

Republic of the Philippines
HOUSE OF REPRESENTATIVES
Quezon City

FIFTEENTH CONGRESS

First Regular Session

HOUSE BILL NO. 1430

INTRODUCED BY: Honorable Mar-Len Abigail S. Binay

EXPLANATORY NOTE

Under Section 203 of the National Internal Revenue Code ("NIRC"), the Bureau of Internal Revenue ("BIR") can assess and collect taxes only within three (3) years from the last day prescribed by law in the filing of the return.

In *Commissioner of Internal Revenue vs. B.F. Goodrich Phils., Inc.*, 303 SCRA 546 (1999) the Supreme Court held that "(f)or the purpose of safeguarding taxpayers from any unreasonable examination, investigation or assessment, our tax law provides a statute of limitations in the collection of taxes. Thus, the law on prescription, being a remedial measure, should be liberally construed in order to afford such protection". [Report of the Tax Commission, Vol. I, p. 98 and *Republic v. Ablaza*, 108 Phil. 1105, 1108 (1960); cited in *Vitug, Compendium of Tax Law and Jurisprudence*, p. 252, 2nd revised ed. (1989); *Hector S. de Leon, The National Internal Revenue Code Annotated*, p. 509, 1991 ed.; and *Ruben E. Agpalo, Statutory Construction*, p. 227, 2nd ed. (1990)]

Similarly, the Supreme Court in *Bank of the Philippine Islands, vs. Commissioner of Internal Revenue*, 473 SCRA 205 (2005), explained that the prescriptive period for assessment provides the citizenry security against **"unscrupulous tax agents who always finds excuses to inspect the books of taxpayers, not to determine the latter's real liability, but to take advantage of every opportunity to molest peaceful, law-abiding citizens.** Without such a legal defense, taxpayers would be under obligation to always keep their books and keep them open for inspection subject to harassment by unscrupulous tax agents."

However, despite this clear legislative intent recognized by the Supreme Court, the exceptions to the three (3)-year prescriptive period under Section 222 of the NIRC have been maliciously used in the malevolent scheme of unscrupulous tax agents to harass taxpayers and extort money from the latter. Specifically, the exceptions to the

prescriptive period which have been abused by unscrupulous tax agents to the great prejudice of taxpayers are: (i) filing of a false return; and (ii) filing of a fraudulent return with intent to evade taxes.

A false return has been defined as one "which contains wrong information due to mistake, carelessness or ignorance." [cf. **Commissioner of Internal Revenue vs. B.F. Goodrich Phils., Inc.**, 303 SCRA 546 (1999)] Resultantly, any return which contains a wrong information of whatever nature, and even if such inaccuracy was without any intent to evade taxes, may be argued as being a "false return" that is not covered by the three (3)-year prescriptive period. Hence, taxpayers have been subjected to harassment and extortion from unscrupulous tax agents who invoke the slightest inaccuracy in a return to demand the inspection of books beyond the three (3)-year period. This demand for inspection is not to determine the **real liability of the taxpayer, but to take advantage of taxpayers who under Section 235 of the NIRC are not required to maintain said books beyond three (3) years.** All told, due to the definition of a "false return", a taxpayer is now effectively under obligation to always keep his books and keep them open for inspection.

Fraud, on the other hand, "is deemed to comprise anything calculated to deceive, including all acts, omissions, and concealment involving a breach of legal or equitable duty, trust or confidence justly reposed, resulting in the damage to another, or by which an undue and unconscionable advantage is taken of another." [**Commissioner of Internal Revenue v. Court of Appeals**, 327 Phil. 1, 33 (1996) cited in **Commissioner of Internal Revenue, vs. The Estate Of Benigno P. Toda, Jr.** 438 SCRA 290 (2004)] However, the said exception is likewise being abused by unscrupulous tax agents to harass taxpayers even without any clear and convincing evidence to support an allegation of fraud. Worse, these tax agents use the mere failure of the taxpayer to provide his books for inspection and/or to submit documents which pertain to transactions that transpired in taxable years more than three (3) years ago as basis to claim fraud, and thus circumvent the three (3) year prescriptive period.

This bill, therefore, seeks to limit the exceptions to the three (3)-year prescriptive period in assessing taxes by removing "false returns" as one of the exceptions. A false return brought about by negligence, mistake, carelessness or ignorance should necessarily fall within those matters which the BIR must be able to ascertain within the three (3)-year prescriptive period because the government is not placed in any disadvantage as the supporting documents of these returns are readily open for inspection and review by the BIR. However, it goes without saying that a return which contains false information due to a conscious and deliberate effort on the part of the taxpayer to evade taxes may fall as a "fraudulent return", which is still an exception to the three (3)-year prescriptive period.

This bill likewise seeks to restrict "fraudulent return" as an exception to the three (3)-year prescriptive period by mandating the BIR to first establish the purported fraud through clear and convincing evidence which they must already have in its possession, and not through evidence which they intend to obtain from the taxpayer. Moreover, the failure of a taxpayer to provide for inspection his books and other supporting documents involving taxable years beyond the three (3)-year prescriptive period shall not be used as an *indicia* of any purported fraud.

In view of the foregoing, it is respectfully requested that all members of the 14th Congress consider and approve this bill with dispatch.


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AN ACT
AMENDING SECTION 222 OF REPUBLIC ACT NO. 8424,
OTHERWISE KNOWN AS THE "TAX REFORM ACT OF 1997"

Be it enacted in the Senate and the House of Representatives of the Philippines in Congress assembled:

SECTION 1. Section 222 of Republic Act No. 8424, as amended, otherwise known as the "Tax Reform Act of 1997", is hereby amended to read as follows:

"Section 222. Exception as to Period of Limitation of Assessment and Collection of Taxes. -

(a) In the case of a fraudulent return with intent to evade tax, or of failure to file a return, the tax may be assessed at any time within ten (10) years after the discovery of the fraud or omission: Provided, That the Commissioner can only claim fraud if he is already in possession of clear and convincing evidence that establishes the said fraud; Provided, Further, That the failure of the taxpayer to submit his books and other documents covering periods beyond the period of limitation under Section 205 shall not be considered as an *indicia* of any fraud; Provided, Finally, That a fraudulent return in a fraud assessment which has become final and executory, the fact of fraud shall be judicially taken cognizance of in the civil or criminal action for the collection thereof.

Negligence, whether slight or gross, mistake, carelessness or ignorance resulting in an inaccurate return shall not constitute as an exception to the period of limitation of assessment and collection of taxes.

(b) If before the expiration of the time prescribed in Section 203 for the assessment of the tax, both the Commissioner and the taxpayer have agreed in writing to its assessment after such time, the tax may be assessed within the period agreed upon. The period so agreed upon may be extended by subsequent written agreement made before the expiration of the period previously agreed upon.

(c) Any internal revenue tax which has been assessed within the period of limitation as prescribed in paragraph (a) hereof may be collected by distraint or levy or by a proceeding in court within five (5) years following the assessment of the tax.

(d) Any internal revenue tax, which has been assessed within the period agreed upon as provided in paragraph (b) herein above, may be collected by distraint or levy or by a proceeding in court within the period agreed upon in writing before the expiration of the five (5) year period. The period so agreed upon may be extended by subsequent written agreements made before the expiration of the period previously agreed upon.

(e) Provided, however, That nothing in the immediately preceding Section and paragraph (a) hereof shall be construed to authorize the examination and investigation or inquiry into any tax return filed in accordance with the provisions of any tax amnesty law or decree."

SEC. 2. If any clause, provision, paragraph or part hereof shall be declared unconstitutional or invalid, such declaration shall not affect, invalidate, or impair any other part thereof, but such declaration shall be merely confined to the clause, provision, paragraph or part directly involved in the controversy in which such declaration has been rendered.

SEC. 3. All laws and other administrative issuances, i.e., implementing rules and regulations, and parts thereof which are inconsistent with the provisions of this Act are hereby modified, amended, superseded or repealed accordingly.

SEC. 4. This Act shall take effect after fifteen (15) days from the completion of its publication in the Official Gazette or any major daily newspaper of general circulation in the Philippines.

Approved,