REPUBLIKA NG PILIPINAS
KAGAWARAN NG PANANALAPI
KAWANIHAN NG RENTAS INTERNAS

August 2, 2005

REVENUE MEMORANDUM ORDER NO. 22-2005

SUBJECT : Prescribing the Guidelines and Procedures in the Implementation of Revenue Regulation (RR) No. 8-2005 on the Inclusion as Income Payments Subject to Creditable Withholding Tax the Manila Electric Company (MERALCO) Refund to Phase IV Customers as Approved by the Energy Regulatory Board (ERB) and Arising from the Supreme Court Case G.R. 141314 of April 9, 2003

TO : All Internal Revenue Officers and Others Concerned

I. BACKGROUND

The Manila Electric Company (MERALCO) filed with the Energy Regulatory Board (ERB) on December 23, 1993, an application for a rate increase. The ERB issued an order granting provisional increase of P0.184 per kWh subject to the condition, however, that in the event it finds that MERALCO is entitled to a lesser rate increase, all excess amounts collected shall be refunded to its customers or credited in their favor for future consumption.

On February 16, 1998, ERB rendered its decision granting MERALCO an increase in rates by P0.017 per kWh only and ordered MERALCO to refund or credit to its customers the amount of P0.167 per kWh beginning February, 1994. MERALCO appealed the decision to the Court of Appeals wherein the latter reversed ERB's decision. However, on November 15, 2002, the Supreme Court reversed the Court of Appeal's decision and upheld the previous ERB decision.

With finality, the Supreme Court denied MERALCO's motion for consideration and for which decision became final and executory on May 5, 2003. As a result of the Supreme Court's decision, MERALCO had given refunds to residential users described as Phase I to III customers. Refunds to Phase IV commercial and industrial customers will start on July 1, 2005 or upon approval by ERB.

II. OBJECTIVE

This Order is issued to prescribe uniform guidelines and procedures in the implementation of Revenue Regulation (RR) No. 8-2005 on MERALCO refund to its customers under Phase IV (A & B), as income payment subject to creditable withholding tax.

III. DEFINITION OF TERMS – For purposes of this Revenue Memorandum Order, the following terms are defined as follows:

a. **Commercial Services (also known as Non-Industrial) –** non-industrial customers with demand greater than five (5) kilowatts for general power, heating and/or lighting. Non-industrial customers are establishments wherein the main economic activity is agriculture, construction, trading, transportation operation and administration, communication services, storage and warehousing, waterworks and supply, financial services, real estate, restaurant and hotel services, storage and warehousing, waterworks and supply, financial services, real estate, restaurant and hotel services, and other community, social and personal services.

b. **Customers with Active Contracts –** are those whose Contract status is Active as of April 30, 2003. Customers whose services have been temporarily disconnected because of delinquent accounts as of April 30, 2003 are still classified under this group.

c. **Customers with Terminated Contracts –** are those whose Contract status is terminated as of April 30, 2003. These are permanently disconnected services.

d. **Inactive Customers per BIR-ITS –** shall refer to customers which may either have an active or terminated contract with MERALCO but are not yet registered with the BIR.

e. **Industrial Services –** are for industrial customers with demand greater than five (5) kilowatts for general power, heating and/or lighting. Industrial customers are establishments wherein the main economic activity is mining, quarrying, manufacturing and processing, electricity generation and distribution, and gas and steam manufacturing.

f. **"Non-government Organizations" (NGOs**) **–** shall refer to non-profit domestic corporations or organizations as defined under Section 34 (H)(2)(c)of the Tax Code, organized and operated exclusively for scientific, research, educational, character-building and youth and sports development, health, social welfare, cultural or charitable purposes, or a combination thereof, no part of the net income of which inures to the benefit of any private individual.

g. **“Non-stock, non-profit corporation or organization” –** shall refer to corporation, organization or association enumerated under Section 30 of the Tax Code.

h. **“Phase IV-A Customers”** – shall refer to small commercial and industrial customers, flat streetlights and government hospitals and metered streetlights with a demand of less than forty kilowatt (<40 kW).

i. **“Phase IV-B Customers” –** shall refer to medium, large, very large and extra large commercial and industrial customers and government hospitals and metered streetlights with a demand equal or more than forty kilowatt (≥ 40kW).

IV. POLICIES AND GUIDELINES:

1. There shall be withheld a creditable income tax at the rates herein specified for each class of payee, from the following items of income payments to persons residing in the Philippines, pursuant to Section 2.57.2(U) of RR No. 8-2005:

   On gross amount of refund whether thru postdated check/s or application to bill of customers:

   (i) With Active Contracts as classified by MERALCO – Twenty-five percent (25%); and
   (ii) With terminated contracts – Thirty-two percent (32%).

2. The amount of tax withheld shall be remitted thru the Electronic Filing and Payment System (EFPS) using BIR Form No. 1601-E on or before the fifteenth (15^{th})) day of the following month which shall be electronically filed in accordance with the staggered filing of returns under RR No. 26-2002.

3. The Monthly Alphalist of Payees/Customers (MAP) for each of the three (3) months of the calendar quarter shall be submitted to the Large Taxpayers Assistance Division I (LTAD I) after each calendar quarter as an attachment to the e-filed BIR Form No. 1601-E. It shall be prepared using an Excel Program following the format shown in Annex “A” of Revenue Regulations (RR) No. 8-2005. The MAP shall be submitted in CD-ROM or 3.5 floppy diskette within fifteen (15) days from electronic filing of applicable BIR Form No. 1601-E.

   Example: Assuming 3^{rd} Quarter – 1601- E for the month of September is due for filing on October 12 (Group D). The MAP for the months of July, August, and September shall be submitted to LTAD I on or before October 27 using the required format in RR 8-2005 in CD-ROM or 3.5 floppy diskette.

4. MERALCO customers subjected to withholding tax shall be furnished with a Certificate of Creditable Tax Withheld at Source (BIR Form No. 2307) on or before the 20^{th} day of the month following the close of the quarter employed by the payee or upon demand.

5. The Certificate of Registration (COR) shall be submitted to MERALCO by all commercial and industrial customers prior to the release of refund or application to bill in order for MERALCO to get the Tax Identification Number (TIN) and identify those that are not subject/exempt from income tax.

6. Customers claiming exemption from withholding tax under RR No. 8-2005 shall obtain and submit to MERALCO a certified true copy of the Certificate of Exemption (COE) or BIR ruling duly issued by the BIR for this purpose, except:

    6.1 National government agencies and its instrumentalities including provincial, city, municipal governments and barangays. However, registered name per Meralco must be in the name of the government agency/instrumentality, otherwise, it shall be subjected to withholding tax;

    6.2 Government Owned or Controlled Corporations (GOCC) such as the Government Service Insurance System (GSIS), the Social Security System (SSS), the Philippine Health Insurance Corporation (PHIC), the Philippine Charity Sweepstakes Office (PCSO) and the Philippine Amusement and Gaming Corporation (PAGCOR); and

    6.3 Foreign embassies and international organizations such as WHO, IRRI, UNESCO.

    The exemption certificate shall be applied prospectively from the date of its issuance. Under no circumstance shall it have retroactive application.

7. The refund of creditable income tax withheld from tax-exempt MERALCO customers shall be an adjustment to the recorded collection performance of the Large Taxpayers Service (LTS). However, where the amount of refund cannot be directly identified as to source or shall include not only tax credit on MERALCO refund, it shall be apportioned to that of MERALCO tax credits over total credits/payments during the taxable year multiplied by the total amount refunded.

V. PROCEDURES:

A. The Large Taxpayers Assistance Division I/II (LTAD I/II) shall:

1. Screen the MAP and its content if compliant with the required format under RR 8-2005. Check if the transmittal sheet indicates the number of diskettes or CDs submitted by taxpayer. If the MAP is in compliance with the required format under RR 8-2005 AND the transmittal sheet indicates the number of diskettes or CDs submitted by the taxpayer, accept the MAP and receive the transmittal sheet/letter of taxpayer. If there is less than full compliance with the aforementioned requirements, return the MAP to the taxpayer with the information on the nature of the deficiency.

2. Transmit the MAP, transmittal sheet/letter of taxpayer and the diskettes or CDs submitted by the taxpayer to LTDPQAD within five (5) days from the date of receipt of the same.

3. Receive application for refund/TCC from entities under the Large Taxpayers Service resulting from, or which includes, withholding tax on MERALCO refund and forward the same to LTAID I/II or LTDO.

B. The Large Taxpayers Document Processing and Quality Assurance Division (LTDPQAD) shall:

1. Receive the MAP for the three (3) months as attachments to the e-filed BIR Form 1601-E for the third (3^{rd}) month of every taxable quarter.

2. Within fifteen (15) days from receipt of request, issue certification to the requesting Revenue District Officer (RDO) on the particulars of refund to customer per MAP submitted by MERALCO.

3. Furnish a List of Inactive Customers per BIR-ITS to the concerned Regional Directors Attention: Revenue District Officer (RDO) thru the Deputy Commissioner, OIC-Large Taxpayers Service, for Tax Compliance and Verification Drive (TCVD) project.

C. The Revenue District Office shall:

1. Receive from Large Taxpayers Service a List of Inactive Customers as per BIR-ITS for TCVD project.

2. Conduct further verification as to taxpayer’s status of operation and existence. Require these inactive taxpayers to accomplish the appropriate BIR registration forms (e.g., 1901, 1902, 1903, 1905) in accordance with existing procedures for registration or update of registration data.

3. Process the application for refund of taxpayers with excess credits resulting from, or which includes, withholding tax on MERALCO refund in accordance with the guidelines and procedures provided under existing revenue issuances.

4. Verify the authenticity of the Certificate of Exemption submitted by tax-exempt MERALCO customers.

5. Secure certification from LTDPQAD that a particular taxpayer claiming for refund is one among those included per MAP submitted by MERALCO.

D. The Large Taxpayers Audit and Investigation Division I or II or Large Taxpayers District Office shall:

1. Receive from LTAD I/II the application for refund/TCC from entities under the Large Taxpayers Service resulting from, or which includes, withholding tax on MERALCO refund.

2. Process the application for refund of taxpayers with excess credits resulting from, or which includes, withholding tax on MERALCO refund in accordance with the guidelines and procedures provided under existing revenue issuances.

3. Secure certification from LTDPQAD that a particular taxpayer claiming for refund is one among those included per MAP submitted by MERALCO.

E. BIR Contact Center shall:

1. Assist taxpayers in providing requirements for the issuance of the TIN whether thru the concerned Revenue District Office (RDO) or the BIR e-TIN facility.

2. Receive issues related to this RMO and RR 8-2005 for referral to the LTS/Revenue Regional Office, Attention: LTAD I / II or LTAID I / II or RDO concerned for resolution.

VI. REPEALING CLAUSE:

All other issuances and/or portions thereof inconsistent herewith are hereby repealed, modified or amended accordingly.

VII. EFFECTIVITY

This Order shall take effect immediately.

(Original Signed)
JOSE MARIO C. BUÑAG
OIC - Commissioner of Internal Revenue