

2010 – 2015
TAXATION BAR EXAM QUESTIONS
ON
ESTATE TAX

Don Fortunato, a widower, died in May, 2011. In his will, he left his estate of P100 million to his four children. He named his compadre, Don Epitacio, to be the administrator of the estate. When the BIR sent a demand letter to Don Epitacio for the payment of the estate tax, he refused to pay

claiming that he did not benefit from the estate, he not being an heir. Forthwith, he resigned as administrator. As a result of the resignation, who may be held liable for the payment of the estate tax? (2011 Bar Question)

- (A) Don Epitacio since the tax became due prior to his resignation.
- (B) The eldest child who would be reimbursed by the others.
- (C) All the four children, the tax to be divided equally among them.
- (D) The person designated by the will as the one liable.

SUGGESTED ANSWER:

- (C) All the four children, the tax to be divided equally among them.

Don Sebastian, single but head of the family, Filipino, and resident of Pasig City, died intestate on November 15, 2009. He left the following properties and interests:

House and lot (family home) in Pasig	P 800,000
Vacation house and lot in Florida, USA	1,500,000
Agricultural land in Naic, Cavite which he inherited from his father	2,000,000
Car which is being used by his brother in Cavite	500,000
Proceeds of life insurance where he named his estate as irrevocable beneficiary	1,000,000
Household furnitures and appliances	1,000,000
Claims against a cousin who has assets of P10,000 and liabilities of P100,000	100,000
Shares of stock in ABC Corp, a domestic enterprise	100,000
The expenses and charges on the estate are as follows:	
Funeral Expenses	P 250,000
Legal fees for the settlement of the estate	500,000
Medical expenses of last illness	600,000
Claims against the estate	300,000

The compulsory heirs of Don Sebastian approach you and seek your assistance in the settlement of his estate for which they have agreed to the above-stated professional fees. Specifically, they request you to explain and discuss with them the following questions. You oblige:

- a. What are the properties and interests that should be included in the computation of the gross estate of the decedent? Explain. (2.5%)
- b. What is the net taxable estate of the decedent? Explain. (2.5%)
- c. When is the due date for filing and payment of the applicable tax return and tax? Are these dates extendible? If so, under what conditions or requirements? (2.5%)
- d. If X, one of the compulsory heirs, renounces his share in the inheritance in favor of the other co-heirs, is there any tax implication of X's renunciation? What about the other coheirs? (2.5%) (2010 Bar Question)

SUGGESTED ANSWER:

- a. All the properties and interest enumerated in the problem should be included in the gross estate of the decedent. The decedent is a citizen of the Philippines and the law requires that the composition in the gross estate of the decedent shall include all kinds of properties wherever situated and to the extent of the interest that he has thereon at the time of his death.
- b. The net taxable estate of the decedent is Php 3.7M. From the gross estate of Php 7.0M, the following deductions are allowed: (1) Funeral expenses of Php 200K which is the maximum allowed by law, (2) legal fees amounting to Php 500K; (3) medical expenses not to exceed Php 500K incurred one year prior to death and substantiated with receipts; (4) claims against the estate of Php 300K; (5) family home equivalent to its FMV (not to exceed Php 1.0M) of Php 800K and (6) standard deduction of Php 1.0M or a total allowable deduction of Php 3.3M.

The claim against the cousin amounting to Php 100K although includible in the gross estate cannot be claimed as a deduction because the debtor is not yet declared insolvent. Likewise, the inherited property cannot give rise to a vanishing deduction for want of sufficient factual basis.

- c. The tax return and the payment of the estate tax are both due within six (6) months from death. The filing of the return is extendible for a maximum period of 30 days under meritorious cases as maybe determined by the CIR. Whereas, the payment of the estate tax may also be extended when the CIR finds that the payment thereof would impose undue hardship upon the estate or any of the heirs. The period of extension to pay shall not exceed 5 years from death if the estate is settled through the courts or shall not exceed 2 years from death if settled extra-judicially. The CIR may require the executor or administrator or the beneficiary to furnish a bond in an amount not more than double the amount of the estate tax due.
- d. If the renunciation is a general renunciation (in favor of co-heirs in accordance with their respective interest in the inheritance), the law on accretion applies and the property waived is considered to pass through the other co-heirs by inheritance; hence, it has no tax implication. There is no donation of property because the property had never become the property of the donor. Such being the case, the renunciation is not subject to donor's tax.

If it is not a general renunciation in favor of the other co-heirs, the heir renouncing his right is considered to have made a donation and the renunciation is subject to donor's tax. In both cases, however, the renunciation has no tax implication to the other co-heirs.

In the settlement of the estate of Mr. Barbera who died intestate, his wife renounced her inheritance and her share of the conjugal property in favor of their children. The BIR determined that there was a taxable gift and thus assessed Mrs. Barbera as a donor.

Was the BIR correct? (2013 Bar Question)

SUGGESTED ANSWER:

The BIR is not correct in imposing donor's tax on the renounced inheritance of Mrs. Barbera from Mr. Barbera. According to Section 11 of the RR No. 2-2003: "General renunciation by an heir, including the surviving spouse, of his/her share in the hereditary estate left by the decedent is not subject to donor's tax, unless specifically and categorically done in favor of identified heir/s to the exclusion or disadvantage of other co-heirs in the hereditary estate."

On the other hand, the BIR is correct in imposing donor's tax on the renounced conjugal share of Mrs. Barbera. This is because Section 11 of RR No. 2-2003 provides that "renunciation by the surviving spouse of his/her share in the conjugal partnership or absolute community after the dissolution of the marriage in favor of the heirs of the deceased spouse or any other person/s is subject to donor's tax." This proceeds from the rule that the share of the conjugal property is the share of the surviving spouse. Thus, the surviving spouse is effectively donating property when he or she makes a renunciation.

Tong Siok, a Chinese billionaire and a Canadian resident, died and left assets in China valued at P80 billion and in the Philippines assets valued at P20 billion. For Philippine estate tax purposes the allowable deductions for expenses, losses, indebtedness, and taxes, property previously taxed, transfers for public use, and the share of his surviving spouse in their conjugal partnership amounted to P15 billion. Tong's gross estate for Philippine estate tax purposes is: (2011 Bar Question)

- (A) P20 billion.
- (B) P5 billion.
- (C) P100 billion.
- (D) P85 billion.

SUGGESTED ANSWER:

- (A) P20 billion

While he was traveling with friends, Mr. Jose Francisco, resident Filipino citizen, died on January 20, 2011 in a California Hospital, USA, leaving personal and real properties with market values as follows: House and Lot in Quezon City – P10 Million; Cash in bank in California – US\$10,000.00; Citibank in New York – US\$5,000.00; Cash in BPI Makati – P4 Million; Car in Quezon City – P1 Million; Shares of stocks of Apple Corporation, US corporation listed in NY Stock Exchange – US\$1 = Php50. His gross estate for the Philippine estate tax purposes shall be: (2012 Bar Question)

- a) P13 Million;
- b) P14 Million;
- c) P15 Million;
- d) P16 Million.

SUGGESTED ANSWER:

- b) P14 Million

Section 85, NIRC.

Mr. Mayuga donated his residential house and lot to his son and duly paid the donor's tax. In the Deed of Donation, Mr. Mayuga expressly reserved for himself the usufruct over the property for as long as he lived.

Describe the donated property from the taxation perspective. (1%) (2013 Bar Question)

- (A) The property will form part of Mr. Mayuga's gross estate when he dies.
- (B) The property will not form part of Mr. Mayuga's gross estate when he dies because he paid the donor's tax.

(C) The property will form part of Mr. Mayuga's gross estate because he died soon after the donation.

(D) The property will not form part of Mr. Mayuga's gross estate because it is no longer his.

SUGGESTED ANSWER:

(A) The property will form part of Mr. Mayuga's gross estate when he dies.

Applying Section 85 (B)¹ of the NIRC, the donated property will still form part of the gross estate of the decedent when in the deed of donation, the donor “has retained for his life or for any period which does not in fact end before his death 91) the possession or enjoyment of, or the right to the income from the property.”

Therefore, the property will form part of Mr. Mayuga’s gross estate when he dies because he donated the property in contemplation of death.

Mr. Agustin, 75 years old and suffering from an incurable disease, decided to sell for valuable and sufficient consideration a house and lot to his son. He died one year later.

In the settlement of Mr. Agustin's estate, the BIR argued that the house and lot were transferred in contemplation of death and should therefore form part of the gross estate for estate tax purposes.

Is the BIR correct? (2013 Bar Question)

SUGGESTED ANSWER:

The BIR is not correct.

Pursuant to Section 85(B) of the NIRC, properties that are transferred in contemplation of death form part of the gross estate of the decedent. An exception to this is a *bona fide* sale for an adequate and full consideration in money.

Therefore, the house and lot which Mr. Agustin sold to his son for a valuable and sufficient consideration should not be considered as forming part of Mr. Agustin’s gross estate.

Mr. X, a Filipino residing in Alabama, U.S.A., died on January 2, 2013 after undergoing a major heart surgery. He left behind to his wife and two (2) kids several properties, to wit: (4%)

- (1) Family home in Makati City;**
- (2) Condominium unit in Las Piñas City;**
- (3) Proceeds of health insurance from Take Care, a health maintenance organization in the Philippines; and**
- (4) Land in Alabama, U.S.A.**

¹Section 85(B) Transfer in Contemplation of Death. - To the extent of any interest therein of which the decedent has at any time made a transfer, by trust or otherwise, in contemplation of or intended to take effect in possession or enjoyment at or after death, or of which he has at any time made a transfer, by trust or otherwise, under which he has retained for his life or for any period which does not in fact end before his death (1) the possession or enjoyment of, or the right to the income from the property, or (2) the right, either alone or in conjunction with any person, to designate the person who shall possess or enjoy the property or the income therefrom; except in case of a bona fide sale for an adequate and full consideration in money or money's worth.

The following expenses were paid:

- (1) Funeral expenses;**
- (2) Medical expenses; and**
- (3) Judicial expenses in the testate proceedings.**

- (A) What are the items that must be considered as part of the gross estate income of Mr. X?**
(B) What are the items that may be considered as deductions from the gross estate? (2014 Bar Question)

SUGGESTED ANSWER :

(A) All the items of properties enumerated in the problem shall form part of the gross estate of Mr. X. The composition of the gross estate of a decedent who is a Filipino citizen shall include all of his properties, real or personal, tangible or intangible, wherever situated (*Section 85, NIRC*).

(B) All the items of expenses are deductible from his gross estate. However, the allowable amount of funeral expenses shall be 5% of the gross estate or actual, whichever is lower, but in no case shall the amount deductible go beyond Php 200,000.00. Likewise, the deductible medical expenses must be limited to those incurred within one year prior to his death but not to exceed Php 500,000.00 (*Section 86, NIRC*).

Jose Ramos, single, died of a heart attack on October 10, 2011, leaving a residential house and lot with a market value of P1.8 Million and cash of P100,000.00. Funeral expenses paid amounted to P250,000.00. (2012 Bar Question)

- a) His estate will be exempt from estate tax because the net estate is zero;
- b) His estate will be subject to estate tax because net estate is P1,650,000.00;
- c) His estate will be subject to estate tax because net estate is P1,700,00.00;
- d) His estate will be subject to estate tax because net estate is P800,000.00.

SUGGESTED ANSWER:

- a) His estate will be exempt from estate tax because the net estate is zero

Section 85 & 86, NIRC.

During his lifetime, Mr. Sakitin obtained a loan amounting to P10 million from Bangko Uno for the purchase of a parcel of land located in Makati City, using such property as collateral for the loan. The loan was evidenced by a duly notarized promissory note. Subsequently, Mr. Sakitin died. At the time of his death, the unpaid balance of the loan amounted to P2 million. The heirs of Mr. Sakitin deducted the amount of P2 million from the gross estate, as part of the "Claims against the Estate." Such deduction was disallowed by the Bureau of Internal Revenue (BIR) Examiner, claiming that the mortgaged property was not included in the computation of the gross estate. Do you agree with the BIR? Explain. (2014 Bar Question)

SUGGESTED ANSWER :

Yes. Unpaid mortgages upon, or any indebtedness with respect to property are deductible from the gross estate only if the value of the decedent's interest in said property, undiminished by such mortgage or indebtedness, is included in the gross estate (*Section 86(A)(1)(e)*). In the instant case, the

interest of the decedent in the property purchased from the loan where the said property was used as the collateral, was not included in the gross estate. Accordingly, the unpaid balance of the loan at the time of Mr. Sakitin's death is not deductible as "Claims against the Estate."

Which among the following reduces the gross estate (not the net estate) of a citizen of the Philippines for purposes of estate taxation? (2011 Bar Question)

- (A) Transfers for public use
- (B) Property previously taxed
- (C) Standard deduction of P1 million
- (D) Capital of the surviving spouse

SUGGESTED ANSWER:

- (D) Capital of the surviving spouse

State the conditions for allowing the following as deductions from the gross estate of a citizen or resident alien for the purpose of imposing estate tax:

- a. Claims against the estate
- b. Medical expenses (2015 Bar Question)

SUGGESTED ANSWER:

- a. In order that the claims against the estate may be deducted, the following are the requisites:
 - 1. The liability represents a personal obligation of the deceased existing at the time of his death except unpaid obligations incurred incident to his death such as unpaid funeral expenses and unpaid medical expenses;
 - 2. The liability was contracted in good faith and for adequate and full consideration in money or money's worth;
 - 3. The claim must be a debt or claim which is valid in law and enforceable in court;
 - 4. The indebtedness must not have been condoned by the creditor or the action to collect from the decedent must not have prescribed.

At the time the indebtedness was incurred, the debt instrument was duly notarized and if the loan was contracted within three (3) years before the death of the decedent, the administrator or executor shall submit a statement showing the disposition of the proceeds of the loan.

b. All medical expenses incurred within one (1) year before the death of the decedent which are duly substantiated with receipts, provided that the total amount thereof, whether paid or unpaid, does not exceed Five Hundred Pesos (P500,000.00).

Gerardo died on July 31, 2011. His estate tax return should be filed within: (2011 Bar Question)

- (A) six months from filing of the notice of death.
- (B) sixty days from the appointment of an administrator.
- (C) six months from the time he died on July 31, 2011.
- (D) sixty days from the time he died on July 31, 2011.

SUGGESTED ANSWER:

(C) six months from the time he died on July 31, 2011.