

TMAP TAX UPDATES

Period Covered: August 16 to September 15, 2023



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IMPORTANT UPDATES:

A. REVENUE REGULATIONS		
ISSUANCE	DATE ISSUED	SUBJECT
RR 10-2023	September 8, 2023	Topic: Tax Administration Amends certain provisions of RR No. 6-2019, as amended, to implement the extension on the period of availment of the Estate Tax Amnesty pursuant to RA No. 11956, further amending RA No. 11213 (Tax Amnesty Act), as amended by RA No. 11569
RR 11-2023	September 14, 2023	Topic: Tax Collection and Administration Prescribes the use of electronic mail (e-mail) and electronic signature as additional mode of service of the Warrant of Garnishment pursuant to Section 208 in relation to Section 244 of the National Internal Revenue Code of 1997, as amended
B. REVENUE MEMORANDUM CIRCULARS		
RMC No. 91-2023	September 11, 2023	Topic: Incentive Administration Circularizes the amendment to Rule 18, Section 5 of the Implementing Rules and Regulations (IRR) of RA No. 11534 (Corporate Recovery and Tax Incentives for Enterprises (CREATE) Act)
RMC No. 92-2023	September 13, 2023	Topic: Tax Administration and compliance Announces the availability of BIR Form No. 1621 (Quarterly Remittance Return of Tax Withheld on the Amount Withdrawn from Decedent's Deposit Account) in the Electronic Filing and Payment System (eFPS)
C. DIGEST OF IMPORTANT COURT OF TAX APPEALS CASES		
Decision	August 30, 2023	The Commissioner of Internal Revenue v. LBP Service Corporation
Decision	September 14, 2023	The Landmark Corporation v. Commissioner of Internal Revenue

DISCUSSION OF UPDATES

A. REVENUE REGULATIONS

REVENUE REGULATIONS 10-2023

REVENUE REGULATIONS NO. 10-2023, issued on September 8, 2023 amends certain provisions of Revenue Regulations (RR) No. 6-2019, as amended, to implement the extension on the period of availment of the Estate Tax Amnesty pursuant to Republic Act (RA) No. 11956, further amending RA No. 11213 (Tax Amnesty Act), as amended by RA No. 11569.

Sections 2, 9, 13, and 16 of RR No. 6-2019, as amended by RR No. 17-2021, are amended as follows:

"Section 2. Coverage – The estate tax amnesty shall cover the estate of decedents who died on or before May 31, 2022, with or without assessments duly issued therefor, whose estate taxes have remained unpaid or have accrued as of May 31, 2022.

"Section 9. Time and Place of Filing Estate Tax Amnesty Return (BIR Form 2118- EA) and Payment of Estate Tax Due. –

For purposes of these Regulations, the Estate Tax Amnesty Return (ETAR) (BIR Form No. 2118-EA) (Annex B) shall be filed and paid, either electronically or manually, by the executor or administrator, legal heirs, transferees or beneficiaries, who wish to avail of the Estate Tax Amnesty within June 15, 2023 until June 14, 2025 with any authorized agent bank, through revenue collection officer of any Revenue District Office (RDO) or authorized tax software provider as defined in Revenue Memorandum Order (RMO) No. 8-2019.

The duly accomplished and sworn ETAR, together with the Acceptance Payment Form (APF-BIR Form No. 0621-EA) (Annex C) and the complete documents shall be presented to the concerned RDO.

The documents to be submitted shall be limited to the following:

A. Mandatory Requirements:

1. *Certified True Copy of the Death Certificate (DC) or if not available, the Certificate of No Record of Death from the Philippine Statistics Authority and any valid secondary evidence including but not limited to those issued by any government agency/office sufficient to establish the fact of death of the decedent;*
2. *Taxpayer Identification Number (TIN) of decedent and heir/s;*
3. *For "Claims Against the Estate" arising from contract of loan, notarized promissory note, if applicable;*
4. *Proof of the claimed "Property Previously Taxed", if any;*
5. *Proof of the claimed "Transfer for Public Use", if any; and*
6. *At least one (1) government issued identification card (ID) of the Executor/Administrator of the Estate, or if there is no executor or*

administrator appointed, the heirs, transferees, beneficiaries or authorized representative.

B. For Real Property/ies, if any

- 1. Certified true copy/ies of the transfer/original condominium certificates of title of real property/ies;*
- 2. Certified true copy of the tax declaration of real property/ies, if untitled, including the improvements at the time of death or the succeeding 2 available tax declaration issued nearest to the time of death of the decedent, if none is available at the time of death; and*
- 3. Certificate of No Improvement issued by the assessor's office at the time of death of the decedent, if applicable*

C. For Personal Property/ies, if applicable

- 1. Certificate of Deposit/Investment/Indebtedness owned by the decedent alone or decedent and the surviving spouse, or decedent jointly with other;*
- 2. Certificate of Registration of vehicle/s and other proofs showing the correct value of the same;*
- 3. Certificate of Stocks;*
- 4. Proof of valuation of shares of stock at the time of death; or*
- 5. Proof of valuation of other types of personal property.*

D. Other requirements if applicable:

- 1. Duly notarized original Special Power of Attorney (SPA), if the person transacting/processing the transfer is the authorized representative or one of the heirs, designated as executor/Administrator;*
- 2. Certification from the Philippine Consulate or Apostille, if the document is executed abroad; or*
- 3. Location Plan/vicinity map if the zonal value is not readily available.*

Provided, however, that in the absence of the abovementioned documents, the Commissioner may request for alternative documents, as may be deemed appropriate.

Within five (5) working days from the receipt of complete documents, the concerned RDO shall either endorse the APF for payment of the estate amnesty tax with the Authorized Agent Banks (AABs), Revenue Collection Officers (RCOs), or authorized tax software provider, or shall notify the taxpayer in case there is any deficiency in the application. Only the duly endorsed APF shall be presented to and received by the AAB, RCO or authorized tax software provider.

Proof of settlement of the estate, whether judicial or extra-judicial, need not accompany the ETAR if it is not yet available at the time of its filing and payment of taxes, but no electronic Certificate Authorizing

Registration (eCAR) shall be issued unless such proof is presented and submitted to the concerned RDO.

After payment, the duly accomplished and sworn ETAR and APF with proof of payment, together with the complete documentary requirements, shall be immediately submitted to the concerned RDO in triplicate copies. Failure to submit the same until June 15, 2025 is tantamount to non-availing of the Estate Tax Amnesty and any payment made may be applied against the total regular estate tax due inclusive of penalties.

Installment payment shall be allowed within two (2) years from the statutory, date of its payment without civil penalty and interest."

"Section 13. Issuance of Electronic Certificate Authorizing Registration (eCAR). – One (1) eCAR shall be issued per real property, including the improvements, if any, covered by Original Certificate of Title/Transfer Certificate of Title/Condominium Certificate of Title or Tax Declaration for untitled properties. For personal properties included in the estate, a separate eCAR shall be issued.

The eCAR shall only be issued upon submission of the proof of estate settlement [e.g. Extra-Judicial Settlement of Estate (EJS), Copy of Court Order]. In the event that these documents include properties not indicated in the ETAR filed, the particular properties shall likewise be excluded from the eCAR, unless additional estate tax amnesty payment shall be made if the submission is within the amnesty period. Otherwise, the additional estate tax to be paid for the additional properties indicated in the EJS or Court Order shall be subject to applicable estate tax rate including interests and penalties."

"Section 16. Immunities and Privileges of Availing Estate Tax Amnesty. – Estates covered by Estate Tax Amnesty, which have fully complied with all the conditions set forth hereof, including the payment of estate tax amnesty, shall be immune from the payment of all estate taxes as well as any increments and additions thereto, arising from the failure to pay any and all estate taxes for the period ending May 31, 2022 and prior years, and from all appurtenant civil, criminal and administrative cases, and penalties under the 1997 Tax Code, as amended."

Except for the amendments made in Section 2 of the RR, the provisions of existing revenue issuances to implement and to clarify the Estate Tax Amnesty under RA No. 11213, as amended by RA No. 11569, shall continue to apply to the extension of the period of its availing under the present RA No. 11956. Thus, all reference to RA No. 11213, as amended by RA No. 11569, on those revenue issuances shall also apply to RA No. 11956

REVENUE REGULATIONS NO. 11-2023

REVENUE REGULATIONS NO. 11-2023 issued on September 14, 2023 prescribes the use of electronic mail (e-mail) and electronic signature as additional mode of

service of the Warrant of Garnishment (WG) pursuant to Section 208 in relation to Section 244 of the National Internal Revenue Code of 1997, as amended.

The following Revenue Officers and employees are mandated to observe and perform the following general policies and guidelines in order to implement service thru e-mail of the WGs as additional mode of service:

- a. The Regional Director concerned, Assistant Commissioner-Collection Service (CS), Assistant Commissioner-Large Taxpayers Service (LTS), and Chief, Large Taxpayers District Offices (LTDOs), shall issue and electronically sign the WGs issued against the deposits of the delinquent taxpayer;
- b. The Collection Division concerned, Accounts Receivable Monitoring Division (ARMD), LT-Collection Enforcement Division (LTCED), and the LTDO concerned shall use the Office's official e-mail address to transmit and serve the signed WGs to the Bank Head Offices and Bank Branches within the locality of the registered taxpayer simultaneously, showing the details of the tax liabilities of the taxpayers over which the corresponding WGs are based and issued;
- c. Bank Head Offices and Bank Branches are required to provide their official email address, if not yet available, to the concerned BIR office where they are registered;
- d. Service thru e-mail is complete at the time of such e-mail is made, or, when available, at the time that the electronic notification of service of the WGs is sent. The Collection Division, ARMD, LTCED, and the LTDOs concerned, however, may request for an acknowledgement receipt of the signed WGs from the authorized official of the concerned banks;
- e. As proof of service, the concerned BIR official or employee who sent the email shall execute an Affidavit of Service, with a printed proof of transmittal. This shall be attached to the records of the docket of the case, together with the copy of the signed WGs sent via e-mail;
- f. The Collection Division, ARMD, LTCED, and the LTDOs concerned shall request from the concerned banks to facilitate and act expeditiously on the issued WGs and send the corresponding reply thru the official e-mail address of the BIR. Immediately thereafter, a copy of the served WGs, together with the acknowledgement receipt, shall be sent to the concerned delinquent taxpayer thru his/her/its e-mail address, if applicable, and thru registered mail in the registered address indicated in the Integrated Tax System (ITS) and/or Internal Revenue Integrated System (IRIS);
- g. The Collection Division, ARMD, LTCED and the LTDOs concerned shall send a claim letter for the garnished amount, if any, via e-mail addressed, to the concerned banks and issue Authorization Letter to the handling Revenue Officer to collect the said garnishable amount, and claim the manager's check corresponding to deposit/s of the taxpayer under garnishment pursuant to the information electronically transmitted to the BIR by the concerned banks;
- h. The Revenue Officer concerned shall remit the check in payment of the tax liability/ies of the taxpayer to the authorized agent bank where the taxpayer's business is located.

B. REVENUE MEMORANDUM CIRCULARS

REVENUE MEMORANDUM CIRCULAR 91-2023

REVENUE MEMORANDUM CIRCULAR NO. 91-2023 issued on September 11, 2023 circularizes the amendment to Rule 18, Section 5 of the Implementing Rules and Regulations of Republic Act No. 11534 (Corporate Recovery and Tax Incentives for Enterprises Act), which shall read as follows:

“RULE 18. Investments prior to the effectivity of this Act.

SECTION 5. Non-income related tax incentives. — All registered export and domestic enterprises that will continue to avail of their existing tax incentives subject to Sections 1, 2 and 3 of this Rule, may continue to enjoy the duty exemption, VAT exemption on importation, and VAT zero-rating on local purchases as provided in their respective IPA registrations; **PROVIDED, THAT REGISTERED EXPORT ENTERPRISES AS DEFINED UNDER SECTION 293(E) OF THE ACT WHOSE INCOME TAX-BASED INCENTIVES HAVE EXPIRED, MAY CONTINUE TO ENJOY VAT ZERO-RATING ON LOCAL PURCHASES UNTIL THE ELECTRONIC SALES REPORTING SYSTEM OF THE BUREAU OF INTERNAL REVENUE UNDER SECTION 237-A OF THE ACT IS FULLY OPERATIONAL, OR UNTIL THE EXPIRATION OF THE TRANSITORY PERIOD REFERRED TO IN SECTION 311(C) OF THE ACT, WHICHEVER COMES EARLIER; PROVIDED, FURTHER, THAT AN RBE CLASSIFIED AS DME WHICH IS LOCATED INSIDE THE ECONOMIC OR FREEPORT ZONE DURING THE TRANSITORY PERIOD WILL BE ALLOWED TO REGISTER AS A VAT TAXPAYER;** Provided, **FINALLY**, that the duty exemption, VAT exemption on importation, and VAT zero-rating on local purchases shall only apply to goods and services directly attributable to and exclusively used in the registered project or activity of said registered export enterprises.”

The Rules shall apply prospectively; Provided that Domestic Market Enterprises (DMEs) inside the economic or freeport zone that will opt to register as VAT taxpayers shall not be allowed to claim VAT refund for transactions prior to the effectivity of the Rules.

REVENUE MEMORANDUM CIRCULAR NO. 92-2023

REVENUE MEMORANDUM CIRCULAR NO. 92-2023 issued on September 13, 2023 announces the availability of BIR Form No. 1621 (Quarterly Remittance Return of Tax Withheld on the Amount Withdrawn from Decedent's Deposit Account) in the Electronic Filing and Payment System (eFPS). The said BIR form is required to be filed and tax due thereon be paid or remitted not later than the last day of the month following the close of the quarter during which withholding was made. All mandated eFPS taxpayers who are required to file the said return and pay the corresponding tax due thereon, if any, shall use the eFPS facility effective immediately.

C. DIGEST OF SELECT COURT OF TAX APPEALS' DECISIONS

THE COMMISSIONER OF INTERNAL REVENUE in the person of Caesar R. Dulay v. LBP SERVICE CORPORATION

CTA EB No. 2578, August 30, 2023, Modesto-San Pedro, J.

This pertains to the Petition for Review (PFR), which the Commissioner of Internal Revenue filed to reverse the assailed Decision and Resolution dated 23 February 2023, which dismissed the claim of the Bureau of Internal Revenue on the alleged deficiency Value-Added Tax of the private Respondent in the amount of Php131,278,597.75.

According to the Commissioner of Internal Revenue, the Court acquires no jurisdiction on the matter because of the failure of the Respondent to file a valid assessment thereby making the assessment undisputed and has become final, and unappealable. On the part of the Respondent, it categorically denies that it received the FAN. It further contends that the thirty (30) day period to file a petition for review must be reckoned from the date of receipt of the Warrant of Dstraint/ Levy (WDL), pursuant to the CTA's power to review "other matters" arising under the National Internal Revenue Code ("Tax Code").

The Court of Tax Appeals *en banc* sided on the Respondent. In dismissing the theory of the Commissioner of Internal Revenue, it ratiocinated that Section 7(a)(1), in relation to Section 11 of Republic Act No. 1125, as amended by R.A. 9282, provides that the appellate jurisdiction of the Court of Tax Appeals is not limited to the cases involving decisions related to matters of assessments and refunds. In addition, an aggrieved party by such action must appeal the same to the Court within thirty (30) days from receipt thereof.

Since the Respondent has received the WDL on 23 October 2018, the Petition for Review was seasonably filed.

WHEREFORE, Premises considered, the instant Petition for Review is hereby denied for lack of merit. Accordingly, the Decision dated 1 July 2021 and Resolution dated 23 February 2022 in CTA Case No. 9977 are hereby affirmed.

THE LANDMARK CORPORATION v. COMMISSIONER OF INTERNAL REVENUE, CTA CASE NO. 9317, SEPTEMBER 14, 2023, RINGPIS-LIBAN, J.

This is a Petition for Review (PFR) to nullify the deficiency tax assessments made for the year 2011 against the petitioner under the Final Decision on Disputed Assessment (FDDA) dated March 1, 2016, in the total amount of Php583,998,287.78, inclusive of interests and penalties.

On April 1, 2013, the respondent issued a Letter of Authority (LOA) No. 116-2013-00000095, authorizing the examination of the petitioner's books of account and other accounting records for all internal revenue taxes for taxable year 2011.

On July 10, 2014, petitioner, through its Assistant to the Executive Vice President (EVP), Ms. Conchita V. Lee, executed a Waiver of the Defense of Prescription Under the Statute of Limitations of the National Internal Revenue Code, wherein the petitioner waived the said defense, and consented to the assessment and/ or collections of tax

or taxes for 2011 which may be found due after investigation/ reinvestigation/re-evaluation, at any time before or after the lapse of the period of limitations fixed by Sections 203 and 222 of the NIRC, but not later than December 31, 2015. The respondent accepted the said Waiver on July 25, 2014.

On July 22, 2015, the petitioner received the Formal Letter of Demand (FLD) of even date issued by respondent,¹⁰ with the Details of Discrepancies and the corresponding Audit Results/ Assessment Notices,¹¹ informing the petitioner of its alleged deficiency income tax, VAT, EWT, DST, and IAET, based on third-party information for the taxable year 2011.

Thereafter, the Large Taxpayer received the Protest to FLD dated August 18, 2015 on August 20, 2015. Additional documents were likewise submitted on September 30, 2015 and October 19, 2015 respectively.

The Bureau of Internal Revenue issued the assailed FDDA on March 1, 2016 against the Petitioner.

The Petitioner contends that the respondent's right to assess the petitioner of deficiency income, VAT, and EWT, for the taxable year 2011, has already prescribed and is, therefore, void because Respondent issued the FLD dated July 22, 2015 beyond the three-year prescriptive period. Respondent on the other hand contended that Respondent contends that the right of respondent to assess petitioner for taxable year 2011 did not prescribe, as there was a Waiver of the Defense of Prescription executed by petitioner's authorized representative, which extended the period of assessment until December 31, 2015.

The Court was not persuaded by the contention of the CIR and ruled in favor of the Petitioner that the Waiver did not validly extended the prescriptive period. In doing so, the Court of Tax Appeals said that, indeed, a Waiver of the Defense of Prescription is a bilateral agreement between a taxpayer and the BIR to extend the period of assessment and collection to a certain date. However, it is likewise a derogation of the taxpayer's right to security against prolonged and unscrupulous investigations and thus, it must be carefully and strictly construed. The Waiver must faithfully comply with the provisions of RMO No. 20-90 and Revenue Delegation Authority Order No. 05-01 in order to be valid and binding.

According to the Court, as stated in the jurisprudential doctrines on the matter, it is required that a waiver to be valid and would have the effect of extending the three (3)-year prescriptive period to assess under Section 203 of the NIRC of 1997, must indicate the nature and the amount of the tax due.

*****Nothing Follows*****