

**REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY**

EN BANC

PEOPLE OF THE PHILIPPINES, CTA *EB* Crim. No. 145
Petitioner, (CTA Crim. Case No. O-1082)

Present:

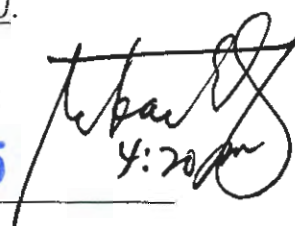
-versus-

**DEL ROSARIO, P.J.,
RINGPIS-LIBAN,
MANAHAN,
BACORRO-VILLENA,
MODESTO-SAN PEDRO,
REYES-FAJARDO,
CUI-DAVID,
FERRER-FLORES, and
ANGELES, JJ.**

**PGU GENERAL MERCHANDISE,
INC., FOOK SEONG YONG and
ROCELLE FRANCISCO,**
Respondents.

Promulgated:

MAR 05 2025



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DECISION

MANAHAN, J.:

Before the Court is a *Petition for Review* (“*Petition*”) filed on April 4, 2024,¹ assailing the Resolutions dated October 12, 2023² and February 27, 2024³ of this Court’s First Division (assailed *Resolutions*). The assailed *Resolutions* dismissed the criminal case filed against respondent for violation of Section 255 of the Tax Code on the ground of prescription, *viz*:

“The present Information dated 03 September 2019 alleging commission date of sometime in September 2015, was filed with the Court only on **10 August 2023**. Thus, the right of the government to institute the case against the accused has already prescribed considering that almost eight (8) years had

¹ *EB* Docket, pp. 5-13.

² *Id.*, pp. 14-19.

³ *Id.*, pp. 20-22.



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already elapsed from the alleged date of the crimes' commission to the filing of the Information on 10 August 2023. Therefore, it is only just that the present criminal Information be dismissed.

Jurisprudence has it that the waiver or loss of the right to prosecute the offender is automatic and by operation of law. Evidently, in this case, prescription has automatically set in when the plaintiff failed to file the present Information within the 5-year prescriptive period provided under Section 281 of the NIRC of 1997, as amended.

WHEREFORE, in light of the foregoing considerations, this case is hereby **DISMISSED** on the ground of prescription.

SO ORDERED.⁴

...

WHEREFORE, in light of the foregoing considerations, plaintiff's "Motion for Reconsideration with Leave of Court and Entry of Appearance (Re: Resolution dated 12 October 2023)" filed on 05 January 2024 is hereby **DENIED** for lack of merit.

...

SO ORDERED.⁵

Petitioner now assigns the following error:

WITH ALL DUE RESPECT, THE HONORABLE COURT IN DIVISION ERRED IN DISMISSING THE INSTANT CASE ON THE GROUND THAT THE INFORMATION WAS FILED BEYOND THE FIVE (5)-YEAR PRESCRIPTIVE PERIOD.

In support of its *Petition*, petitioner cites the case of *People v. Mateo A. Lee, Jr.*⁶ involving the offense of sexual harassment where the Supreme Court held that the filing of a complaint for preliminary investigation suspends the period of prescription.

⁴ Resolution dated October 12, 2023, p. 5. Citation omitted.

⁵ Resolution dated February 27, 2024, p. 3.

⁶ G.R. No. 234618, September 16, 2019 [Per J. Peralta, Third Division].



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Hence, when the complaint for preliminary investigation in the present case was filed on September 27, 2018, it tolled the running of the five (5)-year prescriptive period for the offense of willful failure to pay tax. Consequently, when the *Information* was filed on August 10, 2023, it was not yet time-barred.

RULING OF THE COURT *EN BANC*

We deny the *Petition* for lack of merit.

Below is a summary of the material dates alleged in the *Petition*:

AUG. 07, 2015	Issuance of the Commissioner of Internal Revenue ("CIR")'s final decision on the disputed assessment ⁷
SEP. 2015	The CIR's decision becomes final, executory, and demandable ⁸
SEP. 27, 2018	The complaint for preliminary investigation was filed with the Department of Justice ⁹
AUG. 10, 2023	The <i>Information</i> was filed with the Court charging respondent of willfully and knowingly failing to pay deficiency income tax for taxable year 2008 (<i>sic</i>). ¹⁰

The statute of limitations for violations of the Tax Code is governed by Section 281 thereof. Said provision specifies two rules in determining its reckoning point:

SEC. 281. Prescription for Violations of any Provision of this Code. — All violations of any provision of this Code shall prescribe after **five (5) years**.

Prescription shall begin to run **from the day of 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**.

⁷ *EB* Docket, p. 10.

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*, p. 7.

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The prescription shall be interrupted when proceedings are instituted against the guilty persons and shall begin to run again if the proceedings are dismissed for reasons not constituting jeopardy.

The term of prescription shall not run when the offender is absent from the Philippines.¹¹

The *first rule* is that if it is known when the offense was committed, the five (5)-year prescriptive period shall begin to run from the date of its commission. The *second rule* is that if it is not known when the offense was committed, the five (5)-year prescriptive period shall begin to run from the date of its discovery and institution of judicial proceedings for its investigation and punishment.

Jurisprudence provides that the offense of “failure to pay tax” under Section 255 of the Tax Code is committed after the assessment for deficiency tax becomes final and the taxpayer refuses to pay the same.¹² Here, the assessment became final, executory, and demandable on **September 7, 2015**¹³—thirty (30) days from the date of issuance of the CIR’s decision on the disputed assessment on August 7, 2015—since respondent did not appeal the same.¹⁴ Respondent’s alleged failure to pay tax was therefore committed on September 7, 2015. Applying the *first rule*, the offense charged will prescribe five (5) years therefrom or on **September 7, 2020**.

The question now before the Court is whether the filing of a complaint for preliminary investigation interrupts the period of prescription. If it does, then the prescription for the offense in this case had not yet set in as it was tolled on September 27, 2018. However, if it doesn’t, then the offense had already prescribed on September 7, 2020—almost three (3) years before the present *Information* was filed on August 10, 2023.

¹¹ *Emphasis supplied.*

¹² *Petronila C. Tupaz v. Honorable Benedicto B. Ulep, Presiding Judge of RTC Quezon City, Branch 105, and People of the Philippines*, G.R. No. 127777, October 1, 1999 [Per J. Pardo, First Division].

¹³ September 6, 2015 falls on a Sunday.

¹⁴ TAX CODE, Sec. 228.

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We answer in the negative. The offense had prescribed.

Section 281 of the Tax Code contemplates two (2) modes of “proceedings.” The *first mode* is the “judicial proceedings for [the] investigation and punishment” of the offense. This proceeding must accompany the discovery of the offense to *start* the period of prescription. Pertinently, the first mode of proceeding is relevant only under the second rule, *i.e.* if the date of commission of the offense is unknown.

The *second mode* of proceeding is the “proceedings [which] are instituted against the guilty persons.” This proceeding *interrupts* the period of prescription, while its dismissal “for reasons not constituting jeopardy” *resumes* the period of prescription. The second mode of proceeding is the crux of the present controversy.

The Court affirms that the second mode of proceeding pertains to a court action. As the Court in Division noted, *Lim v. Court of Appeals* (“*Lim*”),¹⁵ which involves a violation of the Tax Code, already settled the matter as follows:

... The Solicitor General stresses that Section 354 speaks not only of discovery of the fraud but also institution of judicial proceedings... Inasmuch as **a preliminary investigation is a proceeding for investigation and punishment of a crime**, it was only on September 1, 1969 that the prescriptive period **commenced**.

The Court is inclined to adopt the view of the Solicitor General... As Section 354 [now Section 281] stands in the statute book (and to this day it has remained unchanged) it would indeed seem that tax cases, such as the present ones, are practically imprescriptible for as long as the **period from the discovery and institution of judicial proceedings for its investigation and punishment, up to the filing of the information in court** does not exceed **five (5) years**.

¹⁵ G.R. Nos. 48134-37, October 18, 1990 [Per C.J. Fernan, Third Division]. *Emphasis supplied.*

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The Court notes, however, that *Lim* did not treat the first and second modes of proceeding as the same kind of action. It acknowledged that the *first mode* of proceeding, despite being qualified by the term “judicial,” refers to preliminary investigation “inasmuch as a preliminary investigation is a proceeding for investigation and punishment.” Although not further elaborated on in *Lim*, the use of the term “judicial” may be explained by the earlier setup of our criminal justice system where preliminary investigation was conducted by justices of peace.¹⁶ Thus, in the past, preliminary investigation was considered a “judicial” function.

The interpretation in *Lim* carries the age-old doctrine that the right of government to recover taxes is imprescriptible unless expressly provided by law. Hence, tax offenses are “practically imprescriptible” in that if their commission is unknown, then the State has an indefinite period from the time of their discovery to institute the proceedings for their investigation and punishment. However, if their commission is known, or once their commission is discovered *and* the State institutes the investigation proceedings, then the five (5)-year prescriptive period under Section 281 of the Tax Code begins to run. This period is interrupted only by the filing of the information in court.

To consider preliminary investigation as the second mode of proceeding would create a paradox where the act that starts the period of prescription is also the act that interrupts it. This renders Section 281 of the Tax Code absurd and meaningless, as the five (5)-year prescriptive period provided under the *second rule* will never begin to run despite the express wording of the law that “[p]rescription shall *begin* to run... from the discovery thereof and the institution of judicial proceedings for its investigation and punishment.”

Moreover, to consider preliminary investigation as the second mode of proceeding also renders superfluous the mandate of the law that the *dismissal* of such proceeding “for reasons not constituting jeopardy” will cause the period to “begin to run again.” Jeopardy attaches when the following elements exist: 1.) a valid information; 2.) a court of competent jurisdiction; 3.) arraignment and plea; and 4.) an acquittal or

¹⁶ *Panaguiton, Jr. v. Department of Justice*, G.R. No. 167571, November 25, 2008 [Per J. Tinga, Second Division].



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a conviction, or a dismissal of the case without the express consent of the accused.¹⁷ These elements do not exist in a preliminary investigation.

The above conclusion is no more than being faithful to the principle that every part of a law must be given effect,¹⁸ and courts should adopt a construction that will render every word operative over that which will make some words idle, insignificant, or superfluous. This principle is expressed in the maxim *Ut magis valeat quam pereat*, that is, we choose the interpretation which gives effect to the whole of the statute – its every word.¹⁹

Finally, the Revised Rules of the Court of Tax Appeals also directs that the institution of criminal actions *by the filing of an information* interrupts the period of prescription. Rule 9, Section 2 states:

SEC. 2. *Institution of criminal actions.* —
All criminal actions before the Court in Division in the exercise of its original jurisdiction shall be ***instituted by the filing of an information*** in the name of the People of the Philippines...

The institution of the criminal action shall interrupt the running of the period of prescription.²⁰

Considering that petitioner failed to file the present *Information* within the five (5)-year prescriptive period under Section 281 of the Tax Code, the offense of willful failure to pay tax charged against respondent has prescribed.

ACCORDINGLY, the instant *Petition for Review* filed on April 4, 2024 is **DENIED** for lack of merit. In view of the above pronouncement, respondent's *Motion to Admit Comment and Entry of Appearance* filed on September 18, 2024²¹ is **NOTED**

¹⁷ *People v. Nazareno*, G.R. No. 168982, August 5, 2009 [Per J. Brion, *En Banc*].

¹⁸ *Manila Electric Company v. Energy Regulatory Board*, G.R. No. 145399, March 17, 2006 [Per J. Garcia, Second Division].

¹⁹ *Philippine Health Care Providers, Inc. v. Commissioner of Internal Revenue*, G.R. No. 167330, September 18, 2009 [Per J. Corona, Special First Division].

²⁰ *Emphasis supplied.*

²¹ EB Docket, p. 34-38.

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without action as the attached *Comment (re: Petition for Review)* is already rendered **MOOT**.

SO ORDERED.

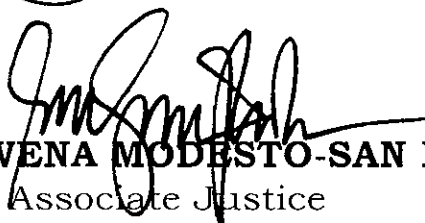

CATHERINE T. MANAHAN
Associate Justice

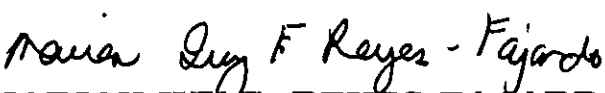
WE CONCUR:


ROMAN G. DEL ROSARIO
Presiding Justice


MA. BELEN M. RINGPIS-LIBAN
Associate Justice


JEAN MARIE A. BACORRO-VILLENA
Associate Justice


MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice


MARIAN IVY F. REYES-FAJARDO
Associate Justice


LANEE S. CUI-DAVID
Associate Justice

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CORAZON G. FERRER-FLORES
Associate Justice


HENRY S. ANGELES
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.


ROMAN G. DEL ROSARIO
Presiding Justice