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If We Can't Race to the Bottom Let's Just Swim Along

by:

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"Every culture has some ritual for joining two people together and making them stay that way, and ours is giving tax breaks." -- Bauvard

A. Theoretical Justification for the Imposition of Corporate Income Tax

1. Kornberg (n.d.) mentions in her article *A Traditional Corporate Tax Policy Evaluation* that customarily, corporate taxation has been justified as regulating corporate managerial power and increasing corporate transparency, and as a revenue raiser. She cites the case of the United States of America when its Congress taxed corporations as separate entities from their shareholders for the first time in 1909, the corporate tax had the primary goal of regulating corporate power. Over time, however, the corporate income tax (CIT) also became an important source of tax revenue. Reliance on this revenue stream has given rise to the "cynical" rule of taxation, which holds that a publicly accepted tax that produces significant revenue, like the corporate tax, will be maintained regardless of more legitimate policy considerations

2. Colm (1939) reiterated that the cynical rule of taxation was a major justification for the imposition of CIT. Its high fiscal productivity is one strong argument why governments impose it along with personal income

tax (PIT), noting that revenues riding on the platform of *ability to pay* cannot be generated solely from PIT.

3. T.S. Adams (1918) has been credited as having said that “the government is a silent partner in all business and as such should receive its share in all profits”. It is assumed that a conducive business environment arising from a system of laws imposed by government makes the latter an “essential factor of production”.

4. Corollary to fiscal necessity, the *benefit principle* is also attributed to the continued obligation placed upon corporations to pay income tax. Following this principle, government is assumed to treat all corporations alike, to render its social, economic, infrastructure, and even legal services to all corporations whether these are profitable or not; both in good times and bad. Hence, the CIT serves as compensation to government.

B. Historical Background of Corporate Income Tax Rates in the Philippines

The National Tax Research Center (NTRC) traces the historical background of the CIT in the Philippines in its concept paper entitled the “Feasibility of Replacing the Current Flat Tax on Corporations with Graduated Income Tax Rates”.

1. The CIT started with a flat rate of eight percent (8%) under Commonwealth Act (CA) 466 (June 15, 1939). In 1946, Republic Act (RA) 82 (January 1, 1946) increased the rate to twelve percent (12%). It was further increased to sixteen percent (16%) in 1950 under RA 590 (January 1, 1950).

2. The two-tiered tax structure started in 1951 with the enactment of RA 600 (January 1, 1951) whereby twenty percent (20%) was imposed on the first P100,000 taxable income and twenty-eight percent (28%) in excess thereof. The rationale for the dual rates is to make the CIT system progressive.

3. The CIT dual rates were increased in 1959 (22%; 30%) under RA 2343 (January 1, 1959), and in 1968 (25%; 35%) under RA 5431 (June 30, 1968).

4. After thirty-five (35) years of implementing a dual rate system for CIT, Executive Order (EO) 37 (July 31, 1986) was issued reverting the structure of the CIT to a unitary rate of thirty-five percent (35%), eliminating “the inducement for individual taxpayers to become corporate entities considering that the maximum rate for individuals is also 35%”.

5. RA 8424 (December 11, 1997) mandated the gradual lowering of the CIT rate from 35% to 34% in 1998, 33% in 1999, and 32% in 2000. The rationale for the reduction of the CIT was to make it competitive vis-à-vis our ASEAN neighbors.

6. The most recent change in the CIT rate was in 2005 with the enactment of RA 9337 (May 24, 2005) which increased the rate to 35% before it was lowered to 30% effective January 1, 2009.

7. The increase in the CIT rate in 2005 was due to the fact that during that time, the fiscal state of the country was not good. The debt of the national government has been increasing during the term of President Gloria Macapagal Arroyo from 2001 until the passage of RA 9337. The country was also faced with worsening budget deficit that reached a record high of 5.5 percent of GDP in 2002.

8. Table 1 summarizes the history of CIT rates in the country.

Table 1. Laws Governing Corporate Income Tax Rates in the Philippines

Pertinent Laws	Tax Rate and Base
Commonwealth Act 466 Approved June 15, 1939 Effective July 1, 1939	8% of total net taxable income
Republic Act 82 Approved October 29, 1946 Effective January 1, 1946	12% of total net taxable income
Republic Act 590 Approved September 22, 1950 Effective January 1, 1950	16% of total net taxable income
Republic Act 600 Approved March 28, 1951 Effective January 1, 1951	Not over P100,000 – 22% Over P100,000 – 28%
Republic Act 2343 Approved June 20, 1959 Effective January 1, 1959	Not over P100,000 – 22% Over P100,000 – 30%
Republic Act 5431 Approved June 27, 1968 Effective June 30, 1968	Not over P100,000 – 25% Over P100,000 – 35%
Executive Order 37 Issued July 31, 1986 Effective August 1, 1986	35% of net taxable income
Republic Act 8424 Approved December 11, 1997 Effective January 1, 1998	January 1, 1998 – 34% January 1, 1999 – 33% January 1, 2000 and thereafter – 32%
Republic Act 9337 Approved May 24, 2005 Effective November 1, 2005	July 15, 2005 to December 31, 2008 - 35% January 1, 2009 and thereafter - 30%

C. Corporate Income Tax Rates Around the World

1. Different regions of the world adopt various corporate income tax rates. Table 2 lists the average statutory corporate tax rates of the different regions in the world. In the said table, Europe records the lowest average rate of CIT at 18.35% while Africa and South America mark the highest average rate at 28.73%. Asia, the region where the Philippines belongs to, registers a 20.05% average rate.

Table 2. Average Statutory Tax Rate by Region

Region	Average Rate	Weighted Average Rate	Number of Countries
Africa	28.73%	28.20%	48
Asia	20.05%	26.26%	45
Europe	18.35%	25.58%	49
North America	23.08%	37.01%	30
Oceania	23.67%	27.10%	18
South America	28.73%	32.98%	13
World	22.96%	29.41%	203

Source: Tax Foundation Fiscal Fact No. 559, September 2017. Data compiled from numerous sources including: PwC, KPMG, Deloitte, and the U.S. Department of Agriculture

2. Table 3 lists the countries with the highest rates of CIT. United Arab Emirates posts the highest rate at 55% followed by Comoros (50%), and Puerto Rico (39%). Compare these rates with the Philippines whose highest CIT rate stood at 35% under RA 9337 (unitary rate) and under RA 5431 (two-tiered structure).

Table 3. Highest Statutory Corporate Income Tax Rates in the World

Country	CIT Rate	Region
United Arab Emirates	55%	Asia
Comoros	50%	Africa
Puerto Rico	39%	North America
United States of America	38.91%	North America
Suriname	36%	South America
Argentina	35%	South America
Chad	35%	Africa
Congo, Democratic Republic of the	35%	Africa
Equatorial Guinea	35%	Africa
Guam	35%	Oceania
Guinea	35%	Africa
Kiribati	35%	Oceania
Malta	35%	Europe
Northern Mariana Islands	35%	Oceania
Sudan	35%	Africa
Virgin Islands, U.S.A.	35%	North America
Zambia	35%	Africa
India	34.61%	Asia
Saint Maarten	34.5%	North America
France	34.43%	Europe
Worldwide average	22.96%	N/A
Worldwide weighted average (by GDP)	29.41%	N/A

Source: Tax Foundation Fiscal Fact No. 559, September 2017. Data compiled from numerous sources including: PwC, KPMG, Deloitte, and the U.S. Department of Agriculture

3. Conversely, Table 4 enumerates the countries with the lowest CIT rates with Uzbekistan registering the lowest rate at 7.5% followed by Turkmenistan (8%), and Hungary and Montenegro (9%). In the case of the Philippines, the lowest CIT rate was registered at 8% of total net taxable income in 1939 (CA 466, unitary rate) whereas under a two-tiered structure, the lowest rate was at 22% (RA 2343).

Table 4. Lowest Statutory Corporate Income Tax Rates in the World

Country	CIT Rate	Region
Uzbekistan	7.5%	Asia
Turkmenistan	8%	Asia
Hungary	9%	Europe
Montenegro	9%	Europe
Andorra	10%	Europe
Bosnia and Herzegovina	10%	Europe
Bulgaria	10%	Europe
Gibraltar	10%	Europe
Kosovo, Republic of	10%	Europe
Kyrgyzstan	10%	Asia

Country	CIT Rate	Region
Macedonia, Former Yugoslav Republic of	10%	Europe
Paraguay	10%	South America
Qatar	10%	Asia
Timor-Leste	10%	Asia
Macao	12%	Asia
Moldova, Republic of	12%	Europe
Oman	12%	Asia
Cyprus	12.5%	Europe
Ireland	12.5%	Europe
Liechtenstein	12.5%	Europe
Worldwide average	22.96%	N/A
Worldwide weighted average (by GDP)	29.41%	N/A

Source: Tax Foundation Fiscal Fact No. 559, September 2017. Data compiled from numerous sources including: PwC, KPMG, Deloitte, and the U.S. Department of Agriculture

4. Within the Association of Southeast Asian Nations (ASEAN) region, Singapore registers the lowest CIT rate at 17% while the Philippines imposes the highest rate at 30%. This is shown in Table 5.

Table 5. Corporate Income Tax Rates of ASEAN-Member Countries, 2017

Country	Standard Corporate Income Tax	
	Rate (%)	Base
Brunei	18.5	Chargeable income
Cambodia	20	Net Profit
Indonesia	25	Net taxable income
Laos	24	Net profit
Malaysia	24	Net taxable income
Myanmar	25	Net taxable income
Philippines	30	Net taxable income
Singapore	17	Net profit
Thailand	20	Taxable profits
Vietnam	20	Net profits

Source: PCW Worldwide Tax Summaries, 2017; Deloitte International Tax 2018

D. Race to the Bottom: The Need to Lower the Corporate Income Tax Rate

1. The CIT rate has consistently declined in the global arena in the past thirty-seven (37) years. According to Jahnsen & Pomerlau (2017), the unweighted average worldwide statutory tax in 1980 was 38.68% but now the average statutory rate stands at 22.96%. This represents a 41% reduction over the 37 years surveyed. The authors also stated that more countries have shifted to taxing corporations at rates lower than 30%. The largest shift occurred between 2000 and 2010, with 77 percent of countries imposing a statutory rate below 30% in 2010 vis-à-vis only 42 percent doing so in 2000.

2. Numerous literature shows that reducing the corporate tax rate boosts investment and output in a country. Some of these are summarized below:

   a. In the study of Johansson, Heady, Arnold, Brys, & Vartia (2008), the OECD found that reducing the statutory CIT rate from 35% to 30% increases the ratio of investment to capital by approximately 1.9% over the long term.

   b. This is also consistent with the finding from the Joint Committee on Taxation (2005) which observed that reducing CIT rates has the greatest effect on long-term growth by increasing the stock of productive capital, which leads to higher labor productivity.

   c. Lee & Gordon (2005) found that a reduction of 10% in the CIT rate can increase the annual growth rate between 1.1 and 1.8 percentage points.

   d. The Tax Foundation has published estimates of the potential growth effects from CIT rate reduction, finding that reducing the "federal corporate tax rate from 35% to 25% would raise GDP by 2.2 percent, increase the private-business capital stock by 6.2 percent, boost wages and hours of work by 1.9 percent and 0.3 percent, respectively, and increase total federal revenues by 0.8 percent."

   e. These growth effects matter for workers. More investment raises productivity, and ultimately wages. A growing amount of research identifies a strong inverse relationship between corporate taxes and wages. Using data for 66 countries over 25 years, Hassett & Mathur (2015) found that, for every 1 percent increase in CIT rates, wages decrease by about 0.5 percent. Using a separate approach with firm-level data, Arulampalam, Devereux, & Maffini

(2009) found that $1 in additional corporate tax reduces wages by 92 cents in the long run. Using cohorts of data covering 1979 to 2000, Felix (2007) found that a 1 percent increase in the marginal corporate tax rate would decrease wages by 0.7 percent. Mihir, Foley, & Hines (2007) concluded in their study that labor bears 57 percent of the burden of the CIT.

3. While many economists claim that a cut in the CIT rate will spur economic growth, Jaimovich & Rebelo (2018) caution about too much hype. They claim that history shows no real link between tax rates and economic growth. In their report, they argue that the "economy of the United States, for example, has grown at a steady rate since 1870 (an average of about 3 percent per year) — despite ups and downs in the corporate income tax rate".

4. When the 10-member ASEAN forged the ASEAN Economic Community (AEC) Blueprint, it sought to transform ASEAN into a single market and production base through five (5) core elements, namely (i) free flow of goods; (ii) free flow of services; (iii) free flow of investment; (iv) freer flow of capital; and (v) free flow of skilled labor.

5. A reading of the AEC Blueprint shows that while there is a long list of things to-do in the areas of legislation and policy, the Blueprint is relatively silent in the matter of tax regimes. This could be justified by the Declaration whereby the heads of States recognize that the "different levels of development within ASEAN require some flexibility as ASEAN moves towards a more integrated and interdependent future".

6. It bears stressing that aside from the existence of reasonable levels of taxation and the overall stability of the tax regime, the most frequently cited reasons for multi-national investments are the market size and growth prospects of the host country, the availability of infrastructure, stable political environment, conditions that support physical and personal security, legal framework, rule of law, corruption and governance concerns.

7. Moreover, the European Union which existed since 1993 has skirted the issue on a uniform tax system among member-States. The EU website publishes that "National governments are responsible for raising taxes and setting tax rates. The amount of tax you pay is therefore decided by your national government, not the EU."

8. However, since harmonization is both a model and requisite for regional integration, differences in the corporate and individual income taxation regimes would swing the pendulum as investors and taxpayers shift from a high-tax jurisdiction to a low-tax jurisdiction.

9. Despite the avowed principle to collectively "achieve higher levels of economic dynamism, sustained prosperity, inclusive growth and integrated development of ASEAN", the pragmatism of country competition for foreign direct investment (FDI) exists and the manipulation of tax systems is one modality to achieve an edge.

10. This observation finds support at the track record of ASEAN member-States which dramatically lowered their corporate income tax rates following the signing of the ASEAN Blueprint in 2007. On the average, the corporate income tax rate is at the 23.1 percentage mark and convergence to this average rate was observed, except for the Philippines which holds the highest rate at 30%.

E. Quo Vadis, Philippines?

1. On the table in the Third Regular Session of the Seventeenth Congress are House Bill 8083 (known as TRABAHO bill) and Senate Bill 1906 (Corporate Income Tax and Incentives Reform Act) authored by Senate President Vicente C. Sotto III.

2. HB 8083 seeks to gradually reduce the corporate income tax as follows:

Beginning January 1, 2021	28%
Beginning January 1, 2023	26%
Beginning January 1, 2025	24%
Beginning January 1, 2027	22%
Beginning January 1, 2029	20%

The bill provides that the President may advance the scheduled reduction in the CIT rate when adequate savings are realized from the rationalization of fiscal incentives, as certified by the Secretary of Finance.

3. On the other hand, SB 1906 proposes for a one-time reduction of the CIT rate to 25%.

4. Quoting from an article written by Abrea (2018) citing Department of Finance figures, almost 90,000 small and medium enterprises (SMEs) still pay the regular income tax. Based on the latest data from the Philippine Statistics

Authority (PSA), in 2016, micro, small and medium enterprises (MSMEs) comprise 99.57 percent of all businesses in the country. Of this percentage, 9.5 percent are small enterprises and 0.44 percent are medium enterprises. These two sectors stand to gain the most from the bill.

5. While there is no assurance that a cut in the corporate income tax rate would keep the headquarters and profits in the Philippines, and while we can't compete with our more advanced neighbors with a more generous tax cut, the truth remains that we can't continue "towering" above the rest. Corporations deserve a break lest our economy breaks.

COMMISSIONER OF INTERNAL REVENUE, *Petitioner*, *v.* **PILIPINAS SHELL PETROLEUM CORPORATION**, *Respondent*. **[G.R. No. 180402, February 10, 2016]**

Facts:

Respondent Pilipinas Shell (Shell) sold and delivered petroleum products to several international carriers of foreign registry for their consumption outside the country from November 2000 to March 2001. Part of the sales and deliveries was derived by Shell from Petron Corporation (Petron) via a 'loan or borrow' deal between them. The excise taxes paid by Petron were passed on to Shell. Respondent sold the petroleum products to international carriers net of excise taxes. The remaining portion was sourced by Shell from its tax-paid supplies.

Shell filed two (2) distinct claims for refund or credit totaling P49,058,733.09 with the Bureau of Internal Revenue (BIR). Shell decided to file a Petition for Review with the Court of Tax Appels (CTA) because of the inaction of the BIR on its demand.

The CTA Second Division, on November 28, 2006, made its Decision allowing Shell's claim but at a decreased amount of P39,305,419.49, based on its sales and deliveries to international carriers sourced from its own tax-paid stock. Shells claim from those coming from the part sourced from Petron was disallowed on the ground that it is not the proper party.

The Motion for Reconsideration (MR) filed the Commissioner of Internal Revenue (CIR) was denied by the CTA (Second Division). The CTA *En Banc* dismissed the Petition for Review filed by the CIR.

By: Dir. Clinton S. Martinez, Legal and Tariff Branch

Issues:

The CIR, in stressing that Shell is not entitled to a refund/credit of the excise taxes paid on its sales and deliveries to international carriers, asserts the ensuing points:

"(1) excise taxes are levied on the manufacturer/producer prior to sale and delivery to international carriers and, regardless of its purchaser, said taxes must be shouldered by the manufacturer/producer or in this case, Pilipinas Shell;

"(2) the excise taxes paid by Pilipinas Shell do not constitute taxes erroneously paid as they are rightfully due from Pilipinas Shell as manufacturer/producer of the petroleum products sold to international carriers;

"(3) the intent of the law - Section 135 of the National Internal Revenue Code (NIRC) - is to exempt the international carriers from paying the excise taxes but not the manufacturer/producer; and

"(4) BIR Ruling No. 051-99, Revenue Regulations No. 5-2000 and other BIR issuances allowing tax refund/credit of excise taxes paid on petroleum products sold to tax-exempt entities or agencies should be nullified for being contrary to Sections 129, 130 and 148 of the NIRC."

Upon the other hand, Shell contends, among others, that the exemption is based on international comity.

Held:

The Supreme Court (SC) rendered its decision alluding to the recent case of *Commissioner of Internal Revenue v. Pilipinas Shell Petroleum Corporation (G.R. No. 188497). The said:*

"We maintain that Section 135 (a), in fulfillment of international agreement and practice to exempt aviation fuel from excise tax and other impositions, prohibits the passing of the excise tax to international carriers who buys petroleum products from local manufacturers/sellers such as respondent. However, we agree that there is a need to re-examine the effect of denying the domestic manufacturers/sellers' claim for refund of the excise taxes they already paid on petroleum products sold to international carriers, and its serious implications on our Government's commitment to the goals and objectives of the Chicago Convention.

"*The Chicago Convention, which established the legal framework for international civil aviation, did not deal comprehensively with tax matters. Article 24 (a) of the Convention simply provides that fuel and lubricating oils on board an aircraft of a Contracting State, on arrival in the territory of another Contracting State and retained on board on leaving the territory of that State, shall be exempt from customs duty, inspection fees or similar national or local duties and charges. Subsequently, the exemption of airlines from national taxes and customs duties on spare parts and fuel has become a standard element of bilateral air service agreements (ASAs) between individual countries.*

"X x x.

"In view of the foregoing reasons, we find merit in respondent's motion for reconsideration. We therefore hold that respondent, as the statutory taxpayer who is directly liable to pay the excise tax on its petroleum products, is entitled to a refund or credit of the excise taxes it paid for petroleum products sold to international carriers, the latter having been granted exemption from the payment of said excise tax under Sec. 135(a) of the NIRC."

The High Court further stated: "X x x *while the claims in Pilipinas Shell and Chevron were premised on different subsections of Section 135 of the NIRC, "the basic tax principle applicable was the same in both cases that excise tax is a tax on property; hence, the exemption from the excise tax expressly granted under Section 135 of the NIRC must be construed in favor of the petroleum products on which the excise tax was initially imposed*."

Finally, the SC denied the CIR's prayer that BIR Ruling No. 051-99; Revenue Regulations (RR) No. 5-2000 and other issuances allowing tax refund/credit of excise taxes paid on petroleum products sold to tax-exempt entities or agencies be declared invalid. "*What the CIR wants is a wholesale invalidation of these issuances, which the Court will not allow.*"

The petition of the CIR is denied.

COMMISSIONER OF INTERNAL REVENUE, *Petitioner, v.* GJM PHILIPPINES MANUFACTURING, INC., *Respondent.* [G.R. No. 202695, February 29, 2016]

Facts:

Respondent GJM Philippines Manufacturing, Inc. (GJM) filed its annual income tax return (ITR) on 12 April 2000. Its parent company, Warnaco (ITK) Ltd., underwent bankruptcy proceedings resulting in the transfer of ownership over GJM to Luen Thai

Overseas Limited in December 2001.

On August 26, 2002, through a letter, GJM informed the Revenue District Officer (RDO) of Trece Martirez, Cavite, that on April 29, 2002, it would be canceling its registered address in Makati and transferring to Rosario, Cavite, which is under RDO 54. The request for transfer was confirmed on August 26, 2002, through Transfer Confirmation Notice No. OCN ITR 000018688.

The Bureau of Internal Revenue (BIR) on October 18, 2002 sent a letter of informal conference informing respondent GJM that the report of investigation on its income and business tax liabilities for 1999 had been submitted. The report showed that GJM was still liable for an income tax deficiency and the corresponding 20% interest, as well as for the compromise penalty in the total amount of P1,192,541.51. GJM impugned said BIR assertions through its financial controller, on October 24, 2002.

A Pre-Assessment Notice (PAN) and Details of Discrepancies against GJM was issued by the BIR on February 12, 2003. Subsequently on April 14, 2003, the BIR issued an undated Assessment Notice (AN), indicating a deficiency income tax assessment in the amount of P1,480,099.29. On July 25, 2003, the BIR issued a Preliminary Collection Letter (PCL) requesting GJM to pay said deficiency for the taxable year 1999. The same was addressed to GJM's former address in Pio del Pilar, Makati. On August 18, 2003, although the BIR sent a Final Notice Before Seizure (FNBS) to GJM's address in Cavite, respondent claimed that it did not receive the same.

GJM received a Warrant of Distraint and/or Levy from the BIR RDO No. 48-West Makati, on December 8, 2003. GJM then filed its Letter Protest on January 7, 2004, which the BIR denied on January 15, 2004. Hence, the company filed a Petition for Review before the CTA.

The CTA First Division rendered a Decision on January 26, 2010 in favor of respondent.

The CIRs Motion for Reconsideration (MR) was denied, hence it brought the case to the CTA *En Banc*. The CTA *En Banc* on March 6, 2012, denied the CIR's petition.

The MR of CIR was denied for lack of merit. Hence, this petition.

Issues:

1] *WHETHER OR NOT THE FORMAL ASSESSMENT NOTICE (FAN) FOR DEFICIENCY INCOME TAX ISSUED TO GJM FOR TAXABLE YEAR 1999 WAS RELEASED, MAILED, AND SENT WITHIN THE THREE (3)-YEAR PRESCRIPTIVE PERIOD UNDER SECTION 203 OF THE NIRC OF 1997*.

2] *WHETHER OR NOT THE BIR'S RIGHT TO ASSESS GJM FOR DEFICIENCY INCOME TAX FOR TAXABLE YEAR 1999 HAS ALREADY PRESCRIBED*.

Held:

The Supreme Court (SC) cited at the outset the following Tax Code proviso:

> *"SEC. 203.* ***Period of Limitation Upon Assessment and Collection****. - Except as provided in Section 222, internal revenue taxes shall be assessed within three (3) years after the last day prescribed by law for the filing of the return, and no proceeding in court without assessment for the collection of such taxes shall be begun after the expiration of such period: Provided, That, in a case where a return is filed beyond the period prescribed by law, the three (3)-year period shall be counted from the day the return was tiled. For purposes of this Section, a return filed before the last day prescribed by law for the filing thereof shall be considered as filed on such last day*."

The High Court stated that the CIR has three (3) years from the date of the actual filing of the return or from the last day prescribed by law for the filing of the return, whichever is later, to assess internal revenue taxes.

In this case, respondent filed its annual ITR for the taxable year 1999 on April 12, 2000. The 3-year prescriptive period, was until April 15, 2003. The records show that the BIR sent the FAN via registered mail on April 14, 2003.

In the words of the Court:

> *"X x x when an assessment is made within the prescriptive period, as in the case at bar, receipt by the taxpayer may or may not be within said period. But it must be clarified that the rule does not dispense with the requirement that the taxpayer should actually receive the assessment notice, even beyond the prescriptive period. GJM, however, denies ever having received any FAN.*
>
> *"If the taxpayer denies having received an assessment from the BIR, it then becomes incumbent upon the latter to prove by competent evidence that such notice was indeed received by the addressee. X x x, the onus probandi* has shifted to the BIR to show by contrary evidence that GJM indeed received the assessment in the due course of mail. It has been settled that while a mailed letter is deemed received by the addressee in the course of mail, this is merely a disputable presumption subject to controversion, the direct denial of which shifts the burden to the sender to prove that the mailed letter was, in fact, received by the addressee.

"To prove the fact of mailing, it is essential to present the registry receipt issued by the Bureau of Posts or the Registry return card which would have been signed by the taxpayer or its authorized representative. And if said documents could not be located, the CIR should have, at the very least, submitted to the Court a certification issued by the Bureau of Posts and any other pertinent document executed with its intervention. The Court does not put much credence to the self-serving documentations made by the BIR personnel, especially if they are unsupported by substantial evidence x x x. While it is true that an assessment is made when the notice is sent within the prescribed period, the release, mailing, or sending of the same must still be clearly and satisfactorily proved. Mere notations made without the taxpayer's intervention, notice or control, and without adequate supporting evidence cannot suffice. Otherwise, the defenseless taxpayer would be unreasonably placed at the mercy of the revenue offices."

"The BIR's failure to prove GJM's receipt of the assessment leads to no other conclusion but that no assessment was issued. Consequently, the government's right to issue an assessment for the said period has already prescribed. The CIR offered in evidence Transmittal Letter No. 282 dated April 14, 2003 prepared and signed by one Ma. Nieva A. Guerrero, as Chief of the Assessment Division of BIR Revenue Region No. 8-Makati, to show that the FAN was actually served upon GJM. However, it never presented Guerrero to testify on said letter, considering that GJM vehemently denied receiving the subject FAN and the Details of Discrepancies. X x x. The CIR likewise failed to show that said mail matters received indeed came from it. It could have simply presented the registry receipt or the registry return card accompanying the envelope purportedly containing the assessment notice, but it offered no explanation why it failed to do so. Hence, the CTA aptly ruled that the CIR failed to discharge its duty to present any evidence to show that GJM indeed received the FAN sent through registered mail on April 14, 2003.

Petition is denied.

Angara urges Senate to pass bill providing tax relief to parents burdened by college tuition

"Noting it is already enrollment season, Sen. Sonny Angara x x x urged the Senate to approve the bill that would provide tax relief to parents burdened by college tuition.

"This bill seeks to help our people by providing that matriculation fees for tertiary education and allied expenses should be tax deductible from the gross income of a taxpayer," Angara said.

"Angara, who chairs the Senate committee on ways and means, lamented that up to now, access to tertiary education remains problematic and elusive.

"The senator pointed out that an annual poverty indicator survey released by the National Statistics Office (NSO) in 2011 shows that 6 million out of 39 million Filipinos aged between 6 and 24 are out-of-school youth or those who are not attending formal school or have not finished college or post-secondary courses.

"Thus, his proposed tax relief measure would make tertiary education widely accessible to Filipinos, especially those who can't qualify for scholarship grants and other assistance."

* Compiled and sorted by Dir. Clinton S. Martinez. Concept and Design by Mr. Bonifacio R. Joson.

Source: Manila Bulletin, Hannah Torrregoza, Published May 21, 2017, 10:54 AM, https://news.mb.com.ph/2017/05/21/angara-urges-senate-to-pass-bill-providing-tax-relief-to-parents-burdened-by-college-tuition/

by:

ELSIE T. JESALVA
SLSO-II - Indirect Taxes Branch

ISSUANCE NO.	SUBJECT	DATE SIGNED
	Customs Memorandum Orders (CMOs)	
CMO 13-2018	**Decentralization of MISTG NON-IT Functions.** In order for the Management Information System and Technology Group (MISTG) to concentrate on its IT role in the Bureau of Customs (BOC), certain non-IT functions currently being performed by MISTG need to be decentralized and transferred to other authorized groups/agencies whose primary roles are more aligned with such functions.	09/04/2018
CMO 12-2018	**Guidelines for the Implementation of the Re-export Bond thru the Automated Bonds Management System (ABMS)**	09/04/2018
CMO 11-2018	**Donation Acceptance Policy for MISTG** In observance of the principles of transparency and impartiality adhered to by the Bureau of Customs, the following policies and guidelines shall govern the procedure and criteria for acceptance of donations made to the Management Information Systems and Technology Group of the Bureau of Customs (MISTG-BOC). Donors are encouraged to seek the assistance of their respective legal and financial advisors in matters relating to their donations, including the resulting tax consequences.	08/07/2018

ENGAGEMENTS

2018 R.A.C.E. to SERVE Fun Run

Lingkod Bayani: Maka-Diyos, Makatao, Makabayan

September 02, 2018—Quirino Grandstand, Manila

Dir. Clinton S. Martinez joined the CSC 2018 R.A.C.E to Serve Fun Run

RACE Route

MY RUN TI.ME

MARTINEZ CLINTON

male

Civil Service Commission R.A.C.E. To Serve Fun Run VIII

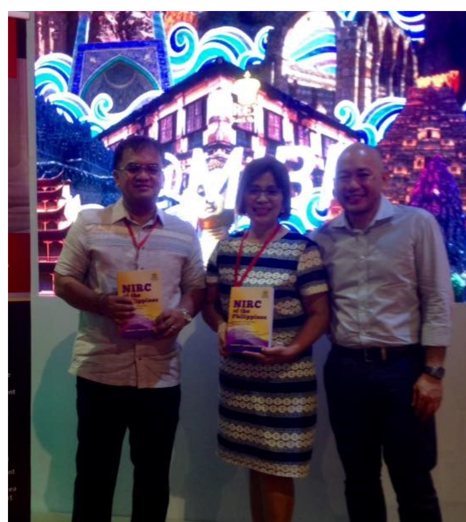
10K

GUN TIME	CHIP TIME	RANK
01:22:02	01:21:51	378 / 852

Re-launching of Director General Atty. Rodelio T. Dascil's book entitled NIRC of the Philippines, As amended: Annotated, 5th Edition, Year 2018, on the occasion of 39th Manila International Book Fair (MIBF).

Speaker on the topic "Impact of Taxation on Publishing and Printing Industries during the Annual General Meeting and ASEAN Publishing Forum hosted by ASEAN Book Publishing Association (ABPA).

September 12, 2018, SMX Convention Center, Mall of Asia, Philippines.



Briefing on SBN 1906 and HBN 8083 on the 2nd Package of the Comprehensive Tax Reform Program (September 13, 2018, Thursday)

In photos are: Senate Secretary Atty. Myra Marie D. Villarica, Dir. Irah Ruth B. Borinaga (OSEC), Atty. Sheela Villano-Millera (OSP Sotto), and LegComSec. Jojo Villapando; STSRO Director General Atty. Rodelio T. Dascil,with STSRO Officers Dir. Ma. Lourdes M. Arbas, Dir. Maria Lucrecia R. Mir, Dir. Vivian A. Cabiling, Dir. Sherry Anne C. Salazar, Dir. Norberto M. Villanueva, Dir. Elvira P. Crudo and Dir. Clinton S. Martinez.

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