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Tax bulletin



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Highlights

BIR Rulings

- ▶ Donations made to the Film Development Council of the Philippines (FDCP), a government agency whose activities are not conducted for profit, are exempt from donor's tax. **(Page 4)**
- ▶ Rural banks created and organized under Republic Act (RA) No. 7353 are exempt from paying all taxes, fees and charges, except corporate income tax and local taxes, fees and charges, for a period of five years from the date of commencement of operations. **(Page 4)**
- ▶ Income payments to a Board of Investments (BOI)-registered enterprise enjoying the income tax holiday (ITH) incentive in connection with its registered activity are not subject to creditable withholding tax (CWT).

Entitlement to ITH is not automatic as the BOI-registered enterprise has to comply with the Specific Terms and Conditions of its BOI registration. **(Page 5)**

BIR Issuances

- ▶ Revenue Regulations (RR) No. 6-2014 prescribes the mandatory use of Electronic Bureau of Internal Revenue Forms (eBIRForms) in filing all tax returns by selected non-electronic filing and payment system (non-eFPS) filers. **(Page 6)**
- ▶ RR No. 7-2014 requires the affixture of internal revenue stamps on imported and locally manufactured cigarettes, and the use of the Internal Revenue Stamp Integrated System (IRSIS) for ordering, distribution and monitoring of the same. **(Page 10)**
- ▶ Revenue Memorandum Circular (RMC) No. 70 -2014 clarifies the requirements for issuing certifications on outstanding tax liabilities/delinquency verification slips for purposes of processing the payment of claims for tax refund, cash conversion of tax credit certificates (TCCs) and VAT monetization. **(Page 16)**
- ▶ RMC No. 73-2014 clarifies the withholding tax (WT) rates on dividend payments to Philippine Central Depository (PCD) Nominees. **(Page 17)**
- ▶ Revenue Memorandum Order (RMO) No. 34-2014 clarifies certain provisions of RMO No. 20-2013 as amended by RMO No. 28-2013 regarding the issuance of tax exemption rulings for qualified non-stock, non-profit (NSNP) corporations and associations under Section 30 of the Tax Code. **(Page 17)**
- ▶ RMO No. 33-2014 amends the policies, guidelines and procedures in issuing the Importer's Clearance Certificate (ICC) and the Broker's Clearance Certificate (BCC), which are required in relation to their accreditation as an Importer/ Customs Broker. **(Page 18)**

BOC Issuance

- ▶ Customs Memorandum Order (CMO) No. 18-2014 prescribes the guidelines on lifting an order of abandonment. **(Page 20)**

PEZA Issuance

- ▶ PEZA clarifies the applicability of DENR Administrative Order No. 2013-22, also known as the "Revised Procedures and Standards for the Management of Hazardous Wastes," to small quantity generators of hazardous wastes. **(Page 20)**

SEC Issuances

- ▶ SEC Memorandum Circular (MC) No. 18 extends to December 31, 2014 the deadline for compliance with SEC MC No. 11, which mandates all publicly-listed companies (PLCs) to include in their website information on the corporate governance practices of their investee companies. **(Page 21)**
- ▶ SEC MC No. 19 clarifies the due date for the filing of an Anti-Money Laundering Operating Manual (AML Operating Manual) and an Anti-Money Laundering Compliance Form (AML Compliance Form) by financing companies and lending companies which became, or may become, covered institutions after December 8, 2010. **(Page 21)**
- ▶ The president of a corporation may initially decide on matters without the prior approval of the Board, if such matters are thereafter ratified by the Board. **(Page 22)**
- ▶ When the by-laws and the articles of incorporation (AOI) of a NSNP corporation provide for different maximum numbers of membership, the number of members stated in the AOI shall prevail. **(Page 22)**

BSP Issuances

- ▶ Circular No. 847 prescribes the rules on the special licensing fees on relocation of head offices, branches/other banking offices (OBOs), and approved but unopened branches/OBOs. **(Page 23)**
- ▶ Circular No. 848 prescribes the reportorial requirements for bank deposit interest rates. **(Page 24)**
- ▶ Circular No. 849 amends Subsection 4303Q.1 of the Manual of Regulations for Non-Bank Financial Institutions (MORNBFI) on Exclusions from the Single Borrower's Loan (SBL) Limit allowed for quasi-banks (QBs). **(Page 25)**
- ▶ Circular No. 850 requires the submission of the Report on Cross-Border Financial Positions. **(Page 25)**

Court Decisions

- ▶ Electronic instructions from abroad or SWIFT messages by investor-clients, instructing a local bank to debit its local or foreign currency account to pay for a transaction in the Philippines, are not subject to documentary stamp tax (DST) under Section 181 of the Tax Code. **(Page 26)**
- ▶ As a general rule, when preferred shares are redeemed and become treasury shares, the net capital gain on the redemption is subject to the 5%-10% capital gains tax (CGT). The excess of the redemption price over the par value of the shares is not deemed a dividend subject to final withholding tax (FWT).

Non-submission of complete supporting documents in the administrative claim is not fatal to a judicial claim, provided the taxpayer is able to adduce sufficient evidence before the Court to support its claim for refund. **(Page 28)**

- ▶ The appellate jurisdiction of the Court of Tax Appeals (CTA) is not limited only to decisions of the Commissioner of Internal Revenue (CIR) involving disputed assessments or claims for refunds, but also to those involving other matters arising under the Tax Code, including the authority to determine the validity of a Warrant of Distraint and/or Levy.

A request for reconsideration, unlike a request for reinvestigation, does not suspend the 5-year prescriptive period to collect the assessed tax. (Page 30)

- ▶ A property owner may file a protest with the Local Board of Assessment Appeals (LBAA) on the assessment by the City Assessor within 60 days from the date of receipt of the written notice of assessment. Failure to appeal the City Assessor's assessment with the LBAA within 60 days from receipt of written notice is fatal. (Page 32)

BIR Rulings

BIR Ruling No. 316-14 dated August 11, 2014

Donations made to the FDCP, a government agency whose activities are not conducted for profit, are exempt from donor's tax.

Facts:

The Film Development Council of the Philippines (FDCP), a government agency under the Office of the President, whose activities are not conducted for profit, is the lead government agency for the preservation and protection of Filipino films. It receives various donations to aid its operations as a film archive.

Issue:

Are the donations made to FDCP exempt from donor's tax?

Ruling:

Yes. Under Sections 101(A)(2) and 101(B)(1) of the Tax Code, donations made in favor of the Government and any of its agencies which are not conducted for profit are exempt from donor's tax. Moreover, Section 17 of RA No. 9167, the law creating the FDCP, exempts from taxes any donation, contribution, subsidy or financial aid made to FDCP, and allows these donations to be deducted in full from the income of the donors for income tax purposes.

BIR Ruling No. 317-14 dated August 11, 2014

Rural banks created and organized under RA No. 7353 are exempt from paying all taxes, fees and charges, except corporate income tax and local taxes, fees and charges, for a period of five years from the date of commencement of operations.

Facts:

B Bank, a domestic corporation, was granted the authority to operate as a rural bank pursuant to RA No. 7353, otherwise known as the Rural Banks Act of 1992. It started its operations on August 10, 2011.

Issue:

Is B Bank exempt from gross receipts tax and DST?

Ruling:

Yes. Section 15 of RA No. 7353, as implemented by RR No. 16-93, provides that rural banks created and organized under RA No. 7353 are exempt from the payment of all taxes, fees and charges, except corporate income tax and local taxes, fees and charges, for a period of 5 years from commencement of operations.

However, the bank's exemption from DST is subject to the provisions of Section 173 of the Tax Code which states that when one party to the taxable document enjoys exemption from DST, the other party who is not exempt shall be the one directly liable for the tax.

BIR Ruling No. 333-14 dated August 15, 2014

Income payments to a BOI-registered enterprise enjoying the ITH incentive in connection with its registered activity are not subject to CWT.

Entitlement to ITH is not automatic as the BOI-registered enterprise has to comply with the Specific Terms and Conditions of its BOI registration.

Facts:

A Co., a domestic corporation, is an operator of a diesel power plant duly registered with the BOI. A Co. was granted the income tax holiday (ITH) incentive for a period of 6 years on the revenues generated from its BOI-registered project.

Issues:

1. Are income payments to A Co. subject to CWT?
2. Is A Co.'s entitlement to ITH automatic?
3. Is A Co. constituted as withholding agent for its income payments subject to withholding tax?
4. Is A Co. subject to any other administrative requirement?

Ruling:

1. No. Under Section 2.57.5(B)(2) of RR No. 2-98, as amended by RR No. 6-01, the CWT shall not apply to income payments to persons enjoying exemption from income tax, such as BOI-registered enterprises under ITH. However, the exemption covers only the revenues generated from the entity's BOI-registered activity.
2. No. Entitlement to ITH is not automatic as it still has to comply with the following Specific Terms and Conditions of its BOI registration:
 - a. Secure from the BOI Supervision and Monitoring Department (SMD) a Certificate of ITH Entitlement (CoE) prior to filing its income tax return (ITR) with the BIR. Otherwise, the ITH for that particular year without CoE shall be forfeited;
 - b. File an application with the BOI Incentives Department within 1 month from the filing of the final ITR with the BIR in order to validate the claim for income tax exemption. The application shall be accompanied by a certification by SSS that the enterprise is in good standing in the remittance of SSS contributions of its employees;
 - c. Submit to the BOI SMD, on a quarterly basis within 15 days from the end of each quarter, a report on Actual Investments, Employment, Sales, Production Costs and other information that the BOI may require at any time with respect to the registered project starting on date of registration.
3. Yes. A Co. shall be constituted as a withholding agent for the government if it acts as employer and any of its employees receive compensation income subject to compensation withholding tax, or if it makes payments to individuals or corporations subject to withholding taxes at source.

4. Yes. A Co. is required to file on or before the 15th day of the 4th month following the close of its accounting period a Profit and Loss Statement and Balance Sheet with Annual Information Return under oath, stating its gross income and expenses incurred during the taxable year. Furthermore, A Co.'s books of accounts and other pertinent records shall be subject to periodic examination by the BIR for the purpose of ascertaining if it has been complying with the conditions for tax exemption or incentives.

BIR Issuances

RR No. 6-2014 prescribes the mandatory use of eBIRForms in filing all tax returns by selected non-eFPS filers.

Revenue Regulations No. 6-2014 dated September 5, 2014

▶ **Definition of Terms**

1. *Electronic Bureau of Internal Revenue Forms (eBIRForms)* - refers to the 2 types of electronic services (e-Services) provided by the BIR for the preparation, generation, and submission of tax returns, which are the following: (i) Offline eBIRForms Package; and (ii) Online eBIRForms System.
2. *eBIRForms Software Package (also known as Offline eBIRForms Package)* - is a tax preparation software that allows the taxpayer and Accredited Tax Agent (ATA) to accomplish or fill out tax forms offline. It is an alternative mode of preparing tax returns that deviates from the conventional manual process of filling out tax returns on pre-printed forms, which is highly susceptible to human error. Taxpayers/ATAs can directly encode data, validate, edit, save, delete, view and print the tax returns. The form package has automatic computations and has the capability to validate information inputted by the taxpayers/ATAs.
3. *Online eBIRForms System* - is a filing infrastructure that accepts tax returns submitted online and automatically computes penalties for tax returns submitted beyond due date. The System creates secure user accounts thru enrollment for use of the online System, and allows ATAs to file on behalf of their clients. The System also has a facility for Tax Software Providers (TSPs) to test and certify the data generated by their tax preparation software (certification is by form). It is capable of accepting returns data filed using certified TSP's tax preparation software.
4. *Accredited Printers* - are duly-constituted agents of the BIR in the printing of principal and supplementary receipts/invoices and included in the List of Accredited Printers of Principal and Supplementary Receipts/Invoices published on the BIR website.
5. *Accredited Tax Agents (ATAs)* - are also known as accredited tax practitioners, who are engaged in tax practice included in the List of Accredited Tax Practitioners as published on the BIR website.
6. *Offline* - is a technical term generally used when the user's workstation is not connected to the internet.
7. *Online* - is the most common technical term used wherein the user connects his workstation to the internet to access various information through the worldwide web.
8. *No Payment Returns* - refers to a tax return that is not accompanied by any payment where the same is filed with any authorized BIR receiving office (e.g., breakeven, no transaction, refundable or second installment tax return).

► **Policies and Guidelines**

1. eBIRForms shall be available to all non-eFPS filers with or without internet access.
2. Taxpayers with internet access may download the eBIRForms Package from the BIR website www.bir.gov.ph, while taxpayers without internet may download the eBIRForms package from the BIR e-lounges.
3. Non-eFPS filers, specifically ATAs, Accredited Printers of Principal and Supplementary Receipts/Invoices, and One-Time Transaction (ONETT) taxpayers are required to use the eBIRForms in filing all of their tax returns, but may opt to submit their tax returns manually using the eBIRForms Offline Package at their respective Revenue District Offices or electronically through the use of the Online eBIRForms System.
4. ATAs who prepare and file tax returns on behalf of their clients are likewise mandated to use the eBIRForms.
5. The procedures prescribed in RMO No. 24-2013, which originally prescribed the guidelines on the use of the eBIRForms, shall be followed and observed.

► **Mandatory Coverage**

Only the following non-eFPS filers are covered by these Regulations:

1. ATAs/Practitioners and all their client-taxpayers;
2. Accredited Printers of Principal and Supplementary Receipts/Invoices;
3. ONETT taxpayers;
4. Those who file a "No Payment" Return;
5. Government-owned or -controlled corporations (GOCCs);
6. Local Government Units (LGUs), except barangays; and
7. Cooperatives registered with the National Electrification Administration (NEA) and Local Water Utilities Administration (LWUA)

► **Covered Returns**

The eBIRForms is an application covering 36 forms consisting of the following:

	Form No.	Latest revision date	Form Name
1	0605	July 1999 (ENCS)	Payment Form
2	1600	September 2005 (ENCS)	Monthly Remittance Return of Value-Added Tax and Other Percentage Taxes Withheld
3	1600WP	January 2010 (ENCS)	Remittance Return of Value-Added Tax and Other Percentage Taxes Withheld by Race Track Operators
4	1601-C	July 2008 (ENCS)	Monthly Remittance Return of Income Taxes Withheld on Compensation
5	1601-E	August 2008 (ENCS)	Monthly Remittance Return of Creditable Income Taxes Withheld (Expanded)
6	1601-F	September 2005 (ENCS)	Monthly Remittance Return of Final Income Taxes Withheld

7	1602	August 2001 (ENCS)	Monthly Remittance Return of Final Income Taxes Withheld on Interest Paid on Deposits and Yield on Deposit Substitutes/ Trusts/Etc.
8	1603	November 2004 (ENCS)	Quarterly Remittance Return of Final Income Taxes Withheld on Fringe Benefits Paid to Employees Other than Rank and File
9	1604-CF	July 2008 (ENCS)	Annual Information Return of Income Taxes Withheld on Compensation and Final Withholding Taxes
10	1604-E	July 1999 (ENCS)	Annual Information Return of Creditable Income Taxes Withheld (Expanded)/Income Payments Exempt from Withholding Tax
11	1606	July 1999 (ENCS)	Withholding Tax Remittance Return For Onerous Transfer of Real Property Other than Capital Asset (Including Taxable and Exempt)
12	1700	June 2013 (ENCS)	Annual Income Tax Return For Individuals Earning Purely Compensation Income (Including Non-Business/Non-Profession Income)
13	1701	June 2013 (ENCS)	Annual Income Tax Return For Self-Employed Individuals, Estates and Trusts
14	1701Q	July 2008 (ENCS)	Quarterly Income Tax Return For Self-Employed Individuals, Estates and Trusts (Including those w/ both Business and Compensation Income)
15	1702-EX	June 2013	June 2013 (ENCS) Annual Income Tax Return For Use ONLY by Corporations, Partnerships and Other Non-Individual Taxpayers EXEMPT Under the Tax Code, as Amended, [Sec. 30 and those exempted in Sec. 27(C)] and Other Special Laws, with NO Other Taxable Income
16	1702-MX	June 2013	Annual Income Tax Return For Corporations, Partnerships and Other Non-Individual Taxpayers with MIXED Income Subject to Multiple Income Tax Rates or with Income Subject to SPECIAL/ PREFERENTIAL RATE

17	1702-RT	June 2013 (ENCS)	Annual Income Tax Return For Corporations, Partnerships and Other Non-Individual Taxpayers Subject Only to REGULAR Income Tax Rate
18	1702Q	July 2008 (ENCS)	Quarterly Income Tax Return For Corporations, Partnerships and Other Non-Individual Taxpayers
19	1704	May 2001	Improperly Accumulated Earnings Tax Return
20	1706	July 1999 (ENCS)	Capital Gains Tax Return For Onerous Transfer of Real Property Classified as Capital Asset (both Taxable and Exempt)
21	1707	July 1999 (ENCS)	Capital Gains Tax Return for Onerous Transfer of Shares of Stock Not Traded Through the Local Stock Exchange
22	1800	July 1999 (ENCS)	Donor's Tax Return
23	1801	July 2003 (ENCS)	Estate Tax Return
24	2000	June 2006 (ENCS)	Documentary Stamp Tax Declaration/ Return
25	2000-OT	June 2006 (ENCS)	Documentary Stamp Tax Declaration/ Return (One-Time Transactions)
26	2200A	May 2006 (ENCS)	Excise Tax Return for Alcohol Products
27	2200AN	August 2003 (ENCS)	Excise Tax Return for Automobiles & Non-Essential Goods
28	2200M	September 2005 (ENCS)	Excise Tax Return for Mineral Products
29	2200P	September 2005 (ENCS)	Excise Tax Return for Petroleum Products
30	2200T	May 2006 (ENCS)	Excise Tax Return for Tobacco Products
31	2550M	February 2007 (ENCS)	Monthly Value-Added Tax Declaration
32	2550Q	February 2007 (ENCS)	Quarterly Value-Added Tax Return
33	2551M	September 2005 (ENCS)	Monthly Percentage Tax Return
34	2551Q	February 2002 (ENCS)	Quarterly Percentage Tax Return
35	2552	July 1999 (ENCS)	Percentage Tax Return For Transactions Involving Shares of Stock Listed and Traded Through the Local Stock Exchange or Through Initial and/or Secondary Public Offering
36	2553	July 1999 (ENCS)	Return of Percentage Tax Payable Under Special Laws

- ▶ These Regulations shall take effect on all returns to be filed on September 1, 2014, or after 15 days following publication in a newspaper of general circulation, whichever comes later.

(Editor's Note: RR No. 6-2014 was published in the Manila Bulletin on September 9, 2014.)

RR No. 7-2014 requires tax affixture of internal revenue stamps on imported and locally manufactured cigarettes, and the use of the IRSIS for ordering, distribution and monitoring of the same.

**Revenue Regulations No. 7-2014 dated July 7, 2014
(released on September 12, 2014)**

▶ **Definition of terms**

1. *APO* - refers to APO Production Unit, Inc., a government entity authorized to undertake the base printing of secure internal revenue stamps and, together with the winning contractor, develop and maintain the Internal Revenue Stamp Integrated System (IRIS);
2. *Bad Order stamps* - refer to internal revenue stamps damaged while at the APO plant involving a deviation in any of the following specifications: (i) Quick Reference Code; (ii) Unique Identifier Code; (iii) latent image; (iv) color; (v) core; and (vi) dimension;
3. *Internal Revenue Stamp* - the BIR-issued stamp with a dimensional size of 23 mm by 43 mm containing multi-layered security features and an IRIS-assigned Unique Identifier Code (UIC) and a Quick Reference Code, containing information pertinent only to the cigarette container (e.g., pack) to which the internal revenue stamp is affixed. The internal revenue stamp comes in 6 different color designs, according to whether the cigarettes are packed by hand or by machine (with colors for high or low tax brackets), for locally manufactured cigarettes; or imported cigarettes with different colors (for high or low tax brackets) or for export. Internal revenue stamps may be ordered in banderols or pre-cut/stack according to the machine requirements of the importer or the local manufacturers.
4. *IRIS* - the web-based application system for ordering and distribution of internal revenue stamps, as well as for real-time monitoring of the said stamps upon affixture on the cigarette products, and for generating the required reports;
5. *Quick Reference (QR) Code* - a two dimensional bar code that holds information on the internal revenue stamp;
6. *Spoiled Stamps* - shall refer to damaged internal revenue stamps where the UIC is still visible or QR Code is still verifiable by the machine; and
7. *Unique Identifier Code (UIC)* - shall refer to the code/serial number that represents an internal revenue stamp.

▶ **Enrollment of Cigarette Importers and Manufacturers**

1. A letter of intent for enrollment and registration with the IRIS shall be filed with the Chief of the BIR Excise LT Field Operations Division (ELTFOD), together with the following: (i) a duly notarized Board Resolution, in case the taxpayer is a juridical entity; or (ii) a Special Power of Attorney (SPA), in case of a sole proprietor.

2. The Board Resolution or the SPA shall state, among others, the names of its/his representatives who are authorized, on behalf of the taxpayer, to maintain a user account for purposes of using the IRSIS.
3. The taxpayer, through its authorized user, shall subsequently proceed to the BIR website and access the IRSIS icon displayed therein for purposes of initiating the enrollment process. Thereafter, the taxpayer, through its authorized representative, shall then, receive an email notification validating the receipt and approval of the application.

▶ **Ordering of Internal Revenue Stamps**

1. Each and every order shall be placed by the authorized user only through the stamp ordering module of IRSIS.
2. All orders submitted on or before 12:00 noon shall be processed by the BIR within the same working day, while those submitted after 12:00 noon of the working day shall be processed the following working day.
3. Upon approval by the BIR of the order, an email notification shall be sent to the said authorized user confirming the order, with the date of release of the internal revenue stamps from the APO-designated plant.
4. The internal revenue stamps shall be released by APO to the importer/ local manufacturer of cigarettes not later than 15 calendar days from the date of approval by the BIR of the submitted order.
5. All orders for internal revenue stamps, after having been duly approved by the BIR, are no longer allowed by IRSIS to be cancelled or changed by the authorized users of importers and manufacturers of cigarettes.

▶ **Prior payment of excise tax**

1. Each and every order of internal revenue stamp submitted by the authorized user of the importer or local manufacturer of cigarettes shall be approved by the BIR, subject to the condition that the excise tax due on the total number of internal revenue stamps ordered has been paid by the importer or local manufacturer of cigarettes.
2. For purposes of placing the order of internal revenue stamps, the excise tax payment shall only be made through eFPS. Accordingly, the importer or local manufacturer of cigarettes shall be enrolled with the eFPS.
3. In cases of eFPS downtime or unavailability, the excise tax return (BIR Form No. 2200-T) shall be manually filed and the excise tax payment be made through the duly Authorized Agent Banks (AABs) of the BIR where the importer or local manufacturer of cigarettes is enrolled.
4. For locally manufactured cigarettes intended for export, the details of payment of the excise tax due through the Product Replenishment Debit Memo (PRDM) prescribed under RR No. 3-2008 shall be encoded in IRSIS by the authorized personnel of the ELTFOD.

▶ **Escalation provisions**

1. After the order of internal revenue stamps is approved but prior to release from the APO designated plant, the price of the internal revenue stamps shall be paid by the importer or local manufacturer of cigarettes to APO in the amount of P0.13.
2. Based on the order reference number issued by the IRSIS, the price of the stamps shall be paid by the importer or local manufacturer through the online payment facility, over-the-counter, or bills-payment on-line facility of APO.
3. In case of inflation, escalation and/or decrease in costs of raw materials and equipment to be used by APO, the BIR shall adjust the price of internal revenue stamps, subject to prior consultation with all concerned stakeholders and the issuance of the amendatory revenue regulations.
4. Payment of the price of internal revenue stamps shall be subject to the existing tax laws, rules and regulations governing withholding taxes.

▶ **Release of internal revenue stamps from APO**

1. The internal revenue stamps shall be released and received personally by the authorized representatives of the importer or local manufacturer of cigarettes directly from the APO-designated plant, within 15 calendar days from the scheduled date of its release as indicated on the email notification.
2. Authorized BIR personnel shall always be present to witness and monitor the actual release by APO of the internal revenue stamps to the taxpayer's authorized representatives and shall affix his signature on the release document issued for the purpose.
3. Upon receipt of the internal revenue stamps by the authorized representative, any damage to or loss of internal revenue stamps shall be for the account of the importer or local manufacturer of cigarettes.

▶ **Spoiled internal revenue stamps, bad orders, losses and replacements**

1. In cases where the internal revenue stamps in the possession of the local manufacturer of cigarettes become spoiled, damaged or rendered unfit for affixture on the cigarette products, or found to be bad orders, the said stamps shall be surrendered to the BIR within 15 calendar days immediately after end of the month of production, but not later than 3 months from the date of release by APO.
2. In the case of spoiled stamps and bad orders in the possession of importers, the same shall be surrendered to the BIR within five months immediately after receipt from APO, subject to reporting requirements on the part of the importer in accordance with the provisions of these Regulations.
3. The replacement of spoiled stamps shall be allowed only upon BIR approval, using the online facility of IRSIS, with the corresponding payment of the price prevailing at the time when the spoiled stamps were originally ordered.
4. For bad orders of internal revenue stamps, the price for the replacement shall no longer be paid by the importer or manufacturer of cigarettes, subject to prior verification by APO.

► **Replacement is not allowed in the following instances:**

1. Failure by the importer or manufacturer of cigarettes to surrender any spoiled stamp or bad order;
2. Unaccounted internal revenue stamps, except in cases of losses due to *force majeure* or other fortuitous events;
3. Spoiled internal revenue stamps that were surrendered to the BIR that do not bear their respective UIC or QR Codes;
4. Spoiled internal revenue stamps that were surrendered to the BIR containing their respective UIC or QR Codes but no longer verifiable by the mobile device.

► **Affixture of stamps**

1. Subject to the transitory provisions of these Regulations, all importations and removals from the place of production of cigarettes shall be affixed with the internal revenue stamps.
2. In case of removals of cigarettes intended for exportation, the following requirements shall be strictly observed:
 - If the country of destination requires the affixture of its own stamps, the local manufacturer-exporter shall submit to the Chief, Excise LT Regulatory Division (ELTRD) prior to the importation of the foreign country's stamps, a certification duly issued by the appropriate regulatory agency of the destination country, specifically stating that the requirement of the affixture of their own stamps on imported cigarettes is required by their country's laws and/or regulations. The certification shall be accompanied by the following documents:
 - a. Copy of the country's laws and/or regulations requiring such requirements;
 - b. Sample of the foreign country's stamps and written description of the security features;
 - c. Process flow chart of the procedures on the ordering, release, delivery of their stamps, including the reportorial requirements

In case of failure to comply with the documentary requirements, the internal revenue stamps prescribed by these Regulations shall be duly affixed on the packs of cigarettes before removal from the place of production and subsequent exportation.

- If the country of destination does not require the affixture of its own stamps, the local manufacturer-exporter shall affix the internal revenue stamp as required under these Regulations.
- In order to facilitate the monitoring of internal revenue stamps duly issued to the importers and local manufacturers by the BIR through APO, the stamps shall be affixed to the immediate containers of cigarettes on a first-in-first-out (FIFO) basis.

▶ **Reporting requirements**

Importers and local manufacturers of cigarettes shall submit the monthly reports enumerated below through the IRSIS reporting facilities within the deadlines prescribed as follows:

Type of Report	Deadline of Submission
Affixture of Stamps	Within 5 working days from the end of the month of affixture; in the case of imported cigarettes, date of affixture shall refer to date of release from Customs custody
Removal of Cigarette Products	Within 10 working days from the date of removal from the finished goods warehouse for local manufacturers, and/or tax-paid depots for importers
Spoiled and Lost Stamps	Within 10 working days immediately after the end of the month of its operations; in the case of importers, within 3 months from receipt of the previously ordered stamps from APO
Bad Orders Stamps	Within 10 working days immediately after the end of the month of production; in the case of importers, within 3 months from receipt of previously ordered stamps from APO

▶ **Monitoring**

1. To monitor the payment of excise taxes and to verify the authenticity of the stamps, the BIR, through its authorized representatives, shall conduct on-the-spot surveillance of cigarette products either in the place of production, storage facilities, or in the domestic market, as the case may be, through the use of mobile verification devices issued for the purpose.
2. In case of discrepancies found during the conduct of surveillance, the appropriate excise taxes shall be assessed and collected, inclusive of the appropriate penalties, without prejudice to the confiscation and forfeiture of any untaxed cigarette products and the filing of the appropriate criminal case.

▶ **Prohibition against possession and accumulation of previously-affixed internal revenue stamps or used/consumed packs of cigarettes with affixed internal revenue stamps**

1. The possession and/or accumulation, sale, transfer or delivery of previously-affixed internal revenue stamps, or of used/consumed packs of cigarettes with internal revenue stamps affixed thereto, shall be prohibited.
2. It shall be *prima facie* evidence that the previously-affixed internal revenue stamps are re-used or affixed on untaxed cigarette packs, or that the used/consumed cigarette packs are recycled, reprocessed or refilled with cigarettes sticks for subsequent sale or removal from the place of production, for purposes of avoiding the payment of excise tax.

▶ **Transitory provisions**

1. Upon the effectivity of these Regulations, the BIR shall conduct stocktaking of all cigarettes held in the finished goods warehouse of the local manufacturers.

2. With respect to imported cigarettes, the importers shall submit a written report of inventory of all internal revenue stamps issued by the BIR before the effectivity of these Regulations.
3. The said inventory report shall be submitted to the Chief, ELTRD within 15 calendar days immediately after the effectivity of these Regulations.
4. All concerned importers and local manufacturers of cigarettes shall enroll with IRSIS and the orders for the NEW internal revenue stamps prescribed may be submitted for approval by the BIR not later than 15 calendar days before the effectivity of these Regulations.
5. No later than October 1, 2014, all locally manufactured packs of cigarettes shall be affixed with the internal revenue stamps prescribed by these Regulations.
6. With respect to imported cigarettes, no importation and subsequent release of cigarettes from the customs house shall be allowed unless the new stamps have been affixed, effective January 1, 2015.
7. Effective February 1, 2015, all cigarettes manufactured in the Philippines and/or imported into the Philippines shall be affixed with the new stamps.
8. The BIR shall upload the balances of the excise tax deposit/payments, including the balances of Product Replenishment Certificates, of all taxpayers covered by these Regulations in the respective taxpayer ledger balances of IRSIS not later than five days before the effectivity of these Regulations.

▶ **Penalties**

1. Any violation of these Regulations shall be subject to the corresponding penalties under the pertinent provisions of the Tax Code and applicable regulations issued by the BIR.
2. The corresponding excise tax due shall be computed, assessed and collected, inclusive of penalties, in the following instances:
 - ▶ Any seller, importer or local manufacturer of cigarettes who is found in possession of fake, spurious or old internal revenue stamps, or the same are affixed to their cigarette products whether found in the storage facility and/or place of production, or in the domestic market;
 - ▶ Removal of cigarettes from the place of production or release from the customs house without the corresponding internal revenue stamps affixed on the said products;
 - ▶ Failure of the importer or local manufacturer to account for lost or missing internal revenue stamps;
 - ▶ Failure of the local manufacturer-exporter to affix the stamps prescribed by the country of destination to the packs of cigarettes for export, prior to the removal from the place of production and subsequent exportation.
3. In addition to excise tax liabilities, the provisions of Section 265 of the Tax Code shall likewise be applied.

4. After the effectivity of these Regulations, the BIR shall conduct a study and cause the installation of a Closed Circuit Television Monitoring system at all production and withdrawal points in the premises of the importer or local manufacturer, for the proper affixture of internal revenue stamps and payment of excise taxes.

- ▶ These Regulations take effect 15 days immediately after publication in a newspaper of general circulation.

(Editor's Note: RR No. 7-2014 was published in the Manila Bulletin on September 13, 2014.)

RMC No. 70 -2014 clarifies the requirements for issuing certifications on outstanding tax liabilities/delinquency verification slips for purposes of processing the payment of claims for tax refund, cash conversion of TCCs and VAT monetization.

Revenue Memorandum Circular No. 70-2014 dated August 18, 2014

- ▶ This Circular clarifies the requirements for the issuance of certifications and/or delinquency verification slips on the existence of any outstanding tax liability, issued by the Revenue District Offices, Regional Collection Divisions, concerned offices of the Large Taxpayers Service, Accounts Receivable Monitoring Division and other Revenue Offices of the BIR.
- ▶ In cases where the taxpayer has ITS-generated "open cases", particularly "stop-filer cases", in addition to delinquent account cases, the concerned Revenue Offices shall determine their validity; only valid "stop-filer cases" shall be reflected in the prescribed certifications / delinquency verification slips.
- ▶ The processing of payment of the applications shall be held in abeyance pending the resolution of these "stop-filer cases" by the concerned Revenue Offices.
- ▶ The status of assessment cases that are pending before courts of law, or with other Revenue Offices (e.g., Appellate Division, Regional Legal Divisions) in case of administrative protests, shall first be determined and clearly indicated in the certifications/verification slips, whether or not the same are final and executory.
- ▶ If the assessment cases are not yet final and executory, the processing of payment of the said applications shall proceed.
- ▶ If the assessment case is already final and executory upon the filing of the application, the processing of payment of a tax refund, cash conversion of TCC or VAT monetization shall be discontinued, and a written denial of the application shall be issued by the Revenue Office having jurisdiction over the taxpayer. The application may be re-filed after settlement of the delinquency account.
- ▶ With respect to those delinquent account cases whose dockets were referred and transferred to other Revenue Offices for resolution of certain legal issues, if any, or for review and approval of certain actions pertinent (e.g., execution of summary remedies, requests for compromise settlement/abatement of penalties), the certification and/or delinquency verification slip shall still be issued, attesting to the existence of the delinquency account of the concerned taxpayer, with the following additional information: (i) name of Revenue Office where the docket of the case was referred and transmitted; (ii) date of transmittal of the case docket; and (iii) the reason for referral/transmittal.

- ▶ Certifications/verification slips on the existence of tax liabilities of the concerned taxpayer shall only be valid for 1 month from the date of issuance.
- ▶ The updated certifications/slips shall be issued by the concerned Revenue Office to the requesting Revenue Office within 24 hours from receipt of the written request.

RMC No. 73-2014 clarifies the WT rates on dividend payments to Philippine PCD Nominees.

Revenue Memorandum Circular No. 73-2014 dated September 12, 2014

- ▶ If the PCD Nominee is a Filipino, the income recipient is deemed to be an individual subject to the 10% final WT pursuant to Section 24(B)(2) of the Tax Code, unless it is satisfactorily shown that the actual equity investor is a domestic corporation.
- ▶ If the PCD Nominee is not a Filipino, the income recipient is deemed to be a non-resident foreign corporation subject to the 30% final WT under Section 28(B)(1) of the Tax Code, unless it is satisfactorily shown that the actual equity investor is a resident alien, non-resident alien whether engaged or not engaged in trade or business in the Philippines or resident foreign corporation.

RMO No. 34-2014 clarifies certain provisions of RMO No. 20-2013 as amended by RMO No. 28-2013 regarding the issuance of tax exemption rulings for qualified NSNP corporations and associations under Section 30 of the Tax Code.

Revenue Memorandum Order No. 34-2014 dated September 18, 2014

- ▶ Tax exemption rulings do not confer tax exemptions which are not provided for by law, nor can tax exemption rulings abrogate those exemptions which are granted by the law.
- ▶ In the review of applications for tax exemption rulings, the BIR merely seeks to validate/confirm whether the conditions set forth by law for the grant of tax exemption are present or whether such conditions have been complied with by the applicant.
- ▶ Because the BIR aims to determine whether an applicant is earning income from other activities conducted for profit, tax exemption rulings may discuss the tax treatment of any income operated from such activities.
- ▶ The absence of a valid, current and subsisting tax exemption ruling will not operate to divest qualified entities of the tax exemption provided under the Constitution or Section 30 of the Tax Code.
- ▶ Non-stock, non-profit (NSNP) entities which fail to secure a tax exemption ruling for a given taxable year or shorter period (as in the case of late filers), are duty bound to prove compliance with the conditions laid down by law and other pertinent administrative issuances in the event of a tax investigation.
- ▶ NSNP entities which fail to renew their tax exemption ruling before the lapse of its validity period may nevertheless file their applications with the Revenue District Office (RDO) where they are registered as soon they are able to do so, and such application shall be treated as a new one.
- ▶ The failure of the NSNP entity to present its valid, current and subsisting tax exemption ruling to the appropriate withholding agents shall subject such entity to the payment of the WT due on their transactions.
- ▶ The withholding agents' failure to withhold notwithstanding the lack of tax exemption ruling shall cause the imposition of penalties under Section 251 and other pertinent Sections of the Tax Code.

- ▶ Applications for tax exemption rulings may be filed by umbrella organizations or confederations which are duly recognized by the BIR on behalf of any of its members-NSNP entities, subject to the submission of the appropriate Board Resolution authorizing said organization or confederation to file the said application, as well as all documentary requirements provided under RMO No. 20-2013.

RMO No. 33-2014 amends the policies, guidelines and procedures in issuing the ICC and the BCC, which are required in relation to their accreditation as Importer/Customs Broker.

Revenue Memorandum Order No. 33-2014 dated September 11, 2014

- ▶ In line with their application for BCC, custom brokers who have no trade name when they registered with the BIR are no longer required to submit a certified true copy of their business name registration
- ▶ Applicants which are BOI/PEZA-registered entities or those located in freeports or special economic zones enjoying tax incentives shall be required to submit, in addition to the regular requirements, their respective Certificates of Registration issued by the concerned Investment Promotions Agencies (IPAs).
- ▶ Applicants for ICC or BCC which are newly-registered with the BIR or which were never accredited by the BOC, are required to submit printer's delivery receipt and proof of filing tax returns through the BIR's eFPS for at least two consecutive months.
- ▶ New importers/customs brokers need not file proof of single importation done.
- ▶ Individual applicants with severe medical condition are allowed to be represented by his/her appointed attorney-in-fact upon showing a duly notarized Special Power of Attorney and a medical certificate issued by the attending physician under oath, endorsed by any government physician.
- ▶ Persons who are named as the authorized person by a non-individual applicant but is not listed in the corporation's latest General Information Sheet (GIS) filed with the Securities and Exchange Commission (SEC) shall be required to execute a sworn statement that he/she shall also be jointly or severally liable in the event problems shall arise with the filed application.
- ▶ All importers and customs brokers which are in the list provided by BOC as of February 2014 and were able to file their applications on or before July 31, 2014 shall be qualified to be issued Provisional ICC/BCC–
 1. If tax verification compliance has not yet been completed, the following minimum criteria must be satisfied:
 - ▶ Registered with the BIR (with Certificate of Registration);
 - ▶ Absence of delinquent account;
 - ▶ Absence of any pending criminal case; and
 - ▶ Not tagged as a "Cannot be Located (CBL)" taxpayer.
 2. If tax verification compliance has been completed, but applicant (except BOI/PEZA registered entities or freeport or special economic zone locators) has been found to have failed in the any of the following criteria:
 - ▶ Regular eFPS user - provided, applicant was able to enroll in the eFPS facility; or
 - ▶ With Certificate of Good Standing - provided, proof of application with the SEC has been submitted; or

- ▶ Absence of unresolved discrepancy arising from the matching of third party information against taxpayer's tax declaration (Letter Notice arising from RELIEF/TRS) - provided that the case has not yet been reported as delinquent account; or
 - ▶ Absence of outstanding tax liabilities - provided, such tax liabilities are covered by an application for abatement or compromise settlement which is pending review by the Bureau. However, in case the application for compromise settlement or abatement of penalties was not favorably acted upon by the concerned offices within the validity of the Provisional ICC/BCC, the same shall be considered as a valid ground for the eventual denial of the application for the issuance of a Regular ICC/BCC.
- ▶ To ensure the issuance of a regular ICC/BCC before the expiration of the six-month validity period, the importers/brokers issued with Provisional ICC/BCC should initiate the verification from the concerned offices if they satisfied the criteria as provided under RMO No. 10-2014.
 - ▶ Complete documentation on their compliance must be submitted to the ARMD at least 30 days prior to the expiry date of the provisional ICC/BCC. In case of non-compliance and upon the expiration of the provisional ICC/BCC, a new application for ICC/BCC must be filed by the importer/broker with the Accounts Receivable Monitoring Division (ARMD).
 - ▶ Upon full verification of their tax compliance through verification from concerned offices, the regular ICC/BCC or denial letter, whichever is appropriate, shall be issued on or before the expiry date of the Provisional ICC/BCC to the applicant.
 - ▶ The non-receipt of either regular ICC/BCC or denial letter on the expiry date of the Provisional ICC/BCC shall be deemed a denial of their application for ICC/BCC.
 - ▶ The list of qualified importers and customs brokers shall be posted in the BIR website and shall also be sent to the Bureau of Customs (BOC) through the BOC's Accounts Management Office and shall serve as the BOC's reference in processing their respective accreditations, in lieu of the physical copy of the certificate itself.
 - ▶ The ARMD shall notify the importers/brokers that were issued Provisional ICC/BCC through email, while the qualified importers/brokers may secure the copy of the certificate itself from the ARMD.
 - ▶ Requests for consideration for denied applications shall be filed with the Office of the Assistant Commissioner-Collection Service, together with pertinent documents as proof of their tax compliance on the grounds cited as basis for the denial, as certified by the Office which has jurisdiction over the taxpayer's registered address.
 - ▶ The list of taxpayers enrolled and regularly using the eFPS, with unresolved / open "stop-filer" cases, with unresolved Letter Notice, with pending criminal case/s, tagged as "Cannot be Located," compliant taxpayers in the electronic submission of alphabetical lists of employees/payees, VAT-registered taxpayers with compliance in the submission of SLS, SLP and SLI shall be submitted by the concerned offices to the ARMD on a monthly basis, on or before the 10th day of the month by the concerned office.

CMO No. 18-2014 prescribes the guidelines on lifting an order of abandonment.

BOC Issuance

Customs Memorandum Order No. 18-2014, dated September 25, 2014

- ▶ The CMO applies to any request for lifting of abandonment on which no final, written decision has been issued by any District Collector or Law Division as of the effective date of this issuance.
- ▶ The Collector or Deputy Collector of the port or sub-port shall initiate and conclude abandonment proceedings, resulting in the issuance of an Order of Abandonment as soon as possible, notwithstanding any appeals or representations, once the following occurs:
 1. When the owner, importer, consignee or interested party after due notice, fails to file an entry within the non-extendible period of 30 days from the date of discharge of the last package from the vessel or aircraft.
 2. Having filed such entry, fails to claim his importation within 15 days, except if the reason for failure is an alert order, written or electronically recorded in the e2m system, issued by an authorized Customs official.
- ▶ Only the Commissioner of Customs is authorized to defer or delay abandonment proceedings and lift any abandonment order.
- ▶ All requests for deferral or delay in abandonment proceedings or lifting of any abandonment order must be made in writing by the consignee directly to the Commissioner for approval, with copies of the request furnished to the District Collector at the port of discharge. If the port of discharge is a sub-port, the Sub-Port Collector should also be furnished a copy.
- ▶ The request shall include the name and TIN of the consignee, date of discharge of shipment, registry number, bill of lading number, port of discharge, description of content, entry number and date of filing, if entry was filed, and reason why the lifting of the abandonment is sought. A copy of the bill of lading and IEIRD (if the entry was not filed) must also be attached.
- ▶ Notwithstanding any request for deferral or delay of abandonment proceedings, or lifting of abandonment, any and all abandonment and other legal proceedings, as well as any auction of goods which were the subject of abandonment orders, should proceed without interruption until their conclusion, unless there is a written instruction from the Commissioner of Customs to do otherwise.
- ▶ The Office of the Commissioner will notify the District Collector, Sub-Port Collector if applicable, and consignee of any decision taken on any request. Until such notification, all Customs officials should treat such requests as having been denied, and proceed accordingly.
- ▶ CMO No. 18-2014 shall take effect on October 13, 2014.

PEZA clarifies the applicability of DENR Administrative Order No. 2013-22, also known as the "Revised Procedures and Standards for the Management of Hazardous Wastes," to small quantity generators of hazardous wastes.

PEZA Issuance

PEZA Memorandum Circular No. 2014 - 024 dated September 5, 2014

- ▶ PEZA-registered enterprises that have lease agreements which require the building owner to manage all generated hazardous wastes may be exempted from registering as a hazardous waste generator (HWG). The building owner shall

bear the requirements and responsibilities of the HWG, including continuing to own and be responsible for the hazardous waste generated or produced in the premises, until a Certificate of Treatment has been issued by the hazardous waste treatment, storage and disposal facility.

- ▶ For IT enterprises with the extended producer's responsibility for its computers and peripherals, electronic wastes should be sent back to the suppliers and not disposed of by the enterprise.
- ▶ Registration as HWGs should be done after issuance of the Environmental Compliance Certificate and other environmental permits issued by the DENR.

SEC Issuances

SEC MC No. 18 extends to December 31, 2014 the deadline for compliance with SEC MC No. 11, which mandates all PLCs to include in their website information on the corporate governance practices of their investee companies.

SEC Memorandum Circular No. 18 dated September 1, 2014

- ▶ SEC MC No. 18 extends to December 31, 2014 the deadline for compliance with SEC MC No. 11.
- ▶ SEC MC No. 11 requires all publicly-listed companies (PLCs) to include in their website all information per SEC-web template for investors to check the corporate governance practices of their investee companies, and to help PLCs rank high in the ASEAN Scorecard Peer Review.
- ▶ Penalties for non-compliance with SEC MC No. 18 are as follows:
 1. For non-posting of such information:
 - ▶ PHP 10,000 basic penalty
 - ▶ PHP 2,000 monthly penalty
 2. For incomplete posting:
 - ▶ PHP 5,000 basic penalty
 - ▶ PHP 1,000 monthly penalty

[Editor's Note: SEC MC No. 18-2014 was published in the Philippine Daily Inquirer and in the Manila Times on September 3, 2014.]

SEC MC No. 19 clarifies the due date for the filing of an AML Operating Manual and an AML Compliance Form by financing companies and lending companies which became, or may become, covered institutions after December 8, 2010.

SEC Memorandum Circular No. 19 dated September 16, 2014

- ▶ If the financing company or lending company becomes a covered institution after the effectivity of MC No. 19, the Anti-Money Laundering Operating Manual (AML Operating Manual) shall be submitted within 60 days from the time the financing company or lending company becomes a covered institution, either by the increase of its paid-up capital to PHP10 Million or increase of the foreign participation to more than 40% of its voting stock.
- ▶ If the financing company or lending company became a covered institution after December 8, 2010 but prior to the issuance of SEC MC No. 19, the AML Operating Manual shall be submitted on the earliest date of the following:
 1. On or before the 60th day from its fiscal year nearest the date when it became a covered institution; or
 2. The date given the company upon being notified of said non-submission; or
 3. Before October 30 2014; or
 4. Whichever is earlier.

- ▶ If the financing company or lending company was already covered before December 8, 2010, the deadline for the submission of the AML Operating Manual was on December 8, 2010. Non-submission or submission of the Manual after December 8, 2010 shall be subject to the appropriate penalty.
- ▶ The AML Compliance Form is a blank form to be filled by the covered institution and shall be submitted to the SEC on the first working day of June of the year following the due date of submission of the AML Operating Manual, and every 3 years thereafter.

[Editor's Note: SEC MC No. 19 was published in the Manila Bulletin and Manila Standard Today on September 19, 2014.]

SEC-OGC Opinion No. 14-23 dated August 26, 2014

The president of a corporation may initially decide on matters without the prior approval of the Board, if such matters are thereafter ratified by the Board.

Facts:

A Co. is a realty and development corporation registered with the SEC. A Co. seeks confirmation on whether the president is allowed to decide on matters like needed renovations, major or minor, of a property/ building without the approval of the Board and have it ratified in the next meeting.

Issue:

Is the president of a corporation allowed to decide on matters without the approval of the Board and have it ratified in the next meeting?

Ruling:

Yes, in an ordinary corporation, the president's power of general control and supervision over the corporate business grants him or her an apparent and/or implied authority to enter into transactions on behalf of the corporation in the ordinary course of business, unless prohibited by the Articles of Incorporation or by-laws. The acts, even if previously unauthorized, may be later ratified by the Board of Directors or Trustees, which ratification cleanses the transaction of its defects.

On the other hand, if A Co. is a close corporation, the act of the president who is also a director may not need ratification later by the Board, provided that any of the below considerations is present:

- ▶ Before or after such action is taken, written consent thereto is signed by all the directors;
- ▶ All the stockholders have actual or implied knowledge of the action and make no prompt objection in writing ;
- ▶ The directors are accustomed to take informal action with the express or implied acquiescence of all stockholders; or
- ▶ All the directors have express or implied knowledge of the action in question and none of them makes prompt objection in writing.

SEC-OGC Opinion No. 14-25 dated September 4, 2014

When the by-laws and the AOI of a NSNP corporation provide for different maximum numbers of membership, the number of members stated in the AOI shall prevail.

Facts:

A Co. is a golf and country club duly registered with the SEC. A Co.'s Articles of Incorporation (AOI) limit the issuance of Membership Certificates to a maximum of 250 members; on the other hand, A Co.'s by-laws provide that the issuance of Certificates of Ownership shall not exceed 500.

A Co.'s current active members on record are more than 250 but not more than 500, with all the members having been issued Certificates of Membership.

When A Co. sought to increase the membership to 1,000 members, the SEC discovered the discrepancy and imposed a fine on A Co. for unauthorized issuances of Certificates of Membership in excess of 250.

Issue:

Will the maximum number of membership in the AOI prevail over the maximum number stated in the by-laws?

Ruling:

The maximum number of members is the maximum number of certificates that may be issued by virtue of the AOI (i.e., 250), and not 500 as stated in the by-laws.

When the by-laws of a corporation are inconsistent with the AOI, the latter shall be controlling, as the by-laws are subordinate to and cannot contravene the corporate charter. As provided for in the AOI, the maximum permitted number of Certificates of Membership issued by A Co is limited to 250 and no member shall be issued more than one certificate.

BSP Issuances

Circular No. 847 prescribes the rules on the special licensing fees on relocation of head offices, branches/OBOs, and approved but unopened branches/OBOs.

BSP Circular No. 847 dated August 28, 2014

- ▶ The relocation of head offices, branches/other banking offices (OBOs), and approved but unopened branches/OBOs to cities of Makati, Mandaluyong, Manila, Paranaque, Pasay, Pasig, Quezon and San Juan shall be subject to the special licensing fee of P20 Million for universal and commercial banks and P15 Million for thrift banks.
- ▶ For branch applications in the restricted areas, the applicant bank shall, upon acceptance of the application, pay a special licensing fee per branch depending on the bank's category. Universal and commercial banks shall pay P20 million and thrift banks shall pay P15 million.
- ▶ Approved but not yet opened branches/OBOs may be relocated upon prior approval by the Deputy Governor, SES, subject to the presentation of justification and valid reason for the relocation, and resubmission of the information/documents enumerated in Subsection X151.3 of the Manual of Regulations for Banks (MORB) on application for authority to establish branches. However, branches located outside the restricted areas which will be relocated to the restricted areas shall be subject to the special licensing fee upon approval of the relocation, and the opening of the relocated branch/OBO shall be made within the prescribed period and shall not be subject to any extension.
- ▶ The relocation of existing branches/OBOs, whether to be opened at the new site on the next banking day or within 1 year from the date of closure of the branch/OBO, shall be allowed in accordance with the following procedures:
 1. Notice of relocation of branch/OBO signed by the president of the bank or officer of equivalent rank, together with a certified true copy of the resolution of the bank's board of directors authorizing said relocation, and an undertaking that the bank shall comply with the notification

requirement, shall be submitted by the bank to the appropriate department of the SES. The notice shall include information as to the new relocation site, the timetable for the said relocation, date and manner of payment of special licensing fee and the branch/OBO that will handle the transactions of the branch/OBO to be relocated.

2. Branches/OBO may be located anywhere, subject to the branching guidelines under Subsection X151.4.
 3. Relocation of branches/OBO beyond 1 year shall be deemed as permanent closure and surrender of license of the branch/OBO at the old site, and the opening of a branch/OBO at the new site shall be deemed as an establishment of a new branch/OBO.
 4. Buyers of closed banks shall be allowed to relocate/transfer acquired branches subject to the conditions stated under items "d" and "e" of the first paragraph of Subsection X151.9 on relocation of branches/OBOs.
 5. A bank's head office may be relocated anywhere it is allowed to establish branches, provided it secures prior approval from the Monetary Board. However, head offices located outside the restricted areas which will be relocated to restricted areas shall be subject to the special licensing fee under Subsection X151.5 upon approval of the relocation.
- ▶ This Circular shall take effect fifteen (15) calendar days following its publication either in the Official Gazette or in a newspaper of general circulation.

[Editor's Note: Circular No. 847 was published in the Business Mirror on September 4, 2014.]

Circular No. 848 prescribes the reportorial requirements for bank deposit interest rates.

BSP Circular No. 848 dated September 8, 2014

- ▶ Subsection X149.8 is added to Section X149 of the MORB which provides that for purposes of determining market median rates on deposits and monitoring banks that rely excessively on large, high-cost or volatile deposits/borrowings, all banks shall submit a quarterly report on bank deposit interest rates which shall be included in the Report of Selected Branch Accounts.
- ▶ Said report shall be submitted 20 banking days after the end of the reference quarter.
- ▶ For purposes of determining the benchmarks for deposit interest rates, banks shall be required to disclose the nominal interest rates which refers to the walk-in rate being offered to clients for the following peso deposit products:
1. *Peso Time Deposit Account* shall refer to interest bearing peso account which requires a specific amount of funds to earn interest at a predetermined competitive rate for a fixed period of time/term and evidenced by certificate issued by the bank.
 2. *Regular Peso Savings Account* shall refer to interest bearing peso account which is withdrawable either upon presentation of properly accomplished withdrawal slip together with the corresponding passbook or thru automated teller machines.

3. *Kiddie savings account* shall refer to interest bearing savings account of children with an initial deposit of PHP100 and no maintaining balance requirement.
 4. *Other Peso Savings Account* shall refer to interest bearing special peso savings account which offers tiered interest rates depending on the size of deposit. It usually carries higher interest rate compared to the rate for regular savings account.
- ▶ The bank shall report the number of accounts and amount of deposits for each of the deposit product in the template on a per branch basis as of the reporting period.
 - ▶ This Circular shall take effect 15 calendar days following its publication either in the Official Gazette or in a newspaper of general circulation.

[Editor's Note: Circular No. 848 was published in the Philippine Daily Inquirer on September 13, 2014.]

Circular No. 849 amends Subsection 4303Q.1 of the MORNBF1 on Exclusions from the SBL Limit allowed for QBs.

BSP Circular No. 849 dated September 8, 2014

- ▶ In case a stand-alone trust corporation is a subsidiary or affiliate of quasi-banks (QB), the asset under management of the trust corporation shall not form part of the relevant exposures of the parent QB for purposes of calculating the Single Borrower's Loan (SBL) limit and the ceilings for accommodation to DOSRI of the parent QB.
- ▶ The purchase by the trust corporation, on behalf of its clients, of securities or instruments issued by its parent QB shall not form part of the relevant exposure of the trust corporation for purposes of calculating the SBL limit and DOSRI ceilings of the trust corporation.
- ▶ This Circular shall take effect 15 calendar days following its publication either in the Official Gazette or in a newspaper of general circulation.

[Editor's Note: Circular No. 849 was published in the Manila Bulletin on September 15, 2014.]

Circular No. 850 requires the submission of the Report on Cross-Border Financial Positions.

BSP Circular No. 850 dated September 8, 2014

- ▶ The Report on Cross-Border Financial Positions is designed to measure and monitor the cross-border financial claims and liabilities of universal and commercial banks (U/KBs) and their subsidiary thrift banks (TBs), to provide the BSP with a comprehensive view of potential financial risks and transmission channels emanating from foreign counterparties of Philippine banks.
- ▶ All U/KBs and their subsidiary TBs shall submit the Report on Cross-Border Financial Positions on a solo basis in accordance with the Guidelines on the Completion of the Report (The guidelines are found in Annex A of the Circular).
- ▶ The Report on Cross-Border Financial Positions shall be considered a Category B report and shall be implemented in 2 phases:
 1. Phase 1 - U/KBs and their subsidiary TBs shall submit an initial, one-time report on their total cross-border financial position according to geographic region/country and currency within 120 calendar days after the initial reference date of September 30, 2014.

2. Phase 2 - U/KBs and their subsidiary TBs shall submit a quarterly report on their cross-border financial positions which shall be categorized according to the sector of their non-resident counterparty within a country. A separate sheet shall be submitted for each sector using the template provided in Annex C of the Circular. This sectoral report shall be submitted within 30 banking days from the end of reference quarter starting March 31, 2015.
- ▶ Late and/or erroneous reporting shall be subject to penalties prescribed under Subsection X192.2 of the MORB for Category B reports.
 - ▶ Specific guidelines on the mode and manner of submission of the Report on Cross-Border Financial Positions in the Philippines shall be covered by a separate memorandum issuance.
 - ▶ The Report on Cross-Border Financial Positions of Banks shall become effective starting with the September 30, 2014 quarter-end report for Phase 1 implementation and with the March 31, 2015 quarter-end report for Phase 2 implementation.

[Editor's Note: Circular No. 850 was published in the Manila Standard Today on September 18, 2014.]

Court Decisions

Consolidated Cases of The Hong Kong and Shanghai Banking Corporation Limited -Philippine Branches vs. Commissioner of Internal Revenue

Supreme Court (First Division) G.R. No. 166018 and 167728 promulgated June 04, 2014

Electronic instructions from abroad or SWIFT messages by investor-clients, instructing a local bank to debit its local or foreign currency account to pay for a transaction in the Philippines, are not subject to documentary stamp tax (DST) under Section 181 of the Tax Code.

Facts:

Petitioner The Hong Kong and Shanghai Banking Corporation Limited - Philippine Branches (HSBC) performs custodial services on behalf of its investor-clients, corporate and individual, resident or non-resident of the Philippines, with respect to their passive investments in the Philippines, particularly investments in shares of stock in domestic corporations. As a custodian bank, HSBC serves as the collection/payment agent with respect to dividends and other income derived from its investor-clients' passive investments.

HSBC's investor-clients maintain Philippine peso and/or foreign currency accounts, which are managed by HSBC through instructions given through electronic messages, known as SWIFT (or "Society for Worldwide Interbank Financial Telecommunication"). In purchasing shares of stock and other investment in securities, the investor-clients would send electronic messages from abroad instructing HSBC to debit their local or foreign currency accounts and to pay the purchase price upon receipt of the securities.

HSBC paid DST in 1997 and 1998 on the electronic messages of its investor-clients.

In August 1999, BIR Ruling No. 132-99 was issued to another bank, where the then Commissioner ruled that instructions or advice from abroad on the management of funds located in the Philippines which do not involve transfer of funds from abroad are not subject to DST. Thus, Section 181 of the 1997 Tax Code imposes DST "(u)pon any acceptance or payment of any bill of exchange or order for the payment of money purporting to be drawn in a foreign country but payable in the Philippines" in an amount of P0.30 on each P200, or fractional part thereof, of the face value of any such bill of exchange, or order, or Philippine equivalent of such value, if expressed in foreign currency.

On the basis of the BIR ruling, HSBC filed separate administrative claims for the refund of the DST its erroneously paid in 1997 and 1998. As the BIR failed to act on the claims, HSBC elevated the matter to the Court of Tax Appeals (CTA) which ruled in favor of HSBC and ordered the BIR to refund or issue a tax credit certificate (TCC).

On appeal, the Court of Appeals (CA) reversed the CTA's decision and ruled that the electronic messages of HSBC's investor-clients are subject to DST. HSBC appealed to the Supreme Court.

Issue:

Is HSBC entitled to the refund of the DST?

Ruling:

Yes, HSBC is entitled to the refund.

The DST under Section 181 of the Tax Code is levied on the acceptance or payment of "a bill of exchange purporting to be drawn in a foreign country but payable in the Philippines."

The electronic messages of HSBC's investor-clients containing instructions to debit their respective local or foreign currency accounts in the Philippines and pay a certain named recipient also residing in the Philippines is not the transaction contemplated under Section 181. Such instructions are similar to an automatic bank transfer of local funds from a savings account to a checking account maintained by a depositor in one bank.

A bill of exchange, which is a general form of negotiable instrument under the Negotiable Instruments Law, is an unconditional order in writing addressed by one person to another, signed by the person giving it, requiring the person to whom it is addressed to pay on demand or at a fixed or determinable future time a certain sum of money to order or to bearer.

The electronic messages cannot be considered negotiable instruments as they lack the feature of negotiability, which, is the ability to be transferred, and said electronic messages are mere memoranda of the transaction consisting of the actual debiting of the investor-client-payor's local or foreign currency account in the Philippines and entered as such in the books of account of the local bank, HSBC.

The instructions given through electronic messages are not negotiable instruments as they do not comply with the requisites of negotiability under Section 1 of the Negotiable Instruments Law, namely:

- ▶ It must be in writing and signed by the maker or drawer;
- ▶ It must contain an unconditional promise or order to pay a sum certain in money;
- ▶ It must be payable on demand, or at a fixed or determinable future time;
- ▶ It must be payable to order or to bearer; and
- ▶ Where the instrument is addressed to a drawee, he must be named or otherwise indicated therein with reasonable certainty.

The electronic messages are not signed by the investor-clients as supposed drawers of a bill of exchange; they do not contain an unconditional order to pay a sum certain in money as the payment is supposed to come from a specific fund or account of the investor-clients; and they are not payable to order or bearer but to a specifically designated third party.

Section 181 levies DST on either (a) the acceptance or (b) the payment of a foreign bill of exchange or order for the payment of money that was drawn abroad but payable in the Philippines. It levies DST as an excise tax on the privilege of the drawee to accept or pay a bill of exchange or order for the payment of money, which has been drawn abroad but payable in the Philippines, and on the corresponding privilege of the drawer to have acceptance of or payment for the bill of exchange or order for the payment of money which it has drawn abroad but payable in the Philippines.

RR No. 26 or the DST regulations recognize that the acceptance or payment of bills of exchange or orders for the payment of money that have been drawn abroad but payable in the Philippines that is subjected to DST under Section 181 is done after presentment for acceptance or presentment for payment, respectively. Hence, the acceptance or payment of the subject bill of exchange or order for the payment of money is done when there is presentment either for acceptance or for payment of the bill of exchange or order for the payment of money.

The electronic messages received by HSBC from its investor-clients abroad instructing the former to debit the latter's local and foreign currency accounts and to pay the purchase price of shares of stock or investment in securities do not properly qualify as either presentment for acceptance or presentment for payment. There being neither presentment for acceptance nor presentment for payment, then there was no acceptance or payment that could have been subjected to DST.

As a general rule, when preferred shares are redeemed and become treasury shares, the net capital gain on the redemption is subject to the 5%-10% CGT. The excess of the redemption price over the par value of the shares is not deemed a dividend subject to FWT.

Non-submission of complete supporting documents in the administrative claim is not fatal to a judicial claim, provided the taxpayer is able to adduce sufficient evidence before the Court to support its claim for refund.

Commissioner of Internal Revenue vs. Goodyear Philippines, Inc.

CTA (*En Banc*) Case No. 1041 promulgated August 14, 2014

Facts:

Respondent Goodyear Philippines, Inc. (Goodyear PH) redeemed the preferred shares held by Goodyear Tire and Rubber Company (Goodyear US), a non-resident foreign corporation organized in the United States.

The preferred shares were redeemed at a price equivalent to its aggregate par value plus accrued and unpaid dividends. The redeemed shares were reclassified as treasury shares and Goodyear PH's Board of Directors resolved to reduce the corporation's capital stock only after complete redemption of all the preferred shares issued to Goodyear US.

Before the payment of the redemption price, Goodyear PH and Goodyear US jointly filed a Tax Treaty Relief Application (TTRA) with the BIR claiming tax exemption of the gain derived from the redemption, pursuant to the PH-US Tax Treaty. Nonetheless, Goodyear PH withheld and remitted to the BIR a 15% FWT on dividends based on the difference between the redemption price and the aggregate par value of the shares redeemed.

In the absence a ruling from the BIR on its TTRA and believing that it erroneously paid tax on the redemption, Goodyear PH filed a claim for refund of the 15% FWT with the BIR. Thirteen (13) days thereafter, Goodyear PH filed a Petition for Review with the CTA.

The CTA Second Division granted the refund claim of Goodyear PH. After its Motion for Reconsideration was denied, the CIR filed a Petition for Review with the CTA *En Banc*. The CIR argued that (a) Goodyear PH failed to exhaust administrative remedies as it was not able to submit all the documents to support the claim at the BIR level, and (b) the excess of the redemption price over the par value of the shares should be taxable as dividend.

Issues:

1. Is the non-submission of all the supporting documents in the administrative claim fatal to the judicial claim?
2. Is the excess of the redemption price over the par value of the shares a taxable dividend?

Ruling:

1. No, the non-submission of complete documents at the administrative level is not fatal to a judicial claim, provided the taxpayer is able to adduce sufficient evidence before the Court to support of its claim for refund.

The Court noted that there is nothing in the record showing that the CIR required Goodyear PH to submit additional evidence or specific relevant documents that would aid in the assessment of the merit of the claim for refund.

The Court ruled that Goodyear PH has no option but to seek judicial intervention on its claim for refund 13 days after its administrative recourse was filed, so as not to forfeit its right to appeal to the CTA. A taxpayer must file both its administrative and judicial claims for refund within 2 years after payment of the tax, as prescribed under Section 229 of the Tax Code.

2. No, the excess of the redemption price over the par value of the shares is not a taxable dividend.

As a general rule, when preferred shares are redeemed and classified as treasury shares, the net capital gain on the redemption is subject to the 5%-10% CGT, pursuant to RR No. 006-08, *the Consolidated Regulations Prescribing the Rules on the Taxation of Sale, Barter, Exchange or Other Disposition of Shares of Stock Held as Capital Assets*.

For non-resident foreign corporations, such as Goodyear US, the capital gain from sale of shares of stock not traded in the stock exchange, reclassified as treasury shares, is subject to the 5%-10% CGT, pursuant to Section 28(B)(5)(c) of the Tax Code, but subject to the provisions of the PH-US Tax Treaty.

Under the PH-US Tax Treaty, gains from the sale or transfer of certain property (listed in the treaty) of a US resident, including shares of stock, shall be taxable only in the US. However, the Philippines may tax gains from the disposition of an interest which Goodyear US may have in a Philippine corporation if said corporation's assets consist principally (i.e., more than 50% of its total assets) of real property interest located in the Philippines. Since Goodyear PH's assets do not consist principally of real property interest, the net capital gain derived by Goodyear US from the redemption of its shares is exempt from the 5%-10% CGT.

The net capital gain (or the component of the redemption price equivalent to the "accrued and unpaid dividends") cannot be treated as dividend subject to the 15% FWT due on non-resident foreign corporations under Section 28(B)(5)(b) of the Tax Code.

A distribution in the nature of a recurring return on stock, made in the ordinary course of business and with intent to maintain the corporation as a going concern is an ordinary dividend. On the other hand, a distribution made when the corporation is winding up its business or recapitalizing and narrowing its activities may be treated as in complete or partial liquidation and as payment for the stockholder's stock.

The excess of the purchase price over the original acquisition cost of the shares, in case of liquidation, whether complete or partial, should be considered as a capital gain but subject to ordinary income tax rates. Said difference or gain cannot be treated as a dividend as it is not a recurring return on stock.

Goodyear US's net capital gain could not be classified as dividends per se since it did not come from the corporation's unrestricted retained earnings or profits and did not represent a recurring return on the shares redeemed. Without the redemption, Goodyear US would not have derived the net capital gain.

The only instance where the gain derived from a redemption may be treated as a dividend is the case of redemption of stock dividends. Thus, if a corporation cancels or redeems stock issued as a dividend at such time and in such manner as to make the distribution and cancellation or redemption, in whole or in part, essentially equivalent to the distribution of a taxable dividend, the amount so distributed in redemption or cancellation of the stock shall be considered as taxable income to the extent that it represents a distribution of earnings or profits.

**Commissioner of Internal Revenue vs.
Abundance Providers and Entrepreneurs Corporation**

CTA (*En Banc*) Case No. 999 promulgated August 18, 2014

Facts:

On April 26, 2004, Respondent Abundance Providers and Entrepreneurs Corp. (APEC) received a Formal Letter of Demand (FLD) from Petitioner CIR for alleged deficiency VAT for taxable year 2001. The CIR alleged that APEC is liable for VAT on its trust fund contributions.

On April 29, 2004, APEC protested the assessment. On July 15, 2004, APEC received the decision of the OIC Deputy Commissioner denying the protest and affirming the assessment in the FLD. On July 16, 2004, APEC wrote the BIR Appellate Division requesting to hold in abeyance any action, pending resolution by the CIR of the industry issue on whether the trust fund contribution of pre-need companies is subject to VAT.

The appellate jurisdiction of the CTA is not limited only to decisions of the CIR involving disputed assessments or claims for refunds, but also those involving other matters arising under the Tax Code, including the authority to determine the validity of a Warrant of Distraint and/or Levy.

A request for reconsideration, unlike a request for reinvestigation, does not suspend the 5-year prescriptive period to collect the assessed tax.

On February 22, 2010, the BIR served a Warrant of Dstraint and/or Levy (Warrant) on APEC enforcing the collection of the deficiency VAT for taxable year 2001. On March 23, 2010, APEC filed a Petition for Review with the CTA seeking to quash, nullify and invalidate the Warrant.

On December 7, 2010, the CIR affirmed the decision of the OIC Deputy Commissioner on the deficiency VAT assessed and ordered APEC to pay the amount plus surcharge and increments.

The CTA Third Division cancelled the Warrant issued by the CIR and declared the same as null and void, on the ground of prescription of the statute of limitations on collection. The CIR appealed to the CTA *En Banc* and argued that (a) the CTA has no jurisdiction to determine the validity of a Warrant, and (b) the prescriptive period to collect was suspended when APEC wrote the BIR Appellate Division to hold in abeyance any action pending the resolution by the CIR relative to the industry issue involving VAT on trust fund contributions.

Issues:

1. Does the CTA have jurisdiction to determine the validity of Warrant of Dstraint and/or Levy?
2. Has the right of the CIR to collect deficiency VAT against APEC prescribed?

Ruling:

1. Yes. The CTA has jurisdiction to determine the validity of a Warrant under Section 7(a)(1) of RA No. 9282, which gives exclusive appellate jurisdiction to the Court in Division to review by appeal decisions of the CIR in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, or *“other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue.”*

The CTA's appellate jurisdiction is not limited only to decisions of the CIR involving disputed assessments or claims for refunds, but also those involving other matters arising under the Tax Code, including the authority to determine the validity of a Warrant issued by the CIR.

2. Yes. The right of the CIR to collect deficiency VAT against APEC has prescribed.

APEC's letters to the Appellate Division to hold in abeyance any action, pending resolution by the CIR relative to the industry issue it raised involving VAT on trust fund contributions of pre-need companies, did not suspend the 5-year prescriptive period for the collection of the assessed tax. The letters were requests for reconsideration and not requests for reinvestigation. A request for reconsideration, unlike a request for reinvestigation, does not toll the running of the prescriptive period to collect tax.

The CTA ruled that when the FLD was issued and received by APEC on April 26, 2004, the BIR had 5 years or until April 26, 2009 to enforce collection of the assessed deficiency VAT. However, it was only on February 22, 2010 when the Warrant was served on the company, or after the lapse of the 5-year reglementary period. Thus, the right of the BIR to collect the same has prescribed.

Belle Bay City Corporation vs. Central Board of Assessment Appeals, City Assessor and City Treasurer of Paranaque City
CTA (*En Banc*) Case No. 1038 promulgated September 2, 2014

A property owner may file a protest with the LBAA on the assessment by the City Assessor within 60 days from the date of receipt of the written notice of assessment. Failure to appeal the City Assessor's assessment with the LBAA within 60 days from receipt of written notice is fatal.

Facts:

In July 1996, Paranaque City issued Ordinance No. 96-16 prescribing the revised schedule of fair market values for land and improvements within its jurisdiction. Pursuant to the ordinance, the City Assessor issued tax declarations covering the properties of Belle Bay City Corporation (Belle Bay).

Belle Bay paid under protest the real property tax assessments of the City Assessor for the four quarters of 2003 and filed its protests with the City Treasurer. Upon the City Treasurer's denial of its protests, Belle Bay appealed to the Paranaque Local Board of Assessment Appeals (LBAA) and sought to nullify the real property tax assessments, viz:

Assessment	Date Paid	Date of Formal Protest to the City Treasurer	Date of appeal with the Paranaque LBAA
1 st Quarter	March 31, 2003	April 30, 2003	August 1, 2003
2 nd Quarter	April 16, 2003	April 30, 2003	August 1, 2003
3 rd Quarter	July 18, 2003	August 20, 2003	October 20, 2003
Penalties	July 18, 2003	August 20, 2003	October 20, 2003
4 th Quarter	October 20, 2003	November 19, 2003	January 2, 2004

The LBAA denied Belle Bay's appeals on the sole ground that they were made beyond the 60-day period provided under Section 226 of RA No. 7160 or the Local Government Code. Belle Bay appealed the decision of the LBAA to the Central Board of Assessment Appeals (CBAA), which dismissed the appeal for lack of merit. Belle Bay filed a Petition for Review with the CTA *En Banc*.

Issue:

Did Belle Bay timely file its appeals to the LBAA?

Ruling:

No. Under Section 226 of RA No. 7160, a property owner may protest with the LBAA the assessment of his real property by the City Assessor within 60 days from the date of receipt of the written notice of assessment.

Since the actual dates of receipt of the assailed assessments were not indicated, the CTA assumed that the date when Belle Bay paid under protest the assailed assessments was the same date it received the assailed assessments. This would reveal that Belle Bay still failed to perfect its appeal with the LBAA within the 60-day period provided by law.

Belle Bay's appeals were filed with the LBAA 122 days after receiving its first quarter assessment and 106, 94, and 74 days after receipt of the second, third and fourth quarter assessments, respectively.

It is a jurisdictional requirement that an appeal must be perfected in the manner and within the period fixed by law. Non-compliance with such requirement is fatal as it renders the decision sought to be appealed final and executory, where no court can exercise appellate jurisdiction to review the said decision.

