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# CLARIFICATION ON THE EFFECT OF THE RESOLUTION OF THE COURT OF APPEALS IN THE CASE OF COMMISSIONER OF INTERNAL REVENUE VS. HON. ANDRES B. REYES, ETC., AND JOSEFINA LEAL, CA-G.R. ...

*BIR REVENUE MEMORANDUM CIRCULAR NO. 47-92, October 15, 1992*

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According to Revenue Memorandum Order No. 15-91 dated March 11, 1991, "the principal activity of pawnshops is lending money at interest and incidentally accepting a ‘pawn’ of personal property delivered by the pawner to the pawnee as security for the loan. Clearly, this makes pawnshop business akin to lending investor's business activity which is broad enough to encompass the business of lending money at interest by any person whether natural or juridical. Such being the case, pawnshops shall be subject to the 5% lending investor's tax based on their gross income pursuant to Section 116 of the Tax Code, as amended."

Under RMO No. 15-91, all investigating units were directed to investigate and assess the lending investor's tax due from pawnshops within the statutory 3-year period.

On May 27, 1991, the Commissioner of Internal Revenue issued Revenue Memorandum Circular No. 43-91 clarifying, inter alia RMO No. 15-91 that pawnshop owners or operators shall become liable to the lending investor's tax on their gross income beginning January 1, 1991 and that they are also subject to documentary stamp tax prescribed in Title VII of the Tax Code.

On March 18, 1992, Josefina Leal, as owner and operator of Josefina's Pawnshop located at San Mateo, Rizal, filed with the Regional Trial Court, 4th Judicial Region, San Mateo, Rizal, a petition for prohibition with preliminary injunction docketed as Civil Case No. 849-92SM, entitled "Josefina Leal, petitioner versus The Commissioner of Internal Revenue, respondent".

On May 21, 1992, Josefina Leal's petition for preliminary injunction was granted by Judge Andres B. Reyes, Presiding Judge of the said Court and ordered the BIR to cease and desist from implementing RMO No. 15-91 and RMC No. 43-91 pending final resolution of the said case.

It is to be noted that the petition was filed with the Regional Trial Court, San Mateo, Rizal, by Ms. Josefina Leal in her individual capacity and not as a class suit. Hence, the writ of preliminary injunction issued in Civil Case No. 849-92SM ordering the Commissioner and his agents to cease and desist from implementation of RMO No. 15-91 and RMC No. 43-91, is only in favor of Josefina Leal.

On September 3, 1992, the Commissioner filed with the Court of Appeals a petition for certiorari and prohibition with Application for Temporary Restraining Order/Preliminary Injunction, docketed as CA-G.R. SP No. 28824, entitled "Commissioner of Internal Revenue, Petitioner vs. Hon. Andres B. Reyes, etc. and Josefina Leal, Respondents", on the ground that Regional Trial Courts cannot issue writs of injunction against administrative agencies whose decisions are reviewable by other courts such as, in this case, where it is the Court of Tax Appeals that has jurisdiction over the case. Consequently, the Judge of the Regional Trial Court of San Mateo, Rizal, has no authority to restrain the BIR from assessing and collecting the 5% lending investor's tax and documentary



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stamp tax from pawnshop operators.

In the Resolution of the Court of Appeals dated September 22, 1992, the respondent Judge Andres B. Reyes, Jr. is temporarily restrained from proceeding further in Civil Case No. 849-92 until further orders from the said Court of Appeals, to wit:

> "MEANWHILE, in order to maintain the status quo and so that the present petition may not be rendered moot and academic, the respondent judge is hereby temporarily restrained from proceeding further in Civil Case No. 849-92 until further orders from this Court.
>
> SO ORDERED."
>
> In view of the foregoing, the implementation of Revenue Memorandum Order No. 15-91 and Revenue Memorandum Circular No. 43-91 can be continued against other pawnshop owners/operators without violating the writ of preliminary injunction issued by the RTC, San Mateo, Rizal, as aforesaid Judge Andres B. Reyes, Jr. is temporarily restrained by the Court of Appeals from proceeding further in Civil Case No. 849-92 SM until further orders from said Court.

It is, therefore, reiterated that all investigating units shall investigate and assess the lending investor's tax due from pawnshops within the statutory 3-year period in accordance with this Circular as well as RMO No. 15-91 and RMC No. 43-91.

All internal revenue officers and others concerned are enjoined to be guided accordingly and to give this Circular as wide a publicity as possible.

Adopted: 15 Oct. 1992

(SGD.) JOSE U. ONG
Commissioner of Internal Revenue


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