

This MAP Tax Bulletin for August 2021 was contributed by KPMG R. G. Manabat & Co.

## **COURT OF TAX APPEALS DECISIONS**

**A CLAIMANT FOR REFUND MUST FIRST FILE AN ADMINISTRATIVE CLAIM FOR REFUND PRIOR TO FILING A JUDICIAL CLAIM BEFORE THE COURT.** Notably, both the administrative and judicial claims for refund should be filed within the two (2)-year prescriptive period indicated therein, and that the claimant is allowed to file the latter even without waiting for the resolution of the former in order to prevent the forfeiture of its claim through prescription. While the law provides that the two (2)-year period is counted from the date of payment of the tax, jurisprudence, however, clarified that the two (2)-year prescriptive period to claim a refund actually commences to run, at the earliest, on the date of the filing of the adjusted final tax return because this is where the figures of the gross receipts and deductions have been audited and adjusted, thus, reflecting the results of the operations of a business enterprise. (*Bethlehem Holdings, Inc. vs. Commissioner of Internal Revenue, CTA Case No. 10050, 07 July 2021*)

**A CLAIM FOR TAX REFUND CARRIES THE ASSUMPTION THAT THE TAX RETURNS FILED WERE CORRECT.** If the tax return filed was not proper, the correctness of the amount paid and, therefore, the claim for refund becomes questionable. In that case, the court must determine if a taxpayer claiming refund of erroneously paid taxes is more properly liable for taxes other than that paid. (*Arrow Freight Corporation vs. Commissioner of Internal Revenue, CTA Case No. 10064, 13 July 2021*)

**THE RULE THAT TAX EXEMPTIONS SHOULD BE CONSTRUED STRICTLY AGAINST THE TAXPAYER PRESUPPOSES THAT THE TAXPAYER IS CLEARLY SUBJECT TO THE TAX BEING LEVIED AGAINST HIM.** Unless a statute imposes a tax clearly, expressly and unambiguously, what applies is the equally well-settled rule that the imposition of a tax cannot be presumed. Where there is doubt, tax laws must be construed strictly against the government and in favor of the taxpayer. This is because taxes are burdens on the taxpayer, and should not be unduly imposed or presumed beyond what the statutes expressly and clearly import. Indeed, there must be a clear delineation between a claim for refund premised on a tax exemption under a statute and a claim for refund based on erroneous payment when the taxpayer or article, as the case may be, is not subject to tax. The former should be construed against the claimant-taxpayer, whereas the latter should be

construed against the government. (*Petron Corporation v. Commissioner of Internal Revenue, et al, CTA Case No. 8544, 19 July 2021*)

**WITHOUT PROOF THAT THE EXAMINATION WAS PROPERLY AUTHORIZED, ALL ASSESSMENTS THAT WERE DERIVED FROM SUCH EXAMINATION ARE NULL AND VOID.** Party-litigants in a tax assessment case are duty bound to present and offer their corresponding pieces of evidence to prove every minute aspect of their respective cases. One party cannot simply rely on the weakness of the other party's evidence to win a deficiency tax assessment case. The party to whom the judgment will be favorable should be that party who proved, through the evidence adduced, that said party is indeed entitled to such ruling. Following this, and to the point of being repetitive, LOA No. 00001975 cannot be considered in determining whether the examinations of petitioner in relation to the subject deficiency tax assessments have been properly authorized since respondent failed to offer the said LOA, or any other LOA for that matter, as part of his evidence and especially since he failed to even merely attach or incorporate a copy of the same as part of this Court's records nor identify it through the testimony of his witnesses. (*Rieckermann Philippines, Inc. v. Commissioner of Internal Revenue, CTA Case No. 9613, 22 July 2021*)

## **REVENUE REGULATIONS (RR)**

1. RR No. 14-2021<sup>1</sup> - Suspends the implementation of certain provisions of RR No. 05-2021 dated 8 April 2021.

The following provision of RR No. 05-2021 are hereby suspended:

- Section 2 (C), on the definition of Proprietary Educational Institutions, insofar as it includes therein the phrase “*which are non-profit*”.
  - Section 2 (E), on the definition of Non-Profit, insofar as it applies to “*Proprietary Educational Institutions*”, and
  - Section 3 (B), which provides illustration on the tax treatment of Proprietary Educational Institutions which are non-profit.
2. RR No. 15-2021<sup>2</sup> - Defers the implementation of RR No. 09-2021 which implements the imposition of twelve percent (12%) Value Added Tax (VAT) on transactions covered under Section 106 (A) (2) (a) subparagraphs (3) (4) (5) , and Section 108 (B) subparagraphs (1) and (5) of the National Internal Revenue Code (Tax Code) of 1997, as amended by R.A. 10963 (TRAIN LAW).

The implementation is deferred until the issuance of the amendatory RR.

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<sup>1</sup> Dated 26 July 2021, Issued on 28 July 2021

<sup>2</sup> Dated 21 July 2021, Issued on 28 July 2021

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## **REVENUE MEMORANDUM ORDERS (RMO)**

1. **RMO No. 21-2021**<sup>3</sup> - Amends certain provisions of Revenue Memorandum Order (RMO) No. 1-2011 on the implementation of final and executory decisions in administrative cases involving BIR officials/employees.

Within three (3) days from receipt of the decisions/orders, the Personnel Adjudication Division (PAD) shall serve the same, including the order of preventive suspension, to the personnel/official concerned and simultaneously furnish the Head of Office where the personnel/official concerned is assigned. The PAD shall, within three (3) days after the decisions/orders become executory, furnish the Personnel Division and Security Management Division with copies thereof to ensure their full implementation.

The roles and responsibilities of the concerned BIR offices relative to the implementation of decisions/orders are prescribed in the Order.

## **REVENUE MEMORANDUM CIRCULARS (RMC)**

1. **RMC No. 81-2021**<sup>4</sup> - Publishes the letter from the Food and Drug Administration containing the “List of VAT-Exempt Products” pursuant to RA No. 11534 (CREATE Act).

The VAT exemption for the sale or importation of the following shall take effect on:

- a. Medicines for diabetes, high cholesterol, and hypertension beginning January 1, 2020;
  - b. Medicines for cancer, mental illness, tuberculosis, and kidney diseases beginning January 1, 2021;
  - c. Drugs and vaccines prescribed and directly used for COVID-19 treatment beginning January 1, 2021 until December 31, 2023; and
  - d. Medical devices directly used for COVID-19 treatment beginning January 1, 2021 until December 31, 2023.
2. **RMC No. 82-2021**<sup>5</sup> - Addresses the absence of confirmation/acknowledgement e-mail after uploading of documents to eAFS System.

**Due to technical issues in the Bureau's electronic Audited Financial Statements (eAFS) System, certain taxpayers fail to receive confirmation/acknowledgment emails for scanned copies of documents uploaded to the said system. For this reason, these taxpayers cannot**

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<sup>3</sup> Dated 15 February 2021, Issued on 07 July 2021

<sup>4</sup> Dated 06 July 2021, Issued on 06 July 2021

<sup>5</sup> Dated 22 June 2021, Issued on 07 July 2021

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**present to other offices, such as the Security and Exchange Commission (SEC), any proof of its submission to this Bureau.**

Under this circular, in lieu of the confirmation/acknowledgement e-mail, copies of screenshots from the eAFS clearly showing the details contained in the screenshot, are considered sufficient proof of submission to the BIR by the concerned taxpayer of the documents described in the said screenshots.

3. **RMC No. 83-2021<sup>6</sup> - Circularizes the Implementing Rules and Regulations of Title XIII of Republic Act (RA) No. 8424, otherwise known as the "National Internal Revenue Code of 1997", as amended by RA No. 11534 (CREATE Act).**
4. **RMC No. 84-2021<sup>7</sup> - Circularizes Executive Order No. 138 titled “Full Devolution of Certain Functions of the Executive Branch to Local Governments, Creation of a Committee on Devolution, and for Other Purposes”.**
5. **RMC No. 85-2021<sup>8</sup> - Publishes the full text of the IATF Memorandum Circular No. 2021-1 dated June 3, 2021, by the Secretary of Department of Budget and Management and Chairman of Administrative Order 25 Inter-Agency Task Force, entitled “Guidelines on the Grant of the Performance-Based Bonus (PBB) for the Fiscal Year 2021 under EO No. 80, s. 2012 and EO No. 201, s. 2016”.**
6. **RMC No. 86-2021<sup>9</sup> - Circularizes the Memorandum of Agreement on Information Exchange and Reconciliation between Department of Energy, Bureau of Customs and Bureau of Internal Revenue.**
7. **RMC No. 87-2021<sup>10</sup> - Prescribes the acceptance of Philippine Identification (PhilID) Card as an acceptable supporting document for proof of address and valid proof of identification for all transactions or frontline services with the BIR.**

All revenue employees/officials processing BIR frontline services requiring presentation of any valid government issued ID shall accept/allow the PSA-issued PhilID Card as proof of identification of the taxpayer. Presentation of the PhilID alone is sufficient as a valid proof of identification; hence, there is no need to require additional/other government ID to establish the identity of the taxpayer. This is in compliance with Republic Act (RA) No. 11055, also known as Philippine Identification System (Philsys) Act, which aims to establish a single national identification system to provide a valid proof of identification for all citizens and resident aliens as a means of simplifying public and private transactions.

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<sup>6</sup> Date 12 July 2021, Issued on 12 July 2021

<sup>7</sup> Dated 30 June 2021, Issued 15 July 2021

<sup>8</sup> Dated 22 June 2021, Issued 15 July 2021

<sup>9</sup> Dated 05 July 2021, Issued 15 July 2021

<sup>10</sup> Dated 15 July 2021, Issued on 15 July 2021

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8. **RMC No. 88-2021**<sup>11</sup> - Circularizes the Lists of Withholding Agents required to deduct and remit the 1% or 2% Creditable Withholding Tax for the purchase of goods and services under Revenue Regulations No. 31-2020.

According to this circular, the obligation to deduct and remit to the BIR the 1% and 2% CWT shall continue, commence or cease, as the case may be, effective August 1, 2021. Any taxpayer not found in the published list of TWAs is deemed excluded and, therefore, not required to deduct and remit the 1% or 2% CWT pursuant to Revenue Regulations No. 31-2020.

Any written request by the taxpayers as a separate documentary proof for being identified as TWAs, despite the publication in the newspaper of general circulation being deemed sufficient, shall be filed with the Revenue District Office and the corresponding Certification issued by its Revenue District Officer where the concerned withholding agent is duly registered.

9. **RMC No. 89-2021**<sup>12</sup> - Circularizes RA No. 11534, titled “An Act Reforming the Corporate Income Tax and Incentives System, Amending for the Purpose Sections 20, 22, 25, 27, 28, 29, 34, 40, 57, 109, 116, 204 and 290 of the National Internal Revenue Code of 1997, as Amended, and Creating Therein New Title XIII, and for Other Purposes”, otherwise known as “Corporate Recovery and Tax Incentives for Enterprises Act” or “CREATE”.

10. **RMC No. 90-2021**<sup>13</sup> - Provides specific guidelines and procedures on the utilization of Tax Payment Certificate (TPC) issued under the Comprehensive Automotive Resurgence Strategy (CARS) Program.

According to this circular, TPC refers to a non-transferable certificate, which shall be used to defray the tax and duty obligations of the Eligible and Registered Participants (ERPs) to the National Government. The ERPs shall request from Department of Trade and Industry-Board of Investments (DTI-BOI) for the issuance of TPC based on the statutory deadlines for payment of tax and/or duty.

The TPC shall only be applied against the Excise Tax, Income Tax and Value-Added Tax (VAT) liabilities incurred in the course of the ERPs operations, and shall not include any type of Withholding Taxes of the ERPs. The amount of the TPC shall be indicated in the tax return as deduction from the tax due of the ERPs. Specifically, indicate the phrase "TPC No. (control or serial number)" and its corresponding amount in the boxes provided for in the line item of the tax return which states the phrase "Other Tax Credits/Payments (specify)" located immediately after the line item stating "Tax Due". In case the amount of TPC exceeds the tax due, net of the creditable taxes, the excess shall not be considered or treated as a refundable amount.

The accomplished tax return shall be filed using the electronic Filing and Payment System (eFPS) or eBIRForms Package, as the case may be. In case the tax due is more than the amount of the TPC, the tax still due shall be paid using the available modes of payment of the BIR.

<sup>11</sup> Dated 29 June 2021, Issued on 16 July 2021

<sup>12</sup> Dated 21 July 2021, Issued on 19 July 2021

<sup>13</sup> Dated 09 July 2021, Issued on 28 July 2021

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**The printed hard copy of the duly-filed tax returns, together with the BIR copy of the TPC and other prescribed attachments, shall be submitted to the Revenue District Office (RDO), Large Taxpayer Division Office (LTDO), or LT Documents Processing and Quality Assurance Division (LTDPQAD) of the Large Taxpayer Service, where the ERPs are duly registered, pursuant to existing revenue guidelines and procedures. The ERPs' copy of the TPC shall be retained by them while the BIR's copy of the TPC shall be used for recording purposes in the collection books of the BIR.**

**A TPC shall have a validity period of thirty (30) days counted from date of issue, and can only be used once. The date indicated on the face of the TPC shall be presumed to be the date of issuance. In the event that a TPC is not presented or utilized for tax payment to the BIR, the ERPs should immediately surrender and return the original copy of the TPC to DTI-BOI for reinstatement in the PCMIA (i.e., Participating Car Maker Incentive Account): Provided, That the surrender thereof is made within the validity period of the TPC, otherwise the same shall be forfeited in favor of the government.**

**END**