



Republic of the Philippines
Supreme Court
Manila

2014 BAR EXAMINATIONS

TAXATION

October 12, 2014

2:00 P.M. – 6:00 P.M.

INSTRUCTIONS

1. This Questionnaire contains **THIRTEEN (13)** pages including these Instructions pages. Check the number of pages and the page numbers at the upper right hand corner of each page of this Questionnaire and make sure it has the correct number of pages and their proper numbers.

There are **TWENTY-NINE (29)** Essay and Multiple Choice Questions (MCQs) to be answered within *four (4) hours*.

The essay portion contains questions that are equivalent to *not less than 80%* of the whole examination, while the MCQ portion contains questions equivalent to *not more than 20%*.

2. Read each question very carefully and write your answers in your Bar Examination Notebook *in the same order the questions are posed*. Write your answers only on the *front*, not the back, page of every sheet in your Notebook. Note well the allocated percentage points for each number, question, or sub-question. In your answers, use the numbering system in the questionnaire.

If the sheets provided in your Examination Notebook are not sufficient for your answers, use the back page of every sheet of your Examination Notebook, starting at the back page of the first sheet and the back of the succeeding sheets thereafter.

3. Answer the Essay questions *legibly, clearly, and concisely*. Start each number on a separate page. An answer to a sub-question under the same number may be written continuously on the same page and the immediately succeeding pages until completed.

Your answer should demonstrate your ability to analyze the facts presented by the question, to select the material from the immaterial facts, and to discern the points upon which the question turns. It should show your knowledge and understanding of the pertinent principles and theories of law involved and their qualifications and limitations. It should demonstrate your ability to apply the law to the given facts, and to reason logically in a lawyer-like manner to a sound conclusion from the given premises.

A mere “Yes” or “No” answer without any corresponding explanation or discussion will not be given any credit. Thus, always briefly but fully explain your answers although the question does not expressly ask for an explanation. At the same time, remember that a complete explanation does not require that you volunteer information or discuss legal doctrines that are not necessary or pertinent to the solution to the problem. You do not need to re-write or repeat the question in your Notebook.

4. MCQs are to be answered by writing in your Notebook the capital letter A, B, C, D, or E corresponding to your chosen answer. There is only one correct answer to every MCQ; choose the BEST answer from among the offered choices. Note that some MCQs may need careful analysis both of the questions and the choices offered.

5. Make sure you do not write *your name* or any *extraneous note/s* or *distinctive marking/s* on your Notebook that can serve as an identifying mark/s (such as names that are not in the given questions, prayers, or private notes to the Examiner).

Writing, leaving or making any distinguishing or identifying mark in the exam Notebook is considered cheating and can disqualify you for the Bar examinations.

You can use the questionnaire for notes you may wish/need to write during the examination.

YOU CAN BRING HOME THIS QUESTIONNAIRE OR HAND IT TOGETHER WITH YOUR NOTEBOOK

J. DIOSDADO M. PERALTA
Chairman
2014 Bar Examinations

I.

On March 27, 2012, the Bureau of Internal Revenue (*BIR*) issued a notice of assessment against Blue Water Industries Inc. (*BWI*), a domestic corporation, informing the latter of its alleged deficiency corporate income tax for the year 2009. On April 20, 2012, *BWI* filed a letter protest before the *BIR* contesting said assessment and demanding that the same be cancelled or set aside.

However, on May 19, 2013, that is, after more than a year from the filing of the letter protest, the *BIR* informed *BWI* that the latter's letter protest was denied on the ground that the assessment had already become final, executory and demandable. The *BIR* reasoned that its failure to decide the case within 180 days from filing of the letter protest should have prompted *BWI* to seek recourse before the Court of Tax Appeals (*CTA*) by filing a petition for review within thirty (30) days after the expiration of the 180-day period as mandated by the provisions of the last paragraph of Section 228 of the National Internal Revenue Code (*NIRC*). Accordingly, *BWI*'s failure to file a petition for review before the *CTA* rendered the assessment final, executory and demandable. Is the contention of the *BIR* correct? Explain. (5%)

II.

Mr. De Sarapen is a candidate in the upcoming Senatorial elections. *Mr. De Almacen*, believing in the sincerity and ability of *Mr. De Sarapen* to introduce much needed reforms in the country, contributed ₱500,000.00 in cash to the campaign chest of *Mr. De Sarapen*. In addition, *Mr. De Almacen* purchased tarpaulins, t-shirts, umbrellas, caps and other campaign materials that he also donated to *Mr. De Sarapen* for use in his campaign. Is the contribution of cash and campaign materials subject to donor's tax? (4%)

III.

Dr. Taimtim is an alumnus of the College of Medicine of *Universal University (UU)*, a privately-owned center for learning which grants yearly dividends to its stockholders.

UU has a famous chapel located within the campus where the old folks used to say that anyone who wanted to pass the medical board examinations should offer a dozen roses on all the Sundays of October. This was what *Dr. Taimtim* did when he was still reviewing for the board examinations. In his case, the folk saying proved to be true because he is now a successful cardiologist. Wanting to give back to the chapel and help defray the costs of its maintenance, *Dr. Taimtim* donated ₱50,000.00 to the

caretakers of the chapel which was evidenced by an acknowledgment receipt.

In computing his net taxable income, can *Dr. Taimtim* use his donation to the chapel as an allowable deduction from his gross income under the National Internal Revenue Code (*NIRC*)? **(4%)**

IV.

Gangwam Corporation (GC) filed its quarterly tax returns for the calendar year 2012 as follows:

First quarter	-	April 25, 2012
Second quarter	-	July 23, 2012
Third quarter	-	October 25, 2012
Fourth quarter	-	January 27, 2013

On December 22, 2013, GC filed with the Bureau of Internal Revenue (*BIR*) an administrative claim for refund of its unutilized input Value-Added Tax (*VAT*) for the calendar year 2012. After several months of inaction by the *BIR* on its claim for refund, GC decided to elevate its claim directly to the Court of Tax Appeals (*CTA*) on April 22, 2014.

In due time, the *CTA* denied the tax refund relative to the input *VAT* of GC for the first quarter of 2012, reasoning that the claim was filed beyond the two-year period prescribed under Section 112(A) of the National Internal Revenue Code (*NIRC*).

- (A) Is the *CTA* correct? **(3%)**
- (B) Assuming that GC filed its claim before the *CTA* on February 22, 2014, would your answer be the same? **(3%)**

V.

The City of *Liwliwa* assessed local business taxes against *Talin Company*. Claiming that there is double taxation, *Talin Company* filed a Complaint for Refund or Recovery of Illegally and/or Erroneously-collected Local Business Tax; Prohibition with Prayer to Issue Temporary Restraining Order and Writ of Preliminary Injunction with the Regional Trial Court (*RTC*). The *RTC* denied the application for a Writ of Preliminary Injunction. Since its motion for reconsideration was denied, *Talin Company* filed a special civil action for *certiorari* with the Court of Appeals (*CA*). The government lawyer representing the City of *Liwliwa* prayed for the dismissal of the petition on the ground that the same should have been filed with the Court of Tax Appeals (*CTA*). *Talin Company*, through its lawyer,

Atty. Frank, countered that the CTA cannot entertain a petition for *certiorari* since it is not one of its powers and authorities under existing laws and rules. Decide. (5%)

VI.

Choose the correct answer. Smuggling - (1%)

- (A) does not extend to the entry of imported or exported articles by means of any false or fraudulent invoice, statement or practices; the entry of goods at less than the true weight or measure; or the filing of any false or fraudulent entry for the payment of drawback or refund of duties.
- (B) is limited to the import of contraband or highly dutiable cargo beyond the reach of customs authorities.
- (C) is committed by any person who shall fraudulently import or bring into the Philippines, or assist in so doing, any article, contrary to law, or shall receive, conceal, buy, sell or any manner facilitate the transportation, concealment or sale of such article after importation, knowing the same to have been imported contrary to law.
- (D) is punishable by administrative penalty only.

VII.

In accordance with the Local Government Code (*LGC*), the *Sangguniang Panglungsod (SP)* of Baguio City enacted Tax Ordinance No. 19, Series of 2014, imposing a ₱50.00 tax on all the tourists and travellers going to Baguio City. In imposing the local tax, the SP reasoned that the tax collected will be used to maintain the cleanliness of Baguio City and for the beautification of its tourist attractions.

Claiming the tax to be unjust, Baguio Travellers Association (*BTA*), an association of travel agencies in Baguio City, filed a petition for declaratory relief before the Regional Trial Court (*RTC*) because BTA was apprehensive that tourists might cancel their bookings with BTA's member agencies. BTA also prayed for the issuance of a Temporary Restraining Order (*TRO*) to enjoin Baguio City from enforcing the local tax on their customers and on all tourists going to Baguio City.

The RTC issued a TRO enjoining Baguio City from imposing the local tax. Aggrieved, Baguio City filed a petition for *certiorari* before the Supreme Court (*SC*) seeking to set aside the TRO issued by the RTC on the ground that collection of taxes cannot be enjoined. Will the petition prosper? (5%)

VIII.

Masarap Kumain, Inc. (MKI) is a Value-Added Tax (VAT)-registered company which has been engaged in the catering business for the past 10 years. It has invested a substantial portion of its capital on flat wares, table linens, plates, chairs, catering equipment, and delivery vans. *MKI* sold its first delivery van, already 10 years old and idle, to *Magpapala Gravel and Sand Corp. (MGSC)*, a corporation engaged in the business of buying and selling gravel and sand. The selling price of the delivery van was way below its acquisition cost. Is the sale of the delivery van by *MKI* to *MGSC* subject to VAT? (4%)

IX.

Mr. Gipit borrowed from *Mr. Maunawain* ₱100,000.00, payable in five (5) equal monthly installments. Before the first installment became due, *Mr. Gipit* rendered general cleaning services in the entire office building of *Mr. Maunawain*, and as compensation therefor, *Mr. Maunawain* cancelled the indebtedness of *Mr. Gipit* up to the amount of ₱75,000.00. *Mr. Gipit* claims that the cancellation of his indebtedness cannot be considered as gain on his part which must be subject to income tax, because according to him, he did not actually receive payment from *Mr. Maunawain* for the general cleaning services. Is *Mr. Gipit* correct? Explain. (4%)

X.

Which of the following is an exclusion from gross income? (1%)

- (A) Salaries and wages
- (B) Cash dividends
- (C) Liquidating dividends after dissolution of a corporation
- (D) *De minimis* benefits
- (E) Embezzled money

XI.

Triple Star, a domestic corporation, entered into a Management Service Contract with *Single Star*, a non-resident foreign corporation with no property in the Philippines. Under the contract, *Single Star* shall provide managerial services for *Triple Star's* Hongkong branch. All said services shall be performed in Hongkong.

Is the compensation for the services of *Single Star* taxable as income from sources within the Philippines? Explain. (4%)

XII.

Which of the following should not be claimed as deductions from gross income? (1%)

- (A) discounts given to senior citizens on certain goods and services.
- (B) advertising expense to maintain some form of goodwill for the taxpayer's business.
- (C) salaries and bonuses paid to employees.
- (D) interest payment on loans for the purchase of machinery and equipment used in business.

XIII.

Hopeful Corporation obtained a loan from *Generous Bank* and executed a mortgage on its real property to secure the loan. When *Hopeful Corporation* failed to pay the loan, *Generous Bank* extrajudicially foreclosed the mortgage on the property and acquired the same as the highest bidder. A month after the foreclosure, *Hopeful Corporation* exercised its right of redemption and was able to redeem the property. Is *Generous Bank* liable to pay capital gains tax as a result of the foreclosure sale? Explain. (4%)

XIV.

Mr. X, a Filipino residing in Alabama, U.S.A., died on January 2, 2013 after undergoing a major heart surgery. He left behind to his wife and two (2) kids several properties, to wit: (4%)

- (1) Family home in Makati City;
- (2) Condominium unit in Las Piñas City;
- (3) Proceeds of health insurance from Take Care, a health maintenance organization in the Philippines; and
- (4) Land in Alabama, U.S.A.

The following expenses were paid:

- (1) Funeral expenses;
 - (2) Medical expenses; and
 - (3) Judicial expenses in the testate proceedings.
- (A) What are the items that must be considered as part of the gross estate income of *Mr. X*?
 - (B) What are the items that may be considered as deductions from the gross estate?

XV.

When is a pre-assessment notice required under the following cases?
(1%)

- (A) When the finding for any deficiency tax is the result of mathematical error in the computation of the tax as appearing on the face of the return.
- (B) When a discrepancy has been determined between the tax withheld and the amount actually remitted by the withholding agent.
- (C) When the excise tax due on excisable articles has been paid.
- (D) When an article locally purchased or imported by an exempt person, such as, but not limited to vehicles, capital equipment, machineries and spare parts, has been sold, traded or transferred to non-exempt persons.

XVI.

Mr. Tiaga has been a law-abiding citizen diligently paying his income taxes. On May 5, 2014, he was surprised to receive an assessment notice from the Bureau of Internal Revenue (*BIR*) informing him of a deficiency tax assessment as a result of a mathematical error in the computation of his income tax, as appearing on the face of his income tax return for the year 2011, which he filed on April 15, 2012. *Mr. Tiaga* believes that there was no such error in the computation of his income tax for the year 2011. Based on the assessment received by *Mr. Tiaga*, may he already file a protest thereon? (4%)

XVII.

In a civil case for Annulment of Contract of Sale, plaintiff *Ma. Reklamo* presented in evidence the Contract of Sale which she sought to be annulled. No documentary stamp tax on the Contract of Sale was paid because according to plaintiff *Ma. Reklamo*, there was no need to pay the same since the sale was not registered with the Register of Deeds. Plaintiff *Ma. Reklamo* is now offering the Contract of Sale as her evidence. Is the Contract of Sale admissible? (4%)

XVIII.

Madam X owns real property in Caloocan City. On July 1, 2014, she received a notice of assessment from the City Assessor, informing her of a deficiency tax on her property. She wants to contest the assessment. (4%)

- (A) What are the administrative remedies available to *Madam X* in order to contest the assessment and their respective prescriptive periods?
- (B) May *Madam X* refuse to pay the deficiency tax assessment during the pendency of her appeal?

XIX.

The Bureau of Internal Revenue (*BIR*) issued Revenue Memorandum Circular (*RMC*) No. 65-2012 imposing Value-Added Tax (*VAT*) on association dues and membership fees collected by condominium corporations from its member condominium-unit owners. The *RMC*'s validity is challenged before the Supreme Court (*SC*) by the condominium corporations.

The Solicitor General, counsel for *BIR*, claims that association dues, membership fees, and other assessment/charges collected by a condominium corporation are subject to *VAT* since they constitute income payments or compensation for the beneficial services it provides to its members and tenants.

On the other hand, the lawyer of the condominium corporations argues that such dues and fees are merely held in trust by the condominium corporations exclusively for their members and used solely for administrative expenses in implementing the condominium corporations' purposes. Accordingly, the condominium corporations do not actually render services for a fee subject to *VAT*.

Whose argument is correct? Decide. (5%)

XX.

During his lifetime, *Mr. Sakitin* obtained a loan amounting to ₱10 million from *Bangko Uno* for the purchase of a parcel of land located in Makati City, using such property as collateral for the loan. The loan was evidenced by a duly notarized promissory note. Subsequently, *Mr. Sakitin* died. At the time of his death, the unpaid balance of the loan amounted to ₱2 million. The heirs of *Mr. Sakitin* deducted the amount of ₱2 million from the gross estate, as part of the "Claims against the Estate." Such deduction was disallowed by the Bureau of Internal Revenue (*BIR*) Examiner, claiming that the mortgaged property was not included in the computation of the gross estate. Do you agree with the *BIR*? Explain. (4%)

XXI.

On August 31, 2014, *Haelton Corporation (HC)*, thru its authorized representative *Ms. Pares*, sold a 16-storey commercial building known as *Haeltown Building* to *Mr. Belly* for ₱100 million. *Mr. Belly*, in turn, sold the same property on the same day to *Bell Gates, Inc. (BGI)* for ₱200 million. These two (2) transactions were evidenced by two (2) separate Deeds of Absolute Sale notarized on the same day by the same notary public.

Investigations by the Bureau of Internal Revenue (*BIR*) showed that: (1) the Deed of Absolute Sale between *Mr. Belly* and *BGI* was notarized ahead of the sale between *HC* and *Mr. Belly*; (2) as early as May 17, 2014, *HC* received ₱40 million from *BGI*, and not from *Mr. Belly*; (3) the said payment of ₱40 million was recorded by *BGI* in its books as of June 30, 2014 as investment in *Haeltown Building*; and (4) the substantial portion of ₱40 million was withdrawn by *Ms. Pares* through the declaration of cash dividends to all its stockholders.

Based on the foregoing, the BIR sent *Haeltown Corporation* a Notice of Assessment for deficiency income tax arising from an alleged simulated sale of the aforesaid commercial building to escape the higher corporate income tax rate of thirty percent (30%). What is the liability of *Haeltown Corporation*, if any? (4%)

XXII.

Choose the correct answer. Double Taxation – (1%)

- (A) is one of direct duplicate taxations wherein two (2) taxes must be imposed on the same subject matter, by the same taxing authority, within the same jurisdiction, during the same period, with the same kind or character of tax, even if the purposes of imposing the same are different.
- (B) is forbidden by law; and therefore, it is a valid defense against the validity of a tax measure.
- (C) means taxing the same property twice when it should be taxed only once; it is tantamount to taxing the same person twice by the same jurisdiction for the same thing.
- (D) exists when a corporation is assessed with local business tax as a manufacturer, and at the same time, value-added tax as a person selling goods in the course of trade or business.

XXIII.

Choose the correct answer. Tax Avoidance – (1%)

- (A) is a scheme used outside of those lawful means and, when availed of, it usually subjects the taxpayer to further or additional civil or criminal liabilities.
- (B) is a tax saving device within the means sanctioned by law.
- (C) is employed by a corporation, the organization of which is prompted more on the mitigation of tax liabilities than for legitimate business purpose.
- (D) is any form of tax deduction scheme, regardless if the same is legal or not.

XXIV.

A, B, and C, all lawyers, formed a partnership called *ABC Law Firm* so that they can practice their profession as lawyers. For the year 2012, *ABC Law Firm* received earnings and paid expenses, among which are as follows: (6%)

Earnings:

- (1) Professional/legal fees from various clients
- (2) Cash prize received from a religious society in recognition of the exemplary service of *ABC Law Firm*
- (3) Gains derived from sale of excess computers and laptops

Payments:

- (1) Salaries of office staff
 - (2) Rentals for office space
 - (3) Representation expenses incurred in meetings with clients
- (A) What are the items in the above mentioned earnings which should be included in the computation of *ABC Law Firm's* gross income? Explain.
 - (B) What are the items in the above-mentioned payments which may be considered as deductions from the gross income of *ABC Law Firm*? Explain.
 - (C) If *ABC Law Firm* earns net income in 2012, what, if any, is the tax consequence on the part of *ABC Law Firm* insofar as the payment of income tax is concerned? What, if any, is the tax consequence on the part of **A, B, and C** as individual partners, insofar as the payment of income tax is concerned?

XXV.

Which of the following transactions is subject to Value-Added Tax (VAT)? (1%)

- (A) Sale of shares of stock-listed and traded through the local stock exchange
- (B) Importation of personal and household effects belonging to residents of the Philippines returning from abroad subject to custom duties under the Tariff and Customs Code
- (C) Services rendered by individuals pursuant to an employer-employee relationship
- (D) Gross receipts from lending activities by credit or multi-purpose cooperatives duly registered with the Cooperative Development Authority

XXVI.

Freezy Corporation, a domestic corporation engaged in the manufacture and sale of ice cream, made payments to an officer of *Frosty Corporation*, a competitor in the ice cream business, in exchange for said officer's revelation of *Frosty Corporation's* trade secrets.

May *Freezy Corporation* claim the payment to the officer as deduction from its gross income? Explain. (4%)

XXVII.

In January 2013, your friend got his first job as an office clerk. He is single and lives with his family who depends upon him for financial support. His parents have long retired from their work, and his two (2) siblings are still minors and studying in grade school. In February 2014, he consulted you as he wanted to comply with all the rules pertaining to the preparation and filing of his income tax return. He now asks you the following:

- (A) Is he entitled to personal exemptions? If so, how much? (1%)
- (B) Is he entitled to additional exemptions? If so, how much? (1%)
- (C) What is the effect of the taxes withheld from his salaries on his taxable income? (2%)

XXVIII.

Choose the correct answer. Tax laws - (1%)

- (A) may be enacted for the promotion of private enterprise or business for as long as it gives incidental advantage to the public or the State
- (B) are inherently legislative; therefore, may not be delegated
- (C) are territorial in nature; hence, they do not recognize the generally-accepted tenets of international law
- (D) adhere to uniformity and equality when all taxable articles or kinds of property of the same class are taxable at the same rate

XXIX.

Doña Evelina, a rich widow engaged in the business of currency exchange, was assessed a considerable amount of local business taxes by the City Government of *Bagnet* by virtue of Tax Ordinance No. 24. Despite her objections thereto, *Doña Evelina* paid the taxes. Nevertheless, unsatisfied with said Tax Ordinance, *Doña Evelina*, through her counsel *Atty. ELP*, filed a written claim for recovery of said local business taxes and contested the assessment. Her claim was denied, and so *Atty. ELP* elevated her case to the Regional Trial Court (*RTC*).

The *RTC* declared Tax Ordinance No. 24 *null* and *void* and without legal effect for having been enacted in violation of the publication requirement of tax ordinances and revenue measures under the Local Government Code (*LGC*) and on the ground of double taxation. On appeal, the Court of Tax Appeals (*CTA*) affirmed the decision of the *RTC*. No motion for reconsideration was filed and the decision became final and executory. (4%)

- (A) If you are *Atty. ELP*, what advice will you give *Doña Evelina* so that she can recover the subject local business taxes?
- (B) If *Doña Evelina* eventually recovers the local business taxes, must the same be considered as income taxable by the national government?

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