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FIRST DIVISION

[G.R. No. 159694. January 27, 2006]

COMMISSIONER OF INTERNAL REVENUE, *petitioner, vs.* **AZUCENA T. REYES,** *respondent.*

[G.R. No. 163581. January 27, 2006]

AZUCENA T. REYES, *petitioner, vs.* **COMMISSIONER OF INTERNAL REVENUE,** *respondent.*

SYLLABUS

1. TAXATION; NATIONAL INTERNAL REVENUE CODE; AN INVALID ASSESSMENT CANNOT BE USED AS BASIS FOR PERFECTION OF A TAX COMPROMISE.— [U]nder the present provisions of the Tax Code and pursuant to elementary due process, taxpayers must be informed in writing of the law and the facts upon which a tax assessment is based; otherwise, the assessment is void. Being invalid, the assessment cannot in turn be used as a basis for the perfection of a tax compromise.

2. ID.; ID.; PROTESTING AN ASSESSMENT; TAXPAYERS SHALL BE INFORMED IN WRITING OF THE LAW AND THE FACTS ON WHICH THE ASSESSMENT IS MADE.— The second paragraph of Section 228 of the Tax Code is clear and mandatory. It provides as follows: "Sec. 228. *Protesting of Assessment.* — x x x "The taxpayers shall be informed in writing of the law and the facts on which the assessment is made: otherwise, the assessment shall be void." In the present case, Reyes was not informed in writing of the law and the facts on which the assessment of estate taxes had been made. xxx To be simply informed in writing of the investigation being conducted and of the recommendation for the assessment of the estate taxes due is nothing but a perfunctory discharge of the tax function of correctly assessing a taxpayer. The act cannot be taken to mean that Reyes already knew the law and the facts on which the assessment was based. It does not at all conform to the compulsory requirement under Section 228. Moreover, the Letter of Authority received by respondent on March 14, 1997 was for the sheer purpose

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of investigation and was not even the requisite notice under the law.

3. **ID.; ID.; ID.; SECTION 228 OF THE NATIONAL INTERNAL CODE FOR PROTESTING AN ASSESSMENT CAN BE APPLIED RETROACTIVELY; RATIONALE.**— The general rule is that statutes are prospective. However, statutes that are remedial, or that do not create new or take away vested rights, do not fall under the general rule against the retroactive operation of statutes. Clearly, Section 228 provides for the procedure in case an assessment is protested. The provision does not create new or take away vested rights. In both instances, it can surely be applied retroactively. Moreover, RA 8424 does not state, either expressly or by necessary implication, that pending actions are excepted from the operation of Section 228, or that applying it to pending proceedings would impair vested rights.

4. **ID.; ID.; TAX REGULATION; ABSENCE THEREOF DOES NOT AUTOMATICALLY MEAN THAT THE NATIONAL INTERNAL REVENUE CODE WOULD BECOME IN OPERATIVE.**— [T]he non-retroactive application of Revenue Regulation (RR) No. 12-99 is of no moment, considering that it merely implements the law. A tax regulation is promulgated by the finance secretary to implement the provisions of the Tax Code. While it is desirable for the government authority or administrative agency to have one immediately issued after a law is passed, the absence of the regulation does not automatically mean that the law itself would become inoperative.

5. **POLITICAL LAW; ADMINISTRATIVE LAW; AN ADMINISTRATIVE RULE INTERPRETIVE OF A STATUTE IS GIVEN RETROACTIVE EFFECT AS OF THE EFFECTIVITY OF THE STATUTE; CASE AT BAR.**— [A]n administrative rule interpretive of a statute, and not declarative of certain rights and corresponding obligations, is given retroactive effect as of the date of the effectivity of the statute. RR 12-99 is one such rule. Being interpretive of the provisions of the Tax Code, even if it was issued only on September 6, 1999, this regulation was to retroact to January 1, 1998 — a date prior to the issuance of the preliminary assessment notice and demand letter.

6. **ID.; ID.; ADMINISTRATIVE DUE PROCESS; VIOLATED IN CASE AT BAR.**— [P]etitioner violated the cardinal rule in administrative law that the taxpayer be accorded due process. Not only was

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the law here disregarded, but no valid notice was sent, either. A void assessment bears no valid fruit. The law imposes a substantive, not merely a formal, requirement. To proceed heedlessly with tax collection without first establishing a valid assessment is evidently violative of the cardinal principle in administrative investigations: that taxpayers should be able to present their case and adduce supporting evidence. In the instant case, respondent has not been informed of the basis of the estate tax liability. Without complying with the unequivocal mandate of first informing the taxpayer of the government's claim, there can be no deprivation of property, because no effective protest can be made. The haphazard shot at slapping an assessment, supposedly based on estate taxation's general provisions that are expected to be known by the taxpayer, is utter chicanery.

7. **CIVIL LAW; PRINCIPLE OF ESTOPPEL; INAPPLICABLE IN CASE AT BAR.**— [T]he rule against estoppel does not apply. Although the government cannot be estopped by the negligence or omission of its agents, the obligatory provision on protesting a tax assessment cannot be rendered nugatory by a mere act of the CIR .

8. **ID.; EFFECT AND APPLICATION OF LAWS; ACTS EXECUTED AGAINST THE MANDATORY PROVISIONS OF LAW ARE VOID, EXCEPT WHEN THE LAW ITSELF AUTHORIZES THE VALIDITY OF THOSE ACTS.**— Tax laws are civil in nature. Under our Civil Code, acts executed against the mandatory provisions of law are void, except when the law itself authorizes the validity of those acts. Failure to comply with Section 228 does not only render the assessment void, but also finds no validation in any provision in the Tax Code. We cannot condone errant or enterprising tax officials, as they are expected to be vigilant and law-abiding.

9. **TAXATION; NATIONAL INTERNAL REVENUE CODE; AUTHORITY OF THE COMMISSIONER TO COMPROMISE TAXES; PROCEDURE WHERE THE BASIC TAX INVOLVED EXCEEDS ONE MILLION PESOS OR THE SETTLEMENT OFFERED IS LESS THAN THE PRESCRIBED MINIMUM RATES.**— Under Section 204(A) of the Tax Code, where the basic tax involved exceeds one million pesos or the settlement offered is less than the prescribed minimum rates, the compromise

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shall be subject to the approval of the NEB composed of the petitioner and four deputy commissioners. xxx [A]s correctly held by the appellate court, this provision applies to all compromises, whether government-initiated or not. *Ubi lex non distinguit, nec nos distinguere debemos.* Where the law does not distinguish, we should not distinguish.

APPEARANCES OF COUNSEL

The Solicitor General for Commissioner of Internal Revenue.
Reynoso B. Floreza for A.T. Reyes.

D E C I S I O N

PANGANIBAN, *C.J.*:

Under the present provisions of the Tax Code and pursuant to elementary due process, taxpayers must be informed in writing of the law and the facts upon which a tax assessment is based; otherwise, the assessment is void. Being invalid, the assessment cannot in turn be used as a basis for the perfection of a tax compromise.

The Case

Before us are two consolidated[1] Petitions for Review[2] filed under Rule 45 of the Rules of Court, assailing the August 8,

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[1] The June 21, 2004 Resolution ordering the consolidation of G.R. No. 163581 with G.R. No. 159694 had been issued before the petitioner in the former case filed a Petition for Review. (G.R. No. 163581; *rollo*, p. 5.)

Afterwards, per Resolution dated August 16, 2004, this Court denied the Petition for Review in G.R. No. 163581 for failure to comply with the requirements in Rules 46 and 56 of the 1997 Rules of Civil Procedure. Lacking was an affidavit of service of copies on the CA and on the respondent, and a duplicate original or a certified true copy of the assailed Decision and Resolution. (G.R. No. 163581; *rollo*, pp. 80-81.)

Ultimately, per Resolution dated December 6, 2004, this Court denied with finality petitioner's Motion for Reconsideration in G.R. No. 163581 of the August 16, 2004 Resolution. (G.R. No. 163581; *rollo*, unnumbered after p. 105.)

[2] G.R. No. 159694, *rollo*, pp. 8-40; G.R. No. 163581, *rollo*, pp. 7-20.

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2003 Decision[3] of the Court of Appeals (CA) in CA-G.R. SP No. 71392. The dispositive portion of the assailed Decision reads as follows:

"WHEREFORE, the petition is *GRANTED*. The assailed decision of the Court of Tax Appeals is *ANNULLED* and *SET ASIDE* without prejudice to the action of the National Evaluation Board on the proposed compromise settlement of the Maria C. Tancinco estate's tax liability."[4]

The Facts

The CA narrated the facts as follows:

"On July 8, 1993, Maria C. Tancinco (or 'decedent') died, leaving a 1,292 square-meter residential lot and an old house thereon (or 'subject property') located at 4931 Pasay Road, Dasmariñas Village, Makati City.

"On the basis of a sworn information-for-reward filed on February 17, 1997 by a certain Raymond Abad (or 'Abad'), Revenue District Office No. 50 (South Makati) conducted an investigation on the decedent's estate (or 'estate'). Subsequently, it issued a Return Verification Order. But without the required preliminary findings being submitted, it issued Letter of Authority No. 132963 for the regular investigation of the estate tax case. Azucena T. Reyes (or '[Reyes]'), one of the decedent's heirs, received the Letter of Authority on March 14, 1997.

"On February 12, 1998, the Chief, Assessment Division, Bureau of Internal Revenue (or 'BIR'), issued a preliminary assessment notice against the estate in the amount of ₱14,580,618.67. On May 10, 1998, the heirs of the decedent (or 'heirs') received a final estate tax assessment notice and a demand letter, both dated April 22, 1998, for the amount of ₱14,912,205.47, inclusive of surcharge and interest.

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[3] Eighth Division. Penned by Justice Edgardo P. Cruz, with the concurrence of Justices Conrado M. Vasquez Jr. (chair) and Noel G. Tijam (member).

[4] CA Decision, p. 14; G.R. No. 159694; *rollo*, p. 56. Uppercase and boldface copied verbatim.

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"On June 1, 1998, a certain Felix M. Sumbillo (or 'Sumbillo') protested the assessment [o]n behalf of the heirs on the ground that the subject property had already been sold by the decedent sometime in 1990.

"On November 12, 1998, the Commissioner of Internal Revenue (or '[CIR]') issued a preliminary collection letter to [Reyes], followed by a Final Notice Before Seizure dated December 4, 1998.

"On January 5, 1999, a Warrant of Distraint and/or Levy was served upon the estate, followed on February 11, 1999 by Notices of Levy on Real Property and Tax Lien against it.

"On March 2, 1999, [Reyes] protested the notice of levy. However, on March 11, 1999, the heirs proposed a compromise settlement of ₱1,000,000.00.

"In a letter to [the CIR] dated January 27, 2000, [Reyes] proposed to pay 50% of the basic tax due, citing the heirs' inability to pay the tax assessment. On March 20, 2000, [the CIR] rejected [Reyes's] offer, pointing out that since the estate tax is a charge on the estate and not on the heirs, the latter's financial incapacity is immaterial as, in fact, the gross value of the estate amounting to ₱32,420,360.00 is more than sufficient to settle the tax liability. Thus, [the CIR] demanded payment of the amount of ₱18,034,382.13 on or before April 15, 2000[;] otherwise, the notice of sale of the subject property would be published.

"On April 11, 2000, [Reyes] again wrote to [the CIR], this time proposing to pay 100% of the basic tax due in the amount of ₱5,313,891.00. She reiterated the proposal in a letter dated May 18, 2000.

"As the estate failed to pay its tax liability within the April 15, 2000 deadline, the Chief, Collection Enforcement Division, BIR, notified [Reyes] on June 6, 2000 that the subject property would be sold at public auction on August 8, 2000.

"On June 13, 2000, [Reyes] filed a protest with the BIR Appellate Division. Assailing the scheduled auction sale, she asserted that x x x the assessment, letter of demand[,] and the whole tax proceedings against the estate are void *ab initio*. She offered to file the corresponding estate tax return and pay the correct amount of tax without surcharge [or] interest.

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"Without acting on [Reyes's] protest and offer, [the CIR] instructed the Collection Enforcement Division to proceed with the August 8, 2000 auction sale. Consequently, on June 28, 2000, [Reyes] filed a [P]etition for [R]eview with the Court of Tax Appeals (or 'CTA'), docketed as CTA Case No. 6124.

"On July 17, 2000, [Reyes] filed a Motion for the Issuance of a Writ of Preliminary Injunction or Status *Quo* Order, which was granted by the CTA on July 26, 2000. Upon [Reyes's] filing of a surety bond in the amount of ₱27,000,000.00, the CTA issued a [R]esolution dated August 16, 2000 ordering [the CIR] to desist and refrain from proceeding with the auction sale of the subject property or from issuing a [W]arrant of [D]istraint or [G]arnishment of [B]ank [A]ccount[,] pending determination of the case and/or unless a contrary order is issued.

"[The CIR] filed a [M]otion to [D]ismiss the petition on the grounds (i) that the CTA no longer has jurisdiction over the case[,] because the assessment against the estate is already final and executory; and (ii) that the petition was filed out of time. In a [R]esolution dated November 23, 2000, the CTA denied [the CIR's] motion.

"During the pendency of the [P]etition for [R]eview with the CTA, however, the BIR issued Revenue Regulation (or 'RR') No. 6-2000 and Revenue Memorandum Order (or 'RMO') No. 42-2000 offering certain taxpayers with delinquent accounts and disputed assessments an opportunity to compromise their tax liability.

"On November 25, 2000, [Reyes] filed an application with the BIR for the compromise settlement (or 'compromise') of the assessment against the estate pursuant to Sec. 204(A) of the Tax Code, as implemented by RR No. 6-2000 and RMO No. 42-2000.

"On December 26, 2000, [Reyes] filed an *Ex-Parte* Motion for Postponement of the hearing before the CTA scheduled on January 9, 2001, citing her pending application for compromise with the BIR. The motion was granted and the hearing was reset to February 6, 2001.

"On January 29, 2001, [Reyes] moved for postponement of the hearing set on February 6, 2001, this time on the ground that she had already paid the compromise amount of ₱1,062,778.20 but was still awaiting approval of the National Evaluation Board (or 'NEB'). The CTA granted the motion and reset the hearing to February 27, 2001.

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"On February 19, 2001, [Reyes] filed a Motion to Declare Application for the Settlement of Disputed Assessment as a Perfected Compromise. In said motion, she alleged that [the CIR] had not yet signed the compromise[,] because of procedural red tape requiring the initials of four Deputy Commissioners on relevant documents before the compromise is signed by the [CIR]. [Reyes] posited that the absence of the requisite initials and signature[s] on said documents does not vitiate the perfected compromise.

"Commenting on the motion, [the CIR] countered that[,] without the approval of the NEB, [Reyes's] application for compromise with the BIR cannot be considered a perfected or consummated compromise.

"On March 9, 2001, the CTA denied [Reyes's] motion, prompting her to file a Motion for Reconsideration *Ad Cautelam*. In a [R]esolution dated April 10, 2001, the CTA denied the [M]otion for [R]econsideration with the suggestion that[,] for an orderly presentation of her case and to prevent piecemeal resolutions of different issues, [Reyes] should file a [S]upplemental [P]etition for [R]eview[,] setting forth the new issue of whether there was already a perfected compromise.

"On May 2, 2001, [Reyes] filed a Supplemental Petition for Review with the CTA, followed on June 4, 2001 by its Amplificatory Arguments (for the Supplemental Petition for Review), raising the following issues:

> '1. Whether or not an offer to compromise by the [CIR], with the acquiescence by the Secretary of Finance, of a tax liability pending in court, that was accepted and paid by the taxpayer, is a perfected and consummated compromise.'
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> '2. Whether this compromise is covered by the provisions of Section 204 of the Tax Code (CTRP) that requires approval by the BIR [NEB].'

"Answering the Supplemental Petition, [the CIR] averred that an application for compromise of a tax liability under RR No. 6-2000 and RMO No. 42-2000 requires the evaluation and approval of either the NEB or the Regional Evaluation Board (or 'REB'), as the case may be.

"On June 14, 2001, [Reyes] filed a Motion for Judgment on the Pleadings; the motion was granted on July 11, 2001. After submission of memoranda, the case was submitted for [D]ecision.

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"On June 19, 2002, the CTA rendered a [D]ecision, the decretal portion of which pertinently reads:

> 'WHEREFORE, in view of all the foregoing, the instant [P]etition for [R]eview is hereby DENIED. Accordingly, [Reyes] is hereby ORDERED to PAY deficiency estate tax in the amount of Nineteen Million Five Hundred Twenty Four Thousand Nine Hundred Nine and 78/100 (₱19,524,909.78), computed as follows:
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> x x x x x x x x x
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> '[Reyes] is likewise ORDERED to PAY 20% delinquency interest on deficiency estate tax due of ₱17,934,382.13 from January 11, 2001 until full payment thereof pursuant to Section 249(c) of the Tax Code, as amended.'

"In arriving at its decision, the CTA ratiocinated that there can only be a perfected and consummated compromise of the estate's tax liability[,] if the NEB has approved [Reyes's] application for compromise in accordance with RR No. 6-2000, as implemented by RMO No. 42-2000.

"Anent the validity of the assessment notice and letter of demand against the estate, the CTA stated that 'at the time the questioned assessment notice and letter of demand were issued, the heirs knew very well the law and the facts on which the same were based.' It also observed that the petition was not filed within the 30-day reglementary period provided under Sec. 11 of Rep. Act No. 1125 and Sec. 228 of the Tax Code."[5]

Ruling of the Court of Appeals

In partly granting the Petition, the CA said that Section 228 of the Tax Code and RR 12-99 were mandatory and unequivocal in their requirement. The assessment notice and the demand letter should have stated the facts and the law on which they were based; otherwise, they were deemed void.[6] The appellate court held that while administrative agencies, like the BIR, were not bound by procedural requirements, they were still required by law and equity to observe substantive due process. The reason behind this requirement, said the CA, was to ensure

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[5] *Id.*, pp. 1-7 & 43-49. Uppercase and italics copied.

[6] *Id.*, pp. 9 & 51.

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that taxpayers would be duly apprised of — and could effectively protest — the basis of tax assessments against them.[7] Since the assessment and the demand were void, the proceedings emanating from them were likewise void, and any order emanating from them could never attain finality.

The appellate court added, however, that it was premature to declare as perfected and consummated the compromise of the estate's tax liability. It explained that, where the basic tax assessed exceeded ₱1 million, or where the settlement offer was less than the prescribed minimum rates, the National Evaluation Board's (NEB) prior evaluation and approval were the *conditio sine qua non* to the perfection and consummation of any compromise.[8] Besides, the CA pointed out, Section 204(A) of the Tax Code applied to all compromises, whether government-initiated or not.[9] Where the law did not distinguish, courts too should not distinguish.

Hence, this Petition.[10]

The Issues

In G.R. No. 159694, petitioner raises the following issues for the Court's consideration:

"I.

Whether petitioner's assessment against the estate is valid.

"II.

Whether respondent can validly argue that she, as well as the other heirs, was not aware of the facts and the law on which the assessment in question is based, after she had opted to propose several

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[7] *Id.*, pp. 10 & 52.

[8] *Id.*, pp. 11 & 53.

[9] *Id.*, pp. 14 & 56.

[10] This case was deemed submitted for decision on August 30, 2004, upon this Court's receipt in G.R. No. 159694 of Petitioner's Memorandum, signed by Assistant Solicitor General Vida G. San Vicente and Associate Solicitor Sherri Lynn S. Cheng. Respondent's Memorandum, signed by Atty. Reynoso B. Floreza, was received by this Court on July 28, 2004.

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compromises on the estate tax due, and even prematurely acting on such proposal by paying 20% of the basic estate tax due."[11]

The foregoing issues can be simplified as follows: *first*, whether the assessment against the estate is valid; and, *second*, whether the compromise entered into is also valid.

The Court's Ruling

The Petition is unmeritorious.

First Issue:

Validity of the Assessment Against the Estate

The second paragraph of Section 228 of the Tax Code[12] is clear and mandatory. It provides as follows:

"Sec. 228. *Protesting of Assessment.* —

x x x *x x x* *x x x*

"The taxpayers shall be informed in writing of the law and the facts on which the assessment is made: otherwise, the assessment shall be void."

In the present case, Reyes was not informed in writing of the law and the facts on which the assessment of estate taxes had been made. She was merely notified of the findings by the CIR, who had simply relied upon the provisions of former Section 229[13] prior to its amendment by Republic Act (RA) No. 8424, otherwise known as the Tax Reform Act of 1997.

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[11] G.R. No. 159694. Petitioner's Memorandum, pp. 12-13; *rollo*, pp. 259-260. Original in uppercase.

[12] The Tax Code referred to is Republic Act (RA) No. 8424, as amended.

[13] The National Internal Revenue Code of 1977 provides:

"SECTION 229. *Protesting of assessment.* — When the Commissioner of Internal Revenue or his duly authorized representative finds that proper taxes should be assessed, he shall first notify the taxpayer of his findings. Within a period to be prescribed by implementing regulations, the taxpayer shall be required to respond to said notice. If the taxpayer fails to respond, the Commissioner shall issue an assessment based on his findings.

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First, RA 8424 has already amended the provision of Section 229 on protesting an assessment. The old requirement of merely *notifying* the taxpayer of the CIR's findings was changed in 1998 to *informing* the taxpayer of not only the law, but also of the facts on which an assessment would be made; otherwise, the assessment itself would be invalid.

It was on February 12, 1998, that a preliminary assessment notice was issued against the estate. On April 22, 1998, the final estate tax assessment notice, as well as demand letter, was also issued. During those dates, RA 8424 was already in effect. The notice required under the *old* law was no longer sufficient under the *new* law.

To be simply informed in writing of the investigation being conducted and of the recommendation for the assessment of the estate taxes due is nothing but a perfunctory discharge of the tax function of correctly assessing a taxpayer. The act cannot be taken to mean that Reyes already knew the law and the facts on which the assessment was based. It does not at all conform to the compulsory requirement under Section 228. Moreover, the Letter of Authority received by respondent on March 14, 1997 was for the sheer purpose of investigation and was not even the requisite notice under the law.

The procedure for protesting an assessment under the Tax Code is found in Chapter III of Title VIII, which deals with remedies. Being procedural in nature, can its provision then be applied retroactively? The answer is yes.

"Such assessment may be protested administratively by filing a request for reconsideration or reinvestigation in such form and manner as may be prescribed by implementing regulation within thirty (30) days from receipt of the assessment; otherwise, the assessment shall become final and unappealable.

"If the protest is denied in whole or in part, the individual, association or corporation adversely affected by the decision on the protest may appeal to the Court of Tax Appeals within thirty (30) days from receipt of the said decision; otherwise, the decision shall become final, executory and demandable."

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The general rule is that statutes are prospective. However, statutes that are remedial, or that do not create new or take away vested rights, do not fall under the general rule against the retroactive operation of statutes.[14] Clearly, Section 228 provides for the procedure in case an assessment is protested. The provision does not create new or take away vested rights. In both instances, it can surely be applied retroactively. Moreover, RA 8424 does not state, either expressly or by necessary implication, that pending actions are excepted from the operation of Section 228, or that applying it to pending proceedings would impair vested rights.

Second, the non-retroactive application of Revenue Regulation (RR) No. 12-99 is of no moment, considering that it merely implements the law.

A tax regulation is promulgated by the finance secretary to implement the provisions of the Tax Code.[15] While it is desirable for the government authority or administrative agency to have one immediately issued after a law is passed, the absence of the regulation does not automatically mean that the law itself would become inoperative.

At the time the pre-assessment notice was issued to Reyes, RA 8424 already stated that the taxpayer must be informed of both the law and facts on which the assessment was based. Thus, the CIR should have required the assessment officers of the Bureau of Internal Revenue (BIR) to follow the clear mandate of the new law. The old regulation governing the issuance of estate tax assessment notices ran afoul of the rule that tax regulations — old as they were — should be in harmony with, and not supplant or modify, the law.[16]

It may be argued that the Tax Code provisions are not self-executory. It would be too wide a stretch of the imagination, though, to still issue a regulation that would simply require tax

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[14] Agpalo, *Statutory Construction (4th ed., 1998)*, p. 373.

[15] §244 of the Tax Code.

[16] Aban, *Law of Basic Taxation in the Philippines* (2001), p. 149.

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officials to inform the taxpayer, in any manner, of the law and the facts on which an assessment was based. That requirement is neither difficult to make nor its desired results hard to achieve.

Moreover, an administrative rule interpretive of a statute, and not declarative of certain rights and corresponding obligations, is given retroactive effect as of the date of the effectivity of the statute.[17] RR 12-99 is one such rule. Being interpretive of the provisions of the Tax Code, even if it was issued only on September 6, 1999, this regulation was to retroact to January 1, 1998 — a date prior to the issuance of the preliminary assessment notice and demand letter.

Third, neither Section 229 nor RR 12-85 can prevail over Section 228 of the Tax Code.

No doubt, Section 228 has replaced Section 229. The provision on protesting an assessment has been amended. Furthermore, in case of discrepancy between the law as amended and its implementing but old regulation, the former necessarily prevails.[18] Thus, between Section 228 of the Tax Code and the pertinent provisions of RR 12-85, the latter cannot stand because it cannot go beyond the provision of the law. The law must still be followed, even though the existing tax regulation at that time provided for a different procedure. The regulation then simply provided that notice be sent to the respondent in the form prescribed, and that no consequence would ensue for failure to comply with that form.

Fourth, petitioner violated the cardinal rule in administrative law that the taxpayer be accorded due process. Not only was the law here disregarded, but no valid notice was sent, either. A void assessment bears no valid fruit.

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[17] Agpalo, *Statutory Construction, id.*, p. 375. See also *Adamson Ozanom Educational Institution, Inc. v. Adamson University Faculty and Employees Association,* 179 SCRA 279, November 9, 1989.

[18] *Philippine Petroleum Corp. v. Municipality of Pililla, Rizal,* 198 SCRA 82, 88, June 3, 1991, citing *Shell Philippines, Inc. v. Central Bank of the Philippines,* 162 SCRA 628, 634, June 27, 1988.

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The law imposes a substantive, not merely a formal, requirement. To proceed heedlessly with tax collection without first establishing a valid assessment is evidently violative of the cardinal principle in administrative investigations: that taxpayers should be able to present their case and adduce supporting evidence.[19] In the instant case, respondent has not been informed of the basis of the estate tax liability. Without complying with the unequivocal mandate of first informing the taxpayer of the government's claim, there can be no deprivation of property, because no effective protest can be made.[20] The haphazard shot at slapping an assessment, supposedly based on estate taxation's general provisions that are expected to be known by the taxpayer, is utter chicanery.

Even a cursory review of the preliminary assessment notice, as well as the demand letter sent, reveals the lack of basis for — not to mention the insufficiency of — the gross figures and details of the itemized deductions indicated in the notice and the letter. This Court cannot countenance an assessment based on estimates that appear to have been arbitrarily or capriciously arrived at. Although taxes are the lifeblood of the government, their assessment and collection "should be made in accordance with law as any arbitrariness will negate the very reason for government itself."[21]

Fifth, the rule against estoppel does not apply. Although the government cannot be estopped by the negligence or omission of its agents, the obligatory provision on protesting a tax assessment cannot be rendered nugatory by a mere act of the CIR.

Tax laws are civil in nature.[22] Under our Civil Code, acts executed against the mandatory provisions of law are void,

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[19] *Ang Tibay v. Court of Industrial Relations,* 69 Phil. 635, February 27, 1940.

[20] See *Ang Ping v. CA,* 369 Phil. 607, July 15, 1999.

[21] *Marcos II v. CA,* 273 SCRA 47, 57, June 5, 1997, per Torres Jr., *J.*

[22] Aban, *Law of Basic Taxation in the Philippines, id.*, p. 143.

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except when the law itself authorizes the validity of those acts.[23] Failure to comply with Section 228 does not only render the assessment void, but also finds no validation in any provision in the Tax Code. We cannot condone errant or enterprising tax officials, as they are expected to be vigilant and law-abiding.

Second Issue:
Validity of Compromise

It would be premature for this Court to declare that the compromise on the estate tax liability has been perfected and consummated, considering the earlier determination that the assessment against the estate was void. Nothing has been settled or finalized. Under Section 204(A) of the Tax Code, where the basic tax involved exceeds one million pesos or the settlement offered is less than the prescribed minimum rates, the compromise shall be subject to the approval of the NEB composed of the petitioner and four deputy commissioners.

Finally, as correctly held by the appellate court, this provision applies to all compromises, whether government-initiated or not. *Ubi lex non distinguit, nec nos distinguere debemos.* Where the law does not distinguish, we should not distinguish.

WHEREFORE, the Petition is hereby ***DENIED*** and the assailed Decision ***AFFIRMED***. No pronouncement as to costs.

SO ORDERED.

Ynares-Santiago, Austria-Martinez, Callejo, Sr., and *Chico-Nazario, JJ.*, concur.

[23] Art. 5 of the Civil Code.