



TAX MANAGEMENT ASSOCIATION  
OF THE PHILIPPINES, INC.



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January 24, 2013

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Hon. Justices of the Court of Tax Appeals  
CTA Building, Agham Road,  
Quezon City Metro Manila

Re: **Judicial Affidavit Rule (AMC No. 12-8-8-SC)**

Your Honors:

We, the undersigned President and Co-Chairperson of the Legislative Committee of the Tax Management Association of the Philippines, Inc. ("TMAP"), most respectfully request that this Honorable Court (a) propose to the Supreme Court that the procedure adopted by this Honorable Court on the use of judicial affidavits pursuant to Section I. A.5.k. of A.M. No. 03-1-09 (SC)<sup>1</sup> ("Guidelines") be deemed, in the meantime, substantial compliance with the Judicial Affidavit Rule ("JAR"); and (b) formalize the existing CTA procedure on the use of judicial affidavits in a CTA Circular and propose to the Supreme Court to implement such CTA Circular in the CTA in lieu of the JAR. We are concerned that the application of the JAR "as is" to tax cases would result in delays and even in miscarriage of justice, and defeat the purpose of the JAR.

Our request is based on the following grounds:

1. **This Honorable Court has been successfully and effectively implementing its own judicial affidavit rule which has been developed exclusively for practice before this Honorable Court.**

In accordance with the Guidelines, this Honorable Court has pioneered the use of Judicial Affidavits *in lieu* of direct examination which has been instrumental in speeding up the proceedings. The practitioners have already accepted and adapted to the existing rules of this Honorable Court. We respectfully submit that the implementation of the JAR beginning January 1, 2013 is counter-productive as it has actually resulted in unnecessary postponements while both the bench and the bar attempt to figure out the best way to adapt the JAR to the CTA proceedings.

Republic of the Philippines  
COURT OF TAX APPEALS  
Quezon City

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<sup>1</sup> Guidelines to be Observed by Trial Court Judges and Clerks of Court in the Conduct of Pre-trial and use of Deposition – Discovery Measures, July 13, 2004.

## **2. Case congestion and delays do not plague the CTA.**

The main reason cited in the "Whereas" clauses for adopting the JAR is to solve case congestion and delays that plague the courts. However, delays in cases heard before the CTA are not prevalent. By the very nature of tax cases, the petitioners will naturally oppose repeated postponements as any delay in the proceedings will entail either: (i) the payment of a hefty 20% deficiency or delinquency interest in case of an assessment or (ii) loss in terms of cost of money in case of a refund. On the other hand, unreasonable delays on the part of the petitioner are not allowed by this Honorable Court and the respondent, Commissioner of Internal Revenue, as it will be detrimental to the interest of the government.

## **3. CTA cases are, in a material respect, different from ordinary civil cases.**

It is unreasonable to apply, as well as extremely difficult to comply with, the requirement to submit all the judicial affidavits within five (5) days before the pre-trial because CTA cases are NOT of the same nature as the cases tried in the regular courts.

- 3.1 It will be difficult to be able to come up with judicial affidavits before pre-trial because almost always, CTA cases are decided based on the voluminous documentary evidence presented, rather than pure testimonial evidence. The testimonies of several witnesses (including those of independent certified public accountants or CPAs as discussed below) are often required to identify and explain documents rather than serve as testimonial evidence in themselves.
- 3.2 Unlike the cases heard in regular courts where the plaintiff can institute an action anytime within the prescriptive period of the action (ranging from three to ten years), the petitioner in tax cases has thirty (30) days only from receipt of the respondent's denial of the protest letter or lapse of the period of inaction within which to file the Petition with the CTA. Thus, petitioner has a much shorter period within which to prepare for trial.
- 3.3 Tax assessments or refunds can be and are often handled by the taxpayer at the administrative level without aid of counsel and are referred to counsel belatedly only during the 30-day reglementary period within which to file the petition with this Honorable Court. Thus, unlike ordinary civil cases where the plaintiff can prepare for the case within the prescriptive period, in tax cases, it is not always possible for the petitioner or its counsel to anticipate a judicial appeal and gather all the original

documentary evidence to be presented in evidence while the case is still pending in the administrative level, especially when more than three years have passed since the tax year in question.

- 3.4 Because of the voluminous records that need to be examined and presented to this Honorable Court, a court-commissioned independent CPA is necessarily engaged. The independent CPA is first commissioned by the Honorable Court before he commences his examination. Thus, it is only after he submits the report of his examination that the judicial affidavit can be prepared. It is therefore not possible to require the submission of the judicial affidavit of the independent CPA before pre-trial.
- 3.5 In the case of tax assessment, the taxpayer may not be fully aware of the evidence against him until he examines the BIR Records. This is peculiar to tax cases because the party alleging a claim is not the one initiating the case. It would be unfair on the part of the taxpayer to already prepare the affidavit and the evidence even before the pre-trial when it may not yet have a complete picture of the assessment. In most instances, the taxpayer is able to examine the BIR Records only after said records are transmitted to this Honorable Court, and such transmittal usually happens way after the filing of the case before this Honorable Court.

#### **4. The JAR defeats the purpose of pre-trial.**

The submission of the judicial affidavits before pre-trial renders the Joint Stipulation of Facts and Issues moot, or stated differently, would defeat the purpose of a Joint Stipulation of Facts and Issues.

The Joint Stipulation of Facts and Issues is an effective way to abbreviate the proceedings, simplify the issues, and expedite the disposition of the case. As a consequence, it could result to reduction in the number of documents or witnesses to be presented before this Honorable Court. If the parties are required to submit the judicial affidavits even before the pre-trial, the parties are forced to present evidence even on facts or issues which may eventually be stipulated upon during pre-trial. Or, since the parties have already submitted their evidence, the parties will no longer have any incentive to enter into a stipulation of facts and issues.

Considering that the judicial affidavit is supposed to be submitted *in lieu* of direct examination and direct examination is to be conducted during the trial proper, this Honorable Court's existing rule requiring submission of the judicial affidavit at least three working days before the hearing where the witness has not actually resulted in undue delay in the proceedings.

#### **5. Cases can be dismissed through no fault of a party.**

Petitioner has no control of the amount involved in case of assessments, and hence, is left with no choice but to pay substantial filing fees to resort to judicial appeal. Likewise, tax refunds are rarely acted upon at the administrative level so petitioners are forced to go to court and pay the filing fees. The payment of substantial filing fees and litigation expenses indicates the petitioner's resolve to prosecute the case. On the part of the Government, the records of the case or the witnesses may not be available through no fault of counsel. Hence, disregarding the evidence or imposing fines for (a) failure to submit the judicial affidavits on time, and (b) failure of the witness to appear at the scheduled hearing without regard to the reasons for such failures will result in the dismissal of the case through no fault of the party-litigant. This will result in a situation where procedural rules will have the effect of overriding or negating the substantive rights of the taxpayer.

#### **6. Oral offer and objection to exhibits is not practical.**

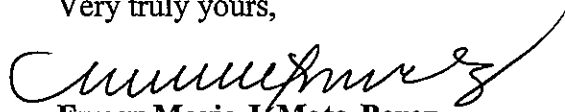
CTA cases, unlike the cases heard in the regular courts, invariably involve the presentation of voluminous exhibits. An oral offer of and objections to exhibits will take up a lot of court time. If the number of exhibits exceed 50, an oral offer of and objection to exhibits and the ruling of the Justices on each exhibit offered might not be completed in one hearing even if an entire court session is devoted to just one case. In addition, ruling on certain objections may require further research on the part of the Court before it can give a definitive ruling. To put undue pressure on the Court to rule on objections immediately in open court increases the risk of mistakes thereby resulting in undue prejudice to a party.

In view of all the foregoing, we respectfully reiterate our request that this Honorable Court:

- (a) propose to the Supreme Court that the procedure adopted by this Honorable Court on the use of judicial affidavits pursuant to Section I. A.5.k. of the Guidelines be deemed, in the meantime, substantial compliance with the JAR; and
- (b) formalize the existing CTA procedure on the use of judicial affidavits in a CTA Circular and propose to the Supreme Court to implement such CTA Circular in the CTA in lieu of the JAR.

We trust that this request will merit your prompt and kind consideration.

Very truly yours,



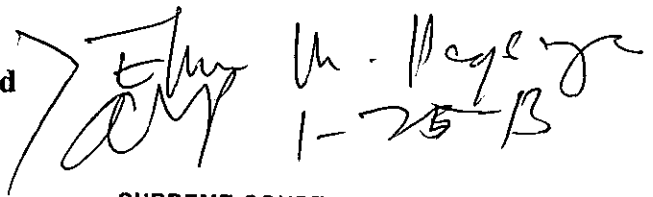
**Euney Marie J. Mata-Perez**  
President



**Priscilla B. Valer**  
Co-Chair, Legislative Committee

Copy furnished:

**Associate Justice Roberto A. Abad**  
Supreme Court of the Philippines  
Manila



**Court Administrator Jose Midas P. Marquez**  
Office of the Court Administrator  
Supreme Court of the Philippines  
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