

REPUBLIC OF THE PHILIPPINES
DEPARTMENT OF FINANCE
BUREAU OF INTERNAL REVENUE

Quezon City

August 10, 2007

REVENUE MEMORANDUM CIRCULAR NO. 56 - 2007

SUBJECT : Publishing the Full Text of Department Order No. 23-07 dated July 26, 2007 entitled “Mandating the Marking of Imported Kerosene and Fuel Oils Which are Entered Tax and Duty Free to Prevent the Unauthorized Diversion Thereof Into the Domestic Market and for Other Purposes

TO : All Internal Revenue Officials, Employees and Others Concerned

For the information and guidance of all internal revenue officials, employees and others concerned, quoted hereunder is the full text of Department Order No. 23-07 entitled “Mandating the Marking of Imported Kerosene and Fuel Oils which are Entered Tax and Duty Free to Prevent the Unauthorized Diversion Thereof Into the Domestic Market and for Other Purposes, as follows:

“ [DEPARTMENT ORDER NO. 23-07]

MANDATING THE MARKING OF IMPORTED KEROSENE AND FUEL OILS WHICH ARE ENTERED TAX AND DUTY FREE TO PREVENT THE UNAUTHORIZED DIVERSION THEREOF INTO THE DOMESTIC MARKET AND FOR OTHER PURPOSES

Pursuant to Section 7 (4), Chapter 6, Book IV, Title III of Executive Order No. 292, otherwise known as the “Administrative Code of 1987,” in relation to Section 100 and Section 602 (b) and other pertinent provisions of the Tariff and Customs Code of the Philippines (TCCP), as amended and the pertinent provisions of the National Internal Revenue Code of 1987, as amended, the following order is hereby issued.

SECTION 1. Rationale. -- Substantial revenues are provided by the taxes and duties collected from the importation of petroleum products, including kerosene and other fuel oils. There are reliable reports that said tax- and duty-free articles have been subsequently entered into the domestic market illegally without the payment of the proper duties and / or taxes due thereon, resulting in huge revenue losses to the government and to legitimate oil companies. Consistent with the declared policy of the State to intensify its anti-smuggling efforts, there is a need to adopt measures to ensure the due payment and / or proper collection of duties and taxes on all fuel oils which were initially entered into the Philippines on an exempt basis and to prevent the unlawful entry and diversion thereof into the domestic market. Other countries have successfully employed existing fuel marking technologies to curtail fuel smuggling activities, by utilizing fuel markers based on, among others, covert molecular recognition technology.

SEC. 2. Scope. -- This Order shall cover the implementation of the program of marking of fuel oils imported into the Philippines, and / or manufactured and / or refined in the Philippines, which under Philippine laws are exempt from the payment of duties and taxes, whether the same was by reason of importation or manufacturing in a free zone, as proof that these fuel oils were legitimately entered into Philippine territories and / or manufactured and / or refined in the Philippines and are, by law, exempt or not required to pay duties and taxes.

SEC. 3. Objectives. -- The mandatory fuel marking program covered by this Order shall have the following objectives:

(a) to properly identify and track fuel oils entered into the Philippines without the payment of duties and taxes, whether the same are legitimately entered free and / or exempt from duties and taxes, or illegally entered into the Philippines;

(b) to plug the leakage of the duties and taxes due on fuel oils initially entered into the country without the payment of duties and taxes and which were eventually diverted to the domestic market or for other use which will subject the fuel oils to duties and taxes.

(c) to provide the necessary tool and evidence required for the prosecution of parties who do not pay the proper duties and taxes for fuel oils introduced into the domestic market.

SEC. 4. Mandatory Marking of Kerosene and Fuel Oil Exempted/Free from Duties and Taxes. -- The following shall be marked with the official marking agent designated by the Department of Finance (DOF) in accordance with existing rules:

- a. all kerosene, including dual purpose kerosene (DPK), subject to zero excise tax; and
- b. all diesel oil imported into the Philippines for which exemption from the payment of duties and taxes is claimed.

SEC. 5. Responsibility to Mark. -- In the case of kerosene subject to zero excise tax referred to in Section 4 above, the person, entity or taxpayer who owns or enters the fuel or to whom the fuel oil is consigned, or whoever brings the same into the country, shall cause the marking of said exempt kerosene / fuel oil with the official marking agent, and shall bear the cost of marking the same.

In the case of diesel oil likewise referred to in Section 4 hereof, the person, entity or taxpayer who imports, manufactures, and / or refines said diesel oil shall cause the marking thereof with the official marking agent, and shall bear the cost of marking the same.

The failure or refusal of the person, entity or taxpayer responsible for the marking of the fuel oils as herein required within a period of fifteen (15) days from due notice shall subject such owner, consignee or importer and the articles to such sanctions as may be imposed in accordance with the Tariff and Customs Code of the Philippines, as amended, and other relevant existing laws and rules and regulations issued in pursuance of law.

SEC. 6. Presence of Marker; Presumption. -- In the event that diesel oil containing the official marker signifying exemption is found in the domestic market, or in possession of anyone or under any situation where said diesel oil is subject to duties and taxes, it shall be presumed that the same was imported or withdrawn with the intention to evade the payment of duties and taxes due thereon, and shall be proceeded against pursuant to law, unless the contrary be proven through the presentation of valid documents and / or other evidence to the contrary.

The same presumption shall apply in the event that kerosene subject to zero excise tax containing the official marker is found being used, transported, stored or otherwise labeled as aviation fuel in domestic markets, or in possession of anyone or under any situation where said kerosene is subject to duties and taxes.

SEC. 7. Pilot Implementation. -- The mandatory marking herein prescribed shall be implemented by the Bureau of Customs (BOC) on a pilot basis at the Subic Bay Free Port and the Clark Special Economic Zone and likewise at the Port of Batangas for imported kerosene. The

BOC shall provide a monthly report and evaluation to the DOF on the progress of the pilot program with the end in view of having the marking program implemented on a nationwide basis.

SEC. 8. Program Implementation Office (PIO). -- A PIO, headed by a DOF Senior Officer to be designated by the Secretary of Finance, and with the Commissioners of Customs and the Commissioner of Internal Revenue – or their duly authorized representatives with the rank of Deputy Commissioner – as members shall directly coordinate and supervise the proper and effective implementation of this Order. The PIO shall be supported by personnel of the DOF, as well as those assigned or seconded from agencies attached to the DOF.

SEC. 9. Responsibility of the PIO. -- The PIO, which is hereby authorized to call on any official of the DOF and its attached agencies for such assistance as may be necessary, as well as to require the participation of experts to help achieve the objectives of the Order, shall have the following duties and responsibilities:

- (a) To commence the pilot implementation at the Subic Bay Free Port, the Clark Special Economic Zone and the Port of Batangas on or before August 15, 2007;
- (b) To ensure that all operational and technical written instructions are in place and properly disseminated to all concerned;
- (c) To issue the Terms of Reference and Engagement of the pilot test marking provider;
- (d) To identify and resolve operational and technical difficulties identified in the course of pilot implementation;
- (e) Complete the pilot test within three (3) months from commencement and submit recommendation on the nationwide roll-out within the pilot test period;
- (f) Submit monthly progress report to the Secretary of Finance on the pilot implementation.

SEC. 10. Nationwide Roll-out. – The PIO, in recommending the nationwide roll-out of the program, in consultations with the BOC and the Bureau of Internal Revenue (BIR), shall submit, among others, the following: (a) specifications of the national marker; (b) the marker to be used and the marking service provider; (c) Terms of Reference and

Engagement of the Provider; (d) Performance Measures of the Program; (e) Ports / Places where Program will be rolled-out.

SEC. 11. Implementing Rules and Regulations. -- Except on matters falling within the competence and jurisdiction of the PIO, the BOC and the BIR shall issue the relevant orders and administrative issuances necessary for the proper implementation and enforcement of this Order.

SEC. 12. Separability Clause. -- If for any reason, any provision of this Order is declared unconstitutional or invalid, such parts thereof not affected shall remain in full force and effect.

SEC. 13. Repealing Clause. -- All orders, circulars, memoranda, and other issuances, or parts thereof, which are inconsistent with this Department Order, are hereby repealed or modified accordingly.

SEC. 14. Effectivity. -- This Department Order shall take effect immediately after its publication in a newspaper of general circulation.

(Original Signed)
MARGARITO B. TEVES
Secretary”

All concerned are hereby enjoined to be guided accordingly and give this circular a wide publicity as possible.

(Original Signed)
LILIAN B. HEFTI
OIC - Commissioner of Internal Revenue