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DETERMINATION OF WHEN CAUSE OF ACTION FOR WILLFUL FAILURE TO PAY DEFICIENCY TAX OCCURS; AND PRESCRIPTION UNDER SECTION 280 OF THE TAX CODE

KRI REVENUE MEMORANDUM CIRCULAR NO. 101-90, November 26, 1990

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For the information and guidance of all concerned, the following are the salient features of the decision promulgated by the Supreme Court on October 19, 1990 in the case entitled Emilio E. Lim, Sr., et al. vs. Court of Appeals, et al., G.R. Nos. L-48134-37.

- When Cause of Action for Willful Failure to Pay Deficiency Tax Occurs – The cause of action for willful failure to pay deficiency tax occurs when the final notice and demand for the payment thereof is served on the taxpayer. Prior thereto, no violation is committed. The offense is committed only after receipt is coupled with refusal to pay the tax within the allotted period.

- Prescription Under Section 280 of the Tax Code -

a. The 5-year prescriptive period in an offense for willful failure to pay a deficiency tax assessment commences to run only after the receipt of the final notice and demand by the taxpayer and he refuses to pay.

b. In a protested assessment, the 5-year period starts from the service of the final notice and demand disposing of the protest, and not from the date of the original assessment.

c. An offense under the Tax Code is considered discovered only after the manner of commission and the nature and extent of the fraud has been definitely ascertained. This occurs when the BIR renders its final decision and requires the taxpayer to pay the deficiency tax.

This is a departure from the usual practice of reckoning the date of discovery from the date of the examiner's report on the basis of what appears to have been enunciated by an obiter dictum in People vs. Tierra, 12 SCRA 667, 671 [1964]).

d. The 5-year prescriptive period in Section 280 of the Tax Code does not commence to run by the mere fact of discovery. This must be coupled by judicial proceedings, such as a preliminary investigation before the Prosecutor's Office, before the five (5) year limitation period begins to run.

The offenses under the Tax Code are seemingly imprescriptible for as long as the period from the discovery and institution of judicial proceedings for its investigation and punishment, up to the filing of the information in court does not exceed five (5) years.

All concerned are enjoined to give this Circular as wide a publicity as possible.

Adopted: 26 Nov. 1990

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