22-000183-0055

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

CTA CASE NO. 10844

CONVEYING AND PACKAGING CO. INC.,
Petitioner,

- versus -

NOTICE OF DECISION

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

To:

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

ATTY. DAYNE B. MEDINA
ATTY. SHEEHERAZADEE A. LABOR- MORAN
ATTY. JOSHUA Y. BAGOTSAY
Bureau of Internal Revenue-Revenue Region No. 7A
Room 516, Legal Division, Roof Deck, Fishermall
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Ortigas Center, 1605 Pasig City

GREETINGS:

You are hereby notified by these presents that on **May 26, 2025**, a Decision was rendered in the above-entitled case, copy of which is attached hereto.

Quezon City, Philippines, **May 26, 2025.**

Atty. Maria Johoanna F. Chan-Te
Executive Clerk of Court II

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

CONVEYING AND PACKAGING CO. INC.,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 10844

Members:

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

Promulgated:

MAY 26 2025 10:10 AM

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DECISION

CUI-DAVID, J.:

Before this Court is an *Amended Petition for Review*[1] filed on September 8, 2022, by petitioner Conveying and Packaging Co., Inc. ("**Petitioner**") against respondent Commissioner of Internal Revenue ("**CIR**" or "**Respondent**"), seeking to declare the tax assessment issued against it null and void and to quash or cancel the Warrant of Distraint and Levy (**WDL**) issued by respondent.

THE PARTIES

Petitioner is a corporation duly organized and existing under and by virtue of the laws of the Republic of the Philippines with principal place of business at Unit A 4/F Prosperity Center Building, 92A West Ave., Brgy. Phil-am, Quezon City.[2]

Respondent is the duly appointed CIR, who is charged with, among other powers and duties, the enforcement of

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1 Docket, pp. 113–121.
2 *Id.* at 186, Joint Stipulation of Facts and Issues (JSFI), par. 1.

revenue laws, the collection of national internal revenue taxes, and the power to decide tax protests. He holds office at the Bureau of Internal Revenue (**BIR**) National Office, Senator Miriam Defensor-Santiago Avenue, Diliman, Quezon City.[3]

THE FACTS

On April 19, 2017, respondent issued Letter of Authority (**LOA**) No. 038-2017-00000234, authorizing Revenue Officer (**RO**) Mary Anne Cruz and Group Supervisor (**GS**) Alfredo Santos to examine petitioner's books of accounts and other accounting records for taxable year (**TY**) 2015.[4] The LOA, signed by OIC-Regional Director (**RD**) Marina C. De Guzman, was received by a certain Dottie T. Rivera (**Ms. Rivera**) on April 21, 2017.

Petitioner filed a *Legal Petition Notice* dated April 25, 2017, questioning the validity of the LOA.[5]

On May 9, 2017, the *First Request for Presentation of Records* was issued.[6] Petitioner filed another *Legal Petition Notice* dated May 15, 2017, this time assailing the service of the said *First Request*.

In a *Memorandum* dated June 14, 2017, RO Mary Anne Cruz (**RO Cruz**) referred both *Legal Petition Notices* to the Chief of the Legal Division for an opinion.[7]

Meanwhile, respondent issued an undated *Second and Final Request for Presentation of Records,* which a certain Dorotea T. Rivera received on June 22, 2017.[8] In response, petitioner filed a *Legal Petition Notice* dated June 26, 2017, expressing concerns over the BIR officers' failure to address the issues raised in the two previous *Legal Petition Notices* it filed.[9]

On June 30, 2017, Oscar A. Aguilar, Chief of the Legal Division of Revenue Region No. 7, issued a *Memorandum* where he rendered an opinion upholding the validity of the LOA.[10]

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[3] *Id.*
[4] Exhibit "R-2", Docket, p. 385; BIR Records, p. 2.
[5] BIR Records, pp. 4–8.
[6] Exhibit "R-3", Docket, p. 387; BIR Records, p. 3.
[7] BIR Records pp. 234–238.
[8] Exhibit "R-4", Docket, p. 388; BIR Records, p. 41.
[9] BIR Records, pp. 43–46.
[10] *Id.* at 262.

In an undated *Memorandum,* RO Cruz and GS Alfredo Santos (**GS Santos**) recommended the issuance of a Preliminary Assessment Notice (**PAN**), attaching the *Revenue Officer's Audit Reports.*[11]

On February 22, 2018, a *Notice for Informal Conference* (**NIC**) was issued.[12] On March 1, 2018, petitioner filed another *Legal Petition Notice,* confirming receipt of a Letter captioned as *Notice for Informal Conference.*[13] Based on the undated *Memorandum* by RO Cruz,[14] the informal conference was held on March 5, 2018, and was attended by Ms. Rivera, her staff, and two representatives from a tax consultancy firm. However, the informal conference proceeded with only Ms. Rivera and her staff as the two representatives lacked BIR accreditation.

The PAN was issued on September 17, 2018,[15] and served on September 19, 2018, by leaving a copy with Annabelle Zalamea (**Ms. Zalamea**) at petitioner's office or regular place of business.[16] In a *Memorandum* received on September 21, 2018, RO Jo-Anlaren H. Alip (**RO Alip**) recommended returning the PAN to the Assessment Division for the issuance of a FAN/FLD.[17]

Petitioner filed a *Legal Petition Notice* dated September 28, 2018 against the PAN.[18]

Thus, on October 5, 2018, respondent issued the FAN/FLD.[19] Prior to its service, RD Marina C. De Guzman (**RD De Guzman**) acknowledged the filing of the *Legal Petition Notice* dated September 28, 2018, in a Letter dated October 11, 2018,[20] *viz.*:

> "In reply, we hereby acknowledge your letter and supporting documents submitted and could be given credence and shall form part of the tax docket. However, Formal Letter of Demand (FLD) No. 038-2018-B022-15 covering the above deficiency will be issued pursuant to Section 3.1.1 of Revenue Regulations No. 18-2013."

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[11] Exhibit "R-5", including submarkings, and "R-6" Docket, pp. 389–393; BIR Records, pp. 325–326.
[12] Exhibit "R-7", Docket, p. 394; BIR Records, p. 342.
[13] BIR Records, pp. 334–336.
[14] Exhibit "R-8", Docket, pp. 399–400; BIR Records, pp. 344–346.
[15] Exhibit "P-4", Docket, pp. 319–325; Exhibit "R-9", Docket, pp. 401–407; BIR Records, pp. 377–380.
[16] BIR Records, p. 381, Affidavit of Service of Preliminary Assessment Notice.
[17] *Id.* at 383.
[18] Exhibit "P-5", Docket, pp. 326–327; BIR Records, pp. 423–424.
[19] Exhibit "P-6", Docket, pp. 328–336; Exhibit "R-10", Docket, pp. 408–416; BIR Records, pp. 398–403.
[20] BIR Records, p. 450.

The FAN/FLD was served on October 15, 2018, by leaving a copy with Ms. Rivera.[21]

On October 16, 2018, petitioner filed a *Legal Petition Notice* against the FAN/FLD.[22] RD De Guzman acknowledged this in a *Letter* dated October 29, 2018, advising petitioner to file an administrative protest in case it disagrees with the assessment.[23] Another *Legal Petition Notice* was thus filed by petitioner on October 31, 2018, submitting additional documents.[24]

On November 8, 2018, petitioner filed another *Legal Petition Notice*,[25] stating that the caption "Legal Petition Notice" is in accordance with law and the Rules of Court. Petitioner argued on the improper form of the FAN/FLD, the shortened period of the informal conference, and the substance of the assessment.

The *Legal Petition Notices* dated October 31, 2018, and November 8, 2018, were both acknowledged by RD De Guzman and treated as requests for reconsideration.[26]

On February 28, 2019, respondent issued a second LOA, LOA No. 038-2019-00000336, authorizing RO Alip and GS Santos to examine petitioner's books of accounts and other accounting records for TY 2015. Ms. Zalamea received the LOA on the same day.[27] In response, petitioner filed another *Legal Petition Notice* dated March 14, 2019, reiterating its question about the LOA's form, that no prior appointment was made when the service was made, and that no audit program was provided upon the service of the LOA.

In an undated *Letter* stamped received by the Assessment Division on April 2, 2019, RO Alip recommended the issuance of a Final Decision on Disputed Assessment (**FDDA**).[28] However, the records are bereft of any copy of an actual FDDA.

Meanwhile, on April 1, 2019, petitioner filed a *Demand Letter* "invoking [its] legal right and demanding ... the preparation, signing and release of a Preliminary Collection

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[21] *Id.* at 404, Affidavit of Service of Formal Letter of Demand.
[22] Exhibit "P-7", Docket, pp. 337–341; BIR Records, pp. 409–413.
[23] BIR Records, p. 473.
[24] *Id.* at 483–487.
[25] Exhibit "P-11", Docket, pp. 349-361; BIR Records, pp. 488–500.
[26] BIR Records, p. 533.
[27] Exhibit "R-11", Docket, p. 417; BIR Records, p. 538.
[28] Exhibit "R-12", Docket, p. 418.

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Letter (**PCL**)."[29] This was accompanied by a proposed Agreement Form signed by petitioner's President, offering payment of P98,699.53 representing the deficiency Expanded Withholding Tax (**EWT**).[30] This demand was reiterated in a *Request Letter* filed by petitioner on April 10, 2019.

The *Demand Letter* and the *Request Letter* were both denied in a *Letter* dated May 8, 2019,[31] signed by Zenaida G. Ordinario, OIC-Chief of Assessment Division, on the ground that the assessment had not yet become final and executory; hence, a PCL could not be issued.

On May 24, 2019, petitioner filed another *Request Letter*,[32] disagreeing on the non-issuance of the PCL and requesting a Certificate of Delinquencies/Tax Liabilities for it to avail of the Tax Amnesty on Delinquencies under Republic Act (**RA**) No. 11213.

On September 20, 2019, petitioner filed a *Compliance Letter for RA 11213*.[33] In the letter, petitioner stated that its request for the issuance of a Certificate of Delinquencies/Tax Liabilities was denied. Petitioner attached the following documents:

1. An unsigned Certificate of Delinquencies/Tax Liabilities[34] for the signature of the concerned RO;
2. *Tax Amnesty Return on Delinquencies Pursuant to Republic Act No. 11213* (BIR Form No. 2118-DA) showing a tax amnesty amount of ₱65,695.96;[35]
3. *Acceptance Payment Form Pursuant to Republic Act No. 11213* (BIR Form No. 0621-DA);[36] and
4. Bank Payment Slip.[37]

On March 6, 2020, petitioner filed a *Formal Demand to Release CTD* dated March 4, 2020.[38] This was followed by petitioner's filing of *Last Opportunity Before Suits* on March 12, 2020[39] and a *Final Notice Before Suits* on March 10, 2020.[40]

[29] BIR Records, p. 590.
[30] *Id.* at 589.
[31] Exhibit "P-9", Docket, pp. 347–348; BIR Records, pp. 596–597.
[32] BIR Records, pp. 614–618.
[33] *Id.* at 712–714.
[34] *Id.* at 711.
[35] Exhibit "P-8", Docket, p. 344.
[36] Exhibit "P-8-A", Docket, p. 345.
[37] Exhibit "P-8-B", Docket, p. 346.
[38] BIR Records, pp. 731–732.
[39] *Id.* at 752–763.
[40] *Id.* at 768–773.

On March 25, 2022, respondent issued the assailed WDL against petitioner, seeking the satisfaction of deficiency taxes in the amount of ₱36,124,882.24.[41]

On March 28, 2022, petitioner filed an uncaptioned *Letter* questioning the issuance of the WDL.[42] This was followed by petitioner's filing of a *Motion for Reconsideration* dated March 25, 2022 on March 29, 2022.[43]

The *Letter* and the *Motion for Reconsideration* were both denied in a *Letter* dated May 6, 2022, signed by Dr. Alice S.A. Gonzales, Chief of Collection Division of Revenue Region 7A.[44] The *Letter* stated that the issuance of the WDL was proper as the assessment had already become final and executory with the withdrawal of petitioner's *Protest* based on its *Demand Letter* dated March 29, 2019.

On May 23, 2022, respondent then issued multiple Warrants of Garnishment (**WOG**) against petitioner.[45]

On June 3, 2022, petitioner filed an uncaptioned letter dated May 31, 2022, reiterating its protest against the issuance of the WDL and WOGs, and clarifying that the withdrawal of its protest pertained only to its alleged deficiency EWT.

PROCEEDINGS BEFORE THE COURT

On April 25, 2022, petitioner filed a *Petition for Review*.[46]

Summons were issued to respondent on May 4, 2022.[47]

As the *Petition for Review* initially contained a prayer to suspend the collection of taxes, petitioner filed a *Manifestation* on June 7, 2022, clarifying that the inclusion of such a prayer was inadvertent.[48]

On July 4, 2022, respondent filed his *Answer*.[49]

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[41] Exhibit "R-14", Docket, p. 420; BIR Records, p. 785.
[42] BIR Records, p. 799–804.
[43] Exhibit "R-15", Docket, pp. 421-426; BIR Records, pp. 818–823.
[44] BIR Records, p. 834.
[45] *Id.* at 841–847.
[46] Docket, pp. 6-14, including annexes.
[47] *Id.* at 61.
[48] *Id.* at 66–68.
[49] *Id.* at 76–85.

On September 8, 2022, petitioner filed a *Motion for Leave to File Amended Petition for Review*[50] with attached *Amended Petition for Review.*[51] The Court granted the motion on October 27, 2022.[52] In turn, respondent filed his *Amended Answer* on November 22, 2022.[53]

Respondent[54] and petitioner[55] filed their respective *Pre-Trial Briefs* on March 3, 2023, and March 6, 2023. The Pre-Trial Conference was held on March 9, 2023,[56] followed by the filing of the *Joint Stipulation of Facts and Issues* on April 11, 2023.[57] On May 18, 2023, the Court issued the *Pre-Trial Order.*[58]

On May 29, 2023, the Philippine Mediation Center Office issued a notice of *No Agreement to Mediate.*[59]

On August 7, 2023, respondent filed his *Explanation and Compliance*, thus elevating the BIR Records consisting of one folder and 889 pages.[60]

On the hearing dated August 8, 2023, petitioner presented its witness, Ms. Zalamea, who testified through her judicial affidavit.[61]

Despite being ordered four times to file a motion to commission an independent Certified Public Accountant (**ICPA**),[62] petitioner failed to do so, and petitioner's right to present an ICPA is deemed waived by the Court.[63]

On October 11, 2023, petitioner filed its *Formal Offer of Documentary Evidence*,[64] which was resolved by the Court on January 25, 2024.[65]

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[50] *Id.* at 89–92.
[51] *Id.* at 113–121.
[52] *Id.* at 128.
[53] *Id.* at 129–138.
[54] *Id.* at 141–150.
[55] *Id.* at 151–161.
[56] *Id.* at 183–185.
[57] *Id.* at 186–197.
[58] *Id.* at 200–205.
[59] *Id.* at 206.
[60] *Id.* at 227–229.
[61] *Id.* at 291–292.
[62] *Id.* at 183–185, Order dated March 9, 2023; 210, Resolution dated June 7, 2023; 214–215, Resolution dated July 10, 2023; 291–292, Order dated August 8, 2023.
[63] *Id.* at 308, Resolution dated September 15, 2023.
[64] *Id.* at 312–317.
[65] *Id.* at 369–370.

On April 2, 2024, respondent presented his witness, RO Mary Grace J. Soriano, who testified through her judicial affidavit.[66]

On April 8, 2024, respondent filed his *Formal Offer of Evidence*,[67] which was resolved by the Court on July 17, 2024.[68]

Respondent filed his *Memorandum* on August 27, 2024,[69] while petitioner belatedly filed its *Memorandum* on September 11, 2024.[70]

The case was submitted for decision on October 2, 2024.

THE ISSUE

The parties stipulated the following issue for this Court's resolution, *viz.*:[71]

> Whether or not petitioner is liable to pay the alleged Deficiency Income Tax and Expanded Withholding Tax in the aggregate amount of ₱36,124,882.24, including interests and surcharge for taxable year 2015.

PETITIONER'S ARGUMENTS

In its *Memorandum,* petitioner argues that the FAN and FLD are void for failing to state the factual and legal basis. According to petitioner, its submissions "proved to be futile as [r]espondent did not bother to check and review as [r]espondent had resolved to make the assessments against [it] final, without regard to process." Petitioner points out that the items in the FAN/FLD are mere reiterations of the items in the PAN.

The Petitioner also states that it has already paid the deficiency EWT assessment, which should have been removed from the WDL. Petitioner also argues that it is not liable for alleged deficiency income taxes because the documentation on the alleged unaccounted and unsupported expenses and creditable withholding taxes has already been submitted to respondent as attachments to petitioner's *Legal Petition Notices.*

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66 *Id.* at 375–376, Order dated April 2, 2024.
67 *Id.* at 378–384.
68 *Id.* at 444–445.
69 *Id.* at 446–459.
70 *Id.* at 465–473.
71 *Id.* at 187, JSFI, Joint Statement of Issue to be Tried or Resolved.

RESPONDENT'S ARGUMENTS

In his *Answer* and *Memorandum,* respondent argues that the Court has no jurisdiction over the instant Petition for Review. According to respondent, petitioner should have waited 180 days from the filing of a Motion for Reconsideration on the issuance of the WDL before it could have elevated its appeal to the Court of Tax Appeals (**CTA**).

Respondent maintains that the assessment is valid and has factual and legal basis. Respondent also states that petitioner's application for Tax Amnesty on Delinquencies on its expanded withholding tax was invalid.

THE COURT'S RULING

The instant *Petition for Review* is impressed with merit.

The Court has jurisdiction over the instant case.

Before delving into the merits of the case, the Court must first determine whether it has jurisdiction.

Section 7(a)(1) and (2) of RA No. 1125,[72] as amended by RA No. 9282,[73] vests the CTA with exclusive appellate jurisdiction over decisions and inactions of the CIR, as follows:

> SEC. 7. *Jurisdiction.* – **The CTA shall exercise**:
>
> (a) **Exclusive appellate jurisdiction to review by appeal, as herein provided**:
>
> (1) **Decisions of the [CIR] in cases involving disputed assessments,** refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or **other matters** arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue;
>
> (2) **Inaction by the [CIR] in cases involving disputed assessments**, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or **other matters** arising under the National Internal Revenue Code or other laws

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72 An Act Creating the Court of Tax Appeals, June 16, 1954.

73 An Act Expanding the Jurisdiction of the Court of Tax Appeals (CTA), Elevating Its Rank to the Level of a Collegiate Court with Special Jurisdiction and Enlarging Its Membership, Amending for the Purpose Certain Sections of Republic Act No. 1125, as Amended, Otherwise Known as the Law Creating the Court of Tax Appeals, and for Other Purposes, March 30, 2004.

> administered by the Bureau of Internal Revenue, where the National Internal Revenue Code provides a specific period of action, in which case the inaction shall be deemed a denial; *(Emphasis supplied)*

The above provision clearly establishes that the CTA has jurisdiction not only over decisions of the CIR involving assessments and refunds but also over "other matters" arising under the NIRC or related laws. In *Philippine Journalists, Inc. v. Commissioner of Internal Revenue,*[74] the Supreme Court held that Section 7(1) of RA No. 1125 gives the CTA the jurisdiction to determine the validity of a WDL issued by the BIR.

Accordingly, the Court has jurisdiction to review the validity of the WDL issued against petitioner.

Moreover, Section 11 of RA No. 1125, as amended by RA No. 9282, sets the period for filing an appeal:

> SEC. 11. *Who May Appeal; Mode of Appeal; Effect of Appeal.* – **Any** **<u>party adversely affected</u>** **by a decision, ruling, or inaction of the [CIR]...**may file an **appeal with the CTA within thirty (30) days after the receipt of such decision or ruling or after the expiration of the period fixed by law for action as referred to in Section 7(a)(2) herein. ...** *(Emphasis supplied)*

The above provisions are likewise found in Section 3(a)(1)(2), Rule 4,[75] and Section 3(a), Rule 8[76] of the Revised Rules of the Court of Tax Appeals.

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[74] G.R. No. 162852, December 16, 2004 [Per J. Ynares-Santiago, First Divison], cited in *Commissioner of Internal Revenue v. Manila Medical Services, Inc. (Manila Doctors Hospital)*, G.R. No. 255473, February 13, 2023 [Per J. Singh, Third Division].

[75] *Section 3. Cases Within the Jurisdiction of the Court in Divisions.* — The Court in Divisions shall exercise:
(a) Exclusive original or appellate jurisdiction to review by appeal the following:
(1) Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or <u>other matters</u> arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue;
(2) Inaction by the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue, where the National Internal Revenue Code or other applicable law provides a specific period for action: ...

[76] Sec. 3. Who may appeal; period to file petition. — (a) A party adversely affected by a decision, ruling, or the inaction of the Commissioner of Internal Revenue on disputed assessments or claims for refund of internal revenue taxes, or by a decision or ruling of the Commissioner of Customs, the Secretary of Finance, the Secretary of Trade and Industry, the Secretary of Agriculture, or a Regional Trial Court in the exercise of its original jurisdiction may appeal to the Court by petition for review filed within thirty days after receipt of a copy of such decision or ruling, or expiration of the period fixed by law for the Commissioner of Internal Revenue to act on the disputed assessments. In case of inaction of the Commissioner of Internal Revenue on claims for refund of internal revenue taxes erroneously or illegally collected, the taxpayer must file a petition for review within the two-year period prescribed by law from payment or collection of the taxes.

Based on the foregoing, the Court has exclusive jurisdiction to review the WDL by appeal, provided that the appeal is filed within thirty (30) days from petitioner's receipt of the WDL.

In the instant case, respondent issued the assailed WDL seeking the satisfaction of deficiency taxes in the amount of ₱36,124,882.24 on **March 25, 2022.**[77] Petitioner received the WDL on the same day. Considering that the 30th day, April 24, 2022, fell on a Sunday, the *Petition for Review* filed on the next working day, **April 25, 2022,** was timely.[78]

The FLD/FAN and WDL are void for violating petitioner's fundamental right to due process.

Section 228 of the NIRC of 1997, as amended,[79] mandates that the taxpayer be informed in writing of the law and facts on which the assessment is based; otherwise, the assessment is void.[80] As a requirement of due process, this rule allows the taxpayer to make an effective protest.[81] Moreover, it must be emphasized that failure to comply with Section 228 renders the assessment void and finds no validation in any provision in the Tax Code.[82]

To implement Section 228, Section 3 of Revenue Regulations (**RR**) No. 12-1999,[83] as amended by RR Nos. 18-2013[84] and 7-2018,[85] expressly requires that the FLD/FAN must state the factual and legal bases of the assessment; otherwise, it is void. The pertinent portion reads:

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77 Exhibit "R-14", Docket, p. 420; BIR Records, p. 785.

78 Docket, pp. 6–14, including annexes.

79 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:

....

The taxpayers shall be informed in writing of the law and the facts on which the assessment is made; otherwise, the assessment shall be void. (*Emphasis supplied*)

80 *Commissioner of Internal Revenue v. Avon Products Manufacturing, Inc.*, G.R. Nos. 201398–99 & 201418–19, October 3, 2018 [Per J. Leonen, Third Division].

81 *Commissioner of Internal Revenue v. Spouses Magaan*, G.R. No. 232663, May 3, 2021 [Per J. Leonen, Third Division].

82 *Commissioner of Internal Revenue v. Spouses Magaan*, G.R. No. 232663, May 3, 2021 [Per J. Leonen, Third Division] citing *Commissioner of Internal Revenue v. Reyes*, G.R. Nos. 159694 & 163581, January 27, 2006 [Per CJ Panganiban, First Division].

83 Implementing the Provisions of the National Internal Revenue Code of 1997 Governing the Rules on Assessment of National Internal Revenue Taxes, Civil Penalties and Interest and the Extra-Judicial Settlement of a Taxpayer's Criminal Violation of the Code Through Payment of a Suggested Compromise Penalty, September 6, 1999.

84 Amending Certain Sections of Revenue Regulations No. 12-99 Relative to the Due Process Requirement in the Issuance of a Deficiency Tax Assessment, November 28, 2013.

85 Amending Certain Sections of Revenue Regulations No. 12-99, as Amended by Revenue Regulations No. 18-13, Relative to the Due Process Requirement in the Issuance of a Deficiency Tax Assessment, January 22, 2018.

> SEC. 3. *Due Process Requirement in the Issuance of a Deficiency Tax Assessment.* –
>
> 3.1 Mode of procedure in the issuance of a deficiency tax assessment:
>
> ....
>
> 3.1.2 *Preliminary Assessment Notice (PAN).* – If after review and evaluation by the Commissioner or his duly authorized representative, as the case may be, it is determined that there exists sufficient basis to assess the taxpayer for any deficiency tax or taxes, the said Office shall issue to the taxpayer a Preliminary Assessment Notice (PAN) for the proposed assessment. It shall show in detail the facts and the law, rules and regulations, or jurisprudence on which the proposed assessment is based (see illustration in ANNEX 'A' hereof).
>
> ....
>
> 3.1.4 *Formal Letter of Demand and Final Assessment Notice (FLD/FAN).* – The Formal Letter of Demand and Final Assessment Notice (FLD/FAN) shall be issued by the Commissioner or his duly authorized representative. **The FLD/FAN** calling for payment of the taxpayer's deficiency tax or taxes **<u>shall state the facts, the law</u>, rules and regulations, or jurisprudence <u>on which the assessment is based, *otherwise, the assessment shall be void*</u>** (see illustration in ANNEX 'B' hereof). (*Emphasis supplied*)

Although Section 228 of the NIRC of 1997, as amended, does not require a taxpayer to respond to a PAN, the BIR is required to consider any reply filed within the 15-day period allotted to taxpayers. [86] This consideration is not merely procedural; rather, it upholds due process rights and promotes a more efficient resolution of tax disputes by shortening the assessment procedure.

In *Commissioner of Internal Revenue v. Avon Products Manufacturing, Inc.* (*Avon*),[87] the Supreme Court underscored that while the Commissioner is not bound to accept the taxpayer's explanations, any rejection must be justified with specific reasons based on facts appearing in the record. The Supreme Court held:

[86] *Commissioner of Internal Revenue v. Avon Products Manufacturing, Inc.*, G.R. Nos. 201398–99 & 201418–19, October 3, 2018 [Per J. Leonen, Third Division].

[87] *Id.*

Tax assessments issued in violation of the due process rights of a taxpayer are null and void. While the government has an interest in the swift collection of taxes, the Bureau of Internal Revenue and its officers and agents cannot be overreaching in their efforts, but must perform their duties in accordance with law, with their own rules of procedure, and always with regard to the basic tenets of due process.

The 1997 National Internal Revenue Code, also known as the Tax Code, and revenue regulations allow a taxpayer to file a reply or otherwise to submit comments or arguments with supporting documents at each stage in the assessment process. **Due process requires the Bureau of Internal Revenue to *consider* the defenses and evidence submitted by the taxpayer and to render a decision based on these submissions. Failure to adhere to these requirements constitutes a denial of due process and taints the administrative proceedings with <u>invalidity</u>.**

....

The Bureau of Internal Revenue is the primary agency tasked to assess and collect proper taxes, and to administer and enforce the Tax Code. To perform its functions of tax assessment and collection properly, it is given ample powers under the Tax Code, such as the power to examine tax returns and books of accounts, to issue a subpoena, and to assess based on the best evidence obtainable, among others. However, these powers must 'be exercised reasonably and [under] the prescribed procedure.' **The Commissioner and revenue officers must strictly comply with the requirements of the law, with the Bureau of Internal Revenue's own rules, and with due regard to taxpayer's constitutional rights.**

....

In carrying out these quasi-judicial functions, **the Commissioner is required to 'investigate facts or ascertain the existence of facts, hold hearings, weigh evidence, and draw conclusions from them as basis for their official action and exercise of discretion in a judicial nature.'** Tax investigation and assessment necessarily demand the observance of due process because they affect the proprietary rights of specific persons.

....

In *Ang Tibay v. The Court of Industrial Relations*, this Court observed that **although quasi-judicial agencies 'may be said to be free from the rigidity of certain procedural requirements[, it] does not mean that it can, in justiciable cases coming before it, entirely ignore or disregard the fundamental and essential requirements of due process in trials and investigations of an administrative character.'** It then enumerated the fundamental requirements of due process that must be respected in administrative proceedings:

(1) The party interested or affected must be able to present his or her own case and submit evidence in support of it.

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(2) **The administrative tribunal or body must *consider* the evidence presented.**
(3) There must be evidence supporting the tribunal's decision.
(4) The evidence must be substantial or 'such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.'
(5) The administrative tribunal's decision must be rendered on the evidence presented, or at least contained in the record and disclosed to the parties affected.
(6) The administrative tribunal's decision must be based on the deciding authority's own independent consideration of the law and facts governing the case.
(7) **The administrative tribunal's decision is rendered in a manner that the parties may *know* the various issues involved and the reasons for the decision.**

....

The last requirement relating to the form and substance of the decision is <u>the decision-maker's *'duty to give reason'*</u> to enable the affected person to understand how the rule of fairness has been administered in his [or her] case, to expose the reason to public scrutiny and criticism, and <u>to ensure that the decision will be thought through by the decision-maker</u>.

....

Administrative due process is anchored on fairness and equity in procedure. It is satisfied if the party is properly notified of the charge against it and is given a fair and reasonable opportunity to explain or defend itself. Moreover, it **demands that the party's defenses be *considered*** by the administrative body in making its conclusions, **and that the party be *sufficiently informed* of the reasons for its conclusions.**

....

The importance of providing taxpayer with adequate written notice of his or her tax liability is undeniable. **Under Section 228, it is explicitly required that the taxpayer be informed in writing of the law and of the facts on which the assessment is made; otherwise, the assessment shall be void.** Section 3.1.2 of Revenue Regulation No. 12-99 requires the Preliminary Assessment Notice to show in detail the facts and law, rules and regulations, or jurisprudence on which the proposed assessment is based. Further, **Section 3.1.4 requires the Final Letter of Demand must state the facts and law on which it is based; otherwise, the Final Letter of Demand and Final Assessment Notices themselves shall be void.** Finally, Section 3.1.6 specifically requires that the decision of the Commissioner or of his or her duly authorized representative on a disputed assessment shall state the facts and law, rules and regulations, or jurisprudence on which the decision is based. Failure to do so would invalidate the Final Decision on Disputed Assessment.

> **'The use of the word 'shall' in Section 228 of the [National Internal Revenue Code] and in [Revenue Regulations] No. 12-99 indicates that the requirement of informing the taxpayer of the legal and factual bases of the assessment and the decision made against him [or her] is mandatory.'** This is an essential requirement of due process and applies to the Preliminary Assessment Notice, Final Letter of Demand with the Final Assessment Notices, and the Final Decision on Disputed Assessment.
>
> ....
>
> The facts demonstrate that Avon was deprived of due process. It was not fully apprised of the legal and factual bases of the assessments issued against it. **The Details of Discrepancy attached to** the Preliminary Assessment Notice, as well as **the Formal Letter of Demand with Final Assessment Notices, did not even comment or address the defenses and documents submitted by Avon. Thus, Avon was left unaware on how the Commissioner or her authorized representatives appreciated the explanations or defenses raised in connection with the assessments.** There was clear inaction of the Commissioner at every stage of the proceedings.
>
> ....
>
> It is true that the Commissioner is not obliged to accept the taxpayer's explanations, as explained by the Court of Tax Appeals. **However, when he or she rejects these explanations, he or she must give some reason for doing so. He or she must give the particular facts upon which his or her conclusion are based, and those facts must appear in the record.**
>
> ....
>
> **The Commissioner's total disregard of due process rendered the identical Preliminary Assessment Notice, Final Assessment Notices,** and Collection Letter **null and void, and of no force and effect.** (*Emphasis supplied*)

The Supreme Court held in *Avon* that respondent or his duly authorized representative must perform assessment functions with strict adherence to the law and BIR procedures, and with due regard for the basic tenets of due process. This requires respondent to consider the taxpayer's defenses and evidence and provide a reasoned explanation if these are rejected.

In this case, the PAN dated September 17, 2018,[88] found petitioner liable for ₱35,870,350.63 in deficiency income taxes and EWT for taxable year 2015, broken down as follows:

hr

[88] Exhibit "P-4", Docket, pp. 319–325; Exhibit "R-9", Docket, pp. 401–407; BIR Records, pp. 377–380.

	Basic tax	Interest	Total
Income tax	₱24,908,237.40	₱10,864,086.01	₱35,772,323.41
EWT	65,965.96	32,061.26	98,027.22
Total	**₱24,974,203.36**	**₱10,896,147.27**	**₱35,870,350.63**

Petitioner filed its *reply* to PAN, denominated as a "*Legal Petition Notice*" dated September 28, 2018.[89] The BIR, through RD De Guzman, acknowledged receipt of the *reply* in a Letter dated October 11, 2018,[90] stating:

> "In reply, we hereby acknowledge your letter and supporting documents submitted and could be given credence and shall form part of the tax docket. However, Formal Letter of Demand (FLD) No. 038-2018-B022-15 covering the above deficiency will be issued pursuant to Section 3.1.1 of Revenue Regulations No. 18-2013."

While acknowledging receipt of petitioner's *reply* to PAN and the supporting documents attached thereto, the tenor of the October 11, 2018 Letter suggested that a FAN/FLD would nevertheless be issued, without any indication that the merits of petitioner's arguments in the PAN were considered.

Indeed, the FLD dated October 5, 2018,[91] notably issued before the Letter, maintained the same basic deficiency tax assessment of ₱24,974,203.36 as the PAN, merely adjusting the interest, bringing the total amount due to ₱36,124,882.24, *viz.*:

	Basic Tax	Interest	Total
Income tax	₱24,908,237.40	₱11,117,945.31	₱36,026,182.71
EWT	65,965.96	32,733.57	98,699.53
Total	**₱24,974,203.36**	**₱11,150,678.88**	**₱36,124,882.24**

The Details of Discrepancies attached to the FLD were identical to those in the PAN, with no indication that respondent considered petitioner's *reply*. In essence, the BIR merely reiterated its original findings, without addressing petitioner's rebuttals, an indication that respondent failed to consider petitioner's arguments when he issued the FLD/FAN. Thus, petitioner was left unaware of how respondent or the BIR appreciated its explanations or defenses, in violation of its right to administrative due process.

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89 Exhibit "P-5", Docket, pp. 326–327; BIR Records, pp. 423–424.
90 BIR Records, p. 450.
91 Exhibit "P-6", Docket, pp. 328–336; Exhibit "R-10", Docket, pp. 408–416; BIR Records, pp. 398–403.

As emphasized in *Avon*, due process requires not only informing the taxpayer of the factual and legal bases of the assessment, but also considering any explanation or evidence submitted in response. Although the BIR is not obliged to accept the taxpayer's defense, it must explain any rejection with specific factual and legal grounds, which must be reflected in the record. The right to be heard becomes meaningless if the taxpayer's submissions are ignored.

The PAN is not a mere procedural formality but an integral part of procedural due process.[92] It gives both the taxpayer and the BIR a genuine opportunity to resolve issues before a final assessment is made.[93] Ignoring the taxpayer's reply reduces this safeguard to an empty ritual, thereby undermining the integrity of the assessment process.

Here, a side-by-side review of the PAN and FLD/FAN, including their respective Details of Discrepancies,[94] reveals identical computations of the deficiency tax assessment, without any acknowledgment of petitioner's submitted explanations and evidence in the *reply* to the PAN. Respondent's disregard of these submissions confirms that due process was not observed, rendering both the FLD/FAN and the resulting WDL void.

As the Supreme Court has affirmed, "*between the power of the State to tax and an individual's right to due process, the scale favors the right of the taxpayer to due process.*"[95]

Given that the deficiency tax assessment against petitioner is void for failure to observe due process, the Court finds no reason to delve into its merits. Consequently, the WDL, having been issued under a void assessment, **has no legal effect**.

The principle of due process furnishes a standard to which governmental action should conform in order to impress it with the stamp of validity. Fidelity to such standards must be the

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92 *Commissioner of Internal Revenue v. Unioil Corporation*, G.R. No. 204405, August 4, 2021 [Per J. Hernando, Second Division].

93 See *Commissioner of Internal Revenue v. Avon Products Manufacturing, Inc.*, G.R. Nos. 201398–99 & 201418–19, October 3, 2018 [Per J. Leonen, Third Division].

94 Docket, pp. 21–35, vis-à-vis pp. 45–57.

95 *Commissioner of Internal Revenue v. Villanueva*, G.R. No. 249540, February 28, 2024 [Per J. Caguioa, Third Division] citing *Commissioner of Internal Revenue v. Fitness by Design, Inc.*, G.R. No. 215957, November 9, 2016 [Per J. Leonen, Second Division].

overriding concern of government agencies.[96] While indeed the government has an interest in the swift collection of taxes, its assessment and collection should be exercised justly and fairly and always in strict adherence to the requirements of the law and of the BIR's own rules.[97]

WHEREFORE, in light of the foregoing, the instant *Petition for Review* is **GRANTED**.

Accordingly, the Formal Letter of Demand with Assessment Notices dated October 5, 2018, the Warrant of Distraint and/or Levy dated March 25, 2022, and the Warrants of Garnishment dated May 23, 2022, are hereby **CANCELLED** and **SET ASIDE**. Further, respondent's decision, as embodied in the *Letter* dated May 6, 2022, stating that the issuance of the Warrant of Distraint and/or Levy was proper and the assessment had become final and executory, is **REVERSED** and **SET ASIDE**.

Respondent or any person acting on his behalf is **ENJOINED** and **PROHIBITED** from proceeding with the collection of taxes in the above-captioned case.

SO ORDERED.

LANEE S. CUI-DAVID
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

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96 *Mabuhay Textile Mills Corporation v. Ongpin, et al.*, G.R. No. L-67784, February 28, 1986 [Per J. Gutierrez, Jr., First Division].

97 *Commissioner of Internal Revenue v. Avon Products Manufacturing, Inc.*, G.R. Nos. 201398–99 & 201418–19, October 3, 2018 [Per J. Leonen, Third Division].

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