

Headline	This is not about Facebook		
MediaTitle	The Philippine Star		
Date	22 Aug 2017	Language	English
Section	Business	Journalist	JULIUS PATRICK C. ACOSTA
Page No	B3	Frequency	Daily



## This is not about Facebook

When a person hears the word “update” or “notification,” more often than not, the first thing that comes to mind is Facebook, Twitter, Instagram, or the many other social networking applications. Hardly anyone sees any reference and connection between these words and taxation.

And yet, updates and notifications are most relevant in taxation, especially in the area of due process the rights of the taxpayer in relation to the change of a taxpayer’s business address. As this article highlights, changing one’s business address may not be as simple as changing profile pictures on Facebook.

The Bill of Rights, under the 1987 Constitution of the Philippines, provides that no person shall be deprived of property without due process of law. In tax

### TOP OF MIND



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assessments conducted by Bureau of Internal Revenue (BIR), due process includes the taxpayer being informed in writing of the legal and factual bases of such assessments.

In *Commissioner of Internal Revenue (CIR) vs. Coolmate Corp. (Coolmate)* (CTAEB No. 1226, June 8, 2016), Coolmate was subjected to a deficiency income tax assessment by the BIR for taxable year 2006. However, during the course of the assessment, Coolmate changed its business address, which also changed the Revenue District Office (RDO) that has jurisdiction over it – from RDO No. 48 to RDO No. 49.

The Preliminary Assessment Notice (PAN) and Final Assessment Notice (FAN) were both sent to Coolmate’s old address. However, only the PAN was received by Coolmate. The FAN, on the other hand, was returned to sender because Coolmate had already moved out from its old business address. Despite not receiving the FAN, the same became final, executory and demandable, thus, giving the right to the BIR to collect the deficiency taxes.

The CTA *en banc* ruled in favor of Coolmate and declared void the deficiency income tax assessment because the FAN was sent by the BIR to Coolmate’s old business address. Consequently, Coolmate did not receive the FAN in its new business address, therefore violating its right to due process of being informed in writing of the laws and facts the FAN was based on.

The CIR argued there was no valid update in the change of Coolmate’s business address and that under Section 11 of Revenue Regulations (RR) No. 12-85, Coolmate should have given a written notice of change of address to RDO No. 48, the RDO which had jurisdiction over Coolmate’s former place of business.

RR No. 12-85 provides that in case of change of address, the taxpayer must give a written notice to the Revenue District Officer having jurisdiction over his former legal residence and/or place of business, copy furnished the Revenue District Officer having jurisdiction over his new legal residence or place of business.

Disagreeing with the CIR’s argument, the CTA *en banc* ruled, citing the Supreme Court in *Commissioner of Internal Revenue vs. BASF Coating + Inks Phils., Inc.* (G.R. No. 198677, Nov. 26, 2014), that despite the absence of a formal written notice of the taxpayer’s change of address, the fact remains that the CIR became aware of the taxpayer’s new address as shown by documents such as: (1) BIR Form No. 1905 (Application for Registration Information Update) and the Certificate of Registration issued by RDO No. 49 reflecting the new address of Coolmate; (2) the letter sent by the CIR to Coolmate in its new address asking for submission of pertinent documents; and (3) the letters sent by Coolmate to the CIR with Coolmate’s new address indicated therein.

Moreover, Coolmate filed its annual income tax returns for taxable years 2007 (in April 2008) and 2008 (in April 2009) with RDO No. 49, not with RDO No. 48. This was considered conclusive proof that Coolmate’s change of business address was already recorded in the BIR prior to the issuance of the PAN and

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FAN in March and April of 2010, respectively.

The CTA *en banc* further explained that notice to the taxpayer's change in address need not be formal. The BIR just needs to be notified and be made aware of the taxpayer's new address so that the running of the prescriptive period to assess and collect taxes will not be suspended. In the case of Coolmate, the update in the change of business address received by the new RDO (RDO No. 49) is already sufficient notice to the entire BIR, including the old RDO (RDO No. 48).

On June 13, 2016, or less than a week after the promulgation of the *Coolmate case*, the BIR issued Revenue Memorandum Order (RMO) No. 26-2016, which provides that an assessment notice shall become final, executory and demandable if the taxpayer fails to receive the same because: (1) it was served in the address indicated in the BIR's registration database; and (2) the taxpayer transferred to a new address or closed/ceased operations without updating and transferring its BIR registration or cancelling its BIR registration, as the case may be, through the accomplishment and filing of BIR Form No. 1905.

The issuance of RMO No. 26-2016 emphasized the need for a taxpayer (that changes its business address) to update its BIR registration to avoid being caught up in a situation wherein an assessment notice will become final, executory and demandable without being able to provide any defense whatsoever.

Does the provision of RMO No. 26-2016 violate the taxpayer's right to due process? No, it does not. The right to be informed of the legal and factual bases of the assessment is not removed because it just mandates taxpayers to update their BIR registrations pursuant to the Tax Code and the rules and regulations of the BIR. Verily, when the taxpayer does not follow the procedures prescribed by law, there will be consequences — one of which will be losing the opportunity to respond or protest an assessment notice that was sent to the taxpayer's old address.

Reading the RMO in connection with the *Coolmate case*, although notice to the BIR of the taxpayer's change in address need not be formal, the taxpayer is still mandated to update its BIR registration. Otherwise, the assessment notices sent to its old business address shall become final, executory and demandable.

Considering that there has already been a conscious and continuous effort on the part of the BIR to modernize and simplify its rules and regulations regarding registration, it should already be incumbent upon all taxpayers to diligently comply with such procedures provided therein. With that being said, the BIR should make sure that its registration database is also updated regularly so as not to fault taxpayers who follow the rules and regulations to the letter.

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