

2010 – 2015
TAXATION BAR EXAM QUESTIONS
ON
TAX REMEDIES

The Commissioner of Internal Revenue issued a BIR ruling to the effect that the transaction is liable to income tax and value added tax. Upon receipt of the ruling, a taxpayer does not agree thereto. What is his proper remedy? (2012 Bar Question)

- a) File a petition for review with the Court of Tax Appeals within thirty (30) days from receipt thereof;
- b) File a motion for reconsideration with the Commissioner of Internal Revenue;
- c) File an appeal to the Secretary of Finance within thirty (30) days from receipt thereof;
- d) File an appeal to the Secretary of Justice within thirty (30) days from receipt thereof.

SUGGESTED ANSWER:

- c) File an appeal to the Secretary of Finance within thirty (30) days from receipt thereof

Section 4, NIRC.

Mr. Alvarez is in the retail business. He received a deficiency tax assessment from the BIR containing only the computation of the deficiency tax and the penalties, without any explanation of the factual and legal bases for the assessment.

Is the assessment valid? (1%)(2013 Bar Question)

- (A) The assessment is valid; all that Mr. Alvarez has to know is the amount of the tax.
- (B) The assessment is invalid; the law requires a statement of the facts and the law upon which the assessment is based.
- (C) The assessment is valid but Mr. Alvarez can still contest it.
- (D) The assessment is invalid because Mr. Alvarez has no way to determine if the computation is erroneous.

SUGGESTED ANSWER:

- (B) The assessment is invalid; the law requires a statement of the facts and the law upon which the assessment is based.

Section 228 of the NIRC provides that a preliminary assessment notice shall inform the taxpayer in writing of the law and the facts on which the assessment is based as part of due process; otherwise, the assessment shall be void. In relation to this provision, Section 3 of RR No. 12-99 states that the preliminary assessment notice shall show in detail the facts and the law, rules and regulations, or jurisprudence on which the assessment is based. (See also: *Commissioner of Internal Revenue v. Reyes*, G.R. No. 159694, January 27, 2006)

Jeopardy assessment is a valid ground to compromise a tax liability (2011 Bar Question)

- (A) involving deficiency income taxes only, but not for other taxes.
- (B) because of doubt as to the validity of the assessment.
- (C) if the compromise amount does not exceed 10% of the basic tax.
- (D) only when there is an approval of the National Evaluation Board.

SUGGESTED ANSWER:

(B) because of doubt as to the validity of the assessment.

What should the BIR do when the prescriptive period for the assessment of a tax deficiency is about to prescribe but the taxpayer has not yet complied with the BIR requirements for the production of books of accounts and other records to substantiate the claimed deductions, exemptions or credits? (2011 Bar Question)

- (A) Call the taxpayer to a conference to explain the delay.
- (B) Immediately conduct an investigation of the taxpayer's activities.
- (C) Issue a jeopardy assessment coupled with a letter of demand.
- (D) Issue a notice of constructive distraint to protect government interest.

SUGGESTED ANSWER:

(C) Issue a jeopardy assessment coupled with a letter of demand.

In January 2011, the BIR issued a ruling that Clemen's vodka imports were not subject to increased excise tax based on his claim that his net retail price was only P200 per 750 milliliter bottle. This ruling was applied to his imports for May, June, and July 2011. In September 2011, the BIR revoked its ruling and assessed him for deficiency taxes respecting his May, June and July 2011 vodka imports because it discovered that his net retail price for the vodka was P250 per bottle from January to September 2011. Does the retroactive application of the revocation violate Clemen's right to due process as a taxpayer? (2011 Bar Question)

- (A) Yes, since the presumption is that the BIR ascertained the facts before it made its ruling.
- (B) No, because he acted in bad faith when he claimed a lower net retail price than what he actually used.
- (C) No, since he could avail of remedies available for disputing the assessment.
- (D) Yes, since he had already acquired a vested right in the favorable BIR ruling.

SUGGESTED ANSWER:

(B) No, because he acted in bad faith when he claimed a lower net retail price than what he actually used.

Which among the following circumstances negates the prima facie presumption of correctness of a BIR assessment? (2011 Bar Question)

- (A) The BIR assessment was seasonably protested within 30 days from receipt.
- (B) No preliminary assessment notice was issued prior to the assessment notice.
- (C) Proof that the assessment is utterly without foundation, arbitrary, and capricious.
- (D) The BIR did not include a formal letter of demand to pay the alleged deficiency.

SUGGESTED ANSWER:

(C) Proof that the assessment is utterly without foundation, arbitrary, and capricious.

KaTato owns a parcel of land in San Jose, Batangas declared for real property taxation, as agricultural. In 1990, he used the land for a poultry feed processing plant but continued to declare the property as agricultural. In March 2011, the local tax assessor discovered KaTato's change of

use of his land and informed the local treasurer who demanded payment of deficiency real property taxes from 1990 to 2011. Has the action prescribed? (2011 Bar Question)

- (A) No, the deficiency taxes may be collected within five years from when they fell due.
- (B) No. The deficiency taxes for the period 1990 up to 2011 may still be collected within 10 years from March 2011.
- (C) Yes. More than 10 years had lapsed for the period 1990 up to 2000, hence the right to collect the deficiency taxes has prescribed.
- (D) Yes. More than 5 years had lapsed for the collection of the deficiency taxes for the period 1990 up to 2005.

SUGGESTED ANSWER:

(B) No. The deficiency taxes for the period 1990 up to 2011 may still be collected within 10 years from March 2011.

On October 15, 2005, ABC Corp. imported 1,000 kilos of steel ingots and paid customs duties and VAT to the Bureau of Customs on the importation. On February 17, 2009, the Bureau of Customs, citing provisions of the Tariff and Customs Code on post-audit, investigated and assessed ABC Corp. for deficiency customs duties and VAT.

Is the Bureau of Customs correct? (2013 Bar Question)

SUGGESTED ANSWER:

The Bureau of Customs was not correct.

As to the VAT: The Bureau of Customs has no authority to assess ABC Corp. as this falls under the jurisdiction of the Bureau of Internal Revenue (BIR). Under Sec. 2 of the NIRC, the BIR's powers and duties include, among others, the assessment and collection of all national internal revenue taxes, fees and charges. VAT is a national internal revenue tax under Title IV of the NIRC.

Under Sec. 12 of the NIRC, the Commissioner of Customs and his subordinates are merely agents and deputies for collection, not assessment of national internal revenue taxes.

As to the deficiency customs duties found on post-audit: The Bureau of Customs was not correct in assessing deficiency customs duties. The facts show that the investigation and assessment on post-audit were made on February 17, 2009, which is more than three (3) years from October 15, 2005 which is the date of payment by ABC Corp.

Sec. 4 of Republic Act 9135¹ amended Section 1603 of the Tariff and Customs Code of the Philippines. The provision states that when articles have been entered and passed free of duty or final adjustments of duties made, with subsequent delivery, such entry and passage free of duty or settlements of duties will, after the expiration of three (3) years from the date of the final payment of duties, in the absence of fraud or protest or compliance audit pursuant to the provisions of this Code, be final and conclusive upon all parties, unless the liquidation of the import entry was merely tentative. Customs Administrative Order No. 5-2001 which implements RA 9135, confirms the above conclusion.

¹ An Act Amending Certain Provisions Of Presidential Decree No. 1464, Otherwise Known As The Tariff And Customs Code Of The Philippines, As Amended, And For Other Purposes

In 2010, pursuant to a Letter of Authority (LA) issued by the Regional Director, Mr. Abcede was assessed deficiency income taxes by the BIR for the year 2009. He paid the deficiency. In 2011, Mr. Abcede received another LA for the same year 2009, this time from the National Investigation Division, on the ground that Mr. Abcede's 2009 return was fraudulent.

Mr. Abcede contested the LA on the ground that he can only be investigated once in a taxable year. Decide. (2013 Bar Question)

SUGGESTED ANSWER:

Mr. Abcede's contention is not correct; he may be re-investigated because he filed a fraudulent tax return for 2009. Section 235 of the NIRC provides that the books and records of taxpayers may be examined and inspected only once in a taxable year, except in cases of fraud, irregularity or mistakes, as determined by the Commissioner.

What is the effect of the execution by a taxpayer of a "waiver of the statute of limitations" on his defense of prescription? (2010 Bar Question)

SUGGESTED ANSWER:

The waiver of the statute of limitation executed by a taxpayer is not a waiver of the right to invoke the defense of prescription. The waiver of the statute of limitation is merely an agreement in writing between the taxpayer and the CIR that the period to assess and collect taxes due is extended to a date certain. If prescription has already set in at the time of the execution of the waiver or if the said waiver is invalid, the taxpayer can still raise prescription as a defense.

Mia, a compensation income earner, filed her income tax return for the taxable year 2007 on March 30, 2008. On May 20, 2011, Mia received an assessment notice and letter of demand covering the taxable year 2007 but the postmark on the envelope shows April 10, 2011. Her return is not a false and fraudulent return. Can Mia raise the defense of prescription? (2011 Bar Question)

- (A) No. The 3 year prescriptive period started to run on April 15, 2008, hence, it has not yet expired on April 10, 2011.
- (B) Yes. The 3 year prescriptive period started to run on April 15, 2008, hence, it had already expired by May 20, 2011.
- (C) No. The prescriptive period started to run on March 30, 2008, hence, the 3 year period expired on April 10, 2011.
- (D) Yes. Since the 3-year prescriptive period started to run on March 30, 2008, it already expired by May 20, 2011.

SUGGESTED ANSWER:

- (A) No. The 3 year prescriptive period started to run on April 15, 2008, hence, it has not yet expired on April 10, 2011.

There is prima facie evidence of a false or fraudulent return where the: (2011 Bar Question)

- (A) tax return was amended after a notice of assessment was issued.
- (B) tax return was filed beyond the reglementary period.
- (C) taxpayer changed his address without notifying the BIR.
- (D) deductions claimed exceed by 30% the actual deductions.

SUGGESTED ANSWER:

(D) deductions claimed exceed by 30% the actual deductions.

The prescriptive period for the collection of the deficiency tax assessment will be tolled: (2012 Bar Question)

- a) If the taxpayer files a request for reconsideration with the Asst. Commissioner;
- b) If the taxpayer files a request for reinvestigation that is approved by the Commissioner of Internal Revenue;
- c) If the taxpayer changes his address in the Philippines that is communicated to the BIR official;
- d) If a warrant of levy is served upon the taxpayer's real property in Manila.

SUGGESTED ANSWER:

b) If the taxpayer files a request for reinvestigation that is approved by the Commissioner of Internal Revenue

Section 223, NIRC; BPI v. Commissioner, G.R. No. 139736, October 17, 2005.

Taxpayer A was required by the BIR to sign and submit a waiver of the statute of limitations on the assessment period, to give the BIR more time to complete its investigation. The BIR accepted the waiver but failed to indicate the date of its acceptance.

What is the legal status of the waiver? (1%)(2013 Bar Question)

- (A) The waiver is valid because the date of acceptance is immaterial and unimportant.
- (B) The waiver is invalid; the taxpayer cannot be required to waive the statute of limitations.
- (C) The waiver is invalid; the date of acceptance is crucial in counting the start of the period of suspension of the prescriptive period.
- (D) The waiver is valid, having been accepted by the BIR.

SUGGESTED ANSWER:

(C) The waiver is invalid; the date of acceptance is crucial in counting the start of the period of suspension of the prescriptive period.

Section 2 of the Revenue Memorandum Order No. 20-90 provides that the date of such acceptance by the BIR should be indicated. Both the date of execution by the taxpayer and date of acceptance by the BIR should be before the expiration of the period of prescription or before the lapse of the period agreed upon in case a subsequent agreement is executed.

When is a pre-assessment notice required under the following cases? (1%)

- (A) When the finding for any deficiency tax is the result of mathematical error in the computation of the tax as appearing on the face of the return.
- (B) When a discrepancy has been determined between the tax withheld and the amount actually remitted by the withholding agent.
- (C) When the excise tax due on excisable articles has been paid.
- (D) When an article locally purchased or imported by an exempt person, such as, but not limited to vehicles, capital equipment, machineries and spare parts, has been sold, traded or transferred to non-exempt persons. (2014 Bar Question)

SUGGESTED ANSWER :

C. When the excise tax due on excisable articles has been paid.

A preliminary Assessment Notice (PAN) is NOT required to be issued by the BIR before issuing a Final Assessment Notice (FAN) on one of the following cases: (2012 Bar Question)

- a) When a taxpayer does not pay the 2010 deficiency income tax liability on or before July 15 of the year;
- b) When the finding for any deficiency tax is the result of mathematical error in the computation of the tax as appearing on the face of the return;
- c) When a discrepancy has been determined between the value added tax paid and the amount due for the year;
- d) When the amount of discrepancy shown in the Letter Notice is not paid within thirty (30) days from date of receipt.

SUGGESTED ANSWER:

b) When the finding for any deficiency tax is the result of mathematical error in the computation of the tax as appearing on the face of the return

Section 228, NIRC.

Mr. Tiaga has been a law-abiding citizen diligently paying his income taxes. On May 5, 2014, he was surprised to receive an assessment notice from the Bureau of Internal Revenue (BIR) informing him of a deficiency tax assessment as a result of a mathematical error in the computation of his income tax, as appearing on the face of his income tax return for the year 2011, which he filed on April 15, 2012. Mr. Tiaga believes that there was no such error in the computation of his income tax for the year 2011. Based on the assessment received by Mr. Tiaga, may he already file a protest thereon? (2014 Bar Question)

SUGGESTED ANSWER :

Yes, *Mr. Tiaga* may already file a protest. Rev. Regs. No. 18-2013, implementing Sec. 228 of the Tax Code, states that no PAN is required if the deficiency tax is a result of a mathematical error in the computation of tax as appearing on the face of the tax return. In such case, an FLD/FAN shall be issued outright. Thus, the assessment notice sent by the BIR is deemed an FLD/FAN which may be the subject of a protest.

On July 31, 2011, Esperanza received a preliminary assessment notice from the BIR demanding that she pays P180,000.00 deficiency income taxes on her 2009 income. How many days from July 31, 2011 should Esperanza respond to the notice? (2011 Bar Question)

- (A) 180 days.
- (B) 30 days.
- (C) 60 days.
- (D) 15 days.

SUGGESTED ANSWER:

(D) 15 days

On March 30, 2005 Miguel Foods, Inc. received a notice of assessment and a letter of demand on its April 15, 2002 final adjustment return from the BIR. Miguel Foods then filed a request for reinvestigation together with the requisite supporting documents on April 25, 2005. On June 2, 2005, the BIR issued a final assessment reducing the amount of the tax demanded. Since Miguel Foods was satisfied with the reduction, it did not do anything anymore. On April 15, 2010 the BIR garnished the corporation's bank deposits to answer for the tax liability. Was the BIR action proper? (2011 Bar Question)

- (A) Yes. The BIR has 5 years from the filing of the protest within which to collect.
- (B) Yes. The BIR has 5 years from the issuance of the final assessment within which to collect.
- (C) No. The taxpayer did not apply for a compromise.
- (D) No. Without the taxpayer's prior authority, the BIR action violated the Bank Deposit Secrecy Law.

SUGGESTED ANSWER:

(B) Yes. The BIR has 5 years from the issuance of the final assessment within which to collect

On April 15, 2011, the Commissioner of Internal Revenue mailed by registered mail the final assessment notice and the demand letter covering the calendar year 2007 with the QC Post Office. Which statement is correct? (2012 Bar Question)

- a) The assessment notice is void because it was mailed beyond the prescriptive period;
- b) The assessment notice is void because it was not received by the taxpayer within the three-year period from the date of filing of the tax return;
- c) The assessment notice is void if the taxpayer can show that the same was received only after one (1) month from date of mailing;
- d) The assessment notice is valid even if the taxpayer received the same after the three-year period from the date of filing of the tax return.

SUGGESTED ANSWER:

d) The assessment notice is valid even if the taxpayer received the same after the three-year period from the date of filing of the tax return.

Section 203, NIRC; BPI v. CIR, G.R. No. 139736, October 17, 2005.

Taxpayer Andy received on January 3, 2010 a preliminary assessment notice (PAN) from the BIR, stating that he had fifteen (15) days from its receipt to comment or to file a protest. Eight (8) days later (or on January 11, 2010), before he could comment or file a protest, Andy received the final assessment notice (FAN).

Decide on the validity of the FAN. (1%)(2013 Bar Question)

- (A) The FAN is invalid; Andy was not given the chance to respond to the PAN, in violation of his due process rights.
- (B) The FAN is invalid for being premature.
- (C) The FAN is valid since it was issued before the right to assess prescribed.
- (D) The FAN is valid. There is no legal requirement that the FAN should await the protest to the PAN because protest to the PAN is not mandatory.

SUGGESTED ANSWER:

(D) The FAN is valid. There is no legal requirement that the FAN should await the protest to the PAN because protest to the PAN is not mandatory.

RR No. 12-99 provides for the due process requirement in the issuance of a deficiency tax assessment pursuant to Section 228 of the NIRC. Under 3.1.1 of RR No. 12-99, if the taxpayer is not amenable to the submitted report of investigation of the revenue officer, the taxpayer shall be informed by the BIR, in writing, of the discrepancy/discrepancies for purposes of the informal conference in order to afford the taxpayer with an opportunity to present his side of the case. His failure to respond within 15 days from the date of the receipt of the notice for the informal conference would result in the issuance of PAN. Therefore, prior to the issuance of the PAN, the taxpayer is already given the opportunity to present his side. Although the same RR provides that the taxpayer is given 15 days to file a protest, his failure to do so or the issuance by the BIR of the FAN before the expiration of the 15-day period, as in the given problem, shall not defeat Andy's right to due process.

Upon issuance of the FAN, Andy may still file an administrative protest within thirty (30) days from the date of receipt thereof. In case of denial of the protest by the Commissioner's authorized representative, Andy may still elevate the adverse decision to the Commissioner within 30 days from its receipt. He may, thereafter, elevate the adverse decision to the CTA and, finally, to the Supreme Court.

Considering, therefore, that Andy could present his side before and after the issuance of the PAN, the reply to the latter is mandatory.

No action shall be taken by the BIR on the taxpayer's disputed issues until the taxpayer has paid the deficiency taxes: (2011 Bar Question)

- (A) when the assessment was issued against a false and fraudulent return.
- (B) if there was a failure to pay the deficiency tax within 60 days from BIR demand.
- (C) if the Regional Trial Court issues a writ of preliminary injunction to enjoin the BIR.
- (D) attributable to the undisputed issues in the assessment notice.

SUGGESTED ANSWER:

(D) attributable to the undisputed issues in the assessment notice.

On March 10, 2010, Continental, Inc. received a preliminary assessment notice (PAN) dated March 1, 2010 issued by the Commissioner of Internal Revenue (CIR) for deficiency income tax for its taxable year 2008. It failed to protest the PAN. The CIR thereupon issued a final assessment notice (FAN) with letter of demand on April 30, 2010. The FAN was received by the corporation on May 10, 2010, following which or on May 25, 2010, it filed its protest against it.

The CIR denied the protest on the ground that the assessment had already become final and executory, the corporation having failed to protest the PAN. Is the CIR correct? Explain. (2010 Bar Question)

SUGGESTED ANSWER:

The issuance of preliminary assessment notice (PAN) does not give rise to the right of the taxpayer to protest. What can be protested by a taxpayer is the final assessment notice (FAN) or that assessment issued following the PAN. Since the FAN was timely protested, within 30 days from receipt thereof, the assessment did not become final and executory.

When a protest against the deficiency income tax assessment was denied by the BIR Regional Director of Quezon City, the appeal to the Court of Tax Appeals must be filed by a taxpayer: (2012 Bar Question)

- a) If the amount of basic tax assessed is P100,000.00 or more;
- b) If the amount of basic tax assessed is P300,000.00 or more;
- c) If the amount of basic tax assessed is P500,000.00 or more;
- d) If the amount of basic tax assessed is P1 Million or more;

SUGGESTED ANSWER:

All the choices are correct. All decisions on disputed assessments are appealable to the CTA (in Division) irrespective of the amount (*Section 3, RA 9282*).

The submission of the required documents within sixty (60) days from the filing of the protest is available only where: (2012 Bar Question)

- a) The taxpayer previously filed a Motion for Reconsideration with the BIR official;
- b) The taxpayer previously filed a request for reconsideration with the BIR official;
- c) The taxpayer previously filed a request for reinvestigation with the BIR official;
- d) The taxpayer previously filed an extension to file a protest with the BIR official.

SUGGESTED ANSWER:

- c) The taxpayer previously filed a request for reinvestigation with the BIR official

Section 228, NIRC; RCBC v. CIR.

What is the effect on the tax liability of a taxpayer who does not protest an assessment for deficiency taxes? (2011 Bar Question)

- (A) The taxpayer may appeal his liability to the CTA since the assessment is a final decision of the Commissioner on the matter.
- (B) The BIR could already enforce the collection of the taxpayer's liability if it could secure authority from the CTA.
- (C) The taxpayer's liability becomes fixed and subject to collection as the assessment becomes final and collectible.
- (D) The taxpayer's liability remains suspended for 180 days from the expiration of the period to protest.

SUGGESTED ANSWER:

- (C) The taxpayer's liability becomes fixed and subject to collection as the assessment becomes final and collectible.

On March 27, 2012, the Bureau of Internal Revenue (BIR) issued a notice of assessment against Blue Water Industries Inc. (BWI), a domestic corporation, informing the latter of its alleged deficiency corporate income tax for the year 2009. On April 20, 2012, BWI filed a letter protest before the BIR contesting said assessment and demanding that the same be cancelled or set aside.

However, on May 19, 2013, that is, after more than a year from the filing of the letter protest, the BIR informed BWI that the latter's letter protest was denied on the ground that the assessment had already become final, executory and demandable. The BIR reasoned that its failure to decide the case within 180 days from filing of the letter protest should have prompted BWI to seek recourse before the Court of Tax Appeals (CTA) by filing a petition for review within thirty (30) days after the expiration of the 180-day period as mandated by the provisions of the last paragraph of Section 228 of the National Internal Revenue Code (NIRC). Accordingly, BWI's failure to file a petition for review before the CTA rendered the assessment final, executory and demandable. Is the contention of the BIR correct? Explain. (2014 Bar Question)

SUGGESTED ANSWER :

No. Notwithstanding the lapse of the 180-day period, BWI had the option to await the BIR'S final decision on its protest before filing a Petition for Review with the CTA. Pursuant to the case of Lascona Land Co., Inc. v. Commissioner of Internal Revenue (G.R. No. 171251, March 5, 2012), in case the Commissioner fails to act on a taxpayer's protest within the 180-day period, a taxpayer can either: (i) file a petition for review with the Court of Tax Appeals within 30 days after the expiration of the 180-day period; or (ii) await the final decision of the Commissioner on the disputed assessments, and thereafter appeal such final decision to the CTA within 30 days after the receipt of a copy of such decision.¹ In the present case, BWI simply availed itself of the second option.

Spanflex Int'l Inc. received a notice of assessment from the BIR. It seasonably filed a protest with all the necessary supporting documents but the BIR failed to act on the protest. Thirty days from the lapse of 180 days from the filing of its protest, Spanflex still has not elevated the matter to the CTA. What remedy, if any, can Spanflex take? (2011 Bar Question)

- (A) It may file a motion to admit appeal if it could prove that its failure to appeal was due to the negligence of counsel.

- (B) It may no longer appeal since there is no BIR decision from which it could appeal.
- (C) It may wait for the final decision of the BIR on his protest and appeal it to the CTA within 30 days from receipt of such decision.
- (D) None. Its right to appeal to the CTA has prescribed.

SUGGESTED ANSWER:

- (C) It may wait for the final decision of the BIR on his protest and appeal it to the CTA within 30 days from receipt of such decision.

The taxpayer seasonably filed his protest together with all the supporting documents. It is already July 31, 2011, or 180 days from submission of the protest but the BIR Commissioner has not yet decided his protest. Desirous of an early resolution of his protested assessment, the taxpayer should file his appeal to the Court of Tax Appeals not later than: (2011 Bar Question)

- (A) August 31, 2011.
- (B) August 30, 2011.
- (C) August 15, 2011.
- (D) August 1, 2011.

SUGGESTED ANSWER:

- (B) August 30, 2011

The taxpayer received an assessment notice on April 15, 2011 and filed its request for reinvestigation against the assessment on April 30, 2011. Additional documentary evidence in support of its protest was submitted by it on June 30, 2011. If no denial of the protest was received by the taxpayer, when is the last day for the filing of its appeal to the CTA? (2012 Bar Question)

- a) November 30, 2011;
- b) December 30, 2011;
- c) January 30, 2012;
- d) February 28, 2012.

SUGGESTED ANSWER:

- c) January 30, 2012

Section 228, NIRC.

Using the same facts in the immediately preceding number, but assuming that the final decision on the disputed assessment was received by the taxpayer on July 30, 2011, when is the last day for filing of the appeal to the CTA? (2012 Bar Question)

- a) August 30, 2011;
- b) September 30, 2011;
- c) December 30, 2011;
- d) January 30, 2012.

SUGGESTED ANSWER:

a) August 30, 2011;

Section 228, NIRC (nearest answer but not correct answer)

[Note: The period to appeal is within 30 days from receipt of the final decision by the Commissioner. The decision was received on July 30, 2011 so the last day to perfect an appeal with the CTA is August 29, 2011. It is thus clear that the question did not provide for the CORRECT answer. Hence, it should be treated as a bonus question.]

On May 15, 2013, CCC, Inc. received the Final Decision on Disputed Assessment issued by the Commissioner of Internal Revenue (CIR) dismissing the protest of CCC, Inc. and affirming the assessment against said corporation. On June 10, 2013, CCC, Inc. filed a Petition for Review with the Court of Tax Appeals (CTA) in division. On July 31, 2015, CCC, Inc. received a copy of the Decision dated July 22, 2015 of the CT A division dismissing its Petition. CCC, Inc. immediately filed a Petition for Review with the CT A *en banc* on August 6, 2015. Is the immediate appeal by CCC, Inc. to the CTA *en banc* of the adverse Decision of the CTA division the proper remedy? (2015 Bar Question)

SUGGESTED ANSWER:

No, CCC, Inc. should first file a motion for reconsideration with the CTA Division. Petition for review of a decision or resolution of the Court in Division must be preceded by the filing of a timely motion for reconsideration or new trial with the Division. Before the CTA En Banc could take cognizance of the petition for review concerning a case falling under its exclusive appellate jurisdiction, the litigant must sufficiently show that it sought prior reconsideration or moved for a new trial with the concerned CTA division.

When a BIR decision affirming an assessment is appealed to the CTA, the BIR's power to garnish the taxpayer's bank deposits: (2011 Bar Question)

- (A) is suspended to await the finality of such decision.
- (B) is suspended given that the CTA can reverse BIR decisions when prejudicial to the taxpayer.
- (C) is not suspended because only final decisions of the BIR are subject to appeal.
- (D) is not suspended since the continued existence of government depends on tax revenues.

SUGGESTED ANSWER:

(D) is not suspended since the continued existence of government depends on tax revenues.

Which court has jurisdiction to determine if the warrant of distraint and levy issued by the BIR is valid and to rule if the waiver of the Statute of Limitations was validly effected? (2012 Bar Question)

- a) City Courts;
- b) Regional Trial Court;
- c) Court of Tax Appeals;
- d) Court of Appeals.

SUGGESTED ANSWER:

c) Court of Tax Appeals

Section 7, RA 9282.

Which statement is correct? The collection of a deficiency tax assessment by distraint and levy:
(2012 Bar Question)

- a) May be repeated, if necessary, until the full amount due, including all expenses, is collected;
- b) Must be done successively, first by distraint and then by levy;
- c) Automatically covers the bank deposits of a delinquent taxpayer;
- d) May be done only once during the taxable year.

SUGGESTED ANSWER:

- a) May be repeated, if necessary, until the full amount due, including all expenses, is collected

Section 217, NIRC.

Does the Court of Appeals have the power to review compromise agreements forged by the Commissioner of Internal Revenue and a taxpayer? Explain. (2010 Bar Question)

SUGGESTED ANSWER:

No, for either of two reasons:

(a) in instances in which the CIR is vested with authority to compromise, such authority should be exercised in accordance with the CIR discretion and courts have no power, as a general rule, to compel him to exercise such discretion one way or another.

(b) If the CIR abuses his discretion by not following the parameters set by law, the CTA, not the CA, may correct such abuse if the matter is appealed to it. In case of arbitrary or capricious exercise by the CIR of the power to compromise, the compromise can be attacked and reversed through judicial process. It must be noted however, that a compromise is considered as other matters arising under the NIRC which vests the CTA with jurisdiction and since the decision of the CTA is appealable to the Supreme Court, the Court of Appeals is devoid of any power to review a compromise settlement forged by the CIR.

Based on the Affidavit of the Commissioner of Internal Revenue (CIR), an Information for failure to file income tax return under Section 255 of the National Internal Revenue Code (NIRC) was filed by the Department of Justice (DOJ) with the Manila Regional Trial Court (RTC) against XX, a Manila resident.

XX moved to quash the Information on the ground that the RTC has no jurisdiction in view of the absence of a formal deficiency tax assessment issued by the CIR.

Is a prior assessment necessary before an Information for violation of Section 255 of the NIRC could be filed in court? Explain. (2010 Bar Question)

SUGGESTED ANSWER:

No. In case of failure to file a return, a proceeding in court for the collection of the tax may be

filed without an assessment. The tax can be collected by filing a criminal action with the RTC because a criminal action with the RTC is a mode of collecting the tax liability. Besides, the CIR is empowered to prepare a return on the basis of his own knowledge and upon such information and he can obtain from testimony or otherwise, which shall be *prima facie* correct and sufficient for legal purposes. The issuance of a formal deficiency tax assessment, therefore, is not required.

True or False. (2010 Bar Question)

- a. In civil cases involving the collection of internal revenue taxes, prescription is construed strictly against the government and liberally in favor of the taxpayer. (1%)

SUGGESTED ANSWER: True.

- b. In criminal cases involving tax offenses punishable under the National Internal Revenue Code (NIRC), prescription is construed strictly against the government. (1%)

SUGGESTED ANSWER: False.

- c. In criminal cases where the Court of Tax Appeals (CTA) has exclusive original jurisdiction, the right to file a separate civil action for the recovery of taxes may be reserved. (1%)

SUGGESTED ANSWER: False.

- d. Proceedings before the CTA in the exercise of its exclusive original jurisdiction are in the nature of trial *de novo*. (1%)

SUGGESTED ANSWER: True.

- e. Judgments, resolutions or orders of the Regional Trial Court in the exercise of its *original* jurisdiction involving criminal offenses arising from violations of the NIRC are appealable to the CTA, which shall hear the cases *en banc*. (1%)

SUGGESTED ANSWER: False.

The prescriptive period to file a criminal action is: (2012 Bar Question)

- a) Ten (10) years from the date of discovery of the commission of fraud or non-filing of tax return;
b) Five (5) years from the date of issuance of the final assessment notice;
c) Three (3) years from the filing of the annual tax return;
d) Five (5) years from the commission of the violation of the law, and if the same be not known at the time, from the discovery thereof and the institution of judicial proceedings for its investigation and punishment.

SUGGESTED ANSWER:

d) Five (5) years from the commission of the violation of the law, and if the same be not known at the time, from the discovery thereof and the institution of judicial proceedings for its investigation and punishment.

Section 281, NIRC.

The accused's mere reliance on the representations made by his accountant, with deliberate refusal or avoidance to verify the contents of his tax return and to inquire on its authenticity constitutes: (2012 Bar Question)

- a) Simple negligence;
- b) Gross negligence;
- c) Willful blindness;
- d) Excusable negligence.

SUGGESTED ANSWER:

- c) Willful blindness;

CTA E.B. Criminal Case No. 006; People vs Kintanar, G.R. No. 196340.

The acquittal of the accused in the criminal action for the failure to file income tax return and failure to supply correct information will have the following consequence: (2012 Bar Question)

- a) The CTA will automatically exempt the accused from any civil liability;
- b) The CTA will still hold the taxpayer liable for deficiency income tax liability in all cases, since preponderance of evidence is merely required for tax cases;
- c) The CTA will impose civil or tax liability only if there was a final assessment notice issued by the BIR against the accused in accordance with the prescribed procedures for issuing assessments, which was presented during the trial;
- d) The CTA will impose civil or tax liability, provided that a computation of the tax liability is presented during the trial.

SUGGESTED ANSWER:

- c) The CTA will impose civil or tax liability only if there was a final assessment notice issued by the BIR against the accused in accordance with the prescribed procedures for issuing assessments, which was presented during the trial

OR

- d) The CTA will impose civil or tax liability, provided that a computation of the tax liability is presented during the trial.

Republic v. Patanao, L-22356, July 1, 1967; (Castro v. Collector of Internal Revenue, L-12174, April 26, 1962).

X Corporation had excess income tax payment for the year 2008, which it chose to carry over in 2009. In filing its 2009 corporate income tax return, it signified its intention (by checking the small box "refund" at the bottom of the return) to get a refund of the overpaid amount in 2008. Can the

refund be allowed or not, and if disallowed, does X Corporation lose the claimed amount? (2012 Bar Question)

- a) X Corporation may not get the refund because the decision to carry over in 2008 was irrevocable for that year, and it may not change that decision in succeeding years;
- b) X Corporation may not get the refund in 2009, but the amount being claimed as refund may be utilized in succeeding years until fully exhausted because there is no prescriptive period for carry over of excess income tax payments;
- c) X Corporation may get the refund, provided that it will no longer carry over such amount or utilize the same against its income tax liability in the future;
- d) X Corporation may file instead a claim of tax credit, in lieu of refund.

SUGGESTED ANSWER:

b) X Corporation may not get the refund in 2009, but the amount being claimed as refund may be utilized in succeeding years until fully exhausted because there is no prescriptive period for carry over of excess income tax payments

Section 76, NIRC.

The carry-over of excess income tax payments is no longer limited to the succeeding taxable year. Unutilized excess income tax payments may now be carried over to the succeeding taxable years until fully utilized. In addition, the option to carry-over excess income tax payments is now irrevocable. Hence, unutilized excess income tax payments may no longer be refunded. (*Belle Corp. v. CIR, G.R. No. 181298, January 10, 2011*)

Mirador, Inc., a domestic corporation, filed its Annual Income Tax Return for its taxable year 2008 on April 15, 2009. In the Return, it reflected an income tax overpayment of P1,000,000.00 and indicated its choice to carry-over the overpayment as an automatic tax credit against its income tax liabilities in subsequent years.

On April 15, 2010, it filed its Annual Income Tax Return for its taxable year 2009 reflecting a taxable loss and an income tax overpayment for the current year 2009 in the amount of P500,000.00 and its income tax overpayment for the prior year 2008 of P1,000,000.00.

In its 2009 Return, the corporation indicated its option to claim for refund the total income tax overpayment of P1,500,000.00

Choose which of the following statements is correct.

- a. **Mirador, Inc. may claim as refund the total income tax overpayment of P1,500,000.00 reflected in its income tax return for its taxable year 2009;**
 - b. **It may claim as refund the amount of P500,000.00 representing its income tax overpayment for its taxable year 2009; or**
 - c. **No amount may be claimed as refund.**
- Explain the basis of your answer. (2010 Bar Question)**

SUGGESTED ANSWER:

b. It may claim as refund the amount of P500,000.00 representing its income tax overpayment for its taxable year 2009.

Since it has opted to carry-over the Php 1.0M overpaid income tax for taxable year 2008, said option is considered irrevocable and no application for cash refund shall be allowed for it.

In its final adjustment return for the 2010 taxable year, ABC Corp. had excess tax credits arising from its over-withholding of income payments. It opted to carry over the excess tax credits to the following year. Subsequently, ABC Corp. changed its mind and applied for a refund of the excess tax credits.

Will the claim for refund prosper? (2013 Bar Question)

SUGGESTED ANSWER:

The claim for refund will not prosper as it is barred by the irrevocability rule.

Paragraph 2, Section 76 of the NIRC embodies the irrevocability rule. This rule provides that a corporation which is entitled to a tax credit or refund of the excess estimated quarterly income taxes paid has two options: (1) to carry-over the excess credit; or (2) to apply for the issuance of a tax credit certificate or to claim a cash refund. If the corporation opts to carry-over its excess credit in the final adjustment return, its choice shall be irrevocable for that taxable period. The purpose of this rule is to prevent a taxpayer from claiming excess tax credits twice.

In the given problem, ABC Corp. opted to carry-over its excess tax credits for the 2010 taxable year. Consequently, ABC Corp. can no longer revoke its choice to carry-over the excess tax credits and instead claim for a refund.

As a general rule, within what period must a taxpayer elevate to the Court of Tax Appeals a denial of his application for refund of income tax overpayment? (2011 Bar Question)

- (A) Within 30 days from receipt of the Commissioner's denial of his application for refund.
- (B) Within 30 days from receipt of the denial which must not exceed 2 years from payment of income tax.
- (C) Within 2 years from payment of the income taxes sought to be refunded.
- (D) Within 30 days from receipt of the denial or within two years from payment.

SUGGESTED ANSWER:

(B) Within 30 days from receipt of the denial which must not exceed 2 years from payment of income tax.

In case of full or partial denial of the written claim for refund or excess input tax directly attributable to zero-rated sales, or the failure on the part of the Commissioner to act on the application within 120 days from the date of submission of complete documents, an appeal must be filed with the CTA: (2012 Bar Question)

- a) Within thirty (30) days after filing the administrative claim with the BIR;
- b) Within sixty (60) days after filing the administrative claim with the BIR;
- c) Within one hundred twenty (120) days after filing the administrative claim with the BIR;

d) Within thirty (30) days from the receipt of the decision denying the claim or after the expiration of the 120-day period.

SUGGESTED ANSWER:

d) Within thirty (30) days from the receipt of the decision denying the claim or after the expiration of the 120-day period.

In case of full or partial denial by the CIR, the taxpayer's recourse is to file an appeal before the CTA within 30 days from receipt of the decision of the CIR. However, if after the 120-day period the CIR fails to act on the application for tax refund/credit, the remedy of the taxpayer is to appeal the inaction of the CIR to CTA within 30 days. (*CIR v. Aichi Forging Company of Asia, Inc., G.R. No. 184823, October 6, 2010*)

The BIR could not avail itself of the remedy of levy and distraint to implement, through collection, an assessment that has become final, executory, and demandable where: (2011 Bar Question)

- (A) the subject of the assessment is an income tax.
- (B) the amount of the tax involved does not exceed P100.00.
- (C) the corporate taxpayer has no other uncollected tax liability.
- (D) the taxpayer is an individual compensation income earner.

SUGGESTED ANSWER:

(B) the amount of the tax involved does not exceed P100.00.

Anion, Inc. received a notice of assessment and a letter from the BIR demanding the payment of P3 million pesos in deficiency income taxes for the taxable year 2008. The financial statements of the company show that it has been suffering financial reverses from the year 2009 up to the present. Its asset position shows that it could pay only P500,000.00 which it offered as a compromise to the BIR. Which among the following may the BIR require to enable it to enter into a compromise with Anion, Inc.? (2011 Bar Question)

- (A) Anion must show it has faithfully paid taxes before 2009.
- (B) Anion must promise to pay its deficiency when financially able.
- (C) Anion must waive its right to the secrecy of its bank deposits.
- (D) Anion must immediately deposit the P500,000.00 with the BIR.

SUGGESTED ANSWER:

(C) Anion must waive its right to the secrecy of its bank deposits.

The Commissioner of Internal Revenue may NOT inquire into the bank deposits of a taxpayer, except: (2012 Bar Question)

- a) When the taxpayer files a fraudulent return;
- b) When the taxpayer offers to compromise the assessed tax based on erroneous assessment;
- c) When the taxpayer offers to compromise the assessed tax based on financial incapacity to pay and he authorizes the Commissioner in writing to look into his bank records;

d) When the taxpayer did not file his income tax return for the year.

SUGGESTED ANSWER:

c) When the taxpayer offers to compromise the assessed tax based on financial incapacity to pay and he authorizes the Commissioner in writing to look into his bank records;

Section 6(F), NIRC.

Which statement below on compromise of tax liability is correct? (2012 Bar Question)

- a) Compromise of a tax liability is available only at the administrative level;
- b) Compromise of a tax liability is available only before trial at the CTA;
- c) Compromise of a tax liability is available even during appeal, provided that prior leave of court is obtained;
- d) Compromise of a tax liability is still available even after the court decision has become final and executory.

SUGGESTED ANSWER:

c) Compromise of a tax liability is available even during appeal, provided that prior leave of court is obtained

RR 30-2002.

MMM, Inc., a domestic telecommunications company, handles incoming telecommunications services for non-resident foreign companies by relaying international calls within the Philippines. To broaden the coverage of its telecommunications services throughout the country, MMM, Inc. entered into various interconnection agreements with local carriers. The non-resident foreign corporations pay MMM, Inc. in US dollars inwardly remitted through Philippine banks, in accordance with the rules and regulations of the *Bangko Sentral ng Pilipinas*.

MMM, Inc. filed its Quarterly VAT Returns for 2000. Subsequently, MMM, Inc. timely filed with the BIR an administrative claim for the refund of the amount of P6,321,486.50, representing excess input VAT attributable to its effectively zero-rated sales in 2000. The BIR ruled to deny the claim for refund of MMM, Inc. because the VAT official receipts submitted by MMM, Inc. to substantiate said claim did not bear the words "zero-rated" as required under Section 4.108-1 of Revenue Regulations (RR) No. 7-95. On appeal, the CTA division and the CT A *en bane* affirmed the BIR ruling.

MMM, Inc. appealed to the Supreme Court arguing that the NIRC itself did not provide for such a requirement. RR No. 7-95 should not prevail over a taxpayer's substantive right to claim tax refund or credit.

a. Rule on the appeal of MMM, Inc.

b. Will your answer in (a) be any different if MMM, Inc. was claiming refund of excess input VAT attributable to its effectively zero-rated sales in 2012? (2015 Bar Question)

SUGGESTED ANSWER:

a. The appeal of MMM, Inc. must be denied. MMM, Inc.'s position that the requirements under RR No. 7-95 should not prevail over a taxpayer's substantive right to claim tax refund or credit is unmeritorious.

The Secretary of Finance has the authority to promulgate the necessary rules and regulations for the effective enforcement of the provisions of the NIRC. Such rules and regulations are given weight and respect by the courts in view of the rule-making authority given to those who formulate them and their specific expertise in their respective fields.

An applicant for a claim for tax refund or tax credit must not only prove entitlement to the claim but also compliance with all the documentary and evidentiary requirements. Consequently, the CTA and the CTA en banc correctly ruled that the failure to indicate the words "zero-rated" on the invoices and receipts issued by a taxpayer would result in the denial of the claim for refund or tax credit.

b. No. In *Kepeco Philippines Corporation v. Commissioner of Internal Revenue*, the Supreme Court ruled that the subsequent incorporation of Section 4.108-1 of RR 7-95 in Section 113(B)(2)(c) of RA 9337 actually confirmed the validity of the imprinting requirement on VAT invoices or official receipts – a case falling under the principle of legislative approval of administrative interpretation by reenactment.

In "Operation Kandado," the BIR temporarily closed business establishments, including New Dynasty Corporation that failed to comply with VAT regulations. New Dynasty contends that it should not be temporarily closed since it has a valid and existing VAT registration, it faithfully issued VAT receipts, and filed the proper VAT returns. The contention may be rejected if the BIR investigation reveals that: (2011 Bar Question)

- (A) the taxpayer has not been regularly filing its income tax returns for the past 4 years.
- (B) the taxpayer deliberately filed a false and fraudulent return with deliberate intention to evade taxes.
- (C) the taxpayer used falsified documents to support its application for refund of taxes.
- (D) there was an understatement of taxable sales or receipts by 30% or more for the taxable quarter.

SUGGESTED ANSWER:

- (D)** there was an understatement of taxable sales or receipts by 30% or more for the taxable quarter.

The City of Liwliwa assessed local business taxes against Talin Company. Claiming that there is double taxation, Talin Company filed a Complaint for Refund or Recovery of Illegally and/or Erroneously-collected Local Business Tax; Prohibition with Prayer to Issue Temporary Restraining Order and Writ of Preliminary Injunction with the Regional Trial Court (RTC). The RTC denied the application for a Writ of Preliminary Injunction. Since its motion for reconsideration was denied, Talin Company filed a special civil action for certiorari with the Court of Appeals (CA). The government lawyer representing the City of Liwliwa prayed for the dismissal of the petition on the ground that the same should have been filed with the Court of Tax Appeals (CTA). Talin Company, through its lawyer, Atty. Frank, countered that the CTA cannot entertain a petition for certiorari since it is not one of its powers and authorities under existing laws and rules.

Decide. (2014 Bar Question)

SUGGESTED ANSWER :

The petition for *certiorari* before the CA must be dismissed, since such petition should have been filed with the CTA. As stated in *City of Manila v. Caridad H. Grecia-Cuerdo* (G.R. No. 175723, February 2, 2014, 715 SCRA 182), the CTA has the power to determine whether or not there has been grave abuse of discretion amounting to lack or excess of jurisdiction on the part of the RTC in issuing interlocutory orders in cases falling within the CTA's exclusive appellate jurisdiction. The CTA therefore has jurisdiction to issue writs of certiorari in such cases. Furthermore, its authority to entertain petitions for *certiorari* questioning interlocutory orders issued by the RTC is included in the powers granted by the Constitution and inherent in the exercise of its appellate jurisdiction.

GGG, Inc. offered to sell through competitive bidding its shares in HHH Corp., equivalent to 40% of the total outstanding capital stock of the latter. JJJ, Inc. acquired the said shares in HHH Corp. as the highest bidder. Before it could secure a certificate authorizing registration/tax clearance for the transfer of the shares of stock to JJJ, Inc., GGG, Inc. had to request a ruling from the BIR confirming that its sale of the said shares was at fair market value and was thus not subject to donor's tax. In BIR Ruling No. 012-14, the CIR held that the selling price for the shares of stock of HHH Corp. was lower than their book value, so the difference between the selling price and the book value of said shares was a taxable donation. GGG, Inc. requested the Secretary of Finance to review BIR Ruling No. 012-14, but the Secretary affirmed said ruling. GGG, Inc. filed with the Court of Appeals a Petition for Review under Rule 43 of the Revised Rules of Court. The Court of Appeals, however, dismissed the Petition for lack of jurisdiction declaring that it is the CTA which has jurisdiction over the issues raised. Before which Court should GGG, Inc. seek recourse from the adverse ruling of the Secretary of Finance in the exercise of the latter's power of review? (2015 Bar Question)

SUGGESTED ANSWER:

GGG should file its petition with the Court of Tax Appeals. The Supreme Court held that the jurisdiction to review the rulings of the Commissioner of Internal Revenue pertains to the CTA which has the authority to issue, among others, a writ of certiorari in the exercise of its appellate jurisdiction.

What are the conditions that must be complied with before the Court of Tax Appeals may suspend the collection of national internal revenue taxes? (2010 Bar Question)

SUGGESTED ANSWER:

The CTA may suspend the collection of internal revenue taxes if the following conditions are met: (a) the case is pending appeal with the CTA, (b) in the opinion of the court, the collection will jeopardize the interest of the Government and/or the taxpayer (c) the taxpayer is willing to deposit in Court the amount being collected or to file a surety bond for not more than double the amount of the tax.

After filing an Information for violation of Section 254 of the National Internal Revenue Code (Attempt to Evade or Defeat Tax) with the CTA, the Public Prosecutor manifested that the People is reserving the right to file the corresponding civil action for the recovery of the civil liability for taxes. As counsel for the accused, comment on the People's manifestation. (2015 Bar Question)

SUGGESTED ANSWER:

I will move for the denial of the manifestation. Any provision of law or the Rules of Court to the contrary notwithstanding, the criminal action and the corresponding civil action for the recovery of civil liability for taxes and penalties shall at all times be simultaneously instituted with, and jointly determined in the same proceeding by the CTA, the filing of the criminal action being deemed to necessarily carry with it the filing of the civil action, and no right to reserve the filing of such civil action separately from the criminal action shall be recognized.