

REPUBLIC OF THE PHILIPPINES
DEPARTMENT OF FINANCE
BUREAU OF INTERNAL REVENUE

22 January 2009

REVENUE MEMORANDUM ORDER No. 5-2009

SUBJECT : Prescribing the Policies and Guidelines in the Issuance of Letters of Authority by the Various Investigating Offices of the Bureau of Internal Revenue

TO : All Internal Revenue Officers and Others Concerned

I. BACKGROUND

The power to authorize the examination of any taxpayer, and the assessment of the correct amount of tax due, is vested in the Commissioner of Internal Revenue in accordance with the provisions of Section 6 of the National Internal Revenue Code of 1997, as amended (hereinafter referred to as the "Tax Code"), to wit:

SEC. 6. Power of the Commissioner to Make Assessments and Prescribe Additional Requirements for Tax Administration and Enforcement. –

(A) *Examination of Returns and Determination of Tax Due.* – After a return has been filed as required under the provisions of this Code, the Commissioner or his authorized representative may authorize the examination of any taxpayer and the assessment of the correct amount of tax: *Provided, however,* That failure to file a return shall not prevent the Commissioner from authorizing the examination of any taxpayer.

While the Commissioner is allowed to delegate such power to his authorized representative, such delegation has, in certain instances, given rise to the issuance of duplicate or multiple Letters of Authority (LAs) by more than one (1) Investigating Office of the Bureau of Internal Revenue (BIR) to the same taxpayer, for the same taxable period.

Such occurrences have therefore resulted in unwarranted confusion on the part of the taxpayers, and the unproductive utilization of much-needed resources on the part of the BIR. In this regard, and in order to forestall the undue increase of the taxpayer's burden of compliance in the course of a tax investigation, as well as enhance the effectiveness of the BIR's audit and investigation efforts, it is imperative that the issuance of multiple LAs be avoided, and that conflicts of jurisdiction between Investigating Offices be resolved in as expeditious a manner as possible.

This Order is being issued, therefore, to prescribe the policies and guidelines to be observed in determining the Investigating Office that shall have jurisdiction over the audit / examination of taxpayers, and in the resolution of conflicts of jurisdiction in on-going tax investigations.

II. POLICIES AND GUIDELINES

A. General Rules

1. It shall be the general rule that the Investigating Office –
 - a) Where the taxpayer is registered; or
 - b) Which has specific jurisdiction over a taxpayer,shall exercise primary jurisdiction over the conduct of an audit / investigation into the tax liabilities of the taxpayer for a given taxable period.
2. For purposes of this Order, the following Investigating Offices shall exercise primary jurisdiction in the conduct of audits / investigations, relative to Item A (1) of this Section:

For the Regional Offices:

- The Revenue District Offices – for taxpayers registered in the various Revenue Districts

For the Large Taxpayers Service (LTS):

- The Large Taxpayers (LT) Audit and Investigation Division I (LTAID-I) – for Regular Large Taxpayers
- The LT Audit and Investigation Division II (LTAID-II) – for Excise Taxpayers
- The LT District Office (LTDO) – Makati
- The LT District Office – Cebu

B. Exceptions to the General Rule on Primary Jurisdiction

1. The exception to the general rule on primary jurisdiction shall pertain directly to:
 - a) Cases where there is prima facie evidence of tax fraud; or,
 - b) Cases falling under the Run After Tax Evaders (RATE) Program.

2. In either instance, jurisdiction to conduct the appropriate audit / investigation shall rest with:
 - The National Investigation Division (NID); or
 - The Regional Special Investigation Divisions (SIDs).

C. Determination of *Prima Facie* Evidence of Tax Fraud

1. In the event that, following the conduct of prescribed preliminary investigation procedures, the NID / SID believes that *prima facie* evidence of tax fraud exists, it shall submit the case, together with a memorandum stating the justifications for the conduct of an audit / investigation for tax fraud (and the documentary evidence to support the allegation of fraud), through the Assistant Commissioner (ACIR), Enforcement Service (ES), to the Deputy Commissioner (DCIR) of the Legal and Inspection Group (LIG), for evaluation.
 - 1.1. Upon promulgation of this Order, the National Office Tax Fraud Committee reconstituted under Revenue Special Order No. 5-2008 (dated January 8, 2008) shall be considered as dissolved, and the determination of *prima facie* evidence of fraud shall henceforth be undertaken by the DCIR-LIG.
2. If, upon careful evaluation of the merits of a case, the DCIR-LIG should determine that *prima facie* evidence of fraud exists, he shall submit the report of the NID / SID, bearing his signature recommending approval of the same, to the Commissioner, for final evaluation.
 - 2.1. Each report must contain the following segment, where the Commissioner may indicate his decision:

APPROVED / DISAPPROVED

**(Signature Over Printed Name)
Commissioner of Internal Revenue**

3. In the event that the Commissioner should approve the conduct of an audit / investigation of a taxpayer by the NID / SID, the report bearing the Commissioner's signature of approval, together with its supporting documents, shall be returned by the Office of the Commissioner to the Office of the DCIR-LIG, for transmittal to the Enforcement Service, for preparation of the appropriate LA and notification of the concerned Investigating Office which has primary jurisdiction over the taxpayer.

3.1. Upon receipt of the report that has been duly approved by the Commissioner, the ACIR – ES shall inform the Regional Office having jurisdiction over the Investigating Office concerned / ACIR – Large Taxpayers Service, using the *pro forma* notification provided in Annex “A” hereof, that:

- The case shall be considered as a tax fraud case to be investigated by the NID / SID; and
- Any LA issued by the Investigating Office to the concerned taxpayer for the same taxable period shall be deemed *automatically cancelled*.

A copy of the report approved by the Commissioner shall be attached to such notification.

3.2. In the event that the Investigating Office should determine that an LA has been issued to the taxpayer for the same taxable period, the same shall be considered as automatically cancelled and invalid, and the Head of the Investigating Office shall, upon receipt of the notification from the ACIR-ES, immediately direct the Revenue Officers concerned to cease all activities on the case.

3.2.1. In the event that no LA has yet been issued to the taxpayer for the aforesaid taxable period, the Revenue District Office (RDO) is hereby advised that it is precluded from issuing an LA for the taxpayer, covering the said taxable period.

3.3. Within five (5) days from its receipt of the notification from the ACIR-ES, the Investigating Office shall also:

- Inform the taxpayer of the change of jurisdiction in the audit / investigation of the case, through the issuance of a “Notice of Change of Jurisdiction” (Annex “B”);
- Transmit the entire docket of the case to the NID / SID;
- Furnish the Enforcement Service with a copy of the “Notice of Change of Jurisdiction” that has been duly received by the concerned taxpayer.

3.4. Upon receipt of the copy of the “Notice of Change of Jurisdiction” that was received by the taxpayer, the ACIR-ES shall prepare the appropriate LA mandating the audit /

investigation of the taxpayer by the NID / SID, for the signature of the DCIR-LIG.

- 4. In the event that the Commissioner should **not** approve the conduct of a tax fraud investigation by the NID / SID against a particular taxpayer, the report, together with all supporting documents, shall be returned to the Office of the DCIR-LIG, for transmittal of the documentary evidence gathered by the NID / SID to the appropriate Investigating Office, in accordance with the general rule on primary jurisdiction stated in Item A(1) of this Section.

D. Resolution of Existing Conflicts of Jurisdiction

- 1. All issues concerning duplicate or multiple LAs issued to a single taxpayer for a particular taxable period prior to the promulgation of this Order shall be immediately elevated by the Offices that issued the LAs to the Office of the Commissioner, for review and evaluation.
 - 1.1. Each case must be supported by a memorandum report prepared by the concerned Investigating Office and by the NID / SID, stating the justifications for the retention of jurisdiction thereat.
- 2. Each memorandum report must contain the following segment, where the Commissioner may indicate his decision in the case:

APPROVED / DISAPPROVED

(Signature Over Printed Name)
Commissioner of Internal Revenue

- 3. The decision of the Commissioner in a particular case shall be conveyed to the concerned Offices by the Office of the Commissioner, through the *pro forma* notification provided in Annex “C”, and the Head of the Office that shall give up jurisdiction of a particular audit / examination shall immediately direct the Revenue Officers concerned to cease all activities on the case, and shall, within five (5) days from its receipt of the notification of the decision of the Commissioner:
 - Inform the taxpayer of the change of jurisdiction in the audit / investigation, through the issuance of a Notice of Transfer of Jurisdiction (Annex “D”); and

- Transmit the entire docket of the case to the Office that shall assume jurisdiction of the audit / investigation, for integration with their records of the case.
4. In all instances, the decision of the Commissioner shall be final and executory.
- E. Crediting of Internal Revenue Collections from Audits / Investigations
1. All internal revenue collections generated from tax fraud / RATE investigations conducted by the NID / SIDs shall be credited to the Revenue District Office / LT Division or District Office having primary jurisdiction over the taxpayers concerned.

III. REPEALING CLAUSE

Any provision of any Order and / or pertinent revenue issuance(s) that is inconsistent with this Order is hereby revoked, modified or amended accordingly.

IV. EFFECTIVITY

This Order shall take effect immediately.

(Original Signed)
SIXTO S. ESQUIVIAS IV
Commissioner of Internal Revenue