

The Theory of Imprescriptibility in Criminal Tax Actions

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SUBJECT(S): TAX LAW

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This Note is an abridged version of the Author's Thesis. The issue threshed out in this Note is whether there is basis for the argument of imprescriptibility for the two prescriptive periods for the extraordinary ten-year period under Section 222 (a) of the Tax Code and the five-year prescriptive period under Section 281 of the Tax Code. The Author begins by evaluating whether the statutes of limitations under the Tax Code, i.e., in relation to the assessment and collection of taxes, and the institution of criminal tax actions, actually bestow the benefits intended by the legislature to the taxpayers or if in reality, they are merely a form of Indian giving. A discussion on the origin of the prescriptive period for tax offenses is provided as well as a detailed analysis of Section 281 of the Tax Code, which provides for the prescriptive period for criminal tax actions. There are two modes to determine this prescriptive period. The first mode deals with a situation where the commission of the offense was know at the time it was committed. The second mode deals with a situation where the commission of the offense was not known at the time it was committed.

The Note also analyzes the provisions of the Tax Code governing the different prescriptive periods and compares them. It also examines jurisprudence on taxation and those involving the discussed prescriptive periods, such as *People of the Philippines v. Arnault* and *Republic v. Patanao*. A review of the annotations on statutes of limitations in general and as applied in taxation is also given by the Author. The Author concludes with the idea that the prescriptive periods for the assessment and collection of taxes on one hand and the prescriptive period for criminal tax actions on the other, are both imprescriptible; hence, the Theory of Imprescriptibility. This Theory posits that the period of prescription is imprescriptible because it either possessed an indefinite character such that the period can run perpetually or that the law was improperly construed. This Theory is based on the position of Professor De Leon in the Court of Tax Appeals case in *Dominador Menguito v. Commissioner of Internal Revenue* and the Supreme Court decision in *Lim, Sr. v. Court of Tax Appeals*.