

Republic of the Philippines
COMMISSION ON ELECTIONS
Manila

FIRST DIVISION

BONIFACIO PARABUAC ILAGAN,
SATURNINO CUNANAN
OCAMPO, MARIA CAROLINA
PAGADUAN ARAULLO,
TRINIDAD GERLITA REPUNO,
JOANNA KINTANAR CARINO,
ELISA TITA PEREZ LUBI, LIZA
LARGOZA MAZA, DANILO
MALLARI DELA FUENTE,
CARMENCITA MENDOZA
FLORENTINO, DOROTEO
CUBACUB ABAYA, JR., ERLINDA
NABLE SENTURIAS SR.,
ARABELLA CAMMAGAY
BALINGAO, SR., CHERRY M.
IBARDALOZA, CSSJB, SR. USAN
SANTOS ESMILE, SFIC, HOMAR
RUBERT ROCA DISTAJO,
POLYNNE ESPINEDA DIRA, JAMES
CARWYN CANDILA, and JONAS
ANGELO LOPENA ABADILLA,

Petitioners,

- versus -

FERDINAND ROMUALDEZ
MARCOS, JR.,

Respondent.

x ----- x

ANSWER

(to the *Petition for Disqualification* dated 18 November 2021)

Respondent **FERDINAND ROMUALDEZ MARCOS, JR.** ("BBM"), through undersigned counsel and unto the Honorable Commission, respectfully submits this *Answer* to the *Petition for Disqualification* dated 18 November 2021 ("**Petition**") and in support thereof states :



SPA NO. 21-212 (DC)

I. TIMELINESS

1. On 21 December 2021, **BBM** received a *Summons* with *Notice of Preliminary Conference* dated 20 December 2021 from the Honorable Commission, directing him to file his *Answer* within five (5) days from receipt thereof.

2. However, the 5th day, 26 December 2021, falls on a Sunday. Hence, **BBM** has until the next working day, 27 December 2021, to file *Answer*.

II. STATEMENT OF THE CASE

3. The *Petition* seeks to disqualify **BBM** as a candidate for President of the Republic of the Philippines, relative to the 9 May 2022 National and Local Elections, on the grounds that he is perpetually disqualified from holding any public office, and that he was allegedly sentenced to a penalty of imprisonment of more than eighteen (18) months, and that he was allegedly convicted of a crime involving moral turpitude.¹

4. Contrary to the petitioners' allegations however, the penalty of perpetual disqualification has never been imposed against **BBM**. Likewise, **BBM** has neither been convicted by final judgment of a crime involving moral turpitude nor sentenced by final judgment to suffer imprisonment for more than eighteen (18) months.

III. COUNTER-STATEMENT OF FACTS

5. From 1980 to 1983, **BBM** was the Vice Governor of Ilocos Norte. Thereafter, from 1983 until February 1986, he served as the Governor of said province.

¹ See *Petition*, pp. 24-25, 42.

6. Since **BBM** was a government official, the Provincial Government of Ilocos Norte, as **BBM**'s employer, was mandated by law to deduct and withhold his income taxes.² Thus, **BBM**'s income taxes for taxable years 1982 to 1985 were automatically withheld by the Provincial Government of Ilocos Norte. Attached as *Annex "1"* is a *Certification* from the Local Finance Committee of Ilocos Norte stating that "*taxes due were withheld against the salary of the Honorable Ferdinand R. Marcos, Jr. during his term as Governor for the year 1982-1985.*"

7. In February 1986, a revolution now dubbed as "EDSA I" broke out and overthrew the entire government. **BBM** and his family were removed from office and were forced to go into exile in Hawaii, U.S.A. **BBM** was barred from returning to the Philippines until 1991.

8. From 20 September 1991 until 20 October 1991, in a span of just one month, a barrage of eight (8) criminal informations for violations of Sections 45 (non-filing of income tax returns) and 50 (non-payment of deficiency taxes) of the National Internal Revenue Code ("NIRC") was filed against **BBM**.³

9. The trial court convicted **BBM** of the offenses charged. On appeal, the Court of Appeals, in a *Decision* dated October 31, 1997 ("*CA Decision*"), acquitted **BBM** of the criminal charges of non-payment of deficiency taxes for the taxable years 1982 to 1985. However, **BBM** was ordered to pay a fine plus interest for his failure to file income tax returns for aforesaid years.

10. Initially, **BBM** appealed the *CA Decision* to the Supreme Court. However, on 8 August 2001, **BBM** withdrew his appeal. The *CA Decision* became final and executory on 31 August 2001. **BBM** paid the deficiency taxes and fines on 27 December 2001.

11. Since then, **BBM** has filed his COC numerous times for various elected positions. In 2004, he ran for and served as Governor of Ilocos Norte. In 2007, **BBM** ran for and served as Member of the House of Representatives. In 2010, **BBM** ran for and served as Member of the Senate. **BBM** likewise ran for Vice President in 2016.

² Paragraph (a), Section 91, Presidential Decree 1158, otherwise known as the "1977 NIRC."

³QC-RTC Criminal Cases No. Q-92-29213, Q-92-29212, Q-92-29217, Q-92-2916, Q-92-29215, Q-92-29214, Q-91-24391, and Q-91-24390.

12. In all these instances, **BBM** publicly and openly represented that he was eligible for the position he was running for. Not once was **BBM**'s eligibility questioned.

13. Then, on 6 October 2021, **BBM** filed his COC for the position of President of the Philippines.

14. Thereafter, the petitioners filed the *Petition*. According to the petitioners, on account of **BBM**'s conviction for failure to file tax returns, **BBM** should be disqualified to be a candidate for President of the Republic of the Philippines because :

a) he is perpetually disqualified to run for public office by virtue of his conviction for failure to file tax returns; and

b) he was convicted of a crime involving moral turpitude.

15. As shall be demonstrated below, the *Petition* is based entirely on irrelevant, baseless and misleading statements. It is an affront to our judicial process and should be dismissed forthwith.

IV. ARGUMENTS

A. **BBM**'s conviction for failure to file tax returns did not disqualify him from holding any public office.

1. Section 252 of the 1977 NIRC is not applicable in this case.
2. Even if Section 252 of the 1977 NIRC is applicable, **BBM** is still not disqualified from holding public office because the penalty of disqualification is not *ipso facto* imposed upon the mere fact of conviction and neither the Regional Trial Court nor the Court of Appeals imposed the said penalty.

- B. **BBM was never sentenced by final judgment to a penalty of more than eighteen months of imprisonment.**
- C. **BBM was never convicted by final judgment of a crime involving moral turpitude.**
 - 1. **Even if BBM was convicted of a crime involving moral turpitude, the disqualification has long been automatically removed.**
- D. **Retroactive effect must be given to R.A. 10963 which decriminalized the non-filing of annual income tax return by pure compensation income earners.**

**V.
DISCUSSION**

- A. **BBM’s conviction of failure to file tax returns did not disqualify him from holding any public office.**
 - 1. **Section 252 of the 1977 NIRC is not applicable in this case.**

16. *Section 252 of the 1977 NIRC, which the petitioners cite as basis for BBM’s alleged disqualification, was not in the original 1977 NIRC. The said section was merely introduced by Presidential Decree No. 1994 (“PD 1994”) which took effect in 1 January 1986.*

17. In the case at bar, **BBM** simply failed to file his tax returns for taxable years 1982 to 1985. The table below shows the respective dates of mandatory filing of tax returns and the corresponding dates of consummation of the offense of failure to file tax returns :

Taxable Year	Date of Mandatory Filing	Consummation of Offense of Failure to File Returns
1982	April 15, 1983	April 16, 1983
1983	April 15, 1984	April 16, 1984
1984	April 15, 1985	April 16, 1985
1985	April 15, 1986	April 16, 1986

18. It is clear that for the taxable years 1982 to 1984, **BBM** failed to file his tax returns before the effectivity of PD 1994. Therefore, the penalty of perpetual disqualification which was introduced by PD 1994⁴ cannot be applied to **BBM**'s failure to file his tax returns for taxable years 1982 to 1984. To rule otherwise would be tantamount to a violation of the Constitutional prohibition on *ex post facto* laws, thus :

Art III Bill of Rights

Section 22. No *ex post facto* law or bill of attainder shall be enacted.

19. In *People of the Philippines v. Sandiganbayan and Paredes, Jr.*⁵, the Court defined an *ex post facto* law in this wise :

An "*ex post facto* law" is defined as a law which provides for the **infliction of punishment upon a person for an act done which, when it was committed, was innocent;*** a law which aggravates a crime or makes it greater than when it was committed; **a law that changes the punishment or inflicts a greater punishment than the law annexed to the crime when it was committed;*** a law that changes the rules of evidence and receives less or different testimony than was required at the time of the commission of the offense in order to convict the offender; a law which, assuming to regulate civil rights and remedies only, in effect imposes a penalty or the deprivation of a right which, when done, was lawful; *a law which deprives persons accused of crime of some lawful protection to which they have become entitled*, such as the protection of a former conviction or acquittal, or of the proclamation of amnesty; **every law which, in relation to the offense or its consequences, alters the situation of a person to his disadvantage.*** *Wilensky v. Fields*, Fla., 267 So. 2d 1, 5. (Black's Law Dictionary, Fifth Edition, p. 520.)⁶

⁴ as the alleged Section 252 of the 1977 NIRC

⁵ 211 SCRA 241 (1992) at page 249.

⁶ Citations in the original, emphasis supplied.

20. Since P.D. 1994 provides for additional and greater punishments other than those obtaining prior to its enactment, its provisions therefore cannot be applied to Petitioner's alleged failure to file his tax returns for the years 1982 to 1984. This is necessarily so since by the time P.D. 1994 took effect on January 1, 1986, the mandatory dates of filing of the tax returns for the years 1982 to 1984 have long lapsed, and consequently, the offenses arising therefrom have been consummated already. To still apply P.D. 1994 for these consummated offenses is to give such law an *ex post facto* effect. This is unconstitutional.

21. As for the year 1985, a more circumspect analysis of the surrounding circumstances reveals that the "perpetual disqualification" imposed under Section 252 (c) of the 1977 NIRC, as amended by P.D. 1994, likewise does not apply to **BBM**.

22. As early as February 1986, the *whole* government was overthrown through a revolution dubbed as EDSA I. No less than the Supreme Court confirms this fact in the case of *Estrada v. Desierto, et al* and *Estrada v. Macapagal-Arroyo*⁷, thus :

In fine, the **legal distinction** between EDSA People Power I EDSA People Power II is clear. **EDSA I** involves the exercise of the **people power of revolution** which **overthrew the whole government**. **EDSA II** is an exercise of **people power of freedom of speech and freedom of assembly to petition the government for redress of grievances** which **only affected the office of the President**. **EDSA I** is **extra constitutional** and the legitimacy of the new government that resulted from it cannot be the subject of judicial review, but **EDSA II** is **intra constitutional** and the resignation of the sitting President that it caused and the succession of the Vice President as President are subject to judicial review. **EDSA I presented a political question; EDSA II involves legal questions**. A brief discourse on freedom of speech and of the freedom of assembly to petition the government for redress of grievance which are the **cutting edge of EDSA People Power II** is not inappropriate.

23. Not only was **BBM** removed from government, he and his family were forced to leave the country due to exigent circumstances. This fact is likewise confirmed by the Court in *Romualdez-Marcos v. COMELEC and Montejo*⁸ :

⁷ 353 SCRA 452 (2001), at page 493.

⁸ G.R. No. 119976, September 18, 1995.

What is undeniable, however, are the following set of facts which establish the fact of petitioner's domicile, which we lift verbatim from the COMELEC's Second Division's assailed Resolution:

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[I]n February 1986 (she claimed that) she and her family were abducted and kidnapped to Honolulu, Hawaii. In November 1991, she came home to Manila. In 1992, respondent ran for election as President of the Philippines and filed her Certificate of Candidacy wherein she indicated that she is a resident and registered voter of San Juan, Metro Manila.⁹

24. It took several years before **BBM** was finally able to return to the country. These circumstances, along with the overthrow of the government and the institution of a revolutionary government in its stead, undoubtedly show that well before the last day for filing of the 1985 tax returns, **BBM** was no longer a government official.

25. Section 252 of the 1977 NIRC, as amended, is clear and unambiguous; perpetual disqualification applies only if the accused is a public officer or employee. Since **BBM** has ceased to be a government official before the offense of non-filing of tax returns was consummated, it is therefore clear that perpetual disqualification cannot be imposed against him.

2. Even if Section 252 of the 1977 NIRC is applicable, **BBM** is still not disqualified from holding public office because the penalty of disqualification is not *ipso facto* imposed upon the mere fact of conviction and neither the Regional Trial Court nor the Court of Appeals imposed the said penalty.

26. The *CA Decision* is clear: there is no perpetual disqualification from holding public office imposed on **BBM**. In fact, even the Regional Trial Court did not impose any penalty of perpetual disqualification from holding public office. The **only penalty that was imposed was fines**. The creativity and imagination of petitioners--writing and wanting what is not there--can never be sufficient grounds to disqualify **BBM**.

⁹ Underscoring supplied.

27. Nevertheless, the petitioners argue that the penalty of perpetual disqualification under Section 252 of the 1977 NIRC is deemed imposed upon conviction. However, the petitioners cannot cite any provision in the 1977 NIRC, as amended, to support their stance. The reason is simple : there is none.

28. Indeed, under the RPC, there is no need to include in the judgment of conviction that the accused shall suffer the accessory penalties because these penalties are already deemed imposed with the principal penalties to which they attach. Article 73 of the RPC is clear on this :

Article 73. *Presumption in regard to the imposition of accessory penalties.* - Whenever the courts shall impose a penalty which, by provision of law, carries with it other penalties, according to the provisions of Articles 40, 41, 42, 43 and 44 of this Code, it must be understood that the accessory penalties are also imposed upon the convict.

29. However, Article 73 of the RPC cannot be applied suppletorily or even by analogy to the NIRC. This is basic. Criminal laws are strictly construed- *nullum crimen nulla poena sine lege*. Neither the 1977 NIRC, as amended, nor the present NIRC contains a provision equivalent or even remotely similar to Article 73 of the RPC. In *Laurel v. Abrogar*,¹⁰ the Supreme Court explicitly stated that penal laws may not be enlarged by implication.

As Chief Justice John Marshall declared, "it would be dangerous, indeed, to carry the principle that a case which is within the reason or mischief of a statute is within its provision, so far as to punish a crime not enumerated in the statute because it is of equal atrocity, or of kindred character with those which are enumerated. When interpreting a criminal statute that does not explicitly reach the conduct in question, the Court should not base an expansive reading on inferences from subjective and variable understanding.

¹⁰ 483 SCRA 243, 266-267 (2006), citing *United States v. Wiltberger*, 18 U.S. 76 (1820), *Kelley v. State*, 119 N.E.2d 322 (1954); *State v. McGraw*, 480 N.E.2d 552 (1985).

30. In fact, the Supreme Court has already ruled in *People of the Philippines v. Simon*¹¹ that the rules on the application of penalties under the RPC has no suppletory effect on other statutes if the penalties thereunder are different from and are without reference to those under the RPC, thus :

[W]here the penalties under the special law are different from and are without reference or relation to those under the Revised Penal Code, there can be no suppletory effect of the rules for the application of penalties under said Code or by other relevant statutory provisions based on or applicable only to said rules for felonies under the Code. In this type of special law, the legislative intendment is clear.

31. It is clear therefore that the argument of the petitioners that BBM's conviction of failure to file tax returns carried with it the penalty of perpetual disqualification. It is also odious to the concepts of fair play and due process. There is simply no principle in the NIRC which sanctions automatic and implied imposition of penalties.

B. BBM was never sentenced by final judgment to a penalty of more than eighteen months of imprisonment

32. At the outset, it bears stressing that **BBM** was not sentenced by final judgment to a penalty which involves imprisonment. Section 12 of the OEC provides :

Sec. 12. *Disqualifications.* - Any person who has been declared by competent authority insane or incompetent, or **has been sentenced by final judgment** for subversion, insurrection, rebellion or for any offense for which he **has been sentenced to a penalty of more than eighteen months** or for a crime involving moral turpitude, shall be disqualified to be a candidate and to hold any office, unless he has been given plenary pardon or granted amnesty.

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¹¹ 234 SCRA 555 (1994), at page 576.

33. A plain reading of Section 12 of the OEC readily reveals that it is not enough that a person was convicted for an offense that carries a penalty of more than eighteen (18) months. In order to be a ground for disqualification thereunder, the court must have actually sentenced the person in question to more than eighteen months of imprisonment.

34. The petitioners themselves admit that the decision of the Court of Appeals in CA-G.R. CR No. 18569 became final and that **BBM** was not sentenced to imprisonment. Thus, the situation of **BBM** falls outside the purview of Section 12.

35. Nonetheless, the petitioners made a lengthy, yet irrelevant and absurd argument that the **CA Decision** is void. According to the petitioners, the **CA Decision** is void because it was illegal for the Court of Appeals to delete the penalty of imprisonment and merely impose fines. Thus, the petitioners appear to be assailing the final decision of the Court of Appeals.

36. It needs no elaboration that the Honorable Commission is bereft of any power to nullify decisions of the Court of Appeals, especially when such decisions do not even pertain to any election law. Neither Article IX C (2) of the 1987 Constitution nor Section 52 of the OEC confer expressly or impliedly such power to COMELEC. If the petitioners are indeed assailing the **CA Decision**, they have most certainly brought their cause to the wrong forum.

37. Furthermore, the **petitioners attempt to mislead this Honorable Commission by quoting inapplicable laws**. To be clear, from 1982 to 1985, Section 73 of the 1977 NIRC was the governing provision insofar as the penalty for failing to file a return is concerned, thus :

Section 73. Penalty for failure to file return or to pay tax.- Any one liable to pay the tax, to make a return or to supply information required under this Code, who refuses or neglects to pay such tax, to make such return or to supply such information at the time or times herein specified in each year, **shall be punished by a fine of not more than two thousand pesos OR* by imprisonment** for not more than six months, or both.

38. When the amendments by P.D. 1994 took effect, Section 288 of the 1977 NIRC likewise stated :

Section 288. *Failure to file return, supply information, pay tax, withhold and remit tax.*- Any person required under this Code or by regulations promulgated thereunder to pay any tax, make a return, keep any records, or supply any information, who willfully fails to pay such tax, make such return, keep such records, or supply such information, or withhold or remit taxes withheld, at the time or times required by law or regulations, shall, in addition to other penalties provided by law, upon conviction thereof, be fined not less than five thousand pesos nor more than fifty thousand pesos, OR* imprisoned for not less than six months and one day but not more than five years, or both.

39. Thus, even if the Honorable Commission may annul and correct the final decisions of the Court of Appeals, there is nothing to correct as at all since the law effective during the relevant period gives the courts the **discretion to impose either fine, imprisonment, or both**.

40. To be sure, even if the petitioners are correct to say that the *CA Decision* is void, **BBM** all the more is not disqualified. If the *CA Decision* is void, then it is as if **BBM** was never convicted at all. **BBM** is reverted to his status prior to the trial. This is clear in paragraph 74 of the *Petition* where the petitioners very own cited case of *Lingkod Manggagawa sa Rubberworld v. Rubberworld (Phils.), Inc.*¹², thus :

xxx In other words, a void judgment is regarded as a nullity, and the **situation is the same as it would be if there were no judgment**. It accordingly leaves the party-litigants in the **same position they were in before trial**. (Emphasis supplied)

41. There is simply no basis to conclude that if the *CA Decision* is void, the trial court's decision would be applicable. It cannot be any more clear. The situation is the same as it would be if there were no judgment. Considering that the *CA Decision* is void according to the petitioner, then **BBM** should not be considered to have been convicted at all. Accordingly, this Honorable Commission should dismiss the *Petition* outright for utter lack of merit.

¹² G.R. No. 153882, January 29, 2007.

C. BBM was never convicted by final judgment of a crime involving moral turpitude.

42. The petitioners aver that **BBM's** conviction of failure to file tax returns is a conviction of a crime involving moral turpitude. Nothing can be farther from the truth.

43. The Supreme Court has explained that for a crime to be considered as one which involves moral turpitude, such crime must involve an act of baseness, vileness, or depravity :

To consider a crime as one involving moral turpitude, the act constituting the same must have been "done contrary to justice, honesty, modesty, or good morals. [it must involve] an act of baseness, vileness, or depravity in the private duties which a man owes his fellowmen, or to society in general, contrary to the accepted and customary rule of right and duty between man and woman, or conduct contrary to justice, honesty, modesty, or good morals."¹³

44. Through the years, several approaches were developed by the Court to determine whether a particular crime involved moral turpitude. In his concurrence in *Teves v. COMELEC and Teves*¹⁴, Justice Brion pointed out that three approaches have been thus far formulated. The first approach is to determine whether the act itself is intrinsically immoral, regardless whether it is punishable by law or not. Thus, in *Zari v. Flores*¹⁵, the Court elucidated that :

"Moral turpitude" has been defined as an act of baseness, vileness, or depravity in the private and social duties which a man owes his fellow men, to society in general, contrary to the accepted and customary rule of right and duty between man and woman or conduct contrary to justice, honesty, modesty, or good morals. **It implies something immoral in itself, regardless of the fact that it is punishable by law or not. It must not merely be mala prohibita but, the act itself must be inherently immoral.*** The doing of the act itself, and not its prohibition by statute fixes the moral turpitude. **Moral turpitude does not, however, include such acts as are not of themselves immoral but whose illegality lies in the fact of their being positively prohibited.*** Hence, the crime of illegal possession of firearm or ammunition does not involve moral turpitude for under our laws, what is punishable is the possession of a firearm or ammunition without a license or authority.

¹³ Re: *Decision* dated 17 March 2011 in Criminal Case No. SB-28361 entitled "People of the Philippines vs. Joselito C. Barrozo", A.C. No. 10207, July 21, 2015.

¹⁴ 587 SCRA 1 (2009).

¹⁵ 94 SCRA 317 (1979), at pp. 322-323.

45. The second approach in determining the involvement of moral turpitude is to look at the elements of the offense. Generally, where some degree of fraud is an element, the crime in question involves moral turpitude. Thus, it has been held that violations of B.P. 22 involve moral turpitude since one of the elements of the offense, namely, "*that the accused knows at the time of the issuance that he or she does not have sufficient credit with the drawee bank*" implies deceit.¹⁶

46. The third and final approach considers whether the offender was motivated by ill-will in committing the offense.

47. Regardless of what approach is used, and even if all of the above-mentioned methods of determining involvement of moral turpitude is utilized, it cannot be concluded that **BBM's** failure to submit his tax returns is an offense which involves moral turpitude.

48. First, the failure to file tax returns is not inherently immoral. As an offense *malum prohibitum*, non-filing of income tax return is wrong merely because the NIRC prohibits the same.

49. Second, fraud is not an element of failure to file a tax return. In determining whether said offense was committed, the only issue is whether or not the accused filed a tax return. The presence or absence of fraud has no bearing on the commission or non-commission of the offense.

50. Finally, it cannot be denied that **BBM** was not motivated by any ill-will when he omitted to file his income tax returns. It must be noted that **BBM** was a purely compensation income earner. Thus, it was the **obligation of the government to compute BBM's income taxes**. It was likewise the **obligation of the government to deduct and withhold BBM's income taxes**. Section 94 of the 1977 NIRC provides:

SECTION 94. Return and payment in case of Government employees.- If the employer is the Government of the Philippines or any political subdivision, agency or instrumentality thereof, the return of the amount deducted and withheld upon any wages shall be made by the officer or employee having control of the payment of such wages, or by any officer or employee duly designated for that purpose.

¹⁶ 369 SCRA 126 (2001), at page 133.

51. In the *CA Decision*, the Court of Appeals categorically ruled that **BBM's** income taxes have in fact been withheld and paid by the Government. Thus, **BBM** did not stand to gain any benefit, whether financial or otherwise, from his failure to file his income tax returns. There is no advantage at all which **BBM** may derive from not filing his tax returns. **Since the taxes on his income are computed and withheld at source by the Government itself, BBM's income taxes is paid regardless of whether he filed his tax return or not. Therefore, there cannot be any ill-motivation, let alone, an intent to defraud, on the part of BBM** when he failed to file the income tax returns for the years 1982 to 1985. Explicitly, the *CA Decision* declared that **BBM** was in good faith :

It bears emphasis that the duty to withhold taxes from government employees, including elected officials like provincial governor, has been reposed by the law in the Government (Sections 90 (c); 94 of the NIRC of 1977). Consequently, any deficiency in the taxes so withheld is likewise attributable to and/or determinable by the government and not by the employee concerned (Section 91 (f), 1977 NIRC).

The appellant had a right to rely on the computation and assessment by the BIR for whatever deficiency income taxes that may be due from him, as after all, it is the government itself, which deducts from his gross income the taxes, which he should pay, over which he has no control.

(At page 24)

52. In sum, both the facts and the law confirm that the allegations of the petitioners that failure to file tax returns is an offense, which involve moral turpitude are simply just that : allegations.

53. If only to erase any doubt in the mind of the Honorable Commission, and to further enlighten the petitioners on this point, no less than the Supreme Court has adjudged that failure to file tax returns is not an offense which involves moral turpitude. Thus, in the case of *Republic of the Philippines v. Ferdinand Marcos II and Imelda R. Marcos*¹⁷ the Court held that :

¹⁷ 595 SCRA 43 (2009) at pp. 63-64.

The "failure to file an income tax return" is not a crime involving moral turpitude as the mere omission is already a violation regardless of the fraudulent intent or willfulness of the individual. This conclusion is supported by the provisions of the NIRC as well as previous Court decisions which show that with regard to the filing of an income tax return, the NIRC considers three distinct violations: (1) a false return, (2) a fraudulent return with intent to evade tax, and (3) failure to file a return.

54. Citing *Aznar v. Court of Tax Appeals*, the Supreme Court went on to explain that while filing a fraudulent return with intent to defraud is a crime involving moral turpitude, the same cannot be said for mere failure to file a return :

To our minds we can dispense with these controversial arguments on facts, although we do not deny that the findings of facts by the Court of Tax Appeals, supported as they are by very substantial evidence, carry great weight, by resorting to a proper interpretation of Section 332 of the NIRC. We believe that the proper and reasonable interpretation of said provision should be that in the three different cases of **(1) false return, (2) fraudulent return with intent to evade tax, (3) failure to file a return**, the tax may be assessed, or a proceeding in court for the collection of such tax may be begun without assessment, at any time within ten years after the discovery of the **(1) falsity, (2) fraud, and (3) omission**. Our stand that the law should be interpreted to mean a separation of the three different situations of false return, fraudulent return with intent to evade tax, and failure to file a return is strengthened immeasurably by the last portion of the provision which segregates the situations into three different classes, namely, "falsity," "fraud" and "omission."¹⁸ (Emphasis Supplied)¹⁸

Applying the foregoing considerations to the case at bar, the filing of a "fraudulent return with intent to evade tax" is a crime involving moral turpitude as it entails willfulness and fraudulent intent on the part of the individual. The same, however, cannot be said for "failure to file a return" where the mere omission already constitutes a violation.*

55. Then, in no uncertain terms, the Supreme Court declared that :

Thus, this Court holds that even if the conviction of BBM Marcos II is affirmed, the same not being a crime involving moral turpitude cannot serve as a ground for his disqualification.

¹⁸ Citations omitted, emphasis in the original.

56. Therefore, the claim of the petitioners that BBM has been convicted of a crime involving moral turpitude is utterly false.

1. Even if BBM was convicted of a crime involving moral turpitude, the disqualification has long been automatically removed.

57. Assuming arguendo that the offense of failure to file return is a crime involving moral turpitude, Section 12 of the OEC provides that the disqualification to be a candidate shall be automatically removed after the period of five (5) years from service of sentence, thus:

SECTION 12. Disqualifications. – Any person who has been declared by competent authority insane or incompetent, or has been sentenced by final judgment for subversion, insurrection, rebellion or for any offense for which he has been sentenced to a penalty of more than eighteen months or for a crime involving moral turpitude, shall be disqualified to be a candidate and to hold any office, unless he has been given plenary pardon or granted amnesty.

This disqualifications to be a candidate herein provided shall be deemed removed upon the declaration by competent authority that said insanity or incompetence had been removed or after the expiration of a period of five years from his service of sentence, unless within the same period he again becomes disqualified.
[Emphasis supplied]

58. In the *CA Decision*, the Court of Appeals ordered BBM to pay a fine of Php2,000.00 for each charge in Criminal Cases Nos. Q-92-29213, Q-92-29212 and Q-92-2917 for failure to file income tax returns for the years 1982, 1983 and 1984; and the fine of Php30,000.00 in Criminal Case No. Q-91-24391 for failure to file income tax return for 1985, with surcharges.

59. BBM initially intended to appeal the foregoing *CA Decision* and filed a *Motion for Extension of Time to file a Petition for Review on Certiorari* with the Supreme Court. However, BBM subsequently withdrew the motion which was granted by the Supreme Court in its *Resolution* dated 8 August 2001. Thereafter, an *Entry of Judgement* was issued on 31 August 2001.

60. On 27 December 2001, **BBM** complied with the **CA Decision** by paying the deficiency taxes, as well as the fines. Attached as **Annex "2"** is the Certification attesting that the deficiency taxes and fines have been paid as early as 27 December 2001.

61. Clearly, even assuming that **BBM's** conviction for failure to file tax returns involves moral turpitude, any disqualification has been automatically removed upon the lapse of five years from the payment of fines and penalties on 27 December 2001.

62. Thus, as early as 28 December 2006, **BBM** was no longer disqualified to be a candidate and hold public office.

D. Retroactive effect must be given to R.A. 10963 which decriminalized the non-filing of annual income tax return by pure compensation income earners.

63. With the advent of R.A. 10963¹⁹ ("TRAIN"), persons receiving purely compensation income are no longer required to file annual income tax returns. Section 14 of TRAIN added a new section in the 1997 NIRC, Section 51-A, and the same provides that :

Sec. 51-A. Substituted Filing of Income Tax Returns by Employees Receiving Purely Compensation Income - Individual taxpayers receiving purely compensation income, regardless of amount, from only one employer in the Philippines for the calendar year, the income tax of which has been withheld correctly by the said employer (tax due equals tax withheld) shall not be required to file an annual income tax return. The certificate of withholding filed by the respective employers, duly stamped 'received' by the BIR, shall be tantamount to the substituted filing of income tax returns by said employees.

64. It therefore follows that non-filing of annual income tax returns by pure compensation income earners is no longer punishable under the 1997 NIRC, as amended by TRAIN.

¹⁹ Otherwise known as the "Tax Reform for Acceleration and Inclusion (TRAIN)."

65. It is a hornbook doctrine in Philippine Criminal Law that Penal Laws shall be applied retroactively insofar as they favor persons found guilty of committing an offense. This principle has in fact been codified in Article 22 of the Revised Penal Code which provides that :

Article 22. *Retroactive effect of penal laws.* - Penal Laws shall have a retroactive effect insofar as they favor the persons guilty of a felony, who is not a habitual criminal, as this term is defined in Rule 5 of Article 62 of this Code, although at the time of the publication of such laws a final sentence has been pronounced and the convict is serving the same.

66. The doctrine was recently applied in *Hernan v. Sandiganbayan*²⁰ where the Court emphasized that :

On a final note, judges, public prosecutors, public attorneys, private counsels, and such other officers of the law are hereby advised to similarly apply the provisions of RA No. 10951 whenever it is, by reason of justice and equity, called for by the facts of each case. Hence, said recent legislation shall find application in cases where the imposable penalties of the affected crimes such as theft, qualified theft, estafa, robbery with force upon things, malicious mischief, malversation, and such other crimes, the penalty of which is dependent upon the value of the object in consideration thereof, have been reduced, as in the case at hand, taking into consideration the presence of existing circumstances attending its commission. **For as long as it is favorable to the accused, said recent legislation shall find application regardless of whether its effectivity comes after the time when the judgment of conviction is rendered and even if service of sentence has already begun. The accused, in these applicable instances, shall be entitled to the benefits of the new law warranting him to serve a lesser sentence, or to his release, if he has already begun serving his previous sentence, and said service already accomplishes the term of the modified sentence.*** In the latter case, moreover, the Court, in the interest of justice and expediency, further directs the appropriate filing of an action before the Court that seeks the reopening of the case rather than an original petition filed for a similar purpose.

67. The retroactivity of statutes favorable to the accused is not limited to instances where the offense in question involves the Revised Penal Code. In *Ho Wai Pang v. People of the Philippines*²¹, the Court applied the lighter sentence for illegal transportation of methamphetamine under R.A. 7659 even though the prevailing law at the time of commission of the offense was R.A. 6425, thus :

²⁰ 847 SCRA 552 (2017), at p. 577.

²¹ 659 SCRA 624 (2011), at pp. 640-641.

xxx

We agree. In *People v. Doroja*, we held :

In *People v. Martin Simon* (G.R. No. 93028, 29 July 1994) this Court ruled (a) that the amendatory law, being more lenient and favorable to the accused than the original provisions of the Dangerous Drugs Act, should be accorded retroactive application, x x x.

And, since "*reclusion perpetua* is a lighter penalty than life imprisonment, and considering the rule that criminal statutes with a favorable effect to the accused, have, as to him, a retroactive effect", the penalty imposed by the trial court upon petitioner is proper. Consequently, the Court sustains the penalty of imprisonment, which is *reclusion perpetua*, as well as the amount of fine imposed by the trial court upon petitioner, the same being more favorable to him.²²

68. In the present case, the amendment brought about by TRAIN effectively decriminalized the non-filing of annual tax returns insofar as pure compensation income earners are concerned. Such decriminalization has a retroactive effect to BBM's case. As a consequence, whatever penalties that have been imposed against BBM have already been remitted or extinguished.

PRAYER

WHEREFORE, premises considered, it is respectfully prayed that the *Petition* dated 1 December 2021 be **DISMISSED** for lack of merit.

Other reliefs as may be just and equitable under the circumstances are likewise prayed for.

Taguig City for Manila, December 27, 2021.

²² Citations omitted.

M & ASSOCIATES

Counsel for respondent Ferdinand R. Marcos, Jr.

30/F Ore Central Tower
31st Street corner 9th Avenue
Bonifacio Global City
Taguig 1634

Email : inquiry@m-associates.com

Telephone no. +63 (02) 8863 0601

By :



PAOLO S. TESTON

Roll of Attorneys No. 52114

PTR No. 6514508/ 01-06-21/Pasig City

Lifetime IBP No. 010292/RSM

MCLE Compliance No. VI- 0005372/1-12-2018



AL A. BALJON

Roll of Attorneys No. 66389

PTR No. 4596775/ 01-15-21/Mandaluyong City

Lifetime IBP No. 15065/Rizal

MCLE Compliance No. VI- 0020274/3-7-2019



DRIXEL S. DABATOS

Roll of Attorneys No. 75275

PTR No. 8536864 / 01-07-21 / Makati City

IBP Official Receipt No. 153865/01-19-21/QC

Admitted to the Bar in 2020

Copy furnished :

ATTY. HOWARD M. CALLEJA Counsel for Petitioners Calleja Law Office Unit 2904-C, West Tower PSE Centre, Exchange Road Ortigas Center, Pasig City	Registry Receipt No. : AE 014 377 731 22 Date : 27 Nov 2021 Post Office: SM NUSA LBC Tracking no. 1497 2929 6348
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EXPLANATION

A copy of this *Answer* will be served on the above addressee by **registered mail, private courier** and/or **electronic mail** since personal service is impracticable due to distance, time and manpower constraints.


DRIXEL S. DABATOS

VERIFICATION

I, **FERDINAND R. MARCOS, JR.**, Filipino, of legal age and with office address at G/F Sunset View Towers, 2230 Roxas Boulevard, Pasay City 1300, after having been duly sworn to in accordance with law, hereby depose and state the following :

1. I am the respondent in the case entitled "*Bonifacio Parabuac Ilagan, et al. v. Ferdinand R. Marcos, Jr.,*" filed before the Commission on Elections and docketed as SPA No. 21-212 (DC);

2. I have caused the preparation and filing of the foregoing *Answer*;

3. I have read and understood the contents thereof and I attest that the allegations therein are true and correct based on my personal knowledge and available records on hand;

4. I attest that the foregoing *Answer* is not filed to harass, cause unnecessary delay, or needlessly increase the cost of litigation;

5. I further attest that the factual allegations in the foregoing *Answer* have evidentiary support or, if specifically so identified, will likewise have evidentiary support after a reasonable opportunity for discovery; and

6. I attest to the truth of the foregoing statements.

DEC 27 2021

IN WITNESS WHEREOF, I have hereunto affixed my signature this _____ day of December 2021 in TAGUIG CITY.

FERDINAND R. MARCOS, JR.

Affiant

SUBSCRIBED AND SWORN to before me this DEC 27 2021 at TAGUIG CITY, affiant exhibiting to me his Philippine Passport No. P2450290B issued at DFA, Manila on 5 July 2019. *Affiant* is known to me to be the same person who executed the foregoing instrument and acknowledged to me that the same is his free act and deed.

Doc No. 775 :
Page No. 68 :
Book No. 41 :
Series of 2021.

ATTY. EDUARDO P. BAROT
Notary Public for Taguig, RoH No. 36248
Commission No. 3 Until December 31, 2022
PTR No. 4578428/01.04.21/Mandaluyong City
IBP Lifetime Member No. 013895/06.02.15/ RSM
MCLE Compliance No. VI-0007875 /04.14.22/
3/F Bonifacio Technology Center 31st Street
Corner 2nd Avenue Crescent Park West
Global City Taguig City, Philippines

Republic of the Philippines
PROVINCE OF ILOCOS NORTE

LOCAL FINANCE COMMITTEE

CERTIFICATION

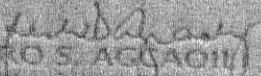
This is to certify that taxes due were withheld against the salary of the Honorable Ferdinand R. Marcos Jr. during his term as Governor for the year 1982-1985 as explicitly shown in the herein original and certified copy of his salary card.

This certification is being issued for whatever legal purpose it may serve.


JOSEPHINE P. CALAJATE
Provincial Treasurer


MERCEDES R. RAMOS
Provincial Accountant


LEAH F. BLAS
SAO & DIC - PBO. 4/5/85


PEDRO S. AGSAG III JR.
Prov. Planning Dev. Officer



CERTIFICATION

This is to certify that the following collection details were verified and found included in the System database of the Bureau. Please see attached screen shots for your ready reference.

Name of Taxpayer: FERDINAND R. MARCOS JR.

Address: BRGY LACUB, BATAK CITY
ILOCOS NORTE 2906

TIN No.: 149-909-133-000

has paid the following to wit;

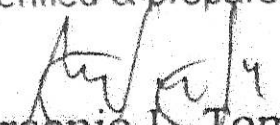
<u>Ret. Pd.</u>	<u>Amount</u>	<u>Bank</u>	<u>Code</u>	<u>BCS No.</u>	<u>Date Paid</u>
12/31/1982	3,172.48	Landbank Phils	B-086204	A-005502	12/27/2001
12/31/1983	8,788.13	Landbank Phils	B-086204	A-005504	12/27/2001
12/31/1984	5,925.57	Landbank Phils	B-086204	A-005503	12/27/2001
12/31/1985	49,251.09	Landbank Phils	B-086204	A-005501	12/27/2001

.....


This Certification is issued for the validation of payments of the above taxpayer and for whatever legal purpose it may serve.

Issued this 09th day of December 2021.

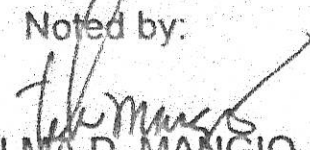
Verified & prepared by:


Arsenio L. Tomeldan
Quality Assurance – Collection Section

Attested by:


Adelfa L. Mateo
Collection Section Chief

Noted by:


THELMA D. MANGIO
Revenue District Officer

SAMA-SAMA SA HAMON NG PANAHON:
BUWIS KO, PARA SA PILIPINO

The People of the Philippines

v.

Ferdinand R. Marcos, Jr.
CA - G. R. CR No. 18569

COMPUTATION OF DEFICIENCY INCOME TAXES & FINES

Taxable Year
Crim. Cases Nos.

Total Gross Compensation Income
Less: Total Exemptions
Taxable Income

TOTAL

	1982	1983	1984	1985
	Q-92-28213	Q-92-28212	Q-92-28217	Q-91-24391
	10,759.17	70,215.83	64,565.00	78,780.00
	3,000.00	3,000.00	3,000.00	3,000.00
	7,759.17	75,215.83	61,565.00	75,780.00

Tax Due

Less: Tax Withheld

Basic Tax Payable - date of filing - July 26, 1991

Less: Payments made

Deficiency Income Tax

Add: Incrementals

Interest - 60% maximum (Sec. 51, NIRC of
1977 as amended by PD 1705)

TOTAL DEFICIENCY INCOME TAX

Add: FINES

SURCHARGE - 50%

TOTAL DEFICIENCY TAXES & FINES DUE

13,137.27	172.48	5,788.13	2,926.67	4,251.09
36,000.00	2,000.00	2,000.00	2,000.00	50,000.00
18,000.00	1,000.00	1,000.00	1,000.00	15,000.00

167,137.27	13,172.48	8,788.13	5,926.67	49,251.09
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PREPARED BY
EMERITA FRANCIA
Attorney II

RECEIVED BY
FERNANDO O. URRANO
Chief, Prosecution Division

REPUBLIC OF THE PHILIPPINES)
) SS.
X-----X

AFFIDAVIT OF SERVICE

I, **JESSIE T. SALVADOR**, of legal age, Filipino, with office address at 30/F Ore Central Tower, 31st Street corner 9th Avenue, Bonifacio Global City, Taguig 1634, after having been sworn to in accordance with law, depose and state the following :

1. I am one of the liaison officers of **M & ASSOCIATES**, counsel for respondent *Ferdinand R. Marcos, Jr.*;
2. On 27 December 2021, I mailed one (1) copy of *Answer and Entry of Appearance* in the case entitled *Bonifacio Parabua Ilagan, et al. v. Ferdinand Romualdez Marcos, Jr.* with SPA No. 21-212 (DC) pending before the Commission on Elections, Manila by Registered Mail and Private Courier (LBC) :

ATTY. HOWARD M. CALLEJA <i>Counsel for the Petitioners</i> Calleja Law Office Unit 2904-C, West Tower, PSE Centre Exchange road, Ortigas Center Pasig City	Registry Receipt No. <u>RE 514 377 731 72</u> Date : 27 December 2021 Post Office : <u>SM AURA</u> Taguig Post Office LBC Tracking no. <u>1497 2929 6348</u>
--	--


3. That the above service was done in Market-Market Taguig Post Office, as evidenced by the Receipts hereto attached wherein the name of the addressee was indicated.

IN WITNESS WHEREOF, I have hereunto affixed my signature this 27 December 2021 in Taguig City.


JESSIE T. SALVADOR
Affiant

SUBSCRIBED AND SWORN to before me this 27 December 2021 at Taguig City, affiant exhibiting to me his Tax Identification No. 230-188-418-000. Affiant is known to me to be the same person who executed the foregoing instrument and acknowledged to me that the same is his free act and deed.

Doc. No. 776
Page No. 69
Book No. 71
Series of 2021.


ATTY. EDUARDO P. BAROT
Notary Public for Taguig, RoH No. 36248
Commission No. 3 Until December 31, 2022
PTR No. 4578428/01.04.21/Mandaluyong City
IBP Lifetime Member No. 013895/06.02.15/ RSM
MCLE Compliance No. VI-0007875 /04.14.22/
3/F Bonifacio Technology Center 31st Street
Corner 2nd Avenue Crescent Park West
Global City Taguig City, Philippines

REPUBLIC OF THE PHILIPPINES)
Taguig City) SS.
x-----x

AFFIDAVIT OF SERVICE

I, **DRIXEL S. DABATOS**, of legal age, Filipino, with office address at 30/F Ore Central Tower, 31st Street corner 9th Avenue, Bonifacio Global City, Taguig 1634, after having been sworn to in accordance with law, depose and state the following :

1. I am one of the Lawyers of **M & ASSOCIATES**, counsel for the respondent *Ferdinand R. Marcos, Jr.*;

2. On 27 December 2021 at 4:38 in the afternoon, I emailed to clerkofthecommission@comelec.gov.ph a copy of the *Answer and Entry of Appearance* dated 27 December 2021 in the case entitled *Bonifacio Parabuac Ilagan, et al. v. Ferdinand R. Marcos, Jr.* with SPA No. 21-212 (DC), pending before the Commission on Elections, Manila;

3. I took a screenshot of the email I sent to the above-mentioned party and printed the same as proof of transmittal; and


4. That I am executing this *Affidavit* to attest to the truth of the foregoing statement and for whatever legal purposes it may serve best.

IN WITNESS WHEREOF, I have hereunto affixed my signature this 27 December 2021 at Taguig City.


DRIXEL S. DABATOS
Affiant

SUBSCRIBED AND SWORN to before me this 27 December 2021 at Taguig City, affiant exhibiting to me her IBP ID No. 75275. Affiant is known to me to be the same person who executed the foregoing instrument and acknowledged to me that the same is her free act and deed.

Doc. No. 377
Page No. 64
Book No. 71
Series of 2021.


ATTY. EDUARDO P. BAROT
Notary Public for Taguig, RoH No. 36248
Commission No. 3 Until December 31, 2022
PTR No. 4578428/01.04.21/Mandaluyong City
IBP Lifetime Member No. 013895/06.02.15/ RSM
MCLE Compliance No. VI-0007875 /04.14.22/
3/F Bonifacio Technology Center 31st Street
Corner 2nd Avenue Crescent Park West
Global City Taguig City, Philippines

Re: ANSWER & ENTRY OF APPEARANCE (Bonifacio Parabuac Ilagan, et al. v. Ferdinand R. Marcos, Jr.) - SPA No. 21-212 (DC)

Office of the Clerk of the Commission <clerkofthecommission@comelec.gov.ph>

Mon 12/27/2021 4:40 PM

To: inquiry@m-associates.com <inquiry@m-associates.com>

Greetings:

Acknowledging receipt of this e-mail with four (4) attachments.

Also, may we remind the party to file four (4) hard copies of the submissions immediately after the filing of this e-mail by virtue of COMELEC Resolution No. 10673 through the fastest means available, including registered mail or any courier service.

Present a printed copy of this acknowledgment with name and signature of the party, sender, or counsel.

Do not erase the e-mail, attachments, or links (including the files therein) as the same shall form part of the records of the case.

Thank you,

*Atty. Drixel Dabatos
Counsel for Respondent*

OFFICE OF THE CLERK OF THE COMMISSION

Commission on Elections

8th Floor, Palacio del Gobernador Building

General Luna Street, Intramuros, Manila 1002

[+632 - 85272770 / 85273002]

=====

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From: inquiry@m-associates.com <inquiry@m-associates.com>

Sent: Monday, December 27, 2021 4:38 PM

To: Office of the Clerk of the Commission <clerkofthecommission@comelec.gov.ph>; Law Department <law@comelec.gov.ph>

Cc: callejalaw@callejalaw.com <callejalaw@callejalaw.com>; callejalaw@gmail.com <callejalaw@gmail.com>; Paolo S. Teston <psteston@m-associates.com>; Al A. Baljon <aabaljon@m-associates.com>; Drixel S. Dabatos <dsdabatos@m-associates.com>; info@bongbongmarcos.com <info@bongbongmarcos.com>

Subject: ANSWER & ENTRY OF APPEARANCE (Bonifacio Parabuac Ilagan, et al. v. Ferdinand R. Marcos, Jr.) - SPA No. 21-212 (DC)

27 December 2021

COMMISSION ON ELECTIONS

Palacio del Gobernador
General Luna Street
Intramuros, Manila 1002

Re : **ANSWER & ENTRY OF APPEARANCE**
(Bonifacio Parabuc Ilagan, et al. v. Ferdinand R. Marcos, Jr.) - SPA No. 21-212 (DC)

Gentlemen :

For reference, attached please find the following documents in connection with the above-captioned matter :

1. *Answer dated 27 December 2021 with attached Verification dated 27 December 2021;*
2. *Affidavit of Service by Registered Mail dated 27 December 2021;*
3. *Affidavit of Service by Electronic Mail dated 27 December 2021;*
4. *Entry of Appearance dated 27 December 2021*

Other party was furnished with copies of the *Answer & Entry of Appearance* by registered mail.

Kindly acknowledge receipt of this email.

Thank you and I look forward to your usual prompt action on this matter.

Kind regards,

Drixel Jann S. Dabatos
Associate

30/F Ore Central Tower
31st Street corner 9th Avenue
Bonifacio Global City, Taguig 1634
Philippines

Telephone : +63 (02) 8863 0601

inquiry@m-associates.com

<https://m-associates.com>

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It is intended for the use of the individual or entity named above and no one else. If you are not the intended recipient of this email, please notify the sender and/or **M & Associates** immediately. Do not disclose the contents of this email to any other person, use it for any purpose, and/or copy the information in any medium. Any liability arising from the unlawful disclosure of this information is hereby excluded.