REPUBLIC OF THE PHILIPPINES
DEPARTMENT OF FINANCE
BUREAU OF INTERNAL REVENUE

November 12, 2009

REVENUE MEMORANDUM CIRCULAR NO. 63 - 2009

SUBJECT: Primer on creditable withholding tax on campaign expenditures prescribed in Revenue Regulations No. 8-2009

TO: All Internal Revenue Officers and Others Concerned

Revenue Regulations 8-2009 (RR 8-2009) was issued last October 22, 2009 and published in the Philippine Star on October 27, 2009. These regulations provide for the withholding of a 5% creditable withholding tax (CWT) by candidates of local and national elections, their political parties and their contributors on their payments to their suppliers of campaign-related goods and services

This Circular provides the answers to questions in the implementation of RR 8-2009.

Question (Q) -1 : What are the payments that are subject to the 5% CWT?

Answer (A) -1: The following are the payments subject to the 5% CWT:

a. Payments made by political parties and candidates of local and national elections for their campaign expenditures; and
b. Payments made by individuals or juridical persons for their purchases of goods and services intended to be given as campaign contributions to political parties and candidates.

Q-2: Is the 5% CWT a tax on the candidate, political party or contributor?

A-2: No. The 5% CWT is NOT a tax on the candidate, political party or contributor.

Q-3: What then is the 5% CWT?

A-3: This is a tax on the supplier of goods and services pertaining to campaign expenditures. This is a tax on the income of these suppliers of goods and services who shall be earning income when they provide the materials and services for the campaign requirements of the candidates, political parties and contributors. This tax is collected by means of the expanded withholding tax system where the candidates, political parties and contributors when making the payments for the supply of the goods and services are required to deduct a certain amount of the agreed transaction price and remit the same to the BIR.

Q-4: Is the 5% CWT collected by means of the expanded withholding tax system allowed under the law?

Q-4: Yes, this is allowed under the law. Section 57(B) of the National Internal Revenue Code of 1997 (R.A. No. 8424), as amended, provides for withholding of creditable tax at source. To implement this provision of law, the Department of Finance and the Bureau of Internal Revenue regularly issues revenue regulations (RR) providing for what transactions or payments shall be covered by the CWT and the CWT rate. It is on this basis that RR 8-2009 have been issued and implemented.

Q-5: Is the expanded withholding tax system a new measure?

Q-5: No. The expanded withholding tax system has been implemented by the BIR for over thirty years already. This system allows for the inclusion of transactions or payments that can be covered. It is on this basis that the payments for the campaign expenditures are now being subjected to the 5% CWT.

Q-6: Who are required to deduct and withhold the 5% CWT?

A-6:
a. Candidates in the local and national elections;
b. Political parties;
c. Individuals and juridical persons on their income payments made to purchases of goods and services intended as campaign contributions.

Q-7: If a candidate, political party or contributor purchases goods or services amounting to an agreed price of P100,000 for a campaign-related expense, will they pay the

supplier of goods or services P100,000 and pay the BIR an additional 5% or P5,000 for the 5% CWT?

A-7: No. The candidate, political party or contributor will pay only 95% of P100,000 or P95,000.00 to their supplier of goods or services and remit to the BIR the 5% of P100,000 or P5,000.00 representing the 5% CWT.

There is no additional amount that the candidate, political party or contributor shall pay to their supplier of goods and services. Thus, there is no reason that the prices for campaign expenditures shall increase because of the 5% CWT.

Q-8: Can the supplier of goods and services benefit from the P5,000 CWT remitted to the BIR?

A-8: Yes. The 5% CWT remitted to the BIR shall be allowed as a tax credit or deduction against the total income tax liability of the supplier of goods or services. The supplier of goods or services is still required to report their total income for a particular year and compute the corresponding income taxes due thereon. The 5% CWT can then be deducted from the total income tax liability.

For example, the supplier of the goods or services referred to in Q-7 above is a corporation and earns a total of P100,000 of taxable income for 2010. When the corporation reports this taxable income to the BIR, it will compute a total annual income tax liability of P30,000 (30% corporate income tax rate multiplied by total taxable income of P100,000). The corporation can deduct the 5% CWT of P5,000 from the total annual income tax and pay only the net amount of P25,000 to the BIR.

Q-9: What will be the proof of the supplier that they are entitled to the tax credit on the 5% CWT?

A-9: The supplier should be given BIR Form 2307 by the candidate, political party and contributor deducting the 5% CWT from their payments.

Under existing regulations, every payor (candidate, political party and contributor) required to deduct and withhold the CWT shall furnish, in triplicate, each payee (supplier of goods and services,) with a withholding tax statement, using the prescribed form (BIR Form No. 2307) showing the income payments made and the amount of taxes withheld therefrom, for every month of the quarter within twenty (20) days following the close of the taxable quarter employed by the payee in filing his/its quarterly income tax return. Upon the request of the payee, however, the payor must furnish such certificate simultaneously with the income payment.

Q-10: Prior to RR No. 8-2009, various CWT rates are required in the withholding of tax on the different types of payments. Will the same various rates apply to the same payments under RR No. 8-2009?

A-10: No. RR No. 8-2009 prescribes a one uniform rate of 5% that will be applied in the withholding of tax on campaign expenditures.

Q-11: Contributor Ms. *May Pag-asa* who believes in the ability of Mr. *Juan Maglilingkod*, a candidate in the May 2010 elections, donates or contributes P100,000 in cash to the latter. (a) Will this donation be subject to the Donor's Tax? (b) Will Ms. *May Pag-asa* be required to withhold and remit the 5% CWT under RR No. 8-2009?

A-11: (a) No. The donation shall not be subject to the payment of any donor's tax pursuant to Section 13 of RA No. 7166 (Election Code) in relation to Section 99(C) of the Tax Code.

(b) No. Such cash donation does not result in *Ms. May Pag-asa* making payments to the supplier of goods and services where the 5% CWT shall apply.

Q-12: In relation to Q-11, instead of donating the P100,000 to Mr. *Juan Maglilingkod*, Ms. *May Pag-asa* purchased tarpaulins, t-shirts and other election paraphernalia from *Matapat* Corporation which was later on donated to Mr. *Juan Maglilingkod*. (a) Will the income payment of P100,000.00 made by Ms. *May Pag-asa* to *Matapat* Corporation on her purchases of goods subject to the 5% CWT? (b) Will the donation made by Ms. *May Pag-asa* subject to Donor's Tax?

A-12: (a) Yes. In this example, it is contributor Ms. *May Pag-asa* who made the purchases and the payment made to *Matapat* Corporation shall be subject to the 5% CWT.

Ms. *May Pag-asa* shall now pay *Matapat* Corporation P95,000 and the P5,000 withheld by her representing the 5% CWT shall be remitted to the BIR.

(b) No. The donation shall still not be subject to the payment of any donors tax pursuant to Section 13 of RA No. 7166 in relation to Section 99(C) of the Tax Code.

Q-13: In relation to Q-11, Mr. *Juan Maglilingkod* used the money donated to him by Ms. May Pag-asa to purchase his campaign paraphernalia or hire the services of staff to assist in the campaign activities. Will Mr. *Juan Maglilingkod* be required to withhold and remit the 5% CWT?

A-13: Yes. The payments made by Mr. *Juan Maglilingkod* for his purchase of goods or services shall be subjected to the 5% CWT.

Mr. *Juan Maglilingkod* shall pay his supplier of goods and services P95,000.00 and the P5,000.00 amount withheld representing 5% CWT shall be remitted to the BIR.

Q-14: Under R.A. No. 7166, any contribution in cash or in kind to any candidate or political party or coalition of parties for campaign purposes shall not be subject to the payment of any gift tax. What instance will it be subject to Donor's Tax?

A-14: Those contributions in cash or in kind NOT duly reported to the Commission on Elections (COMELEC) shall be subject to donor's tax.

Section 99(C) of the Tax Code, as amended, provides that any contribution in cash or in kind for campaign purposes shall be governed by R.A. No. 7166 or the Election Code.

Section 13 of R.A. No. 7166 specifically states that any provision of law to the contrary notwithstanding any contribution in cash or in kind to any candidate or political party or coalition of parties for campaign purposes, ***duly reported to the Commission*** shall not be subject to the payment of any gift tax (donor's tax). Accordingly, the BIR can impose donor's tax on contributions of this nature.

Q-15: When is the time of withholding of the 5% CWT?

A-15: Under Revenue Regulations No. 2-98, as amended, the obligation of the payor (candidates, political parties or contributors) to deduct and withhold the tax arises at the time an income payment is paid or payable, or the income payment is accrued or recorded as an expense or asset, whichever is applicable, in the payor's books whichever comes first. The term "payable" refers to the date the obligation becomes due, demandable or legally enforceable.

Q-16: Where shall the 5% CWT be remitted?

A-16: The 5% CWT shall be remitted by filing the Monthly Remittance Return of Creditable Income Taxes Withheld (BIR Form No. 1601-E) in triplicate copies and making the payment with the authorized agent banks under the jurisdiction of the Revenue District Office (RDO)/Large Taxpayers District Office (LTDO) where candidate, political party, and contributor is required to register and file the return. In places where there is no authorized agent bank, the return shall be filed directly with the Revenue Collection Officer or the duly authorized Municipal/City treasurer of the Revenue District Office.

Persons covered under Revenue Regulations No. 8-2009 who are not engaged in trade or business or in the practice of their profession shall not be required anymore to submit the

attachment of the Monthly Alphalist of Payees (MAP) prescribed under Revenue Regulations No. 2-2006.

Q-17: When shall the 5% CWT be remitted?

A-17: The 5% CWT withheld for a particular month shall be remitted to the BIR within ten (10) days after the end of each month, except for taxes withheld for the month of December of each year, which shall be filed on or before January 15 of the following year

.

Q-18: What are the rules for those covered by the Electronic Filing and Payment System (EFPS)?

Q-18 Candidates, political parties and contributors who are covered by the EFPS shall follow the rules prescribed for them, including the deadline for electronically filing the applicable withholding tax returns and paying the taxes due thereon via the EFPS which shall be five (5) days later than the deadline set above, unless, unless the EFPS regulations provide for different deadline dates.

Q-19: What will happen if a BIR officer or employee makes any unauthorized disclosure of the information contained in the tax returns and other documents submitted by the candidate, political party or contributor?

Q-19: The BIR officer or employee will be subject to the sanctions and penalties imposed under the Tax Code and other laws. The confidentiality of information contained in all documents submitted to the BIR is mandated under existing laws, rules and regulations of the BIR.

Q-20: Is the COMELEC aware of the provisions and implementation of RR 8-2009.

A-20: The COMELEC is aware of all the developments on this matter since the BIR has been coordinating and communicating with the COMELEC. A Memorandum of Agreement between the COMELEC and the BIR is being discussed prior to its finalization.

Q-21: What has the BIR been doing to inform and assist the candidates, political parties and contributors on their compliance with the provisions of RR 8-2009.

A-21: The BIR has issued guidelines to all its BIR personnel to conduct an information campaign, assist in the registration as withholding agents, and provide assistance in the compliance of all affected parties.

Q-22: What happens if a candidate, political party, or contributor does not comply with the provisions of RR 8-2009 and the pertinent BIR issuances?

Q-22: The candidate, political party or contributor who does not comply will not necessarily be violating the provisions of the Election Code. However, they will be violating the provisions of the Tax Code and its implementing rules and regulations, and as such, shall be subject to the penalties and sanctions imposed therein.

Q-23: Where can information or clarification be made regarding the implementation of RR 8-2009?

A-23: All BIR offices can handle questions and provide information on this matter. The BIR website (www.bir.gov.ph) also provides information. A Coordinating Committee in the Office of the Senior Deputy Commissioner has also been created to respond to queries and can be contacted at telephone number 924-2915.

Approved pursuant to the
Authority under E.O. 827:

(Original Signed)
JOEL L. TAN-TORRES
Senior Deputy Commissioner

A-1