THY WILL BE DONE by Atty. Angelo M. Cabrera

ESTATE TAX, LIKE A METERED TAXI

"Estate tax is like a metered taxi. It accrues from the moment of death."

Thus declared Commissioner Kim Henares of the Bureau of Internal Revenue in a press conference two weeks ago as it announced the agency's renewed campaign to improve collection of estate taxes. Estate tax remains to be one of the lowest contributors to government coffers. In fact, she said that in 2010, the BIR was only able to collect P1.34 billion in estate taxes, representing about a tenth of one percent of the total tax collection of P822.6 billion.

Estate tax is imposed on the right of the deceased to transmit his estate to his heirs at the time of death. This means that before any property can be transferred to heirs, estate taxes must have to be paid.

Under the tax code, heirs, executors or administrators are given six months from the date of death of the estate owner to settle and pay the estate taxes on the properties left behind by the deceased. Failure to settle within the period, without being granted an extension by the BIR, will mean a surcharge of 25% for ordinary delays or 50% when it is attended by fraud or an attempt at tax evasion.

An example of the latter is the case that BIR filed early last year where the heirs allegedly used a bogus deed of assignment to make it appear that the property in question was sold to them by their deceased parent before his death. Because of this, apart from the basic tax of about 14 million, a 50% surcharge or 7 million could be imposed. (I just wonder what has happened to this case along with the many cases filed and announced by the BIR. All this posturing would seem like empty threats in the absence of actual convictions).

Apart from the surcharge, an annual interest of 20 percent is imposed as penalty until the full payment of the estate tax. The effect of all of these is the shrinkage of the estate up to a point where perhaps nothing would be left to the heirs. As Commissioner Henares aptly put it, "A lot of heirs and beneficiaries receive and take possession of their shares of the inheritance without transferring the titles to their names believing that they could suspend or even avoid the payment of the estate tax. The estate tax should be paid. Otherwise, nothing could be left in the estate for the heirs."

Let's look at an example to appreciate the impact of these surcharges and penalties on the estate over a period of time.

A patriarch died twelve years ago and left behind ten children and a property in a prime location in Metro Manila. Like in many cases, the heirs did not bother to pay the estate taxes, so that the property, though now jointly owned by them by virtue of succession, remained under the name of their deceased father. When they finally decided to sell the inherited property, that was when they realized how much it had shrunk.

The tax computation showed that they should have paid 5 million in estate taxes twelve years ago. A surcharge of 25% meant that an additional 1.25 million became due six months after the death of the father. Worse, the 20% interest per annum meant that another 1 million was due as penalty each year or a total of 12 million over twelve years. Each year of delay is costing the property and the heirs a cool one million.

How does a taxi meter operate? Whether the taxi is moving or not, the meter continues to run. Sooner or later, you might find that you don't have enough money in your pocket to pay driver Kim.

In the coming weeks, we shall discuss the different ways to prepare and address the issue of estate taxes.

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Ronnie De Dios, publisher of Insurance Philippines and Jake Montenegro my former boss at Ayala Life have two things in common. Both celebrated a birthday milestone last July 27 – the 85th for Mr. De Dios and a few decades less for Jake; and both happen to be my dear friends. Happy Birthday Mr. De Dios and Jake. Stay healthy and God bless.

For comments or questions, you may email cabrera.am@amclawoffice.com