AN OVERVIEW ON THE INSTITUTIONAL FRAMEWORK OF THE STATE BOARDS OF INTERNAL REVENUE SERVICE

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Abstract

The aim of the paper is to provide an overview on the institutional framework of the State Board of Internal Revenue Service (SBIRS). The State Internal Revenue Service is an establishment of the relevant State Government across Nigeria including the Federal Capital Territory (FCT) which is saddled with the responsibility of collecting and employment of taxes as well as enforcing tax laws at the state levels. The SBIRS is to assess all persons chargeable with tax in the State. To collect, recover and pay to the designated bank account any tax or levy due to the state under the law or any other enhancement with the sole mandate to enforce payment of due taxes. The paper critically looks at the enabling law establishing the Board as well as the composition of the Board. The rationale behind establishing the Board was also look at. The functions and powers of the Board was critically analysed, the paper look at the major key departments of the Board, their functions and how they aid toward enforcing payment of taxes and revenue generation in a particular state.

Keywords: Institutional; Framework; State; Internal Revenue Service.

1. Introduction

This paper focuses on the institutional framework and mode of operation of the State Boards of Internal Revenue (SBIR). It began with establishment and composition of the (SBIR) wherein the powers of the SBIR as well as the offices of senior officers of the SBIR and the procedure for their appointment were discussed. The paper goes on to critically analyse the rational for the establishment of the Board and its functions, thus the SBIR was established for the purpose of generating revenue for the State Governments. Committees and departments were established under the SBIR for administrative convenience. Hence the paper analysed the functions of the Committees and the departments before ending with a conclusion.

2. Establishment and Composition of State Boards of Internal Revenue

The State Boards of Internal Revenue (SBIR) were established by the Personal Income Tax Act.[1] Section 87 (1) provided that:

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[1]Personal Income Tax Act (PITA) Cap 8 LFN 2004.

There is hereby established for each state a Board of Internal Revenue (in this Act referred to as "the State Board") whose operational arm shall be known as the State Internal Revenue Service (in this Act referred to as "the service") [2]

The State Board of Internal Revenue comprises of:

i. The Chairman: The Chairman heads the State Internal Revenue Services (SIRS) as well as the SBIR. For a person to be appointed as Chairman of the SBIR, he or she must be a person experienced in taxation and a member of the relevant recognized professional body. The power to appoint the Chairman of the SBIR is vested on the Governor of the State, subject to confirmation of the State House of Assembly.[3]
ii. The Directors of the SBIR may be appointed from within or outside the SIRS.[4]
iii. A Director from the State Ministry of Finance.[5]
iv. The Legal Adviser to the Service: Notwithstanding the fact that the legal adviser is a member of the SBIR, he can represent the SBIR or SIRS in his professional capacity in any proceedings involving the SBIR or SIRS as a party. Where the legal adviser represents the SBIR or SIRS in a proceeding, he cannot give evidence on behalf of the SBIR or SIRS in the suit in which he represents them.[6]
v. Three other persons as may be appointed as members by the State Governor based on their personal merits, each of them representing one senatorial district in the state.[7]
vi. Secretary of the SIRS: The Secretary is appointed from within the SIRS, and he serves in an ex-officio capacity and his duties include summoning meetings of SBIR.[8]

Where there are five members one of whom must be the Chairman or a Director, quorum is constituted for the purpose of meetings of the Board.[9] Where majority of members consent to a particular matter in written correspondence through the secretary, it is considered as though it is a decision of the SBIR in actual meeting unless any member insists on deliberating on such matter in an actual meeting.[10]

[2] *Ibid.*
[3] *Ibid*, S.87 (2) (a).
[4] *Ibid*, S. 87 (2) (b).
[5] *Ibid*, S. 87 (2) (C).
[6] *Ibid*, S. 87 (2) (d).
[7] *Ibid*, S. 87 (2) (e).
[8] *Ibid*, S. 87 (2) (F) & (4).
[9] *Ibid* S. 87 (3).
[10] *Ibid*, S. 87 (7).

2.1 Committees of the Board

The following committees are established under the SBIR to discharge its mandate efficiently and create synergy between the SBIR and other tax authorities in the country. The committees are as follows:

i. Technical Committee.[11]
ii. Joint Revenue Committees.[12]

2.2 Technical Committee of the Boards

The Technical Committee comprises of:

i. The Chairman of SBIR as the Chairman;
ii. The Director of the SIRS;
iii. The Legal adviser of the SIRS; and
iv. The Secretary of the SIRS.

The functions of the technical committee include *inter-alia:*[13]

i. To co-opt additional staff from within state civil service as circumstance may demand;
ii. Consider all matters that require professional and technical expertise and make recommendation to the SBIR;
iii. Advise the SBIR on the best way to exercise its powers and discharge its duties;
iv. Attend to such other matters as may be referred to the technical committee by the SIBR from time to time.

2.3 Joint Revenue Committee

The Joint Revenue Committee comprises the following:[14]

i. The Chairman of the SBIR as the Chairman.
ii. The Chairman of the Local Government Revenue Committee;
iii. The representative of the Bureau on Local Government Affairs not below the rank of a Director;
iv. A representative of the Revenue Mobilization Allocation and Fiscal Commission as an observer;
v. The Legal Adviser of the SIRS; and
vi. The Secretary of the Committee who shall be a staff of the SIRS.

Functions of the State Joint Revenue Committee include *inter-alia:*[15]

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[11] *Ibid,* S. 89.
[12] *Ibid,* S. 92.
[13] *Ibid,* S. 89 (1).
[14] *Ibid,* S. 92.

i. Implementing decisions of the Joint Tax Board (JTB);
ii. Advising the JTB and the state and Local Governments on revenue matters;
iii. Harmonize tax administration in the state;
iv. Enlighten members of the public generally on State and Local Government Revenue matters; and
v. Carry out such other functions as may be assigned to it by the JTB.

3. Rationale for the Establishment of the State Boards of Internal Revenue

The reason for establishing the SBIR is traceable to the creation of states in Nigeria. The States Creation and Transitional Provision Decree[16] was promulgated by the then Military Government by virtue of which the three regions that existed hitherto were converted into twelve states.[17] The concomitant result of the Decree was converting Lagos which was before then the Federal Capital of the Country into a State. This conversion came with some implications for the new States, one of which was how to generate revenue to provide basic infrastructures and essential services for residents of the States. In solving the problem, the collection of Personal Income Tax in Lagos which was hitherto vested on Federal Inland Revenue Department was re-assigned to the Lagos State Internal Revenue Department.[18]In fact, most of the States as of then did not have Boards of Internal Revenue, the only structure that could be considered as tax authority was the office of the Director of Tax Revenue.[19] The absence of Institutional structures led some states to resort to engaging the services of tax consultants to impose tax on behalf of the state governments. This was the position in several States until the report of the 1991 study group was presented to the Federal Government. The report of the group culminated in the promulgation of the Personal Income Tax Decree,[20] by virtue of which a Board of Internal Revenue was established for all the States of the Federation.[21]

Therefore, it is plausible to conclude that the rational for the establishment of the SBIR is to collect taxes within its jurisdiction so that such taxes can directly have impact on the lives of

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[15]*Ibid*, S. 93.
[16]No: 14 1967.
[17]Okauru I.O, *A Comprehensive History of Tax in Nigeria (*Federal Inland Revenue Service Abuja 2015), 1.
[18]*Ibid.*
[19]*Ibid.*
[20]Decree No: 104 of 1993.
[21]Odusola A, "Tax Policy Reforms in Nigeria", (2006) (3), *World Institute for Development Economics Research*, 1810-2611, 20.

the residents of the various States. This can be achieved through the optimum and judicious utilization of the revenue collected.[22]

However, as a result of the recent dwindling of production and price of crude oil and the resultant reduction of monthly National Allocation from the Federal Government, some State Governments reviewed the functions, performance, process and structure of their Boards of Internal Revenue and in the course of doing so, articulated a vision and mission statements with a view to boosting and improving the performance of the SBIR.[23] Such vision and mission statements are the elaboration or redefining of the initial reason for establishment of SBIR by the Military Government in 1967, which was generating revenue for provision of basic infrastructure and essential services to the residents of the state.[24] For instance, in 2013 the Kano State Government created a study group to review the functional, performance, process and structure of the Kano State Board of Internal Revenue (KBIR) and the study group among other things articulated a mission and vision statement for the KBIR as follows:

a. Mission Statement: Achieving a culture of continuous improvement in internally generated revenue through the use of competent, professional workforce and a tax administration system that is tax payer considerate in line with relevant tax laws.

b. Vision: To be an efficient and effective revenue generating agency providing continuous flow of internally generated revenue to the State in line with international best practices for sustenance of good governance.[25]

The Edo State Internal Revenue Service also coined its vision and mission as follows:

a. Vision Statement: To become the most efficient and transparent revenue generation agency in Nigeria, built on integrity accountability and tax payers confidence.

b. Mission Statement: To render value added service to taxpayers entrenching a sustainable system of taxation and revenue generation.[26]

4. Functions and Powers of the Boards

Section 88 of the Act[27] provides that the SBIR shall be responsible for:

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[22]Gurama Z.U, Mansor M.B and Pantamee A.A, "Tax Evasion and Nigerian Tax System: An Overview", (2015) 6 (8) *Research Journal of Finance and Accounting*, 203-204, 208. Available at http://www.iiste.org last visited January 2017.

[23]*Ibid.*

[24]Kano State Board of Internal Revenue Functional, Performance Process and Structural Review (SPARC Report) August 2013, 17.

[25]*Ibid*,536.

[26]Edo State Internal Revenue Service, Strategic Direction Roles Responsibilities and Key Performance Indicators, Vol: 1 Version 1 October, 2015, 23.

[27]PITA Cap 8 LFN 2004.

i. Ensuring the effectiveness and optimum collection of all taxes and penalties due to the government under the relevant laws;
ii. Doing all such things as may be deemed necessary and expedient for the assessment and collection of tax and shall account for all amounts so collected in a manner to be prescribed by the commissioner provided that an amount of not less than 5 per cent of revenue collected as may be approved by a state House of Assembly shall be retained by the Board of Internal Revenue to defray cost of collection and administration;
iii. Making recommendations, where appropriate to the Joint Tax Board on tax policy, tax reform, tax legislation, tax treaties and exemptions as may be required from time to time;
iv. Generally controlling the management of the State Services on matters of policy, subject to the provisions of the law setting up the services; and
v. Appointment, promotion, transferring and imposing discipline on employees of the State Services.

The State Board shall be autonomous in the day to day running of the technical, professional and administrative affairs of the State Service. Subject to sub section 4 of this section the State Board may, by notice in the Gazette or in writing, authorize any person to:

i. Perform or exercise on behalf of the SBIR, any function, duty, or power conferred on the SBIR; and
ii. Receive any notice or other documents to be given or delivered to or inconsequence of this Act and any subsidiary legislation made under it.

Thus, SBIR plays the following role in the administration of tax[28]:

i. Ensuring the effectiveness and optimum collection of all taxes and penalties due to the government under the relevant law.
ii. Doing all such things as may be deemed necessary and expedient for the assessment and collection of tax and accounting for all amounts so collected in a manner to be prescribed by the Commissioner of Finance.
iii. Making recommendations where appropriate, to the Joint Tax Board on tax Policy, tax reform, tax registration, tax treaties and exemptions as may be required from time to time.
iv. Management of the SIRS on matters of policy, subject to provisions of the law setting up the SIRS, and

[28]National Tax Policy for Nigeria (2014), Federal Ministry of Finance, Abuja, 34.

v. Appointing, promoting, transferring and imposing discipline on employees of SIRS.

The SIRS is empowered to collect tax from individuals or body of individuals such as communities and families and unincorporated bodies such as partnerships and executors of estates of deceased persons.[29] It is pertinent to note that incorporated companies, persons employed in the Nigerian Military Force, Nigerian Police Force, individual residents of the Federal Capital Territory, Abuja and settlement trusts are subject to be taxed by the FIRS.[30] There are 36 States and the Federal Capital Territory, Abuja in Nigeria, each of these States and the Federal Capital Territory has their respective Boards of Internal Revenue that assesses and collects taxes on their behalf. Therefore, an SBIR of one state cannot collect tax from a person who is neither resident nor deemed to be resident within that State.[31]

Residency is essential in the assessment and collection of Personal Income Tax in Nigeria.[32] A person pays tax in the State where he resides. Residence means living or dwelling in a particular place, for the purposes of taxation the dwelling must be continuous for a period of twelve months commencing from 1st January to 31st December of the year under consideration.[33]

Residence, in relation to domestic use of the individual within Nigeria does not include residing in Hotel, Rest House or other places he is lodging temporarily.[34] Where an individual has two or more places of residence in a particular year and both residences are not within the same State, section 2(3)[35] provides that such person should be taxed based on his principal place of residence which can be determined as follows:

i. In the case of retiree with no source of income, apart from his pension in Nigeria, the State that he usually resides shall be considered as his principal place of residence.
ii. In the case of an individual who has a source of earned income other than pension in Nigeria, the State that is nearest to his usual place of work shall be considered as his principal place of residence.[36]
iii. In the case of an individual who has a source of unearned income in Nigeria, the State in which he usually resides shall be his principal place of residence.[37]

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[29] S. 2, PITA Cap 8 LFN 2004.
[30] *Ibid,* S. 3.
[31] *Ibid.*
[32] Josphine A and Agbomika A.A, "An Appraisal of the Law Regulating the Assessment of Personal Income Tax in Nigeria", (2015) 37, *Journal of Law, Policy and Globalization* 2224-3259,182. Available at http//:www.iiste.org last visited February,2017.
[33] S. 100, PITA Cap 8 LFN 2004.
[34] *Ibid,* First Schedule Paragraph 1.
[35] *Ibid.*
[36] Earned income in this context means income derived by an individual from a trade, profession, business; vocation or employment carried on by him or derived by him in respect of previous employment.

Tax is imposed on an itinerant worker in any year by the state in which he is found during the year.[38] Itinerant worker is an individual who works at any time during a year of assessment for daily wages or normally earns his livelihood in more than one place in Nigeria and his or her total income does not exceed six hundred naira (N600) per annum.[39]

The income of partnership is taxed by the SBIR of the state in which the principal place of business of the partnership is situated in Nigeria on the first day of the year under consideration or it is first established during that year.[40]Ayua observed:

> Since it is not the income of the partnership as going concern that is taxed but income of an individual partner that is taxed, it is doubtful, in the ascertainment of residence for the purpose of taxation of a partnership. To say whether it is the residence of the individual partners that is taken into cognizance or the place where the principal place of the business or office is situate. The term place of business or principal office is not defined by section 100 (a) of the Personal Income Tax Decree, the position is not clear where a partnership has two places of business with principal office in each.[41]

Partnerships are registrable under Part B of Companies and Allied Matters Act.[42] Hence, where the charter or partnership agreement indicates its principal office or registered office, that office shall be considered as the principal place of business for the purpose of determining residence of the partnership in order to tax it.[43] It is pertinent to note that, if the partnership does not have an office in Nigeria, the State in which any part or the whole or any part of its income is derived is liable to tax in Nigeria for that year.[44]

Tax may be imposed on communities. Such tax may be charged on either:

i. Estimated total income of all the members of the community; or
ii. Estimated total income of those of its members whose income is impracticable in the opinion of the relevant tax authority to assess individually; or

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[37]"Unearned income in this context is incomes derived from sources other than employment, business or reward for services rendered. It include investment income such as dividends, royalty from trade mark, patent etc others are gift, inheritance and bequest
[38]S. (1) (A), PITA Cap 8 LFN 2004.
[39]Josephine and Agbonika above n 32, 24.
[40]S. 100 PITA Cap 8 LFN 2004.
[41]Ayua, A.I, *The Nigerian Tax Law*, (Spectrum Law Publishing, Lagos, 1999), 66.
[42]Josephine and Agbonika, Above n 32, 184; Companies and Allied Matters Act (CAMA) Cap C 20 LFN 2004.
[43]Josephine and Agbonika, Above n 32, 184.
[44]S.2 (4) PITA Cap 8 LFN 2004.

iii. The amount of any communal income, which in the opinion of the relevant State tax authority in relation to such community, impossible to apportion with certainty between its members.

It is pertinent to note that tax may be imposed on communities only by the law of the State in which the community exists. Some States in Nigeria have enacted their Revenue Administration Law which brought villages and indigenous communities within their jurisdictions. Section 2 of the Sokoto State Board of Internal Revenue Law provides that taxable persons include body of individual.[45] Section 84 of Revenue Administration Law of Lagos State also defined taxable persons to include body of persons.[46] In **AG & CJ Anambra v Registered Trustees of Cattle Dealers Association Lagos State & Ors,[47]** it was held per Nimpar JCA:

> …I do not agree with the contention of the 4th respondent that the matter refers to the taxation of companies and other bodies carrying on business in Nigeria. The tax collected from the members of the 1st and 2nd respondents is not a Federal Tax but a State Tax.

The income of a family recognized under any law or custom in Nigeria may be taxed by the State in which the members of the family who first received the income resides, provided that several interest of the individual members of the family cannot be determined or ascertained.[48] In **Lagos State Internal Revenue Board v Motorola Nigeria Ltd & Anor**, AKAAHS JCA opined:

> It is trite, that the term "person" as couched in the Personal Income Tax Act Cap 8., Laws of the Federation of Nigeria, 2004 denotes "in relation to carrying on of a business, has the meaning assigned to it by section 108 of this Act does not include a company". However, by virtue of section 108 of the Personal Income Tax Act, the term "person" includes: executor, trustee, company, partnership, community, family and individual. (Underlining is mine).

For tax to be imposed on a family the following conditions must exist:[49]

i. The family must be recognized under any law or custom in Nigeria;

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[45]Sokoto State Board of Internal Revenue Law (SSBIRL) No.4 2008.
[46]Lagos State Revenue Administrative Law 2006 (LSRA).
[47](2016) LPER-4047 (CA) Pp 13-16.
[48]S. 2 (5) PITA Cap 8 LFN 2004.
[49]*Ibid*, S. 40.

ii. The interest of the several members of the family must not be distinctly identifiable or determinable; and

iii. The taxing authority must be in the State where the principal members of the family reside.

The income of trustee or executor derived from settlement trust or estate of a deceased persons created or administered in Nigeria is subject to income tax by the SBIR of the State where the deceased resided or the trusts are created.[50] The income of a settlement trust is deemed to be the income of the settlor or person creating the trust if:[51]

i. The settlor retains or acquires a general power exercisable over the capital asset of the settlement or trust or the income derived there from;

ii. The settlor makes use of it directly or indirectly by borrowing or otherwise, of any part of the income arising under the settlement or trust; or

iii. The settlement is revocable in circumstances where the settlor or person or his spouse thereof resumes control over part of the income or asset comprised therein.

Where a settlement is created for the benefit of a child of the settlor, any income paid to or for the benefit of the child during the life time of the settlor while the child is unmarried shall be treated as the income of the settlor for that year and as the income of any other person.[52]

The SBIR is autonomous in the day to day running of its technical, professional and administrative affairs.[53]However, in practice there are some provisions in revenue laws of some states that inhibit the SBIR from attaining full autonomy. For instance, the Sokoto State Board of Internal Revenue law[54] provides to the effect that:

i. The Commissioner of Finance is vested with the power to make regulation for the smooth running of the SBIR and implementing the law.[55]

ii. The Board shall render account to the Commissioner of Finance for all amounts collected in such manner as may be prescribed by the Commissioner;[56]

iii. Where SBIR makes regulation in respect of the condition of service of its staff, such regulation shall not have effect until approved by the Commissioner;[57]

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[50]*Ibid,* S. 26.
[51]*Ibid,* Second Schedule Part 1.
[52]*Ibid,* Second Schedule Paragraph 4.
[53]*Ibid* S. 88 (2); S.10(1) LSRAL.
[54]SSBIRL No.4 2008.
[55]*Ibid,* S. 6.
[56]*Ibid* S.10 (d).
[57]*Ibid* S. 12 (2).

iv. The Attorney General of the State who is not a staff of the SBIR shall be a member of the technical committee;[58]

v. The Chairman of SBIR shall keep proper accounting record, in such manners as may be determined from time to time by the Commissioner.[59]

In fact, lack of full autonomy for the SBIR in Nigeria is a negation of the simplicity criterion of a good tax system.[60] The Lagos State Government initiated a tax administration reform process in order to optimize the tax potentials of the State.[61] The reform culminated into enactment of the Lagos State Revenue Administration Law under which full autonomy was granted to the Lagos State Internal Revenue Service (LIRS).[62] Under the new law:[63]

i. The position of the Chairman was upgraded to Permanent Secretary reporting directly to the Governor;

ii. The LBIR is autonomous and self-accounting;

iii. Members of staff of the LSBIR who could not fit into the vision and mission of the LSBIR were redeployed to the civil service.

Due to the aforesaid reforms implemented by Lagos State Government especially granting autonomy to the LSBIR, the State has left a landmark in terms of independence of the use of internally generated revenue. In 2007 the State achieved a GDP of N3.68 trillion an equivalent of 29.028 billion, making it the biggest contributor to the Federal Government.[64]

The fact that there has been sharp and steady increase in cumulative growth of tax revenue by more than 20 per cent each year from 2006 to 2015 in Lagos State could be attributed to the autonomous status of the LSBIR.[65]

Kano State Government also improved quite impressively from 400Million in 2010 to N1.7 Billion in 2013 as a result of granting full autonomy to the Kano State Board of Internal Revenue.[66]

[58] *Ibid* S. 13(1)(b).
[59] *Ibid* S.20(2)(a).
[60] Uremendu S.O and Ndulue J.C, "A Review of Private Tax Revenue Generation At Local Government Level in Nigeria", (2011) 3 (6) I *Journal of Public Administration and Policy Research*, 174-183,177. Available at http://www.acadamicjournals.org/jpapr last visited 2nd June 2016.
[61] Asaolu T.O, Dopemu S.O and Monday J.U, "Impact of Tax Reforms on Revenue Generation in Lagos State: A Time Series Approach", (2015) 6(8) *Research Journal of Finance and Accounting*, 2222-2847, 85. Available at http://www.iiste.org/journals last visited, June 2016.
[62] LSRAL 2006.
[63] Asaolu, Dopemu and Monday above n 61.
[64] Abiola J. and Asiweh M, "Impact of Tax Administration on Government Revenue in a Developing Economy-A Case Study of Nigeria", (2012) 3(8) *International Journal of Business and Social Science*, 99-113, 104. Available at http://www.ijbssnet.com Last visited, 10th June 2016.
[65] Asaolu, Dopemu and Monday, above n 61.
[66] SPARC Report, above n 24, 13.

5. Departments under the Board

Various departments are established under the SBIR for administrative convenience and smooth running of the SBIR. The SBIR of the 36 states in Nigeria have different *modus operandi* and the nomenclature for the departments established under each SBIR varies from State to State. However, the following departments exist under almost all SBIR in Nigeria:

i. Assessment Department;
ii. Collection Department;
iii. Information and Investigation Department;
iv. Legal Department;

5.1 Assessment Department

The functions of the assessment department are as follows:[67]

i. Identification and registration of tax payers.
ii. Receiving tax returns from registered tax payers.
iii. Assessment of all registered taxpayers.
iv. Assessment and issuance of notice of assessment to all registered tax payers.
v. Treatment of objections from aggrieved tax payers where necessary.
vi. Compiling and presenting of defaulters case file to the legal department for recovery/prosecution.

Section 41 provides that:

> For each year of assessment, a taxable person shall without notice or demand, file a return of notice of income on the prescribed form and containing the prescribed information on the tax authority of the state in which the taxable person is deemed to be resident, together with a true and correct statement in writing.[68]

Section 44 provides that the tax payer shall indicate the amount of tax payable in the return. Upon the receipt of the return the relevant SBIR shall proceed to assess the taxpayers' chargeable income as soon as possible after the time allowed to the taxpayer for the delivery of the report.[69] On the other hand, where a taxpayer totally fails or neglects to file the return or fails or neglects to file it within the prescribed time, the relevant SBIR shall use its best judgment to assess the person, but that assessment shall not affect any liability otherwise incurred by the taxpayer by reason of his failure or neglect to file a return. The implication is

[67]SPARC Report, above n 24, 14.
[68]PITA Cap 8 LFN 2004.
[69]*Ibid.*

that the self-assessment opportunity given to the taxpayer can only be revoked where he files the return incorrectly or he totally fails to file a return.[70]

Where a taxpayer files a return, two options are open to the relevant SBIR, to reject and return the assessment to the taxpayer and proceed to assess him on its best judgment or accept the return and assess the taxpayer based on the return filed by him.[71] Where the SBIR rejects the Tax Payer's self-assessment and proceeds to assess the taxpayer on its best judgment, the best judgment of the SBIR should not be arbitrary, bias and unfair. In **Group 4 Securities Nigeria Ltd v Lagos State Internal Revenue Service**[72] it was held that self-assessment return can only be discarded in favour of best judgment assessment based on prior knowledge of similar circumstances that make the particular self-assessment return in question appear suspicious, in order to checkmate fraud and falsification of tax return. Section 46[73] provides that for the purposes of obtaining full information the relevant SBIR may require further and better particulars by way of returns from a taxpayer who has already filed the requisite return of assessment.[74] The relevant SBIR may give notice to the taxpayer requiring him within the time specified in the notice to:[75]

i. Prepare and file to the relevant SBIR any return specified in the notice.
ii. Appear physically before an officer of the relevant SBIR with respect to any matter relating to such income or gains.
iii. Produce or cause to be produced for examination at the place and time stated in the notice which may be produced from day to day for such period as the relevant SBIR may consider necessary for the purpose of examination of any book, document, account and return which the relevant tax authority may deem necessary, or
iv. Give orally or in writing any information including names and addresses specified in the notice.

Any person who contravenes the provisions stated above shall be guilty of an offence and upon conviction be liable to a fine of fifty thousand naira (₦50, 000).[76]

However, for the taxpayer to be liable to pay tax or subjected to any punishment relating to assessment and return in respect of payment of tax, he must be properly served with the

[70]Josephine and Agbonika, Above n 32, 166.
[71]S. 54 (3) PITA Cap 8 LFN 2004.
[72](Unreported) Suit No. TAT/LZ/006/2013.
[73]*Ibid.*
[74]PITA Cap 8 LFN 2004.
[75]*Ibid* S. 47.
[76]*Ibid* (2011) S. 10.

notice of assessment or any further and better particulars.[77] In **Nigerian Breweries PLC v Lagos State Internal Revenue Board**,[78]the Court of Appeal determined what constitutes proper service of tax assessment as:

> A notice stating the amount of any assessment, total or chargeable income, the tax charged, the place at which payment should be made, setting the rights of the taxable person shall be served or sent by registered post to each taxable person or person whose name appears in the assessment list…an ordinary letter indicating revision of the appellant's tax liability does not conform with the requirements of the Law as to what constitute proper notice of tax assessments.

In **Okupe v FBIR**[79] it was held that non service of the assessment is a breach of the right of the taxpayer. Also in **Halliburton Energy Service Nigeria Ltd v FIRS[80]** it was held that the assessment made by FIRS was defective as it was contradictory, speculative and inconsistent with the relevant law.

However, where a taxpayer who makes, produces, or signs or caused to be produced documents, certificates or delegation which are false, inaccurate or incorrect return for the purpose of reducing the amount of tax payable, shall be liable upon conviction to a fine not exceeding N5,000 or imprisonment for five years or to both such fine and imprisonment.[81]

In **R v Hudson,**[82] the appellant was convicted for making false statement to the prejudice of the crown and the public revenue with intent to defraud, in that he had sent to the Inland Revenue Accounts, which falsely stated the profit of his business and certificate of disclosure which he knew to be false. It was held that since the offence disclosed fraud on the crown and the public it is punishable under common law as misdemeanour.

In **R v Amota,[83]** the West African Court of Appeal stated that in order to determine whether *mens rea*, is an essential element of the offence charged, it is necessary to look at the object of the law that created the offence. However, there is a proviso to the general rule to the effect that "innocent incorrect return made honestly does not constitute an offence under the Law. In **Inland Revenue v Ruffle,**[84] the Supreme Court of England held that an accountant

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[77]Section 57 and 58, PITA Cap 8 LFN 2004.
[78](2002) 5 NWLR 759, 1.
[79](2010) TLRN 125.
[80]FIRS 2008 CLRN 138.
[81]Section 96 (i)(b) PITA Cap 8 LFN 2004.
[82](1956) 1 ALL ER 814 C.A.
[83](1954) 14 WACA LN-e-LR. Available at http://www.lawnigeria.com, last visited 5th January 2018.
[84](1979) S.C 391.

who assisted in preparation of an incorrect return of company's account which was inadvertently used for tax purpose was not caught up by the section.

5.2 Collection Department

The functions of the collection department include among others:[85]

i. Preparation of monthly collection report.
ii. Accounting for total revenue of the SBIR on daily basis.
iii. Reconciliation of revenue account and bank statement.
iv. Issuance of receipt to tax payers.
v. Confirmation of tax payment from all departments.
vi. Handling tax payment ledgers.
vii. Supervision of general field operations.
viii. Custodian of revenue account and bank statement.
ix. Custodian of employers' annual return.
x. Recovery of tax arrears.

Basically, there are two ways of collecting personal income tax under the Act.[86] These are Direct Assessment Revenue and Pay As You Earn (PAYE).[87]

a. Direct Assessment

Under the Personal Income Tax Act, tax is collected based on the assessment directly made by the taxpayer after he files his return at the relevant SBIR where the tax payer lives. Income tax is also payable by an assessment made by SBIR and served on the tax payer provided that, the taxpayer does not file any objection or appeal.[88] Where the taxpayer files an objection or appeal, payment of such tax is deferred pending the determination of the appeal or objection. The relevant SBIR may enforce payment in respect of the portion of tax which is not in dispute. Late payment of tax attracts the penalty of 100 per cent per annum of unpaid tax added unto the amount of tax fees.[89] In addition, the relevant SBIR may institute an action in a Court of competent jurisdiction for recovery of the tax payable with full cost of the suit from the defaulting taxpayer as debt due to SBIR. In **FIRS v Oando Plc,**[90] it was held that it could be seen from the evidence that nonchalant attitude of the defendant in matters of the taxation and the levity with which they had all along treated notices served on them under the law until they found that proceedings were eminent and that their defence was nothing short

[85]S PARC Report, above n 24, 41.
[86]PITA Cap 8 LFN 2004.
[87]*Ibid*,Section 81.
[88]*Ibid*,S. 68.
[89]*Ibid* S. 76.
[90]TAT/AB/SS/006/2006.

of finding an escaper out for their act of irresponsibility and wanton disregard of constituted authority. But since the amount was being claimed as debt due to the Federal Government the defendants were liable for the amount and penalties stated on the demand. Thus, in **FBIR v West African Pictures Co. Ltd**,[91] the Tax Appeal Tribunal held that "I hereby dismiss the appeal for being devoid of merits. The respondent is entitled to a cost of one hundred thousand naira (₦100,000) against the appellant".

b. Pay As You Earn

The PAYE Scheme is provided under sections 81-82.[92] Under the PAYE scheme, tax is deducted from source by authorized employers. The SBIR uses the scheme to collect tax from government employees and employees of registered companies within their jurisdiction.[93] The employer is required under the scheme to deduct the appropriate amount from the weekly wages or monthly salaries of its employees in anticipation of the employees tax liability for the whole year.[94] An employer may be given a tax table to assist in calculation by the relevant SBIR. The employer who so deducts the PAYE taxes will file regular returns to the relevant SBIR in such manner as the relevant SBIR may prescribe.[95] In the event of failure by the employer to make the deduction within thirty days after the day fixed for such deduction, he shall be liable to pay the anticipated amount together with a penalty of 10% per annum of the amount. Interest at the prevailing commercial rate shall be recoverable as debt from the employer to the relevant SBIR.[96] In **Commissioner of Internal Revenue v JAO Aworeni,**[97] the defendant was sued in respect of tax deduction from salaries of employees of his School, which he did not pay into government's treasury. Before the commencement of the case the defendant paid the amount he deducted from salaries of his employees but refused to pay the penalty on the ground that he was not liable to pay the penalty. The Court found the defendant liable to pay the penalty and cost of the suit. In **ELF Oil Nigerian Ltd v Oyo State Board of Internal Revenue,**[98] one of the issues formulated for determination before the Court of Appeal was whether the appellant being a company is duty bound to deduct and remit tax from its employees to the Oyo State Board of Internal

[91] (Unreported) Suit No.FRC/L/8/73.
[92] PITA Cap 8 LFN 2004.
[93] It is Pertinent to note that residents of Federal Capital Territory Abuja. Members of the Nigerian Military force, members of Nigerian Police Force and employees Nigerian Foreign Mission are taxed by FIRS.
[94] Josephine and Agbonika, Above n 32, 179.
[95] *Ibid.*
[96] S. 82, PITA Cap 8 LFN 2004.
[97] (Suit) No:1/404/72 Federal High Court Western Nigeria decided in 1974; Commissioner of Finance v Ukponk (2000) 4NWLR 653, 633.
[98] (2002) LPELR -12260(CA).

Revenue. The Court of Appeal resolved the issue in favour of the respondent to the effect that companies are bound to deduct taxes accruable to the Government from the wages and salaries of their workers and remit same to the Government.

5.3 Legal Department

The functions of the legal department are:

i. Prosecuting tax offenders and representing the SBIR in civil matters; and
ii. Distraining and enforcement.

Criminal penalties and punishment have been in existence for years within the tax systems. According to Lord Green MR in the Court of Appeal case of **Lord Howard De Walden v Inland Revenue Commissioners**[99]

> For years a battle of manoeuvres has been waged between the legislature and those who are minded to throw the burden of taxation off their own shoulders on those of their fellow subjects. The legislature has often worsted by the skill, determination and resourcefulness of its opponents, of whom the present appellant has not been the least successful. It would not shock us in the least to find that the legislature has determined to put an end to the struggle by imposing the severest of penalties. It sacredly lies in the mouth of the tax payer who plays with fire to complain of burnt fingers.

It is in pursuance of the above position that the SBIR in Nigeria sought to prosecute tax offenders within their jurisdiction.[100]However, the SBIR's power to prosecute tax offenders generated controversy.[101]The controversy has been settled in the *locus classicus* case of **Unipetrol Nigerian Plc v Edo State Board of Internal Revenue,**[102] where the Supreme Court was presented with the opportunity to pronounce on the capacity of a tax authority to prosecute tax offences in its own name. The fact was that the appellant was charged with refusal to pay an outstanding Pay As You Earn (PAYE) to the respondent contrary to section 51 of Income Tax Law[103] applicable in Edo State. The charge was filed by Edo State Ministry of Justice but in the name of the Edo State Board of Internal Revenue. The appellant filed a preliminary objection contending that the charge was defective. The trial Court dismissed the preliminary objection. On final appeal to the Supreme Court, the sole issue for determination

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[99](1942) 1 ALL ER 287,287.

[100]Kwaghkehe L, "An Appraisal of the Regime of Criminal Sanctions in Nigerian Tax Laws", *Journal of Business Law*, 44 – 58, 48. Available at http://www.iist.org last visited on 5th February 2017, 45.

[101]Sani A.M, "An Appraisal of the Legal Framework for Taxation in Nigeria", (2015) 34, *Journal of Law Policy and Globalization,* 2224-3259, 183. Available at http://www.iiste.org accessed on 2nd June 2016.

[102](2006) 8 NWLR 983, 624.

[103]Laws of Bendel State (LBS) 1976 Cap 7 Vol. II.

was whether the respondent could validly undertake criminal proceeding in its corporate name rather than that of the Attorney General. The appellant adduced two arguments in support of its contention, the first was that the meanings of the word sue and be sued and the second was on the competence of the charge preferred in the name of respondent instead of the Attorney General. The appellant submitted through its counsel that the phrase “sue and be sued” in section 4(2) (a)[104] connotes civil action. The respondent on its part argued that being a juristic person, the respondent can sue and be sued in its corporate name. On whether the state counsel can prosecute in the name of the respondent, the learned counsel for the respondent submitted that although the Attorney General is constitutionally empowered to sue and be sued on behalf of the state, the powers of the Attorney General can be exercised either directly or through officers of his Ministry. Muktar JSC who read the lead Judgment stated that:[105]

> …The respondent derived its existence from section 4(1) of the Income Tax Law, Laws of Bendel State 1976. A thorough understanding of this provision confirms that the respondent could take any action be it civil or criminal. In this respect I cannot fault the following findings of the lower court which reads thus;
>
> I do not think I can agree with the construction or meaning placed on the word “sue” in section 4(1) of the Income Tax Law by learned counsel for the appellant. Even going by Black’s Law Dictionary definition of the word as indicated by learned counsel both sue and prosecute cover an action it is a common denomination in both words and action be it civil or criminal, it cannot only be civil.

The learned justice went further to say that: it is instructive to note that section 51 of the said Income Tax Law throws some light on the provision of section 14 of the same law and it is definitely of assistance to this discussion. Section 51 provides as follows:

> any person guilty of an offence against this law, or any person who contravenes or fail to comply with any provision of this law or any rule made there under for which no other penalty is specifically provided, shall be liable on conviction to a fine of Four Hundred Naira and where such offence is the failure arising from the provision of part 14 to furnish a return, statement or

[104]*Ibid.*
[105]Olodo H.F, “*A Critical Analysis of Tax Sector Reforms in Nigeria From 1978 – 2012*”, (LLM Dissertation, Ahmadu Bello University, Zaria, 2009), 43.

> information or to keep records required, a further sum of Ten Naira for each and every day during which such failure continues and in default of payment to imprisonment for six months.

The above case seems to settle the controversy as to whether tax authorities in Nigeria can prosecute tax offences in their own name. A close perusal of the Unipetrol's case reveals that the learned justice placed reliance on section 51 of the Income Tax Law.[106]The implication is that if the law establishing a particular tax authority does not have a provision which is similar to section 51 of the Income Tax Law,[107] it will be divested of the power to prosecute tax offenders.[108] The fact that a statute creates an offence is not sufficient to vest the body administering that statute with the power to prosecute under the statutes rather the power to prosecute has to be specifically provided in the statute.[109]

In view of these short comings, the insertion of section 47 of the FIRS Act 2007 is a step in the right direction and an express vesting of prosecutorial powers to the FIRS. Section 47 provides that:

> The Federal Inland Revenue service shall have powers to employ its own legal officers who shall have power to prosecute any of the offences under this Act subject to the power of the Attorney General of the Federation.[110]

The Lagos State Board of Internal Revenue is also specifically empowered to prosecute tax offenders. Section 64(1) [111] provides: "Any criminal proceedings for an offence under this law shall be instituted by or with the consent of the Attorney General.[112] Both section 47[113] and 64(1)[114] were made subject to the powers of the Attorneys General of the Federation and State to initiate or undertake criminal proceeding and therefore do not contradict the provisions of the Constitution.[115]

The fact that the SBIR are vested with powers to initiate civil proceedings in its own name did not generate controversy the way it generated in criminal proceedings.[116] Section 78(1) provides:

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[106]LBS 1976 Cap 7 Vol. II.
[107]*Ibid*.
[108]Sani, above n 101, 207.
[109]Olodo, above n 105, 48.
[110]FIRS Act 2007.
[111]LSRAL 2006.
[112]*Ibid.*
[113]FIRS Act 2007.
[114]LSRAL 2006.
[115]Constitution Federal Republic of Nigeria (CFRN) 1999.
[116]Sani, above n 101, 41.

> Income tax may be sued for and recovered in a court of competent jurisdiction by the relevant tax authority in its official name with full cost of action from the person charged therewith as a debt due to the government of the Federation or the relevant tax authority.[117]

Section 64(1) of Lagos State Revenue Administration Law also provides that the Lagos State Board of Internal Revenue is a body corporate with common seal having perpetual succession and power to sue and be sued in its own name. The fact that SBIR in Nigeria can sue or be sued in their own name to recover income tax from individuals or corporate bodies was exemplified in the case of **Lagos State Board of Internal Revenue v Nigerian Bottling Company and Anor.**[118] The fact of the case was that the Lagos State Board of Internal Revenue (LSBIR), on December 1, 2000, sent a letter to the Nigerian Bottling Company informing the company that the sales tax had been re-introduced in Lagos State and that the rate shall be 5 per cent flat rate on goods/services production brought to the State. The company failed to collect the requested sales tax. Acting under section 6 of the Lagos State Sales Law No.91982, the LSBIR made an estimate of the sum due from the company as sale, and the 5 per cent penalty assessed on the estimated sum. After receiving the notice of assessment, the company filed a notice of objection on the ground that legality of the Sale Tax Act was subject of litigation. In reply the LSBIR served a demand notice for the assessed sum and commenced this action claiming the assessed sum as sales tax arrears, penalty as well as interest. The court held that the defendant is under no obligation to collect additional tax on sales of its service to its customer in that the VAT has already covered the field of tax on consumption of the services provided.

The legal department of the SBIR is also empowered to enforce tax collection through distrain. The Black's Law Dictionary defined the term distrain as:

> The taking whether with legal process or extra judicially subject to the performance of some necessary condition precedent by private individual or by an officer of the court of a person chattel out of the possession of wrong doers or defaulters and into custody of the law to be impounded as a pledge in order to bring pressure to bear upon owner of the chattel to redress an injury, to perform a duty or to satisfy a lawful demand subject however to the right of

[117]PITA Cap 8 LFN 2004.

[118]Suit No: F.D/454/2002 unreported of the High Court of Lagos State (Ikeja Division) delivered by Hon Justice O. H. Oshodi cited in Comprehensive History of Tax in Nigeria, above n 17, 308.

> the owner to have the chattel returned to him upon the injury being redressed or duty performed or upon security being given so to do.[119]

Section 104[120] provides that where the SBIR dully serves a taxpayer with a demand notice and the taxpayer fails to comply with such demand notice within the time stipulated in the notice. The SBIR may:

i. Distrain the taxpayer through his goods, other chattels, bonds or other securities; or
ii. Distrain upon any land, premises or places owned by the taxpayer and recover the amount of tax due by sale of anything so distrained.

In the case of **Sam Nigeria Ltd v Lagos State Internal Revenue Services,[121]** it was held that:

> Where a taxable person fails and or refuses to make the necessary tax payments, sanctions are prescribed in the relevant tax Law, which include but are not limited to the power to distrain. There is no doubt that the claimant has the right to distrain for payment of tax. This section also empowers an officer authorized in writing by the relevant tax authority to break open any building or place in the day for the purpose of levying distress and he may call for the service of the police to assist in that regard. Things distrained may be kept at the cost of the taxpayer for a period of fourteen days, and if all outstanding taxes are not paid, the goods may be sold and recover the amount of tax due by sale of anything so distrained.

However, before the SBIR exercises the power of distrain the following conditions must be complied with:

i. The assessment raised against the taxpayer must have become final and conclusive

Where an assessment is made against a taxpayer, the taxpayer is expected to raise an objection or appeal against such assessment within 30 days. If the taxpayer fails to appeal or raise an objection within 30 days, the SBIR may exercise the power of distrain.[122] However, where the taxpayer appealed against the assessment, if the Body of Appeal Commissioners or

[119] Blacks, H.C, *Law Dictionary*, (West Publishing co, St Paul 1990), 474.
[120] PITA Cap 8 LFN 2004.
[121] (2014) LPER-23215.
[122] S. 57(1) PITA Cap 8 LFN 2004.

the Tax Appeal Tribunal gives its verdict in favour of the SBIR and no notice of further appeal has been filed against the verdict, the SBIR may exercise the power of distrain.[123]

ii. The SBIR must serve a demand notice on the taxpayer

Before the SBIR resorts to distrain as a mode of enforcement of tax, it must serve the taxpayer with a notice of demand and the period of seven days within which the taxpayer is expected to comply with the demand notice has elapsed.[124]In the case of **L.O.C v United States,**[125] it was held that any distrain made before the expiration of the notice of demand is invalid.

iii. The executing officer must be authorized under the law

The officer who executes the order of distrain must fulfil two conditions: he must be authorized by the Chairman of the relevant SBIR and he must obtain an order of distrain at the State High Court which has jurisdiction over the relevant SBIR, on application through motion *expate.*[126] In **Independent Radio Television v Edo State Board of Internal Revenue,**[127] the Court of Appeal held that distress can be used to enforce tax, likening a distress order to garnishee proceeding to collect debt. Also, In **GM Leasing Corporation v United States,**[128] it was held that an entry without warrant by the service onto private property of a person in which that person has reasonable expectation of privacy for the purpose of seizing property to satisfy a tax liability is a violation of that person's rights.

iv. Goods distrained should be kept for 14 days

Goods that are obtained in the course of execution of distrain order shall not be disposed of until after 14 days. If the amount due as tax and the cost and charges incidental to the distress are not paid, the goods may be sold thereafter.[129] The balance if any should be paid to the owner of the distrained property or where the owner of the distrained property cannot be found, the balance should be deposited at the registry of the appropriate Court within 30 days.[130] The relevant SBIR or its agents are bound to strictly observe the aforesaid procedure, any slight noncompliance with the aforesaid procedure will render sale of any property pursuant to a distrain order null and void. In **Canning v Hol**t,[131] it was held that the sale of

[123]Tanko M.B, "Tax Law Enforcement: Practice and Procedure", (2015), 6(7), *Research Journal of Finance and Accounting*,2224-2847, 11. Available at http://www.iiste.org, last visited 2nd January 2017
[124]S. 47(1) (D) PITA Cap 8 LFN 2004.
[125](1977) 338 US.
[126]Ss. 104(4) and (6) PITA Cap 8 LFN 2004
[127](2014) 16 TLR N37.
[128](1976) 449 US.
[129]Ss. 104(5) and (6) PITA Cap 8 LFN 2004.
[130]*Ibid* S. 104 (6).
[131](1883) 56 V 384.

distrained property without strictly complying with the prerequisite of the law is illegal. Where there is noncompliance with the procedure laid down by the law, the remedy open to the taxpayer is to sue the SBIR to set aside the sale or where the purchaser has taken possession, he may be joined in the suit.[132] Where the SBIR becomes aware of the fact that it has distrained the property of a taxpayer illegally, the tax payer is entitled to be refunded with his property. Failure or refusal to return the property to the tax payer is tantamount to depriving him of his right of peaceful enjoyment as provided under the Constitution.[133]

The provision of the law pertaining to enforcement of tax by distrain is comprehensive as far as protecting the right of the taxpayer is concerned. The problem lies with non-compliance by the people who man the tax authorities in Nigeria. Sometimes, the distrained property is sold at a low price compared to the market value of the property at the time of sale. This is done by connivance between the Court officials and officers of the tax authorities.[134] Where the distrained property is sold and after the SBIR takes what is due to it, the officers of SBIR illegally keep the remaining amount.[135]

5.4 Investigation and Information Department

The investigation and Information department is vested with the responsibility of *inter-alia* sourcing for information, investigation and verification of information provided by taxpayers to prevent tax avoidance and evasion.[136] The SBIR is vested with investigative powers in order to enable it perform its functions effectively. The SBIR is empowered to request for information in respect of any taxpayer from whoever, in their opinion have such information including the taxpayer’s spouse and banks.

The SBIR could request for such information by notifying the person in writing to deliver such document as in their opinion contains, or may contain information pertaining to any tax liability of a taxpayer. Failure to comply with such notice is an offence which attracts penalties under the law.[137] This method is adopted where the SBIR suspect that someone else is in possession of the document.

However, if the SBIR suspects that the information or document is in a particular building or premises either official or residential, the Law empowers the SBIR to adopt the method of search and seizure. What this means is that, where the SBIR is reasonably satisfied that there is reasonable ground for suspecting that an offence pertaining to non-disclosure of

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[132]Jones v Flowers (2006) 545 US.
[133]S. 44 (1) CFRN 999
[134]Inplay v Ukrain (2007) ECTHR 803/002.
[135]PITA Cap 8 LFN 2004.
[136]SPARC Report, 24, 44.
[137]Kwaghkehe, Above n 100, 46.

information or any irregularity or an offence in relation to tax has been committed or is being committed and they (SBIR) believe that evidence of commission of the irregularity would be found in the registered office, or other office of trade, vocation, profession or business or in the residence of the principal officer, agent or representative of the taxpayer.[138] The Chairman or a director of the SBIR may issue a search warrant authorizing any of its officers, to enter, if necessary by force to conduct a search and seize the document which the taxpayer is suspected of hiding.[139] But before doing so, a search warrant must be served on the person in possession of such premises or office and where he refuses to comply or does anything which amounts to failure or refusal to comply where he engages in acts leading to abuse, physical assault or similar misbehaviour he shall be guilty of an offence and liable on conviction to a fine of five thousand Naira (N5,000) or to imprisonment for a term not exceeding three months or both.[140]

However, the officer authorized by the SBIR to conduct the search is bound to comply with constitutional safeguard granted to the tax payer under the constitution[141] and the African Charter on Human and Peoples' Right.[142] Tax payers are entitled to the following rights in the course of enforcement of tax law. Section 37[143] provides for right to privacy as follows: "The privacy of citizens, their home correspondences, telephone conversation and telegraphic communication is hereby guaranteed and protected".

However, section 45[144] gives room for derogation from the right to privacy by any Law that is reasonably justifiable in a democratic society in the interest of defence, public safety public order, public morality and public health or for the purpose of protecting the rights and freedoms of other persons. The collective reading of section 37 and 45 confirms that although taxpayers are entitled to their privacy such privacy can be curtailed for the purpose of enforcing tax against the taxpayers. However, the derogation allowed is not absolute. Where the tax authority seeks to exercise its power of search and seizure vide investigation, it must do so in a manner that will not offend the provision of section 37[145] and their action must

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[138] S. 53 (1) (a) 8(b) PITA Cap 8 LFN 2004.
[139] *Ibid*, S. 53(1)(b); 8th Schedule.
[140] *Ibid*, S. 53(7).
[141] CFRN 1999.
[142] B.O Oke, "*Taxpayers Rights Protection in Nigeria*" (Thesis, University of London, London, 2012), 31.
[143] CFRN 1999.
[144] *Ibid*.
[145] CFRN 1999.

clearly fall within the provision of section 45.[146] Any exercise of power beyond section 37 and 45 is tantamount to violation of fundamental rights of the taxpayer.[147]

The provision of the Act which provides that any person in possession of information concerning a taxpayer is bound to divulge it to the tax authority contradicts section 175 of the Evidence Act.[148]

Section 175[149] provides that no one shall be compelled to produce documents in his possession which any other person would be entitled to refuse if it were in his possession unless such last mentioned person consents to their production.

The legislative contradiction between the Evidence Act[150]and the Personal Income Tax Act[151] can be resolved by resorting to the rules of statutory interpretation. In **Orugu v NEC,[152]** it was held that where there is conflict between the Evidence Act and other federal legislation, the court will always rule in favour of the one which is more particular on the question before it. It is argued that the provision of 175[153] prevails over section 53.[154]

Section 49[155] derogates from the right of privacy of taxpayers. Section 49[156] empowers the SBIR to demand from every bank, monthly information of its customers and specifying the names and addresses of new customers of the Bank. Section 53[157] empowers an authorized officer of SBIR to enter, if necessary by force into any building; private, commercial or public for the purpose of collecting or carrying out any function lawfully conferred on the SBIR.

The powers conferred on the authorized officer of SBIR are too wide and prone to abuse if left unfettered. In view of this propensity to abuse, some constitutional, statutory and judicial safeguards are provided.[158] Even though the Personal Income tax Act[159] is silent about bodily search in the course of execution of search warrant, section 36(4)[160] provides that: “No person shall be searched under this section except by a person who is of the same gender as the person to be bodily searched”.

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[146]*Ibid*.
[147]Oke, above n 142.
[148]Kwagkehe, above n 100, 47.
[149]Evidence Act 2011.
[150]*Ibid*.
[151]PITA Cap 8 LFN 2004.
[152](1988) 4 SCNJ 400, 434.
[153]Evidence Act 2011.
[154]PITA Cap 8 LFN 2004.
[155]*Ibid*.
[156]*Ibid*.
[157]PITA Cap 8 LFN 2004.
[158]Oke above n 142, 32.
[159]PITA Cap 8 LFN 2004.
[160]Federal Inland Revenue Service (FIRS) Act 2007.

The intendment of the above section is to protect the cultural and religious beliefs of most Nigerians. Similar provisions are contained in the Criminal Procedure Code,[161] Criminal Procedure Act[162] and Administration of Criminal Justice Act[163] that governs pre-trial investigation of criminal litigation in Nigeria. Both the Federal Inland Revenue Establishment Act[164] and the Personal Income Tax Act are silent about a situation where search is to be conducted in a house in which a woman practicing purdah resides. We suggest that recourse would be had to the provision of CPA, CPC and ACJA. Section 79[165] provides that if the house to be searched is under the occupancy of a woman not being the person to be arrested who according to custom does not appear in public, the person making the search on the premises shall notify such woman to withdraw and afford her reasonable facility to withdraw, and thereafter he may enter the premises.

The Personal Income Tax Act conferred a wide range of powers to the authorized person in the course of conducting investigation in respect of alleged tax related offence without any restriction on such powers.[166] However, under the Federal Inland Revenue Service Establishment Act,[167] the power of the authorized officer to enter any private dwelling is restricted to the effect that the authorized person must seek the consent of the occupier of the premises or obtain an authority from a judicial officer.[168] Where the SBIR fails or neglects to comply with the procedure laid down by the law for a valid search and seizure, a taxpayer can maintain an action against the SBIR for breach of his fundamental right to privacy. In **Stephens Equipment CO, v Inc Debtor**,[169] the Court held that:

> The role of the District Court in issuing an order for seizure of property in satisfaction of tax indebtedness is substantially similar to the court's role in issuance of criminal search warrant…in order to substantiate such an order the IRS must present the court with certain violation. A tax official wishing to search and seize a defaulting taxpayer's property must apply for an order to search. To search the taxpayer's premises he has to supply the court with reasonable grounds that will convince the court to grant the order, otherwise his application will be refused.

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[161] Criminal Procedure Code Cap 30 Laws of Northern Nigeria 1963 (CPC).
[162] Cap C41 LFN 2004 (CPA).
[163] Administration of Criminal Justice Act, (ACJA) 2015.
[164] FIRS Act 2007.
[165] Cap 30 Laws of Northern Nigeria 1963(CPC), this section is in *parimateria* with S. 149 (6) ACJA 2015.
[166] Sani above n 101, 141.
[167] FIRS Act 2007.
[168] *Ibid* S. 29(5) (6) (7).
[169] BR 676 (D.C 1985).

The Courts frown at situations where the SBIR uses the procedure for enforcement of tax as punishment on defaulting taxpayers. In **Okupe v FBIR,**[170] the court held that:

> It is my view that though there is an abundant evidence that the appellant was guilty of failure or wilful default in the supply of information or disclosure concerning his sources of income, the officials of the Board have no right or power under the law to inflict any assessment which is or tends to be punitive in nature upon him and I conceive that it is my duty in the public interest, to ensure that officials of the revenue Board are discouraged and in fact prevented from using their powers of tax action as a punitive measure.

6. Conclusion

Regulation and enforcement regime is the crux of revenue generation. Hence the need to critically appraise the institutional and institutional framework of the SBIR with a view to identifying its defects if any and proffer solutions to same, for without identifying any defect of the SBIR, proffering any solution would be an exercise in futility. The paper discussed the establishment and composition of the SBIR and analysed the rational for establishing the SBIR.

Thus, the SBIR was created as a result of creation of States in 1967 by the then Military Government after the Regions that hitherto existed were converted into twelve States. The new States were faced with the challenge of how to generate revenue for provision of basic infrastructure and essential amenities for their residents. In order to solve this problem, the collection of personal income tax which was hitherto vested in the Federal Inland Revenue Department was partly re-assigned to the newly created SBIR for all the states under the Personal Income Decree. The paper also examined the functions and powers of the SBIR.

The functions and powers of SBIR are exercised vide the various departments established under it for administrative convenience. For instance, the assessment department is saddled with the responsibility of identifying and registering taxpayers etc. The functions of the collection department include *inter-alia* preparation of monthly collection report and accounting for the total revenue of the SBIR. The legal department is vested with the power to among others prosecute tax offenders, represent the SBIR in civil matters and distraining and enforcement against a defaulting taxpayer. While the investigation and information department is vested with the responsibility to gather information and verify information

[170](2010) 2 TLRN.

given by tax payers, the various committees established under the SBIR were equally discussed.