

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

FIRST DIVISION

CTA CRIM. CASE NO. O-1214

**PEOPLE OF THE PHILIPPINES ,
Plaintiff,**

- versus -

**W2 ELECTRO MECHANICAL
SYSTEMS AND GENERAL
CONTRACTOR, INC./
WILFREDO S. LUCAS (President),
Accused.**

NOTICE OF RESOLUTION

To:

**PROSECUTOR GENERAL BENEDICTO A. MALCONTENTO
SR. ASST. CITY PROSECUTOR SUSAN T. VILLANUEVA
Department of Justice
Padre Faura Street, Ermita
1000 Manila**

**ATTY. CARLO D. CELIS
MS. JHOANNA M. BAGUILAN
MR. JOHN B. BAJADOR
MS. MARGARITA R. JOSE
Bureau of Internal Revenue - Revenue Region No. 7A
Legal Division, 5th Floor, Room 505, Fishermall
Quezon Avenue corner Fernando Poe Jr., Avenue
Quezon City**

GREETINGS:

You are hereby notified by these presents that on **October 10, 2024**, a Resolution was rendered in the above-entitled case, copy of which is attached hereto.

Quezon City, Philippines, October 11, 2024.

Atty. Maria Johoanna F. Chan-Te
Executive Clerk of Court II

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff,

CTA Crim. Case No. **O-1214**

For: Violation of Section 255,
in relation to Sections 253 and
256 of the National Internal
Revenue Code (NIRC) of
1997, as amended.

- versus -

Members:

DEL ROSARIO, P.J., Chairperson,
BACORRO-VILLENA, and
CUI-DAVID, JJ.

**W2 ELECTRO MECHANICAL
SYSTEMS AND GENERAL
CONTRACTOR, INC./
WILFREDO S. LUCAS**
(President),

Accused.

Promulgated:

OCT 10 2024, 1:10PM

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RESOLUTION

On 16 August 2024, the plaintiff filed an Information¹ against herein accused **W2 ELECTRO MECHANICAL SYSTEMS AND GENERAL CONTRACTOR, INC. / WILFREDO S. LUCAS (accused)**, for violation of Section 255² of the National Internal Revenue Code (**NIRC**) of 1997, as amended, in relation to Sections 253(d)³ and 256⁴ of the same Code allegedly committed as follows:

¹ Division Docket, pp. 5-7.

² **SEC. 255.** *Failure to File Return, Supply Correct and Accurate Information, Pay Tax, Withhold and Remit Tax and Refund Excess Taxes Withheld on Compensation.*

³ **SEC. 253.** *General Provisions.* –

...
(d) In the case of associations, partnerships or corporations, the penalty shall be imposed on the partner, president, general manager, branch manager, treasurer, officer-in-charge, and employees responsible for the violation.

⁴ **SEC. 256.** *Penal Liability of Corporations.*

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...

That on August 7, 2017 and thereafter, in Quezon City, and within the jurisdiction of this Honorable Court, accused **W2 ELECTRO MECHANICAL SYSTEMS AND GENERAL CONTRACTOR, INC.**[], a domestic corporation, and **WILFREDO S. LUCAS**, being its president, required by law to file income tax return at the time or times prescribed by law, rules or regulations and pay the corresponding tax, as provided under the NIRC of 1997, as amended, did then and there willfully, unlawfully and feloniously fail to pay **deficiency income tax** for the taxable year 2010 in the amount of Twenty Million One Hundred Ninety Six Thousand Thirty Four Pesos and Fifty Seven Centavos (P20,196,034.57), exclusive of surcharge and interest, despite receipt of the final assessment notices, including prior and post notices and final demands to pay, the last being in the form of a demand before suit issued on August 7, 2017, to the damage and prejudice of the government.

CONTRARY TO LAW.

...

The plaintiff attached the following supporting documents to the Information:

- 1) Certified True Copy of the Resolution dated 12 February 2020, signed by Senior Assistant City Prosecutor Susan T. Villanueva, with recommending approval of Senior Deputy State Prosecutor Miguel F. Gudio, Jr., and approved by Prosecutor General Benedicto A. Malcontento;⁵
- 2) Certified True Copy of the National Prosecution Service Investigation Data Form with NPS Docket No. XVI-INV-19J-00391 dated 10 October 2019;⁶
- 3) Certified True Copy of the Referral Letter dated 08 October 2019 of the Commissioner of Internal Revenue (**CIR**) Caesar R. Dulay, addressed to the Secretary of Justice Menardo I. Guevarra;⁷ and,
- 4) Certified True Copy of the Joint Complaint-Affidavit dated 10 October 2019⁸ of Bureau of Internal Revenue (**BIR**) officers Atty. Jonel Carlo D. Celis (**Celis**), Jhoanna M. Banguilan (**Banguilan**), John B. Bajador (**Bajador**) and Margarita R.

⁵ Division Docket, pp. 8-13.

⁶ Id., p. 14.

⁷ Id., pp. 15-16.

⁸ Id., pp. 17-24.

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Jose (**Jose**) with attached Annexes "A" to "O", inclusive of sub-markings.⁹

Pursuant to Section 4¹⁰ of Rule 9 of the Revised Rules of the Court of Tax Appeals¹¹ (**RRCTA**), the Court shall proceed to determine if probable cause exists for the issuance of a warrant of arrest. In the said provision, the Court shall go over the preliminary pieces of evidence submitted by the plaintiff and accordingly attached to the Information filed against the accused. In the same provision, it is also provided that the Court may dismiss the case if the evidence fails to establish probable cause.

After a careful consideration of the records, this Court finds that the right to institute the criminal action has already prescribed.

In *Emilio E. Lim, Sr. and Antonia Sun Lim v. Court of Appeals and People of the Philippines*¹² (**Lim**), the Supreme Court ruled that the crime of failure to pay tax is committed only after receipt of the final notice and demand for payment, coupled with willful refusal to pay the taxes due within the allotted period, viz:

...

Inasmuch as the final notice and demand for payment of the deficiency taxes was served on petitioners on July 3, 1968, it was only then that the cause of action on the part of the BIR accrued. **This is so because prior to the receipt of the letter-assessment, no violation has yet been committed by the taxpayers. The offense was committed only after receipt was coupled with the willful refusal to pay the taxes due within the allot[t]ed period. The two criminal informations, having been filed on June 23, 1970, are well-within the five-year prescriptive period and are not time-barred.**

...

⁹ Id., pp. 25-81.

¹⁰ **SEC. 4. Warrant of arrest.** — Within ten days from the filing of the information, the Division of the Court to which the case was raffled shall evaluate the resolution of the public prosecutor and its supporting evidence. The Division may immediately dismiss the case if it finds that the evidence on record clearly fails to establish probable cause. If the Division finds probable cause, it shall issue a warrant of arrest signed by the Chairperson of the Division. In case of doubt on the existence of probable cause, the Division may order the prosecutor to present additional evidence, *ex parte*, within five days from notice.

¹¹ A.M. No. 05-11-07-CTA.

¹² G.R. Nos. L-48134-37, 18 October 1990; Emphasis and underscoring supplied.

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This interpretation was further applied by the Supreme Court in *Petronila C. Tupaz v. Honorable Benedicto B. Ulep Presiding Judge of RTC Quezon City, Branch 105, et al.*¹³ (**Tupaz**), where it was held that the offense of failure to pay deficiency income tax can only be deemed committed after the taxpayer has been served a notice and demand for payment of the deficiency taxes, viz:

...
We agree with the Solicitor General that the offense has not prescribed. Petitioner was charged with **failure to pay deficiency income tax** after repeated demands by the taxing authority. In *Lim, Sr. v. Court of Appeals*, we stated that[,] **by its nature[,] the violation could only be committed after service of notice and demand for payment of the deficiency taxes upon the taxpayer.** Hence, it cannot be said that the offense has been committed as early as 1980, upon filing of the income tax return. This is so because **prior to the finality of the assessment, the taxpayer has not committed any violation for nonpayment of the tax. The offense was committed only after the finality of the assessment coupled with taxpayer's willful refusal to pay the taxes within the allotted period.** ...

...
In this case, the records show that accused received the Formal Letter of Demand¹⁴ (**FLD**) with attached Details of Discrepancies¹⁵, together with the Assessment Notices¹⁶ (**ANs**), all dated 10 January 2014 on **13 January 2014**.¹⁷ The ANs indicated that the deficiency taxes should be paid on or before 10 February 2014.

Despite receipt of the FLD and ANs, accused failed to file any administrative protest thereto (before 12 February 2014), thus, the FLD became final and unappealable on **13 February 2014**, and on such date the offense is "committed" for purposes of the five (5)-year prescriptive period.

Section 281 of the NIRC of 1997, as amended, which governs the prescriptive period for criminal tax actions, reads as follows:

¹³ G.R. No. 127777, 01 October 1999; Citation omitted, italics in the original text and emphasis supplied.

¹⁴ Annex "J", Division Docket, pp. 56-58.

¹⁵ Id., p. 59.

¹⁶ Annexes "J-1" to "J-4", id., pp. 60-63.

¹⁷ As indicated in the stamp receipt in the Assessment Notice No. 396-B088-10.

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...
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.

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.¹⁸

...

The above provision is clear that the period of prescription for the offense charged is five (5) years. As to the time the period of prescription starts to run, the above provision states that prescription shall begin to run from the day of the commission of the violation of the law, or if the same be not known at the time, from the discovery thereof and the institution of judicial proceedings for its investigation and punishment. It shall be interrupted when proceedings are instituted against the offender and shall run again if the proceedings are dismissed for reasons not constituting jeopardy. The prescriptive period shall not run when the offender is not in the country.

In construing when the prescriptive period for crimes punishable under the NIRC of 1997, as amended, is suspended, it is proper to interpret the provision with reference to its context, *i.e.*, that every part of the statute must be considered together with the other parts and kept subservient to the general intent of the whole enactment.¹⁹ The second paragraph of Section 281 speaks of “judicial proceedings”, which means that the “proceedings” referred to in the third paragraph likewise pertains to proceedings which are judicial in nature, *i.e.*, the filing of criminal information with the court.

¹⁸ Italics in the original text and emphasis supplied.

¹⁹ *Philippine International Trading Corporation v. Commission on Audit*, G.R. No. 183517, 22 June 2010.

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In *Lim*, the Supreme Court interpreted Section 354 of the NIRC of 1939, as amended, (which contains the exact provision as the present Section 281 of the NIRC of 1997, as amended) to mean that tax cases 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, *viz*:

...
Not only that. **The Solicitor General stresses that Section 354 [now, Section 281] speaks not only of discovery of the fraud but also institution of judicial proceedings. Note the conjunctive word "and" between the phrases "the discovery thereof" and "the institution of judicial proceedings for its investigation and proceedings." In other words, in addition to the fact of discovery, there must be a judicial proceeding for the investigation and punishment of the tax offense before the five-year limiting period begins to run. It was on September 1, 1969 that the offenses subject of Criminal Cases Nos. 1790 and 1791 were indorsed to the Fiscal's Office for preliminary investigation. 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. For while that particular point might have been raised in the Ching Lak case, the Court, at that time, did not give a definitive ruling which would have settled the question once and for all. **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.**
...

Unless amended by the legislature, Section 354 [now, Section 281] stays in the Tax Code as it was written during the days of the Commonwealth. And as it is, must be applied regardless of its apparent one-sidedness in favor of the Government. In criminal cases, statutes of limitations are acts of grace, a surrendering by the sovereign of its right to prosecute. They receive a strict construction in favor of the Government and limitations in such cases will not be presumed in the absence of clear legislation.²⁰
...

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Plaintiff had five (5) years from 13 February 2014 (*i.e.*, the day after the deadline for filing a protest against the FANs and ANs), or until **12 February 2019**, within which to file the Information in court. Since the subject Information was filed only on **16 August 2024**, criminal action had already *been prescribed for five (5) years, seven (7) months and two (2) days* from **12 February 2019** (*i.e.*, the last day of the five [5]-year prescriptive period). Evidently, plaintiff's right to file the subject criminal action has already prescribed.

Relevantly, Section 2, Rule 9 of the RRCTA, as amended, provides:

...
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. In criminal actions involving violations of the National Internal Revenue Code and other laws enforced by the Bureau of Internal Revenue, the Commissioner of Internal Revenue must approve their filing. In criminal actions involving violations of the Tariff and Customs Code and other laws enforced by the Bureau of Customs, the Commissioner of Customs must approve their filing.

The institution of the criminal action shall interrupt the running of the period of prescription.²¹

...

Verily, pursuant to the Supreme Court's pronouncement in *Lim* and the above-quoted provision of the RRCTA, the prescriptive period to file a criminal case is tolled only when the Information is filed before the Court. In this case, the Information was filed beyond the five (5)-year prescriptive period, thus there is no interruption of said period.

To be sure, criminal offenses for violations of the NIRC of 1997, as amended, including known offenses, are not intended to be imprescriptible. However, if the prescriptive period is interrupted once preliminary investigation proceedings are instituted before the Department of Justice (DOJ), it suggests that there is no fixed deadline for filing an Information in court. As a result, the offense could indefinitely remain actionable once a complaint reaches the DOJ. This grants the DOJ discretionary power over when to act, potentially

²¹ Italics in the original text and emphasis supplied.

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allowing the misuse of the rule on prescription as a means to intimidate, harass, and disrupt taxpayers suspected of tax violations.²²

Stated otherwise, prescription protects taxpayers who are at the mercy of the taxing and prosecuting authorities from unreasonable, long drawn out or abusive investigations. It serves as a safeguard against the abuse of power by unscrupulous public officials, including the possibility of initiating vexatious, arbitrary, and oppressive investigations.²³

Again, given that the Information²⁴ was filed on **16 August 2024**, beyond the five (5)-year prescriptive period under Section 281 of the NIRC of 1997, as amended, that ended on **12 February 2019**, plaintiff's right to initiate this case against the named accused had already expired by the time of filing. Consequently, this justifies the dismissal of the case on the ground of prescription.

Jurisprudence has it that the waiver or loss of the right to prosecute the offender is automatic and by operation of law.²⁵ Evidently, in this case, prescription has automatically set in when plaintiff failed to file the Information within the five (5)-year prescriptive period provided under Section 281 of the NIRC of 1997, as amended.

It is also the rule that in the interpretation of the law on prescription of crimes, that which is more favorable to the accused is to be adopted.²⁶ Here, the circumstances show that the crime has prescribed resulting in extinguishment of accused's criminal liability, if any.

WHEREFORE, in light of the foregoing considerations, CTA Crim. Case No. O-1214 is hereby **DISMISSED** by reason of prescription.

²² See *People of the Philippines v. Diego G. Martinez*, CTA Crim. Case No. O-672, 25 January 2024.

²³ Id.

²⁴ Supra at note 1.

²⁵ *Rafael Yapdiangco v. The Hon. Concepcion B. Buencamino, et al.*, G.R. No. L-28841, 24 June 1983.

²⁶ *People of the Philippines v. Arturo F. Pacificador*, G.R. No. 139405, 13 March 2001.

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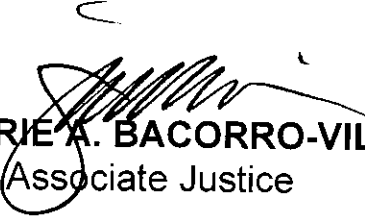
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SO ORDERED.

ON OFFICIAL BUSINESS
ROMAN G. DEL ROSARIO
Associate Justice


JEAN MARIE A. BACORRO-VILLENA
Associate Justice


LANEE S. CUI-DAVID
Associate Justice