

A Compilation of the
Questions and Suggested Answers
In the
PHILIPPINE BAR EXAMINATIONS 2007-2013
In
TAXATION LAW

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**ANSWERS TO BAR EXAMINATION QUESTIONS by the
UP LAW COMPLEX (2007-2013)**

&

PHILIPPINE ASSOCIATION OF LAW SCHOOLS (2008)



FOREWORD

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The Authors.



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General Principles

BIR Rulings; “Rulings of First Impression” (2007)

IV. XYZ Corporation, an export-oriented company, was able to secure a Bureau of Internal Revenue (BIR) ruling in June 2005 that exempts from tax the importation of some of its raw materials. The ruling is of first impression, which means the interpretations made by the Commissioner of Internal Revenue is one without established precedents. Subsequently, however, the BIR issued another ruling which in effect would subject to tax such kind of importation. XYZ Corporation is concerned that said ruling may have a retroactive effect, which means that all their importations done before the issuance of the second ruling could be subject to tax. (10%)

(A) What are BIR rulings?

SUGGESTED ANSWER:

BIR rulings are administrative opinions issued by the Commissioner of Internal Revenue interpretative of a provision of a tax law.

ALTERNATIVE ANSWER:

They are the best guess of the moment and incidentally often contain such well-considered and sound law, but the courts

have held that they do not prevent an entire change of front at any time and are merely advisory – sort of an information service to the taxpayer. (Aban, Law of Basic Taxation in the Philippines, p. 149 citing Quiazon and Lukban).

(B) What is required to make a BIR ruling or first impression a valid one?

SUGGESTED ANSWER:

A BIR ruling of first impression to be valid must not be against the law and it must be issued only by the Commissioner of Internal Revenue. (Philippine Bank of Communications v. CIR, 302 SCRA 241 [1999]; Section 7, NIRC).

(C) Does a BIR ruling have a retroactive effect, considering the principle that tax exemptions should be interpreted strictly against the taxpayer?

SUGGESTED ANSWER:

No. A BIR ruling cannot be given retroactive effect if its retroactive application is prejudicial to the taxpayer. (Section 246, NIRC; CIR v. Court of Appeals et. Al. 267 SCRA 557 [1997]).



ANOTHER ALTERNATIVE ANSWER:

The general rule is that a BIR ruling does not have a retroactive effect if giving it a retroactive application is prejudicial to the taxpayer. However, if the first ruling is tainted with either of the following: (1) misstatement or omission of material facts, (2) the facts gathered by the BIR are materially different from the facts upon which the ruling is based, or (3) the taxpayer acted in bad faith, a subsequent ruling can have a retroactive application. (ABS-CBN Broadcasting Co. v. CTA & CIR, 08 SCRA 142 [1981]; Sec 246, NIRC).

Power of Taxation: Equal Protection of the Law; Rational Basis Test (2010)

(IIc) What is the "rational basis" test? Explain briefly. (2%)

SUGGESTED ANSWER:

The "rational basis test" is applied to gauge the constitutionality of an assailed law in the face of an equal protection challenge. It has been held that "in areas of social and economic policy, a statutory classification that neither proceeds along suspect lines nor infringes constitutional rights must be upheld against equal protection challenge if there is any reasonably conceivable state of facts that could provide a rational basis for the classification." Under the rational basis test, it is sufficient that the legislative classification is rationally related to achieving some legitimate State interest (*British American Tobacco v. Camacho and Parayno, G.R. No. 163583, April 5, 2009*).

Power of Taxation: Limitations: Inherent Limitations (2009)

(II) Enumerate the four (4) inherent limitations on taxation. Explain each item briefly. (4%)

SUGGESTED ANSWER:

The inherent limitations on the power to tax are:

1. Taxation is for public purpose. – The proceeds of the tax must be used (a) for the support of the State or (b) for some recognized objective of the government or to directly promote the welfare of the community.
2. Taxation is inherently legislative- Only the legislature has the full discretion as to the persons, property, occupation or business to be taxed provided these are all within the State's territorial jurisdiction. IT can also finally determine the amount or rate of tax, the kind of tax to be imposed and the method of collection (1 Cooley 176-184).
3. Taxation is territorial- Taxation may be exercised only within the territorial jurisdiction, the taxing authority (61 Am. Jur. 88). Within the territorial jurisdiction, the taxing authority may determine the "place of taxation" or "tax situs".
4. Taxation is subject to international comity. – This is a limitation which is founded on reciprocity designed to maintain harmonious and productive relationships among the various state. Under international comity, a state must recognize the generally-accepted tenets of international law, among which are the principles of sovereign equality among states and of their freedom from suit without their consent, that limits that authority of a government to effectively impose taxes in a sovereign state and its instrumentalities,, as well as in its



property held, and activities undertaken in that capacity.

Power of Taxation: Limitations: Tax Treaties (2009)

X(B) ABCD Corporation (ABCD) is a domestic corporation with individual and corporate shareholders who are residents of the United States. For the 2nd quarter of 1983, these U.S.-based individual and corporate stockholders received cash dividends from the corporation. The corresponding withholding tax on dividend income --- 30% for individual and 35% for corporate non-resident stockholders --- was deducted at source and remitted to the BIR.

On May 15, 1984, ABCD filed with the Commissioner of Internal Revenue a formal claim for refund, alleging that under the RP-US Tax Treaty, the deduction withheld at source as tax on dividends earned was fixed at 25% of said income. Thus, ABCD asserted that it overpaid the withholding tax due on the cash dividends given to its non-resident stockholders in the U.S. The Commissioner denied the claim.

On January 17, 1985, ABCD filed a petition with the Court of Tax Appeals (CTA) reiterating its demand for refund.

Is the contention of ABCD Corporation correct? Why or why not? (3%)

SUGGESTED ANSWER:

Yes. The provision of a treaty must take precedence over and above the provisions of the local taxing statute consonant with the principle of international comity. Tax treaties are accepted limitations to the power of taxation. Thus, the CTA should apply the treaty provision so that the claim for refund representing the difference between the amount actually withheld and paid to the BIR and the amount due and payable under the treaty, should be granted

(Hawaiian-Philippine Company v. CIR, CTA Case No. 3887, May 31, 1988).

ANOTHER SUGGESTED ANSWER:

The contention of ABCD Corporation that it overpaid the withholding tax is correct provided it can establish:

- (1) The existence of RP-US Tax Treaty imposing a lower rate of tax of 25%;**
- (2) The said tax treaty is applicable to its case; and**
- (3) Its payment with the BIR of a tax based on a higher rate of 30% and 35%, respectively.**

Principle of Administrative Feasibility (2009)

I(A) True or False. Explain your answer in not more than two (2) sentences.

A law that allows taxes to be paid either in cash or in kind is valid. (5%)

SUGGESTED ANSWER:

True. There is no law which requires payment of taxes in cash only. However, a law allowing payment of taxes in kind, although valid, may pose problems of valuation, hence, will violate the principle of administrative feasibility.

Set-off; “Doctrine of Equitable Recoupment” (2009)

I(C) True or False. Explain your answer in not more than two (2) sentences.

The *doctrine of equitable recoupment* allows a taxpayer whose claim for refund has prescribed to offset tax liabilities with his claim of overpayment. (5%)



SUGGESTED ANSWER:

True. The doctrine arose from common law allowing offsetting of a prescribed claim for refund against a tax liability arising from the same transaction on which an overpayment is made and underpayment is due. The doctrine finds no application to cases where the taxes involved are totally unrelated, and although it seems equitable, it is not allowed in our jurisdiction (CIR v. UST, 104 Phil 1062 (1958))

Tax Avoidance; Exchange of Real Property and Shares of Stock (2008)

V. Maria Suerte, a Filipino citizen, purchased a lot in Makati City in 1980 at a price of P1 million. Said property has been leased to MAS Corporation, a domestic corporation engaged in manufacturing paper products, owned 99% by Maria Suerte. In October 2007, EIP Corporation, a real estate developer, expressed its desire to buy the Makati property at its fair market value of P300 million, payable as follows: (a) P60 million down payment; and (b) balance, payable equally in twenty four (24) monthly consecutive instalments. Upon the advice of a tax lawyer, Maria Suerte exchanged her Makati property for shares of stocks of MAS Corporation. A BIR ruling, confirming the tax-free exchange of property for shares of stock, was secured from the BIR National Office and a Certificate Authorizing Registration was issued by the Revenue District Officer (RDO) where the property was located. Subsequently, she sold her entire stockholdings in MAS Corporation to

EIP Corporation for P300 million. In view of the tax advice, Maria Suerte paid only the capital gains tax of P29,895,000 (P100,000 x 5% plus P298,900,000 x 10%), instead of the corporate income tax of P104,650,000 (35% on P299 million gain from sale of real property). After evaluating the capital gains tax payment, the RDO wrote a letter to Maria Suerte, stating that she committed tax evasion.

Is the contention of the RDO tenable? Or was it tax avoidance that Maria Suerte had resorted to? Explain. (6%)

SUGGESTED ANSWER:

No. The exchange of the real state property for the shares of stocks is considered as a legitimate tax avoidance scheme (Sec. 40 [C2 b] NIRC). The sale of the shares of stocks of domestic corporation, which is a capital asset, is subject to a final tax of 5% on the first P100,000 and 10% on the amount in excess of P100,000 (Sec. 24[C] NIRC).

ALTERNATIVE ANSWER:

Yes. the RDO's contention, that Maria Suerte committed tax evasion and not tax avoidance, is tenable. Suerte's sale of her property to MAS Corporation was an intermediary transaction aimed more at reducing Suerte's tax liabilities than for MAS Corporation's legitimate business purposes (CIR v. Norton Harrison Co.,



120 Phil. 684, 691 [1964]). Said sale was merely a tax ploy, a sham and without business purpose and economic substance (CIR v. Toda's Estate, G.R. No. 147188, 14 September 2004).

Taxes considered as NIRC Taxes (2007)

III. What kind of taxes, fees and charges are considered as National Internal Revenue Taxes under the National Internal Revenue Code (NIRC)? (5%)

SUGGESTED ANSWER:

The following taxes, fees and charges are considered to be National Internal Revenue Taxes under the National Internal Revenue Code:

- (A) Income tax;**
 - (B) Estate and donor's taxes;**
 - (C) Value-added tax;**
 - (D) Other percentage taxes;**
 - (E) Excise taxes;**
 - (F) Documentary stamp taxes; and**
- Such other taxes as are or hereafter may be imposed and collected by the Bureau of Internal Revenue. (Section 21, NIRC)**

Income Taxation

Basic: Closed and Completed Transaction (2012)

III. Mr. Jose Castillo is a resident Filipino citizen. He purchased a parcel of land in Makati City in 1970 at a consideration of P1 Million. In 2011, the land, which remained undeveloped and idle had a fair market value of P20 Million. Mr. Antonio Ayala, another Filipino citizen, is very much interested in the property and he offered to buy the same for P20 Million. The Assessor of Makati City re-assessed in 2011 the property at P10 Million.

(B) Is Mr. Castillo liable for income tax in 2011 based on the offer to buy by Mr. Ayala? Explain your answer. (3%)

SUGGESTED ANSWER:

No. Mr. Castillo is not liable for income tax in 2011 because no income is realized by him during that year. Tax liability for income tax attaches only if there is a gain realized resulting from a closed and complete transaction (Madrigal v. Rafferty, G.R. No. L-12287, August 7, 1918).

Charitable Institutions: Income Tax for Profit-Driven Activities (2013)

(II) A group of philanthropists organized a non-stock, non-profit hospital for charitable purposes to provide medical services to the



poor. The hospital also accepted paying patients although none of its income accrued to any private individual; all income were plowed back for the hospital's use and not more than 30% of its funds were used for administrative purposes.

Is the hospital subject to tax on its income? If it is, at what rate? (6%)

SUGGESTED ANSWER:

Yes. Although a non-stock non-profit hospital organized for charitable purposes, is generally exempt from income tax, it becomes taxable on income derived from activities conducted for profit. Services rendered to paying patients are considered activities conducted for profit which are subject to income tax, regardless of the disposition of said income. The hospital is subject to income tax of 10% of its net income derived from the paying patients considering that the income earned appears to be derived solely from hospital-related activities (CIR v. St. Luke's Medical Center, Inc., G.R. Nos. 195909 & 195960, Sept 26, 2012).

ANOTHER SUGGESTED ANSWER:

No. The hospital is organized exclusively for charitable purposes and since no part of its income inures to the benefit of any private individual, it should not lose its exempt character by simply admitting paying patients. The revenues derived from paying patients are necessary to maintain "its head above the waters" and allow it to sustain its charitable activities (YMCA v. CA & CIR, 298 SCRA 83, 91 [Oct 14, 1998, G.R. NO. 124043]).

Corporate Income Tax: Accumulated Profits; "Immediacy Test" (2010)

(IIb) What is the "immediacy test"? Explain briefly. (2%)

SUGGESTED ANSWER:

The "immediacy test" is applied to determine whether the accumulation of after tax profits by a domestic or resident foreign corporation is really for the reasonable needs of the business. Under this test, the reasonable needs of the business are construed to mean the immediate needs of the business, including reasonably anticipated needs. The corporation should be able to prove an immediate need for the accumulation of earnings and profits, or the direct correlation of anticipated needs to such accumulation of profits to justify the said accumulation (Sec 3, RR No. 2-2001; Mertens, Law of Federal Income Taxation, Vol. 7, Chapter 39, p. 103, cited in Manila Wine Merchants, Inc. v. CIR, G.R. No. L-26145, Feb. 20, 1984)

Corporate Income Tax: Accumulated Profits; Capitalization Rules (2010)

(Xf) The capitalization rules may be resorted to by the BIR in order to compel corporate taxpayers to declare dividends to their stockholders regularly.

SUGGESTED ANSWER:

True. (Sec 244, NIRC; Rev. Reg. No. 2-2001 implementing Sec 29, NIRC)

Corporate Income Tax: Carry-Over Option is Irrevocable (2012)

IX. On April 16, 2012, the corporation filed its annual corporate income tax return for 2011 showing an overpayment of income tax of P1 Million, which is to be carried over to the succeeding year(s). On May 15, 2012, the corporation sought advice from you and said that it contemplates to file an amended return for 2011, which shows that instead



of carryover of the excess income tax payment, the same shall be considered as a claim for tax refund and the small box shown as "refund" in the return will be filled up. Within the year, the corporation will file the formal request for refund for the excess payment.

(A) Will you recommend to the corporation such a course of action and justify that the amended return is the latest official act of the corporation as to how it may treat such overpayment of tax or should you consider the option granted to taxpayers as irrevocable, once previously exercised by it? Explain your answer. (5%)

SUGGESTED ANSWERS:

Once the option to carry-over and apply the excess quarterly income tax against income tax against income tax due for the taxable quarters of the succeeding taxable years has been made such option shall be considered IRREVOCABLE for the taxable year period and no application for tax refund or issuance of tax credit certificate shall be allowed therefore (Section 76, NIRC).

(B) Should the petition for review filed with the CTA on the basis of the amended tax return be denied by the BIR and the CTA, could the corporation still carry over such excess payment of income tax in the

succeeding years, considering that there is no prescriptive period provided for in the income tax law with respect to carry over of excess income tax payments? Explain your answer. (5%)

SUGGESTED ANSWERS:

Yes. The carry-over of excess income tax payments is no longer limited to the succeeding taxable year. Unutilized excess income tax payments may now be carried over to the succeeding taxable years until fully utilized. In addition, the option to carry-over excess income tax payments is now irrevocable. Hence, unutilized excess income tax payments may no longer be refunded (Belle Corp. v. CIR, G.R. No. 181298, January 10, 2011).

Corporate Income Tax: Carry-Over Option is Irrevocable (2013)

(I) In its final adjustment return for the 2010 taxable year, ABC Corp. had excess tax credits arising from its over-withholding of income payments. It opted to carry over the excess tax credits to the following year. Subsequently, ABC Corp. changed its mind and applied for a refund of the excess tax credits.

Will the claim for refund prosper? (6%)

SUGGESTED ANSWER:

No. The claim for refund will not prosper. While the law gives the taxpayer an option to whether carry-over or claim as refund the excess tax credits shown



on its final adjustment return, once the option to carry-over has been made, such option shall be considered irrevocable for that taxable period and no application for cash refund or issuance of a tax credit certificate shall be allowed. (Sec 76, NIRC; CIR v. PL Management International Phils., Inc., April 4, 2011, 647 SCRA 72 (2011) G.R. No. 160949).

Corporate Income Tax: Joint Venture (2007)

IX. Weber Realty Company which owns a three-hectare land in Antipolo entered into a Joint Venture Agreement (JVA) with Prime Development Company for the development of said parcel of land. Weber Realty as owner of the land contributed the land to the Joint Venture and Prime Development agreed to develop the same into a residential subdivision and construct residential houses thereon. They agreed that they would divide the lots between them. (10%)

(A) Does the JVA entered into by and between Weber and Prime create a separate taxable entity? Explain briefly.

SUGGESTED ANSWER:

The JVA entered into between Weber and Prime does not create a separate taxable entity. The joint venture is formed for the purpose of undertaking construction projects; hence, is not considered as a corporation for income tax purposes. (Section 22 (B), NIRC).

(B) Are the allocation and distribution of the saleable lots to Weber and Prime subject to income tax and to expanded withholding tax? Explain briefly.

SUGGESTED ANSWER:

No. The allocation and distribution of the saleable lots to Weber and Prime is a mere return of their capital contribution. The income tax and the expanded withholding tax is not due on a capital transaction because no income is realized from it. (BIR Ruling No. DA-192-2001, October 17, 2011).

(C) Is the sale by Weber or Prime of their respective shares in the saleable lots to third parties subject to income tax and to expanded withholding tax? Explain briefly.

SUGGESTED ANSWER:

Yes. The sale by Weber and Prime of their respective shares to third parties is a closed and completed transaction resulting in the realization of income, subject to income tax and to the expanded withholding tax. (BIR Ruling DA-228-2006).

Corporate Income Tax: Sale of Real Property by a Real Estate Broker (2008)

I. In January 1970, Juan Gonzales bought one hectare of agricultural land in Laguna for P100,000. This property has a current fair market value of P10 million in view of



the construction of a concrete road traversing the property. Juan Gonzales agreed to exchange his agricultural lot in Laguna for a one-half hectare residential property located in Batangas, with a fair market value of P10 million, owned by Alpha Corporation, a domestic corporation engaged in the purchase and sale of real property. Alpha Corporation acquired the property in 2007 for P9 million.

(C) Is Alpha Corporation subject to income tax on the exchange property? If so, what is the tax base and rate? Explain (3%)

SUGGESTED ANSWER:

Yes. Alpha must pay corporate income tax at the rate of 35% of the residential property's fair market value of P10 million (Sec. 27[A] NIRC).

Corporate Income Tax: Who is a Contractor (2013)

(III) ABC Corporation is registered as a holding company and has an office in the City of Makati. It has no actual business operations. It invested in another company and its earnings are limited to dividends from this investment, interests on its bank deposits, and foreign exchange gains from its foreign currency account. The City of Makati assessed ABC Corporation as a contractor or one that sells services for a fee. Is the City of Makati correct? (6%)

SUGGESTED ANSWER:

No. the corporation cannot be considered as a contractor because it does not render services for others for a fee. A contractor is one whose activity

consists essentially in the sale of all kinds of services for a fee, regardless of whether or not the performance of the service calls for the exercise or use of the physical or mental faculties of such contractor or its employees. To be considered as a contractor, the corporation must derive income from doing active business of selling services and not from deriving purely passive income. Accordingly, a mere holding company cannot be assessed by the City of Makati as a contractor (Sec 131 (h), LGC).

Final Withholding Tax: Informer's Reward (2010)

(Xg) Informer's reward is subject to a final withholding tax of 10%.

SUGGESTED ANSWER:
True. (Sec 282, NIRC)

Final Withholding Tax: Royalties Paid to Non-Resident Corporation (2010)

(XVIII) ABC, a domestic corporation, entered into a software license agreement with XYZ, a non-resident foreign corporation based in the U.S. Under the agreement which the parties forged in the U.S., XYZ granted ABC the right to use a computer system program and to avail of technical know-how relative to such program. In consideration for such rights, ABC agreed to pay 5% of the revenues it receives from customers who will use and apply the program in the Philippines.

Discuss the tax implication of the transaction. (5%)



SUGGESTED ANSWER:

The amount payable under the agreement is in the nature of royalty. The term royalty is broad enough to include compensation for the use of an intellectual property and supply of technical know-how as a means of enabling application or enjoyment of any such property or right (Sec 42(4), NIRC). The royalties paid to the non-resident U.S. corporation, equivalent to 5% of the revenues derived by ABC for the use of the program in the Philippines, is subject to a 30% final withholding tax, unless a lower tax rate is prescribed under an existing tax treaty. (Sec 28(B)(1), NIRC).

Foreign Corporate Tax; Local Agent for a Foreign Airline (2009)

(VII) Kenya International Airlines (KIA) is a foreign corporation, organized under the laws of Kenya. It is not licensed to do business in the Philippines. Its commercial airplanes do not operate within Philippine territory, or service passengers embarking from Philippine airports. The firm is represented in the Philippines by its general agent, Philippine Airlines (PAL), a Philippine corporation.

KIA sells airplane tickets through PAL, and these tickets are serviced by KIA airplanes outside the Philippines. The total sales of airline tickets transacted by PAL for KIA in 1997 amounted to P2,968,156.00. The Commissioner of Internal Revenue assessed KIA deficiency income taxes at the rate of 35% on its taxable income, finding that KIA's airline ticket sales constituted income derived from sources within the Philippines.

KIA filed a protest on the ground that the P2,968,156.00 should be considered as income derived exclusively from sources outside the Philippines since KIA only serviced passengers outside Philippine territory.

Is the position of KIA tenable? Reasons. (4%)

SUGGESTED ANSWER:

No, KIA's position is not tenable. The revenue it derived in 1997 from sales of airplane tickets in the Philippines, through its agent PAL, is considered as income from within the Philippines, subject to 35% tax based on its taxable income pursuant to Sec 25(a)(1) of the Tax Code of 1997. The transacting of business in the Philippines through its local sales agent, makes KIA a resident foreign corporation despite the absence of landing rights, thus, it is taxable on income derived within. The source of an income is the property, activity or service that produced the income. In the instant case, it is the sale of tickets in the Philippines which is the activity that produced the income. KIA's income being derived from within is subject to Philippine income tax (*CIR v. British Overseas Airways Corporation, 149 SCRA 395, (1987)*).

Note: The taxable year involved in the problem is 1997, hence, the suggested answer above follows the applicable provision of the old Tax Code (National Internal Revenue Code of 1997) then in effect and the prevailing jurisprudence on the matter. However, with the adoption of the National Internal Revenue Code of 1997 (RA 8424) which took effect on January 1, 1998, it is expected that the bar candidates have lost track of the change in the tax law which transpired more than a decade ago. For this reason, it is respectfully requested that an answer based on the provisions of the New tax Code shall be given full credit. Accordingly, an answer framed in his wise should also be considered as a correct answer, viz:

ALTERNATIVE ANSWER:

Yes. KIA is a non-resident foreign corporation which is taxable only on income from within. The income of KIA



as an international air carrier is derived from the sale of transportation services. Compensation for services is an income from within if the sources are performed in the Philippines (Sec 42(A)(3), NIRC). The origination of the flight is determinative of the sources of income of the international carrier. If the flight originated from the Philippines to a foreign destination, the income is an income from within; if it originated in a foreign country to any destination, the income is from without. In the case at bar, no flight will originate from the Philippines because KIA is not licensed to do business here. Hence, the income is not taxable in the Philippines (Sec 28(A)(3), NIRC).

Foreign Corporate Tax: “Single Entity Concept”; Branch Remittances (2012)

I. Anchor Banking Corporation, which was organized in 2000 and existing under the laws of the Philippines and owned by the Sy Family of Makati City, set up in 2010 a branch office in Shanghai City, China, to take advantage of the presence of many Filipino workers in that area and its booming economy. During the year, the bank management decided not to include the P20 Million net income of the Shanghai Branch in the annual Philippine income tax return filed with the BIR, which showed a net taxable income of P30 Million, because the Shanghai Branch is treated as a foreign corporation and is taxed only on income from sources within the Philippines, and since the loan and other business

transactions were done in Shanghai, these incomes are not taxable in the Philippines.

(A) Is the bank correct in excluding the net income of its Shanghai Branch in the computation of its annual corporate income tax for 2010? Explain your answer. (5%)

SUGGESTED ANSWER:

No. A Domestic Corporation is taxable on all income derived from sources within and without the Philippines (Section 23, NIRC). The income of the foreign branch and that of the Home Office will be summed up for income tax purposes following the “single entity” concept and will all be included in the gross income of the domestic corporation in the annual Philippine income tax return.

(B) Should the Shanghai Branch of Anchor bank remit profit to its Head Office in the Philippines in 2011, is the branch liable to the 15% branch profit remittance tax imposed under Section 28 (A)(5) of the Tax Code? Explain your answer. (5%)

SUGGESTED ANSWER:

No. The branch profit remittance tax is imposed only on remittances by branches of Foreign Corporation in the Philippines to their Home Office abroad. It is the outbound branch profits that is



subject to the tax not the inbound profits (Section 28(A)(5), NIRC).

Foreign Corporate Tax: Situs of Taxation (2012)

II. Foster Corporation (FC) is a Singapore-based foreign corporation engaged in construction and installation projects. In 2010, Global Oil petroleum products, awarded an anti-pollution project to Foster Corporation, whereby FC shall design, supply machinery and equipment, provided that the installation part of the project may be sub-contracted to a local construction company. Pursuant to the contract, the design and supply contracts were done in Singapore by FC, while the installation works were sub-contracted by FC with Philippine Construction Corporation (PCC), a domestic corporation. The project with a total cost of P100 Million was completed in 2011 at the following cost components: (design - P20 Million; machinery and equipment - P50 Million; and installation - P30 Million). Assume that the project was 40% complete in 2010 and 100% complete in 2011, based on the certificates issued by the architects and engineers working on the project. GOC paid FC as follows: P60 Million in 2010 and P40 Million in 2011 and FC paid PCC in foreign currency through a Philippine bank as follows: P10 Million in 2010 and P20 Million in 2011.

(A) Is FC liable to Philippine income tax, and if so, how much revenue shall be reported by it in 2010 and in 2011? Explain your answer (5%)

SUGGESTED ANSWER:

No. FC is not liable to Philippine income tax. The revenues from the design and supply contracts having been all done in Singapore are income from without, hence, not taxable to a foreign corporation in the Philippines (Section 42, NIRC; CIR v. Marubeni Corporation, G.R. No. 137377, December 18, 2001). Also, With respect to the installation of the project which are services performed within, the same is sub-contracted to PCC, a domestic corporation. Since FC has no branch or permanent establishment in the Philippines, business profits earned by it pursuant to our treaty with Singapore are exempt from income tax.

[Note: if the examinee answered that the offshore portion of the contract (design and supply) is not taxable in the Philippines while the onshore portion (installation) is taxable invoking the source rules, it should be given full credit. The question might be too technical for students and expected new entrants to tax practice to discern.]



Fringe Benefit Tax: De Minimis Benefits (2007)

VIII. Nutrition Chippy Corporation gives all its employees (rank and file, supervisors and managers) one sack of rice every month valued at P800 per sack. During an audit investigation made by the Bureau of Internal Revenue (BIR), the BIR assessed the company for failure to withhold the corresponding withholding tax on the amount equivalent to the one sack of rice received by all the employees, contending that the sack of rice is considered as additional compensation for the rank and file employees and additional fringe benefit for the supervisors and managers. Therefore, the value of the one sack of rice every month should be considered as part of the compensation of the rank and file subject to tax. For the supervisors and managers, the employer should be the one assessed pursuant to Section 33 (a) of the NIRC. Is there a legal basis for the assessment made by the BIR? Explain your answer.(5%)

SUGGESTED ANSWER:

There is no legal basis for the assessment. The one sack of rice given to the supervisors and managers are considered de minimis fringe benefits considering that the value per sack does not exceed P1,000, hence exempted from the fringe benefits tax. (Section 33,

NIRC as implemented by RR No. 10-2000).

The one sack of rice per month given to the rank and file employees is, likewise, not subject to tax as part of compensation income. This is a benefit of relatively small value intended to promote the health, goodwill, contentment and efficiency of the employee which will not constitute taxable income of the recipient. (Section 2.78.1 (A)(3) of RR No. 2-98).

Partnership: Income Tax (2013)

(VII) XYZ Law Offices, a law partnership in the Philippines and a VAT-registered taxpayer, received a query by e-mail from Gainsburg Corporation, a corporation organized under the laws of Delaware, but the e-mail came from California where Gainsburg has an office. Gainsburg has no office in the Philippines and does no business in the Philippines.

XYZ Law Offices rendered its opinion on the query and billed Gainsburg US\$1,000 for the opinion. Gainsburg remitted its payment through Citibank which converted the remitted US\$1,000 to pesos and deposited the converted amount in the XYZ Law Offices account.

What are the tax implications of the payment to XYZ Law Offices in terms of VAT and income taxes? (7%)

SUGGESTED ANSWER:

For income tax purposes, the compensation for services is part of the gross income of the law partnership. From its total gross income derived within and without, it has to compute its



net income in the same manner as a corporation. The net income of the partnership whether distributed or not will be declared by the partners as part of their gross income who are to pay the income tax thereon in their individual capacity. (Sec 26, NIRC)

Personal Income Tax: Accounting Period (2010)

(Xe) True or False. An individual taxpayer can adopt either the calendar or fiscal period for purposes of filing his income tax return. (1%)

SUGGESTED ANSWER:

False. (Sec 43, NIRC)

Personal Income Tax: Passive Income; (Interest Income); Situs of Taxation (2007)

XV. In 2007, spouses Renato and Judy Garcia opened peso and dollar deposits at the Philippine branch of the Hong Kong Bank in Manila. Renato is an overseas worker in Hong Kong while Judy lives and works in Manila. During the year, the bank paid interest income of P10,000 on the peso deposit and US\$1,000 on the dollar deposit. The bank withheld final income tax equivalent to 20% of the entire interest income and remitted the same to the BIR.

(A) Are the interest incomes on the bank deposits of spouses Renato and Judy Garcia subject to income tax? Explain. (4%)

SUGGESTED ANSWER:

The interest income of Renato, who is a non-resident, is exempt from income tax under Sec. 27(D3)(2) NIRC. Any bank interest of non-residents from an expanded foreign currency deposit system is exempt from income tax (Sec. 24[B1] NIRC). An expanded foreign currency deposit refers to any bank authorized by the Central Bank to transact business in local and acceptable foreign currencies.

Judy Garcia, who is a resident of the Philippines, is liable for 7.5% final income tax on interest income (Sec. 24[B1] NIRC).

(B) Is the bank correct in withholding the 20% final tax on the entire interest income? Explain. (4%)

SUGGESTED ANSWER:

No, The bank should withhold only 7.5% on the final interest income of the wife. The husband is exempt.

Personal Income Tax: Passive Income; (Rental Income); Situs of Taxation (2008)

(C) Will Z, a non-resident citizen, be liable to pay income tax on the P45,000 monthly rental income? Reason briefly.



SUGGESTED ANSWER:

Yes. The rental income from property located in the Philippines is considered as income derived from within. Z, a non-resident citizen is taxable on income derived from sources within the Philippines. (Section 42 in relation to Section 23, NIRC).

Personal Income Tax: Payment by Instalment (2010)

(Xd) True or False. The Tax Code allows an individual taxpayer to pay in two equal instalments, the first instalment to be paid at the time the return is filed, and the second on or before July 15 of the same year, if his tax due exceeds P2,000. (1%)

SUGGESTED ANSWER:

True. (Sec 56 (A)(2), NIRC)

Personal Income Tax: Personal Exemptions of a Non-resident Alien (2010)

(Xh) A non-resident alien who stays in the Philippines for less than 180 days during the calendar year shall be entitled to personal exemption not to exceed the amount allowed to citizens of the Philippines by the country of which he is subject or citizen.

SUGGESTED ANSWER:

False. (Sec 25 (A)(1) in relation to Sec 35, NIRC)

Trust: Income from Trust (2009)

(XIX) Johnny transferred a valuable 10-door commercial apartment to a designated trustee, Miriam, naming in the trust

instrument Santino, Johnny's 10-year old son, as the sole beneficiary. The trustee is instructed to distribute the yearly rentals amounting to P720,000.00. The trustee consults you if she has to pay the annual income tax on the rentals received from the commercial apartment.

- a. What advice will you give the trustee? Explain. (3%)

SUGGESTED ANSWER:

I will advise the trustee that she has nothing to pay in annual income taxes because the trust's taxable income is zero. This is so because the amount of income to be distributed annually to the beneficiary is a deduction from the gross income of the trust but must be reported as income of the beneficiary (Sec 61(A), NIRC).

- b. Will your advice be the same if the trustee is directed to accumulate the rental income and distribute the same only when the beneficiary reaches the age of majority? Why or why not? (3%)

SUGGESTED ANSWER:

No. The trustee has to pay the income tax in the trust's net income determined annually is the income is required to be accumulated. Once a taxable trust is established, its net income is either taxable to the trust, represented by the trustee, or to the beneficiary depending on the provision for distribution of income following the one-layer taxation scheme (Sec 61 (A), NIRC).



Deductions, Exemptions, Exclusions & Inclusions

Deductions: "All-events Test" (2009)

(XII) YYY Corporation engaged the services of the Manananggol Law Firm in 2006 to defend the corporation's title over a property used in the business. For the legal services rendered in 2007, the law firm billed the corporation only in 2008. The corporation duly paid.

YYY Corporation claimed this expense as a deduction from gross income in its 2008 return, because the exact amount of the expense was determined only in 2008. Is YYY's claim of deduction proper? Reasons. (4%)

SUGGESTED ANSWER:

No. The expense is deductible in the year it complies with the all-events test. The test is considered met if the liability is fixed, and the amount of such liability to pay is already fixed in 2007 when the services were rendered, and the amount of such liability is determinable with reasonable accuracy in the same year. Hence the deduction should have been claimed in 2007 and not in 2008 (CIR v. Isabela Cultural Corporation, 515 SCRA 556 (2007)).

Deductions: "All Events Test" (2010)

(IIa) What is the "all events test"? Explain briefly. (2%)

SUGGESTED ANSWER:

The "all events test" is a test applied in the realization of income and expense by an accrual-basis taxpayer. The test

requires (1) the fixing of a right to the income or liability to pay; and (2) the availability of reasonably accurate determination of such income or liability, to warrant the inclusion of the income or expense in the gross income or deductions during the taxable year. (CIR v. Isabela Cultural Corporation, G.R. No. 172231, Feb. 12, 2007)

Deductions; Claimed by a Partner (2013)

(IV) Atty. Gambino is a partner in a general professional partnership. The partnership computes its gross revenues, claims deductions allowed under the Tax Code, and distributes the net income to the partners, including Atty. Gambino, in accordance with its articles of partnership.

In filing his own income tax return, Atty. Gambino claimed deductions that the partnership did not claim, such as purchase of law books, entertainment expenses, car insurance and car depreciation. The BIR disallowed the deductions.

Was the BIR correct? (6%)

SUGGESTED ANSWER:

No. The BIR is wrong in disallowing the deductions claimed by Atty. Gambino. It appears that the general professional partnership (GPP) claimed itemized deductions from its gross revenues in arriving at its distributable net income. The share of a partner in the net income of the GPP must be reported by him as part of his gross income from practice of profession and he is allowed to claim further deductions which are reasonable, ordinary and necessary in the practice of profession and were not claimed by the partnership in computing its net income (Sec 26, NIRC; RR No. 16-2008; 2-2010).



ALTERNATIVE ANSWER:

The BIR is wrong in disallowing the deductions because if the partnership claims itemized deductions. The partner can further claim deductions from his share in the net income of the partnership provided these are ordinary, reasonable and necessary, duly substantiated and not yet claimed by the partnership in computing its distributable net income. Consonant with the requirements of deductibility, the purchase of law books can be considered as a capital outlay, hence not deductible outright but subject to depreciation. Insofar as entertainment expenses are concerned only an amount not exceeding 1% of gross income shall be allowed. For the car insurance and car depreciation, they are allowed as deductions but only to the extent that the car is used in the practice of profession. (Sec 26, NIRC; RR No. 16-2008; RR No. 2-2010; Sec 34 (A) as implemented by RR No. 10-2002).

Deductions: Income Tax Withheld by US Government (2010)

(XVII) In 2009, Caruso, a resident Filipino citizen, received dividend income from a U.S.-based corporation which owns a chain of Filipino restaurants in the West Coast, U.S.A. The dividend remitted to Caruso is subject to U.S. withholding tax with respect to a non-resident alien like Caruso.

- a. What will be your advice to Caruso in order to lessen the impact of possible double taxation on the same income? (3%)

SUGGESTED ANSWER:

Caruso has the option either to claim the amount of income tax withheld in U.S. as deduction from his gross income

in the Philippines, or to claim it as a tax credit (Sec 34 (C)(1)(b), NIRC).

Deductions: Non-deductible; Casualty Loss (2010)

(XVI) A is a travelling salesman working full time for Nu Skin Products. He receives a monthly salary plus 3% commission on his sales in a Southern province where he is based. He regularly uses his own car to maximize his visits even to far flung areas. One fine day a group of militants seized his car. He was notified the following day by the police that the marines and the militants had a bloody encounter and his car was completely destroyed after a grenade hit it.

A wants to file a claim for casualty loss. Explain the legal basis of your tax advice. (3%)

SUGGESTED ANSWER:

A is not entitled to claim a casualty loss because all of his income partake the nature of compensation income. Taxpayers earning compensation income arising from personal services under an employee-employer relationship are not allowed to claim deduction except that allowed under Sec 34(M) referring only to the P2,400 health and/or hospitalization insurance premium; perforce the claim of casualty loss has no legal basis (Sec 34, NIRC).

Deductions: Non-deductible; Maintenance of Goodwill (2009)

(XX) Masarap Food Corporation (MFC) incurred substantial advertising expenses in order to protect its brand franchise for one of its line products. In its income tax return, MFC included the advertising expense as deduction from gross income, claiming it as an ordinary business expense. Is MFC correct? Explain. (3%)



SUGGESTED ANSWER:

No. The protection of taxpayer's brand franchise is analogous to the maintenance of goodwill or title to one's property which is in the nature of a capital expenditure. An advertising expense as, of such nature does not qualify as an ordinary business expense, because the benefit to be enjoyed by the taxpayer goes beyond one taxable year (CIR v. General Foods Inc., 401 SCRA 545 (2003)).

Deductions; Optional Standard Deduction (2010)

(Xb) True or False. A corporation can claim the optional standard deduction equivalent to 40% of its gross sales or receipts, as the case may be. (1%)

SUGGESTED ANSWER:

False. (Sec 34 (L), NIRC, as amended by RA No. 9504)

Deductions; Optional Standard Deductions; Irrevocability of Election (2009)

(XVI) Ernesto, a Filipino citizen and a practicing lawyer, filed his income tax return for 2007 claiming optional standard deductions. Realizing that he has enough documents to substantiate his profession-connected expenses, he now plans to file an amended income tax return for 2007, in order to claim itemized deductions, since no audit has been commenced by the BIR on the return he previously filed. Will Ernesto be allowed to amend his return? Why or why not? (4%)

SUGGESTED ANSWER:

No. Since Ernesto has elected to claim optional standard deduction, said election is irrevocable for the taxable

year for which the return is made (Sec 34(L), NIRC).

Deductions: Premiums for Health Insurance (2010)

(Xc) True or False. Premium payment for health insurance of an individual who is an employee in an amount of P2,500 per year may be deducted from gross income if his gross salary per year is not more than P250,000. (1%)

SUGGESTED ANSWER:

False. (Sec 34 (M), NIRC)

Deductions: Premiums for Life Insurance (2007)

X. Noel Santos is a very bright computer science graduate. He was hired by Hewlett Packard. To entice him to accept the offer of employment, he was offered the arrangement that part of his compensation would be an insurance policy with a face value of P20 Million. The parents of Noel are made the beneficiaries of the insurance policy. (10%)

(B) Can the company deduct from its gross income the amount of the premium? Reason briefly.

SUGGESTED ANSWER:

Yes. The premiums paid are ordinary and necessary business expenses of the company. They are allowed as a



deduction from gross income so long as the employer is not a direct or indirect beneficiary under the policy of insurance. (Section 36 (A)(4), NIRC). Since the parents of the employee were made the beneficiaries, the prohibition for their deduction does not exist.

Deductions: Vanishing Deductions (2008)

VI. While driving his car to Baguio last month, Pedro Asuncion, together with his wife Assunta, and only son, Jaime, met an accident that caused that instantaneous death of Jaime. The following day, Assunta also died in the hospital. The spouses and their son had the following assets and liabilities at the time of death:

Properties	Assunta		Jaime
	Exclusive	Conjugal	Exclusive
Cash		P 10M	P 1.2M
Cars	P 2M	P 500K	
Land	P 5M	P 2M	
Residential house		P 4M	
Mortgage payable		P 2.5M	
Funeral expenses		P 300K	

(B) Is vanishing deduction applicable to the Estate of Assunta Asuncion? Explain (4%)

SUGGESTED ANSWER:

No. In order to claim a vanishing deduction, Sec. 86(A2) NIRC requires that the estate tax of the property from Jaime to Assunta has already been paid. However, in this case, it is unlikely that the estate tax has been paid because of the difference of only one day between the respective times of death.

ALTERNATIVE ANSWER:

Yes. Provided that the estate tax of the property of Jaime was paid before Assunta died, as provided for in Sec. 86(A2) NIRC. Vanishing deduction equal to 100% is applicable to Assunta’s estate as regards ½ of the cash she inherited from her son Jaime. Assunta died within one (1) year after receiving her share of Jaime’s estate.

Exemptions: Gains from Redemption of Shares of Stock in Mutual Fund Company (2010)

(Xa) True or False. Gains realized by the investor upon redemption of shares of stock in a mutual fund company are exempt from income tax. (1%)

**SUGGESTED ANSWER:
True. (Sec 32 (B)(7)(h), NIRC)**



Exemptions: Gifts, Bequests and Devises (2008)

XIV. Spouses Jose San Pedro and Clara San Pedro, both Filipino citizens, are the owners of a residential house and lot in Quezon City. After the recent wedding of their son, Mario, to Maria, the spouses donated said real property to them. At the time of donation, the real property has a fair market value of P2 million.

(A) Are Mario and Maria subject to income tax for the value of the real property donated to them? Explain. (4%)

SUGGESTED ANSWER:

No. The law classifies the donated property as an exclusion from income tax, and therefore exempt from income tax (Sec. 32[B3] NIRC).

Exemptions: Income Abroad by Non-Resident Filipino (2010)

(XVII) In 2009, Caruso, a resident Filipino citizen, received dividend income from a U.S.-based corporation which owns a chain of Filipino restaurants in the West Coast, U.S.A. The dividend remitted to Caruso is subject to U.S. withholding tax with respect to a non-resident alien like Caruso.

- a. Would your answer in **A** be the same if Caruso became a U.S. immigrant in 2008 and had become a non-resident Filipino citizen? Explain the difference in treatment for Philippine income tax purposes. (3%)

SUGGESTED ANSWER:

No. The income from abroad of a non-resident citizen is exempt from the Philippine income tax; hence, there is no international double taxation on said income (Sec 23, NIRC).

Exemptions: Income from Religious Activities (2009)

I (D) True or False. Explain your answer in not more than two (2) sentences.

A law imposing a tax on income of religious institutions derived from the sale of religious articles is valid. (5%)

SUGGESTED ANSWER:

False. Congress can pass a law taxing income of religious institutions from its property or activities used for profit but not for their income from exercise of religious activities. The imposition of a tax on income of a religious institution from sale of religious articles is an infringement of religious freedom which is not allowed under the fundamental law (*American Bible Society v. City of Manila*, 101 Phil. 385 (1957)).

Exemptions: Pensions from Foreign Government Agencies and other Institutions (2007)

VI. Z is a Filipino immigrant living in the United States for more than 10 years. He is retired and he came back to the Philippines as a balikbayan. Every time he comes back to the Philippines, he stays here for about a month. He regularly receives a pension from his former employer in the United States, amounting to US\$1,000 a month. While in the Philippines, with his pension pay from his former employer, he



purchased three condominium units in Makati which he is renting out for P15,000 a month each.(5%)

(A) Does the US\$1,000 pension become taxable because he is now residing in the Philippines? Reason briefly.

SUGGESTED ANSWER:

The pension is not taxable. The law provides that pensions received by resident or nonresident citizens of the Philippines from foreign governments agencies and other institutions, private or public, are excluded from gross income. (Section 32 (B)(6)(c), NIRC).

ALTERNATIVE ANSWER:

Z is still considered as a nonresident Filipino citizen who is subject to tax only on income derived from the Philippine sources. (Section 23, NIRC). His pension from U.S. is an income from without being in the nature of compensation for past services rendered outside the Philippines. (Section 42, NIRC). Accordingly, the pension is not subject to the Philippine income tax.

Exemptions: Personal & Additional Exemptions (2012)

V. Spouses Pablo Gonzales and Teresita Gonzales, both resident citizens, acquired

during their marriage a residential house and lot located in Makati City, which is being leased to a tenant for a monthly rental of P100,000.00. Mr. Pablo Gonzales is the President of PG Corporation and he receives P50,000.00 salary per month. The spouses have only one (1) minor child. In late June 2010, he was immediately brought to the hospital because of a heart attack and he was pronounced dead on June 30, 2010. With no liabilities, the estate of the late Pablo Gonzales was settled extra-judicially in early 2011.

(A) Is Mr. Pablo Gonzales required to file income tax return for 2010? IF so, how much income must he declare for the year? How much personal and additional exemption is he entitled to? Explain your answer. (5%)

SUGGESTED ANSWER:

Yes. Income to be declared: P600,000 (Rental Income P300,000 & Salary P300,000); Personal and Additional Exemption P75,000 (Basic of P50,000 & P25,000 for one minor child)

(B) Is Mrs. Teresita Gonzales required to file income tax return for 2010? IF so, how much income must she declare for the year? How much personal exemption is she entitled to? Explain your answer. (5%)



SUGGESTED ANSWER:

Yes. Rental Income P600,000 (P300,000 share for January to June 2010 & P300,000 representing his interest in the income from the properties comprising the estate for the period July to December). The share of the minor child in the rental income (P300,000) earned after death is not included in the return of the parent pursuant to Section 51(E) of the Tax Code.

(C) Is the Estate of the late Pablo Gonzales required to file income tax return for 2010? If so, how much income must it declare for the year? How much personal exemption is it entitled to? Explain your answer. (5%)

SUGGESTED ANSWER:

No. It has acquired no tax personality because the estate is not under judicial settlement. The income of the properties is taxable to the heirs in their individual capacity in accordance with their respective interest in the inheritance.

Exemptions: Proceeds from Accident Insurance (2007)

VII. Antonia Santos, 30 years old, gainfully employed, is the sister of Eduardo Santos. She died in an airplane crash. Edgardo is a lawyer and he negotiated with the Airline Company and insurance company and they

were able to agree to a total settlement of P10 Million. This is what Antonia would have earned as somebody who was gainfully employed. Edgardo was her only heir. (10%)

(B) Should Edgardo report the P10 Million as his income being Antonia's only heir? Reason briefly.

SUGGESTED ANSWER:

The P10M should not be reported by Edgardo as his income. The amount received in a settlement agreement with the airline company and insurance company is an amount received from the accident insurance company is an amount received from the accident insurance covering the passengers of the airline company and is in the nature of compensation for personal injuries and for damages sustained on a account of such injuries, which is excluded from the gross income of the recipient. (Section 32(B)(4), NIRC).

ALTERNATIVE ANSWER:

No. The P10M having been received for the loss of life, is compensatory in nature, hence, is not considered as an income but a mere return of capital. Income is any wealth which flows to the taxpayer other than a mere return of capital. (Madrigal v. Rafferty 38 Phil. 414 [1918]).



Exemptions: Life Insurance (2007)

X. Noel Santos is a very bright computer science graduate. He was hired by Hewlett Packard. To entice him to accept the offer of employment, he was offered the arrangement that part of his compensation would be an insurance policy with a face value of P20 Million. The parents of Noel are made the beneficiaries of the insurance policy. (10%)

(A) Will the proceeds of the insurance form part of the income of the parents of Noel and be subject to income tax? Reason briefly.

SUGGESTED ANSWER:

No. The proceeds of life insurance policies paid to the heirs of beneficiaries upon the death of the insured are not included as part of the gross income of the recipient. (Section 32 (B)(1), NIRC). There is no income realized because nothing flows to Noel's parents other than a mere return of capital, the capital being the life of the insured.

Capital Gain Tax

Exemption of Family Home; Conditions (2013)

(XI) In 2000, Mr. Belen bought a residential house and lot for P1,000,000. He used the property as his and his family's principal

residence. It is now year 2013 and he is thinking of selling the property to buy a new one. He seeks your advice on how much income tax he would pay if he sells the property. The total zonal value of the property is P5,000,000 and the fair market value per the tax declaration is P2,500,000. He intends to sell it for P6,000,000.

What material considerations will you take into account in computing the income tax? Please explain the legal relevance of each of these considerations. (7%)

SUGGESTED ANSWER:

Since the planned sale involves a real property classified as a capital asset, the material considerations to take into account to compute the income tax are:

- 1. The current fair market value of the property to be sold. The current fair market value is the higher between the zonal value and the fair market value per tax declaration.**
- 2. The gross selling price of the property.**
- 3. Determination of the tax base which is the higher between the gross selling price and the current fair market of the property.**

The income tax is computed as 6% of the tax base which is in the nature of a final capital gains tax. (Sec 24 (D)(1), NIRC).

However, since the property to be sold is a principal residence and the purpose is to buy a new one, I will advise Mr. Belen that the sale can be exempt from 6% capital gains tax if he is willing to comply with the following conditions:

- a. He must utilize the proceeds of sale acquiring a new principal residence within 18**



- months from the date of disposition;
- b. He should notify the Commissioner of his intention to avail of the exemption within 30 days from date of sale;
 - c. He should open an escrow account with a bank and deposit the 6% capital gains tax due on the sale. If he complies with the utilization requirement he will be entitled to get back his deposit; otherwise, the deposit will be applied against the capital gains tax due. (Sec 24 (D)(2), NIRC)

Exchange of Real Property by an Individual and Domestic Corporation (2008)

I. In January 1970, Juan Gonzales bought one hectare of agricultural land in Laguna for P100,000. This property has a current fair market value of P10 million in view of the construction of a concrete road traversing the property. Juan Gonzales agreed to exchange his agricultural lot in Laguna for a one-half hectare residential property located in Batangas, with a fair market value of P10 million, owned by Alpha Corporation, a domestic corporation engaged in the purchase and sale of real property. Alpha Corporation acquired the property in 2007 for P9 million.

(B) Is Juan Gonzales subject to income tax on the exchange of property? If so, what is the tax base and rate? Explain (3%)

SUGGESTED ANSWER:

Yes. Juan must pay final income tax of 6% of the gross selling price or the fair market value, whichever is higher (Sec. 24[D1], NIRC; and RR No. 13-99).

Fair Market Value (2007)

V. ABC Corporation sold a real property in Malolos, Bulacan to XYZ Corporation. The property has been classified as residential and with a zonal valuation of P1,000 per square meter. The capital gains tax was paid based on the zonal value. The Revenue District Officer (RDO), however, refused to issue the Certificate Authorizing Registration for the reason that based on his ocular inspection the property should have a higher zonal valuation determined by the Commissioner of Internal Revenue because the area is already a commercial area. Accordingly, the RDO wanted to make a recomputation of the taxes due by using the fair market value appearing in a nearby bank's valuation list which is practically double the existing zonal value. The RDO also wanted to assess a donor's tax on the difference between the selling price based on the zonal value and the fair market value appearing in a nearby bank's valuation list. (10%)

(A) Does the RDO have the authority or discretion to unilaterally use the fair market value as the basis for determining



the capital gains tax and not the zonal value as determined by the Commissioner of Internal Revenue? Reason briefly.

SUGGESTED ANSWER:

No. The RDO has no authority to use a fair market value other than that prescribed in the Tax Code. The fair market value prescribed for the computation of any internal revenue tax shall be, whichever is the higher of: (1) The fair market value as determined by the Commissioner (referred to as zonal value); or (2) the fair market value as shown in the schedule of values of the provincial and city assessors (FMV per tax declaration). (Section 6(E), NIRC). The use of the fair market value appearing in a nearby bank's valuation list, therefore, is not allowed for purposes of computing internal revenue taxes.

(B) Should the difference in the supposed taxable value be legally subject to donor's tax? Reason briefly.

SUGGESTED ANSWER:

No. The difference in the supposed taxable value cannot be legally subject to the donor's tax, because the use of a fair market value other than that prescribed by the Tax Code is not allowed for computing any internal revenue tax. (Section 6(E), NIRC).

ALTERNATIVE ANSWER:

The difference in value is not subject to donor's tax, because the sale is not for an insufficient consideration. A deemed gift subject to tax arises only if a tax is avoided as a result of selling a property at a price lower than its fair market value. In a sale subject to the 6% capital gains tax, the tax is always based on the gross selling price or fair market value, whichever is higher, and therefore, the seller cannot avoid any tax by selling his property below its fair market value. This means that the deemed gift provision provided for under the Tax Code will not apply to a sale of real property subject to the 6% capital gains tax. (Section 100, NIRC).

Nature of Real Properties; Capital or Ordinary Asset (2008)

I. In January 1970, Juan Gonzales bought one hectare of agricultural land in Laguna for P100,000. This property has a current fair market value of P10 million in view of the construction of a concrete road traversing the property. Juan Gonzales agreed to exchange his agricultural lot in Laguna for a one-half hectare residential property located in Batangas, with a fair market value of P10 million, owned by Alpha Corporation, a domestic corporation engaged in the purchase and sale of real



property. Alpha Corporation acquired the property in 2007 for P9 million.

- (A) What is the nature of the real properties exchanged for tax purposes - capital asset or ordinary asset? Explain. (3%)

SUGGESTED ANSWER:

With regard to the Laguna property, it is a capital asset because it is agricultural land. The Batangas property, in contrast, is an ordinary asset because it is either (1) held for sale to customers in the ordinary course of business or (2) real property used in the trade of business of a realtor like Alpha Corp (Secs. 24[D1], 39[A1]2 NIRC; and RR No. 7-2003).

Purchase of Condominium (2007)

VI. Z is a Filipino immigrant living in the United States for more than 10 years. He is retired and he came back to the Philippines as a balikbayan. Every time he comes back to the Philippines, he stays here for about a month. He regularly receives a pension from his former employer in the United States, amounting to US\$1,000 a month. While in the Philippines, with his pension pay from his former employer, he purchased three condominium units in Makati which he is renting out for P15,000 a month each.(5%)

- (B) Is his purchase of the three condominium units subject to any tax? Reason briefly.

SUGGESTED ANSWER:

Yes. The purchase will be subject to the capital gains tax imposed on the sale of real property and the documentary stamp tax on conveyance of real property, if these units are acquired from individual unit owners or domestic corporations who hold them as capital assets. (Section 24(D), 27(D)(5) and 196, NIRC). If these properties, however were acquired from dealers and/or lessors of real property the purchase will give rise to the imposition of the regular income tax, value added tax and documentary stamp tax. (Section 24-28 and 196, NIRC).

ALTERNATIVE ANSWER:

Yes, the purchase of the three condominium units is subject to the following taxes:

- i. Capital gains tax, if held as capital assets by the seller (Section 24(D) and 27(D)(5), NIRC), otherwise, the regular income tax (Section 24-28, NIRC);**
- ii. Documentary stamp tax (Section 196, NIRC);**



- iii. **Local transfer tax (Section 135,LGC); and**
- iv. **Value-added tax if acquired from real estate developers or lessors of real property.**

[Note: Value-added tax and documentary stamp taxes are outside the coverage of the BAR Examination. It is requested that full credit be given even if these two taxes are not mentioned in the answer.]

ANOTHER ALTERNATIVE ANSWER:

The purchase is only subject to the documentary stamp tax, a tax that is imposed indifferently on the parties to a transaction (Section 173 and 196, NIRC). Other taxes that may be due on the transaction, other than the documentary stamp tax, are the legal liabilities of the seller which cannot be considered as a tax on the purchase but a tax on the sale. To the purchaser, these taxes are not taxes but merely part of the purchase price if, by the nature of the tax, the economic incidence can be shifted to him.

Sale of a Capital Asset (2010)

III (A) Melissa inherited from her father a 300-square-meter lot. At the time of her father's death on March 14, 1995, the property was valued at P720,000.00. On February 28, 1996, to defray the cost of the medical expenses of her sick son, she sold the lot for P600,000.00, on cash basis. The prevailing market value of the property at the time of the sale was P3,000.00 per square meter.

Is Melissa liable to pay capital gains tax on the transaction? If so, how much and why? If not, why not? (4%)

SUGGESTED ANSWER:

Yes. The capital gains tax is 6% of the higher value between the selling price (P600,000.00) and fair market value of the real property (P900,000.00) or a tax in the amount of P54,000.00. The capital gains tax is due on the sale of a real property classified as a capital asset (Sec 24(d)(1), NIRC).

Sale of Shares of Stock Not Traded in the Local Stock Exchange (2008)

X. John McDonald, a U.S. citizen residing in Makati City, bought shares of stock of a domestic corporation whose shares are listed and traded in the Philippine Stock Exchange at the price of P2 million. Yesterday, he sold the shares of stock through his favorite Makati stockbroker at a gain of P200,000.

- (B) If John McDonald directly sold the shares to his best friend, who is another U.S. citizen residing in Makati, at a gain of P200,000, is he liable for Philippine income tax? If so, what is the tax base and rate? (3%)

SUGGESTED ANSWER:

Yes, He is liable for a final income tax of 5% on first P100,000 net capital gain, and 10% for any amount in excess of P100,000 net capital gain (Sec.24[C] NIRC).



Tax Rate; Period to File Return (2012)

III. Mr. Jose Castillo is a resident Filipino citizen. He purchased a parcel of land in Makati City in 1970 at a consideration of P1 Million. In 2011, the land, which remained undeveloped and idle had a fair market value of P20 Million. Mr. Antonio Ayala, another Filipino citizen, is very much interested in the property and he offered to buy the same for P20 Million. The Assessor of Makati City re-assessed in 2011 the property at P10 Million.

(C) Should Mr. Castillo agree to sell the land to Mr. Ayala in 2012 for P20 Million, subject to the condition as stated in the Deed of Sale that the buyer shall assume the capital gains tax thereon, how much is the income tax due on the transaction and when must the tax return be filed and the tax be paid by the taxpayer? Explain your answer. (5%)

SUGGESTED ANSWER:

He shall be liable to pay the 6% capital gains tax (CGT) based on the Gross Selling Price of the Property which is P20 Million plus the CGT assumed by the buyer. He should file the return within 30 days from date of the sale (date of notarization) and shall pay the tax as he files the return (Section 24(D), NIRC).

ANOTHER SUGGESTED ANSWER:

The income tax due on the transaction is P1,276,595.74 which is computed as 6% of the Gross Selling Price (GSP). The tax base of the 6% capital gains tax (CGT) is the higher between the GSP and the fair market value (FMV). The GSP is P20 Million plus the CGT to be assumed by the buyer, following the doctrine of constructive receipt of income or a total of P21,276,595.74, which amount is higher than the FMV of P20 Million.

Other Percentage Taxes**Sale of Shares of Stock Traded through the Local Stock Exchange (2008)**

X. John McDonald, a U.S. citizen residing in Makati City, bought shares of stock of a domestic corporation whose shares are listed and traded in the Philippine Stock Exchange at the price of P2 million. Yesterday, he sold the shares of stock through his favorite Makati stockbroker at a gain of P200,000.

(A) Is John McDonald subject to Philippine income tax on the sale of his shares through his stockbroker? Is he liable for any other tax? (3%)



SUGGESTED ANSWER:

No. R.A. 7717, now incorporated in Sec. 127 of the NIRC, provides that the sale of shares of stock traded in the local stock exchange is subject to a percentage tax on the sales of shares, in lieu of any kind of income tax.

Estate & Donor's Taxes

Donor's Tax: Capital or Ordinary Asset (2012)

IV. Mr. Pedro Aguirre, a resident citizen, is working for a large real estate development company in the country and in 2010, he was promoted to Vice-President of the company. With more responsibilities comes higher pay. In 2011, he decided to buy a new car worth P2 Million and he traded in his old car with a market value of P800,000.00, and paid the difference of P1.2 Million to the car company. The old car, which was bought three (3) years ago by the father of Mr. Pedro Aguirre at a price of P700,000.00, was donated by him and registered in the name of his son. The corresponding donor's tax thereon was duly paid by the father.

(A) How much is the cost basis of the old car to Mr. Aguirre? Explain your answer. (2%)

SUGGESTED ANSWERS:

P700,000. The basis of the property in the hands of the donee is the carry-over basis (Section 40 (B)(3), NIRC)

(B) What is the nature of the old car – capital asset or ordinary asset? Explain your answer. (3%)

SUGGESTED ANSWERS:

The old car is a capital asset. It is property held by the taxpayer (whether or not connected with his trade or business), but is not stock in trade of the taxpayer or other property of a kind which would properly be included in the inventory of the taxpayer if on hand at the close of the taxable year, or property held by the taxpayer primarily for sale to customers in the ordinary course of his trade or business, or property used in the trade or business, of a character which is subject to the allowance for depreciation; or real property used in trade or business of the taxpayer (Section 39, NIRC).

(C) Is Mr. Aguirre liable to pay income tax on the gain from the sale of his old car? Explain your answer. (5%)



SUGGESTED ANSWERS:

Yes, Capital gain is P100,000. The amount of the taxable gain is subject to the holding period of the asset (Section 39, NIRC)

Donor's Tax: Donation to Relatives (2008)

XIV. Spouses Jose San Pedro and Clara San Pedro, both Filipino citizens, are the owners of a residential house and lot in Quezon City. After the recent wedding of their son, Mario, to Maria, the spouses donated said real property to them. At the time of donation, the real property has a fair market value of P2 million.

(B) Are Jose and Clara subject to donor's tax? If so, how much is the taxable gift of each spouse and what rate shall be applied to the gift? Explain. (4%)

SUGGESTED ANSWER:

Yes, because the value of the gift exceeds P10,000 (Sec. 101 [A1] NIRC). However, they are each entitled to a deduction of P100,000 for the net value of the gift (Sec.99[B] NIRC). Each spouse shall be liable for a taxable gift worth P890,000 each at the progressive rate of 2-15%, since the donee is a relative.

Donor's Tax: Dowry Exclusion (2009)

XV Miguel, a citizen and resident of Mexico, donated US\$1,000.00 worth of stocks in Barack Motors Corporation, a Mexican company, to his legitimate son, Miguelito, who is residing in the Philippines and about to be married to a Filipino girlfriend. Mexico does not impose any transfer tax of whatever nature on all gratuitous transfers of property.

(a) Is Miguel entitled to claim a *dowry exclusion*? Why or why not? (3%)

SUGGESTED ANSWER:

Miguel, a non-resident alien, is not allowed any dowry exclusion. The dowry applies only to a donor who is either a citizen or resident of the Philippines (Sec 101(A)(1), NIRC).

Donor's Tax: Exemptions; Donations for Religious Institutions (2007)

XI. The Congregation of the Mary Immaculate donated a land and a dormitory building located along España St. in favor of the Sisters of the Holy Cross, a group of nuns operating a free clinic and high school teaching basic spiritual values. Is the donation subject to donor's tax? Reason briefly. (5%)

SUGGESTED ANSWER:

No. Gifts in favor of an educational and/or charitable, religious, social welfare corporation, or cultural institution, accredited non-government organization, trust or philanthropic organization or research institution or



organization are exempt from the donor's tax, provided, that, not more than 30% of the gifts are used for administration purposes. The donation being in the nature of a real property complies with the utilization requirement. (Section 101 (A)(3). NIRC).

Donor's Tax: "Reciprocity Rule" (2009)

(XV) Miguel, a citizen and resident of Mexico, donated US\$1,000.00 worth of stocks in Barack Motors Corporation, a Mexican company, to his legitimate son, Miguelito, who is residing in the Philippines and about to be married to a Filipino girlfriend. Mexico does not impose any transfer tax of whatever nature on all gratuitous transfers of property.

- (b) Is Miguel entitled to the *rule of reciprocity* in order to be exempt from the Philippine donor's tax? Why or why not? (3%)

SUGGESTED ANSWER:

No. The donation is not subject to the Philippine donor's tax because the donor is non-resident alien and the property donated is a property not situated in the Philippines. The rule of reciprocity applies only if the property transferred by a non-resident alien is an intangible personal property situated in the Philippines. This is designed to reciprocate the exemption from donor's tax granted by a foreign country to Filipinos who are not residing thereat. (Sec 104, NIRC).

Donor's Tax: Renunciation of Shares (2010)

(XV)(d) If X, one of the compulsory heirs, renounces his share in the inheritance in favor of the other co-heirs, is there any tax

implication of X's renunciation? What about the other co-heirs? (2.5%)

SUGGESTED ANSWER:

If the renunciation is a general renunciation such that the share of the heir who waives his right to the inheritance goes to the other co-heirs in accordance with their respective interest in the inheritance, the law on accretion applies and the property waived is considered to pass through the other co-heirs by inheritance; hence, it has no tax implication. Undoubtedly, when the compulsory heir renounced his share in the inheritance, he did not donate the property which did not become his. Such being the case, the renunciation is not subject to the donor's tax. If it is not a general renunciation in favor of the other co-heirs, the heir renouncing his right is considered to have made a donation and the renunciation is subject to donor's tax. In both cases, however, the renunciation has no tax implication to the other co-heirs (BIR Ruling No. DA (DT-039) 396-09, dated July 23, 2009).

Donor's Tax: Renunciation of Shares (2013)

(IX) In the settlement of the estate of Mr. Barbera who died intestate, his wife renounced her inheritance and her share of the conjugal property in favor of their children. The BIR determined that there was a taxable gift and thus assessed Mrs. Barbera as a donor. Was the BIR correct? (7%)

SUGGESTED ANSWER:

The BIR is correct that there was taxable gift only insofar as the renunciation of the share of the wife in the conjugal property is concerned. This is a transfer of property without consideration which takes effect during the lifetime of the transferor/wife and this qualifies as a taxable gift. (RR Mo. 2-2003).



But the renunciation of the wife's share in the inheritance during the settlement of the estate is not a taxable gift considering that the property is automatically transferred to the other heirs by operation of law due to her repudiation of her inheritance. (BIR Ruling DA No. 333-07)

Estate Tax (2007)

VII. Antonia Santos, 30 years old, gainfully employed, is the sister of Eduardo Santos. She died in an airplane crash. Edgardo is a lawyer and he negotiated with the Airline Company and insurance company and they were able to agree to a total settlement of P10 Million. This is what Antonia would have earned as somebody who was gainfully employed. Edgardo was her only heir.(10%)

(A) Is the P10 Million subject to estate tax? Reason briefly.

SUGGESTED ANSWER:

No. The estate tax is a tax on the privilege enjoyed by an individual in controlling the disposition of her properties to take effect upon her death. The P10M is not a property existing as of the time of decedent's death; hence, it cannot be said that she exercised control over its disposition. Since the privilege to transmit the property is not exercised by the decedent, the estate tax cannot be imposed thereon. (Definition of Estate Tax p. 184, Vitug, Compendium of Tax

Law and Jurisprudence, Third Revised Edition).

Estate Tax: Basis of Computation (2007)

XII. Remedios, a resident citizen, died on November 10, 2006. She died leaving three condominium units in Quezon City valued at P5 Million each. Rodolfo was her only heir. He reported her death on December 5, 2006 and filed the estate tax return on March 30, 2007. Because he needed to sell one unit of the condominium to pay for the estate tax, he asked the Commissioner of Internal Revenue to give him one year to pay the estate tax due. The Commissioner approved the request for extension of time provided that the estate tax be computed on the basis of the value of the property at the time of payment of the tax. (10%)

(B) Does the condition that the basis of the estate tax will be the value at the time of the payment have legal basis? Reason briefly.

SUGGESTED ANSWER:

No. The valuation of properties comprising the estate of a decedent is the fair market as of the time of death. No other valuation date is allowed by law. (Section 88, NIRC).



Estate Tax: Basis of Computation (2008)

II. Jose Cernan, Filipino citizen, married to Maria Cernan, died in a vehicular accident in NLEX on July 10, 2007. The spouses owned, among others, a 100-hectare agricultural land in Sta. Rosa, Laguna with current fair market value of P20 million, which was the subject matter of a Joint Venture Agreement about to be implemented with Star Land Corporation (SLC), a well-known real estate development company. He bought the said real property for P2 million fifty years ago. On January 5, 2008, the administrator of the estate and SLC jointly announced their big plans to start conversion and development of the agricultural lands in Sta. Rosa, Laguna, into first-class residential and commercial centers. As a result, the prices of real properties in the locality have doubled.

The Administrator of the Estate of Jose Cernan filed the estate tax return on January 9, 2008, by including in the gross estate the real property at P2 million. After 9 months, the BIR issued deficiency estate tax assessment, by valuing the real property at P40 million.

43(A) Is the BIR correct in valuing the real property at P40 million? Explain (3%)

SUGGESTED ANSWER:

No. The BIR is not correct. The property valuation should be fixed at P20 million,

which was the value at the time of the death of Jose Cernan (Sec. 88[A] NIRC).

(B) If you disagree, what is the correct value to use for estate tax purposes? Explain (3%)

SUGGESTED ANSWER:

For purposes of computing the estate tax, the value should have been P20 million because that was the value of the property at the time of death (Sec. 88[A] NIRC).

Estate Tax: CIR's Power to Extend Payment (2007)

XII. Remedios, a resident citizen, died on November 10, 2006. She died leaving three condominium units in Quezon City valued at P5 Million each. Rodolfo was her only heir. He reported her death on December 5, 2006 and filed the estate tax return on March 30, 2007. Because he needed to sell one unit of the condominium to pay for the estate tax, he asked the Commissioner of Internal Revenue to give him one year to pay the estate tax due. The Commissioner approved the request for extension of time provided that the estate tax be computed on the basis of the value of the property at the time of payment of the tax. (10%)

(A) Does the Commissioner of Internal Revenue have the power to extend the



payment of estate tax? If so, what are the requirements to allow such extension?

SUGGESTED ANSWER:

Yes. The Commissioner may allow an extension of time to pay the estate tax if the payment on the due date would impose undue hardship upon the estate or any of the heirs. The extension, in any case, will not exceed two years if the estate is not under judicial settlement of five years if it is under judicial settlement. The Commissioner may also require the posting of a bond to secure the payment of the tax. (Section 91(B), NIRC).

ALTERNATIVE ANSWER:

Yes. The requirements to be complied with so that an extension may be allowed are: (1) a request for extension must be filed before the expiration of the original period to pay which is within 6 months from death; (2) there must be a finding that the payment on the due date of the estate tax would impose undue hardship upon the estate or any of the heirs; (3) the extension must be for a period of not exceeding 5 years if the estate is settled judicially or 2 years if settled extra judicially; and (4) the Commissioner may require the posting of a bond in an amount not exceeding double the amount of tax to secure the payment thereof. (Section 91 (B), NIRC).

Estate Tax: Composition of Gross Estate (2008)

(XV(a)) What are the properties and interests that should be included in the computation of the gross estate of the decedent? Explain. (2.5%)

SUGGESTED ANSWER:

All the properties and interests enumerated in the problem should be included in the gross estate if the decedent. The composition of a gross estate of a decedent who is a citizen of the Philippines includes all properties, tangible or intangible, wherever situated and to the extent of the interest that he has thereon at the time of his death (Sec 85, NIRC).

Estate Tax: Composition of Gross Estate (2009)

XIII (A) In 1999, Xavier purchased from his friend, Yuri, a painting for P500,000.00. The fair market value (FMV) of the painting at the time of the purchase was P1-million. Yuri paid all the corresponding taxes on the transaction. In 2001, Xavier died. In his last will and testament, Xavier bequeathed the painting, already worth P1.5-million, to his only son, Zandro. The will also granted Zandro the power to appoint his wife, Wilma, as successor to the painting in the event of Zandro's death. Zandro died in 2007, and Wilma succeeded to the property.

Should the painting be included in the gross estate of Xavier in 2001 and thus, be subject to estate tax? Explain. (3%)

SUGGESTED ANSWER:

Yes. The transmission of the property from Xavier to Zandro is subject to the estate tax because this is a property within Xavier's control to dispose upon his death. The composition of the gross estate pertains to properties owned and existing as of the time of death and to be



transferred by the owner by death (Sec 85, NIRC).

Estate Tax: Deductions Allowed to Estate of a Resident or Citizen (2008)

(XV) Don Sebastian, single but head of the family, Filipino, and resident of Pasig City, died intestate on November 15, 2009. He left the following properties and interests:

House and lot (family home) in Pasig	P 800,000
Vacation house and lot in Florida, USA	1,500,000
Agricultural land in Naic, Cavite which he inherited from his father	2,000,000
Car which is being used by his brother in Cavite	500,000
Proceeds of life insurance where he named his estate as irrevocable beneficiary	1,000,000
Household furniture and appliances	1,000,000
Claims against a cousin who has assets of P10,000 and liabilities of P100,000	100,000
Shares of stock in ABC Corp, a domestic	100,000

enterprise

The expenses and charges on the estate are as follows:

Funeral Expenses	P 250,000
Legal fees for the settlement of the estate	500,000
Medical expenses of last illness	600,000
Claims against the estate	300,000

The compulsory heirs of Don Sebastian approach you and seek your assistance in the settlement of his estate for which they have agreed to the above-stated professional fees. Specifically, they request you to explain and discuss with them the following questions. You oblige:

(B) What is the net taxable estate of the decedent? Explain. (2.5%)

SUGGESTED ANSWER:

The net taxable extent of the decedent is P3,700,000.00. From the gross estate of P7 million the following deductions are allowed: (1) funeral expenses of P 200,000 which is the maximum allowed by law; (2) legal fees amounting to P500,000; (3) medical expenses not to exceed P500,000; (4) Claims against the estate of P300,000; (5) family home equivalent to its fair market value (not to exceed P1 million) of P800,000; and (6) standard deduction of P1 million, or a total allowable deduction of P3,300,000.00 (Sec 86, NIRC).

The claim against the cousin amounting to P100, 000, although included in the gross estate, cannot be claimed as a deduction because the debtor is not yet declared insolvent. Likewise, the



inherited property cannot give rise to a vanishing deduction for want of sufficient factual basis (Sec 86, NIRC).

Estate Tax: Deductions Allowed to Estate of a Resident or Citizen (2008)

VI. While driving his car to Baguio last month, Pedro Asuncion, together with his wife Assunta, and only son, Jaime, met an accident that caused that instantaneous death of Jaime. The following day, Assunta also died in the hospital. The spouses and their son had the following assets and liabilities at the time of death:

Properties	Assunta		Jaime
	Exclusive	Conjugal	Exclusive
Cash		P 10M	P 1.2M
Cars	P 2M	P 500K	
Land	P 5M	P 2M	
Residential house		P 4M	
Mortgage payable		P 2.5M	
Funeral expenses		P 300K	

(A) Is the Estate of Jaime Asuncion liable for estate tax? Explain. (4%)

SUGGESTED ANSWER:

No. By availing of the standard deduction of P1 million (Sec. 86 [A5]

NIRC); funeral expenses not exceeding P200,000 and in no case, to exceed 5% of the gross estate (Sec. 86[A1a] NIRC); and medical expenses not more than P500,000 (Sec. 86[A6] NIRC), the result is a negative net estate. Therefore, there is no estate tax liability.

Estate Tax: Exemptions; Transfer with Sufficient Consideration (2013)

(V) Mr. Agustin, 75 years old and suffering from an incurable disease, decided to sell for valuable and sufficient consideration a house and lot to his son. He died one year later.

In the settlement of Mr. Agustin's estate, the BIR argued that the house and lot were transferred in contemplation of death and should therefore form part of the gross estate for estate tax purposes. Is the BIR correct? (7%)

SUGGESTED ANSWER:

No. The house and lot were not transferred in contemplation of death therefore, these properties should not form part of the decedent's gross estate. To qualify as a transfer in contemplation of death, the transfer must be either without consideration or for insufficient consideration. Since the house and lot were sold for valuable and sufficient consideration, there is no transfer in contemplation of death for estate tax purposes. (Sec 85 (B), NIRC).

Estate Tax; Exemptions; Transmission from the First Heir, Legatee or Donee in favor of another beneficiary (2009)

XIII (B) In 1999, Xavier purchased from his friend, Yuri, a painting for P500,000.00. The fair market value (FMV) of the painting



at the time of the purchase was P1-million. Yuri paid all the corresponding taxes on the transaction. In 2001, Xavier died. In his last will and testament, Xavier bequeathed the painting, already worth P1.5-million, to his only son, Zandro. The will also granted Zandro the power to appoint his wife, Wilma, as successor to the painting in the event of Zandro's death. Zandro died in 2007, and Wilma succeeded to the property.

Should the painting be included in the gross estate of Zandro in 2007 and thus, be subject to estate tax? Explain. (3%)

SUGGESTED ANSWER:

No. The transmission from the first heir, legatee or donee in favor of another beneficiary, in accordance with the desire of the predecessor is an exempt transfer (Sec 87, NIRC). Zandro has no control over the disposition of the property at the time of his death; hence, the estate tax which imposed the privilege of transmitting properties upon his death will not apply.

ALTERNATIVE ANSWER:

No. The property passes from Zandro to Wilma by virtue of the special power of appointment granted by Xavier. The law includes as part of the gross estate of the decedent a property passing under general (not special) power of appointment. The grantee of the power to appoint, Zandro, has no control over the disposition of the property because it is the desire of the grantor of the power that the property will go to a specific person. This being so, the painting should not be included in the gross estate of Zandro, hence, it is not subject to estate tax (Sec 85(D), NIRC).

Estate Tax: Period for Filing and Payment (2010)

(XV)(c) When is the due date for filing and payment of the applicable tax return and tax? Are these dates extendible? If so, under what conditions or requirements? (2.5%)

SUGGESTED ANSWER:

The filing of the return and payment of the tax is within 6 months from date of death following the pay-as-you-file concept. The period to file return is extendible for a maximum of 30 days under meritorious cases as maybe determined by the Commissioner. The payment of the estate tax may also be extended when the Commissioner finds that the payment of the tax on the due date would impose undue hardship on the estate or any of the heirs. The period of extension to pay shall not exceed 5 years if the estate is settled through the courts, or shall not exceed 2 years if settled extrajudicially. The Commissioner may require the executor, or administrator, or the beneficiary to furnish a bond in an amount not more than double the amount of estate tax due (Sec 91, NIRC).

Estate Tax: Vanishing Deductions (2009)

XIII (C) In 1999, Xavier purchased from his friend, Yuri, a painting for P500,000.00. The fair market value (FMV) of the painting at the time of the purchase was P1-million. Yuri paid all the corresponding taxes on the transaction. In 2001, Xavier died. In his last will and testament, Xavier bequeathed the painting, already worth P1.5-million, to his only son, Zandro. The will also granted Zandro the power to appoint his wife, Wilma, as successor to the painting in the event of Zandro's death. Zandro died in 2007, and Wilma succeeded to the property.



May a vanishing deduction be allowed in either or both of the estates? Explain. (3%)

SUGGESTED ANSWER:

Vanishing deduction shall be allowed to the estate of Xavier but only to the extent of ½ of the property which is the portion acquired by gifts (Sec 100, NIRC). The donation took place within 5 years (1999 to 2001) from the death of Xavier; hence, there is a vanishing deduction. However, Zandro's estate will not be entitled to claim because, first and foremost, the property previously taxed is not includable in his gross estate and second, even if it is includable, the present decedent died more than 5 years from the death of the previous decedent, and that a vanishing deduction is already claimed by the previous estate involving the same property.

(A) Are the importations of motor vehicles from abroad subject to customs duties and value added taxes? Explain. (4%)

SUGGESTED ANSWER:

No. because domestic corporations importing used vehicles that are “stored, used or traded” within the Subic Naval Base Area enjoy an exemption from customs duties and VAT, provided they are registered with the SBMA (R.A. 7096; Executive Secretary v. Southwing Heavy Industries, G.R. No. 164171, 20 February 2006).

(B) If they are taxable, when must the duties and taxes be paid? What are the bases for and purposes of computing customs duties and VAT? To whom must the duties and VAT be paid? Explain. (3%)

SUGGESTED ANSWER:

Duties and taxes must be paid upon release of the vehicle from Customs' custody. Custom duties for motor vehicles are based on the value being used by the Bureau for assessing customs duties. VAT is also based on the value being used by the Bureau for motor vehicles (Sec. 107[A] NIRC). Duties must be paid to the Bureau of Customs. VAT must be paid to the Bureau of Internal Revenue.

Business Taxes

VAT: Exempted Transactions; Importation and Use within SBMA (2008)

IV. JKL Corporation is a domestic corporation engaged in the importation and sale of motor vehicles in the Philippines and is duly registered with the Subic Bay Metropolitan Authority (SBMA). In December 2007, it imported several second-hand motor vehicles from Japan and Korea, which it stores in a warehouse in Subic Bay. It sold these motor vehicles in April 2008, to persons residing in the customs territory.



VAT: Exempted Transactions; Residential Units for Lease (2009)

(XIV) Emiliano Paupahan is engaged in the business of leasing out several residential apartment units he owns. The monthly rental for each unit ranges from P8,000.00 to P10,000.00. His gross rental income for one year is P1,650,000.00. He consults you on whether it is necessary for him to register as a VAT taxpayer. What legal advice will you give him, and why? (4%)

SUGGESTED ANSWER:

I will advise Emiliano that he is not required to register as a VAT taxpayer. His transactions of leasing residential units for an amount not exceeding P10,000.00 per unit per month are exempt from VAT irrespective of the aggregate amount of rentals received annually (Sec 109 (1)(Q), NIRC).

VAT: Liable for VAT (2008)

XII. Greenhills Condominium Corporation incorporated in 2001 is a non-stock, non-profit association of unit owners in Greenhills Tower, San Juan City. To be able to reduce the association dues being collected from the unit owners, the Board of Directors of the corporation agreed to lease part of the ground floor of the condominium building to DEF Savings Bank for P120,000 a month or P1.44 million for the year, starting January 2007.

(A) Is the non-stock, non-profit association liable for value added tax in 2007? If your answer is in the negative, is it liable for another kind of business tax? (4%)

SUGGESTED ANSWER:

No. Under RR No. 16-2005, liability for VAT arises only if the annual gross receipts exceed P1.5 million. Secondly, under Sec. 106(A1a) NIRC, the lease must be pursuant to the ordinary course of trade or business of the taxpayer. The lease of the ground floor to the bank is a casual transaction.

The Association is liable for the business tax of 3% of the gross receipt if the gross receipts of the taxpayer do not exceed P1.5 million per annum (Sec. 116 NIRC).

(B) Will the association be liable for value added tax in 2008 if it increases the rental to P150,000 a month beginning January 2008? Explain. (3%)

SUGGESTED ANSWER:

Yes, because the gross receipts will exceed P1.5 million (RR No. 16-2005).

ALTERNATIVE ANSWER:

No. Although the gross receipts will exceed P1.5 million, the lease of the ground floor is not part of the ordinary course of trade or business of the association (RR No. 16-2005).



VAT: Rates (2010)

(XI) Are the following transactions subject to VAT? If yes, what is the applicable rate for each transaction? State the relevant authority/ies for your answer.

(XIa) Construction by XYZ Construction Co. of concrete barriers for the Asian Development Bank in Ortigas Center to prevent car bombs from ramming the ADB gates along ADB Avenue in Mandaluyong City. (3%)

SUGGESTED ANSWER:

The transaction is subject to VAT at the rate of zero percent (0%). ADB is exempt from direct and indirect taxes under a special law, thereby making the sale of services to it by a VAT-registered construction company, effectively zero-rated (Sec 108 (B)(3), NIRC).

(XIb) Call Center operated by a domestic enterprise in Makati that handles exclusively the reservations of a hotel chain which are all located in North America. The services are paid for in US\$ and duly accounted for with the *Bangko Sentral ng Pilipinas*. (3%)

SUGGESTED ANSWER:

The transaction is subject to VAT at the rate of zero percent (0%). Zero-rated sale of services includes services rendered to a person engaged in business outside the Philippines and the consideration is paid in acceptable foreign currency duly accounted for by the *Bangko Sentral ng Pilipinas* (Sec 108 (B)(2), NIRC).

(XIc) Sale of orchids by a flower shop which raises its flowers in Tagaytay. (3%)

SUGGESTED ANSWER:

The sale of orchids is subject to VAT at 12%. This is a sale of agricultural non-food product in its original state which

is no longer one of the exempt transactions (Sec 109, NIRC, as amended by RA 9337).

VAT: Sale of a Capital Asset (2010)

III (B) Melissa inherited from her father a 300-square-meter lot. At the time of her father's death on March 14, 1995, the property was valued at P720,000.00. On February 28, 1996, to defray the cost of the medical expenses of her sick son, she sold the lot for P600,000.00, on cash basis. The prevailing market value of the property at the time of the sale was P3,000.00 per square meter.

Is Melissa liable to pay Value Added Tax (VAT) on the sale of the property? If so, how much and why? If not, why not? (4%)

SUGGESTED ANSWER:

No. The real property sold, being in the nature of a capital asset, is not subject to VAT. The sale is subject to VAT only if the real property sold is held primarily for sale to customers or held for lease in the ordinary course of trade or business. A real property classified as a capital asset does not include a real property held for sale or for lease, hence, its sale is not subject to VAT (Sec 39 and 106, NIRC).

ALTERNATIVE ANSWER:

No. Melissa is not liable to pay the VAT because she is not in the real estate business. A sale of real property not in the course of trade or business is not subject to VAT (Sec 105 and 109,(1)(P), NIRC).

VAT: Zero-rated; Services Rendered to Business Outside the Country (2012)

II. Foster Corporation (FC) is a Singapore-based foreign corporation engaged in



construction and installation projects. In 2010, Global Oil petroleum products, awarded an anti-pollution project to Foster Corporation, whereby FC shall design, supply machinery and equipment, provided that the installation part of the project may be sub-contracted to a local construction company. Pursuant to the contract, the design and supply contracts were done in Singapore by FC, while the installation works were sub-contracted by FC with Philippine Construction Corporation (PCC), a domestic corporation. The project with a total cost of P100 Million was completed in 2011 at the following cost components: (design - P20 Million; machinery and equipment - P50 Million; and installation - P30 Million). Assume that the project was 40% complete in 2010 and 100% complete in 2011, based on the certificates issued by the architects and engineers working on the project. GOC paid FC as follows: P60 Million in 2010 and P40 Million in 2011 and FC paid PCC in foreign currency through a Philippine bank as follows: P10 Million in 2010 and P20 Million in 2011.

(B) Is PCC, which adopted the percentage of completion method of reporting income and expenses, liable to value added tax in 2010 and in 2011. Explain your answer. (5%)

SUGGESTED ANSWER:

Yes, PCC is liable to the VAT as seller of services for a fee. However, the sale of services to FC is subject to VAT at zero percent rate. Services rendered to a person engaged in business conducted outside the Philippines or to non-resident person not engaged in business who is outside the Philippines when the services are performed paid in foreign currency inwardly remitted through the banking system are zero-rated sales of services (Section 108(B)(2), NIRC)

VAT: Zero-rated; Services Rendered to Persons Conducting Business Outside the Country (2013)

(VII) XYZ Law Offices, a law partnership in the Philippines and a VAT-registered taxpayer, received a query by e-mail from Gainsburg Corporation, a corporation organized under the laws of Delaware, but the e-mail came from California where Gainsburg has an office. Gainsburg has no office in the Philippines and does no business in the Philippines.

XYZ Law Offices rendered its opinion on the query and billed Gainsburg US\$1,000 for the opinion. Gainsburg remitted its payment through Citibank which converted the remitted US\$1,000 to pesos and deposited the converted amount in the XYZ Law Offices account.

What are the tax implications of the payment to XYZ Law Offices in terms of VAT and income taxes? (7%)



SUGGESTED ANSWER:

The payment to XYZ Law Offices by Gainsburg Corporation is subject to VAT and income tax in the Philippines.

For VAT purposes, the transaction is a zero-rated sale of services where the output tax is zero percent and XYZ is entitled to claim as refund or tax credit certificate the input taxes attributable to the zero-rated sale. The services were rendered to a nonresident person, engaged in business outside the Philippines, which services are paid for in foreign currency inwardly remitted through the banking system, thereby making the sale of services subject to tax at zero-rate. (Sec 108 (B)(2), NIRC)

Remedies in Internal Revenue Taxes

BIR: Assessment; Exemption to Examine Once a Year (2013)

(X) In 2010, pursuant to a Letter of Authority (LA) issued by the Regional Director, Mr. Abcede was assessed deficiency income taxes by the BIR for the year 2009. He paid the deficiency. In 2011, Mr. Abcede received another LA for the same year 2009, this time from the National Investigation Division, on the ground that Mr. Abcede's 2009 return was fraudulent.

Mr. Abcede contested the LA on the ground that he can only be investigated once in a taxable year. Decide. (7%)

SUGGESTED ANSWER:

The contention of Mr. Abcede is not tenable. While the general rule is to the

effect that for income tax purposes, a taxpayer must be subject to examination and inspection by the internal revenue officers only once in a taxable year, this will not apply if there is fraud, irregularity or mistakes as determined by the Commissioner. In the instant case, what triggered the second examination is the findings by the BIR that Mr. Abcede's 2009 return was fraudulent, accordingly, the examination is legally justified. (Sec 235, NIRC)

BIR: Assessment; Requisites (2008)

VII. After examining the books and records of EDS Corporation, the 2004 final assessment notice, showing basic tax of P1,000,000, deficiency interest of P400,000, and due date for payment of April 30, 2007, but without the demand letter, was mailed and released by the BIR on April 15, 2007. The registered letter, containing the tax assessment, was received by the EDS Corporation on April 25, 2007.

(A) What is an assessment notice? What are the requisites of a valid assessment? Explain. (3%)

SUGGESTED ANSWER:

An assessment notice is a computation prepared by the BIR of the alleged unpaid taxes, plus interests, penalties or surcharges, if any. However, an assessment notice must be accompanied by a demand letter from the BIR in order to result in valid assessment (RR No. 12-99).



(B) As tax lawyer of EDS Corporation, what legal defense(s) would you raise against the assessment? Explain. (3%)

SUGGESTED ANSWER:

I would raise the defense that there is no valid assessment because EDS Corporation did not receive a demand letter from the BIR.

BIR: Assessment; Sale of Real Properties (2008)

XI. Pedro Manalo, a Filipino citizen residing in Makati City, owns a vacation house and lot in San Francisco, California, U.S.A. which he acquired in 2000 for P15 million. On January 10, 2006, he sold said real property to Juan Mayaman, another Filipino citizen residing in Quezon City, for P20 million. On February 9, 2006, Manalo filed the capital gains tax return and paid P1.2 million representing 6% capital gains tax. Since Manalo did not derive any ordinary income, no income tax return was filed by him for 2006. After the tax audit conducted in 2007, the BIR officer assessed Manalo for deficiency income tax computed as follows: P5 million (P20 million less P15 million) x 35% = P1.75 million, without the capital gains tax paid being allowed as tax credit. Manalo consulted a real estate

broker who said that the P1.2 million capital gains tax should be credited from the P1.75 million deficiency income tax.

(A) Is the BIR officer's tax assessment correct? Explain. (3%)

SUGGESTED ANSWER:

The BIR officer correctly disallowed the credit of the final tax of P1.2 million against the net income tax, which is subject to deductions. However, the assessment of 35% is incorrectly imposed. The correct rate is based on the 5-32% tax scale which is applicable to individuals (Sec.24[D1] and Sec. 42[A5] NIRC).

(B) If you were hired by Manalo as his tax consultant, what advice would you give him to protect his interest? Explain. (3%)

SUGGESTED ANSWER:

I would advise him to demand the application of the 5-32% tax scale instead of the fixed rate of 35% which applies only to domestic corporations (Sec. 24[D1] NIRC).

BIR; Compromise; Financial Incapacity (2009)

I(B) True or False. Explain your answer in not more than two (2) sentences. (5%)



When the financial position of the taxpayer demonstrates a clear inability to pay the tax, the Commissioner of Internal Revenue may validly compromise the tax liability.

SUGGESTED ANSWER:

True. Financial incapacity is a ground allowed by law in order that the Commissioner of Internal Revenue may validly compromise a tax liability. (Sec 204, NIRC)

BIR: Criminal Prosecution; Duty to Pay Tax despite Acquittal (2012)

X. Explain the following statements:

(A) The acquittal of the taxpayer in a criminal action under the Tax Code does not necessarily result in exoneration of said taxpayer from his civil liability to pay taxes. (3%)

SUGGESTED ANSWERS:

In taxation, the taxpayer becomes criminally liable because of a civil liability. While he may be acquitted on the criminal case, his acquittal could not operate to discharge him from the duty to pay tax, since that duty is imposed by statute prior to and independent of any attempt on the taxpayer to evade payment. The obligation to pay the tax is not a mere consequence of the felonious acts charged in the information, nor is a mere civil liability derived from crime that would be wiped out by the declaration that the criminal

acts charged did not exist (Castro v. Collector of Internal Revenue, L-12174, April 26, 1962).

BIR: Criminal Prosecution; Tax Evasion; Bribery (2013)

(XII) You are the retained tax counsel of ABC Corp. Your client informed you that they have been directly approached with a proposal by a BIR insider (i.e., a middle rank BIR official) on the tax matter they have referred to you for handling. The BIR insider's proposal is to settle the matter by significantly reducing the assessment, but he will get 50% of the savings arising from the reduced assessment.

What tax, criminal and ethical considerations will you take into account in giving your advice? Explain the relevance of each of these considerations. (9%)

SUGGESTED ANSWER:

I will advise my client not to accept the settlement proposal but instead pay the entire amount of tax that is legally due to the government.

On the tax aspect, I will tell my client that a proposed assessment covering deficiency taxes which are legally due must be fully paid to exonerate the taxpayer from further liabilities. The unwarranted reduction of the proposed assessment into half and the payment thereof will not close the case but can be re-opened anytime within ten years from discovery so as to collect the correct amount of taxes from ABC Corp.

The act of deliberately paying an amount of tax that is less than what is known by my client to be legally due through a cause of action that is unlawful is considered as tax evasion. I will advise my client that conniving with a BIR



insider to reduce the proposed assessment for a fee us unlawful which can expose the officers of the corporation to criminal liability. Likewise, the payment to be made to the BIR official of 50% of the savings constitutes direct bribery punishable under the Revised Penal Code. Insofar as the BIR officer is concerned he will also be a principal to direct bribery and to the criminal violation penalized under Section 269 of the Tax Code.

On ethical grounds, agreeing to the settlement scheme being proposed by the BIR insider is agreeing to the perpetration of a dishonest act. Since taxation is symbiotic relationship, fair dealing on both sides is of paramount importance. I will remind my client that taxpayers owe honesty to government just as government owes fairness to taxpayers. (CIR v. Tokyo Shipping Co. Ltd., G.R. No. 68252, May 26, 1996)

BIR: False Return v. Fraudulent Return (2009)

I(E) True or False. Explain your answer in not more than two (2) sentences.

A false return and a fraudulent return are one and the same. (5%)

SUGGESTED ANSWER:

False. There is a different between a false return and a fraudulent return. The first merely implies a deviation from the truth or fact whether intentional or not, whereas the second is intentional and deceitful with the aim of evading the correct tax due (*Aznar v. Commissioner, GR NO. L-20569, Aug 23, 1974, 58 SCRA 519 (1974)*).

BIR: Failure to File Return; Collection Without Assessment (2012)

(X) Explain the following statements:

(B) Should the accused be found guilty beyond reasonable doubt for violation of Section 255 of the Tax Code (for failure for file tax return or to supply correct information), the imposition of the civil liability by the CTA should be automatic and no assessment notice from the BIR is necessary? (2%)

SUGGESTED ANSWER:

Yes. If the failure to file tax return or to supply correct information resulted to unpaid taxes the amount of which is proven during trial, the CTA shall not only impose the criminal penalty but must likewise order the payment of the civil liability (Section 205(b), NIRC). As a matter of fact, it is well-recognized that in the case of failure to file a return, a proceeding in court for the collection of the tax may be filed without the need of an assessment, which recognizes that the civil liability of a taxpayer maybe established without the need of an assessment (Section 222(a), NIRC).

BIR: Failure to File Return; Criminal Actions in RTC (2010)

(VI) Based on the Affidavit of the Commissioner of Internal Revenue (CIR), an Information for failure to file income tax



return under Section 255 of the National Internal Revenue Code (NIRC) was filed by the Department of Justice (DOJ) with the Manila Regional Trial Court (RTC) against XX, a Manila resident.

XX moved to quash the Information on the ground that the RTC has no jurisdiction in view of the absence of a formal deficiency tax assessment issued by the CIR.

Is a prior assessment necessary before an Information for violation of Section 255 of the NIRC could be filed in court? Explain. (4%)

SUGGESTED ANSWER:

No. In the case of failure to file a return, a proceeding in court for the collection of the tax may be filed without an assessment (Sec 222 (a), NIRC). The tax can be collected by filing a criminal action with the RTC because a criminal action is a mode of collecting the tax liability. (Sec. 205, NIRC). Besides, the Commissioner is empowered to prepare a return on the basis of his own knowledge, and upon such information as he can obtain from testimony or otherwise, which shall be prima facie correct and sufficient for legal purposes (Sec 6 (B), NIRC; the issuance of a formal deficiency tax assessment, therefore, is not required.

BIR: Prescription; Construction in Criminal Cases (2010)

(Ib) True or False. In criminal cases involving tax offenses punishable under the National Internal Revenue Code (NIRC), prescription is construed strictly against the government. (1%)

SUGGESTED ANSWER:

False. (Lim v. Court of Appeals, G.R. No. 48134-37, Oct. 18, 1990)

CTA: Jurisdiction of the CTA (2010)

(Ic) In criminal cases where the Court of Tax Appeals (CTA) has exclusive original jurisdiction, the right to file a separate civil action for the recovery of taxes may be reserved. (1%)

SUGGESTED ANSWER:

False. (Sec. 11, Rule 9, 2005 Rules of the Court of Tax Appeals, as amended)

CTA: Jurisdiction of the CTA (2010)

(Ie) Judgments, resolutions or orders of the Regional Trial Court in the exercise of its *original* jurisdiction involving criminal offenses arising from violations of the NIRC are appealable to the CTA, which shall hear the cases *en banc*. (1%)

SUGGESTED ANSWER:

False. (Sec. 3(b)(2), Rule 4, 2005 Revised Rules of the Court of Tax Appeals)

CTA: Jurisdiction; Appeals from Decisions of the Collector of Customs (2010)

(VIII) What is the rule on appeal from decisions of the Collector of Customs in protest and seizure cases? When is the decision of the Collector of Customs appealable to the Court of Tax Appeals? Explain. (5%)

SUGGESTED ANSWER:

Decisions of the Collector of Customs in protest and seizure cases are appealable to the Commissioner of Customs within 15 days from receipt of notice of the written decision.

As a rule, decisions of the Collector of Customs are not appealable to the Court



of Tax Appeals. If the Collector of Customs, however, does not decide a protest for a long period of time, the inaction may be considered as an adverse decision by the Collector of Customs and the aggrieved taxpayer may appeal to the CTA even without the Collector's and Commissioner's actual decision (*Commissioner of Customs v. Planters Products, Inc. G.R. No. 82018, March 16, 1989*).

CTA: Jurisdiction; Power to Review Compromise Agreements (2010)

(V) Does the Court of Appeals have the power to review compromise agreements forged by the Commissioner of Internal Revenue and a taxpayer? Explain. (5%)

SUGGESTED ANSWER:

No, for either of two reasons (1) in instances in which the Commissioner of Internal Revenue is vested with authority to compromise, such authority should be exercised in accordance with the Commissioner's discretion, and courts have no power, as a general rule, to compel him to exercise such discretion one way or another (*Koppel Phils., Inc. v. CIR, 87 Phil, 351 (1950)*); (2) If the Commissioner abuses his discretion by not following the parameters set by law, the CTA, not the Court of Appeals, may correct such abuse if the matter is appealed to it. In case of arbitrary or capricious exercise by the Commissioner of the power to compromise, the compromise can be attacked and reversed through the judicial process. It must be noted however, that a compromise is considered as other matters arising under the NIRC which vests the CTA with jurisdiction, and since the decision of the CTA is appealable to the Supreme Court, the Court of Appeals is devoid of any power of review a compromise settlement forged by the Commissioner (*PNOC v. Savellano, G.R. No. 109976,*

April 26, 2005; RA 9282 on jurisdiction of CTA).

(Note: It is respectfully requested that if the examinee gives any one of the two reasons presented above, the answer should be given full credit.)

CTA: Proceedings in the CTA (2010)

(Id) Proceedings before the CTA in the exercise of its exclusive original jurisdiction are in the nature of trial *de novo*. (1%)

SUGGESTED ANSWER:

True. (*CIR v. Manila Mining Corp. G.R. No. 153204, Aug. 31, 2005*)

CTA: Suspension of the Collection of NIR Taxes (2010)

(VII) What are the conditions that must be complied with before the Court of Tax Appeals may suspend the collection of national internal revenue taxes? (3%)

SUGGESTED ANSWER:

The CTA may suspend the collection of internal revenue taxes if the following conditions are met:

1. the case is pending appeal with the CTA;
2. in the opinion of the Court the collection will jeopardize the interest of the Government and/or the taxpayer; and
3. the taxpayer is willing to deposit in Court the amount being collected or to file a surety bond for not more than double the amount of the tax (*Sec 11, RA 1125, as amended by RA 9282*).



Customs: Prescription Period to Assess (2013)

(VI) On October 15, 2005, ABC Corp. imported 1,000 kilos of steel ingots and paid customs duties and VAT to the Bureau of Customs on the importation. On February 17, 2009, the Bureau of Customs, citing provisions of the Tariff and Customs Code on post-audit, investigated and assessed ABC Corp. for deficiency customs duties and VAT.

Is the Bureau of Customs correct? (7%)

SUGGESTED ANSWER:

No. The Bureau of Customs (BOC) has lost its right to assess deficiency customs duties and VAT. The imported steel ingots in 2005 have been entered and the customs duties thereon had been paid by thereby making the liquidation of the importation final and conclusive upon all parties after the expiration of three (3) years from the date of final payment of duties and taxes (Sec 1603, TCC, as amended by RA 9135).

[Note: Insofar as VAT on importation is concerned, the underpayment will be automatically cured when these are credited against the output tax due upon sale by the imported when the VAT return is filed. Be that as it may, an assessment for deficiency VAT can only be made by the BIR (not by BOC), VAT being an internal revenue tax, within three (3) years from the last day prescribed by law for filing of the VAT return. (Sec 203, NIRC)].

Taxpayer: Claim for Refund; Carry-Over Option is Irrevocable (2013)

(I) In its final adjustment return for the 2010 taxable year, ABC Corp. had excess tax credits arising from its over-withholding of income payments. It opted to carry over the excess tax credits to the following year. Subsequently, ABC Corp. changed its mind

and applied for a refund of the excess tax credits.

Will the claim for refund prosper? (6%)

SUGGESTED ANSWER:

No. The claim for refund will not prosper. While the law gives the taxpayer an option to whether carry-over or claim as refund the excess tax credits shown on its final adjustment return, once the option to carry-over has been made, such option shall be considered irrevocable for that taxable period and no application for cash refund or issuance of a tax credit certificate shall be allowed. (Sec 76, NIRC; CIR v. PL Management International Phils., Inc., April 4, 2011, 647 SCRA 72 (2011) G.R. No. 160949).

Taxpayer: Claim for Refund; Substantiation Requirement (2009)

(IV) International Technologies, Inc. (ITI) filed a claim for refund for unutilized input VAT with the Court of Tax Appeals (CTA). In the course of the trial, ITI engaged the services of an independent Certified Public Accountant (CPA) who examined the voluminous invoices and receipts of ITI. ITI offered in evidence only the summary prepared by the CPA, without the invoices and the receipts, and then submitted the case for decision.

Can the CTA grant ITI's claim for refund based only on the CPA's summary? Explain. (4%)

SUGGESTED ANSWER:

No. The summary prepared by the CPA does not prove anything unless the documents which were the basis of the summary are submitted to the CTA and adduced in evidence. The invoices and receipts must be presented because they are the only real and direct evidence that would enable the Court to



determine with particular certainty the basis of the refund (*CIR v. Rio Tuba Nickel Mining Corp.*, 207 SCRA 549 (1992)).

Taxpayer: Claim for Refund; Withholding Agent as a Proper Party (2009)

X(A) ABCD Corporation (ABCD) is a domestic corporation with individual and corporate shareholders who are residents of the United States. For the 2nd quarter of 1983, these U.S.-based individual and corporate stockholders received cash dividends from the corporation. The corresponding withholding tax on dividend income --- 30% for individual and 35% for corporate non-resident stockholders --- was deducted at source and remitted to the BIR.

On May 15, 1984, ABCD filed with the Commissioner of Internal Revenue a formal claim for refund, alleging that under the RP-US Tax Treaty, the deduction withheld at source as tax on dividends earned was fixed at 25% of said income. Thus, ABCD asserted that it overpaid the withholding tax due on the cash dividends given to its non-resident stockholders in the U.S. The Commissioner denied the claim.

On January 17, 1985, ABCD filed a petition with the Court of Tax Appeals (CTA) reiterating its demand for refund.

Does ABCD Corporation have the legal personality to file the refund on behalf of its non-resident stockholders? Why or why not? (3%)

SUGGESTED ANSWER:

Yes. A withholding agent is not only an agent of the Government but is also an agent of the taxpayer/income earner. Hence, ABCD is also an agent of the beneficial owner of the dividends with respect to the actual payment of the tax to the Government, such authority may reasonably be held to include the

authority to file a claim for refund and to bring an action for recovery of such claim (*CIR v. Procter & Gamble*, 204 SCRA 377, (1991)).

Taxpayer: Tax Credit; Off-Setting (2007)

XIII. ABC Corporation won a tax refund case for P150 Million. Upon execution of the judgment and when trying to get the Tax Credit Certificates (TCC) representing the refund, the Bureau of Internal Revenue (BIR) refused to issue the TCC on the basis of the fact that the corporation is under audit by the BIR and it has a potential tax liability. Is there a valid justification for the BIR to withhold the issuance of the TCC? Explain your answer briefly? (5%)

SUGGESTED ANSWER:

The BIR has no valid justification to withhold the TCC. Offsetting the amount of TCC against a potential tax liability is not allowed, because both obligations are not yet fully-liquidated. While the amount of the TCC has been determined; the amount of deficiency tax is yet to be determined through the completion of the audit. (*Philex Mining Corporation v. CIR*, 294 SCRA 687 [1998]).

ALTERNATIVE ANSWER:

There is no valid justification to withhold the TCC. The requirement, that the claim for refund/TCC and liability for deficiency taxes must be settled



under one proceeding to avoid multiplicity of suits, will not apply since the determination of the entitlement to the refund was already removed from the BIR. To reopen the claim for refund in order to give way to the introduction of evidence of a deficiency assessment will lead to an endless litigation, which is not allowed. (CIR v. Citytrust Banking Corporation, 499 SCRA 477 [2006]).

Taxpayer: Claim for Tax Credit; Prescription (2008)

III. DEF Corporation is a wholly owned subsidiary of DEF, Inc., California, USA. Starting December 15, 2004, DEF Corporation paid annual royalties to DEF, Inc., for the use the latter's software, for which the former, as withholding agent of the government, withheld and remitted to the BIR the 15% final tax based on the gross royalty payments. The withholding tax return was filed and the tax remitted to the BIR on January 10 of the following year, On April 10, 2007, DEF Corporation filed a written claim for tax credit with the BIR, arising from erroneously paid income taxes covering the years 2004 and 2005. The following day, DEF Corporation filed a petition for review with the Court of Tax Appeals involving the tax credit claim for 2004 and 2005.

(A) As a BIR lawyer handling the case, would you raise the defense of prescription in your answer to the claim for tax credit? Explain. (4%)

SUGGESTED ANSWER:

Yes. The defense of prescription is available as against the 2004 tax credit. Under Sec. 229 NIRC, the prescriptive period is 2 years reckoned from the filing of the annual return (CIR v. TMX Sales, G.R. No. 83736, 15 January 1992; CIR v. PhilAm Life, G.R. No. 105208, 29 May 1995; CIR v. CTA, G.R. No. 117254, 21 January 1999). However, the 2005 claim has not yet prescribed since its prescriptive period ends on January 11, 2008 while the claim was filed on April 10, 2007. The filing of the Petition for Review with the Tax Appeals on the 2005 Claim is premature (Sec. 57[A] NIRC).

(B) Can the BIR lawyer raise the defense that DEF Corporation is not the proper party to file such claim for tax credit? Explain. (3%)

SUGGESTED ANSWER:

No. the BIR cannot raise the defense that DEF Corporation is not the proper party. In CIR v. Procter & Gamble, G.R. No. 66838, 02 December 1991, the Court



ruled that a final withholding agent is a proper party “with sufficient legal interest” because it will be liable in the event that the final income tax cannot be paid by the taxpayer (See also Philippine Guaranty Co. v. CIR and CTA, No. L-22074, 30 April 1965).

Taxpayer: Petition for Review; Tenor of Finality of Assessment (2012)

VIII. In the examination conducted by the revenue officials against the corporate taxpayer in 2010, the BIR issued a final assessment notice and demand letter which states: “It is requested that the above deficiency tax be paid immediately upon receipt hereof, inclusive of penalties incident to delinquency. This is our final decision based on investigation. If you disagree you may appeal this time, decision within thirty (30) days from receipt hereof, otherwise said deficiency tax assessment shall become final, executory and demandable.” The assessment was immediately appealed by the taxpayer to the Court of Tax Appeals, without filing its protest against the assessment and without a denial thereof by the BIR. If you were the judge, would you deny the petition for review filed by the taxpayer and consider the case as prematurely filed? Explain your answer. (5%)

SUGGESTED ANSWER:

NO. The Petition for Review should not be denied. The case is an exception to the rule on exhaustion of administrative remedies. The BIR is estopped from claiming that the filing of the Petition for Review is premature because the taxpayer failed to exhaust all administrative remedies. The statement of the BIR in its Final Assessment Notice and Demand Letter led the taxpayer to conclude that only a final judicial ruling in his favor would be accepted by the BIR. The taxpayer cannot be blamed for not filing a protest against the Formal Letter of Demand with Assessment Notices since the language used and the tenor of the demand letter indicate that it is the final decision of the respondent on the matter. The CIR should indicate, in a clear and unequivocal language, whether his action on a disputed assessment constitutes his final determination thereon in order for the taxpayer concerned to determine when his or her right to appeal to the tax court accrues. Although there was no direct reference for the taxpayer to bring the matter directly to the CTA, it cannot be denied that the word “appeal” under prevailing tax laws refers to the filing of a Petition for Review with the CTA (Allied Bank vs. CIR, G.R. No. 175097, February 5, 2010).



Taxpayer: Prescription; Construction in Civil Cases (2010)

I (a) True or False. In civil cases involving the collection of internal revenue taxes, prescription is construed strictly against the government and liberally in favor of the taxpayer. (1%)

SUGGESTED ANSWER:

True. (CIR v. BF Goodrich., Phils. Inc., G.R. No. 104171, Feb. 24, 1999; Phil. Journalists, Inc. v. CIR, G.R. No. 162852, Dec. 16, 2004.)

Taxpayer: Prescription; Effect of Prescription to File Protest (2009)

(XVII) A final assessment notice was issued by the BIR on June 13, 2000, and received by the taxpayer on June 15, 2000. The taxpayer protested the assessment on July 31, 2000. The protest was initially given due course, but was eventually denied by the Commissioner of Internal Revenue in a decision dated June 15, 2005. The taxpayer then filed a petition for review with the Court of Tax Appeals (CTA), but the CTA dismissed the same.

- a. Is the CTA correct in dismissing the petition for review? Explain your answer. (4%)

SUGGESTED ANSWER:

Yes. The protest was filed out of time, hence the CTA does not acquire jurisdiction over the matter (CIR v. Atlas Mining and Development Corp. (2000)).

- b. Assume that the CTA's decision dismissing the petition for review has become final. May the Commissioner legally enforce collection of the delinquent tax? Explain. (4%)

SUGGESTED ANSWER:

No. The protest was filed out of time and, therefore, did not suspend the running of the prescriptive period for the collection of the tax. Once the right to collect has prescribed, the Commissioner can no longer enforce collection of the tax liability against the taxpayer (CIR v. Atlas Mining and Development Corp. (2000)).

Taxpayer; Prescription; Effect of Waiver of Statute of Limitations (2010)

(IIId) What is the effect of the execution by a taxpayer of a "waiver of the statute of limitations" on his defense of prescription? (2%)

SUGGESTED ANSWER:

The waiver of the statute of limitation executed by a taxpayer is not a waiver of the right to invoke the defense of prescription. The waiver of the statute of limitation is merely an agreement in writing between the taxpayer and the BIR that the period to assess and collect taxes due is extended to a date certain. If prescription has already set in at the time of execution of the waiver or if the said waiver is invalid, the taxpayer can still raise prescription as defense (Phil. Journalists Inc., v. CIR, G.R. No. 162852, Dec. 16, 2004)

Taxpayer: Protest against Final Assessment Notice (2010)

(IV) On March 10, 2010, Continental, Inc. received a preliminary assessment notice (PAN) dated March 1, 2010 issued by the Commissioner of Internal Revenue (CIR) for deficiency income tax for its taxable year 2008. It failed to protest the PAN. The CIR thereupon issued a final assessment notice (FAN) with letter of demand on April 30, 2010. The FAN was received by the



corporation on May 10, 2010, following which or on May 25, 2010, it filed its protest against it.

The CIR denied the protest on the ground that the assessment had already become final and executory, the corporation having failed to protest the PAN.

Is the CIR correct? Explain. (5%)

SUGGESTED ANSWER:

No. The issuance of preliminary assessment notice (PAN) does not give rise to the right of the taxpayer to protest. What can be protested by the taxpayer is the final assessment notice (FAN) or that assessment issued following the PAN. Since the FAN was timely protested (within 30 days from receipt thereof, the assessment did not become final and executory (Sec 228, NIRC; RR No. 12-99).

Taxpayer: Protest; Remedies Against BIR's Inaction to a Protest (2009)

(XVIII) A taxpayer received an assessment notice from the BIR on February 3, 2009. The following day, he filed a protest, in the form of a request for reinvestigation, against the assessment and submitted all relevant documents in support of the protest. On September 11, 2009, the taxpayer, apprehensive because he had not yet received notice of a decision by the Commissioner on his protest, sought your advice.

What remedy or remedies are available to the taxpayer? Explain. (4%)

SUGGESTED ANSWER:

The remedy of a taxpayer is to avail of either of two options:

- 1. File a petition for review with the CTA within 30 days after**

the expiration of the 180-day period from submission of all relevant documents; or

- 2. Await the final decision of the Commissioner on the disputed assessment and appeal such final decision to the CTA within 30 days after receipt of a copy of such decision.**

These options are mutually exclusive such that resort to one bars the application of the other (RCBC v. CIR, 522 SCRA 144 (2007)).

Taxpayer: Request for Reconsideration vs. Request for Reinvestigation (2012)

VI. The BIR issued in 2010 a final assessment notice and demand letter against X Corporation covering deficiency income tax for the year 2008 in the amount of P10 Million, X Corporation earlier requested the advice of a lawyer on whether or not it should file a request for reconsideration or a request for reinvestigation. The lawyer said it does not matter whether the protest filed against the assessment is a request for reconsideration or a request for reinvestigation, because it has the same consequences or implications.

(A) What are the differences between a request for reconsideration and a request for reinvestigation? (5%)

SUGGESTED ANSWER:

Request for Reconsideration – plea for evaluation of assessment on the basis of



existing records without need of presentation of additional evidence. It does not suspend the period to collect the deficiency tax.

Request for Reinvestigation – plea for re-evaluation on the basis of newly discovered evidence which are to be introduced for examination for the first time. It suspends the prescriptive period to collect.

(B) Do you agree with the advice of the lawyer? Explain your answer. (5%)

SUGGESTED ANSWER:

No, in view of the aforesaid difference between Request for Reconsideration & Request for Reinvestigation.

Local & Real Property Taxes

Local Taxation: Business Tax: Taxable Period, Payment in Instalment (2008)

XIII. MNO Corporation was organized on July 1, 2006, to engage in trading of school supplies, with principal place of business in Cubao, Quezon City. Its books of accounts and income statement showing gross sales as follows:

July 1, 2006 to December 31, 2006
P5,000,000.
January 1, 2007 to June 30, 2007
P10,000,000.

July 1, 2007 to December 31, 2007
15,000,000.

Since MNO Corporation adopted fiscal year ending June 30 as its taxable year for income tax purposes, it paid its 2% business tax for fiscal year ending June 30, 2007 based on gross sales of P15 million. However, the Quezon City Treasurer assessed the corporation for deficiency business tax for 2007 based on gross sales of P25 million alleging that local business taxes shall be computed based on calendar year.

(A) Is the position of the city treasurer tenable? Explain. (3%)

SUGGESTED ANSWER:

Yes. Under Sec. 165 of the Local Government Code, the taxable period for the payment of business taxes is the calendar year.

(B) May the deficiency business tax be paid in installments without surcharge and interest? Explain. (3%)

SUGGESTED ANSWER:

Yes, provided there is a valid tax ordinance enacted for that purpose that does not impose such surcharge and/or



interest on any taxes not paid (Sec. 192, Local Government Code).

ALTERNATIVE ANSWER:

No, There is no ordinance authorizing the instalment payment of business taxes without interest and surcharges (See Sec. 192, Local Government Code).

Local Taxation: Business Tax on Contractors (2010)

(Iie) What is the basis for the computation of business tax on contractors under the Local Government Code? (2%)

SUGGESTED ANSWER:

The business tax on contractors is a graduated annual fixed tax based on the gross receipts for the preceding calendar year. However, when the gross receipts amount to P2 million or more, the business tax on contractors is imposed as a percentage tax at the rate of 50% of 1% (Sec 143 (e), LGC).

Local Taxation: Legality/Constitutionality; Legislative Franchise (2007)

II. The Local Government Code took effect on January 1, 1992.

PLDT's legislative franchise was granted sometime before 1992. Its franchise provides that PLDT will only pay 3% franchise tax in lieu of all taxes.

The legislative franchises of Smart and Globe Telecoms were granted in 1998. Their

legislative franchises state that they will pay only 5% franchise tax in lieu of all taxes.

The Province of Zamboanga del Norte passed an ordinance in 1997 that imposes a local franchise tax on all telecommunication companies operation within the province. The tax is 50% of 1% of the gross annual receipts of the preceding calendar year based on the incoming receipts, or receipts realized, within its territorial jurisdiction.

Is the ordinance valid? Are PLDT, Smart and Globe liable to pay franchise taxes? Reason briefly. (10%)

SUGGESTED ANSWER:

The ordinance is valid. The Local Government Code explicitly authorizes provincial governments, notwithstanding any law or other special law, to impose a tax on business enjoying a franchise at the rate of 50% of 1% based on the gross annual receipts during the preceding year within the province. (Section 137, LGC).

PLDT is liable to the franchise tax levied by the province of Zamboanga del Norte. The tax exemption privileges on franchises granted before the passage of the Local Government Code are effectively repealed by the latter law.



(PLDT v. City of Davao, 363 SCRA 522 [2001]).

Smart and Globe, however, are not liable to the franchise tax imposed under the provincial ordinance. The legislative franchises of Smart and Globe were granted in 1998, long after the Local Government Code took effect. Congress is deemed to have been aware of the provisions of the earlier law, when it granted the exemption. Accordingly, the latest will of the legislature to grant tax exemption must be respected.

Local Taxation; Constitutionality; Professional or Occupation Taxes (2009)

(VIII) The City of Manila enacted Ordinance No. 55-66 which imposes a municipal occupation tax on persons practicing various professions in the city. Among those subjected to the occupation tax were lawyers. Atty. Mariano Batas, who has a law office in Manila, pays the ordinance-imposed occupation tax under protest. He goes to court to assail the validity of the ordinance for being discriminatory. Decide with reasons. (3%)

SUGGESTED ANSWER:

The ordinance is valid. The tax imposed by the ordinance is in the nature of a professional tax which is authorized by law to be imposed by cities (Sec 151 in relation o Sec 139, LGC). The ordinance is not discriminatory because the City Council has the power to select the subjects of taxation and impose the same tax on those belonging to the same class. The authority given by law to cities is to impose a professional tax only on persons engaged in the practice of their profession requiring government

examination and lawyers are included within that class of professionals.

ALTERNATIVE ANSWER:

The ordinance is valid. The ordinance is not discriminatory because it complies with the rule of equality and uniformity in taxation. Equality and uniformity in local taxation means that all subjects or objects of taxation belonging to the same class shall be taxed at the same rate within the territorial jurisdiction of the taxing authority or local government unit and not necessarily in comparison with other units although belonging to the same political subdivision. In fine, uniformity is required only within the geographical limits of the taxing authority. It is not for the Court to judge what particular cities or municipalities should be empowered to impose occupation tax. In case at bar, the imposition of the occupation tax to persons exercising various professionals in the city is well within the authority of the City of Manila (*Punsalan et. al. v. City of Manila, 95 Phil. 46 (1954)*).

Local Taxation; Legality/Constitutionality; Regulatory Measures (2009)

(VI) The Sanggunian Bayan of the Municipality of Sampaloc, Quezon, passed an ordinance imposing a storage fee of ten centavos (P0.10) for every 100 kilos of copra deposited in any bodega within the Municipality's jurisdiction. The Metropolitan Manufacturing Corporation (MMC), with principal office in Makati, is engaged in the manufacture of soap, edible oil, margarine, and other coconut oil-based products. It has a warehouse in Sampaloc, Quezon, used as storage space for the copra purchased in Sampaloc and nearby towns before the same is shipped to Makati. MMC goes to court to challenge the validity of the ordinance, demanding the refund of the storage fees it paid under protest.



Is the ordinance valid? Explain your answer. (4%)

SUGGESTED ANSWER:

Yes. The municipality is authorized to impose reasonable fees and charges as a regulatory measure in an amount commensurate with the cost of regulations, inspection and licensing (Sec 147, LGC). In the case at bar, the storage of copra in any warehouse within the municipality can be the proper subject of regulation pursuant to the police power granted to municipalities under the Revised Administrative Code of the "general welfare clause." A warehouse used for keeping or storing copra is an establishment likely to endanger the public safety or likely to give rise to conflagration because the oil content of the copra, when ignited, is difficult to put under control by water and the use of chemicals is necessary to put out the fire. It is, thus, reasonable that the Municipality impose storage fees for its own surveillance and lookout (*Procter & Gamble Philippine Manufacturing Corporation v. Municipality of Jagna, Province of Bohol, 94 SCRA 894 (1979)*).

**Local Taxation: Legality/
Constitutionality; Tax Rate (2008)**

VIII. The City of Manila enacted an ordinance, imposing a 5% tax on gross receipts on rentals of space in privately-owned public markets. BAT Corporation questioned the validity of the ordinance, stating that the tax is an income tax, which cannot be imposed by the city government. Do you agree with the position of BAT Corporation? Explain (5%)

SUGGESTED ANSWER:

BAT Corporation is correct in questioning the ordinance, but not because it is income tax. The tax imposed is authorized by Sec. 143 (H) of the Local Government Code. However, the maximum rate that can be imposed by the city is only 3% (Sec. 151, Local Government Code). Therefore, tax imposed by Manila is invalid for exceeding the amount allowed by law.

Local Taxation; Principal Office and Branches; Situs of Taxation (2010)

(XII) Ferremaro, Inc., a manufacturer of handcrafted shoes, maintains its principal office in Cubao, Quezon City. It has branches/sales offices in Cebu and Davao. Its factory is located in Marikina City where most of its workers live. Its principal office in Quezon City is also a sales office.

Sales of finished products for calendar year 2009 in the amount of P10 million were made at the following locations:

i) Cebu branch	25%
ii) Davao branch	15%
iii) Quezon City branch	60%
Total	100%

Where should the applicable local taxes on the shoes be paid? Explain. (3%)

SUGGESTED ANSWER:

Twenty five percent (25%) of total sales or P2.5 million shall be taxed in Cebu and 15% of total sales or P1.5 million shall be taxed in Davao. For the



remaining 60% sales amounting to P6 million which are recorded in the principal office, 30% thereof or P1.8 million is taxable in Quezon City where the principal office is located and 70% or P4.2 million is taxable in Marikina City where the factory is located.

Under the law, manufacturers maintaining a branch or sales outlet shall record the sale in the branch or sales outlet making the sale and pay the tax in the city or municipality where the branch or outlet is located. Since Ferremaro, Inc. maintains one factory, the sales recorded in the principal office shall be allocated and 30% of said sales are taxable in the place where the principal office is located while 70% is taxable in the place where the factory is located (Sec. 150, LGC).

Local Taxation: Retiring Business (2010)

(IIf) How are retiring businesses taxed under the Local Government Code? (2%)

SUGGESTED ANSWER:

Retiring businesses under the LGC are taxed in their gross sales or gross receipts in the current year and not in the preceding year. If the tax paid in the current year is less than the tax due on gross sales or receipts of the current year, the difference shall be paid before the business is considered officially retired (Sec 145, LGC).

Local Taxation; Taxing Power; Limitation (2010)

(XIII) XYZ Shipping Corporation is a branch of an international shipping line with voyages between Manila and the West Coast of the U.S. The company's vessels load and unload cargoes at the Port of Manila, albeit it does not have a branch or sales office in Manila. All the bills of lading and invoices are issued by the branch office

in Makati which is also the company's principal office.

The City of Manila enacted an ordinance levying a 2% tax on gross receipts of shipping lines using the Port of Manila.

Can the City Government of Manila legally impose said levy on the corporation? Explain. (3%)

SUGGESTED ANSWER:

No, Manila cannot legally levy the 2% Gross Receipts Tax on the shipping line, because taxes on the gross receipts of transportation contractors and passengers or freight by hire and common carriers by air, land or water is a limitation on the exercise of taxing powers by local government units (Sec 133 (j), LGC).

ALTERNATIVE ANSWER:

No. Since the gross receipts of an international shipping company is subject to tax under the Internal Revenue Code, the power to tax is impliedly withheld from local government units. This is the "rule on preemption or exclusionary rule" which applies unless by express provision of law, LGUs are given the power to tax that field already covered by the taxing power of the National government (*Victorias Milling Co., Inc. v. Mun. of Victorias, L-2113, Sept 27, 1968; Sec 133, LGC*).

Local Taxation: Taxing Power; Nature (2007)

- I. What is the nature of the taxing power of the provinces, municipalities and cities? How will the local government units be able to exercise their taxing powers? (5%)

"Never Let The Odds Keep You From Pursuing What You Know In Your Heart You Were Meant To Do."-Leroy Satchel Paige



SUGGESTED ANSWER:

The taxing power of the provinces, municipalities and cities is directly conferred by the Constitution by giving them the authority to create their own sources of revenue. The local government units do not exercise the power to tax as an inherent power or by a valid delegation of the power by the Congress, but pursuant to a direct authority conferred by the Constitution. (Mactan Cebu International Airport Authority v. Marcos, 261 SCRA 667 [1996]; NPC v. City of Cabanatuan, 401 SCRA 259 [2003]).

The local government units exercise the power to tax by levying taxes, fees and charges consistent with the basic policy of local autonomy, and to assess and collect all these taxes, fees and charges which will exclusively accrue to them. The local government units are authorized to pass tax ordinances (levy) and to pursue actions for the assessment and collection of the taxes imposed in the said ordinances. (Section 129, and 132, Local Government Code).

Real Property Taxation: Beneficial Use of the Property (2013)

(VIII) Mr. Amado leased a piece of land owned by the Municipality of Pinagsabitan and built a warehouse on the property for his business operations. The Municipal

Assessor assessed Mr. Amado for real property taxes on the land and the warehouse. Mr. Amado objected to the assessment, contending that he should not be asked to pay realty taxes on the land since it is municipal property.

Was the assessment proper? (5%)

SUGGESTED ANSWER:

Yes, the assessment is proper. The land, although owned by the municipality, is not exempt from real property tax because the beneficial use has been granted to a taxable person. (Sec 234 (a), LGC)

Real Property Tax; Exemption; Religious Activities (2010)

(XIV) A inherited a two-storey building in Makati from his father, a real estate broker in the '60s. A group of Tibetan monks approached A and offered to lease the building in order to use it as a venue for their Buddhist rituals and ceremonies. A accepted the rental of P1 million for the whole year.

The following year, the City Assessor issued an assessment against A for non-payment of real property taxes.

Is the assessor justified in assessing A's deficiency real property taxes? Explain. (3%)

SUGGESTED ANSWER:

No. The property is exempt from real property tax by virtue of the beneficial use thereof by the Tibetan monks for their religious rituals and ceremonies. A property that is actually, directly and exclusively used for religious purposes is exempt from the real property tax (Sec 234, LGC; Sec 28(3), Article IV, Phil. Constitution). The test of exemption from the tax is not ownership but beneficial use of the property (City of



Baguio v. Busuego, L-29772, Sept 18, 1980).

Real Property Taxation: Liable for Payment; Taxpayer (2009)

(IX) Republic Power Corporation (RPC) is a government-owned and controlled corporation engaged in the supply, generation and transmission of electric power. In 2005, in order to provide electricity to Southern Tagalog provinces, RPC entered into an agreement with Jethro Energy Corporation (JEC), for the lease of JEC's power barges which shall be berthed at the port of Batangas City. The contract provides that JEC shall own the power barges and the fixtures, fittings, machinery, and equipment therein, all of which JEC shall supply at its own cost, and that JEC shall operate, manage and maintain the power barges for the purpose of converting the fuel of RPC into electricity. The contract also stipulates that all real estate taxes and assessments, rates and other charges, in respect of the power barges, shall be for the account of RPC.

In 2007, JEC received an assessment of real property taxes on the power barges from the Assessor of Batangas City. JEC sought reconsideration of the assessment on the ground that the power barges are exempt from real estate taxes under Section 234 [c] of R.A. 7160 as they are actually, directly and exclusively used by RPC, a government-owned and controlled corporation. Furthermore, even assuming that the power barges are subject to real property tax, RPC should be held liable therefor, in accordance with the terms of the lease agreement. Is the contention of JEC correct? Explain your answer. (4%)

SUGGESTED ANSWER:

No, the contention of JEC is not correct. The owner of the power barges is JEC which is required to operate, manage and maintain the power barges for the purpose of converting the fuel of RPC

into electricity. This belies the claim that RPC, a government-owned and controlled corporation engaged in the supply, generation and transmission of electric power, is the actual, direct and exclusive user of the barge, hence, does not fall within the purview of the exempting provision of Sec 234(c) of RA 7160. Likewise, the argument that RPC should be liable to the real property taxes consonant with the contract is devoid of merit. The liability for the payment of the real estate taxes is determined by law and not by the agreement of the parties (FELS Energy Inc. v. The Province of Batangas, 516 SCRA 186 (2007)).

Real Property Taxation: Liable for Payment; Period (2012)

III. Mr. Jose Castillo is a resident Filipino citizen. He purchased a parcel of land in Makati City in 1970 at a consideration of P1 Million. In 2011, the land, which remained undeveloped and idle had a fair market value of P20 Million. Mr. Antonio Ayala, another Filipino citizen, is very much interested in the property and he offered to buy the same for P20 Million. The Assessor of Makati City re-assessed in 2011 the property at P10 Million.

(A) When is Mr. Castillo liable for real property tax on the land beginning 2011 or beginning 2012? Explain your answer. (2%)

SUGGESTED ANSWER:

Mr. Castillo shall be liable to the real property tax based on the re-assessment beginning 2012. All re-assessments made after the first day of any year shall take effect on the first day of January of the succeeding year (Section 221,LGC).

[Note: The question is misleading. Mr. Castillo is liable to the real property tax on



the property when he became the owner thereof although his liability increases upon re-assessment of the property.]

Remedies in Local Taxes

Taxpayer: Local Tax; Period to File Protest and Appeal (2010)

(IX) On May 15, 2009, La Manga Trading Corporation received a deficiency business tax assessment of P1,500,000.00 from the Pasay City Treasurer. On June 30, 2009, the corporation contested the assessment by filing a written protest with the City Treasurer.

On October 10, 2009, the corporation received a collection letter from the City Treasurer, drawing it to file on October 25, 2009 an appeal against the assessment before the Pasay Regional Trial Court (RTC).

(IXa) Was the protest of the corporation filed on time? Explain. (3%)

SUGGESTED ANSWER:

The protest was filed on time. The taxpayer has the right to protest an assessment within 60 days from receipt thereof (Sec 195, LGC).

(IXb) Was the appeal with the Pasay RTC filed on time? Explain. (3%)

SUGGESTED ANSWER:

The appeal was not filed on time. When an assessment is protested, the treasurer has 60 days within which to decide. The taxpayer has 30 days from receipt of the denial of the protest or from the lapse of the 60-day period to decide whichever comes first, otherwise the assessment becomes conclusive and unappealable. Since no decision becomes conclusive

and unappealable. Since no decision on the protest was made, the taxpayer should have appealed to the RTC within 30 days from the lapse of the period to decide the protest (Sec 195, LGC).

Tariff And Customs Duties

Customs: Exempted Transactions; Importation and Use within SBMA (2008)

IV. JKL Corporation is a domestic corporation engaged in the importation and sale of motor vehicles in the Philippines and is duly registered with the Subic Bay Metropolitan Authority (SBMA). In December 2007, it imported several second-hand motor vehicles from Japan and Korea, which it stores in a warehouse in Subic Bay. It sold these motor vehicles in April 2008, to persons residing in the customs territory.

(A) Are the importations of motor vehicles from abroad subject to customs duties and value added taxes? Explain. (4%)

SUGGESTED ANSWER:

No. because domestic corporations importing used vehicles that are “stored, used or traded” within the Subic Naval Base Area enjoy an exemption from customs duties and VAT, provided they are registered with the SBMA (R.A. 7096; Executive Secretary v. Southwing Heavy Industries, G.R. No. 164171, 20 February 2006).

(B) If they are taxable, when must the duties and taxes is paid? What are the bases for and purposes of computing customs duties and VAT? To whom must the duties and VAT be paid? Explain. (3%)



SUGGESTED ANSWER:

Duties and taxes must be paid upon release of the vehicle from Customs' custody. Custom duties for motor vehicles are based on the value being used by the Bureau for assessing customs duties. VAT is also based on the value being used by the Bureau for motor vehicles (Sec. 107[A] NIRC). Duties must be paid to the Bureau of Customs. VAT must be paid to the Bureau of Internal Revenue.

Customs: Forfeiture Proceeding, Nature (2008)

IX. William Antonio imported into the Philippines a luxury car worth US\$100,000. This car was, however, declared only for US\$20,000 and corresponding customs duties and taxes were paid thereon. Subsequently, the Collector of Customs discovered the underdeclaration and he initiated forfeiture proceedings of the imported car.

- (A) May the Collector of Customs declare the imported car forfeited in favor of the government? Explain. (3%)

SUGGESTED ANSWER:

Yes, Under-declaration of value is a ground for forfeiture (See Sec. 1206, Tariff and Customs Code; See also *Feeder International v. CA*, G.R. No. 94262, 31 May 1991).

- (B) Are forfeiture proceedings of goods illegally imported criminal in nature? Explain. (3%)

SUGGESTED ANSWER:

No, a forfeiture proceeding under tariff and customs laws is not penal in nature, the main purpose of which is to enforce the administrative fines or forfeiture incident to unlawful importation of goods or their deliberate possession. The penalty in seizure cases is distinct and

separate from the criminal liability that might be imposed against the indicted importer or possessor and both kinds of penalties may be imposed (*Peo. v. CFI of Rizal, et al.*, No. L-41686, 17 November 1980).

Customs: Jurisdiction; Issuance of Warrant of Search and Seizure (2009)

(V) Jessie brought into the Philippines a foreign-made luxury car, and paid less than the actual taxes and duties due. Due to the discrepancy, the Bureau of Customs instituted seizure proceedings and issued a warrant of seizure and detention. The car, then parked inside a pay parking garage, was seized and brought by government agents to a government impounding facility. The Collector of Customs denied Jessie's request for the withdrawal of the warrant.

Aggrieved, Jessie filed against the Collector a criminal complaint for usurpation of judicial functions on the ground that only a judge may issue a warrant of search and seizure.

- a. Resolve with reasons Jessie's criminal complaint. (4%)

SUGGESTED ANSWER:

The criminal complaint is bereft of merit. The issuance of a warrant of seizure and detention by the Collector of Customs for goods released contrary to law, as when there is underpayment of taxes and duties, is his primary and exclusive jurisdiction and precludes the judge of regular courts from taking cognizance of the subject matter. Accordingly, what was done by the Collector could not be a basis of a prosecution for the usurpation of judicial functions (*Commissioner v. Navarro*, 77 SCRA 264 (1977)).

- b. Would your answer be the same if the luxury car was seized while



parked inside the garage of Jessie's residence? Why or why not? (4%)

SUGGESTED ANSWER:

No. The luxury car being in a dwelling house, cannot be seized by officers of the Bureau of Customs exercising police authority without a search warrant issued by a judge of a competent court (Sec 2209, TCC; *Pacis v. Pamaran*, 56 SCRA 16 (1974)).

Other Related Matters

BIR: Bank Deposits Secrecy Violation (2012)

VII. (A) May the bank deposits – peso and foreign currency – of an individual taxpayer be disclosed by a commercial bank to the Commissioner of Internal Revenue, in connection with a tax investigation being conducted by revenue officials, without violating the relevant bank secrecy laws? Explain your answer. (5%)

SUGGESTED ANSWER:

No. As a general rule, bank deposits of an individual taxpayer may not be disclosed by a commercial bank to the Commissioner. As exceptions, the Commissioner is authorized to inquire into the bank deposits of: (1) a decedent to determine his gross estate; and (2) any taxpayer who has filed an application for compromise of his tax liability by reason of financial incapacity to pay his tax liability.

In case a taxpayer files an application to compromise the payment of his tax liabilities on his claim that his financial position demonstrates a clear inability to pay the tax assessed, his application shall not be considered unless and until

he waives in writing his privilege under Republic Act No. 1405 (Bank Secrecy Law) or under other general or special laws, and such waiver shall constitute the authority of the Commissioner to inquire into the bank deposits of the taxpayer (Section 6, NIRC).

(B) In 2011 the Commissioner of the US Internal Revenue Service (IRS) requested in writing the Commissioner of Internal Revenue to get the information from a bank in the Philippines, regarding the deposits of a US Citizen residing in the Philippines, who is under examination by the officials of the US IRS, pursuant to the US- Philippine Tax Treaty and other existing laws. Should the BIR Commissioner agree to obtain such information from the bank and provide the same to the IRS? Explain your answer. (5%)

SUGGESTED ANSWER:

Yes. The Commissioner should agree to the request pursuant to the principle of international comity. The Commissioner of Internal Revenue has the authority to inquire into bank deposit accounts and related information held by financial institutions of a specific taxpayer subject of a request for the supply of tax information from a foreign tax authority pursuant to an international convention or agreement to which the Philippines is a signatory or party of (Section 3, RA 10021).

(C) Is the bank secrecy law in the Philippines violated when the BIR issues a Warrant of Garnishment directed against a domestic bank requiring it not to allow any withdrawal from any existing bank deposit of the delinquent taxpayer mentioned in the Warrant and to freeze the same until the tax delinquency of said taxpayer is settled with the BIR? Explain your answer. (5%)

SUGGESTED ANSWER:

No. Garnishment is an administrative remedy allowed by law to enforce a tax liability. Bank accounts shall be



garnished by serving a warrant of garnishment upon the taxpayer and upon the president, manager, treasurer or other responsible officer of the bank. Upon receipt of the warrant of garnishment, the bank shall turn over to the Commissioner so much of the bank accounts as may be sufficient to satisfy the claim of the Government (Section 208, NIRC).

MULTIPLE CHOICE QUESTIONS (MCQ)

2013 Taxation Law Exam MCQ (October 13, 2013)

I. ABC Corp. was dissolved and liquidating dividends were declared and paid to the stockholders.

What tax consequence follows? (1%)

(A) ABC Corp. should deduct a final tax of 10% from the dividends.

(B) The stockholders should declare their gain from their investment and pay income tax at the ordinary rates.

(C) The dividends are exempt from tax.

(D) ABC Corp. should withhold a 10% creditable tax.

SUGGESTED ANSWER:

(B) Section 39, BIR Ruling 39-02, Nov. 11, 2002

II. MGC Corp. secured an income tax holiday for 5 years as a pioneer industry. On the fourth year of the tax holiday, MGC Corp. declared and paid cash dividends to

its stockholders, all of whom are individuals.

Are the dividends taxable? (1%)

(A) The dividends are taxable; the tax exemption of MGC Corp. does not extend to its stockholders.

(B) The dividends are tax exempt because of MGC Corp.'s income tax holiday.

(C) The dividends are taxable if they exceed 50% of MGC Corp.'s retained earnings.

(D) The dividends are exempt if paid before the end of MGC Corp.'s fiscal year.

SUGGESTED ANSWER:

(A) Sunio v. NLRC, G.R. No. 57767, Jan. 31, 1984

III. Mr. Alas sells shoes in Makati through a retail store. He pays the VAT on his gross sales to the BIR and the municipal license tax based on the same gross sales to the City of Makati. He comes to you for advice because he thinks he is being subjected to double taxation.

What advice will you give him? (1%)

(A) Yes, there is double taxation and it is oppressive.

(B) The City of Makati does not have this power.

(C) Yes, there is double taxation and this is illegal in the Philippines.

(D) Double taxation is allowed where one tax is imposed by the national government and the other by the local government.

SUGGESTED ANSWER:

(D) CIR v. Solidbank Corp., G.R. No. 148191, Nov. 25, 2003

IV. Congress passed a sin tax law that increased the tax rates on cigarettes by 1,000%. The law was thought to be sufficient to drive many cigarette companies out of business, and was questioned in court by a cigarette company that would go out of business because it would not be able to pay the increased tax.

The cigarette company is _____ (1%)

(A) wrong because taxes are the lifeblood of the government



(B) wrong because the law recognizes that the power to tax is the power to destroy

(C) correct because no government can deprive a person of his livelihood

(D) correct because Congress, in this case, exceeded its power to tax

SUGGESTED ANSWER:

(B) McCulloch v. Maryland, 17 U.S. 4 Wheat 316 (1819)

V. Mr. Alvarez is in the retail business. He received a deficiency tax assessment from the BIR containing only the computation of the deficiency tax and the penalties, without any explanation of the factual and legal bases for the assessment.

Is the assessment valid? (1%)

(A) The assessment is valid; all that Mr. Alvarez has to know is the amount of the tax.

(B) The assessment is invalid; the law requires a statement of the facts and the law upon which the assessment is based.

(C) The assessment is valid but Mr. Alvarez can still contest it.

(D) The assessment is invalid because Mr. Alvarez has no way to determine if the computation is erroneous.

SUGGESTED ANSWER:

(B) Section 228, NIRC, Azucena Reyes v. Commissioner

VI. In 2010, Mr. Platon sent his sister Helen \$1,000 via a telegraphic transfer through the Bank of PI. The bank's remittance clerk made a mistake and credited Helen with \$1,000,000 which she promptly withdrew. The bank demanded the return of the mistakenly credited excess, but Helen refused. The BIR entered the picture and investigated Helen.

Would the BIR be correct if it determines that Helen earned taxable income under these facts? (1%)

(A) No, she had no income because she had no right to the mistakenly credited funds.

(B) Yes, income is income regardless of the source.

(C) No, it was not her fault that the funds in excess of \$1,000 were credited to her.

(D) No, the funds in excess of \$1,000 were in effect donated to her.

SUGGESTED ANSWER:

(B) Javier v. Commissioner, 199 SCRA 824, G.R. No. 78953

VII. The municipality of San Isidro passed an ordinance imposing a tax on installation managers. At that time, there was only one installation manager in the municipality; thus, only he would be liable for the tax.

Is the law constitutional? (1%)

(A) It is unconstitutional because it clearly discriminates against this person.

(B) It is unconstitutional for lack of legal basis.

(C) It is constitutional as it applies to all persons in that class.

(D) It is constitutional because the power to tax is the power to destroy.

SUGGESTED ANSWER:

(C) Shell Co. of P.I. v. Vaño, 94 Phil 387

VIII. XYZ Corporation manufactures glass panels and is almost at the point of insolvency. It has no more cash and all it has are unsold glass panels. It received an assessment from the BIR for deficiency income taxes. It wants to pay but due to lack of cash, it seeks permission to pay in kind with glass panels.

Should the BIR grant the requested permission? (1%)

(A) It should grant permission to make payment convenient to taxpayers.

(B) It should not grant permission because a tax is generally a pecuniary burden.

(C) It should grant permission; otherwise, XYZ Corporation would not be able to pay.

(D) It should not grant permission because the government does not



have the storage facilities for glass panels.

SUGGESTED ANSWER:

(B) Characteristics of Taxes

IX. Prior to the VAT law, sales of cars were subject to a sales tax but the tax applied only to the original or the first sale; the second and subsequent sales were not subject to tax.

Deltoid Motors, Inc. (Deltoid) hit on the idea of setting up a wholly-owned subsidiary, Gonmad Motors, Inc. (Gonmad), and of selling its assembled cars to Gonmad at a low price so it would pay a lower tax on the first sale. Gonmad would then sell the cars to the public at a higher price without paying any sales tax on this subsequent sale.

Characterize the arrangement. (1%)

A. The plan is a legitimate exercise of tax planning and merely takes advantage of a loophole in the law.

B. The plan is legal because the government collects taxes anyway.

C. The plan is improper; the veil of corporate fiction can be pierced so that the second sale will be considered the taxable sale.

D. The government must respect Gonmad's separate juridical personality and Deltoid's taxable sale to it.

SUGGESTED ANSWER:

(C) Koppel Philippines Inc. v. Yatco, 77 Phil 496

X. PRT Corp. purchased a residential house and lot with a swimming pool in an upscale subdivision and required the company president to stay there without paying rent; it reasoned out that the company president must maintain a certain image and be able to entertain guests at the house to promote the company's business. The company president declared that because they are childless, he and his wife could very well live in a smaller house.

Was there a taxable fringe benefit? (1%)

(A) There was no taxable fringe benefit since it was for the

convenience of the employer and was necessary for its business.

(B) There was a taxable fringe benefit since the stay at the house was for free.

(C) There was a taxable fringe benefit because the house was very luxurious.

(D) There was no taxable fringe benefit because the company president was only required to stay there and did not demand free housing.

SUGGESTED ANSWER:

(A) Section 33, NIRC; RR No. 3-98

XI. Taxpayer A was required by the BIR to sign and submit a waiver of the statute of limitations on the assessment period, to give the BIR more time to complete its investigation. The BIR accepted the waiver but failed to indicate the date of its acceptance.

What is the legal status of the waiver? (1%)

(A) The waiver is valid because the date of acceptance is immaterial and unimportant.

(B) The waiver is invalid; the taxpayer cannot be required to waive the statute of limitations.

(C) The waiver is invalid; the date of acceptance is crucial in counting the start of the period of suspension of the prescriptive period.

(D) The waiver is valid, having been accepted by the BIR.

SUGGESTED ANSWER:

(C) Commissioner v. Kudos Metal Corp., G.R. No. 178087, May 5, 2010

XII. Taxpayer Andy received on January 3, 2010 a preliminary assessment notice (PAN) from the BIR, stating that he had fifteen (15) days from its receipt to comment or to file a protest. Eight (8) days later (or on January 11, 2010), before he could comment or file a protest, Andy received the final assessment notice (FAN).

Decide on the validity of the FAN. (1%)

(A) The FAN is invalid; Andy was not given the chance to respond



to the PAN, in violation of his due process rights.

(B) The FAN is invalid for being premature.

(C) The FAN is valid since it was issued before the right to assess prescribed.

(D) The FAN is valid. There is no legal requirement that the FAN should await the protest to the PAN because protest to the PAN is not mandatory.

SUGGESTED ANSWER:**(A)Section 228, NIRC; RR No. 12-99**

XIII. MSI Corp. imports orange and lemon concentrates as raw materials for the fruit drinks it sells locally. The Bureau of Customs (BOC) imposed a 1% duty rate on the concentrates. Subsequently, the BOC changed its position and held that the concentrates should be taxed at 7% duty rate. MSI disagreed with the ruling and questioned it in the CTA which upheld MSI's position. The Commissioner of Customs appealed to the CTA en banc without filing a motion for reconsideration. Resolve the appeal. (1%)

(A) The appeal should be dismissed because a motion for reconsideration is mandatory.

(B) The appeal should be dismissed for having been filed out of time.

(C) The appeal should be given due course since a motion for reconsideration is a useless exercise.

(D) The appeal should be upheld to be fair to the government which needs taxes.

SUGGESTED ANSWER:**(A)RA 9282; Rule 8, Revised Rules of the CTA**

XIV. The spouses Jun and Elvira Sandoval purchased a piece of land for ₱5,000,000 and included their two (2) minor children as co-purchasers in the Deed of Absolute Sale. The Commissioner of Internal Revenue (CIR) ruled that there was an implied donation and assessed donors' taxes against the spouses.

Rule on the CIR's action. (1%)

(A) The CIR is wrong; a donation must be express.

(B) The CIR is wrong; financial capacity is not a requirement for a valid sale.

(C) The CIR is correct; the amount involved is huge and ultimately ends up with the children.

(D) The CIR is correct; there was animus donandi since the children had no financial capacity to be co-purchasers.**SUGGESTED ANSWER:****(D)Spouse Evono v. Department of Finance, et. al., CTA EB Case No. 705, June 4, 2012**

XV. Pheleco is a power generation and distribution company operating mainly from the City of Taguig. It owns electric poles which it also rents out to other companies that use poles such as telephone and cable companies. Taguig passed an ordinance imposing a fee equivalent to 1% of the annual rental for these poles. Pheleco questioned the legality of the ordinance on the ground that it imposes an income tax which local government units (LGUs) are prohibited from imposing.

Rule on the validity of the ordinance. (1%)

(A) The ordinance is void; the fee is based on rental income and is therefore a tax on income.

(B) The ordinance is valid as a legitimate exercise of police power to regulate electric poles.

(C) The ordinance is void; 1% of annual rental is excessive and oppressive.

(D) The ordinance is valid; an LGU may impose a tax on income.

SUGGESTED ANSWER:**(B)Section 129, RA 7160**

XVI. Aleta sued Boboy for breach of promise to marry. Boboy lost the case and duly paid the court's award that included, among others, ₱100,000 as moral damages for the mental anguish Aleta suffered.

Did Aleta earn a taxable income? (1%)



(A) She had a taxable income of ₱100,000 since income is income from whatever source.

(B) She had no taxable income because it was a donation.

(C) She had taxable income since she made a profit.

(D) She had no taxable income since moral damages are compensatory.

SUGGESTED ANSWER:

(D)Section 32 (B)(4), NIRC

XVII. Mr. Mayuga donated his residential house and lot to his son and duly paid the donor's tax. In the Deed of Donation, Mr. Mayuga expressly reserved for himself the usufruct over the property for as long as he lived.

Describe the donated property from the taxation perspective. (1%)

(A) The property will form part of Mr. Mayuga's gross estate when he dies.

(B) The property will not form part of Mr. Mayuga's gross estate when he dies because he paid the donor's tax.

(C) The property will form part of Mr. Mayuga's gross estate because he died soon after the donation.

(D) The property will not form part of Mr. Mayuga's gross estate because it is no longer his.

SUGGESTED ANSWER:

(A)Section 85(B), NIRC

XVIII. Mr. Z made an importation which he declared at the Bureau of Customs (BOC) as "Used Truck Replacement Parts". Upon investigation, the container vans contained 15 units of Porsche and Ferrari cars.

Characterize Mr. Z's action. (1%)

(A) Mr. Z committed smuggling.

(B) Mr. Z did not commit smuggling because he submitted his shipment to BOC examination.

(C) Mr. Z only made a misdeclaration, but did not commit smuggling.

(D) Mr. Z did not commit smuggling because the shipment has not left the customs area.

SUGGESTED ANSWER:

(A)Section 3601, TCCP; Rieta v. People of the Philippines, 436 SCRA 273

XIX. Mr. A was preparing his income tax return and had some doubt on whether a commission he earned should be declared for the current year or for the succeeding year. He sought the opinion of his lawyer who advised him to report the commission in the succeeding year. He heeded his lawyer's advice and reported the commission in the succeeding year. The lawyer's advice turned out to be wrong; in Mr. A's petition against the BIR assessment, the court ruled against Mr. A.

Is Mr. A guilty of fraud? (1%)

(A) Mr. A is not guilty of fraud as he simply followed the advice of his lawyer.

(B) Mr. A is guilty of fraud; he deliberately did not report the commission in the current year when he should have done so.

(C) Mr. A's lawyer should pay the tax for giving the wrong advice.

(D) Mr. A is guilty for failing to consult his accountant.

SUGGESTED ANSWER:

(A)CIR v. CA, G.R. No. 119322, June 4, 1996

XX. The BIR, through the Commissioner, instituted a system requiring taxpayers to submit to the BIR a summary list of their sales and purchases during the year, indicating the name of the seller or the buyer and the amount. Based on these lists, the BIR discovered that in 2004 ABC Corp. purchased from XYZ Corp. goods worth ₱5,000,000. XYZ Corp. did not declare these for income tax purposes as its reported gross sales for 2004 was only ₱1,000,000.

Which of the following defenses may XYZ Corp. interpose in an assessment against it by the BIR? (1%)



(A) The BIR has no authority to obtain third party information to assess taxpayers.

(B) The third party information is inadmissible as hearsay evidence.

(C) The system of requiring taxpayers to submit third party information is illegal for violating the right to privacy.

(D) None of the above.

SUGGESTED ANSWER:

(D) Sections 5 and 6, NIRC

2012 Taxation Law Exam MCQ (October 14, 2012)

(1) Bank A deposited money with Bank B which earns interest that is subjected to the 20% final withholding tax. At the same time, Bank A is subjected to the 5% gross receipts tax on its interest income on loan transactions to customers. Which statement below INCORRECTLY describes the transaction?

(A) There is double taxation because two taxes - income tax and gross receipts tax are imposed on the interest incomes described above, and double taxation is prohibited under the 1987 Constitution.

(B) There is no double taxation because the first tax is income tax, while the second tax is business tax;

(C) There is no double taxation because the income tax is on the interest income of Bank A on its deposits with Bank B (passive income), while the gross receipts tax is on the interest Income received by

Bank A from loans to its debtor-customers (active income);

(D) Income tax on interest income of deposits of Bank A is a direct tax, while GRT on interest income on loan transaction is an indirect tax.

SUGGESTED ANSWER:

(A) There is no double taxation if the law imposes two different taxes on the same income, business or property. First, the taxes herein are imposed on two different subject matters. The subject matter of the FWT [Final Withholding Tax] is the passive income generated in the form of interest on deposits and yield on deposit substitutes, while the subject matter of the GRT [Gross Receipts Tax] is the privilege of engaging in the business of banking. Second, although both taxes are national in scope because they are imposed by the same taxing authority - the national government under the Tax Code - and operate within the same Philippine jurisdiction for the same purpose of raising revenues, the taxing periods they affect are different. The FWT is deducted and withheld as soon as the income is earned, and is paid after every calendar quarter in which it is earned. On the other hand, the GRT is neither deducted nor withheld, but is paid only after every taxable quarter in which it is earned. (Commissioner of Internal Revenue vs.



BPI, G.R. No. 147375 dated June 26, 2006)

(2) Which of the following statements is NOT correct?

(A) In case of doubt, statutes levying taxes are construed strictly against the government;

(B) The construction of a statute made by his predecessors is not binding upon the successor, if thereafter he becomes satisfied that a different construction should be given;

(C) The reversal of a ruling shall not generally be given retroactive application, if said reversal will be prejudicial to the taxpayer;

(D) A memorandum circular promulgated by the CIR that imposes penalty for violations of certain rules needed not be published in a newspaper of general circulation or official gazette because it has the force and effect of law.

SUGGESTED ANSWER:

(D) A revenue memorandum circular shall not begin to be operative until after due notice thereof may be fairly presumed (Commissioner of Internal Revenue vs. Philippine Airlines, G.R. No. 180066 dated July 8, 2009).

(3) Which statement below expresses the lifeblood theory?

(A) The assessed taxes must be enforced by the government.

(B) The underlying basis of taxation is government necessity, for without taxation, a government can neither exist nor endure;

(C) Taxation is an arbitrary method of exaction by those who are in the seat of power;

(D) The power of taxation is an inherent power of the sovereign to impose burdens upon subjects and objects “within its jurisdiction for the purpose of raising revenues”.

SUGGESTED ANSWER:

(B) Taxes are the lifeblood of the government, for without taxes, the government can neither exist nor endure. A principal attribute of sovereignty, the exercise of taxing power derives its source from the very existence of the state whose social contract with its citizens obliges it to promote public interest and common good. The theory behind the exercise of the power to tax emanates from necessity; without taxes, government cannot fulfil its mandate of promoting the general welfare and well-being of the people. (National Power Corporation vs. City of Cabanatuan, G.R. No. 149110 April 9, 2003).

(4) Which statement is WRONG?



(A) The power of taxation may be exercised by the government, its political subdivisions, and public utilities;

(B) Generally, there is no limit on the amount of tax that may be imposed;

(C) The money contributed as tax becomes part of the public funds;

(D) The power of tax is subject to certain constitutional limitations.

SUGGESTED ANSWER:

(A) Inherent Powers of the State

(5) The Philippines adopted the semi-global tax system, which means that:

(A) All taxable incomes, regardless of the nature of income, are added together to arrive at gross income, and all allowable taxable income;

(B) All incomes subject to final withholding taxes are liable to income tax under the schedular tax system, while all ordinary income as well as income not subject to final withholding taxes are liable to income tax under' the, global tax system;

(C) All taxable incomes are subject to final withholding taxes under the schedular tax system;

(D) All taxable incomes from sources within and without the Philippines are liable to income tax.

SUGGESTED ANSWER:

(B) General Principles of Taxation

(6) Income from the performance of service is treated as income from within the Philippines, if:

(A) The payment of compensation for the service is made in the Philippines;

(B) The contract calling for the performance of service is signed in the Philippines;

(C) The service is actually performed in the Philippines;

(D) The recipient of service income is a resident of the Philippines.

SUGGESTED ANSWER:

(C) Section 42, NIRC

(7) For income tax purposes, the source of the service income is important for the taxpayer, who is a:

(A) Filipino citizen residing in Makati City;

(B) Non-resident Filipino citizen working and residing in London, United Kingdom;

(C) Japanese citizen who is married to a Filipina citizen and residing in their family home located in Fort Bonifacio, Taguig City;

(D) Domestic corporation.

SUGGESTED ANSWER:

(B) Section 23 in relation to Section 42, NIRC

[NOTE: C is also a correct answer considering that resident aliens are also taxable only on income derived from within the Philippines]



(8) Interest income of a domestic commercial bank derived from a peso loan to a domestic corporation in 2010 is:

(A) Subject to the 30% income tax based on its net taxable income;

(B) Subject to the 20% final withholding tax;

(C) Subject to the 7.5% final withholding tax;

(D) Subject to 10% final withholding tax.

SUGGESTED ANSWER:

(A) Section 27(A)

(9) A resident foreign corporation is one that is:

(A) Organized under the laws of the Philippines that does business in another country;

(B) Organized under the laws of a foreign country that sets up a regional headquarter in the Philippines doing product promotion and information dissemination;

(C) Organized under the laws of the Philippines that engages business in special economic zone;

(D) Organized under the laws of a foreign country that engages in business in Makati City, Philippines.

SUGGESTED ANSWER:

(D) Section 22(H), NIRC

(10) A dealer in securities sold unlisted shares of stocks of a domestic corporation

in 2010 and derived a gain of P1 Million therefrom. The gain is:

(A) Taxable at 30% regular corporate income tax based on net taxable income;

(B) Taxable at 5%/10% capital gains tax based on net capital gain;

(C) Taxable at ½ of 1% stock transaction tax based on the gross selling price or fair market value, whichever is higher

(D) Exempt from income tax.

SUGGESTED ANSWER:

(A) Section 22(U) in relation to Section 27, NIRC

(11) An individual, who is a real estate dealer, sold a residential lot in Quezon City at a gain of P100,000.00 (selling price of P900,000.00 and cost is P800,000.00). The sale is subject to income tax as follows:

(A) 6% capital gains tax on the gain;

(B) 6% capital gains tax on the gross selling price or fair market value, whichever is higher;

(C) Ordinary income tax at the graduated rates of 5% to 32% of net taxable income;

(D) 30% income tax on net taxable income.

SUGGESTED ANSWER:

(C) Section 24, NIRC

(12) During the audit conducted by the BIR official, it was found that the rental income claimed by the corporation was not



subjected to expanded withholding tax. Accordingly, the claimed rental expense:

(A) Is deductible from the gross income of the corporation, despite non-withholding of income tax by the corporation;

(B) Is deductible from the gross income of the corporation, provided that the 5% expanded withholding tax is paid by the corporation during the audit;

(C) Is not deductible from gross income of the corporation due to non-withholding of tax;

(D) Is deductible, if it can be shown that the lessor has correctly reported the rental income in his tax return.

SUGGESTED ANSWER:

(C) Section 34(K), NIRC

(13) A resident Filipino citizen (not a dealer in securities) sold shares of stocks of a domestic corporation that are listed and traded in the Philippine Stock Exchange.

(A) The sale is exempt from income tax but subject to the ½ of 1% stock transaction tax;

(B) The sale is subject to income tax computed at the graduated income tax rates of 5% to 32% on net taxable Income;

(C) The sale is subject to the stock transaction tax and income tax;

(D) The sale is both exempt from the stock transaction tax and income tax.

SUGGESTED ANSWER:

(A) Section 127, NIRC

(14) The appropriate method of accounting for a contractor on his long-term construction contract (i.e., it takes more than a year to finish) is:

(A) Cash method;

(B) Accrual method;

(C) Instalment sale method;

(D) Percentage of completion method.

SUGGESTED ANSWER:

(D) Section 127, NIRC

(15) A general professional partnership (GPP) is one:

(A) That is registered as such with the Securities and Exchange Commission and the Bureau of Internal Revenue;

(B) That is composed of individuals who exercise a common profession;

(C) That exclusively derives income from the practice of the common profession;

(D) That derives professional income and rental income from property owned by it.

Which statement above does NOT properly refer to a GPP?

SUGGESTED ANSWER:

(C) Section 26, NIRC

[Note: The question is unfair because it gives an initial impression that the examiner is asking the statement which best characterizes a GPP but the real question is found after the enumeration



of the choices which might not be noticed by the examinee.]

(16) The interest expense of a domestic corporation on a bank loan in connection with the purchase of a production equipment:

(A) Is not deductible from gross income of the borrower corporation;

(B) Is deductible from the gross income of the borrower-corporation during the year or it may be capitalized as part of cost of the equipment;

(C) Is deductible only for a period of five years from date of purchase;

(D) Is deductible only if the taxpayer uses the cash method of accounting.

SUGGESTED ANSWER:

(B) Section 34(B)(3), NIRC

(17) The “all events test” refers to:

(A) A person who uses the cash method where all sales have been fully paid by the buyers thereof;

(B) A person who uses the instalment sales method, where the full amount of consideration is paid in full by the buyer thereof within the year of sale;

(C) A person who uses the accrual method, whereby an expense is deductible for the taxable year in which all the events had occurred which determined the fact of the liability and

the amount thereof could be determined with reasonable accuracy;

(D) A person who uses the completed method, whereby the construction project has been completed during the year the contract was signed.

SUGGESTED ANSWER:

(C) The accrual of income and expense is permitted when the all-events test has been met. This test requires: (1) fixing of a right to income or liability to pay; and (2) the availability of the reasonable accurate determination of such income or liability.

The all-events test requires the right to income or liability be fixed, and the amount of such income or liability be determined with reasonable accuracy. However, the test does not demand that the amount of income or liability be known absolutely, only that a taxpayer has at his disposal the information necessary to compute the amount with reasonable accuracy. The all-events test is satisfied where computation remains uncertain, if its basis is unchangeable; the test is satisfied where a computation may be unknown, but is not as much unknowable, within the taxable year. The amount of liability does not have to be determined exactly; it must be determined with “reasonable accuracy.” (Commissioner of Internal Revenue vs.



Isabela Cultural Corporation, G.R. No. 172231 February 12, 2007)

(18) All the items below are excluded from gross income, except:

- (A) Gain from sale of long-term bonds, debentures and indebtedness;
- (B) Value of property received by a person as donation or inheritance;
- (C) Retirement benefits received from the GSIS, SSS, or accredited retirement plan;
- (D) Separation pay received by a retiring employee under a voluntary retirement program of the corporate employer.**

SUGGESTED ANSWER:

(D) Section 32(B)(6)

(19) Which statement is correct? A non-stock, non-profit charitable association that sells its idle agricultural property is:

- (A) Not required to file an income tax return, nor pay income tax on the transaction to the BIR, provided the sales proceeds are invested in another real estate during the year;
- (B) Required to pay the 6% capital gains tax on the gross selling price or fair market value, whichever is higher;**
- (C) Mandated to pay the 30% regular corporate income tax on the gain from sale;
- (D) Required to withhold the applicable expanded withholding tax rate on the transaction and remit the same to the BIR.

SUGGESTED ANSWER:

(B) Section 30, NIRC

(20) ABS Corporation is a PEZA-registered export enterprise which manufactures cameras and sells all its finished products abroad. Which statement is NOT correct?

(A) ABS Corporation is subject to the 5% final tax on gross income earned, in lieu of all national and local taxes;

(B) ABS Corporation is exempt from the 30% corporate income tax on net income, provided it pays value added tax.

(C) ABS Corporation is subject to the 30% corporate income tax on net income;

(D) ABS Corporation is exempt from all national and local taxes, except real property tax.

SUGGESTED ANSWER:

(A) Sections 23 & 24, RA 7916

(21) In May 2010, Mr. and Mrs. Melencio Antonio donated a house and lot with a fair market value of P10 million to their son, Roberto, who is to be married during the same year to Josefina Angeles. Which statement below is INCORRECT?

- (A) There are four (4) donations made - two (2) donations are made by Mr. Melencio Antonio to Roberto and Josefina, and two (2) donations are made by Mrs. Antonio;
- (B) The four (4) donations are made by the Spouses Antonio to members of the family,



hence, subject to the graduated donor's tax rates (2%-15%);

(C) Two (2) donations are made by the spouses to members of the family, while two (2) other donations are made to strangers;

(D) Two (2) donations made by the spouses to Roberto are entitled to deduction from the gross gift as donation proper nuptias.

SUGGESTED ANSWER:

(D) Section 101, NIRC; Tang Ho v. Court of Appeals

(22) While he was traveling with friends, Mr. Jose Francisco, resident Filipino citizen, died on January 20, 2011 in a California Hospital, USA, leaving personal and real properties with market values as follows: House and Lot in Quezon City- P10 million; Cash in bank in California - US\$10,000.00; Citibank in New York - US\$5,000.00; Cash in BPI Makati - P4 million; Car in Quezon City - P1 million; Shares of stocks of Apple Corporation, US corporation listed in NY Stock Exchange - US \$5,000.00. Funeral expenses paid - P2 million. Assume conversion rate of US\$1=Php50. His gross estate for the Philippine estate tax purposes shall be:

(A) 13 Million;

(B) 14 Million;

(C) 15 Million;

(D) 16 Million

SUGGESTED ANSWER:

(B) Section 85, NIRC

(23) In 2006, Mr. Vicente Tagle, a retiree, bought 10,000 CDA shares that are unlisted in the local stock exchange for P10 per share. In 2010, the said shares had a book value per share of P60 per share. In view of a car accident in 2010, Mr. Vicente Tagle had to sell his CDA shares but he could sell the same only for P50 per share. The sale is subject to tax as follows:

(A) 5%/10% capital gains tax on the capital gain from sale of P40 per share (P50 selling price less P10 cost);

(B) 5%/10% capital gains tax on the capital gain of P50 per share, arrived at by deducting the cost (P10 per share) from the book value (P60 per share);

(C) 5%/10% capital gains tax on the capital gain from sale of P40 per share (P50 selling price less P10 cost) plus donor's tax on the excess of the fair market value of the shares over the consideration;

(D) Graduated income tax rates of 5% to 32% on the net taxable income from the sale of the shares.

SUGGESTED ANSWER:

(C) Section 24(C) in relation to Section 100, NIRC; RR No. 6-2008

(24) On January 10, 2011, Maria Reyes, single-mother, donated cash in the amount



of P50,000.00 to her daughter Cristina, and on December 20, 2011, she donated another P50,000.00 to Cristina. Which statement is correct?

(A) Maria Reyes is subject to donor's tax in 2011 because gross gift is P100,000.00;

(B) Maria Reyes is exempt from donor's tax in 2011 because gross gift is P100,000.00;

(C) Maria Reyes is exempt from donor's tax in 2011 only to the extent of P50,000.00;

(D) Maria Reyes is exempt from donor's tax in 2011 because the donee is minor.

SUGGESTED ANSWER:

(B) Section 99(A), NIRC

(25) Jose Ramos, single, died of a heart attack on October 10, 2011. leaving a residential house and lot with a market value of P1.8 million and cash of P100,000.00. Funeral expenses paid amounted to P250,000.00.

(A) His estate will be exempt from estate tax because the net estate is zero;

(B) His estate will be subject to estate tax because net estate is P1,650,000.00;

(C) His estate will be subject to estate tax because net estate is P1,700,000.00;

(D) His estate will be subject to estate tax because net estate is P800,000.00.

SUGGESTED ANSWER:

(A) Section 85 & 86, NIRC

(26) Sale of residential house and lot by an official of a domestic corporation to another official in the same corporation for a consideration of P2.5 million in 2011 is:

(A) Exempt from VAT because the gross sales do not exceed P2.5 million;

(B) Exempt from VAT because the property sold is a capital asset, regardless of the gross selling price;

(C) Exempt from VAT because the seller is not a person engaged in real estate business;

(D) Taxable at 12% VAT output tax on the gross selling price of P2.5 million.

Which statement above is INCORRECT?

SUGGESTED ANSWER:

(B) Section 106, NIRC

(27) An importer of flowers from abroad in 2011:

(A) Is liable for VAT, if it registers as a VAT person;

(B) Is exempt from VAT, because the goods are treated as agricultural products;

(C) Is exempt from VAT, provided that his total importation of flowers does not exceed P1.5 Million;

(D) Is liable for VAT, despite the fact that it did not register as a VAT person and its total annual sales of flowers do not exceed P1.5 Million.

SUGGESTED ANSWER:

(D) Section 107, NIRC



(28) A VAT - registered contractor performed services for his customer in 2010 and billed him P11.2 Million, broken down as follows: P10 Million - cost of services, plus P1.2 Million, 12% VAT. Of the contract price of P10 Million, only P8 Million plus VAT thereon was received from the customer in 2010, and the balance of P4 Million plus VAT was received by the contractor in 2011. How much is the taxable gross receipts of the contractor for 2010, for VAT purposes?

(A) P10 Million, the total cost of services performed in 2010;

(B) P8 Million, the amount received from the customer in 2010;

(C) P8 Million plus VAT received from the customer in 2010;

(D) P11.2 Million, the total cost of services performed plus 12% VAT.

SUGGESTED ANSWER:

(B) Section 108, NIRC

(29) MBM Corporation is the owner-operator of movie houses in Cavite. During the year 2010, it received a total gross receipts of P20 Million from the operation of movies. It did not register as a VAT person. Which statement below is correct?

(A) MBM Corporation is exempt from the 12% VAT, but liable for the 20%

amusement tax on admissions under the Local Government Code;

(B) MBM Corporation is both liable for the 12% VAT and 20% amusement tax on admissions;

(C) MBM Corporation is both exempt from the 12% VAT and 20% amusement tax on admissions;

(D) MBM Corporation is liable for the 12% VAT, but exempt “ from the 20% amusement tax on admissions.

SUGGESTED ANSWER:

(A) CIR v. SM Prime Holdings Inc., G.R. No. 183505, February 26, 2010

(30) A pawnshop shall now be treated, for business tax purposes:

(A) As a lending investor liable to the 12% VAT on its gross receipts from interest income and from gross selling price from sale of unclaimed properties;

(B) Not as a lending investor, but liable to the 5% gross receipts tax imposed on a non-bank financial intermediary under Title VI (Other Percentage Taxes);

(C) As exempt from 12% VAT and 5% gross receipts tax;

(D) As liable to the 12% VAT and 5% gross receipts tax.

SUGGESTED ANSWER:

(B) RR No. 10-2004; H. Tambunting Inc. v. CIR, G.R. No. 172394, October 13, 2010



(31) Under the VAT system, there is no cascading because the tax itself is not again being taxed. However, in determining the tax base on sale of taxable goods under the VAT system:

(A) The professional tax paid by the professional is included in gross receipts;

(B) The other percentage tax (e.g., gross receipts tax) paid by the taxpayer is included in gross selling price;

(C) The excise tax paid by the taxpayer before withdrawal of the goods from the place of production or from customs custody is included in the gross selling price;

(D) The documentary stamp tax paid by the taxpayer is included in the gross selling price or gross receipts.

SUGGESTED ANSWER:

(C) Section 106, NIRC; RR No. 16-2005

(32) Except for one transaction, the rest are exempt from value added tax. Which one is VAT taxable?

(A) Sales of chicken by a restaurant owner who did not register as a VAT person and whose gross annual sales is P1.2 Million;

(B) Sales of copra by a copra dealer to a coconut oil manufacturer who did not register as a VAT person and whose gross annual sales is P5 Million;

(C) Gross receipts of a CPA during the year amounted to P1 Million; the CPA registered as a VAT person in January 2011, before practicing his profession;

(D) Sales of a book store during the year amounted to P10 Million; it did not register as a VAT person with the BIR.

SUGGESTED ANSWER:

(C) Section 108, NIRC

(33) A lessor of real property is exempt from value added tax in one of the transactions below. Which one is it?

(A) Lessor leases commercial stalls located in the Greenhills Commercial Center to VAT-registered sellers of cell phones; lessor's gross rental during the year amounted to P12 Million;

(B) Lessor leases residential apartment units to individual tenants for P10,000.00 per month per unit; his gross rental income during the year amounted to P2 Million;

(C) Lessor leases commercial stalls at P10,000.00 per stall per month and residential units at P15,000.00 per unit per month;

(D) Lessor leases two (2) residential houses and lots at P50,000.00 per month per unit, but he registered as a VAT person.

SUGGESTED ANSWER:

(B) Section 109 (Q), NIRC



(34) IBP Bank extended loans to debtors during the year, with real properties of the debtors being used as collateral to secure the loans. When the debtors failed to pay the unpaid principal and interests after several demand letters, the bank foreclosed the same and entered into contracts of lease with tenants. The bank is subject to the tax as follows:

(A) 12% VAT on the rental income, but exempt from the 7% gross receipts tax;

(B) 7% gross receipts tax on the rental income, but exempt from VAT;

(C) Liable to both the 12% VAT and 7% gross receipts tax;

(D) Exempt from both the 12% VAT and 7% gross receipts tax.

SUGGESTED ANSWER:

(B) Section 121, NIRC

(35) Which transaction below is subject to VAT?

(A) Sale of vegetables by a farmer in Baguio City to a vegetable dealer;

(B) Sale of vegetables by a vegetable dealer in Baguio City to another vegetable dealer in Quezon City;

(C) Sale of vegetables by the QC vegetable dealer to a restaurant in Manila;

(D) Sale of vegetables by the restaurant operator to its customers.

SUGGESTED ANSWER:

(D) Section 109, NIRC

[Note: This is not absolutely true because a restaurant may sell the vegetables in their original state which will be exempt from VAT under Section 109(A), irrespective of who is the seller.]

(36) Which importation in 2011 is subject to VAT?

(A) Importation of fuels by a person engaged in international shipping worth P20 Million;

(B) Importation of raw, unprocessed, refrigerated Kobe beef from Japan by a beef dealer for sale to hotels in Makati City with a fair market value of P1.2 Million;

(C) Importation of wines by a wine dealer with a fair market value of P2 Million for sale to hotels in Makati City;

(D) Importation of books worth P5 Million and school supplies worth P1.2 Million.

SUGGESTED ANSWER:

(C) Sections 107 & 109, NIRC

[Note: d) may also be a correct choice because only importation of books is exempt from VAT. The importation of school supplies is not exempt.]

(37) Input tax is available to a VAT - registered buyer, provided that:

(A) The seller is a VAT - registered person;

(B) The seller issues a VAT invoice or official receipt, which separately indicates the VAT component;



(C) The goods or service is subject to or exempt from VAT, but the sale is covered by a VAT invoice or receipt issued by VAT-registered person;

(D) The name and TIN of the buyer is not stated or shown in the VAT invoice or receipt.

SUGGESTED ANSWER:

(B) Section 113(B), NIRC

(38) Claim for tax creditor refund of excess input tax is available only to:

(A) A VAT - registered person whose sales are made to embassies of foreign governments and United Nations agencies located in the Philippines without the BIR approval of the application for zero-rating;

(B) Any person who has excess input tax arising from local purchases of taxable goods and services;

(C) A VAT - registered person whose sales are made to clients in the Philippines;

(D) A VAT - registered person whose sales are made to customers outside the Philippines and who issued VAT invoices or receipts with the words "ZERO RATED SALES" imprinted on the sales invoices or receipts.

SUGGESTED ANSWER:

(D) Kepco Phils. Corp. v. CIR, G.R. No. 179961, January 31, 2011

(39) A hotel operator that is a VAT - registered person and who leases luxury vehicles to its hotel customers is:

(A) Subject to the 3% common carriers tax and 12% VAT;

(B) Subject to the 3% common carriers tax only;

(C) Subject to the 12% VAT only;

(D) Exempt from both the 3% common carriers tax and 12% VAT.

SUGGESTED ANSWER:

(C) Section 108, NIRC

(40) Which statement is correct? A bar review center owned and operated by lawyers is:

(A) Exempt from VAT, regardless of its gross receipts during the year because it is an educational center;

(B) Exempt from VAT, provided that its annual gross receipts do not exceed P1.5 Million in 2011;

(C) Subject to VAT, regardless of its gross receipts during the year;

(D) Subject to VAT, if it is duly accredited by TESDA.

SUGGESTED ANSWER:

(B) Section 109 (V), NIRC

(41) For 2012, input tax is not available as a credit against the output tax of the buyer of taxable goods or services during the quarter, if:



(A) The VAT invoice or receipt of the seller is registered with the BIR;

(B) The VAT invoice or receipt of the seller does not separately indicate the gross selling price or gross receipts and the VAT component therein;

(C) The VAT invoice or receipt is issued in the name of the VAT-registered buyer and his TIN is shown in said invoice, or receipt;

(D) The VAT invoice or receipt issued by the seller shows the Taxpayer Identification Number plus the word "VAT" or "VAT registered person".

SUGGESTED ANSWER:

(B) Section 113, NIRC

(42) The public market vendor below, who is not a VAT - registered person is liable to VAT in 2010, if:

(A) She sells raw chicken and meats and her gross sales during the year is P2 Million;

(B) She sells vegetables and fruits in her stall and her gross sales during the year is P1.6 Million;

(C) She sells canned goods, processed coconut oils, and cut flowers in her stall and her gross sales during the year is P2.5 Million;

(D) She sells live fish, shrimps, and crabs and her gross sales during the year is P5 Million.

SUGGESTED ANSWER:

(C) Sections 105 & 109, NIRC

(43) Which statement is FALSE under the VAT law?

(A) A VAT- registered person will be subject to VAT for his taxable transactions, regardless of his gross sales or receipts;

(B) A person engaged in trade or business selling taxable goods or services must register as a VAT person, when his gross sales or receipts for the year 2011 exceed P1.5 Million;

(C) A person who issued a VAT- registered invoice or receipt for a VAT - exempt transaction is liable to the 12% VAT as a penalty for the wrong issuance thereof:

(D) Once a doctor of medicine exercises his profession during the year, he needs to register as a VAT person and to issue VAT receipts for professional fees received.

SUGGESTED ANSWER:

(D) Section 236(G)(1)(b), NIRC

(44) The Commissioner of Internal Revenue may NOT inquire into the bank deposits of a taxpayer, except:

(A) When the taxpayer files a fraudulent return;

(B) When the taxpayer offers to compromise the assessed tax based on erroneous assessment;



(C) When the taxpayer offers to compromise the assessed tax based on financial incapacity to pay and he authorizes the Commissioner in writing to look into his bank records;

(D) When the taxpayer did not file his income tax return for the year.

SUGGESTED ANSWER:

(C) Section 6(F), NIRC

(45) The Commissioner of Internal Revenue issued a BIR ruling to the effect that the transaction is liable to income tax and value added tax. Upon receipt of the ruling, a taxpayer does not agree thereto. What is his proper remedy?

(A) File a petition for review with the Court of Tax Appeals within thirty(30) days from receipt thereof;

(B) File a motion for reconsideration with the Commissioner of Internal Revenue;

(C) File an appeal to the Secretary of Finance within thirty(30) days from receipt thereof;

(D) File an appeal to the Secretary of Justice within thirty(30) days from receipt thereof.

SUGGESTED ANSWER:

(C) Section 4, NIRC

(46) On April 15, 2011, the Commissioner of Internal Revenue mailed by registered mail the final assessment notice and the demand letter covering the calendar year

2007 with the QC Post Office. Which statement is correct?

(A) The assessment notice is void because it was mailed beyond the prescriptive period;

(B) The assessment notice is void because it was not received by the taxpayer within the three-year period from the date of filing of the tax return;

(C) The assessment notice is void if the taxpayer can show that the same was received only after one(1) month from date of mailing;

(D) The assessment notice is valid even if the taxpayer received, the same after the three-year period from the date of filing of the tax return.

SUGGESTED ANSWER:

(D) Section 203, NIRC; BPI v. CIR, G.R. No. 139736, October 17, 2005

(47) A Preliminary Assessment Notice (PAN) is NOT required to be issued by the BIR before issuing a Final Assessment Notice (FAN) in one of the following cases:

(A) When a taxpayer does not pay the 2010 deficiency income tax liability on or before July 15 of the year;

(B) When the finding for any deficiency tax is the result mathematical error in the computation of the tax as appearing on the face of the return;



(C) When a discrepancy has been determined between the value added tax paid and the amount due for the year;

(D) When the amount of discrepancy shown in the Letter Notice is not paid within thirty (30) days from date of receipt.

SUGGESTED ANSWER:

(B) Section 228, NIRC

(48) When a protest against the deficiency income tax assessment was denied by the BIR Regional Director of Quezon City, the appeal to the Court of Tax Appeals must be filed by a taxpayer:

(A) If the amount of basic tax assessed is P100,000.00 or more;

(B) If the amount of basic tax assessed is P300,000.00 or more;

(C) If the amount of basic tax assessed is P500,000.00 or more;

(D) If the amount of basic tax assessed is P1 Million or more.

SUGGESTED ANSWER:

All the choices are correct. All the decisions on disputed assessments are appealable to the CTA (in Division) irrespective of the amount (Section 3, RA 9282).

(49) The taxpayer received an assessment notice on April 15, 2011 and filed its request for reinvestigation against the assessment on April 30, 2011. Additional documentary evidence in support of its

protest was submitted by it on June 30, 2011. If no denial of the protest was received by the taxpayer, when is the last day for the filing of its appeal to the CTA?

(A) November 30, 2011;

(B) December 30, 2011;

(C) January 30, 2012;

(D) February 28, 2012.

SUGGESTED ANSWER:

(C) Section 228, NIRC

(50) Using the same facts in the immediately preceding number, but assuming that the final decision on the disputed assessment was received by the taxpayer on July 30, 2011, when is the last day for filing of the appeal to the CTA.

(A) August 30, 2011;

(B) September 30, 2011;

(C) December 30, 2011;

(D) January 30, 2012.

SUGGESTED ANSWER:

(A) Section 228, NIRC (nearest answer but not a correct answer)

[Note: The period to appeal is within 30 days from receipt of the final decision by the Commissioner. The decision was received on July 30, 2011 so the last day to perfect an appeal with the CTA is August 29, 2011. It is thus clear that the question did not provide for the CORRECT answer. Hence, it should be treated as a bonus question.]



(51) Which court has jurisdiction to determine if the warrant of distraint and levy issued by the BIR is valid and to rule if the waiver of the Statute of Limitations was validly effected?

- (A) City Courts;
 (B) Regional Trial Courts;
(C) Court of Tax Appeals;
 (D) Court of Appeals.

SUGGESTED ANSWER:

(C) Section 7, RA 9282

(52) Which statement below on compromise of tax liability is correct?

- (A) Compromise of a tax liability is available only at the administrative level;
 (B) Compromise of a tax liability is available only before trial at the CTA;
(C) Compromise of a tax liability is available even during appeal, provided that prior leave of court is obtained;
 (D) Compromise of a tax liability is still available even after the court decision has become final and executory.

SUGGESTED ANSWER:

(C) RR 30-2002

(53) In case of full or partial denial of the written claim for refund or excess input tax directly attributable to zero-rated sales, or the failure on the part of the Commissioner to act on the application within 120 days

from the date of submission of complete documents, an appeal must be filed with the CTA:

- (A) Within thirty (30) days after filing the administrative claim with the BIR;
 (B) Within sixty (60) days after filing the administrative claim with the BIR;
 (C) Within one hundred twenty (120) days after filing the administrative claim with the BIR;

(D) Within thirty (30) days from the receipt of the decision denying the claim or after the expiration of the 120-day period.

SUGGESTED ANSWER:

(D) Section 112(C) NIRC of 1997

In case of full or partial denial by the CIR, the taxpayer's recourse is to file an appeal before the CTA within 30 days from receipt of the decision of the CIR. However, if after the 120-day period the CIR fails to act on the application for tax refund/credit, the remedy of the taxpayer is to appeal the inaction of the CIR to CTA within 30 days. (CIR v. Aichi Forging Company of Asia, Inc., G.R. No. 184823, October 6, 2010)

(54) The submission of the required documents within sixty (60) days from the filing of the protest is available only where:



(A) The taxpayer previously filed a Motion for Reconsideration with the BIR official;

(B) The taxpayer previously filed a request for reconsideration with the BIR official;

(C) The taxpayer previously filed a request for reinvestigation with the BIR official;

(D) The taxpayer previously filed an extension to file a protest with the BIR official.

SUGGESTED ANSWER:

(C) Section 228, NIRC; RCBC v. CIR

(55) The prescriptive period for the collection of the deficiency tax assessment will be tolled:

(A) If the taxpayer files a request for reconsideration with the Asst. Commissioner;

(B) If the taxpayer files a request for reinvestigation that is approved by the Commissioner of Internal Revenue;

(C) If the taxpayer changes his address in the Philippines that is communicated to the BIR official;

(D) If a warrant of levy is served upon the taxpayer's real property in Manila

SUGGESTED ANSWER:

(B) Section 223, NIRC; BPI v. Commissioner, G.R. No. 139736, October 17, 2005

(56) Which statement is correct? The collection of a deficiency tax assessment by distraint and levy:

(A) May be repeated, if necessary, until the full amount due, including all expenses, is collected;

(B) Must be done successively, first by distraint and then by levy;

(C) Automatically covers the bank deposits of a delinquent taxpayer;

(D) May be done only once during the taxable year.

SUGGESTED ANSWER:

(A) Section 217, NIRC

(57) The prescriptive period to file a criminal action is:

(A) Ten (10) years from the date of discovery of the commission of fraud or non-filing of tax return;

(B) Five (5) years from the date of issuance of the final assessment notice;

(C) Three (3) years from the filing of the annual tax return;

(D) Five (5) years from the commission of the violation of the law, and if the same be not known at the time, from the discovery thereof and the institution of judicial proceedings for its investigation and punishment.

SUGGESTED ANSWER:

(D) Section 281, NIRC



(58) The accused's mere reliance on the representations made by his accountant, with deliberate refusal or avoidance to verify the contents of his tax return and to inquire on its authenticity constitutes:

(A) Simple negligence;

(B) Gross negligence;

(C) Wilful blindness;

(D) Excusable negligence.

SUGGESTED ANSWER:

(C) CTA E.B. Criminal Case No. 006; People v. Kintanar, G.R. No. 196340

(59) The acquittal of the accused in the criminal action for the failure to file income tax return and failure to supply correct information will have the following consequence:

(A) The CTA will automatically exempt the accused from any civil liability;

(B) The CTA will still hold the taxpayer liable for deficiency income tax liability in all cases, since preponderance of evidence is merely required for tax cases;

(C) The CTA will impose civil or tax liability only if there was a final assessment notice issued by the BIR against the accused in accordance with the prescribed procedures for issuing assessments, which was presented during the trial;

(D) The CTA will impose civil or tax liability, provided that a computation of the tax liability is presented during the trial.

SUGGESTED ANSWER:

(C) or (D) Republic vs. Patanao, L-22356, July 1, 1967; (Castro v. Collector of Internal Revenue, L-12174, April 26, 1962).

(60) X Corporation had excess income tax payment for the year 2008, which it chose to carryover in 2009. In filing its 2009 corporate income tax return, it signified its intention (by checking the small box "refund" at the bottom of the return) to get a refund of the overpaid amount in 2008. Can the refund be allowed or not, and if disallowed, does X Corporation lose the claimed amount?

(A) X Corporation may not get the refund because the decision to carryover in 2008 was irrevocable for that year, and it may not change that decision in succeeding years;

(B) X Corporation may not get the refund in 2009, but the amount being claimed as refund may be utilized in succeeding years until fully exhausted because there is no prescriptive period for carryover of excess income tax payments;

(C) X Corporation may get the refund, provided that it will no longer carryover



such amount or utilize the same against its income tax liability in the future;

(D) X Corporation may file instead a claim of tax credit, in lieu of refund.

SUGGESTED ANSWER:

(B) Section 76, NIRC

The carryover of excess income tax payments is no longer limited to the succeeding taxable year. Unutilized excess income tax payments may now be carried over to the succeeding taxable years until fully utilized. In addition, the option to carryover excess income tax payments is now irrevocable. Hence, unutilized excess income tax payments may no longer be refunded. (Belle Corp. v. CIR, G.R. No. 181298, January 10, 2011)

(61) Which statement is correct?

(A) Legislative acts passed by the municipal council in the exercise of its lawmaking authority are denominated as resolutions and ordinances;

(B) Legislative acts passed by the municipal council in the exercise of its lawmaking authority are denominated as resolutions;

(C) Legislative acts passed by the municipal council in the exercise of its lawmaking authority are denominated as ordinances;

(D) Both ordinances and resolutions are solemn and formal acts.

SUGGESTED ANSWER:

(C) Section 2227, Revised Administrative Code of 1917

(62) Which of the following statements is NOT a test of a valid ordinance?

(A) It must not contravene the Constitution or any statute;

(B) It must not be unfair or oppressive;

(C) It must not be partial or discriminatory;

(D) It may prohibit or regulate trade.

SUGGESTED ANSWER:

(D) To be valid, an ordinance must not prohibit but may regulate trade. (Magtajas v. Pryce Properties Corporation, Inc., G.R. No. 111097, July 20, 1994)

(63) Taxing power of local government units shall NOT extend to the following taxes, except one:

(A) Income tax on banks and other financial institutions;

(B) Taxes of any kind on the national government, its agencies and instrumentalities, and local government units;

(C) Taxes on agricultural and aquatic products when sold by the marginal farmers or fishermen;

(D) Excise taxes on articles enumerated under the National Internal Revenue Code.

SUGGESTED ANSWER:

(A) Section 186, RA 7160



(64) Which statement on prescriptive periods is true?

(A) The prescriptive periods to assess taxes in the National Internal Revenue Code and the Local Government Code are the same;

(B) Local taxes shall be assessed within five (5) years from the date they became due;

(C) Action for the collection of local taxes may be instituted after the expiration of the period to assess and to collect the tax;

(D) Local taxes may be assessed within ten (10) years from discovery of the underpayment of tax which does not constitute fraud.

SUGGESTED ANSWER:

(B) Section 194, RA 7160

(65) The appraisal, assessment, levy and collection of real property tax shall be guided by the following principles. Which statement does NOT belong here?

(A) Real property shall be appraised at its current and fair market value;

(B) Real property shall be classified for assessment purposes on the basis of its actual use;

(C) Real property shall be assessed on the basis of a uniform classification within each local political subdivision;

(D) The appraisal and assessment of real property shall be based on audited financial statements of the owner.

SUGGESTED ANSWER:

(D) Section 198, RA 7160

(66) The Manila International Airport Authority (MIAA) is exempt from real property tax. Which statement below is NOT correct?

(A) MIAA is not a government-owned or controlled corporation because it is not organized as a stock or non-stock corporation;

(B) MIAA is a government instrumentality vested with corporate powers and performing essential public services;

(C) MIAA is not a taxable entity because the real property is owned by the Republic of the Philippines and the beneficial use of such property has not been granted to a private entity;

(D) MIAA is a government-owned or controlled corporation because it is required to meet the test of economic viability.

SUGGESTED ANSWER:

(D) MIAA vs. City of Pasay, G.R. No. 163072, April 2, 2009

(67) For purposes of real property taxes, the tax rates are applied on:

(A) Zonal values;

(B) Fair market value;

(C) Assessed values;

(D) Reproduction values,



SUGGESTED ANSWER:**(C) Section 233, RA 7160**

(68) One of the local government units below does NOT have the power to impose real property tax:

(A) Bacoor, Cavite;

(B) Davao, City;

(C) Tarlac Province;

(D) Malabon, Metro Manila.

SUGGESTED ANSWER:**(A) Section 200, RA 7160**

[Note: The answer above is premised on the belief that Bacoor is a municipality and the LGC does not vest municipalities with the power to impose real property taxes, except for municipalities within the Metropolitan Manila area. However, Bacoor is already a city hence, can no longer be a correct choice. Since the question did not provide for the CORRECT answer, it should be treated as a bonus.]

(69) Where the real property tax assessment is erroneous, the remedy of the property owner is:

(A) To file a claim for refund in the Court of Tax Appeals if he has paid the tax, within thirty (30) days from date of payment;

(B) To file an appeal with the Provincial Board of Assessment Appeals within thirty

(30) days from receipt of the assessment;

(C) To file an appeal with the Provincial Board of Assessment Appeals within sixty (60) days from receipt of the assessment;

(D) To file an appeal with the Provincial Board of Assessment Appeals within sixty (60) days from receipt of the assessment and paying the assessed tax under protest.

SUGGESTED ANSWER:**(C) Section 226, RA 7160**

(70) The City Government of Manila may NOT impose:

(A) Basic real property tax at 2% of the assessed value of real property;

(B) Additional levy on real property for the special education fund at 1% of the assessed value of real property;

(C) Additional ad valorem tax on idle lands at a rate not exceeding 5% of the assessed value;

(D) Special levy on lands within its territory specially benefited by public works projects or improvements funded by it at 80% of the actual cost of the projects or improvements.

SUGGESTED ANSWER:**(D) Section 240, Ra 7160**

71. Importation of goods is deemed terminated:



(A) When the customs duties are paid, even if the goods remain within the customs premises;

(B) When the goods are released or withdrawn from the customs house upon payment of the customs duties or with legal permit to withdraw;

(C) When the goods enter Philippine territory and remain within the customs house within thirty (30) days from date of entry;

(D) When there is part payment of duties on the imported goods located in the customs area.

SUGGESTED ANSWER:

(B) Section 1202, Tariff and Customs Code

(72) A protest against an assessment issued by the Collector of Customs for unpaid customs duties on imported goods shall be filed with:

(A) The Commissioner of Customs;

(B) The Regional Trial Court;

(C) The Court of Tax Appeals;

(D) The Collector of Customs.

SUGGESTED ANSWER:

(D) Section 2308, Tariff and Customs Code

(73) The dutiable value of an imported article subject to an ad valorem rate of duty under existing law shall be:

(A) The home consumption value;

(B) The total value;

(C) The total landed cost;

(D) The transaction value.

SUGGESTED ANSWER:

(D) Section 201, Tariff and Customs Code, as amended by RA 8181 dated March 28, 1996.

(74) The imported articles shall in any case be subject to the regular physical examination when:

(A) The importer disagrees with the findings as contained in the government surveyor's report'

(B) The number, weight and nature of packages indicated in the customs entry declaration and supporting documents differ from that in the manifest;

(C) The container is not leaking or damaged;

(D) The shipment is covered by alert/hold orders issued pursuant to an existing order.

SUGGESTED ANSWER:

(B) Sec. 1401, Tariff and Customs Code, as amended by RA 7650.

(75) Which cases are appealable to the CTA?

(A) Decisions of the Secretary of Finance in cases involving liability for customs duties, seizure, detention or release of property affected;



(B) Decisions of the Commissioner of Customs in cases involving liability for customs duties, seizure, detention or release of property affected;

(C) Decisions of the Collector of Customs in cases involving liability for customs duties, seizure, detention or release of property affected;

(D) Decisions of the BIR Commissioner in cases involving liability for customs duties, seizure, detention or release of property affected.

SUGGESTED ANSWER:

(B) Section 7, RA 9282.

**2011 Taxation Law Exam
MCQ (November 13, 2011)**

(1) A municipality may levy an annual ad valorem tax on real property such as land, building, machinery, and other improvement only if

(A) the real property is within the Metropolitan Manila Area.

(B) the real property is located in the municipality.

(C) the DILG authorizes it to do so.

(D) the power is delegated to it by the province.

(2) Anne Lapada, a student activist, wants to impugn the validity of a tax on text messages. Aside from claiming that the law adversely affects her since she sends messages by text, what may she allege that would strengthen her claim to the right to file a taxpayer's suit?

(A) That she is entitled to the return of the taxes collected from her in case the court nullifies the tax measure.

(B) That tax money is being extracted and spent in violation of the constitutionally guaranteed right to freedom of communication.

(C) That she is filing the case in behalf of a substantial number of taxpayers.

(D) That text messages are an important part of the lives of the people she represents.

(3) There is no taxable income until such income is recognized. Taxable income is recognized when the

(A) taxpayer fails to include the income in his income tax return.

(B) income has been actually received in money or its equivalent.



(C) income has been received, either actually or constructively.

(D) transaction that is the source of the income is consummated.

(4) Keyrand, Inc., a Philippine corporation, sold through the local stock exchange 10,000 PLDT shares that it bought 2 years ago. Keyrand sold the shares for P2 million and realized a net gain of P200,000.00. How shall it pay tax on the transaction?

(A) It shall declare a P2 million gross income in its income tax return, deducting its cost of acquisition as an expense.

(B) It shall report the P200,000.00 in its corporate income tax return adjusted by the holding period.

(C) It shall pay 5% tax on the first P100,000.00 of the P200,000.00 and 10% tax on the remaining P100,000.00.

(D) It shall pay a tax of one-half of 1% of the P2 million gross sales.

(5) Amaretto, Inc., imported 100 cases of Marula wine from South Africa. The shipment was assessed duties and value-added taxes of P300,000 which Amaretto, Inc. immediately paid. The Bureau of Customs did not, however, issue the release

papers of the shipment yet since the Food and Drug Administration (FDA) needed to test the suitability of the wine for human consumption. Is the Bureau of Customs at fault for refusing to release the shipment just as yet?

(A) Yes, because the importation was already terminated as a result of the payment of the taxes due.

(B) Yes, the Bureau of Customs is estopped from holding the release of the shipment after receiving the payment.

(C) No, if the amount paid as duties and value-added taxes due on the importation was insufficient.

(D) No, because the Bureau of Customs has not yet issued the legal permit for withdrawal pending the FDA's findings.

(6) Which theory in taxation states that without taxes, a government would be paralyzed for lack of power to activate and operate it, resulting in its destruction?

(A) Power to destroy theory

(B) Lifeblood theory

(C) Sumptuary theory

(D) Symbiotic doctrine



(7) The spouses Helena and Federico wanted to donate a parcel of land to their son Dondon who is getting married in December, 2011. The parcel of land has a zonal valuation of P420,000.00. What is the most efficient mode of donating the property?

(A) The spouses should first donate in 2011 a portion of the property valued at P20,000.00 then spread the P400,000.00 equally for 2012, 2013, 2014 and 2015.

(B) Spread the donation over a period of 5 years by the spouses donating P100,000.00 each year from 2011 to 2015.

(C) The spouses should each donate a P110,000.00 portion of the value of the property in 2011 then each should donate P100,000.00 in 2012.

(D) The spouses should each donate a P100,000.00 portion of the value of the property in 2011, and another P100,000.00 each in 2012. Then, in 2013, Helena should donate the remaining P20,000.00.

(8) Mia, a compensation income earner, filed her income tax return for the taxable year 2007 on March 30, 2008. On May 20, 2011, Mia received an assessment notice

and letter of demand covering the taxable year 2007 but the postmark on the envelope shows April 10, 2011. Her return is not a false and fraudulent return. Can Mia raise the defense of prescription?

(A) No. The 3 year prescriptive period started to run on April 15, 2008, hence, it has not yet expired on April 10, 2011.

(B) Yes. The 3 year prescriptive period started to run on April 15, 2008, hence, it had already expired by May 20, 2011.

(C) No. The prescriptive period started to run on March 30, 2008, hence, the 3 year period expired on April 10, 2011.

(D) Yes. Since the 3-year prescriptive period started to run on March 30, 2008, it already expired by May 20, 2011.

(9) Double taxation in its general sense means taxing the same subject twice during the same taxing period. In this sense, double taxation

(A) violates substantive due process.

(B) does not violate substantive due process.



(C) violates the right to equal protection.

(D) does not violate the right to equal protection.

(10) The payor of passive income subject to final tax is required to withhold the tax from the payment due the recipient. The withholding of the tax has the effect of

(A) a final settlement of the tax liability on the income.

(B) a credit from the recipient's income tax liability.

(C) consummating the transaction resulting in an income.

(D) a deduction in the recipient's income tax return.

(11) Guidant Resources Corporation, a corporation registered in Norway, has a 50 MW electric power plant in San Jose, Batangas. Aside from Guidant's income from its power plant, which among the following is considered as part of its income from sources within the Philippines?

(A) Gains from the sale to an Ilocos Norte power plant of generators bought from the United States.

(B) Interests earned on its dollar deposits in a Philippine bank under the Expanded Foreign Currency Deposit System.

(C) Dividends from a two-year old Norwegian subsidiary with operations in Zambia but derives 60% of its gross income from the Philippines.

(D) Royalties from the use in Brazil of generator sets designed in the Philippines by its engineers.

(12) Tong Siok, a Chinese billionaire and a Canadian resident, died and left assets in China valued at P80 billion and in the Philippines assets valued at P20 billion. For Philippine estate tax purposes the allowable deductions for expenses, losses, indebtedness, and taxes, property previously taxed, transfers for public use, and the share of his surviving spouse in their conjugal partnership amounted to P15 billion. Tong's gross estate for Philippine estate tax purposes is

(A) P20 billion.

(B) P5 billion.

(C) P100 billion.

(D) P85 billion.



(13) Anktryd, Inc., bought a parcel of land in 2009 for P7 million as part of its inventory of real properties. In 2010, it sold the land for P12 million which was its zonal valuation. In the same year, it incurred a loss of P6 million for selling another parcel of land in its inventory. These were the only transactions it had in its real estate business. Which of the following is the applicable tax treatment?

(A) Anktryd shall be subject to a tax of 6% of P12 million.

(B) Anktryd could deduct its P6 million loss from its P5 million gain.

(C) Anktryd's gain of P5 million shall be subject to the holding period.

(D) Anktryd's P6 million loss could not be deducted from its P5 million gain.

(14) Aplets Corporation is registered under the laws of the Virgin Islands. It has extensive operations in Southeast Asia. In the Philippines, Its products are imported and sold at a mark-up by its exclusive distributor, Kim's Trading, Inc. The BIR compiled a record of all the imports of Kim from Aplets and imposed a tax on Aplets net income derived from its exports to Kim. Is the BIR correct?

(A) Yes. Aplets is a non-resident foreign corporation engaged in trade or business in the Philippines.

(B) No. The tax should have been computed on the basis of gross revenues and not net income.

(C) No. Aplets is a non-resident foreign corporation not engaged in trade or business in the Philippines.

(D) Yes. Aplets is doing business in the Philippines through its exclusive distributor Kim's Trading, Inc.

(15) In 2009, Spratz, Inc.'s net profit before tax was P35 million while its operating expenses was P31 million. In 2010, its net profit before tax was P40 million and its operating expenses was P38 million. It did not declare dividends for 2009 and 2010. And it has no proposed capital expenditures for 2011 and the immediate future. May Spratz be subject to the improperly accumulated tax on its retained profits for 2009 and 2010?

(A) Yes, since the accumulated amounts are reasonable for operations in relation to what it usually needed annually.



(B) Yes, since the accumulation is not reasonably necessary for the immediate needs of the business.

(C) No, because there is no showing that the taxpayer's 2009 and 2010 net profit before tax exceeded its paid-up capital.

(D) No, because the taxpayer is not shown to be a publicly-listed corporation, a bank, or an insurance company.

(16) The actual effort exerted by the government to effect the exaction of what is due from the taxpayer is known as

(A) assessment.

(B) levy.

(C) payment.

(D) collection.

(17) Although the power of taxation is basically legislative in character, it is NOT the function of Congress to

(A) fix with certainty the amount of taxes.

(B) collect the tax levied under the law.

(C) identify who should collect the tax.

(D) determine who should be subject to the tax.

(18) Passive income includes income derived from an activity in which the earner does not have any substantial participation. This type of income is

(A) usually subject to a final tax.

(B) exempt from income taxation.

(C) taxable only if earned by a citizen.

(D) included in the income tax return.

(19) In 2010, Juliet Ulbod earned P500,000.00 as income from her beauty parlor and received P250,000.00 as Christmas gift from her spinster aunt. She had no other receipts for the year. She spent P150,000.00 for the operation of her beauty parlor. For tax purposes, her gross income for 2010 is

(A) P750,000.00.

(B) P500,000.00.

(C) P350,000.00.

(D) P600,000.00.



(20) Exempted from donor's taxation are gifts made

(A) for the use of the barangay.

(B) in consideration of marriage.

(C) to a school which is a stock corporation.

(D) to a for-profit government corporation.

(21) Federico, a Filipino citizen, migrated to the United States some six years ago and got a permanent resident status or green card. He should pay his Philippine income taxes on

(A) the gains derived from the sale in California, U.S.A. of jewelry he purchased in the Philippines.

(B) the proceeds he received from a Philippine insurance company as the sole beneficiary of life insurance taken by his father who died recently.

(C) the gains derived from the sale in the New York Stock Exchange of shares of stock in PLDT, a Philippine corporation.

(D) dividends received from a two year old foreign corporation whose

gross income was derived solely from Philippine sources.

(22) An example of a tax where the concept of progressivity finds application is the

(A) income tax on individuals.

(B) excise tax on petroleum products.

(C) value-added tax on certain articles.

(D) amusement tax on boxing exhibitions.

(23) A corporation may change its taxable year to calendar or fiscal year in filing its annual income tax return, provided

(A) it seeks prior BIR approval of its proposed change in accounting period.

(B) it simultaneously seeks BIR approval of its new accounting period.

(C) it should change its accounting period two years prior to changing its taxable year.

(D) its constitution and by-laws authorizes the change.



(24) What is the rule on the taxability of income that a government educational institution derives from its school operations? Such income is

(A) subject to 10% tax on its net taxable income as if it is a proprietary educational institution.

(B) Exempt from income taxation if it is actually, directly, and exclusively used for educational purposes.

(C) subject to the ordinary income tax rates with respect to incomes derived from educational activities.

(D) Exempt from income taxation in the same manner as government-owned and controlled corporations.

(25) Which among the following reduces the gross estate (not the net estate) of a citizen of the Philippines for purposes of estate taxation?

(A) Transfers for public use

(B) Property previously taxed

(C) Standard deduction of P1 million

(D) Capital of the surviving spouse

(26) Ka Pedring Matibag, a sole proprietor, buys and sells "kumot at kulambo" both of

which are subject to value-added tax. Since he is using the calendar year as his taxable year, his taxable quarters end on the last day of March, June, September, and December. When should Ka Pedring file the VAT quarterly return for his gross sales or receipts for the period of June 1 to September 30?

(A) Within 25 days from September 30

(B) Within 45 days from September 30

(C) Within 15 days from September 30

(D) Within 30 days from September 30

(27) In January 2011, the BIR issued a ruling that Clemen's vodka imports were not subject to increased excise tax based on his claim that his net retail price was only P200 per 750 milliliter bottle. This ruling was applied to his imports for May, June, and July 2011. In September 2011, the BIR revoked its ruling and assessed him for deficiency taxes respecting his May, June and July 2011 vodka imports because it discovered that his net retail price for the vodka was P250 per bottle from January to September 2011. Does the retroactive application of the revocation violate



Clemen's right to due process as a taxpayer?

(A) Yes, since the presumption is that the BIR ascertained the facts before it made its ruling.

(B) No, because he acted in bad faith when he claimed a lower net retail price than what he actually used.

(C) No, since he could avail of remedies available for disputing the assessment.

(D) Yes, since he had already acquired a vested right in the favorable BIR ruling.

(28) Don Fortunato, a widower, died in May, 2011. In his will, he left his estate of P100 million to his four children. He named his compadre, Don Epitacio, to be the administrator of the estate. When the BIR sent a demand letter to Don Epitacio for the payment of the estate tax, he refused to pay claiming that he did not benefit from the estate, he not being an heir. Forthwith, he resigned as administrator. As a result of the resignation, who may be held liable for the payment of the estate tax?

(A) Don Epitacio since the tax became due prior to his resignation.

(B) The eldest child who would be reimbursed by the others.

(C) All the four children, the tax to be divided equally among them.

(D) The person designated by the will as the one liable.

(29) On July 31, 2011, Esperanza received a preliminary assessment notice from the BIR demanding that she pays P180,000.00 deficiency income taxes on her 2009 income. How many days from July 31, 2011 should Esperanza respond to the notice?

(A) 180 days.

(B) 30 days.

(C) 60 days.

(D) 15 days.

(30) The BIR could not avail itself of the remedy of levy and distraint to implement, through collection, an assessment that has become final, executory, and demandable where

(A) the subject of the assessment is an income tax.

(B) the amount of the tax involved does not exceed P100.00.



(C) the corporate taxpayer has no other uncollected tax liability.

(D) the taxpayer is an individual compensation income earner.

(31) Alain Descartes, a French citizen permanently residing in the Philippines, received several items during the taxable year. Which among the following is NOT subject to Philippine income taxation?

(A) Consultancy fees received for designing a computer program and installing the same in the Shanghai facility of a Chinese firm.

(B) Interests from his deposits in a local bank of foreign currency earned abroad converted to Philippine pesos.

(C) Dividends received from an American corporation which derived 60% of its annual gross receipts from Philippine sources for the past 7 years.

(D) Gains derived from the sale of his condominium unit located in The Fort, Taguig City to another resident alien.

(32) Income is considered realized for tax purposes when

(A) it is recognized as revenue under accounting standards even if the law does not do so.

(B) the taxpayer retires from the business without approval from the BIR.

(C) the taxpayer has been paid and has received in cash or near cash the taxable income.

(D) the earning process is complete or virtually complete and an exchange has taken place.

(33) Which among the following circumstances negates the prima facie presumption of correctness of a BIR assessment?

(A) The BIR assessment was seasonably protested within 30 days from receipt.

(B) No preliminary assessment notice was issued prior to the assessment notice.

(C) Proof that the assessment is utterly without foundation, arbitrary, and capricious.

(D) The BIR did not include a formal letter of demand to pay the alleged deficiency.



(34) On March 30, 2005 Miguel Foods, Inc. received a notice of assessment and a letter of demand on its April 15, 2002 final adjustment return from the BIR. Miguel Foods then filed a request for reinvestigation together with the requisite supporting documents on April 25, 2005. On June 2, 2005, the BIR issued a final assessment reducing the amount of the tax demanded. Since Miguel Foods was satisfied with the reduction, it did not do anything anymore. On April 15, 2010 the BIR garnished the corporation's bank deposits to answer for the tax liability. Was the BIR action proper?

(A) Yes. The BIR has 5 years from the filing of the protest within which to collect.

(B) Yes. The BIR has 5 years from the issuance of the final assessment within which to collect.

(C) No. The taxpayer did not apply for a compromise.

(D) No. Without the taxpayer's prior authority, the BIR action violated the Bank Deposit Secrecy Law.

(35) Which among the following taxpayers is required to use only the calendar year for tax purposes?

(A) Partnership exclusively for the design of government infrastructure projects considered as practice of civil engineering.

(B) Joint-stock company formed for the purpose of undertaking construction projects.

(C) Business partnership engaged in energy operations under a service contract with the government.

(D) Joint account (cuentas en participacion) engaged in the trading of mineral ores.

(36) Spanflex Int'l Inc. received a notice of assessment from the BIR. It seasonably filed a protest with all the necessary supporting documents but the BIR failed to act on the protest. Thirty days from the lapse of 180 days from the filing of its protest, Spanflex still has not elevated the matter to the CTA. What remedy, if any, can Spanflex take?

(A) It may file a motion to admit appeal if it could prove that its failure to appeal was due to the negligence of counsel.

(B) It may no longer appeal since there is no BIR decision from which it could appeal.



(C) It may wait for the final decision of the BIR on his protest and appeal it to the CTA within 30 days from receipt of such decision.

(D) None. Its right to appeal to the CTA has prescribed.

(37) Gerardo died on July 31, 2011. His estate tax return should be filed within

(A) six months from filing of the notice of death.

(B) sixty days from the appointment of an administrator.

(C) six months from the time he died on July 31, 2011.

(D) sixty days from the time he died on July 31, 2011.

(38) Income from dealings in property (real, personal, or mixed) is the gain or loss derived

(A) only from the cash sales of property.

(B) from cash and gratuitous receipts of property.

(C) from sale and lease of property.

(D) only from the sale of property.

(39) In March 2009, Tonette, who is fond of jewelries, bought a diamond ring for P750,000.00, a bracelet for P250,000.00, a necklace for P500,000.00, and a brooch for P500,000.00. Tonette derives income from the exercise of her profession as a licensed CPA. In October 2009, Tonette sold her diamond ring, bracelet, and necklace for only P1.25 million incurring a loss of P250,000.00. She used the P1.25 million to buy a solo diamond ring in November 2009 which she sold for P1.5 million in September 2010. Tonette had no other transaction in jewelry in 2010. Which among the following describes the tax implications arising from the above transactions?

(A) Tonette may deduct his 2009 loss only from her 2009 professional income.

(B) Tonette may carry over and deduct her 2009 loss only from her 2010 gain.

(C) Tonette may carry over and deduct her 2009 loss from her 2010 professional income as well as from her gain.

(D) Tonette may not deduct her 2009 loss from both her 2010 professional income and her gain.



(40) Anion, Inc. received a notice of assessment and a letter from the BIR demanding the payment of P3 million pesos in deficiency income taxes for the taxable year 2008. The financial statements of the company show that it has been suffering financial reverses from the year 2009 up to the present. Its asset position shows that it could pay only P500,000.00 which it offered as a compromise to the BIR. Which among the following may the BIR require to enable it to enter into a compromise with Anion, Inc.?

(A) Anion must show it has faithfully paid taxes before 2009.

(B) Anion must promise to pay its deficiency when financially able.

(C) Anion must waive its right to the secrecy of its bank deposits.

(D) Anion must immediately deposit the P500,000.00 with the BIR.

(41) Real property owned by the national government is exempt from real property taxation unless the national government

(A) transfers it for the use of a local government unit.

(B) leases the real property to a business establishment.

(C) gratuitously allows its use for educational purposes by a school established for profit.

(D) sells the property to a government-owned non-profit corporation.

(42) Dondon and Helena were legally separated. They had six minor children, all qualified to be claimed as additional exemptions for income tax purposes. The court awarded custody of two of the children to Dondon and three to Helena, with Dondon directed to provide full financial support for them as well. The court awarded the 6th child to Dondon's father with Dondon also providing full financial support. Assuming that only Dondon is gainfully employed while Helena is not, for how many children could Dondon claim additional exemptions when he files his income tax return?

(A) Six children.

(B) Five children.

(C) Three children.

(D) Two children.

(43) Political campaign contributions are NOT deductible from gross income

(A) if they are not reported to the Commission on Elections.



(B) if the candidate supported wins the election because of possible corruption.

(C) since they do not help earn the income from which they are to be deducted.

(D) since such amounts are not considered as income of the candidate to whom given.

(44) When a BIR decision affirming an assessment is appealed to the CTA, the BIR's power to garnish the taxpayer's bank deposits

(A) is suspended to await the finality of such decision.

(B) is suspended given that the CTA can reverse BIR decisions when prejudicial to the taxpayer.

(C) is not suspended because only final decisions of the BIR are subject to appeal.

(D) is not suspended since the continued existence of government depends on tax revenues.

(45) Real property taxes should not disregard increases in the value of real property occurring over a long period of

time. To do otherwise would violate the canon of a sound tax system referred to as

(A) theoretical justice.

(B) fiscal adequacy.

(C) administrative feasibility.

(D) symbiotic relationship.

(46) The power to tax is the power to destroy. Is this always so?

(A) No. The Executive Branch may decide not to enforce a tax law which it believes to be confiscatory.

(B) Yes. The tax collectors should enforce a tax law even if it results to the destruction of the property rights of a taxpayer.

(C) Yes. Tax laws should always be enforced because without taxes the very existence of the State is endangered.

(D) No. The Supreme Court may nullify a tax law, hence, property rights are not affected.

(47) Jeopardy assessment is a valid ground to compromise a tax liability

(A) involving deficiency income taxes only, but not for other taxes.



(B) because of doubt as to the validity of the assessment.

(C) if the compromise amount does not exceed 10% of the basic tax.

(D) only when there is an approval of the National Evaluation Board.

(48) Zygomite Minerals, Inc., a corporation registered and holding office in Australia, not operating in the Philippines, may be subject to Philippine income taxation on

(A) gains it derived from sale in Australia of an ore crusher it bought from the Philippines with the proceeds converted to pesos.

(B) gains it derived from sale in Australia of shares of stock of Philex Mining Corporation, a Philippine corporation.

(C) dividends earned from investment in a foreign corporation that derived 40% of its gross income from Philippine sources.

(D) interests derived from its dollar deposits in a Philippine bank under the Expanded Foreign Currency Deposit System.

(49) As a general rule, within what period must a taxpayer elevate to the Court of Tax

Appeals a denial of his application for refund of income tax overpayment?

(A) Within 30 days from receipt of the Commissioner's denial of his application for refund.

(B) Within 30 days from receipt of the denial which must not exceed 2 years from payment of income tax.

(C) Within 2 years from payment of the income taxes sought to be refunded.

(D) Within 30 days from receipt of the denial or within two years from payment.

(50) After the province has constructed a barangay road, the Sangguniang Panglalawigan may impose a special levy upon the lands specifically benefitted by the road up to an amount not to exceed

(A) 60% of the actual cost of the road without giving any portion to the barangay.

(B) 100% of the actual project cost without giving any portion to the barangay.

(C) 100% of the actual project cost, keeping 60% for the province and giving 40% to the barangay.



(D) 60% of the actual cost, dividing the same between the province and the barangay.

(51) Celia donated P110,000.00 to her friend Victoria who was getting married. Celia gave no other gift during the calendar year. What is the donor's tax implication on Celia's donation?

(A) The P100,000.00 portion of the donation is exempt since given in consideration of marriage.

(B) A P10,000.00 portion of the donation is exempt being a donation in consideration of marriage.

(C) Celia shall pay a 30% donor's tax on the P110,000.00 donation.

(D) The P100,000.00 portion of the donation is exempt under the rate schedule for donor's tax.

(52) Levox Corporation wanted to donate P5 million as prize money for the world professional billiard championship to be held in the Philippines. Since the Billiard Sports Confederation of the Philippines does not recognize the event, it was held under the auspices of the International Professional Billiards Association, Inc. Is Levox subject to the donor's tax on its donation?

(A) No, so long as the donated money goes directly to the winners and not through the association.

(B) Yes, since the national sports association for billiards does not sanction the event.

(C) No, because it is donated as prize for an international competition under the billiards association.

(D) Yes, but only that part that exceeds the first P100,000.00 of total Levox donations for the calendar year.

(53) A violation of the tariff and customs laws is the failure to

(A) pay the customs duties and taxes and to comply with the rules on customs procedures.

(B) pay the customs duties and taxes or to comply with the rules on customs procedures.

(C) pay the customs duties and taxes.

(D) comply with the rules on customs procedures.



(54) What is the effect on the tax liability of a taxpayer who does not protest an assessment for deficiency taxes?

(A) The taxpayer may appeal his liability to the CTA since the assessment is a final decision of the Commissioner on the matter.

(B) The BIR could already enforce the collection of the taxpayer's liability if it could secure authority from the CTA.

(C) The taxpayer's liability becomes fixed and subject to collection as the assessment becomes final and collectible.

(D) The taxpayer's liability remains suspended for 180 days from the expiration of the period to protest.

(55) A non-stock, non-profit school always had cash flow problems, resulting in failure to recruit well-trained administrative personnel to effectively manage the school. In 2010, Don Leon donated P100 million pesos to the school, provided the money shall be used solely for paying the salaries, wages, and benefits of administrative personnel. The donation represents less than 10% of Don Leon's taxable income for the year. Is he subject to donor's taxes?

(A) No, since the donation is actually, directly, and exclusively used for educational purposes.

(B) Yes, because the donation is to be wholly used for administration purposes.

(C) Yes, since he did not obtain the requisite NGO certification before he made the donation.

(D) No, because the donation does not exceed 10% of his taxable income for 2010.

(56) What is the tax base for the imposition by the province of professional taxes?

(A) That which Congress determined.

(B) The pertinent provision of the local Government Code.

(C) The reasonable classification made by the provincial sanggunian.

(D) That which the Dept. of Interior and Local Government determined.

(57) There is prima facie evidence of a false or fraudulent return where the

(A) tax return was amended after a notice of assessment was issued.



(B) tax return was filed beyond the reglementary period.

(C) taxpayer changed his address without notifying the BIR.

(D) deductions claimed exceed by 30% the actual deductions.

(58) The proceeds received under a life insurance endowment contract is NOT considered part of gross income

(A) if it is so stated in the life insurance endowment policy.

(B) if the price for the endowment policy was not fully paid.

(C) where payment is made as a result of the death of the insured.

(D) where the beneficiary was not the one who took out the endowment contract.

(59) The excess of allowable deductions over gross income of the business in a taxable year is known as

(A) net operating loss.

(B) ordinary loss.

(C) net deductible loss.

(D) NOLCO.

(60) No action shall be taken by the BIR on the taxpayer's disputed issues until the taxpayer has paid the deficiency taxes

(A) when the assessment was issued against a false and fraudulent return.

(B) if there was a failure to pay the deficiency tax within 60 days from BIR demand.

(C) if the Regional Trial Court issues a writ of preliminary injunction to enjoin the BIR.

(D) attributable to the undisputed issues in the assessment notice.

(61) Is an article previously exported from the Philippines subject to the payment of customs duties?

(A) Yes, because all articles that are imported from any foreign country are subject to duty.

(B) No, because there is no basis for imposing duties on articles previously exported from the Philippines.

(C) Yes, because exemptions are strictly construed against the importer who is the taxpayer.



(D) No, if it is covered by a certificate of identification and has not been improved in value.

(62) Prior to the enactment of the Local Government Code, consumer's cooperatives registered under the Cooperative Development Act enjoyed exemption from all taxes imposed by a local government. With the Local Government Code's withdrawal of exemptions, could these cooperatives continue to enjoy such exemption?

(A) Yes, because the Local Government Code, a general law, could not amend a special law such as the Cooperative Development Act.

(B) No, Congress has not by the majority vote of all its members granted exemption to consumers' cooperatives.

(C) No, the exemption has been withdrawn to level the playing field for all taxpayers and preserve the LGUs' financial position.

(D) Yes, their exemption is specifically mentioned among those not withdrawn by the Local Government Code.

(63) Under the Tariff and Customs Code, abandoned imported articles becomes the property of the

(A) government whatever be the circumstances.

(B) insurance company that covered the shipment.

(C) shipping company in case the freight was not paid.

(D) bank if the shipment is covered by a letter of credit.

(64) Ka Tato owns a parcel of land in San Jose, Batangas declared for real property taxation, as agricultural. In 1990, he used the land for a poultry feed processing plant but continued to declare the property as agricultural. In March 2011, the local tax assessor discovered Ka Tato's change of use of his land and informed the local treasurer who demanded payment of deficiency real property taxes from 1990 to 2011. Has the action prescribed?

(A) No, the deficiency taxes may be collected within five years from when they fell due.

(B) No. The deficiency taxes for the period 1990 up to 2011 may still be collected within 10 years from March 2011.



(C) Yes. More than 10 years had lapsed for the period 1990 up to 2000, hence the right to collect the deficiency taxes has prescribed.

(D) Yes. More than 5 years had lapsed for the collection of the deficiency taxes for the period 1990 up to 2005.

(65) Pierre de Savigny, a Frenchman, arrived in the Philippines on January 1, 2010 and continued to live and engage in business in the Philippines. He went on a tour of Southeast Asia from August 1 to November 5, 2010. He returned to the Philippines on November 6, 2010 and stayed until April 15, 2011 when he returned to France. He earned during his stay in the Philippines a gross income of P3 million from his investments in the country. For the year 2010, Pierre's taxable status is that of

(A) a non-resident alien not engaged in trade or business in the Philippines.

(B) a non-resident alien engaged in trade or business in the Philippines.

(C) a resident alien not engaged in trade or business in the Philippines.

(D) a resident alien engaged in trade or business in the Philippines.

(66) Lualhati Educational Foundation, Inc., a stock educational institution organized for profit, decided to lease for commercial use a 1,500 sq. m. portion of its school. The school actually, directly, and exclusively used the rents for the maintenance of its school buildings, including payment of janitorial services. Is the leased portion subject to real property tax?

(A) Yes, since Lualhati is a stock and for profit educational institution.

(B) No, since the school actually, directly, and exclusively used the rents for educational purposes.

(C) No, but it may be subject to income taxation on the rents it receives.

(D) Yes, since the leased portion is not actually, directly, and exclusively used for educational purposes.

(67) Apparently the law does not provide for the refund of real property taxes that have been collected as a result of an erroneous or illegal assessment by the provincial or city assessor. What should be done in such instance to avoid an injustice?



(A) Question the legality of the no-refund rule before the Supreme Court.

(B) Enact a new ordinance amending the erroneous or illegal assessment to correct the error.

(C) Subsequent adjustment in tax computation and the application of the excess payment to future real property tax liabilities.

(D) Pass a new ordinance providing for the refund of real property taxes that have been erroneously or illegally collected.

(68) What should the BIR do when the prescriptive period for the assessment of a tax deficiency is about to prescribe but the taxpayer has not yet complied with the BIR requirements for the production of books of accounts and other records to substantiate the claimed deductions, exemptions or credits?

(A) Call the taxpayer to a conference to explain the delay.

(B) Immediately conduct an investigation of the taxpayer's activities.

(C) Issue a jeopardy assessment coupled with a letter of demand.

(D) Issue a notice of constructive distraint to protect government interest.

(69) Money collected from taxation shall not be paid to any religious dignitary EXCEPT when

(A) the religious dignitary is assigned to the Philippine Army.

(B) it is paid by a local government unit.

(C) the payment is passed in audit by the COA.

(D) it is part of a lawmaker's pork barrel.

(70) Discriminatory duties may NOT be imposed upon articles

(A) wholly manufactured in the discriminating country but carried by vessels of another country.

(B) not manufactured in the discriminating country but carried by vessels of such country.

(C) partly manufactured in the discriminating country but carried by vessels of another country.

(D) not manufactured in the discriminating country and



carried by vessels of another country.

(71) The taxpayer seasonably filed his protest together with all the supporting documents. It is already July 31, 2011, or 180 days from submission of the protest but the BIR Commissioner has not yet decided his protest. Desirous of an early resolution of his protested assessment, the taxpayer should file his appeal to the Court of Tax Appeals not later than

- (A) August 31, 2011.
- (B) August 30, 2011.
- (C) August 15, 2011.
- (D) August 1, 2011.

(72) Which of the following are NOT usually imposed when there is a tax amnesty?

(A) Civil, criminal, and administrative penalties

- (B) Civil and criminal penalties
- (C) Civil and administrative penalties
- (D) Criminal and administrative penalties

(73) Which among the following concepts of taxation is the basis for the situs of income taxation?

- (A) Lifeblood doctrine of taxation
- (B) Symbiotic relation in taxation**
- (C) Compensatory purpose of taxation
- (D) Sumptuary purpose of taxation

(74) In "Operation Kandado," the BIR temporarily closed business establishments, including New Dynasty Corporation that failed to comply with VAT regulations. New Dynasty contends that it should not be temporarily closed since it has a valid and existing VAT registration, it faithfully issued VAT receipts, and filed the proper VAT returns. The contention may be rejected if the BIR investigation reveals that

- (A) the taxpayer has not been regularly filing its income tax returns for the past 4 years.
- (B) the taxpayer deliberately filed a false and fraudulent return with deliberate intention to evade taxes.
- (C) the taxpayer used falsified documents to support its application for refund of taxes.



(D) there was an understatement of taxable sales or receipts by 30% or more for the taxable quarter.

(75) The head priest of the religious sect Tres Personas Solo Dios, as the corporation sole, rented out a 5,000 sq. m. lot registered in its name for use as school site of a school organized for profit. The sect used the rentals for the support and upkeep of its priests. The rented lot is

(A) not exempt from real property taxes because the user is organized for profit.

(B) exempt from real property taxes since it is actually, directly, and exclusively used for religious purposes.

(C) not exempt from real property taxes since it is the rents, not the land, that is used for religious purposes.

(D) exempt from real property taxes since it is actually, directly, and exclusively used for educational purposes.

2010 Taxation Law Exam MCQ (September 12, 2010)

(III) Mirador, Inc., a domestic corporation, filed its Annual Income Tax Return for its taxable year 2008 on April 15, 2009. In the Return, it reflected an income tax overpayment of P1,000,000.00 and indicated its choice to carry-over the overpayment as an automatic tax credit against its income tax liabilities in subsequent years.

On April 15, 2010, it filed its Annual Income Tax Return for its taxable year 2009 reflecting a taxable loss and an income tax overpayment for the current year 2009 in the amount of P500,000.00 and its income tax overpayment for the prior year 2008 of P1,000,000.00.

In its 2009 Return, the corporation indicated its option to claim for refund the total income tax overpayment of P1,500,000.00

Choose which of the following statements is correct.

- a. Mirador, Inc. may claim as refund the total income tax overpayment of P1,500,000.00 reflected in its income tax return for its taxable year 2009;
- b. **It may claim as refund the amount of P500,000.00 representing its income tax overpayment for its taxable year 2009; or**



- c. No amount may be claimed as refund.
Explain the basis of your answer.
(5%)

SUGGESTED ANSWER:

B. It may claim as refund the amount of P500,000 representing its income tax overpayment for its taxable year 2009. Since the taxpayer has opted to carry-over the P1 million overpaid income tax for taxable year 2008, said option is considered irrevocable and no application for cash refund shall be allowed for it (Sec 76, NIRC; CIR v. Bank of Philippine Island, G.R. No. 178490, July 7, 2009).

**2009 Taxation Law Exam
MCQ (September 13, 2009)**

(XI) Raffy and Wena, husband and wife, are both employed by XXX Corporation. After office hours, they jointly manage a coffee shop at the ground floor of their house. The coffee shop is registered in the name of both spouses. Which of the following is the correct way to prepare their income tax return? Write the letter only. DO NOT EXPLAIN YOUR ANSWER.
(2%)

- a. Raffy will declare as his income the salaries of both spouses, while

Wena will declare the income from the coffee shop.

- b. Wena will declare the combined compensation income of the spouses, and Raffy will declare the income from the coffee shop.
- c. All the income will be declared by Raffy alone, because only one consolidated return is required to be filed by the spouses.
- d. **Raffy will declare his own compensation income and Wena will declare hers. The income from the coffee shop shall be equally divided between them. Each spouse shall be taxed separately on their corresponding taxable income to be covered by one consolidated return for the spouses.**
- e. Raffy will declare his own compensation income and Wena will declare hers. The income from the coffee shop shall be equally divided between them. Raffy will file one income tax return to cover all the income of both spouses, and the tax is computed on the aggregate taxable income of the spouses.



References:

- **Answers to Bar Examination Questions by the UP LAW COMPLEX (2007, 2009, 2010)**
- **PHILIPPINE ASSOCIATION OF LAW SCHOOLS (2008)**
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