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No LOA, No Entry

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Top of Mind
7 August 2018

While the power to tax is comprehensive, it still has to be exercised within the metes and bounds of the Constitution. Otherwise, it will negate its own purpose.

NO ID, NO ENTRY. We usually see this sign posted on the gates of schools, companies and government offices. A guard would usually call a halt on you and ask for some identification before you could enter the premises. It's a simple security measure and yet this could result to a lot risks if ignored. It could result to property damage, loss or theft, if a stranger is given unauthorized access to the premises. In police operations, there is a similar policy, No warrant, No arrest or No warrant, No seizure. Generally, an arrest or seizure is considered unlawful when it is done without a warrant. It is a paramount rule enshrined in the 1987 Constitution that no person shall be deprived of life, liberty or property without due process of law. Any unsanctioned intrusion into privacy or unlawful deprivation of life, liberty or property of a person is a violation of his fundamental rights protected under the Constitution.

This holds true even in the field of taxation. While taxes are the lifeblood of the government, the right to tax is still subject to certain limitations. Section 13 of the Tax Code provides that a Revenue Officer (RO) assigned to perform assessment functions in any district, may pursuant to a Letter of Authority (LOA) issued by the Revenue Regional Director, examine taxpayers within the jurisdiction of the district in order to collect the correct amount of tax, or to recommend the assessment of any deficiency tax due in the same manner that the said acts could have been performed by the Revenue Regional Director himself. In other words, the Revenue Officer (RO), unless girded with a LOA cannot just barge into the taxpayer's doors without this piece of paper in his hands. To put it simply, NO LOA, NO ENTRY!

A LOA is an official document that authorizes the RO to examine or investigate the taxpayer's books of accounts and other accounting records, in order to determine the taxpayer's correct internal revenue tax liabilities. It specifies the name of the ROs who will conduct the examination and the scope of the examinations like the tax types to be examined (e.g. income taxes, VAT, CGT or withholding taxes) and the tax period covered by the examination. A LOA is of utmost importance in the conduct of a tax audit and investigation. In the case of *Medicaid Philippines, Inc v. Commissioner of Internal Revenue (G.R. No. 222743)*, the Supreme Court (SC) emphasized that the absence of a LOA violated a taxpayer's right to due process and accordingly, the assessment is void.

Commonly, the issues raised with regard to LOAs in tax assessment cases are whether a valid LOA was issued in relation to the conduct of tax investigation. However, in the recent case decided by the Court of Tax Appeals (CTA), the predicament lies in the absence of a new LOA covering the reassignment of cases to a different RO. In the case of *Bonifacio Land Corporation vs. Commissioner of Internal Revenue, CTA Case No. 9068 (Bonifacio Case)*, there was initially a valid LOA issued on July 15, 2009 for the examination of the petitioner's books of accounts and other accounting records. Subsequently, the petitioner received a Preliminary Assessment Notice (PAN) on December 20, 2011 and a Final Assessment Notice (FAN) on March 1, 2012, assessing petitioner for the alleged deficiency income tax. In accordance with the prescribed procedure for protesting tax assessments of the BIR, petitioner filed a protest and request for reinvestigation on March 29, 2012. Thereafter, the case was reassigned to a different RO pursuant to a Memorandum of Assignment (MOA) issued on May 8, 2012. No new LOA was issued covering the reassignment. On May 18, 2015, a Final Decision on Disputed Assessment (FDDA) was received by the petitioner, reiterating its deficiency income tax assessment. The issue raised was whether there was a valid assessment despite the absence of a new LOA. The CTA invalidated the assessment made by the RO due to lack of authority to conduct the same.

In case of reassignment, Revenue Memorandum Order (RMO) No. 43-1990 provides that, "Any re-assignment/transfer of cases to another RO(s), and revalidation of L/As which have already expired, shall require the issuance of new L/A, with the corresponding notation thereto, including the previous L/A number and date of issue of said L/A." The keyword is "shall", which connotes a mandatory order or an imperative obligation. Therefore the issuance of new LOA is mandatory. These matters may be an issue of technicality, but it really is not just a matter of procedure which can be brushed aside. As such, taxpayers must be made aware of the importance of a LOA, because the validity of the assessment may also depend on the existence of a valid LOA. Through the CTA's ruling in Bonifacio case, the taxpayers are reminded that there is a valid defense in the event that a new LOA is not issued upon the appointment of a new examining revenue officer. Without the issuance of a new LOA allowing the new RO to examine the taxpayer's books, the assessment would be void and, therefore there can be no collection of taxes. It is within every taxpayer's right to raise the defense of absence of a new LOA in protesting the validity of the assessment, as it is an assertion of his right to due process. The SC has always been firm that in balancing the scales between the power of the state to tax and its inherent right to prosecute perceived transgressors of the law on one side, and the constitutional rights of a citizen to due process of law and the equal protection of the laws on the other, the scales must tilt in favor of the individual, for a citizen's right is amply protected by the Bill of Rights under the Constitution.

As it is opined in the Bonifacio case, while taxes are the lifeblood of the government, the power to tax has its limits, in spite of all its plenitude. While the power to tax is comprehensive, it still has to be exercised within the metes and bounds of the Constitution. Otherwise, it will negate its own purpose.

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