REPUBLIKA NG PILIPINAS
KAGAWARAN NG PANANALAPI
KAWANIHAN NG RENTAS INTERNAS

March 5, 2007

REVENUE MEMORANDUM CIRCULAR NO. 17-2007

SUBJECT : Publishing the Full Text of the Memorandum of Agreement between the Board of Investments (BOI), BOI Autonomous Region of Muslim Mindanao (BOI-ARMM) and the Bureau of Internal Revenue (BIR) Executed on March 1, 2007

TO : All Revenue Officials and Personnel and Others Concerned

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Circularized hereunder is the full text of the Memorandum of Agreement between the Board of Investments (BOI), BOI Autonomous Region of Muslim Mindanao and the Bureau of Internal Revenue (BIR) executed on March 1, 2007:

"***MEMORANDUM OF AGREEMENT***

KNOW ALL MEN BY THESE PRESENTS:

This Agreement is made and entered into by and between:

The BOARD OF INVESTMENTS, with principal office at the Industry and Investments Building, 385 Sen. Gil J. Puyat Avenue, Makati City, represented herein by Undersecretary Elmer C. Hernandez, hereinafter referred to as the BOI;

The BOARD OF INVESTMENTS – AUTONOMOUS REGION OF MUSLIM MINDANAO, with principal office at ORC Compound, Cotabato City, Maguindanao, represented herein by Chairman & Managing Head Sheryl B. Siao, hereinafter referred to as the BOI-ARMM;

and

The BUREAU OF INTERNAL REVENUE, with principal office at the BIR National Office Building, Agham Road, Diliman, Quezon City, represented herein by Commissioner Jose Mario C. Buñag, hereinafter referred to as the BIR;

WITNESSETH THAT:

WHEREAS, the National Internal Revenue Code of 1997 (Tax Code), as amended, mandates the BIR to administer and execute all internal revenue tax laws;

WHEREAS, *Section 5 (B) thereof authorizes the BIR Commissioner to obtain, on a regular basis, from any person, government agencies and instrumentalities, any information to ascertain the liability of any person for any internal revenue tax;*

WHEREAS, *Section 203 thereof provides for a three (3)-year statute of limitations or prescriptive period for the BIR to make a deficiency tax assessment to be reckoned from the last day prescribed by law for the filing of tax return, or from the date of filing of the said return, whichever comes later;*

WHEREAS, *Article 7, Chapter II of Executive Order (EO) No. 226, as amended, also known as the Omnibus Investment Code of 1987, provides that the BOI / BOI-ARMM shall be responsible for the regulation and promotion of investments in the Philippines. As such, it is empowered to process and approve applications for registration with the Board, imposing such terms and conditions as it may deem necessary to promote the objectives of the Code, and to cancel the registration or suspend the enjoyment of incentives benefits of any registered enterprise and/or require refund of incentives including interests and monetary penalties for violation of any provision of the Code, its implementing rules and regulations, or of the terms and conditions of the registration agreement;*

WHEREAS, *there is a need to provide for an effective mechanism to monitor registered enterprises enjoying Income Tax Holiday (ITH) incentives under Art. 39 (a) of EO No. 226, as amended;*

WHEREAS, *the parties mutually agree to assist one another in the implementation of strategies to enhance tax enforcement and collection efforts towards an efficient tax incentives system;*

NOW, THEREFORE, *for and in consideration of the foregoing premises, the parties, through their respective representatives, and subject to the confidentiality and disclosure provisions of EO No. 226, as amended, and the Tax Code, as amended, do hereby agree to undertake the following:*

I. The BOI/BOI-ARMM shall:

1. ***Coordinate and work closely with the BIR to ensure effective monitoring of ITH availments by BOI / BOI-ARMM-registered enterprises, and provide documents, records and such other valuable information relevant to the ITH claims;***

2. ***Furnish the BIR the following:***

    a. ***Within a month following the close of each semester (i.e., on or before July 31 and on or before January 31), an updated alphabetical master list of BOI / BOI-ARMM -registered enterprises entitled to ITH incentives with the following column headings:***

        - ***Name of Registered Enterprise***
        - ***TIN of Registered Enterprise***
        - ***Registered Address***
        - ***BOI / BOI-ARMM Registration Number***
        - ***Date of Registration***
        - ***Validity Period of ITH entitlement plus extension, if any***
        - ***Start of ITH***

- *Registered Activity (including registered capacity, if applicable)*
- *Date of Filing of Application for ITH Availment and the Period Covered (Indicate if no application was filed)*
- *Performance Data for the Taxable Year*
- *Amount of ITH Applied*
- *Amount of ITH Approved and Date of Approval*
- *% of Income Tax Exemption Approved*
- *Other relevant information*

b. *Within thirty (30) days after issuance to the BOI / BOI-ARMM-registered enterprise, the second copy of the Certificate of ITH Entitlement (CE) stating that the said enterprise is a bonafide BOI / BOI-ARMM -registered entitled to ITH incentive;*

c. *Not later than November 30 of each year, an alphabetical list of BOI / BOI-ARMM -registered enterprises that have filed applications for ITH incentives with the BOI/ BOI-ARMM within six (6) months from the date of filing of the annual Income Tax Returns (ITRs) with the BIR or from the last day prescribed by law for the filing of the annual ITR, whichever comes later, indicating therein the amount of the ITH incentives applied for; and*

d. *Within thirty (30) days after the end of every month, an alphabetical list of BOI / BOI-ARMM -registered enterprises whose ITH incentives entitlements have expired during the preceding month;*

3. *Consider any of the following as grounds for forfeiture of the BOI / BOI-ARMM-registered enterprise's ITH incentives for the taxable year:*

   a. *Failure by the BOI / BOI-ARMM -registered enterprise to secure CE from the BOI / BOI-ARMM and to attach the same in the annual ITR upon its filing with the BIR;*

   b. *Failure by the BOI / BOI-ARMM -registered enterprise with issued CE to apply for ITH incentive with the BOI / BOI-ARMM within six (6) months from the date of filing of the annual ITR with the BIR or from the last day prescribed by law for the filing of the annual ITR, whichever comes later; or*

   c. *Failure by the BOI / BOI-ARMM -registered enterprise with and without CE to file the ITH application with the BOI / BOI-ARMM;*

4. *Process, review and endorse to the Assessment Service of the BIR National Office all applications for ITH incentive, including dockets bearing on the evaluation thereof, financial statements, schedules and supporting documents attached thereto, for taxable year 2006 and every year thereafter within one year from official receipt of the ITH applications;*

   In the event an ITH application cannot be processed and evaluated within the prescribed one-year period due to policy and/or legal issues, the BOI / BOI-ARMM shall immediately

inform the BIR within one (1) month after the end of the said one-year period so as not to prejudice the duty of the latter to make an assessment within the three (3)-year period prescribed[1] under Section 203 of the Tax Code, as amended.

II. The BIR shall:

1. ***Require the BOI / BOI-ARMM -registered enterprise to attach the BOI / BOI-ARMM -issued CE upon filing of the annual ITR. In the absence thereof, the BIR shall not allow any claim for ITH incentive that is reflected in the annual ITR. For large taxpayers filing on-line, submission of CE shall be done manually until such time that the BIR's Electronic Integrated Tax System (e-ITS) facility is enhanced for this purpose;***

2. ***Defer issuance of Letter of Authority (LOA)/ Letter Notice (LN)/ Tax Verification Notice (TVN) to BOI / BOI-ARMM-registered enterprises whose operations are 100% registered with the BOI/BOI-ARMM, until after the completion of BOI / BOI-ARMM evaluation of ITH application but not to exceed one and a half (1 1/2) years from the last day prescribed by law for the filing of the annual ITR;***

   However, for BOI / BOI-ARMM-registered enterprises, with mixed operations (i.e., registered and unregistered activities), the above deferment shall only be for one (1) year from the last day prescribed by law for the filing of the annual ITR;

   BOI / BOI-ARMM-registered enterprises described above may be entitled to the above deferment, except those falling under any of the following instances:

   a. ***Cases handled by the BIR under the Run After Tax Evader (RATE) Program;***
   b. ***Persons under investigation as a result of verified information filed by a Tax Informer under Section 282 of the NIRC, duly processed and recorded in the BIR Official Registry Book;***
   c. ***Cases involving claims for tax refund; and***
   d. ***Cases in which Letter Notices (LNs) were issued, where the discrepancy in sales exceeds 30% of sales of base year or the discrepancy in purchases exceeds 30% of the purchases of the base year;***

3. ***Conduct post-audit/review of the dockets bearing on ITH incentive availment endorsed by the BOI / BOI-ARMM prior to the end of the prescriptive period provided under Section 203 of the Tax Code, as amended, through the Assessment Service in the BIR National Office;***

   If any deficiency tax assessment arises from the review of incentive availment, the Assessment Service shall transmit its

[1] The 3 year prescriptive period is reckoned after the last day prescribed by law for the filing of the Annual ITR, or from the day such return was filed, whichever comes later. For taxpayers adopting an accounting period on a calendar year basis, the last day for filing shall be on or before the fifteenth (15th) day of April of the succeeding year. For taxpayers on a fiscal year basis, however, the last day for filing shall be on or before the fifteenth (15th) day of the fourth month following the close of the fiscal year.

findings of discrepancy and the corresponding documents to the concerned RDOs to enforce the immediate collection thereof, including increments accruing thereon;

4. *Conduct immediate investigation of BOI / BOI-ARMM -registered enterprises that claimed ITH incentives in their annual ITR but failed to attach the CE, failed to file or filed applications for ITH incentives with the BOI/ BOI-ARMM beyond the six (6)-month period as provided in Item I (3)(b) above for purposes of enforcing collection of income taxes pertaining to forfeited ITH claims, including all increments accruing thereon;*

5. *Inform the BOI / BOI-ARMM of its findings on the post audit and/or review it has conducted within thirty (30) days from the approval by the concerned BIR official;*

6. *Furnish BOI / BOI-ARMM with copies of pertinent BIR regulations, rulings, other revenue issuances, and other information within thirty (30) days from issuance thereof, the latter however, is subject to the provisions of Sec. 270, in conjunction with Sec. 71 of the Tax Code, as amended; and*

7. *Issue a Revenue Memorandum Circular for the effective implementation of the provisions of this Agreement.*

III. *The BOI/ BOI-ARMM and BIR shall:*

1. *Within thirty (30) days from signing of this Agreement, create a Working Group, with the inclusion of one representative each from the Department of Finance (DOF) and Department of Trade and Industry (DTI), that shall oversee and monitor the proper implementation of the provisions of this Agreement, including the creation of a database on investment incentives for policy purposes;*

2. *Within thirty (30) days from the creation of the Working Group, promulgate and disseminate their respective rules and regulations for the execution of the provisions of this Agreement;*

3. *Undertake to promptly resolve any issue involving discrepancies in exchanged data/information; and*

4. *Carry out information campaign of the contents of this Agreement through letters and publications in newspapers of general circulation for the awareness of all concerned.*

IV. *Transitory Provisions:*

a. *All applications covering taxable years 2004 and 2005 received prior to the effectivity of this Agreement and still pending processing by the BOI / BOI-ARMM shall be immediately processed/reviewed for transmittal to the BIR, for post-audit, not later than August 31, 2007; and*

b. All BOI / BOI-ARMM -registered enterprises entitled to ITH incentives for taxable years 2004/2005 shall be required by BOI / BOI-ARMM to file their ITH applications not later than May 31, 2007. Processed applications for said taxable years shall be transmitted to the BIR, for post-audit, not later than August 31, 2007.

V. Effectivity:

Subject to the provisions of item IV of this Agreement, the rest of the herein provisions shall apply to ITH incentives availments covering taxable year 2006 and onwards, unless revoked by the parties.

IN WITNESS WHEREOF, the parties hereto have affixed their signatures this 1st day of March, 2007, in the City of Pasay, Philippines.

BOARD OF INVESTMENTS	BOI-AUTONOMOUS REGION OF MUSLIM MINDANAO	BUREAU OF INTERNAL REVENUE
By:	By:	By:
(Original signed) ELMER C. HERNANDEZ Vice Chairman and Managing Head	(Original signed) SHERYL B. SIAO Chairman & Managing Head	(Original signed) JOSE MARIO C. BUÑAG Commissioner

SIGNED IN THE PRESENCE OF:

(Original signed) Efren V.Leano Board of Investments	(Original signed) Nemesio S. Manaay BOI-ARMM	(Original signed) Erlinda A. Simple Bureau of Internal Revenue"

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

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

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