

2010 BAR EXAMINATIONS

TAXATION

12 September 2010

2 P.M – 5 P.M.

INSTRUCTIONS

This questionnaire is in TWO (2) PARTS: Part I with nine (9) questions (numbered I to IX), contained in five (5) pages; and Part II with nine (9) questions (numbered X to XVIII), contained in six (6) pages, for a total number of eleven (11) pages.

Write your answers to Part I and Part II in the corresponding portions indicated in the booklet.

Begin your answer to each numbered question on a separate page; an answer to a sub-question/s under the same number may be written continuously on the same page and succeeding pages until completed.

Answer the questions directly and concisely. Do not repeat the question. Write legibly.

HAND IN YOUR NOTEBOOK WITH THIS QUESTIONNAIRE

GOOD LUCK!!!

CONCHITA CARPIO MORALES

Chairperson

2010 Bar Examinations Committee

PLEASE CHECK THAT THIS SET CONTAINS ELEVEN (11) PAGES (INCLUDING THIS PAGE).

WARNING: NOT FOR SALE OR UNAUTHORIZED USE

PART I**I****True or False.**

- A.** 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%)
- B.** In criminal cases involving tax offenses punishable under the National Internal Revenue Code (NIRC), prescription is construed strictly against the government. (1%)
- C.** 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%)
- D.** Proceedings before the CTA in the exercise of its exclusive original jurisdiction are in the nature of trial *de novo*. (1%)
- E.** 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%)

II

- A.** What is the “*all events test*”? Explain briefly. (2%)
- B.** What is the “*immediacy test*”? Explain briefly. (2%)
- C.** What is the “*rational basis*” test? Explain briefly. (2%)
- D.** What is the effect of the execution by a taxpayer of a “waiver of the statute of limitations” on his defense of prescription? (2%)

- E.** What is the basis for the computation of business tax on contractors under the Local Government Code? (2%)
- F.** How are retiring businesses taxed under the Local Government Code? (2%)

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 ₱1,000,000.00 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 ₱500,000.00 and its income tax overpayment for the prior year 2008 of ₱1,000,000.00.

In its 2009 Return, the corporation indicated its option to claim for refund the total income tax overpayment of ₱1,500,000.00

Choose which of the following statements is correct.

- A.** Mirador, Inc. may claim as refund the total income tax overpayment of ₱1,500,000.00 reflected in its income tax return for its taxable year 2009;
- B.** It may claim as refund the amount of ₱500,000.00 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%)

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%)

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%)

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%)

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%)

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%)

IX

On May 15, 2009, La Manga Trading Corporation received a deficiency business tax assessment of ₱1,500,000.00 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).

- A. Was the protest of the corporation filed on time? Explain. (3%)
- B. Was the appeal with the Pasay RTC filed on time? Explain. (3%)

- END OF PART I-

PART II**X****True or False.** (1% each)

- A.** Gains realized by the investor upon redemption of shares of stock in a mutual fund company are exempt from income tax.
- B.** A corporation can claim the optional standard deduction equivalent to 40% of its gross sales or receipts, as the case may be.
- C.** Premium payment for health insurance of an individual who is an employee in an amount of ₱2,500 per year may be deducted from gross income if his gross salary per year is not more than ₱250,000.
- D.** The Tax Code allows an individual taxpayer to pay in two equal installments, the first installment 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 ₱2,000.
- E.** An individual taxpayer can adopt either the calendar or fiscal period for purposes of filing his income tax return.
- F.** The capitalization rules may be resorted to by the BIR in order to compel corporate taxpayers to declare dividends to their stockholders regularly.
- G.** Informer's reward is subject to a final withholding tax of 10%.
- H.** 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.

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.

- A. 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%)
- B. 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%)
- C. Sale of orchids by a flower shop which raises its flowers in Tagaytay. (3%)

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 ₱10 million were made at the following locations:

i)	Cebu branch	25%
ii)	Davao branch	15%
iii)	Quezon City branch	<u>60%</u>
	Total	100%

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

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%)

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 ₱1 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%)

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	₱ 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 furnitures and appliances	1,000,000
Claims against a cousin who has assets of ₱10,000 and liabilities of ₱100,000	100,000
Shares of stock in ABC Corp, a domestic enterprise	100,000

The expenses and charges on the estate are as follows:

Funeral Expenses	₱ 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:

- A.** What are the properties and interests that should be included in the computation of the gross estate of the decedent? Explain. (2.5%)
- B.** What is the net taxable estate of the decedent? Explain. (2.5%)
- 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%)
- 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%)

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%)

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%)
- B.** 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%)

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%)

- NOTHING FOLLOWS -

**RETURN THIS QUESTIONNAIRE
WITH YOUR NOTEBOOK**