

INSTRUCTIONS

This questionnaire consists of fourteen (14) numbers 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 sub-question under the same number may be written continuously on the same page and immediately succeeding pages until completed. Do not repeat the question. 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!!!

Signed **ANGELINA S. GUTIERREZ**

Chairperson

20006 Bar Examination Committee

PLEASE CHECK THE NUMBER OF PAGES IN THIS SET

WARNING: NOT FOR SALE OR UNAUTHORIZED USE

TAXATION LAW

- I -

1. Enumerate the 3 stages or aspects of taxation. Explain each. 5%
2. Distinguish "direct taxes" from "Indirect taxes". Give examples. 5%

- II -

What is tax pyramiding? What is its basis in law? 5%

- III -

What properties are exempt from the real property tax? 5%

- IV -

Royal Mining is a VAT -registered domestic mining entity. One of its products is silver being sold to the *Bangko Sentral ng Pilipinas*. It filed a claim with the BIR for tax refund on the ground that under Section 106 of the Tax Code, sales of precious metals to the *Bangko Sentral* are considered export sales subject to zero-rated VAT.

Is Royal Mining's claim meritorious? Explain. 5%

- V -

Vanishing deduction is availed of by taxpayers to:

- a. correct his accounting records to reflect the actual deductions made
- b. reduce his gross income
- c. reduce his output value-added tax liability
- d. reduce his gross estate

Choose the correct answer. Explain. 5%

1. The Constitution provides "charitable institutions, churches, parsonages or convents appurtenant thereto, mosques, and non-profit cemeteries and all lands, buildings, and improvements actually, directly and exclusively used for religious, charitable or educational purposes shall be exempt from taxation." This provision exempts charitable institutions and religious institutions from what kind of taxes? Choose the best answer. Explain. 5%
 - a. from all kinds of taxes, i.e., income, VAT, customs duties, local taxes and real property tax
 - b. from income tax only
 - c. from value-added tax only
 - d. from real property tax only
 - e. from capital gains tax only

- VI -

Congress enacts a law granting grade school and high school students a 10% discount on all school-prescribed textbooks purchased from any bookstore. The law allows bookstores to claim in full the discount as a tax credit.

1. If in a taxable year a bookstore has no tax due on which to apply the tax credits, can the bookstore claim from the BIR a tax refund in lieu of tax credit? Explain. 2.5%
2. Can the BIR require the bookstores to deduct the amount of the discount from their gross income? Explain. 2.5%
3. If a bookstore closes its business due to losses without being able to recoup the discount, can it claim reimbursement of the discount from the government on the ground that without such reimbursement, the law constitutes taking of private property for public use without just compensation? Explain. 5%

- VII -

Congress enacts a law imposing a 5% tax on the gross receipts of common carriers. The law does

not define the term "gross receipts". Express Transport, Inc., a bus company plying the Manila-Baguio route, has time deposits with ABC Bank. In 2005, Express Transport earned P1 Million interest, after deducting the 20% final withholding tax from its time deposits with the bank. The BIR wants to collect a 5% gross receipts tax on the interest income of Express Transport without deducting the 20% final withholding tax. Is the BIR correct? Explain. 5%

- VIII -

On June 1, 2003, Global Bank received a final notice of assessment from the BIR for deficiency documentary stamp tax in the amount of P5 Million. On June 30, 2003, Global Bank filed a request for reconsideration with the Commissioner of Internal Revenue. The Commissioner denied the request for reconsideration only on May 30, 2006, at the same time serving on Global Bank a warrant of distraint to collect the deficiency tax. If you were its counsel, what will be your advice to the bank? Explain. 5%

- IX -

The Commissioner of Internal Revenue issued an assessment for deficiency income tax for taxable year 2000 last July 31, 2006 in the amount of P10 Million inclusive of surcharge and interests. If the delinquent taxpayer is your client, what steps will you take? What is your defense? 10%

- X -

The Collector of Customs issued an assessment for unpaid customs duties and taxes on the importation of your client in the amount of P980,000.00. Where will you file your case to protect your client's right? Choose the correct courts/agencies, observing their proper hierarchy. 5%

1. Court of Tax Appeals
2. Collector of Customs
3. Commissioner of Customs
4. Regional Trial Court
5. Metropolitan Trial Court
6. Court of Appeals
7. Supreme Court

- XI -

Charlie, a widower, has two sons by his previous marriage. Charlie lives with Jane who is legally married to Mario. They have a child named Jill. The children are all minors and not gainfully employed.

1. How much personal exemption can Charlie claim? Explain. 2.5%

2. How much additional exemption can Charlie claim? Explain. 2.5%

- XII -

Mr. Abraham Eugenio, a pawnshop operator, after having been required by the Revenue District Officer to pay value added tax pursuant to a Revenue Memorandum Order (RMO) of the Commissioner of Internal Revenue, filed with the Regional Trial Court an action questioning the validity of the RMO.

If you were the judge, will you dismiss the case? 5%

- XIII -

Gerry was being prosecuted by the BIR for failure to pay his income tax liability for Calendar Year 1999 despite several demands by the BIR in 2002. The Information was filed with the RTC only last June 2006. Gerry filed a motion to quash the Information on the ground of prescription, the Information having been filed beyond the 5-year reglementary period.

If you were the judge, will you dismiss the Information? Why? 5%

- XIV -

Gold and Silver Corporation gave extra 14th month bonus to all its officials and employees in the total amount of P75 Million. When it filed its corporate income tax return the following year, the corporation declared a net operating loss. When the income tax return of the corporation was reviewed by the BIR the following year, it disallowed as item of deduction the P75 Million bonus the corporation gave its officials and employees on the ground of unreasonableness. The corporation claimed that the bonus is an ordinary and necessary expense that should be allowed.

If you were the BIR Commissioner, how will you resolve the issue? 5%

- XV -

Lily's Fashion, Inc. is a garment manufacturer located and registered as a Subic Bay Freeport Enterprise under Republic Act No. 7227 and a non-VAT taxpayer. As such, it is exempt from payment of all local and national internal revenue taxes. During its operations, it purchased various supplies and materials necessary in the conduct of its manufacturing business. The suppliers of these goods shifted to Lily's Fashion, Inc. the 10% VAT on the purchased items amounting to PS00,000.00. Lily's Fashion, Inc. filed with the BIR a claim for refund for the input tax shifted to it by the suppliers.

If you were the Commissioner of Internal Revenue, will you allow the refund? 5%

- XVI -

Quezon City published on January 30, 2006 a list of delinquent real property taxpayers in 2 newspapers of general circulation and posted this in the main lobby of the City Hall. The notice requires all owners of real properties in the list to pay the real property tax due within 30 days from the date of publication, otherwise the properties listed shall be sold at public auction.

Joachin is one of those named in the list. He purchased a real property in 1996 but failed to register the document of sale with the Register of Deeds and secure a new real property tax declaration in his name. He alleged that the auction sale of his property is void for lack of due process considering that the City Treasurer did not send him personal notice. For his part, the City Treasurer maintains that the publication and posting of notice are sufficient compliance with the requirements of the law.

1. If you were the judge, how will you resolve this issue? 2.5%
2. Assuming Joachin is a registered owner, will your answer be the same? 2.5%

NOTHING FOLLOWS.