

**2008 BAR EXAMINATIONS
TAXATION**

14 September 2008

2 P.M. – 5 P.M.

INSTRUCTIONS

This questionnaire consists of fifteen (15) questions contained in eight (8) pages. Read each question very carefully. Answer legibly, clearly and concisely. Start each number on a separate page; an answer to a subquestion under the same number may be written continuously on the same page and on the immediately succeeding pages until completed. Do not repeat the question.

You will be given credit for your knowledge of legal doctrine and for the quality of your legal reasoning. A mere “Yes” or “No” answer without any corresponding discussion will not be given any credit.

HAND IN YOUR NOTEBOOK WITH THIS QUESTIONNAIRE.

GOOD LUCK!

**DANTE O. TINGA
CHAIRPERSON
2008 BAR EXAMINATIONS COMMITTEE**

PLEASE CHECK THE NUMBER OF PAGES IN THIS SET

WARNING: NOT FOR SALE OR UNAUTHORIZED USE

I

In January 1970, Juan Gonzales bought one hectare of agricultural land in Laguna for ₱100,000. This property has a current fair market value of ₱10 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 ₱10 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 ₱9 million.

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

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

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

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 ₱20 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 ₱2 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 ₱2 million. After 9 months, the BIR issued deficiency estate tax assessment, by valuing the real property at ₱40 million.

a) Is the BIR correct in valuing the real property at ₱40 million? Explain. (3%)

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

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 of 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%)

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%)

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%)

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%)

V

Maria Suerte, a Filipino citizen, purchased a lot in Makati City in 1980 at a price of ₱1 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 ₱300 million, payable as follows: (a) ₱60 million downpayment; and (b) balance, payable equally in twenty four (24) monthly consecutive installments. Upon the advice of a tax lawyer, Maria Suerte exchanged her Makati property for shares of stock 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 ₱300 million. In view of the tax advice, Maria Suerte paid only the capital gains tax of ₱29,895,000 (₱100,000 x 5% plus ₱298,900,000 x 10%), instead of the corporate income tax of ₱104,650,000 (35% on ₱299 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%)

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 the 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:

	<i>Assunta</i> Exclusive	Conjugal	<i>Jaime</i> Exclusive
Cash		₱10,000,000.	₱1,200,000.
Cars	₱2,000,000.	500,000.	
Land	5,000,000.	2,000,000.	
Residential house		4,000,000.	
Mortgage payable		2,500,000.	
Funeral expenses		300,000.	

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

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

VII

After examining the books and records of EDS Corporation, the 2004 final assessment notice, showing basic tax of ₱1,000,000, deficiency interest of ₱400,000, 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%)

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

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%)

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%)

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

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 ₱2 million. Yesterday, he sold the shares of stock through his favorite Makati stockbroker at a gain of ₱200,000.

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? Explain. (3%)

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 ₱200,000, is he liable for Philippine income tax? If so, what is the tax base and rate? (3%)

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 ₱15 million. On January 10, 2006, he sold said real property to Juan Mayaman, another Filipino citizen residing in Quezon City, for ₱20 million. On February 9, 2006, Manalo filed the capital gains tax return and paid ₱1.2 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: ₱5 million (₱20 million less ₱15 million) x 35% = ₱1.75 million, without the capital gains tax paid being allowed as tax credit. Manalo consulted a real estate broker who said that the ₱1.2 million capital gains tax should be credited from the ₱1.75 million deficiency income tax.

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

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

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 ₱120,000 a month or ₱1.44 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%)

b) Will the association be liable for value added tax in 2008 if it increases the rental to ₱150,000 a month beginning January 2008? Explain. (3%)

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	₱ 5,000,000.
January 1, 2007 to June 30, 2007	₱ 10,000,000.
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 ₱15 million. However, the Quezon City Treasurer assessed the corporation for deficiency business tax for 2007 based on gross sales of ₱25 million alleging that local business taxes shall be computed based on calendar year.

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

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

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 ₱2 million.

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

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%)

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 ₱10,000 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%)

b) Is the bank correct in withholding the 20% final tax on the entire interest income? Explain. (3%)

NOTHING FOLLOWS.