REPUBLIC OF THE PHILIPPINES
DEPARTMENT OF FINANCE
BUREAU OF INTERNAL REVENUE

22 February 2018

REVENUE MEMORANDUM CIRCULAR No. 12-2018

SUBJECT : Clarifying the Nature and Extent of the Power of the Commissioner of Internal Revenue to Obtain Information Under Section 5 of the National Internal Revenue Code of 1997, as Amended, vis-à-vis Attorney-Client and Accountant-Client Privilege

TO : All Revenue Officials/Employees and Others Concerned

Under Section 5 of the National Internal Revenue Code (NIRC), as amended – in ascertaining the correctness of any return, or in making a return when none has been made, or in determining the liability of any person for any internal revenue tax, or in collecting any such liability, or in evaluating tax compliance – the Commissioner of Internal Revenue (CIR) is empowered, *inter-alia*, to obtain on a regular basis from any person other than the person whose internal revenue tax liability is subject to audit or investigation any information, such as, but not limited to, receipts or sales and gross income of taxpayers, and the names, addresses, and financial statements of corporations, registered partnerships, and their members. Non-compliance therewith by any person warrants the imposition of the amount of One Thousand Pesos (P1,000) for each such failure under Section 250 of the NIRC, as amended, as well as the imposition of a fine of Ten Thousand Pesos (P10,000) and suffer imprisonment of not less than one (1) year but not more than ten (10) years under Section 255 of the NIRC, as amended.

On the other hand, there is attorney-client privilege under the Code of Professional Responsibility[1] and the Revised Rules on Evidence[2], wherein an attorney cannot, without the consent of his client, be examined as to any communication made by the client to him, or his advice given thereon in the course of, or with a view to, professional employment. Similarly, there is accountant-client privilege under Republic Act (RA) 9298, or the Philippine Accountancy Act of 2004,[3] and the Code of Ethics for Professional Accountants stating that all working papers, schedules and memoranda

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1 CANON 21, Rule 21.01
2 Rule 130, Section 124(b)
3 Section 29

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made by a certified public accountant in the course of an examination, including those prepared and submitted by the client, incident to or in the course of an examination, by such certified public accountant shall be treated confidential and privileged, and that professional accountants shall refrain from disclosing outside the firm or employing organization confidential information acquired as a result of professional and business relationships.

Let it be clarified, however, that the power of the Commissioner to obtain information under Section 5 of the NIRC of 1997, as amended, serves as an exception to both the attorney-client and accountant-client privilege.

First, Rule 21.01 of the Lawyer's Code of Professional Responsibility provides that a lawyer shall not reveal the confidence or secrets of his client except, among others, when required by law. *Second*, in *Genato v. Silapan*,[4] the Supreme Court stressed that the privilege against disclosure of confidential communication or information does not extend to those made in contemplation of a crime or perpetration of fraud.[5] Notably, attempt to evade or defeat tax is a criminal offense defined and punishable under Section 254 of the NIRC, as amended. *Third*, Section 29 of RA 9298 states that the accountant-client privilege does not apply if the production of documents is through a *subpoena* issued by any court, tribunal, or government regulatory or administrative body. *Fourth*, Section 140.1 of the Code of Ethics of Professional Accountants provides that professional accountants shall refrain from disclosing outside the firm or employing organization confidential information acquired as a result of professional and business relationships unless there is a legal right or duty to disclose. *Finally*, taxes are the lifeblood of our nation so its collection should be actively pursued without unnecessary impediment.[6]

Clearly, therefore, the privileged communication of attorney-client and accountant-client cannot be used to defeat the very purpose and objective of the Commissioner's power to obtain information under Section 5 of the NIRC, as amended.

All revenue officials and employees are hereby enjoined to give this Circular as wide a publicity as possible.

CAESAR R. DULAY
Commissioner of Internal Revenue

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[4] A.C. No. 4078, July 14, 2003
[5] People vs. Van Alshine, 23 NW 594 (1885); Regala vs. Sandiganbayan, 262 SCRA 122 (1996)
[6] G.R. No. 197117, April 10, 2013, First Lepanto Taisho Insurance Corp. v. CIR

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