

Up in the AIR: The Aborted Annual Information Return

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I. INTRODUCTION

The Annual Information Return (AIR) prescribed by Bureau of Internal Revenue (BIR) Revenue Regulations (Rev. Reg.) No. 2-2011¹ was met with allegations of unconstitutionality² and violations of law and privacy,³

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1. Bureau of Internal Revenue, Filing of Income Tax Return and/or Annual Information Return by Individuals, Including Estates and Trusts, Rev. Reg. No. 2-2011 (Mar. 1, 2011).
2. Gil C. Cabacungan, Jr., BIR's Annual Information Return unconstitutional — lawmaker, PHIL. DAILY INQ., Mar. 9, 2011, available at <http://newsinfo.inquirer.net/breakingnews/nation/view/20110309-324451/BIRs-Annual-Information-Return-unconstitutionallawmaker> (last accessed May 23, 2011).
3. Leonard Vinz O. Ignacio, *Annual Information Return: A violation of the Bank Secrecy Act*, BUS. WORLD, Mar. 16, 2011, available at <http://www.bworldonline.com>.

vicious comparisons with its “public counterpart” — the Statement of Assets, Liabilities, and Net Worth (SALN),⁴ and even “encroachment on Congressional power.”⁵

Issued on 1 March 2011, Rev. Reg. No. 2-2011 requires certain taxpayers to file BIR Form No. 1705 or the AIR along with their Income Tax Return (ITR).⁶ Essentially, the AIR discloses sources of income⁷ other than gross taxable compensation income.⁸ Lawmakers and taxpayers alike cringed at this new animal.

Cagayan de Oro Representative Rufus B. Rodriguez warned that the AIR was an “illegal and unnecessary state intrusion into [the] lives of private individuals.”⁹ Believing that the National Internal Revenue Code of 1997 (NIRC),¹⁰ the country’s principal codification of tax laws, did not authorize the BIR Commissioner to require the filing of the AIR, he cautioned that, “[i]f [the BIR] wants to increase revenues through the AIR, [it] should first wait for Congress to legislate a law allowing this additional filing.”¹¹ Representative Magtanggol T. Gunigundo of the Second Legislative District of Valenzuela City, on the other hand, even suggested that the BIR should focus its attention away from private individuals and taxpayers and instead go after huge corporations for tax collection.¹²

Giving in to public pressure, BIR Commissioner Kim S. Jacinto said that the full force of the regulation would not take effect for taxable year 2010 and instead would take effect for taxable year 2011.¹³ To this end, on 10

com/content.php?title=Annual%20Information%20Return:%20A%20violation%20of%20the%20Bank%20Secrecy%20Act&id=28123 (last accessed May 23, 2011); Cabacungan, Jr., *supra* note 2.

4. Cabacungan, Jr., *supra* note 2. See also Ronnel Domingo, et al., *BIR blinks on tax rule*, PHIL. DAILY INQ., Mar. 10, 2011, available at <http://newsinfo.inquirer.net/608/bir-blinks-on-tax-rule> (last accessed May 23, 2011).
5. *Listening to Reason*, Manila Times, available at <http://www.manilatimes.net/opinion/listening-to-reason/> (last accessed May 23, 2011).
6. BIR Rev. Reg. No. 2-2011, § 3.
7. See Bureau of Internal Revenue, Annual Information Return, BIR Form No. 1705, schedule 1-4 (March 2011).
8. See Bureau of Internal Revenue, Annual Income Tax Return, BIR Form No. 1700, schedule 1 (October 2001).
9. Cabacungan, Jr., *supra* note 2.
10. A Decree to Consolidate and Codify All the Internal Revenue Laws of the Philippines [NATIONAL INTERNAL REVENUE CODE OF 1997], Presidential Decree No. 1158, as Amended (1997).
11. *Id.*
12. *Listening to Reason*, *supra* note 5.
13. Domingo, et al., *supra* note 4.

March 2011, Rev. Reg. No. 6-2011 was issued indicating that the implementation of Rev. Reg. No. 2-2011 is “suspended.”¹⁴ In a little over a week’s time, the issue of the AIR was provisionally resolved.

Amid the exchange of legal rhetoric, little has been achieved in settling the legal issues. Postponing the mandatory filing of the AIR is merely a stopgap measure which throws the return up in the air, but, as sure as gravity, it will once again fall and hit the surface of controversy come taxable year 2011.

This Essay explores the heated issues brought up by the AIR. Specifically, it examines the alleged violations of privacy and the possible legal challenges based on the validity of the AIR, resting upon whether the BIR is authorized by the NIRC to prescribe it. Also, the Author will look at the AIR side by side with the SALN in order to determine whether the comparisons between the two are reasonable. Ultimately, it is argued that the strongly worded apprehensions against the AIR are based merely on its unpopularity and negative connotations rather than on its invalidity.

II. A SALN FOR ALL SEASONS?

A. AIR Items

There are three classes of taxpayers required to file the AIR.¹⁵ First, an individual whose pure compensation income,¹⁶ derived from sources within the Philippines, with the income tax correctly withheld,¹⁷ exceeds ₱500,000.00.¹⁸ Second, individuals, estates, and trusts with incomes subject to a final withholding tax,¹⁹ the aggregate of which exceeds ₱125,000.00 annually.²⁰ And lastly, individuals whose total annual income exceeds ₱500,000.00, but their sole income is nonetheless exempt from income tax.²¹

14. Bureau of Internal Revenue, Suspension of the Implementation of Revenue Regulations No. 2-2011, Rev. Reg. No. 6-2011 (Mar. 10, 2011).

15. BIR Rev. Reg. No. 2-2011, § 4 (a)-(c).

16. Under Section 32 (A) (1) of the NIRC, pure compensation income is defined as “[c]ompensation for services in whatever form paid, including, but not limited to fees, salaries, wages, commissions, and similar items.”

NATIONAL INTERNAL REVENUE CODE OF 1997, § 32 (A) (1).

17. See NATIONAL INTERNAL REVENUE CODE OF 1997, § 79.

18. BIR Rev. Reg. No. 2-2011, § 4 (a).

19. See NATIONAL INTERNAL REVENUE CODE OF 1997, § 57 (A).

20. BIR Rev. Reg. No. 2-2011, § 4 (b).

21. *Id.* § 4 (c).

The items in the AIR include passive income composed of interests, royalties, dividends, and prizes and winnings;²² income from the sale or exchange of real properties;²³ properties received through gifts, bequests, and devises;²⁴ and other sources of income which include fringe benefits, compensation subject to 15% preferential rate, proceeds from life insurance policies, returns on premium, retirement benefits, pensions, gratuities, other similar funds, stock transactions, and others.²⁵ For estates and trusts, payments made to heirs or beneficiaries are items included in the AIR.²⁶

Filling out the AIR discloses earnings that are properly taxable and part of gross income. The NIRC defines interests, royalties, dividends, and prizes and winnings in the AIR's Schedule 1 as part of gross income;²⁷ so are gains derived from dealings in property,²⁸ though properties excluded from gross income are also included in the AIR.²⁹ Life insurance proceeds, amounts received by the insured as returns on premium, gifts, bequests, and devises, retirement benefits, pensions, gratuities, and others are excluded from gross income.³⁰

Lastly, the failure to file the AIR on the prescribed date, unless for reasonable causes and not due to willful neglect, is fined ₱1,000.00 for each failure, in accordance with Section 250 of the NIRC.³¹ By extension, the willful neglect to file the AIR or fraudulent filing of the AIR will result in a penalty equivalent to 50% of the tax or deficiency tax.³²

B. The Statement of Assets, Liabilities, and Net Worth (SALN)

The SALN was originally required of every public officer since 1960 by Republic Act (R.A.) No. 3019 or the Anti-Graft and Corrupt Practices Act.³³ It initially disclosed assets and liabilities, amounts and sources of income, amounts of personal and family expenses, and income taxes paid.³⁴

22. BIR Form No. 1705, schedule 1.

23. *Id.* schedule 2.

24. *Id.* schedule 3.

25. *Id.* schedule 4.

26. *Id.* part IV.

27. NATIONAL INTERNAL REVENUE CODE OF 1997, § 32 (A) (4), (6), (7), & (9).

28. *Id.* § 32 (A) (3).

29. BIR Form No. 1705, schedule 4.

30. NATIONAL INTERNAL REVENUE CODE OF 1997, § 32 (B) (1)-(3) & (6).

31. *Id.* § 250; BIR Rev. Reg. No. 2-2011, guidelines.

32. NATIONAL INTERNAL REVENUE CODE OF 1997, § 248 (B).

33. Anti-Graft and Corrupt Practices Act, Republic Act No. 3019, § 7 (1960).

34. *Id.*

The SALN was heralded as the “perfect companion” to R.A. No. 1379³⁵ — the law authorizing the forfeiture in favor of the State of unlawfully acquired property by public officials or employees.³⁶ Under R.A. No. 1379, if a public official or employee, during his incumbency, acquires property the amount of which is “manifestly out of proportion to his salary as such public officer or employee and to his other lawful income and the income from legitimately acquired property,” said property is *prima facie* presumed to have been unlawfully acquired.³⁷

In 1989, the SALN requirements were reformed and refined under R.A. No. 6713 or the Code of Conduct and Ethical Standards for Public Officials and Employees.³⁸ Under said Code, public officials and employees not only have to disclose their assets, liabilities, expenses, and sources of income, but also their business interests and financial connections and those of their spouses and unmarried children under 18 years old.³⁹ Two documents are therefore filed: the SALN and the Disclosure of Business Interests and Financial Connections.⁴⁰

The two documents contain an official or employee’s real properties, their improvements, acquisition costs, assessed value, and current fair market value; personal properties and their acquisition costs; all other assets including investments, cash, stocks, bonds, and the like; liabilities; and business interests and financial connections.⁴¹

In 2008, the Civil Service Commission (CSC) issued new forms for the SALN under Memorandum Circular (Memo. Circ.) No. 02, Series of

35. An Act Declaring Forfeiture in Favor of the State of Any Property Found to Have Been Unlawfully Acquired by Any Public Officer or Employee and Providing for the Proceedings Therefor, Republic Act No. 1379 (1955).

36. Yvonne T. Chua, Statement of Assets and Net Worth: A Critical Tool to Combat Public Sector Corruption, *available at* http://www.transparencyreporting.net/index.php?option=com_content&view=article&id=74:statements-of-assets-and-net-worth-a-critical-tool-to-combat-public-sector-corruption&catid=44:stories&Itemid=79 (last accessed May 23, 2011).

37. R.A. No. 1379, § 2.

38. An Act Establishing a Code of Conduct and Ethical Standards for Public Officials and Employees, to Uphold the Time-Honored Principle of Public Office Being a Public Trust, Granting Incentives and Rewards for Exemplary Service, Enumerating Prohibited Acts and Transactions and Providing Penalties for Violations Thereof and for Other Purposes [CODE OF CONDUCT AND ETHICAL STANDARDS FOR PUBLIC OFFICIALS AND EMPLOYEES], Republic Act No. 6713 (1989).

39. *Id.* § 8 (A).

40. *Id.*

41. *Id.* § 8 (A) (a)-(e).

2008.⁴² The previous SALN form was deemed too difficult to accomplish, time-consuming to file annually, and burdensome.⁴³ The new procedure requires the filing of two new forms: the Baseline Declaration Form⁴⁴ and the Annual Declaration Form.⁴⁵

The Baseline Declaration Form is accomplished by an official only once for incumbents and new entrants.⁴⁶ Where the official has previously submitted his Baseline Declaration, his succeeding submissions will only consist of the Annual Declaration which will document “acquisitions and disposals of assets, incurrence and retirement of liabilities, and creation and termination of business interests and financial connections, since the last SALN submission.”⁴⁷ It is “not as detailed and merely updates” the Baseline Declaration.⁴⁸

In addition to the disclosure requirements under the law, the forms also list the official or employee’s relatives serving in government up to the fourth civil degree of relationship, either of consanguinity or affinity, including *bilas*, *inso*, and *balae*.⁴⁹

Finally, the SALN forms are sworn statements,⁵⁰ and violations of disclosure requirements are punishable with imprisonment not exceeding five years or a fine not exceeding ₱5,000.00, or both.⁵¹ In addition, the

42. Civil Service Commission, Revised Form of the Statement of Assets, Liabilities and Net Worth and Disclosure of Business Interests and Financial Connections, CSC Memorandum Circular No. 02, Series of 2008 (Feb. 1, 2008).

43. *Id.*

44. Civil Service Commission, Sworn Statement of Assets, Liabilities, and Net Worth/Disclosure of Business Interests and Financial Connections and Identification of Relatives in the Government Service, Baseline Declaration Form (Jan. 8, 2008).

45. Civil Service Commission, Sworn Statement of Assets, Liabilities, and Net Worth/Disclosure of Business Interests and Financial Connections and Identification of Relatives in the Government Service, Annual Declaration Form (Jan. 8, 2008).

46. CSC Memo. Circ. No. 02, Series of 2008.

47. *Id.*

48. Chua, *supra* note 36.

49. Baseline Declaration Form, ¶ D; Annual Declaration Form, ¶ F.

Bilas, *inso*, and *balae* are Tagalog terms of reference indicative of relationships. *Bilas* refers to a brother- or sister-in-law’s spouse, *inso* a wife of an elder brother or male cousin, and *balae* parents-in-law.

See DIKSYUNARYO NG WIKANG FILIPINO 74, 104, & 348 (1st ed. 1989).

50. CODE OF CONDUCT AND ETHICAL STANDARDS FOR PUBLIC OFFICIALS AND EMPLOYEES, § 8.

51. *Id.* § 11 (a).

abovementioned violation is sufficient to cause the administrative dismissal of the public official or employee, even if no criminal case is instituted.⁵²

C. Tale of the Tape

On the one hand, the SALN is one of the measures to promote a “high standard of ethics in public service.”⁵³ It is a tool to hold public officials accountable to the people.⁵⁴ Moreover, given the public interest with regard to the SALN, it is covered by the constitutional right of the people to information.⁵⁵

On the other hand, the AIR stems from the general duty of taxpayers to report income.⁵⁶ Hence, the only items listed in the AIR pertain to income other than compensation income. The AIR does not require the disclosure of investments, business interests, and financial connections. Properties listed in the AIR are relevant only insofar as they generate income.

Penalties for failing to file or fraudulently filing the statements are also different. The NIRC only penalizes with fines, while under R.A. No. 6713, a public official may be imprisoned or fined, or both.

The SALN is certainly more extensive and detailed than the AIR. Furthermore, the AIR is not covered by the ambit of public concern and there is no provision allowing access by the public.

The AIR and the SALN are two very different disclosure statements, though possessing some similarities, governed by separate laws, and for different purposes. Comparing the AIR to the SALN, or likening the AIR to a SALN for private citizens, is both exaggerated and unfair.

III. ISSUES AND CHALLENGES

A. Authority Under the NIRC

Under the NIRC, an annual information return is required only for withholding agents.⁵⁷ Furthermore, only an income tax return is explicitly

52. *Id.* § 11 (b).

53. *Id.* § 2.

54. *Id.*

55. *Id.* § 8. See CODE OF CONDUCT AND ETHICAL STANDARDS FOR PUBLIC OFFICIALS AND EMPLOYEES, § 8 (C) & (D). See also PHIL. CONST. art. III, § 7.

56. BIR Rev. Reg. No. 2-2011, § 1.

57. NATIONAL INTERNAL REVENUE CODE OF 1997, §§ 58 (C) & 83 (B). A withholding agent is a person “required to deduct and withhold any tax under the provisions of Section 57.” *Id.* § 22 (K). See also NATIONAL INTERNAL REVENUE CODE OF 1997, § 57.

required for taxpayers in general.⁵⁸ There is no requirement under the NIRC for non-withholding agents to file an annual information return. It is for these reasons that members of Congress feel an encroachment on legislative power and doubt the authority of the BIR to require taxpayers to file the AIR.⁵⁹ Bayan Muna Representative Teodoro A. Casiño even surmised that it is a “matter for the BIR to consolidate the information it can gather from various sources to ensure that the proper taxes are filed by those who are suspected of misdeclaring their earnings.”⁶⁰ This it can do without the AIR.⁶¹

Nevertheless, an argument could be raised which supports the requirement of the AIR as authorized under the NIRC. The BIR is charged with the “assessment and collection of all national internal revenue taxes, fees, and charges, and the enforcement of all forfeitures, penalties, and fines connected therewith.”⁶² To this end, the Secretary of Finance, with the recommendation of the BIR Commissioner, is empowered to promulgate the necessary rules and regulations of the enforcement of the NIRC.⁶³

Specifically, BIR rules and regulations shall prescribe and define the “manner in which tax returns, information[,] and reports” are “prepared and reported.”⁶⁴

As established earlier, the income tax return and annual information return for withholding agents are expressly provided by the NIRC. Is there a provision in the NIRC which authorizes a return not expressly mentioned therein?

Under Section 6 of the NIRC, the BIR Commissioner has the power to make assessments and prescribe *additional* requirements for tax administration and enforcement.⁶⁵ The last item of Section 6 authorizes the Commissioner to “prescribe *additional* procedural or documentary requirements.”⁶⁶ It states: “[t]he Commissioner may prescribe the manner of compliance with any documentary or procedural requirement in connection with the submission or preparation of financial statements accompanying the tax returns.”⁶⁷

58. See NATIONAL INTERNAL REVENUE CODE OF 1997, § 51 (A) (1).

59. See *Listening to Reason*, *supra* note 5.

60. *Id.*

61. *Id.*

62. NATIONAL INTERNAL REVENUE CODE OF 1997, § 2.

63. *Id.* § 244.

64. *Id.* § 245 (i).

65. *Id.* § 6.

66. *Id.* § (H) (emphasis supplied).

67. *Id.*

Furthermore, the provisions of the NIRC conferring powers on the BIR must be liberally construed to enable the BIR to discharge its mandated duty.⁶⁸ Moreover, while the BIR “has only such powers as are expressly granted to it by law, it is likewise the rule that it has also such powers as are necessarily implied in the exercise of its express powers.”⁶⁹

If Rev. Reg. 6-2011 holds true, by 2012, the documentary or procedural requirement of filing the annual income tax return shall be submitted together with the AIR. What is the AIR but a financial statement detailing the taxpayer’s income other than compensation income?

B. Zones of Privacy

Zones of privacy are founded on the Constitution and protected by law. The two leading cases in this jurisdiction on privacy are *Morfe v. Mutuc*⁷⁰ and *Ople v. Torres*.⁷¹ *Morfe* recognized that the various constitutional guarantees create these zones of privacy.⁷² *Ople*, involving the validity of an administrative order adopting a national ID system,⁷³ pronounced stringent standards for a law or regulation vis-à-vis privacy concerns.⁷⁴

Morfe upheld the disclosure requirements in the SALN as then mandated by R.A. No. 3019 for public officers as a lawful “intrusion into what otherwise would be a private sphere.”⁷⁵ Given the rational basis for the requirements — the objectives of the law to curtail corruption and maintain morality in public office⁷⁶ — the invasion of privacy is justified.⁷⁷ Several provisions in the 1987 Constitution recognize a right to privacy,⁷⁸ expressly in Section 3 (1)⁷⁹ and implicitly in other guarantees in the Bill of Rights.⁸⁰

68. HECTOR S. DE LEON & HECTOR M. DE LEON, JR., *ADMINISTRATIVE LAW: TEXT AND CASES* 56-57 (6th ed. 2010) (citing *Solid Homes, Inc. v. Payawal*, 177 SCRA 72, 79 (1989)).

69. *Id.*

70. *Morfe v. Mutuc*, 22 SCRA 424 (1968).

71. *Ople v. Torres*, 293 SCRA 141 (1998).

72. *Morfe*, 22 SCRA at 444 (citing *Griswold v. Connecticut*, 381 U.S. 479, 484 (1965) (U.S.)).

73. Office of the President, *Adoption of a National Computerized Identification Reference System*, Administrative Order No. 308 (Dec. 12, 1996).

74. *Ople*, 293 SCRA at 166.

75. *Morfe*, 22 SCRA at 446.

76. *Id.* at 435.

77. *Id.* at 445.

78. *Ople*, 293 SCRA at 156 (citing *Morfe*, 22 SCRA at 444).

79. *Id.* (citing PHIL. CONST. art. III, § 3 (1)).

80. *Id.* (citing PHIL. CONST. art. III, §§ 1, 2, 6, 8, & 17).

The Civil Code⁸¹ mandates that “[e]very person shall respect the dignity, personality, privacy[,] and peace of mind of his neighbors and other persons.”⁸² Various legislations also provide for both civil⁸³ and criminal liabilities⁸⁴ for violations of the right to privacy. Special penal laws also consider invasion of privacy in special situations as offenses, as gathered from R.A. No. 4200 or the Anti-Wire Tapping Act,⁸⁵ R.A. No. 1405 or the Law on Secrecy of Bank Deposits,⁸⁶ and R.A. No. 8293 or the Intellectual Property Code.⁸⁷

The confidentiality of certain communication and information is also covered by privacy protection by characterizing their status as *privileged*.⁸⁸

Recent legislations also take into account the changing landscape of technology necessitating novel barriers against invasions of privacy. Violations of medical confidentiality regarding the identity and status of persons afflicted with the Human Immunodeficiency Virus (HIV) are penalized under R.A. No. 8504 or the Philippine AIDS Prevention and Control Act of 1998.⁸⁹ Unauthorized access or interference with a computer system, server, or information and computer system is prohibited by R.A.

81. An Act to Ordain and Institute the Civil Code of the Philippines [CIVIL CODE], Republic Act No. 386 (1950).

82. *Id.* art. 26.

83. *Id.* arts. 26, 32, & 723.

84. An Act Revising the Penal Code and Other Penal Laws [REVISED PENAL CODE], Act No. 3815, arts. 229, 290–292, & 280 (1932).

85. An Act to Prohibit and Penalize Wire Tapping and Other Related Violations of Privacy of Communication, and for Other Purposes, Republic Act No. 4200, §§ 1 & 2 (1965).

86. An Act Prohibiting Disclosure of or Inquiry into Deposits, with any Banking Institution and Providing Penalty Therefor, Republic Act No. 1405, §§ 3 & 5 (1955).

87. An Act Prescribing the Intellectual Property Code and Establishing the Intellectual Property Office, Providing for its Powers and Functions, and for Other Purposes [INTELLECTUAL PROPERTY CODE], Republic Act No. 8293, §§ 76, 77, & 84 (1997).

88. *Ople*, 293 SCRA at 158 (citing REVISED RULES ON EVIDENCE, rule 130, § 24) (emphasis supplied).

89. An Act Promulgating Policies and Prescribing Measures for the Prevention and Control of HIV/AIDS in the Philippines, Instituting a Nationwide HIV/AIDS Information and Educational Program, Establishing a Comprehensive HIV/AIDS Monitoring System Strengthening the Philippine National AIDS Council, and for Other Purposes [Philippine AIDS Prevention and Control Act of 1998], Republic Act No. 8504, § 33 (1998).

No. 8792 or the Electronic Commerce Act of 2000.⁹⁰ “Circumstances in which a person has a reasonable expectation of privacy,” as defined by R.A. No. 9995 or the Anti-Photo and Video Voyeurism Act of 2009,⁹¹ are also protected from photo or video voyeurism.⁹²

In 2008, the Supreme Court promulgated the Rule on the Writ of Habeas Data,⁹³ providing a remedy to any person “whose right to privacy in life, liberty[,] or security is violated or threatened by ... [a public or private] individual or entity engaged in the gathering, collecting[,] or storing of data or information.”⁹⁴ The Court has clarified, however, that the protection afforded to “informational privacy” is limited only to threats or violations to *life, liberty, and security* and not to purely property or commercial rights.⁹⁵

90. An Act Providing for the Recognition and Use of Electronic Commercial and Non-Commercial Transactions and Documents, Penalties for Unlawful Use Thereof and for Other Purposes [Electronic Commerce Act of 2000], Republic Act No. 8792, § 33 (a) (2000).

91. The law defines such as circumstances in which a person believes

that he/she could disrobe in privacy, without being concerned that an image or a private area of the person was being captured; or circumstances in which a reasonable person would believe that a private area of the person would not be visible to the public, regardless of whether that person is in a public or private place.

An Act Defining and Penalizing the Crime of Photo and Video Voyeurism, Prescribing Penalties Therefor, and for Other Purposes [Anti-Photo and Video Voyeurism Act of 2009], Republic Act No. 9995, § 3 (f) (2009).

92. *Id.* §§ 4 & 5. “Photo or video voyeurism” is

the act of taking photo or video coverage of a person or group of persons performing sexual act or any similar activity or of capturing an image of the private area of a person or persons without the latter’s consent, under circumstances in which such person/s has/have a reasonable expectation of privacy, or the act of selling, copying, reproducing, broadcasting, sharing, showing or exhibiting the photo or video coverage or recordings of such sexual act or similar activity through VCD/DVD, internet, cellular phones and similar means or device without the written consent of the person/s involved, notwithstanding that consent to record or take photo or video coverage of same was given by such persons.

Id. § 3 (d).

93. THE RULE ON THE WRIT OF HABEAS DATA, A.M. No. 08-1-16-SC, Feb. 2, 2008.

94. *Id.* § 1.

95. *Castillo v. Cruz*, 605 SCRA 628, 636 (2009) (citing *Tapuz v. Del Rosario*, 544 SCRA 768, 784-85 (2008)) (emphasis supplied).

Corollary to the right to privacy is the constitutional right against unreasonable searches and seizures. Section 2 of Article III of the Constitution states that the “right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures of *whatever nature and for any purpose* shall be inviolable.”⁹⁶ The phrase “of whatever nature and for any purpose” has been interpreted to cover other types of searches aside from a regular search warrant,⁹⁷ such as a *subpoena duces tecum* or a production order of books and papers.⁹⁸ It can also cover administrative searches by various administrative agencies other than law enforcement agencies.⁹⁹

These constitutional and statutory provisions highlight an individual’s “right to be let alone” and, more importantly, his “right to determine what, how much, to whom[,] and when information about himself shall be disclosed.”¹⁰⁰

Disclosing various sources of income as required by the AIR for the administration of tax collection and the enforcement of revenue laws may classify as a “search” within the broad scope of the constitutional guarantee against unreasonable searches and seizure.

C. Reasonable Expectations of Privacy

Nevertheless, privacy is “not an absolute right.”¹⁰¹ “Not every invocation of the right to privacy” should thwart a legitimate government inquiry.¹⁰² Thus, “[i]n evaluating a claim for violation of the right to privacy, a court must determine whether a person has exhibited a reasonable expectation of privacy and, if so, whether that expectation has been violated by unreasonable government intrusion.”¹⁰³

In turn, the reasonableness of a person’s expectation of privacy is two-fold:

96. PHIL. CONST. art. III, § 2 (emphasis supplied).

97. See PHIL. CONST. art. III, § 2.

98. JOAQUIN G. BERNAS, S.J., *THE 1987 CONSTITUTION OF THE REPUBLIC OF THE PHILIPPINES: A COMMENTARY* 186 (2009 ed.). See generally 1997 RULES OF CIVIL PROCEDURE, rule 21.

99. *Id.* at 189-90.

100. *Sabio v. Gordon*, 504 SCRA 704, 736 (2006) (citing *ACADEMY OF ASEAN LAW AND JURISPRUDENCE, CONSTITUTIONAL AND LEGAL SYSTEMS OF ASEAN COUNTRIES* 221 (Carmelo V. Sison ed., 1990)).

101. *Standard Chartered Bank v. Senate Committee*, 541 SCRA 456, 475 (2007).

102. See *Standard Chartered Bank*, 541 SCRA at 475.

103. *Sabio*, 504 SCRA at 737 (citing *Burrows v. Superior Court of San Bernardino County*, 13 Cal. 3d 238, 243 (1974) (U.S.)).

- (1) whether by his conduct, the individual has exhibited an expectation of privacy; and
- (2) whether this expectation is one that society recognizes as reasonable.¹⁰⁴

The particular factual circumstances in a case “determine[] the reasonableness of the expectations,” but other factors like “customs, physical surroundings[,] and practices of a particular activity, may serve to create or diminish this expectation.”¹⁰⁵ That an individual’s sources of income or business activities are private information may be concluded from the fact that these are not proper subjects of the public’s constitutional right to information.¹⁰⁶ Furthermore, disclosure of these data can only be compelled by court order¹⁰⁷ or by law.¹⁰⁸

The NIRC also regards these pieces of information as *confidential*, as inferred from the punitive provisions in Sections 270 and 278.¹⁰⁹ Said provisions penalize unlawful divulging of trade secrets relative to the business, *income*, or *estate* of the taxpayer by any officer or employee of the

104. *Ople*, 293 SCRA at 164 (citing *Rakas v. Illinois*, 439 U.S. 128, 143-44 (1978) (U.S.)).

105. *Id.* (citing Stephen M. Kennedy, *Note: Emasculating a State’s Constitutional Right to Privacy: The California Supreme Court’s Decision in Hill v. NCAA*, 68 TEMP. L. REV. 1497, 1517 (1995)).

106. *See* PHIL. CONST. art. II, § 28 & art. III, § 7.

Section 28 of Article II states that “[s]ubject to reasonable conditions prescribed by law, the State adopts and implements a policy of full public disclosure of all *its transactions involving public interest.*”

PHIL. CONST. art. II, § 28 (emphasis supplied).

In conjunction, Section 7 of Article III provides:

The right of the people to information on matters of public concern shall be recognized. Access to official records, and to documents and papers pertaining to official acts, transactions, or decisions, as well as to government research data used as basis for policy development, shall be afforded the citizen, subject to such limitations as may be provided by law.

PHIL. CONST. art. III, § 7.

107. *See* 1997 RULES OF CIVIL PROCEDURE, rule 21 & 27.

108. *See* R.A. 3019, § 7 & CODE OF CONDUCT AND ETHICAL STANDARDS FOR PUBLIC OFFICIALS AND EMPLOYEES, § 8. Private information may also be subject to an administrative agency’s investigative powers. ANTONIO EDUARDO B. NACHURA, *OUTLINE REVIEWER IN POLITICAL LAW* 421 (2009).

109. NATIONAL INTERNAL REVENUE CODE OF 1997, §§ 270 & 278.

BIR¹¹⁰ and procuring unlawful divulgence of trade secrets by causing an office or employee of the BIR to divulge such secrets.¹¹¹

Thus, sources of income are treated as confidential matters by the NIRC and removed from the ambit of the public's right to know. There is, therefore, a reasonable expectation of privacy. The question which remains, then, is whether there has been an unreasonable government intrusion by requiring the filing of the AIR.

D. The Rational Basis Relationship Test

In *Ople*, the challenge to the national ID system was directed to the "common reference number to establish a linkage among concerned agencies" through "Biometrics Technology" and "computer application designs."¹¹² The Supreme Court found that the advancements in biometric technology allowed for a variety of physiological identification such as fingerprinting, retinal scans, "artificial nose," thermograms, and others like them.¹¹³ The Court found the national ID system lacking in safeguards given the potential of the system for misuse.¹¹⁴ The Supreme Court in *Ople* made the following pronouncement:

And we now hold that when the integrity of a fundamental right is at stake, this court will give the challenged law, administrative order, rule or regulation a stricter scrutiny. It will not do for the authorities to invoke the presumption of regularity in the performance of official duties. Nor is it enough for the authorities to prove that their act is not irrational for a basic right can be diminished, if not defeated, even when the government does not act irrationally. They must satisfactorily show the presence of compelling state interests and that the law, rule, or regulation is narrowly drawn to preclude abuses.¹¹⁵

To this end, the Court has employed the rational basis relationship test, as laid down in *Morfe*,¹¹⁶ to determine whether there has been an unreasonable government intrusion to an individual's privacy.¹¹⁷ The test states that there is no infringement on the right to privacy when the requirement to disclose information is for a valid purpose.¹¹⁸ Also, the right

110. *Id.* § 270 (emphasis supplied).

111. *Id.* § 278.

112. *Ople*, 293 SCRA at 158.

113. *Id.* at 159-60.

114. *Id.* at 160-61.

115. *Id.* at 166.

116. *See Morfe*, 22 SCRA at 445.

117. *See Sabio*, 504 SCRA at 738 & *Standard Chartered Bank*, 541 SCRA at 475.

118. *Standard Chartered Bank*, 541 SCRA at 476 (citing *Sabio*, 504 SCRA at 738).

to privacy “is not absolute where there is an overriding *compelling state interest*.”¹¹⁹

And what overriding and compelling state interest could the AIR serve? It must be noted that not only must the AIR be justified by some compelling state interest, it must also be shown that it is “narrowly drawn to preclude abuses.”¹²⁰

One underlying basis of taxation is the lifeblood theory.¹²¹ It states that since government is necessary and that “it cannot exist nor endure without the means to pay its expenses; and for those means, the government has the right to compel all its citizens and property within its limits to contribute in the form of taxes.”¹²² Also, as this Author once discussed:

Taxes are the lifeblood of the government and the sinews of the State, their ‘prompt and certain availability is an imperious need,’ and neither unnecessary hindrance nor delay should impede their collection. The Supreme Court, however, cautions that tax collection ‘should be made in accordance with law as any arbitrariness will negate the very reason for government itself.’ Because of this risk, it is necessary ‘to reconcile the apparently conflicting interests of the authorities and the taxpayers so that the real purpose of taxation, which is the promotion of the common good, may be achieved.’¹²³

The items to be disclosed in the AIR are properly taxable items forming part of the taxable gross income. There is no new tax imposed by the AIR, which would require legislation. Rather, the AIR is already built on existing taxes provided in the NIRC. It is also worth noting that, given the broad investigative powers of the BIR, it is difficult to see why the AIR is construed as a requirement that is without authority from the NIRC.

Sections 5 and 6 of the NIRC empower the BIR Commissioner to obtain necessary information and to summon, examine, and take testimony under oath of persons, as well as to prescribe additional requirements for tax administration and enforcement.¹²⁴ More specifically, the Commissioner can examine material and relevant information contained in any books, papers,

119. *Sabio*, 504 SCRA at 738 (emphasis supplied).

120. *Ople*, 293 SCRA at 166.

121. VICTORINO C. MAMALATEO, *REVIEWER ON TAXATION* 5 (2d ed. 2008).

122. *Id.*

123. Vicente Carlos S. Lo, *A Bribe for the Boatman: The Pains and Politics of the Value-Added Tax (VAT) on Tolls*, 55 *ATENEO L.J.* 514, 537-38 (2010) (citing *Commissioner of Internal Revenue v. Pineda*, 21 SCRA 105, 110 (1967); *Marcos II v. Court of Appeals*, 273 SCRA 47, 61 (1997); *Commissioner of Internal Revenue v. Algue, Inc.*, 158 SCRA 9, 11 (1988)).

124. NATIONAL INTERNAL REVENUE CODE OF 1997, §§ 5 & 6.

records, or other data.¹²⁵ The Commissioner can require persons to submit reports or give information¹²⁶ and summon persons to appear and produce before her books, papers, records, or other required data and take their testimony under oath.¹²⁷ The Commissioner can also conduct inventory-taking of a taxpayer's goods or place one's business operations under surveillance.¹²⁸ Finally, as an exception to R.A. No. 1405, the Commissioner can inquire into a taxpayer's bank deposits, albeit to a limited extent.¹²⁹

What the AIR has accomplished is to make the taxpayer volunteer the desired information concerning his sources of income — information which the BIR could lawfully, with the exception of bank deposits, inquire and investigate into anyway.

In sum, there is a rational relationship between requiring taxpayers to disclose their sources of income in the AIR and the legitimate and compelling State interest of taxation. Thus, there is no unreasonable search or government intrusion of privacy. Additionally, the broad investigative powers granted by the NIRC to the BIR Commissioner add a color of authority for the validity of the AIR. The said disclosure, however, is not without safeguards, as the AIR only requires disclosure of items properly taxable as gross income under the NIRC. Furthermore, the NIRC mandates the BIR to maintain the confidentiality of taxpayers' information and to penalize violations thereof as in instances of unlawful divulgence of a taxpayer's source of income.

E. Secrecy of Bank Deposits

R.A. No. 1405, the law that guarantees the secrecy of bank deposits, is worth discussing since it is specifically mentioned as being patently violated by the AIR.¹³⁰ The public policy is to encourage people "to deposit their money in banking institutions" and to discourage them from privately hoarding cash.¹³¹ In turn, funds deposited may be used for loans and "assist in the economic development of the country."¹³²

Nevertheless, all deposits of whatever nature in Philippine banking institutions, including government investment bonds, are considered

125. *Id.* § 5 (A).

126. *Id.* § 5 (B).

127. *Id.* § 5 (C) & (D).

128. *Id.* § 6 (C).

129. *Id.* § 6 (F). See also NATIONAL INTERNAL REVENUE CODE OF 1997, § 5.

130. Ignacio, *supra* note 3 & Listening to Reason, *supra* note 5.

131. R.A. No. 1405, § 1.

132. *Id.*

“absolutely confidential” and may not be examined by any private or public person, except with the written permission of the depositor or upon lawful order of a competent court, or in cases of impeachment, bribery, dereliction of duty of public officials, or in cases where the deposit is the subject of litigation.¹³³

R.A. No. 1405 penalizes a bank official or employee who discloses bank deposit information in instances other than those provided in the law.¹³⁴ Other exceptions are provided in subsequent laws. The NIRC, in Section 6 (F), authorizes the BIR Commissioner to inquire into bank deposit accounts of “a decedent to determine his gross estate,” “any taxpayer who has filed an application for compromise of his tax liability ... by reason of financial incapacity,” and a specific taxpayer “subject of a request for the supply of tax information from a foreign tax authority pursuant to an international convention or agreement.”¹³⁵ However, despite the broad investigative powers given to the Commissioner by the NIRC, it is made clear that such authority is limited to those provided in Section 6 (F).¹³⁶

The Office of the Ombudsman, charged with the investigation and prosecution of illegal acts and omissions of public officials,¹³⁷ was allowed by the Supreme Court to inquire into bank deposits¹³⁸ given that its office has the power to issue subpoenas and “take testimony in any investigation or inquiry, including the power to examine and have access to bank accounts and records.”¹³⁹

Also, the Anti-Money Laundering Council, in its effort to “protect and preserve the integrity and confidentiality of bank accounts and to ensure that the Philippines shall not be used as a money laundering site for the proceeds of any unlawful activity,”¹⁴⁰ is authorized to inquire and examine, and if necessary, freeze,¹⁴¹ any particular deposit or investment in a bank or non-

133. *Id.* § 2.

134. *Id.* § 3.

135. NATIONAL INTERNAL REVENUE CODE OF 1997, § 6 (F) (1)-(2).

136. *Id.* § 5.

137. An Act Providing for the Functional and Structural Organization of the Office of the Ombudsman and for Other Purposes [Ombudsman Act of 1989], Republic Act No. 6770, § 15 (1) (1989).

138. *Marquez v. Desierto*, 359 SCRA 772, 775 (2001).

139. Ombudsman Act of 1989, § 15 (8).

140. An Act Defining the Crime of Money Laundering, Providing Penalties Therefor and for Other Purposes [Anti-Money Laundering Act of 2001], Republic Act No. 9160, § 2 (2001).

141. *Id.* § 10.

bank institution upon establishing probable cause and securing a lawful order from the court.¹⁴²

Aside from R.A. No. 1405 mandating the confidentiality of bank deposits, bank deposits are also recognized as falling within the zones of privacy, given that it is also removed from the ambit of the public's constitutional right to information.¹⁴³

However, given that the AIR requires the disclosure of interest income,¹⁴⁴ it is opined that the "BIR would be able to estimate the taxpayers' deposits, which the Bank Secrecy Law prevents from being made public."¹⁴⁵ Also, since "[a]ny exception to the rule of absolute confidentiality must be specifically legislated,"¹⁴⁶ the disclosure of interest income "should be mandated by a law amending [R.A. No. 1405] and not by a mere issuance of the BIR."¹⁴⁷

For all the perceived threats against the privacy of the depositor and the secrecy of bank deposits, it is somehow understated that the AIR does not involve an examination or inquiry into bank deposits. Interest income¹⁴⁸ in this jurisdiction is not normally "reported" by a taxpayer as it is withheld at the source or by the payor-bank.¹⁴⁹ The disclosure of the taxpayer's interest income could easily be compared with the annual information return filed by the withholding agent.¹⁵⁰

That the AIR is not a violation of R.A. No. 1405 could be concluded from a similar situation in *China Banking Corporation v. Ortega*.¹⁵¹ Here, the Supreme Court ruled that the garnishment of bank deposits does not involve an inquiry into bank deposits and the existence of bank deposits disclosed during garnishment is "purely incidental to the execution process."¹⁵² Similarly, as it was not the intent "to place bank deposits beyond the reach

142. *Id.* § 11.

143. *Republic v. Eugenio*, 545 SCRA 384, 414 (2008) (citing PHIL. CONST. art. II, § 28 & art. III, § 7).

144. BIR Form No. 1705, schedule I, item 35.

145. *Listening to Reason*, *supra* note 5.

146. *Eugenio*, 545 SCRA at 415.

147. *Ignacio*, *supra* note 3.

148. NATIONAL INTERNAL REVENUE CODE OF 1997, §§ 24 (B) (1), 27 (D) (1) & (3), & 28 (A) (4) & (7) (a)-(b).

149. *Id.* § 57.

150. *Id.* § 58 (C).

151. *China Banking Corporation v. Ortega*, 49 SCRA 355 (1973).

152. *Id.* at 360.

of execution,”¹⁵³ it is not the intent to place them beyond the reach of taxation.

As revealed in the Congressional records, not all inquiries into bank deposits violate R.A. No. 1405. If the inquiry “is made only for the purpose of satisfying a tax liability already declared for the protection of the right in favor of government,” the prohibition does not apply.¹⁵⁴ But “when the object is merely to inquire whether he has a deposit or not for purposes of taxation,” then the prohibition applies.¹⁵⁵

The BIR is limited to inquiring into bank deposits in the instance of determining the gross estate of a decedent, compromising tax liability, or because of a request from a foreign tax authority pursuant to an international agreement. While the disclosure of interest income in the AIR may reveal information about a taxpayer’s bank deposits, said disclosure does not involve an inquiry into the nature and amount of his deposits. The inquiry is directed to the interest income and not to the income itself. The existence of the bank deposits would be merely and purely incidental to the process. It is also worth noting that interest income is treated as confidential information via Sections 270 and 278 of the NIRC.¹⁵⁶ Hence, there is no violation of R.A. No. 1405.

IV. CONCLUSION

As illustrated by this Essay, the BIR is authorized by the NIRC to require the filing of the AIR. The AIR is a valid procedural requirement for purposes of efficient tax administration, collection, and enforcement, with the underlying and compelling State interest of taxation. Furthermore, the NIRC and the BIR has various safeguards in place to ensure the confidentiality of the taxpayers’ sources of income, in conformity with the secrecy of bank deposits maintained by R.A. No. 1405.

There is no reason to suspect that the AIR would expose a private citizen to public scrutiny given that the AIR is not a SALN, and it is not covered by the constitutional right to information. Vocal comparisons of the AIR with the SALN are not only without basis, but also appeal to the emotions of public opinion and only serve to highlight fears rather than issues.

It is no secret that taxpayers under-declare or do not declare the entirety of their sources of income. The AIR is thought and perceived to put an end

153. *Id.* at 358.

154. *Id.*

155. *Id.*

156. See NATIONAL INTERNAL REVENUE CODE OF 1997, §§ 270 & 278.

to this common practice. Hence, the protestations for the BIR to go after “bigger fish” and leave the lowly taxpayer be.

This is not the first time that public opinion is against a BIR directive. In 2010, the value-added tax (VAT) on tolls, long-uncollected, sought to be enforced was met with similar resistance and public clamor.¹⁵⁷ But as argued by this Author before, the VAT on tolls is a “legitimate, albeit unpopular, exaction on tollway operators, even though motorists plying the expressways shoulder the burden.”¹⁵⁸ It is the same situation with the AIR, where opposition is not grounded on legality, but on perception.

157. *See generally* Lo, *supra* note 123.

158. *Id.* at 537.