

**2017 BAR EXAMINATIONS  
TAXATION**

November 12, 2017

2:00 P.M. – 6:00 P.M.

**INSTRUCTIONS**

1. This Questionnaire contains ten (10) pages. Check and make sure that your Questionnaire has the correct number of pages. You may write on your Questionnaire as you answer the questions.

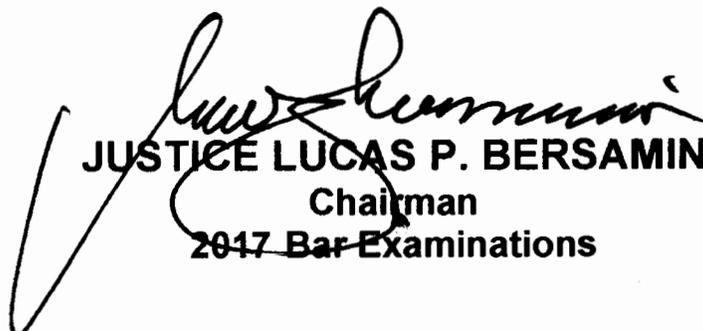
Read each question very carefully and write your answers in your Bar Examination Notebook in the same order of the questions. Answer the essay questions legibly, clearly, and concisely. Write your answers only on the front of every page of your Notebook. If the front pages are not sufficient, continue at the back of the first page and so on. Start every number on a separate page, but an answer to a sub-question under the same number may be written continuously on the same page and on the immediately succeeding pages until the answer is complete. Follow the numbering sequence of the Questionnaire in your answers.

2. Your answers should demonstrate your ability to analyze the facts, apply the pertinent laws and jurisprudence, and arrive at sound and logical conclusions. Answers must fully explain even if the questions do not expressly require explanations. A “Yes” or “No” answer *sans* explanation or discussion will not be given full credit.

3. Marking of your Notebook with your name or other identifying signs or symbols extraneous to the subject matter of the questions may be considered as cheating and may disqualify you.

Good luck!

**YOU CAN BRING HOME THE QUESTIONNAIRE.**

  
**JUSTICE LUCAS P. BERSAMIN**  
Chairman  
2017 Bar Examinations

## I.

**SMZ, Inc. is a VAT-registered enterprise engaged in the general construction business. HP International contracts the services of SMZ, Inc. to construct HP International's factory building located in the Laguna Techno Park, a special economic zone. HP International is registered with the Philippine Economic Zone Authority (PEZA) as an ecozone export enterprise, and, as such, enjoys income tax holiday pursuant to the *Special Economic Zone Act of 1995*.**

**SMZ, Inc. files an application with the Bureau of Internal Revenue (BIR) for the VAT zero-rating of its sale of services to HP International. However, the BIR denies SMZ, Inc.'s application on the ground that HP International already enjoys income tax holiday.**

**Is the BIR correct in denying SMZ, Inc.'s application? Explain your answer. (6%)**

## II.

**Wreck Corporation is a domestic corporation engaged in the business of importing, refining and selling petroleum products. During the period from September 1, 2014 to December 31, 2014, Wreck Corporation imported 225 million liters of Jet A-1 aviation fuel and paid the excise taxes thereon. Seventy-five percent (75%) of the total volume of aviation fuel imported were actually sold to international carriers of Philippine and foreign registries for their use or consumption outside of the Philippines in the period from November 1, 2014 to December 31, 2014. Wreck Corporation did not pass on to the international carriers the excise taxes it paid on the importation of petroleum products.**

**On June 25, 2015, Wreck Corporation filed an administrative claim for refund or issuance of tax credit certificate amounting to the excise taxes it had paid on the importation of 225 million liters of Jet A-1 aviation fuel.**

**If you were the Commissioner of Internal Revenue, will you grant Wreck Corporation's administrative claim for refund or issuance of tax credit certificate? Explain your answer. (6%)**

## III.

Vanderful, Inc.'s income tax return for taxable year 2015 showed an overpayment due to excess creditable withholding taxes in the amount of ₱750,000.00. The company opted to carry over the excess income tax credits as tax credit against its quarterly income tax liabilities for the next succeeding years. For taxable year 2016, the company's income tax return showed an overpayment due to excess creditable withholding taxes in the amount of ₱1,100,000.00, which included the carry-over from year 2015 in the amount of ₱750,000.00 because its operations resulted in a net loss; hence, there was no application for any tax liability. This time, the company opted and marked the box "*To be refunded*" in respect of the total amount of ₱1,100,000.00.

Vanderful, Inc. now files in the BIR a claim for refund of unutilized overpayments of ₱1,100,00.00. Is the claim meritorious? (4%)

## IV.

On the basis of a warrant of seizure and detention issued by the Collector of Customs for the purpose of enforcing the *Tariff and Customs Code*, assorted brands of liquor and cigarettes said to have been illegally imported into the Philippines were seized from a store operating in a Freeport zone. The store owner moved for the quashal of the warrant on the ground that the Collector of Customs had no jurisdiction to enforce it within the Freeport zone.

Should the motion to quash be granted? (3%)

## V.

On March 30, 2016, XL Co. filed an administrative claim for refund of unutilized input VAT for taxable year 2014, together with supporting documents. XL Co. claimed that its sale of generated power and delivery of electric capacity and energy was VAT zero-rated. Due to the inaction of the Commissioner of Internal Revenue (CIR), XL Co. filed with the Court of Tax Appeals (CTA) the following judicial claims for refund:

Period Covered	Date Filed
1 <sup>st</sup> Quarter of 2014	March 31, 2016



2 <sup>nd</sup> Quarter of 2014	June 30, 2016
3 <sup>rd</sup> and 4 <sup>th</sup> Quarter of 2014	August 12, 2016

Is XL Co.'s claim for VAT refund timely filed? Explain your answer. (5%)

## VI.

Heeding the pronouncement of the President that the worsening traffic condition in the metropolis was a sign of economic progress, the Congress enacted Republic Act No. 10701 (RA 10701), also known as *An Act Imposing a Transport Tax on the Purchase of Private Vehicles*.

Under RA 10701, buyers of private vehicles are required to pay a transport tax equivalent to 5% of the total purchase price per vehicle purchased. RA 10701 provides that the Land Transportation Office (LTO) shall not accept for registration any new vehicles without proof of payment of the 5% transport tax. RA 10701 further provides that existing owners of private vehicles shall be required to pay a tax equivalent to 5% of the current fair market value of every vehicle registered with the LTO. However, RA 10701 exempts owners of public utility vehicles and the Government from the coverage of the 5% transport tax.

A group of private vehicle owners sue on the ground that the law is unconstitutional for contravening the *Equal Protection Clause* of the Constitution.

Rule on the constitutionality and validity of RA 10701. (5%)

## VII.

Calvin Dela Pisa was a Permits and Licensing Officer (rank-and-file) of Sta. Portia Realty Corporation (SPRC). He invited the Regional Director of the Housing and Land Use Regulatory Board (HLURB) to lunch at the Sulo Hotel in Quezon City to discuss the approval of SPRC's application for a development permit in connection with its subdivision development project in Pasig City. At breakfast the following day, Calvin met a prospective client interested to enter into a joint venture with SPRC for the construction of a residential condominium unit in Cainta, Rizal.

9

Calvin incurred expenses for the lunch and breakfast meetings he had with the Regional Director of HLURB and the prospective client, respectively. The expenses were duly supported by official receipts issued in his name. At month's end, he requested the reimbursement of his expenses, and SPRC granted his request.

(a) Can SPRC claim an allowable deduction for the expenses incurred by Calvin? Explain your answer. (2.5%)

(b) Is the reimbursement received by Calvin from SPRC subject to tax? Explain your answer. (2.5%)

### VIII.

On April 30, 2015, Daryl resigned as the production manager of 52nd Avenue, a television studio owned by SSS Entertainment Corporation. 52nd Avenue issued to her a Certificate of Withholding Tax on Compensation (BIR Form No. 2316), which showed that the tax withheld from her compensation was equal to her income tax due for the period from January 2015 to April 30, 2015.

A month after her resignation, Daryl put up her own studio and started producing short films. She was able to earn a meager income from her short films but did not keep record of her production expenses.

Is Daryl qualified for substituted filing for taxable year 2015? Explain your answer. (3%)

### IX.

Upon his retirement, Alfredo transferred his savings derived from his salary as a marketing assistant to a time deposit with AAB Bank. The bank regularly deducted 20% final withholding tax on the interest income from the time deposit.

Alfredo contends that the 20% final tax on the interest income constituted double taxation because his salary had been already subjected to withholding tax.

Is Alfredo's contention correct? Explain your answer. (3%)

**X.**

On January 27, 2017, Ramon, the comptroller of Vantage Point, Inc., executed a document entitled *Waiver of the Statute of Limitations* in connection with the BIR's investigation of the tax liabilities of the company for the year 2012. However, the Board of Directors of Vantage Point, Inc. did not adopt a board resolution authorizing Ramon to execute the waiver.

On October 14, 2017, Vantage Point, Inc. received a preliminary assessment notice from the BIR indicating its deficiency withholding taxes for the year 2012. Vantage Point, Inc. filed its protest. On October 30, 2017, the BIR issued a formal letter of demand and final assessment notice. Vantage Point, Inc. again filed a protest. The Commissioner of Internal Revenue denied the protests and directed the collection of the assessed deficiency taxes.

Accordingly, Vantage Point, Inc. filed a petition for review in the CTA to seek the cancellation and withdrawal of the assessment on the ground of prescription.

(a) What constitutes a valid waiver of the statute of limitations for the assessment and collection of taxes? Explain your answer. (3%)

(b) Has the right of the Government to assess and collect deficiency taxes from Vantage Point, Inc. for the year 2012 prescribed? Explain your answer. (3%)

**XI.**

The Board of Directors of Sumo Corporation, a company primarily engaged in the business of marketing and distributing pest control products, approved the partial cessation of its commercial operations, resulting in the separation of 32 regular employees. Only half of the affected employees were notified of the board resolution.

Rule on the taxability of the separation pay and indemnity that will be received by the affected employees as the result of their separation from service. Explain your answer. (3%)

**XII.**

**On September 17, 2015, Data Realty, Inc., a real-estate corporation duly organized and existing under Philippine law, sold to Jenny Vera a condominium unit at Freedom Residences in Malabon City with an area of 32.31 square meters for a contract price of ₱4,213,000.00. The condominium unit had a zonal value amounting to ₱2,877,000.00 and fair market value amounting to ₱550,000.00.**

**(a) Is the transaction subject to value-added tax and documentary stamp tax? Explain your answer. (3%)**

**(b) Would your answer be the same if the property was sold by a bank in a foreclosure sale? Explain your answer. (3%)**

**XIII.**

**BATAS Law is a general professional partnership operating in the City of Valenzuela. It regularly pays value-added tax on its services. All its lawyers have individually paid the required professional tax for the year 2017. However, as a condition for the renewal of its business permit for the year 2017, the City Treasurer of Valenzuela assessed BATAS Law for the payment of percentage business tax on its gross receipts for the year 2016 in accordance with the *Revenue Tax Code of Valenzuela*.**

**Is BATAS Law liable to pay the assessed percentage business tax? Explain your answer. (3%)**

**XIV.**

**Globesmart Services, Inc. received a final assessment notice with formal letter of demand from the BIR for deficiency income tax, value-added tax and withholding tax for the taxable year 2016 amounting to ₱48 million. Globesmart Services, Inc. filed a protest against the assessment, but the Commissioner of Internal Revenue denied the protest. Hence, Globesmart Services, Inc. filed a petition for review in the CTA with an urgent motion to suspend the collection of tax.**

**After hearing, the CTA Division issued a resolution granting the motion to suspend but required Globesmart Services, Inc. to post a surety bond equivalent to the deficiency assessment within 15 days**

from notice of the resolution. Globesmart Services, Inc. moved for the partial reconsideration of the resolution and for the reduction of the bond to an amount it could obtain. The CTA Division issued another resolution reducing the amount of the surety bond to ₱24 million. The latter amount was still more than the net worth of Globesmart Services, Inc. as reported in its audited financial statements.

(a) May the collection of taxes be suspended? Explain your answer. (3%)

(b) Is the CTA Division justified in requiring Globesmart Services, Inc. to post a surety bond as a condition for the suspension of the deficiency tax collection? Explain your answer. (3%)

#### XV.

Casimira died on June 19, 2017 after three weeks of confinement due to an unsuccessful liver transplant. For her confinement, she had incurred substantial medical expenses that she financed through personal loans secured by mortgages on her real properties. Her heirs are still in the process of making an inventory of her assets that can be used to pay the estate taxes, if any, which are due on December 19, 2017.

(a) Are the medical expenses, personal loans and mortgages incurred by Casimira deductible from her gross estate? Explain your answer. (5%)

(b) May the heirs of Casimira file the estate tax return and pay the corresponding estate tax beyond December 19, 2017 without incurring interest and surcharge? Explain your answer. (3%)

#### XVI.

The BIR assessed the Babuyan Water District (BWD) with deficiency income taxes amounting to ₱8.5 million, inclusive of interest and surcharge. The BWD disputed the assessment, and argued that it was a wholly-owned government entity performing essential government functions. However, the BIR denied the protest.

The BWD filed a petition for arbitration in the Office of the Secretary of Justice pursuant to Sections 66 to 71, Chapter 14, Book IV of the *Administrative Code of 1987* to assail the denial of its protest, and

to seek the proper interpretation of Section 32(B)(7)(b) of the *Tax Code* that excluded from gross income the income derived by the Government or its political subdivisions. The Secretary of Justice rendered a decision declaring the BWD exempt from the payment of income tax.

The Commissioner of Internal Revenue appealed to the CTA on the sole ground that the Secretary of Justice had no jurisdiction to review the assessment of the BIR.

Is the appeal meritorious? Explain your answer. (4%)

### XVII.

San Juan University is a non-stock, non-profit educational institution. It owns a piece of land in Caloocan City on which its three 2-storey school buildings stood. Two of the buildings are devoted to classrooms, laboratories, a canteen, a bookstore and administrative offices. The third building is reserved as dormitory for student athletes who are granted scholarships for a given academic year.

In 2017, San Juan University earned income from tuition fees and from leasing a portion of its premises to various concessionaires of food, books, and school supplies.

(a) Can the City Treasurer of Caloocan City collect real property taxes on the land and building of San Juan University? Explain your answer. (5%)

(b) Is the income earned by San Juan University for the year 2017 subject to income tax? Explain your answer. (5%)

### XVIII.

(a) Differentiate *outright smuggling* from *technical smuggling*. (3%)

(b) Distinguish *compromise* from *abatement* of taxes. (3%)

**XIX.**

**CMI School, Inc., a non-stock, non-profit corporation, donated its three parcels of idle land situated in the Municipality of Cuyapo, Nueva Ecija to SLC University, another non-stock, non-profit corporation, in recognition of the latter's contribution to and participation in the spiritual and educational development of the former.**

**(a) Is CMI School, Inc. liable for the payment of donor's tax? Explain your answer. (2.5%)**

**(b) If SLC University later sells the three parcels of idle land to Puregold Supermarket, Inc., a stock corporation, will SLC University be liable for capital gains tax? Explain your answer. (3%)**

**(c) If SLC University donates the three parcels of idle land in favor of the Municipality of Cuyapo, Nueva Ecija, will SLC University be liable for donor's tax? Explain your answer. (2.5%)**

**-NOTHING FOLLOWS-**

8