



**Atty. Fermo B. Avila**

## **TAX LAW FOR BUSINESS**

*BDB Law's "Tax Law for Business" appears in the opinion section of **Business Mirror** every Thursday.*

### **Violation of due process: An inexistent assessment bears no fruit**

Mother Nature has her methods of transforming things. A seed becomes a tree, which, in turn, bears fruits. The seed undergoes certain processes, such as germination and photosynthesis, until it becomes a fruit-bearing tree. When its fruits mature, some or all of its fruits are harvested and eaten, either by animals or by humans. The fruits eaten by animals are secreted, thereby planting a new generation of seedlings, a process that eventually leads back to the seed-to-fruit cycle.

Similarly, the government has its methods of transforming the properties of its taxpayers into goods, services, and infrastructure to promote the general welfare and well-being of the people. Apart from the voluntary payment system, the government issues an assessment against a taxpayer, and the assessment becomes the basis for the collection of taxes. The taxes collected are allocated to the different branches of the government for the payment of salaries of government employees, maintenance and operating expenses, and infrastructure projects. These expenditures provide the people the necessary goods and services for their well-being, thereby enabling them to accumulate more properties, a process that eventually leads back to the private-property-to-general-welfare cycle.

However, the government does not have an unbridled power to collect taxes. Our present constitution requires that due process must be observed before a person may be deprived of his property. Thus, taxes may only be collected by observing the taxpayers' right to due process. But, first, what is due process in relation to the collection of taxes? The word "due" means "of proper quality or extent, or adequate;" on the other hand, the word "process" refers to "a series of actions or steps taken in order to achieve a particular end." Thus, it may be

inferred that, in relation to collection of taxes, “due process” pertains to the adequate series of actions or steps taken in order to achieve a particular end, which is the collection of taxes.

So, what happens if due process is violated?

The Supreme Court, in GR 197945 and 204119-20, canceled the assessments and enjoined the Commissioner of Internal Revenue from collecting the taxes pertaining to the canceled assessments as the CIR violated the taxpayers’ right to due process. In the said case, the SC enumerated instances where the taxpayers’ right to due process was violated. There is a violation of the taxpayer’s right to due process under the following instances: (i) when the assessment fails to state the factual and legal bases for the assessment; (ii) when the assessment was sent to the taxpayer company’s former address; or (iii) when there was no assessment issued prior to the issuance of the collection letters.

In the aforementioned case, the SC held that an invalid assessment, such as when the assessment fails to state the factual and legal bases for the assessment, or when the assessment was sent to the taxpayer company’s former address, bears no valid fruit. And, if an invalid assessment bears no fruit, with more reason will no such fruit arise if there was no assessment in the first place.

Furthermore, the SC also held that “taxes must be collected reasonably and in accordance with the prescribed procedure. Verily, pursuant to the lifeblood doctrine, the Court has allowed tax authorities ample discretion to avail themselves of the most expeditious way to collect the taxes, including summary processes, with as little interference as possible. However, the Court, at the same time, has not hesitated to strike down these processes in cases wherein tax authorities disregarded due process. “The law imposes a substantive, not merely a formal, requirement. To proceed heedlessly with tax collection without first establishing a valid assessment is evidently violative of the cardinal principle in administrative investigations; that taxpayers should be able to present their case and adduce supporting evidence.”

\*\*\*\*

*The author is a junior associate of Du-Baladad and Associates Law Offices (BDB Law), a member-firm of WTS Global.*

*The article is for general information only and is not intended, nor should be construed as a substitute for tax, legal or financial advice on any specific matter. Applicability of this article to any actual or particular tax or legal issue should be supported therefore by a professional*

study or advice. If you have any comments or questions concerning the article, you may e-mail the author at [fermo.avila@bdblawn.com.ph](mailto:fermo.avila@bdblawn.com.ph) or call 403-2001 local 150.