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

May 9, 2008

REVENUE MEMORANDUM ORDER NO. 24-2008

SUBJECT : Policies and Guidelines for RATE Cases

TO : All Internal Revenue Officials, Employees and Others Concerned

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A. OBJECTIVE

To provide the policies and guidelines for the development, investigation and prosecution of cases under the Run After Tax Evaders (RATE) Program of the Bureau.

B. BACKGROUND

Under the RATE Program, the Bureau is mandated to investigate criminal violations of the National Internal Revenue Code of 1997 and assist in the prosecution of criminal cases that will generate the maximum deterrent effect, enhance voluntary compliance, and promote public confidence in the tax system.

Before the inception of the RATE Program, the emphasis on the tax enforcement policy has always been on assessment and collection of taxes. The criminal aspect of any violation of internal revenue laws and regulations was not pursued as long as the taxpayers paid the taxes assessed against them. As such, upon payment and collection of the deficiency taxes, the cases against such erring taxpayers are usually withdrawn or dismissed.

However, the Bureau had recently realized that maintaining public confidence in the fairness of the tax system is vital to effective tax administration. By investigating potential violations of the Tax Code and prosecuting tax offenders, the taxpaying public would recognize and be aware that the BIR is committed to ensure that everyone is paying their fair share of taxes. Consequently, this would lead to a change in the "risk equation" since potential tax offenders would now think twice before committing any infraction of our tax laws.

C. POLICIES

1. In the prosecution of criminal cases for violation of internal revenue laws, the service of the Assessment Notice to the taxpayer is not a requirement as enunciated by the Supreme Court in the cases of Ungab vs. Cusi (G.R. No. L-41919-24 dated May 30, 1980) and CIR vs. Pascor Realty & Development Corp., et. al. (G.R. No. 128315 dated June 29, 1999).

   However, considering the provisions of Section 7 of Republic Act No. 9282 (An Act Expanding the Jurisdiction of the CTA, etc.) which provides that the criminal action and the corresponding civil action for the recovery of civil liability for taxes and penalties shall at all times be simultaneously instituted with and jointly determined in the proceedings before the CTA and that the filing of the criminal action being deemed to necessarily carry with it the filing of the civil action, no right to reserve the filing of such civil action separately from the criminal action will be recognized. RATE cases filed with the Court of Tax Appeals (CTA) must, as much as possible, be accompanied by an initial assessment.

2. Letters of Authority (L/A) for RATE cases to be investigated by the National Investigation Division (NID) / Policy Cases Division (PCD) shall be signed by the Deputy Commissioner for Legal & Inspection Group (DCIR-LIG), while L/As for RATE cases in the Regional Office/s (RO) shall be signed by the Regional Director.

3. Issuance of L/As shall cover only the taxable years where prima facie evidence of fraud or violation of the provisions of the Tax Code (NIRC) has been established unless the investigation of prior or subsequent years are necessary to determine or trace continuing transactions entered into in the covered year and concluding thereafter, or transactions concluding in the covered year which started in the prior years, or it could be established that the same scheme had also been utilized for the prior and/or subsequent years.

4. For RATE cases, the NID and PCD of the National Office and Special Investigation Division (SID) of the respective Regional Offices may conduct a second examination or inspection of the taxpayer's books of accounts and other accounting records even if the regular audit examination had been conducted thereon, subject to the provisions of Section 235 of the Tax Code of 1997. However, any payment of deficiency tax or any amount assessed on the first investigation case shall be credited against the assessment in the second case if the findings/discrepancies in the second investigation include the same findings or issues identified during the regular audit covered by the first L/A.

5. To avoid duplication of L/As and/or simultaneous investigation of the same taxpayer covering the current taxable year, verification with the Letter of

Authority Monitoring System (LAMS) by the NID, PCD and SID is hereby made mandatory.

For this purpose, each district office shall submit to the Regional Director, DCIR-LIG and Office of the Commissioner (OCIR) a list duly certified by the Revenue District Officer (RDO) or Assistant Revenue District Officer (ARDO), and enumerating therein all the taxpayers in their respective districts that are included in the Taxpayer Account Management Program (TAMP) on or before January 31 of each year. As to the current year, the District Office shall submit the list on or before July 5, 2008.

6. The provisions of the LAMS relating to the encoding and status updating of L/As issued by all BIR investigating offices (under Revenue Memorandum Order (RMO) No. 8-2006) shall be strictly enforced. Any violation thereon shall subject the offender to the appropriate administrative sanctions.

   For a case under fraud investigation after the necessary preliminary investigation revealed prima facie evidence of fraud where LAMS verification indicate that no L/A was issued to the subject taxpayer for the current taxable period, the L/A shall be issued to the NID, PCD or SID as a matter of course. Otherwise, the issuance of the L/A to the NID, PCD or SID shall be suspended. Instead, the NID, PCD or SID shall notify the concerned BIR investigating office about its fraud investigation and advise the latter to immediately forward the tax docket for review after the termination of its regular audit. The District Office shall terminate its audit within thirty (30) days from receipt of such notice from the NID, PCD or SID.

   If review of the case docket after termination of the regular audit shows that issues of fraud were still left unresolved during the regular audit, the issuance of L/A against the taxpayer by the NID, PCD or SID shall resume. Otherwise, the L/A being requested by the NID, PCD or SID shall no longer be issued and the case docket shall be returned to the concerned regional office.

   Notwithstanding the foregoing, the CIR may, however, at any stage of the investigation, decide to refer the investigation of the taxpayer to the NID or SID.

7. To speed up the development of RATE cases, the Revenue District Offices shall act immediately on all requests made by NID, PCD or SID for information or data needed to validate or build up a RATE case. Failure to supply the requested information or data within a timely manner shall subject the offender to the appropriate administrative sanctions.

8. Except for RATE cases, priority shall be given to the audit examination being conducted by BIR Offices having regular jurisdiction over taxpayers included in the Bureau's Taxpayer Account Management Program (TAMP). However, upon discovery of any indication of fraud during the regular audit examination, the said BIR Office shall immediately transmit

the records of the case to the NID, PCD or SID for possible RATE investigation.

9. RATE cases may be developed out of findings of infractions under the Third Party Information Program.

D. CRITERIA

To qualify under the RATE Program, a case must conform to the following conditions:

a. Cases representing violations under any of Sections 254, 255, 257 & 258 of the NIRC of 1997, including One-Time Transactions, etc;
b. High-profile Taxpayers or taxpayers well-known within the community, industry or sector to which the taxpayers belong; and
c. Estimated basic tax deficiency is at least One Million Pesos (P1,000,000.00) per year and tax type, but priority should be given to tax cases where the aggregate basic tax deficiencies for all tax types per year is Fifty Million Pesos (P50,000,000.00) or more.

E. JURISDICTION

The NID and PCD shall conduct or undertake the investigation of RATE cases in the National Office, while the SID of each Revenue Region shall conduct or undertake the investigation of RATE cases in the regional offices.

To avoid jurisdictional conflict, the NID or PCD shall have jurisdiction over the investigation of RATE cases initiated and/or developed by it; those cases referred by other investigating units; and cases assigned by the CIR. The SIDs shall be responsible for all RATE cases initiated and/or developed by it and those cases referred to it by the Regional Director. In any case where the NID, PCD and/or SID initiated and/or developed the same case, the DCIR-LIG as head of the RATE Program shall determine which Office will handle the RATE investigation and correspondingly issue the L/A to the said Office.

However, the Revenue District Offices shall develop their own RATE cases.

F. PROCEDURE

A Preliminary Investigation must first be conducted to establish the prima facie existence of fraud for RATE cases. This shall include the verification and determination of the schemes and extent of fraud perpetrated by the subject taxpayer.

The Formal Investigation which includes the examination of the taxpayer's books of accounts and accounting records & third party records,

through the issuance of L/As and access letters, if necessary, shall be conducted only after the prima facie existence of fraud has been established.

1. National Investigation Division

   1.1 The NID thru the Assistant Commissioner, or in his/her absence the Head Revenue Executive Assistant of the Enforcement Service shall recommend to the CIR or DCIR-LIG the issuance of the Letter of Authority which shall automatically supersede all previously issued L/As.

   1.2 Thereafter, a copy of the L/A shall be immediately furnished the district office, the Large Taxpayers Service and/or the SID of the Revenue Region having jurisdiction over the taxpayer, who, upon receipt thereof, must immediately transmit to the NID all the documents in their possession relative thereto; and must withdraw and cancel any issued L/A.

   No other L/A shall be issued to a taxpayer already covered by one issued for a RATE case.

   1.3 Reports on RATE cases recommended for criminal prosecution shall be forwarded to the DCIR-LIG and the RATE Legal Writing and Appearance Group (RATE-LWAG) or Special Prosecution Division for review of the same before approval by the CIR of the filing of the complaint.

2. Special Investigation Division

   2.1 The SID shall recommend to the Regional Director the issuance of the L/A which shall automatically supersede all L/As previously issued by the Revenue District Offices within the Revenue Region. The DCIR-LIG, from time to time, shall monitor the SIDs and issue directives in their pursuit of RATE cases.

   The RDO shall then desist from further issuing any L/A to the taxpayer concerned, and shall transmit to the SID all the documents in its possession relative thereto.

   2.2 Thereafter, a copy thereof shall be immediately furnished the district office having jurisdiction over the taxpayer, who, upon receipt thereof, must immediately transmit to the SID all the documents in their possession relative thereto; and must withdraw and cancel any issued L/A.

   No other L/A shall be issued to a taxpayer already covered by one issued for a RATE case.

2.3 Reports on RATE cases recommended for criminal prosecution shall be forwarded to the Legal Division of the concerned Revenue Region. The Legal Division of the Revenue Region shall submit to the DCIR-LIG a monthly report on the RATE cases submitted to it. The Legal Division shall handle the prosecution of the same in coordination with the Dept. of Justice.

3. Large Taxpayer Services (LTS)/Revenue District Offices (RDO)

3.1 If in the conduct of the regular audit, the LTS/RDO determines that there exist a prima facie evidence of fraud against the subject taxpayer, formal investigation shall continue in order to develop the RATE cases.

3.2 RATE cases developed and recommended for criminal prosecution by the LTS shall be forwarded to the DCIR-LIG and RATE-LWAG/Special Prosecution Division while those developed by the RDOs shall be forwarded to the Legal Division of the concerned Revenue Region. The RATE-LWAG/Special Prosecution Division of the National Office and the Legal Division of the Regional Office shall submit to the DCIR-LIG a monthly report on the RATE cases submitted to it.

4. RATE cases referred by the investigating officer shall be evaluated as follows:

4.1 Evaluation of Rate Cases referred by the National Investigation Division (NID), Policy Cases Division (PCD) or Large Taxpayer Service (LTS).

4.1.1 The RATE-LWAG/Special Prosecution Division shall evaluate the case to determine:

4.1.1.1 If RATE criteria are present:

4.1.1.1.1 High Profile taxpayer or Taxpayer is representative of an Industry/Group/ Sector

4.1.1.1.2 Case represents violations under any of Sections 254, 255, 257 and 258 of the Tax Code of 1997, including One-time Transactions

4.1.1.1.3 Principal amount claimed is at least Php 1 Million per tax type per year but priority should be given to big cases

4.1.1.2 Winnability

4.1.1.3 Completeness of Documents

4.1.1.4 All the elements of the crime are present

4.1.1.5 Other considerations that will promote the objectives of this RMO.

4.1.2 When the RATE-LWAG/Special Prosecution Division determines that the case needs further evaluation, it shall refer the case back to the NID, PCD or LTS with a notation of what needs to be done, the documents still needed and other substantiation requirements.

4.1.3 When the case is sufficient in form and substance, the RATE-LWAG/Special Prosecution Division shall:

4.1.3.1 Prepare the Complaint Affidavit (CA);
4.1.3.2 Prepare the Referral Letter (RL); and
4.1.3.3 Forward the CA and RL to the DCIR-LIG for review and signature.

4.1.4 The DCIR-LIG shall then transmit the CA and the RL to the OCIR for review and signature.

4.1.5 The OCIR shall then transmit the CA and the RL to the RATE-LWAG/Special Prosecution Division thru the DCIR-LIG for filing before the Department of Justice (DOJ).

The RATE-LWAG/Special Prosecution Division shall handle the prosecution of the case in the preliminary investigation before the Department of Justice (DOJ), and should the case be filed before the Court of Tax Appeals, to cooperate, to the fullest extent possible with the DOJ Prosecutor in the successful prosecution of the case before the CTA, unless otherwise deputized to directly handle the case.

4.2 When the SID or the RDO of Revenue Regions No. 5, 6, 7 and 8, determines that there is a prima facie case of tax fraud against a taxpayer, or when the RATE criteria are present:

4.2.1 The SID or RDO shall immediately refer the case, together with the complete set of supporting documents, to the Legal Division of the RO concerned for evaluation and appropriate action including the preparation of the Complaint Affidavit and Referral Letter.

4.2.2 When the Legal Division determines that the case is not sufficient in form and substance, it shall refer the case back to the SID or RDO for further investigation, specifying the points or areas sought to be enhanced and/or the other documents and supporting information that need to be supplied. When the Legal Division finds the case to be sufficient in form and substance, it shall recommend the case for filing to the Regional Director (RD).

4.2.3 When the RD determines the case to be sufficient in form and substance, it shall direct the Legal Division to:

4.2.3.1 Prepare the Complaint Affidavit (CA);
4.2.3.2 Prepare the Referral Letter (RL);
4.2.3.3 Forward the CA and RL to the DCIR-LIG for review and signature.

4.2.4 The DCIR-LIG shall then transmit the CA and the RL to the OCIR for review and signature.

4.2.5 The OCIR shall then transmit the CA and the RL to the RATE-LWAG/Special Prosecution Division or the concerned Regional Legal Division thru the DCIR-LIG for filing before the Department of Justice (DOJ).

The RATE-LWAG/Special Prosecution Division or the concerned Regional Legal Division shall handle the prosecution of the case in the preliminary investigation before the Department of Justice (DOJ), and should the case be filed before the Court of Tax Appeals, to cooperate, to the fullest extent possible with the DOJ Prosecutor in the successful prosecution of the case before the CTA, unless otherwise deputized to directly handle the case.

4.3 When the SID or RDO of the Revenue Regions other than those mentioned in Sec. 4.2, determines that a case involves at least Php 1 Million or a case falls within the jurisdiction of the Court of Tax Appeals (CTA):

4.3.1 The SID or RDO, through the Regional Director, shall immediately refer the case, together with the complete set of supporting documents, to the DCIR-LIG and RATE-LWAG/Special Prosecution Division for evaluation.

4.3.2 When the case is sufficient in form and substance, the RATE-LWAG/Special Prosecution Division shall:

4.3.2.1 Prepare the Complaint Affidavit (CA);
4.3.2.2 Prepare the Referral Letter (RL); and
4.3.2.3 Forward the CA and RL to the DCIR-LIG for review and signature.

4.3.3 The DCIR-LIG shall then transmit the CA and the RL to the OCIR for review and signature.

4.3.4 The OCIR shall then transmit the CA and the RL to the RATE-LWAG/Special Prosecution Division, thru the DCIR-LIG, for filing before the Department of Justice (DOJ).

The RATE-LWAG/Special Prosecution Division shall handle the prosecution of the case in the preliminary investigation before the Department of Justice (DOJ), and should the case be filed before the Court of Tax Appeals, to cooperate, to the fullest extent possible with the DOJ Prosecutor in the successful prosecution of the case before the CTA, unless otherwise deputized to directly handle the case.

4.4 When the SID or RDO of the Revenue Regions determines that a case involves less than Php 1 Million or a case falls within the jurisdiction of the Regional Trial Court (RTC) or Metropolitan Trial Court (MTC):

4.4.1 The Regional Director shall refer the case to the Legal Division for prosecution and other proper enforcement action.

4.4.2 Whenever appropriate, the RATE-LWAG/Special Prosecution Division shall extend technical assistance and other appropriate cooperative action to the Legal Division of the ROs for the successful prosecution of the cases.

G. CIVIL FRAUD

In case the quantum of evidence gathered does not warrant a criminal prosecution because it is not sufficient to prove the guilt of the taxpayer beyond reasonable doubt but there exists clear and convincing evidence that fraud has been committed, a corresponding 50% surcharge shall nevertheless be imposed.

H. ATTRIBUTION OF COLLECTION

All collections arising out of the investigation of RATE cases by the NID and SID shall be attributed to the Revenue District Office or Division having regular jurisdiction over the taxpayer.

I. PENAL CLAUSE

Strict compliance with this RMO is hereby enjoined. Any violation hereof shall be treated as an administrative infraction, and the corresponding penalty as provided under the Updated Code of Conduct shall be imposed.

J. REPEALING CLAUSE

Any provision of any order and/or pertinent issuance inconsistent with this Order is hereby revoked, modified or amended accordingly.

K. EFFECTIVITY

This Revenue Memorandum Order takes effect immediately.

(Original Signed)
LILIAN B. HEFTI
Commissioner of Internal Revenue