GUIDE NOTES AND CASES ON TAX REMEDIES

LILY K. GRUBA



GUIDE NOTES AND CASES ON TAX REMEDIES

Including Amendments pursuant to the Tax Reform for Acceleration and Inclusion ("TRAIN")

(Republic Act No. 10963)

LILY K. GRUBA

LL.B. — Ateneo de Manila University School of Law
LL.M. — Georgetown University School of Law
Executive Director for Fr. Joaquin Bernas, SJ Institute
for Continuing Legal Education — Ateneo de Manila University
School of Law (June 2018-present)

Associate Dean — Ateneo Law School (2002-May 2018) Chairperson, Ateneo Central Bar Operations

Bar Review Committee —

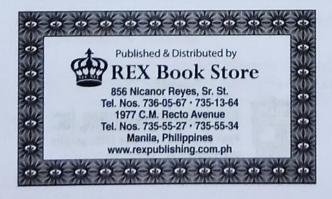
Ateneo de Manila University School of Law Faculty Member — Ateneo de Manila University School of Law (Taxation Law Review, Taxation Law, Due Diligence in Mergers and Acquisitions, Local Government Finance)

Bar Reviewer, Taxation Law — Ateneo de Manila University School of Law

Bar Examiner in Commercial Law (2012)
Bar Examiner in Taxation Law (2007)
Managing Partner — Zambrano, Gruba, Caganda &
Advincula Law Offices

(Formerly Zambrano & Gruba Law Offices)
Board Member, Asia United Bank Corporation
(2004-present)

Former Undersecretary, Department of Finance, Republic of the Philippines (July 1998-January 2001)



Philippine Copyright, 2018

by

LIDY K. GRUBA

ISBN 978-971-23-9907-7

No portion of this book may be copied or reproduced in books, pamphlets, outlines or notes, whether printed, mimeographed, typewritten, copied in different electronic devices or in any other form, for distribution or sale, without the written permission of the author except brief passages in books, articles, reviews, legal papers, and judicial or other official proceedings with proper citation.

Any copy of this book without the corresponding number and the signature of the author on this page either proceeds from an illegitimate source or is in possession of one who has no authority to dispose of the same.

> ALL RIGHTS RESERVED BY THE AUTHOR

Printed by



CONTENTS

Pref	Preface		
		PART I - GENERAL PRINCIPLES ON REMEDIES	
I.	Remed	ly, Defined	1
11.		e of Tax Remedies	1
		ummary of Remedies of Government	2
	B. S	ummary of Remedies of the Taxpayer	3
Ш.		al Powers and Authorities of the Bureau	
	of Inte	rnal Revenue (BIR)	3
	A. P	owers and Duties of the Bureau of Internal	
	R	levenue	4
	B. A	assessment, Defined	5
	C. R	Kinds of Assessments	5
	D. T	he Concept of Self-Assessment	6
	E. I	Deficiency Assessment, Defined	7
	F. T	he Powers of the CIR to Aid in the Conduct	
	0	f an Audit	7
	1	. Examine returns and determine the	
		tax due	17
	2	. Assess the proper tax of a taxpayer on the	
		basis of "best evidence obtainable" under	
		certain conditions	21
	3	. Conduct inventory and surveillance and	
		prescribe presumptive gross sales	
		and receipts	25
	4	. Terminate taxable periods	26
	5	. Prescribe real property values	27
	6	Inquire into the bank deposits and other	
		related information held by financial	
		institutions	30
	7	Authorize the accreditation and registration	
		of tax agents	32

		8. To prescribe additional procedural or	
		documentary requirements for compliance	
		and submission of financial statements	
		to authorities	33
		PART II – DEFICIENCY ASSESSMENT	
I.	Pro	cedure in the conduct of an assessment	34
1.	A.	Letter of Authority	34
	B.	Letter Notice	38
	C.	Notice of Informal Conference	39
II.		stesting a Tax Assessment	46
11.	A.	Preliminary Assessment Notice (PAN)	47
	Α.	a. When a Preliminary Assessment Notice	41
			52
	B.	(PAN) is not required Formal Letter of Demand (FLD) and/or Final	02
	D.		52
		Assessment Notice (FAN)	04
		a. Requisites for a valid FAN/FLD as provided for in Section 3.1.3. RR No. 12-99, as amended	
		by RR No. 18-2013.	53
		b. Taxpayer's Remedies in Response to FLD/FAN	
			53
		i. Request for Reconsideration	53
		ii. Request for Reinvestigation	53
		c. Content of the Protest	54
		d. Effect of Failure to File Protest	54
		e. Decision of the Commissioner of Internal	
		Revenue (CIR) on the protest filed	54
		f. Effect of Inaction of the CIR	55
		g. Final Decision on Disputed Assessment	
		(FDDA)	56
		h. Disputed Assessment	56
	C.	Modes of Service for a Valid Assessment Notice	57
		a. Personal Service	57
		b. Substituted Service	57
		c. Service by Mail	58
	D.	Requisites of a Valid Assessment	59
	E.	Proof of Receipt of the Notice of Assessment	
		is Required	73
		PART III - PRESCRIPTIVE PERIODS	
		FOR ASSESSMENT AND COLLECTION	
I.	Def	inition of Prescription	94

11.	Summary of Prescriptive Periods under the 1997		
	Tax Code, as amended	87	
Ш	Periods for Assessment of Tax Liability	87	
IV.	Periods for Collection of Taxes	100	
	A. Exceptions to the Period of Limitation of	200	
	Assessment and Collection of Taxes	101	
	B. Waiver of the Defense of Prescription	105	
	- Teberipuon	100	
	of Timital	107	
		107	
	Land and a series		
	of Limitations	113	
	to illocative colleges and accommodate to		
	PART IV – ENFORCEMENT OF DEFICIENCY		
	ASSESSMENTS AND COLLECTION OF TAXES		
I.	Collection Process	100	
1.	Collection Process	120	
TT	A. Delinquency Tax versus Deficiency Tax	120	
11.	Remedies of Government in the Collection of		
	Assessed Taxes	122	
	A. Warrant of Distraint or Garnishment	123	
	B. Kinds of Distraint	125	
	C. Procedure for Distraint and Garnishment	127	
	D. Levy on Real Property	128	
	E. Report on the Service of the Warrant of		
	Distraint and Garnishment	131	
	F. Sale of Distrained Properties and Disposition		
	of Proceeds	136	
	G. Tax Lien	137	
	H. Nature of a Tax Lien	138	
	I. Forfeiture	140	
	J. Compromise and Abatement	141	
	a. Compromise	143	
	b. Abatement	153	
	c. Availability of Injunction to Restrain	200	
	Collection of Tax	154	
	d. Other Provisions on Civil Remedies	101	
	for Collection of Taxes	157	
	for Confection of Taxes	101	
	PART V - REFUND OF TAXES		
	Th. 0. 1. 0.00	150	
I.	Refund of Taxes	159	
II.	Legal Basis for Tax Refund	159 163	
III.	Taxes that can be refunded 1		

IV.	Nature of Tax Refunds Under the 1997 Tax Code,				
	as Amended	168			
V.	Grounds and Requisites for Claims for Tax Refund 1				
VI.	Nature of Erroneously Paid Tax or Illegally				
	Assessed or Collected Tax	165			
VII.	Definition of "erroneous or illegal tax"	165			
	Burden of Proof Required for Claim of Refund	168			
IX.	Options Available to Corporate Taxpayers	170			
X.	Tax Credit	170			
XI.	Use of Tax Credit Certificates (TCCs)	170			
	Distinctions between Tax Refund and Tax Credit	171			
XIII	Prescriptive Period for Recovery of Tax Erroneously	111			
71111	III II	171			
XIV	Conditions Under Which Tax Refund/Tax Credit	171			
211 V .	7.5 7.6	177			
XV.		175			
AV.	Refund of Value Added Tax (VAT)	175			
	DADT VI HIDICIAL DEMEDIES				
	PART VI – JUDICIAL REMEDIES				
I.	The Role of the Philippine Court System in Taxation	177			
Π.	Availability of Judicial Remedies on Tax Matters	178			
III.	Laws on the Court of Tax Appeals	178			
IV.	Organization of the Court of Tax Appeals	179			
V.	The CTA is a Specialized Court of Special	1.0			
	Jurisdiction	182			
VI.	The Jurisdiction of the CTA Can Be Summarized	102			
	as Follows	185			
	A. Exclusive Appellate Jurisdiction over Civil Tax	100			
	Cases by the Court in Division	185			
	a. Decisions of the Commissioner of Internal	100			
	Revenue and Other Matters Brought				
	to the CTA	186			
	b. Cases Brought to the CTA Due to Inaction	100			
	by the CIR on Disputed Assessments	188			
	c. Decisions of the Regional Trial Court	100			
	on Local Tax Cases	189			
	d. Decisions of the Commissioner of Customs	103			
	Appealable to the CTA	190			
	B. Exclusive Original and Appellate Jurisdiction	130			
	Over Criminal Cases	101			
VII	Jurisdiction of the MTC and the RTC Over Cases	191			
1 11.	Involving the Collection of Internal Revenue Taxes	105			
VIII	The Court of Tax Appeals is a Court of Record	195			
V 111.	The court of rax rippears is a court of necoru	200			

IX.	Period of Appeal from the RTC to the CTA		201
	A. Rules	on Suspension or Restraining of	
	Collec	tion	202
	B. Appea	al to the Court of Tax Appeals En Banc is	
	Mand	atory and Jurisdictional	211
Sun	nmary of Jur	risdiction of the CTA En Banc	223
D:hl			
DIUI	lography		229
An A	Act Creating	the Court of Tax Appeals	
	(Republic A	Act No. 1125, as amended)	242
Rev	ised Rules of	f the Court of Tax Appeals	
	(A.M. No. 0	05-11-07-CTA, as amended)	252

www.rexestore.com

