Republic of the Philippines
Department of Finance
BUREAU OF INTERNAL REVENUE
National Office
Quezon City

BUREAU OF INTERNAL REVENUE
RECORDS MGT. DIVISION
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August 23, 2022

REVENUE MEMORANDUM ORDER NO. 40-2022

SUBJECT : Guidelines and Procedures in the Conduct of Enforcement Operations, Forfeiture and Prosecution of Cases Relative to the Unlicensed/Illicit/Unauthorized Production, Importation, Trade Sale or Possession of Articles Subject to Excise Tax Including Raw Materials, Packages, Cigarette Paper, Tipping Paper, Cigarette Filter Tips, Ingredients, Machinery, Equipment, Apparatus, Mechanical Contrivances, and Removable Fixture of Any Sort Used for their Production and the Unlicensed/Illicit/Unauthorized Use or Possession of False, Counterfeit, Restored or Altered BIR Internal Revenue Stamps, Labels or Tags

TO : All Internal Revenue Officials & Employees and Others Concerned

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I. OBJECTIVES

This Order is hereby issued to:

1. Prescribe guidelines and procedures to be observed in the conduct of enforcement operations, forfeiture and prosecution of cases relative to the unlicensed production, importation, trade, sale or possession of articles subject to excise tax including raw materials, packages, cigarette paper, tipping paper, cigarette filter tips, ingredients, machinery, equipment, apparatus, mechanical contrivances, and removable fixture of any sort used for their production and the use or possession of false, counterfeit, restored or altered BIR internal revenue stamps, labels or tags.

2. Provide for immediate imposition of penalties and sanctions for offenses committed in order to deter further commission thereof.

3. Maximize the degree of voluntary tax compliance, thereby increasing revenue collection.

II. LEGAL BASIS

The conduct of said activity or operation shall be based on the provisions of Sections 6(c), 15, 130, 131, 163, 164, 171 and 172 of the National Internal Revenue

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Code (NIRC) of 1997, as amended; and Sections 224, 225, 260, 262, 263, 263-A, 265, 265-A. 265-B, 268(B) and 279 of the same Code.

III. DEFINITION OF TERMS

For purposes of this Order, the following types of surveillance shall be utilized and are hereby defined as follows:

a. Covert Surveillance – the discreet verification on the business operations of any person for a certain period to determine the existence and his possession or control of articles subject to excise tax including raw materials, packages, cigarette paper, tipping paper, cigarette filter tips, ingredients, machinery, equipment, apparatus, mechanical contrivances, and removable fixture of any sort used for their unlicensed production and the use or possession of false, counterfeit, restored or altered BIR internal revenue stamps, labels or tags before the conduct of apprehension/seizure of the aforementioned articles subject of an offense or used or intended to be used as the means of committing an offense in violation of any provision of the NIRC of 1997, as amended, and its implementing rules and regulations.

b. Overt Surveillance – the type of surveillance which involves an open-view gathering of information to determine the existence and his possession or control of articles subject to excise tax including raw materials, packages, cigarette paper, tipping paper, cigarette filter tips, ingredients, machinery, equipment, apparatus, mechanical contrivances, and removable fixture of any sort used for their unlicensed production and the use or possession of false, counterfeit, restored or altered BIR internal revenue stamps, labels or tags before the conduct of apprehension/seizure of the aforementioned articles subject of an offense or used or intended to be used as the means of committing an offense in in violation of any provision of the NIRC of 1997, as amended, and its implementing rules and regulations.

IV. POLICIES

A. For purposes of this Order, a BIR STRIKE GROUP shall be composed of two (2) Teams and constituted by the following officers who shall be responsible in the conduct of the undertaking:

Over-all Head:	Deputy Commissioner of Internal Revenue (DCIR) Operations Group
Team I:	Large Taxpayers
Head:	ACIR, Large Taxpayers Service (LTS)
Co-Head:	ACIR, Enforcement & Advocacy Service (EAS)
Asst. Head:	HREA, LTS-Excise
Co-Asst. Head:	HREA, EAS
Members:	Chief, National Investigation Division (NID) and Representatives

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	Chief, Excise LT Field Operations Division (ELTFOD) and Representatives Excise LT Audit Division II Representatives [Optional] Excise Tax Areas (EXTA) Representatives [Optional]
Team II:	Non-Large Taxpayers
Head:	Concerned Regional Director
Asst. Head:	Concerned Assistant Regional Director
Members:	Chief, Regional Investigation Division (RID) and Representatives Representatives from Legal Division Representatives from Revenue District Office (RDO) [Optional] Excise Tax Areas (EXTA) Representatives [Optional]

Further, the BIR Strike Group may request other revenue personnel from other offices to provide assistance and relevant information relative to the enforcement operation.

B. All surveillance and/or enforcement activities shall be covered by Mission Orders (MOs). The MO shall be signed by the DCIR-Operations Group, ACIR, LTS or the concerned Regional Director.

The MOs shall be issued in triplicate/quadruplicate copies, and to be distributed as follows:

Original –	Revenue Officer/s (ROs) directed to conduct the surveillance, and to be attached to the report on surveillance after termination of the activity.
2nd Copy –	Investigating Office's / Division file copy
3rd Copy –	Issuing Office's file copy
4th Copy –	Taxpayer's copy (in case of overt surveillance)

C. The surveillance and/or enforcement activities relative to the implementation of this Order shall either be covert and/or overt surveillance. Covert surveillance shall be resorted to initially evaluate the factual circumstances to determine reasonable ground to believe that there is a violation of the NIRC, as amended, or its implementing rules and regulations. The SUBJECT of the surveillance generally comes from a confidential information or denunciation complaint filed by informers, private individuals or entities, and also from a referral of other government agencies [i.e. Bureau of Customs (BOC), National Bureau of Investigation (NBI), Philippine National Police (PNP), National Tobacco Administration (NTA), Local Government Units (LGUs), etc.].

D. In case the subject taxpayer is a registered excise large taxpayer under the LTS, the said activity shall be performed by Team I (ELTFOD, NID, Excise LT Audit Division II or EXTA). Likewise, if the identified owner/possessor of excisable articles or machinery, etc. falls under the jurisdiction of the Revenue Region (RR), Team II (RID, EXTA and/or concerned Revenue District Office having jurisdiction over the said taxpayer) shall conduct the activity.

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E. All legal issues shall be referred to the Law & Legislative Division under the Legal Service at the National Office or to the Legal Division of the concerned Revenue Region, whichever is applicable. The resolution of the legal issues shall be prepared and issued within ten (10) days from the date of receipt of such request.

F. The Head of the concerned BIR Strike Team shall coordinate with other government agencies and/or private individuals/entities who will be giving information relative to the activities covered by this Order.

G. The team shall submit the results of the surveillance and/or enforcement activities, together with the complete set of supporting documents to the DCIR-Operations Group for evaluation and appropriate action.

As part of their regular function, the ROs of ELTFOD shall be conducting regular covert surveillance to uncover violations of the NIRC pertaining to excise tax.

V. GUIDELINES AND PROCEDURES

1. Introduction to Surveillance Activity

Acquiring preliminary information on the person/entity to be placed under surveillance is necessary for an effective implementation thereof. Before the actual surveillance, the concerned BIR Strike Team must:

1.1 Acquaint himself with the business organization and economic activity of the subject of surveillance (SUBJECT), the location of the stores, outlets, production plant/factory and warehouse/storage facility, and such other relevant information as may be available and / or necessary. This must be done with utmost secrecy to prevent leakage of information to the SUBJECT.

1.2 Prepare the necessary recommendation for the issuance of a MO for approval and signature of the DCIR, Operations Group, ACIR, LTS or concerned Regional Director.

1.3 Brief the implementing officers on the acts to be performed in compliance with the MOs. The briefing shall be done at least thirty (30) minutes before the actual surveillance. *To preserve the confidentiality of the surveillance operation,* the identity of the target SUBJECT should be revealed to the implementing officers only upon arrival at the site of operations.

1.4 Coordinate with other Government Agencies, such as but not limited to NBI, BOC, PNP, and concerned Local Government Unit (LGU).

2. Conduct of Surveillance Activity

2.1 ROs Authorized to Conduct Surveillance Activities on Business Establishments for Possible Violations of Pertinent Excise Tax Provisions of the NIRC of 1997, as amended. – The Revenue Officers from the concerned team of the BIR STRIKE Group shall be authorized to conduct surveillance activities on identified business establishments for possible

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violations of the provision of the NIRC of 1997, as amended based on a validly issued MO signed by the concerned authorized revenue official, and shall perform the following procedures:

a. Observe the business operations of the SUBJECT. Develop leads from other sources by obtaining information from neighboring business establishments, locating additional outlets, stores, production plant/factory, warehouses/storage, or branches of the SUBJECT.

b. Know the suppliers and buyers, and volume of deliveries made to any by the SUBJECT. This should be done discreetly.

c. Determine any violation of internal revenue laws, rules and regulations committed by the SUBJECT.

d. Submit a report within five (5) days after completion of the said activity.

3. Evaluation of Surveillance Results –

3.1. A Memorandum Report shall be prepared recommending the necessary enforcement action if the result of surveillance activities warrants the same.

3.2 The enforcement actions may consist of any or all of the following:

a. Inventory stock-taking (requires MO)
Inventory taking of all articles subject to excise tax including raw materials, supplies, ingredients, machinery, equipment, apparatus, mechanical contrivances, and removable fixture of any sort used for their unlicensed production and false, counterfeit, restored or altered BIR internal revenue stamps, labels or tags found inside the SUBJECT's outlets, stores, production plant/factory, warehouses/storage, or branches and perform other acts necessary to ensure compliance with the provisions of the NIRC of 1997, as amended, and its implementing rules and regulations;

b. Apprehension/seizure of articles, machinery, apparatus, etc. (requires MO)
The concerned ROs are authorized to make apprehension/seizure of all articles, subject to excise tax including raw materials, packages, cigarette paper, tipping paper, cigarette filter tips, ingredients, machinery, equipment, apparatus, mechanical contrivances, and removable fixture of any sort used for their unlicensed/illicit/unauthorized production and false, counterfeit, restored or altered BIR internal revenue stamps, labels or tags for violation of any provision of NIRC of 1997, as amended, and its implementing rules or regulations, and the issuance of Apprehension Slip in accordance with Section 172 of the NIRC of 1997, as amended;

c. Forfeiture and Destruction of seized articles, machinery, apparatus, etc. in accordance with the provisions of Section 225 of the NIRC of 1997, as amended;

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d. Issuance and service of an Assessment to the SUBJECT (i.e. PAN or FLD & FAN) in accordance with the provisions of Sections 203, 222, 223, 228 of the NIRC of 1997, as amended, and Revenue Regulations (RR) No. 12-99, as amended by RR Nos. 18-13, 7-18 and 22-2020 pursuant to a validly issued Letter of Authority (LOA) as required under Section 13 of the NIRC of 1997, as amended, and its implementing rules or regulations; and

e. Filing of civil case and/or criminal case under the Run After Tax Evaders (RATE) Program pursuant to Sections 254, 263 and 265 of the NIRC of 1997, as amended.

3.3. Following the conclusion of the formal surveillance, the concerned BIR Strike Team shall refer the results, together with the complete set of supporting documents, to the DCIR-Operations Group for evaluation and approval.

4. Conduct of Enforcement Action Based on Surveillance Results

4.1. Prepare the necessary MO;

4.2. Serve the MOs to Subject Taxpayer – Directing concerned ROs to enter any house, building, or place where articles subject to excise tax are produced, or kept, or are believed by him upon reasonable grounds to be produced or kept, so far as may be necessary to examine, discover or seize the same; and, to make seizure of any article wherein excise taxes has not been paid, including raw materials, packages, cigarette paper, tipping paper, cigarette filter tips, ingredients, machinery, equipment, apparatus, mechanical contrivances, and removable fixture of any sort used for its unlicensed production and false, counterfeit, restored or altered BIR internal revenue stamps, labels or tags, in violation of the NIRC of 1997, as amended, and any of its implementing rule or regulation;

4.3. Conduct Inventory-Taking/Physical Count – Inventory taking of all articles subject to excise tax, including raw materials, packages, cigarette paper, tipping paper, cigarette filter tips, ingredients, machinery, equipment, apparatus, mechanical contrivances, and removable fixture of any sort used for its unlicensed production and false, counterfeit, restored or altered BIR internal revenue stamps, labels or tags used for their unlicensed/illicit/unauthorized production, and perform other acts necessary to ensure compliance with the provisions of the NIRC of 1997, as amended and its implementing rules and regulations;

4.4. Serve a letter notice to give subject taxpayer due process – A letter will be served directing the subject taxpayer to present the following documents within five (5) days from receipt of the letter:

a. Registration of Branch/Warehouse/Storage Facility (Sec. 236 of NIRC of 1997, as amended);

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b. Permit to operate as manufacturer/importer/dealer or maintain a warehouse, for excise tax purposes (Sec. 154 of NIRC of 1997, as amended);
c. Authenticated copy of Lease of Contract/Agreement;
d. Official Register Books (ORB) for each subject warehouse;
e. BIR Forms such as Official Delivery Notice (GUIA) / Excise Taxpayer Removal Declaration (ETRD) / Withdrawal Certificate (WC), Importation Documents (i.e. Bill of Lading, Packing List, Commercial Invoice, Import Entry and Internal Revenue Declaration (IEIRD), Proof of Payments, Authority to Release Imported Goods (ATRIG) or other proof of source of goods/ inventory kept in subject warehouses);
f. Inventory books per warehouse; and
g. Other documents that may be determined necessary.

4.5. Apprehension/Seizure or Detention of Goods –The concerned ROs are authorized to make apprehension/seizure of all articles subject to excise tax, including raw materials, packages, cigarette paper, tipping paper, cigarette filter tips, ingredients, machinery, equipment, apparatus, mechanical contrivances, and removable fixture of any sort used for their unlicensed/illicit/unauthorized production and false, counterfeit, restored or altered BIR internal revenue stamps, labels or tags for violation of any law, rule or regulation administered by the BIR and the issuance of Apprehension Slip in accordance with Section 172 of the NIRC of 1997, as amended. The enforcement team shall coordinate with the Property Division / Administrative Division / Forfeited Assets Management Unit (FAMU), whichever is applicable, for the proper storage and safekeeping of confiscated or seized articles.

4.6 The authorized ROs are not precluded from applying additional procedures that may be deemed necessary based on initial evaluation of the case provided that the same are carried out with due regard to the SUBJECT's legal rights.

4.7 A Memorandum Report shall be prepared containing the following:

1. Facts of the case;
2. Procedures undertaken;
3. Documentary requirements;
4. Results of the inventory taking;
5. Violations of the provisions of the NIRC of 1997, as amended, and its implementing rules and regulations & computation of internal revenue tax liability on excise tax; and
6. Recommendation:
  a. Forfeiture and destruction of seized articles, machinery, apparatus, etc.
  b. Issuance of a Letter of Authority and the corresponding Assessment (i.e. PAN or FLD & FAN)
  c. Filing of civil case and/or criminal case under the RATE Program pursuant to Sections 254, 263 and 265 of the NIRC of 1997, as amended.
  d. Closure of business – if there is sufficient ground for closure of business as provided under NIRC of 1997, as amended, and its

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implementing rules and regulations and other existing laws, rules and regulations administered by the BIR.

VI. REPORTORIAL REQUIREMENTS

1. The concerned BIR Strike Team shall prepare an Accomplishment/Status Report on the Surveillance and/or Enforcement Activity that was conducted within ten (10) days after the close of each month, and shall submit same to the DCIR-Operations Group.

2. The DCIR-Operations Group shall then submit a consolidated Accomplishment /Status Report within twenty (20) days from the close of each quarter to the Commissioner of Internal Revenue.

VII. REPEALING CLAUSE

All revenue issuances inconsistent herewith are hereby repealed or modified accordingly.

VIII. EFFECTIVITY

This Order shall take effect immediately.

LILIA CATRIS GUILLERMO
Commissioner of Internal Revenue
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