

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

November 14, 2002

REVENUE MEMORANDUM ORDER NO. 31-2002

SUBJECT : Implementing Section 7 of Revenue Regulations No. 12-2002, as amended by Revenue Regulations No. 17-2002 and Revenue Regulations No. 18-2002, on the Institution of Closure Proceedings and the Filing of Criminal Action Against Taxpayers Who Have Not Responded to the Letter Notices Sent by BIR under the RELIEF System.

TO : All Internal Revenue Officers and Others Concerned.

SECTION 1. Policy Statement. - Section 7 of Revenue Regulations No. 12-2002 (RR 12-2002), as amended by RR 17-2002 and RR 18-2002, provides that in case the taxpayer fails or refuses to avail of VAAP within the period prescribed in the Letter Notice, the BIR shall institute such criminal and/or administrative actions as may be authorized under the Code, specifically closure, criminal action, or audit and investigation depending on the extent of underdeclaration.

In the case of closure of business, Section 115 of the Tax Code of 1997 empowers the Commissioner of Internal Revenue to suspend the business operations of a taxpayer if it is found that he has underdeclared his taxable sales/receipts by thirty percent (30%) or more. The procedure for the institution of closure proceedings pursuant to said Section has been operationalized by Revenue Memorandum Order No. 57-2000 (RMO 57-2000) as amended by Revenue Memorandum Order No. 20-2002 (RMO 20-2002).

Under the RELIEF Program of the BIR, numerous taxpayers have been identified to have substantial underdeclaration of sales. Through RR 12-2002, the Bureau has sent Letter Notices in which these taxpayers have been given the opportunity to correct these noted sales discrepancies via availment of VAAP. In the Letter Notice sent, taxpayers have been warned of the possible consequences for non-compliance with its terms and conditions.

While majority of taxpayers with Letter Notices have complied through VAAP availment, there are a few number who, despite having duly received such Letter Notices, have either refused to respond to such Letter Notices or abide by the terms provided therein even after follow-ups have been made. In view thereof, procedures for closure proceedings, audit/investigation and where warranted, criminal action

must now be set in place to enforce collection against these erring taxpayers who have consistently neglected our call to pay the correct amount of taxes due them.

SECTION 2. Objectives. - This Order is issued to:

- (1) Prescribe uniform guidelines and procedures in the institution of closure proceedings against taxpayers who have continued to refuse to abide by the terms of the Letter Notice whose respective noted sales discrepancies are more than thirty percent (30%) as well as the conditions for the lifting thereof;
- (2) Provide for the guidelines and identify the Offices that will be responsible for the institution of the closure proceedings against those taxpayers who have not responded to the Letter Notice even after follow-up has been made and that will complete the case file of such taxpayers as well as those who will execute and approve closure orders and the lifting thereof .

SECTION 3. Guidelines and Procedures. – While the general provisions on the administrative sanction of suspension/temporary closure of business have been clearly laid down in RMO 57-2000 as amended by RMO 20-2002, the following modifications shall be observed in respect to the institution of closure order pursuant to this Order:

- (1) The Letter Notice and follow-up letters sent and duly received by the taxpayer concerned shall be considered as sufficient compliance with the 48-Hour Notice provided for under RMO 57-2000 and RMO 20-2002;
- (2) In view of the long period of time attended to such taxpayers to comply with their obligations as indicated in the Letter Notice that was served, up to the time that follow-up letters have been sent, a 5-Day VAT Compliance Notice shall be issued in lieu of the 10-Day VAT Compliance Notice. The approval and the signing of the 5-Day VAT Compliance Notice is hereby delegated to the Regional Director having jurisdiction over the taxpayer concerned.
- (3) The signing of Closure Order and lifting thereof shall be delegated to the Regional Director having jurisdiction over the taxpayer concerned;
- (4) The procedures for the institution of closure proceedings shall be as follows:
 - (a) The Technical Working Group (TWG) in the National Office shall transmit the case file to the RDO and the RDO, upon receipt thereof, shall complete documentation of the case file in preparation for the closure proceedings;

- (b) Once the case file has been fully documented, the RDO shall submit a report to the Regional Director recommending the action of closure of the concerned establishment based on guidelines provided for under this Order. In instances where it is found that the case does not qualify for closure proceedings, a memorandum for the recommended next course of action to be undertaken shall be submitted by the RDO to the TWG in the National Office, for further evaluation;
- (c) Upon approval thereof by the Regional Director, a Mission Order shall be signed by the Regional Director ordering the service of a 5-Day VAT Compliance Notice to the concerned taxpayer by the RDO;
- (d) The 5-Day Compliance Notice shall state the particular provision of Section 115 that was violated by the taxpayer with specific reference to the amount of sales discrepancy discovered by the RELIEF System and shall further require the taxpayer to pay an amount equivalent to 3% (in case of seller of goods) / 6% (in case of seller of service) of the underdeclared sales/receipts or 110% of the adjusted basic tax due (after considering underdeclaration), whichever is higher, using BIR Payment Form No. 0605. In addition, the RDO shall recommend an audit of the case by the Tax Fraud Division of the National Office unless taxpayer likewise pays the minimum income tax payment as prescribed in the VAAP regulations (Revenue Regulations Nos. 12-2002, 17-2002 and 18-2002);
- (e) In case of failure to respond to the 5-Day VAT Compliance Notice, Closure Order shall be prepared by the RDO and shall be recommended by the Chief, Legal Division for the final approval of the Regional Director;
- (f) Actual closure of the establishment of the concerned taxpayer by the RDO must follow the hereinbelow prescribed procedures:
 - (1) Covert surveillance of business establishment recommended for closure;
 - (2) Briefing of the closure team and preparation of closure paraphernalia;
 - (3) Coordination with local law enforcement units (Advisory to Chief PNP and Mayor);
 - (4) Service of Closure Order;
 - (5) Actual closure of the business establishment; and
 - (6) After closure, report must be submitted by the Regional Director to the DCIR-LIG, copy furnished DCIR-OG.

(g) Lifting Order shall only be issued by the Regional Director subject to the following conditions:

(1) Minimum VAT payments to warrant the lifting of the closure shall be as follows:

- (i) 6% of undeclared gross receipts, for sellers of service;
- (ii) 3% of undeclared gross sales, for sellers of goods.

(2) Payment must be made within fifteen (15) days from the issuance of the closure order, otherwise the case file shall be forwarded to the National Office Prosecution Division for the preparation of criminal complaint in accordance with prevailing guidelines;

The above-mentioned minimum payment does not prevent the taxpayer from making additional payments of its other internal revenue tax liabilities;

(3) The lifting of the closure order, however, is without prejudice to the issuance of letter of authority for the audit of taxpayer's VAT liabilities if payment is below the basic tax without the benefit of input tax deduction based on the undeclared gross sales/receipts as reflected in the discrepancy report but not lower than the minimum amount prescribed in Item (1) above. A separate LA shall likewise be issued to cover the income tax/withholding tax, and other tax liabilities of the taxpayer. The audit of the taxpayer must be concluded in 60 days.

In computing additional amount payable, excess tax carried-over to the ensuing year/period not covered by the audit/letter notice shall not be disturbed.

(h) The RDO shall submit summary weekly report of closure order as well as lifting of closure order as approved by the Regional Director to the DCIR-LIG, copy- furnished DCIR-OG, every Monday of the following week.

SECTION 4. Effectivity Clause.- This Order shall take effect immediately.

(Original Signed)

GUILLERMO L. PARAYNO, JR.
Commissioner of Internal Revenue