May 25, 2021

BIR RULING NO. OT-193-21

Secs. 248 (A); 249; & 204 (B), Tax Code of 1997, as amended; BIR Ruling No. OT-008-20

Abesamis Law Offices
Unit 1410 14th Floor East Tower
Philippine Stock Exchange Centre
Exchange Road, Ortigas Center
1605 Pasig City

Attention: *AAA*

Gentlemen :

This is to acknowledge receipt of your letter dated October 18, 2020 requesting on behalf of your client, **BBB** for waiver of the penalties, interest, and/or surcharges due to the one (1)-day late payment of documentary stamp tax (DST) for reasons of just, valid and humanitarian consideration in this hard and trying times due to COVID-19.

In reply, please be informed that under Sections 248 (A) (1) and (3) and 249, both of the National Internal Revenue Code of 1997 (Tax Code), as amended, the imposition of the surcharge for failure to file return and pay the tax due thereon and interest on delinquency is mandatory. Strong reasons of policy support a strict observance of the rule regarding the payment of tax. The laws imposing penalties for delinquencies are clearly intended to hasten tax payments or punish evasions or neglect of duty in respect thereof. If delays in tax payments are to be condoned for light reasons, the law imposing penalties for delinquencies would be rendered nugatory and the maintenance of the government and its multifarious activities would be as precarious as taxpayers are willing or unwilling to pay their obligations to the state on time. [1] This is justified because the intention of the law is precisely to discourage delay in the payment of taxes due to the State and, in this sense, the surcharge and interest charged are not penal but compensatory in nature. They are compensation to the State for the delay in payment of the tax and for the concomitant use by the taxpayer of the funds that rightfully should be in the government's hands. [2]

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Moreover, under Section 204 (B) of the Tax Code, as amended, the Commissioner may abate or cancel tax liability only in two (2) cases, *viz.*: (a) the tax or any portion thereof appears to be unjustly or excessively assessed; or (b) the administration and collection costs involved do not justify the collection of the amount due. It has also been held that a voluntary relinquishment of a part of a tax lawfully assessed upon and due from a solvent person or corporation is not permitted by law. [3]

Thus, in the matter of abatement of penalties, the Commissioner of Internal Revenue should not act from motives merely out of compassion or charity, but should consider the pecuniary interest of the government, justice and equity and public policy. Good faith alone may not be sufficient to avoid the 25% surcharge which is designated to ensure timely compliance with the law. [4]

It is compensation to the State for the delay in the payment or for the concomitant use of the funds by the taxpayer beyond the date he is supposed to have paid them to the State. [5]

IN VIEW OF THE FOREGOING, this Office regrets to deny your request for the waiver or condonation of the penalties, interest, and/or surcharges due to the one (1)-day late payment of DST.

Please be guided accordingly.

Very truly yours,

(SGD.) CAESAR R. DULAY
Commissioner of Internal Revenue

Footnotes

1. *Philex Mining Corporation vs. Commissioner of Internal Revenue, Court of Appeals, and The Court of Tax Appeals*, G.R. No. 125704, August 28, 1998, citing *Jamora v. Meer*, 7 Phil. 22.
2. *Castro vs. Collector of Internal Revenue*, 6 SCRA 886.
3. 16 Op. Atty. Gen. [U.S.] 249.
4. *Lim vs. Posadas*, 47 Phil. 460.
5. *Castro vs. Col., etc. Resolution on Motion for Reconsideration*, G.R. No. L-12174, Dec. 1962.

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