REPUBLIC OF THE PHILIPPINES
DEPARTMENT OF FINANCE
BUREAU OF INTERNAL REVENUE
Quezon City

April 16, 2009

REVENUE MEMORANDUM CIRCULAR NO. 29-2009

SUBJECT : Clarifying Certain Issues Relative to the Processing of Claims For Tax Credit/Refund

TO : All Internal Revenue Officers and Others Concerned

I. Objective – This Circular is issued to address the concerns of taxpayers/claimants in the delay in the processing of claims for tax refund/tax credit certificate (TCC).

II. Premises – Sections 76, 112 (A), 130 (D) and 204 (C) of the Tax Code of 1997 provide for the credit and/or refund of excess income tax, input VAT attributable to zero-rated or effectively zero-rated sales, excise tax paid on certain export items, and taxes erroneously or illegally received or penalties imposed without authority, respectively. To safeguard the interest of the government, the Supreme Court, in the case of San Carlos Milling Co., Inc. vs. Commissioner of Internal Revenue and Court of Appeals (GR No. 103379 dated November 23, 1993), held that before a taxpayer can credit excess payment to the succeeding taxable year or be granted a tax refund/credit, as the case may be, there is a need of an investigation as a matter of procedure, to enable the Commissioner to determine and/or ascertain the correctness of the return and the amount sought to be credited. The availability of the remedy of tax credit is not absolute and mandatory, as it does not confer an absolute right on the taxpayer to avail of the tax credit scheme if it so chooses; neither does it impose a duty on the part of the government to sit back and allow an important facet of tax collection to be at the sole control and discretion of the taxpayer.

Corollary to the above, all revenue officials and officers should exercise utmost due care and prudence in the recommendation and granting of tax refund/credit claims. The sanctions of suspension and dismissal against violations/offenses involving gross negligence, inefficiency and failure to observe the procedures prescribed under existing Revenue Memorandum Orders (RMO) are embodied in RMO No. 50-98, the Updated Code of Conduct for BIR Officers and Employees.

Further, non-observance of the Supreme Court decision on this matter and existing procedures in the processing of claims due to gross negligence and inefficiency may result to the filing of charges against revenue officials and officers before the Inspection Service and/or Office of the Ombudsman.

III. Period Within Which Refund or Tax Credit of Input Taxes Shall be Made

Section 112 (C) of the Tax Code of 1997, as amended by Republic Act No. 9337, provides, among others, that in proper cases, the Commissioner shall grant a refund or issue the tax credit certificate (TCC) for creditable input taxes within one hundred twenty (120) days from the date of submission of complete documents. For the purpose of defining "proper cases" in the said provision, the taxpayer/claimant must have complied with the following conditions/requirements upon audit/verification of his/its claim:

a. Submission of complete documents necessary to determine and/or ascertain the correctness of the return and the amount to be refunded/credited;

b. That all books of accounts and accounting records pertaining to the claim are immediately available to the concerned Revenue Officer (RO) for audit/verification;

c. Any discrepancies/findings upon audit/verification shall be reconciled/ explained in writing by the taxpayer/claimant within five (5) days from receipt of the notification from the RO; and

d. The taxpayer/claimant has signified his concurrence to the outcome of the audit/verification, which shall be evidenced by an Agreement Form.

In cases where taxpayer failed to comply with the above conditions/requirements, i.e., failure to present the accounting books and records for audit/verification, additional documents to explain discrepancies/findings are not submitted, taxpayer refuses or incurs delay in the submission of the Agreement Form, the running of the 120-day period shall stop from the date of notification to the taxpayer. Likewise, the running of the 120-day period shall be suspended in case a question of law arises during the conduct of audit/verification and/or review of the claim for tax refund/credit, and the issue is referred to the Legal Division or the Legal Service, as the case may be, for resolution and issuance of legal opinion, which should be rendered within thirty (30) working days from receipt of the request.

To accurately document the time frame in processing the claim, the taxpayer shall signify in writing the date when the books and records are available for audit/verification by the RO and the date of submission of documents to explain/reconcile discrepancies and findings, if applicable.

In case of simultaneous audit of all internal revenue tax liabilities and claim for VAT refund/credit, the processing of VAT claims shall be prioritized and should not be held in abeyance pending the completion of the audit for all internal revenue tax liabilities.

IV. Effect of Non-submission of Documents or Non-compliance with Audit/Verification Requirements in Support of the Application for Claim for Tax Refund/Credit

Application for tax refund/TCC shall be denied where the taxpayer/claimant failed to submit complete supporting documents or failed to comply with the audit/verification requirements as stated in Items III.a to III.d hereof, where applicable, after three (3) notifications from the processing/investigating office. For this purpose, the concerned processing/ investigating office shall prepare and issue the corresponding Denial Letter to the taxpayer/claimant.

V. Verification of Big Ticket Items of Local Purchases as Required Under RMO No. 16-2007

In lieu of the procedures mentioned in RMO No. 16-2007, the RO, in addition to the regular verification of sales invoices, official receipts, books of accounts and accounting records of the claimant, may require the taxpayer/claimant to present other proofs/secondary evidence to substantiate the authenticity of purchases made, such as, delivery receipts, check vouchers and cancelled checks. However, the RO shall still access the ITS - Registration System to verify if the suppliers are legitimately registered with the BIR.

VI. Verification of Big Ticket Items of Importations as Required Under RMO No. 22-2007

In relation to Item II.c of RMO No. 22-2007, the input tax on importation may be allowed as input tax credit even if Bureau of Customs (BOC) data are not available at the AITEID or within any office in the BIR, provided that the taxpayer/claimant has fully substantiated such claim by presenting the original copies of import entry declarations, sales invoice and delivery receipt of the claimant's supplier/seller, and official receipt issued by the BOC on VAT and customs duties paid. The RO shall note on the photocopies of these documents that he has verified these against the original copies. Further, the RO shall state on the memorandum report that the recommendation for tax credit on VAT on importation shall be subject to post-verification by the BOC.

Subsequently, it is incumbent upon the BOC to verify the authenticity of the documents before it releases its TCC to the taxpayer/claimant.

VII. Imposition of Sanctions Against Revenue Officials and Officers for Non-Compliance With the Requests of Investigating/Processing Offices for Certifications and Documents Necessary in the Processing of Claims for Tax Refund/Credit

Revenue Officials and Officers shall comply with the requests for issuance of certifications, certified true copies of tax returns and documents necessary in the

processing of claims for tax refund/credit within five (5) working days from receipt thereof, while request for a legal resolution or opinion shall be complied within thirty (30) working days from receipt of the request from investigating/processing offices. Non-compliance of concerned revenue officials and employees on the foregoing shall be reported by the investigating/processing office to the Assistant Commissioner, Inspection Service, copy furnished the Deputy Commissioner, Operations Group and Assistant Commissioner, Assessment Service, for appropriate investigation and imposition of sanctions, if warranted.

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

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

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