

REPUBLIC OF THE PHILIPPINES
DEPARTMENT OF FINANCE
BUREAU OF INTERNAL REVENUE
Quezon City

June 12, 2003

REVENUE MEMORANDUM CIRCULAR NO. 39-2003

SUBJECT : Termination and Handling of Audit/Investigation and Reinvestigation/Reconsideration of Tax Liabilities/Tax Returns of Taxpayers Under the Jurisdiction of the Large Taxpayers Service, Enforcement Service and Legal Service, and Those Handled by the Various Task Forces in the Light of the Pronouncement of the President last January 20, 2003

TO : All Revenue Officials, Revenue Officers and Others Concerned

I. OBJECTIVE – This Circular is issued in order to clarify the pronouncement of Her Excellency, President Gloria Macapagal-Arroyo, in one of her speeches about the termination of BIR audits/investigations and reinvestigations/reconsiderations of tax cases handled through letters of authority or tax verification notices issued pursuant to pre-defined guidelines and/or protest/claim letters of taxpayers.

II. PREMISES - Section 6(A) of the Tax Code of 1997 provides that “After a return has been filed as required under the provisions of this Code, the Commissioner or his duly authorized representative may authorize the examination of any taxpayer and the assessment of the correct amount of tax. . . .” Section 10 of the same Code also provides that “Under rules and regulations, policies and standards formulated by the Commissioner, with the approval of the Secretary of Finance, the Revenue Regional Director shall, within the region and district offices under his jurisdiction, among others: . . . (c) Issue Letters of Authority for examination of taxpayers within the region.” Sections 58(E), 94, 95, and 97 of the Code prohibit the transfer of titles of real property sold or disposed of for a valuable consideration or through succession or gratuitous title unless the corresponding capital gains tax or creditable withholding tax, documentary stamp tax, estate tax, and/or donor’s tax has been first duly determined, assessed and collected by the BIR. Likewise, Sections 76, 112, 130(4)(D) and 204(C) provide for the credit and/or refund of excess income tax, input VAT attributable to zero-rated sales and purchase of capital goods, excise tax paid on certain export items and erroneously or illegally received taxes, respectively, but with a concomitant observance of the Supreme Court ruling in the case of *San Carlos Milling Co., Inc. vs. Commissioner of Internal Revenue and Court of Appeals* (GR No. 103379 dated November 23, 1993) that no tax refund or credit shall be granted unless the taxpayer-claimants’ entitlement thereto has been first duly established through prior audit or investigation. Finally, in keeping up with the due process clause of the Constitution, tax fraud denunciations have to be thoroughly examined for they involve not just property but life and liberty as well.

III. POLICIES - The following guidelines shall be strictly observed:

- A. For cases under the jurisdiction of the Large Taxpayers Service (LTS)*
1. Considering the necessity of conducting audits and verifications as mentioned under Section II hereof, no new Letters of Authority (LAs)/Audit Notices (ANs) and Tax Verification Notices, Mission Orders or any written orders to audit/investigate internal revenue taxes shall be issued except in the following cases:
 - a. Claims for income tax refund or issuance of tax credit certificate or in cases of income tax returns showing carry-over of excess withholding tax or quarterly income tax payments, which will require the audit/verification of taxpayer's income, including withholding tax liabilities, for the covered period;
 - b. Claims for VAT refund or issuance of tax credit certificate or in cases of VAT returns showing excess input tax at the end of the taxable period, which will require the specific audit/verification of the VAT liabilities only for the covered period;
 - c. Other cases of claim for refund or issuance of tax credit certificate for erroneously paid or illegally collected taxes and/or penalties;
 - d. One-time transaction tax returns which fall under the jurisdiction of LTS subject to the provisions of the prevailing RMO on one-time transactions;
 - e. Request for tax clearance of taxpayers due to retirement/cessation of business which will require the audit/verification of all internal revenue tax liabilities for the immediately preceding year and the year of retirement of the taxpayer pursuant to Section 52 of the Code;
 - f. Request for tax clearance of taxpayers undergoing merger/consolidation/split-up/spin-off and other types of corporate reorganizations which result to dissolution of taxpayers and/or creation of new taxpayers, which event requires the audit/verification of all internal revenue tax liabilities for the immediately preceding year and the year of retirement/reorganization of the taxpayer; and
 - g. Other cases as may be directed and approved by the Commissioner.
 2. All audits/investigations/reinvestigations/reconsiderations of internal revenue tax cases/liabilities of taxpayers started in year 2001 and prior years shall be terminated and reported on or before July 31, 2003 whereas those started in year 2002 must be terminated and reported on or before August 29, 2003. The dockets of all audit/investigation cases, which are outstanding as of the said dates, shall be returned/surrendered to the Office of the Commissioner

with a memorandum explaining why the audit was not finished. Nonetheless, cases where preliminary/final assessment notices were already issued shall still be acted upon based on existing policies and procedures.

B. For cases under the jurisdiction of the Enforcement Service (ES)

1. All cases covered by Letters of Authority issued in 2001 and prior years shall be terminated and reported on or before July 31, 2003, while cases with LAs issued in 2002 shall be terminated and reported not later than August 29, 2003. The dockets of all unfinished audit/investigation cases handled by the Tax Fraud Division and Policy Cases Division, if any, shall be forwarded to the Office of the Commissioner, together with the explanation for failure to terminate the same within the herein prescribed periods. Nonetheless, cases where preliminary/final assessment notices were already issued shall still be acted upon based on existing policies and procedures.
2. Preliminary investigation may be conducted based on confidential information from informants, referrals from external and internal sources and developed third party information which are not currently existing in the Bureau's databases. The Enforcement Service may recommend the issuance of LA, for the approval of the Commissioner, where the results of the preliminary investigation show prima facie evidence of fraud.

C. For cases under the jurisdiction of the Legal Service

All cases initially handled by or referred to it in year 2001 and prior years shall be terminated on or before July 31, 2003 whereas cases handled by or referred to it in year 2002 shall be terminated on or before August 29, 2003.

D. For cases handled by the Special Task Forces (STF)

1. No special task force shall be created in the National and Regional Offices without the approval of the Commissioner. Any request for the creation of a task force shall be made in writing, stating therein the specific purpose and the basis for the request, the procedures to be followed by the offices and personnel involved in handling the activities, reports and other outputs of the task force, and the time frame within which the objectives of its creation must be achieved.
2. Investigation of and reports on all cases handled by task forces created in 2001 and prior years, including Letters of Authority/Mission Orders issued in 2001 and prior years, shall be terminated on or before July 31, 2003 whereas cases handled by task forces created in year 2002, including Letters of Authority/Mission Orders issued in year 2002, shall be terminated on or before August 29, 2003.

A Summary List of Unfinished Cases shall be submitted by the concerned Service Head, through his Deputy Commissioner, to the Commissioner within fifteen (15) days from the herein prescribed deadlines for termination of cases. The list shall contain the following information:

- a. LA/TVN/MO number;
- b. LA/TVN/MO date;
- c. Name of taxpayer;
- d. TIN of taxpayer;
- e. Year covered;
- f. Tax type covered;
- g. Name of Revenue Officer(s) assigned; and
- h. Reason for the failure to terminate the case.

Cases pending in the Office of the Deputy Commissioner shall be included in the aforementioned list.

Cases started in 2003 shall be governed by the Revenue Memorandum Order on the handling of audit cases under normal circumstances.

No cases shall be investigated by nor Letters of Authority shall be issued to the LTS, ES and STF without the approval of the Commissioner.

Any violation of the foregoing instructions by any revenue officer or official shall be a ground for the imposition of appropriate administrative sanctions/ penalties.

This Circular shall take effect immediately and shall be given as wide a publicity as possible.

(Original Signed)
GUILLERMO L. PARAYNO, JR.
Commissioner of Internal Revenue