limitations on the assessment and collection of internal revenue taxes in order to safeguard the taxpayers against unreasonable examination, investigation, or assessment.[79] Thus, the law on prescription should be liberally construed and the exceptions thereto should perforce be strictly construed.[80]

While taxes are the lifeblood of the nation, the Court cannot allow tax authorities indefinite periods to assess and/or collect alleged unpaid taxes. Certainly, it is an injustice to leave any taxpayer in perpetual uncertainty

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[73] The last day prescribed by law for the filing of the tax return or actual date of filing the same, whichever comes later.
[74] Exhibit "P-8", Docket – Vol. 2, pp. 737 to 739.
[75] Exhibit "P-8-1", Docket – Vol. 2, pp. 740 to 742.
[76] Exhibit "P-8-2", Docket – Vol. 2, pp. 743 to 745.
[77] Exhibit "P-8-3", Docket – Vol. 2, pp. 748 to 750.
[78] Par. 9, Stipulation of Facts, JSFI, Docket – Vol. 1, p. 347; Exhibit "P-14", Docket – Vol. 2, pp. 760 to 764.
[79] *Commissioner of Internal Revenue vs. B.F. Goodrich Phils. Inc.*, G.R. No. 104171, February 24, 1999.
[80] *Id.*

whether he will be made liable for deficiency or delinquent taxes.[81]

Lastly, with the finding that the subject VAT assessment is invalid, it follows that the imposition of compromise penalty is likewise rendered void.

WHEREFORE, in light of the foregoing considerations, the instant *Petition for Review* is **GRANTED**. Accordingly, the FAN/FLD with *Assessment Notice* No. LTDO-122-VT-2008-00006 and *Details of Discrepancies* dated January 4, 2012 issued against petitioner, are **CANCELLED** and **SET ASIDE**.

Moreover, the FDDA dated September 23, 2015 issued by then Commissioner of Internal Revenue, Ms. Kim S. Jacinto-Henares, holding petitioner liable for deficiency VAT, inclusive of interest, in the aggregate amount of **₱387,937,975.14** for calendar year 2008, is **REVERSED** and **SET ASIDE**.

Respondent, his representatives, agents, or any person acting on his behalf are hereby **ENJOINED** from taking any further action against petitioner arising from the above-mentioned FAN/FLD and FDDA.

SO ORDERED.

Catherine T. Manahan

CATHERINE T. MANAHAN
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

Marian Ivy F. Reyes-Fajardo

MARIAN IVY F. REYES-FAJARDO
Associate Justice

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[81] *Supra*, Note 68.

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

ROMAN G. DEL ROSARIO
Presiding Justice