REPUBLIC OF THE PHILIPPINES
DEPARTMENT OF FINANCE
BUREAU OF INTERNAL REVENUE

April 23, 2007

REVENUE MEMORANDUM CIRCULAR NO. 31 - 2007

SUBJECT: **Directive for the Strict Implementation of the Imposable Sanctions With Regard to the Tax Code Provision and its Implementing Regulations on Punishable Acts of Erring Financial Officers and/or Tax Practitioners**

TO : **All Internal Revenue Officials, Employees and Others Concerned**

Many reports have reached this Office about the illegal and unscrupulous practices being resorted to by financial officers and/or tax practitioners, who are either independent Certified Public Accountant (CPA) or not, leading to tax evasion and non-payment of proper taxes by concerned taxpayers.

This Circular is being issued to remind all concerned of the provision of the National Internal Revenue Code of 1997 (Tax Code), as amended, enumerating the punishable acts and the penal liabilities imposed for the commission of such act, to wit;

> ***"SEC. 257. Penal Liability for Making False Entries, Records or Reports, or Using Falsified or Fake Accountable Forms. -***
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> **(A) Any financial officer or independent Certified Public Accountant engaged to examine and audit books of accounts of taxpayers under Section 232 (A) and any person under his direction who:**
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> **(1) Willfully falsifies any report or statement bearing on any examination or audit, or renders a report, including exhibits, statements, schedules or other forms of accountancy work which has not been verified by him personally or under his supervision or by a member of his firm or by a member of his staff in accordance with sound auditing practices; or**
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> **(2) Certifies financial statements of a business enterprise containing an essential misstatement of facts or omission in respect of the transactions, taxable income, deduction and exemption of his client; or**

(B) Any person who:

(1) Not being an independent Certified Public Accountant according to Section 232(B) or a financial officer, examines and audits books of accounts of taxpayers; or

(2) Offers to sign and certify financial statements without audit; or

(3) Offers any taxpayer the use of accounting bookkeeping records for internal revenue purposes not in conformity with the requirements prescribed in this Code or rules and regulations promulgated thereunder; or

(4) Knowingly makes any false entry or enters any false or fictitious name in the books of accounts or records mentioned in the preceding paragraphs; or

(5) Keeps two (2) or more sets of such records or books of accounts; or

(6) In any way commits an act or omission, in violation of the provisions of this Section; or

(7) Fails to keep the books of accounts or records mentioned in Section 232 in a native language, English or Spanish, or to make a true and complete translation as required in Section 234 of this Code, or whose books of accounts or records kept in a native language, English or Spanish, and found to be at material variance with books or records kept by him in another language; or

(8) Willfully attempts in any manner to evade or defeat any tax imposed under this Code, or knowingly uses fake or falsified revenue official receipts, Letters of Authority, certificates authorizing registration, Tax Credit Certificates, Tax Debit Memoranda and other accountable forms shall, upon conviction for each act or omission, be punished by a fine of not less than Fifty thousand pesos (P50,000) but not more than One hundred thousand pesos (P100,000) and suffer imprisonment of not less than two (2) years but not more than six (6) years.

If the offender is a Certified Public Accountant, his certificate as a Certified Public Accountant shall be automatically revoked or cancelled upon conviction.

In the case of foreigners, conviction under this Code shall result in his immediate deportation after serving sentence, without further proceedings for deportation." (Emphasis supplied.)

The application and implementation of the aforesaid Tax Code provision has likewise been made the subject of Revenue Regulations No. 15-99 (RR No. 15-99), as amended by RR No. 11-2006, in relation to Sec. 6 (G) of the Tax Code, as amended, providing for the acceptable norms of conduct of a Tax Practitioner, and the imposition of the penalties of suspension or cancellation of the certificate of accreditation of tax practitioners, in addition to the penalties provided for under the provisions of the Tax Code, as amended, the pertinent provisions of RR 11-2006 are as follows;

"SECTION 7. Acceptable Norms of Conduct of a Tax Practitioner **- The following norms of conduct are hereby defined as a guide for the observance of tax practitioners. Willful or reckless violation of any of them may be subject of disciplinary action before the Boards:**

A. No tax practitioner shall represent conflicting interests in his practice before the Bureau of Internal Revenue, except by express consent of all directly interested parties after full disclosure has been made.

B. The practitioner must make inquiry as to all relevant facts of the tax case, be satisfied that the material facts are accurately and completely described, and assure that any representation contains no falsehood.

C. The practitioner must relate the law to the actual facts and, when addressing issues based on future assumptions, must clearly identify what facts are assumed.

D. The practitioner must ascertain that all material tax issues have been fairly addressed and fully considered.

E. Where possible, the practitioner must provide an opinion consonant with existing laws and regulations. He shall not present as true those matters or issues which he knows to have been voided, superseded or otherwise invalidated.

F. The practitioner advising a client on matters of tax liability must inform the client of the penalties which may likely apply to him in case of failure or omission to pay the tax in relation to the position advised, prepared or reported.

G. The practitioner advising a client on tax matters must make reasonable inquiries if the information as furnished appears to be incorrect, inconsistent or incomplete and to the extent possible, examine the proof or relevant documents in support of his client's representations.

SECTION 8. Suspension or Cancellation of Certificate of Accreditation -

A. ***Causes for Suspension, Cancellation or Revocation*** **- The accreditation certificate may be suspended, cancelled or revoked as the case may be, upon petition by a taxpayer or by the PICPA or by the TMAP and other similar professional organization, or upon petition by any internal**

revenue officer, or upon motu propio action by the RRAB or RNAB, after due notice and hearing set for the purpose, based on any of the following grounds:

1. Conviction of any criminal offense under the National Internal Revenue Code, or of any offense involving dishonesty, or breach of trust;

2. Giving false or misleading information, or participating in any way in the giving of false or misleading information to the Bureau of Internal Revenue or to any officer or employee thereof, in connection with any matter pending before them, knowing such information to be false or misleading;

3. The use of false or misleading representations with intent to deceive a client or prospective client in order to procure employment, or representing that he can ably obtain special consideration or action from the Bureau of Internal Revenue or officer or employee thereof by improper or unlawful means;

4. Willfully failing to make a tax return in violation of the NIRC, or evading, attempting to evade or participating in any way in evading or attempting to evade any national internal revenue tax or payment thereof;

5. Knowingly counseling or suggesting to a client or prospective client of an illegal plan to evade taxes or payment thereof, or concealing assets to evade taxes or payment thereof;

6. Misappropriating or failing to remit, funds received from a client for the purpose of payment of taxes;

7. Directly or indirectly attempting to influence, or offering or agreeing to attempt to influence the official action of any officer or employee of the BIR by the use of threats, false accusations, duress or coercion, or by offering any special inducement or promise of advantage or by bestowing any gift, favor or thing of substantial value;

8. Disbarment or suspension from the practice as an attorney or as a certified public accountant;

9. Contemptuous conduct in connection with practice before the BIR, including use of abusive language, making false accusations and statements, knowing them to be false, or circulating or publishing malicious or libelous matter;

10. Giving a false opinion, knowingly, recklessly or through gross incompetence, including an opinion which is intentionally or recklessly misleading, or a pattern of providing incompetent opinions on questions arising under the Tax Code. False

opinion includes those which reflect or result from a known misstatement of fact or law from an assertion of a position known to be unwarranted under existing laws or regulations; from advising or assisting in conduct known to be illegal or fraudulent; from concealment of matters required by law or regulations to be revealed. For purposes of this paragraph, "reckless conduct" is a highly unreasonable omission or misrepresentation involving an extreme departure from the standards of ordinary care that a practitioner should observe under the circumstances. A pattern of conduct is a factor that will be taken into account in determining whether a practitioner acted knowingly, recklessly, or through gross incompetence;

11. Upon administrative finding by the concerned Board that the holder of an accreditation certificate has committed any of the following offenses penalized under the Tax Code of 1997:

    a. Willfully falsifying any report or statement bearing on any examination or audit, or rendering a report, including exhibits, statements, schedules or other forms of accountancy work which have not been verified by him personally or under his supervision or by a member of his firm or by a member of his staff in accordance with generally accepted accounting and auditing practices;

    b. Certifying financial statements containing essential misstatements of facts or omission of which he has personal knowledge with respect to the transactions, taxable income, deduction and exemption of his client;

    c. Signing and certifying financial statements without conducting an actual audit;

    d. Assisting/Aiding any taxpayer in the use of accounting/bookkeeping records for internal revenue purposes not in conformity with the requirements prescribed in the Tax Code or rules and regulations promulgated thereunder;

    e. Knowingly making any false entry or entering any false or fictitious name in the books of accounts or records of a taxpayer;

    f. Aiding or keeping in behalf of a taxpayer two or more sets of such records or books of accounts;

    g. Willfully attempting in any manner to evade or defeat any tax imposed under the Tax Code;

h. Willfully using fake or falsified Revenue Official Receipts (RORs), Letters of Authority (LAs), Certificates Authorizing Registration (CARs), Tax Credit Certificates (TCCs), Tax Debit Memoranda (TDMs) and other accountable forms of the Bureau of Internal Revenue;

i. Corrupting/Bribing or attempting to corrupt/bribe any internal revenue official or employee through any of the modes of corruption as defined by the Anti-Graft and Corrupt Practices Act;

j. Such other acts or omissions similar to the foregoing, including all other offenses punishable under the Tax Code or other laws.

Xxx xxx xxx " (Emphasis supplied.)

In view of the foregoing, all Regional Directors, Revenue District Officers, heads of investigating offices and Task Forces are hereby directed to initiate necessary actions such as suspension or cancellation of accreditation, filing of criminal actions, etc., against any financial officers and tax practitioners, who may be found guilty of violating any of the aforesaid provisions.

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

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