REPUBLIC OF THE PHILIPPINES
DEPARTMENT OF FINANCE
BUREAU OF INTERNAL REVENUE

May 04, 2010

REVENUE MEMORANDUM ORDER NO. 42-2010

SUBJECT: **Prohibition on the issuance of temporary restraining orders on the collection of taxes against the Bureau of Internal Revenue by Courts other than the Court of Tax Appeals, the issuance of warrants of distraint and garnishment, and/or levy on final decisions of the Bureau of Internal Revenue on disputed assessments, cases filed before the Court of Tax Appeals, and the sale of property distrained and granished.**

TO: **All Internal Revenue Officers and Others Concerned**

I. LEGAL PROVISIONS

Under Section 218 of the National Internal Revenue Code as amended, (herein referred to as the Tax Code) **NO COURT (except the CTA)** shall have the authority to grant an injunction to restrain the collection of any national internal revenue tax, fee or charge imposed by the said Tax Code. This prohibition shall apply to all collection activities, including imposition and collection of taxes prescribed in tax laws; issuance of warrants of distraint and garnishment, and/or levy on final decisions of the Bureau of Internal Revenue on disputed assessments, cases filed before the Court of Tax Appeals, and the sale of property distrained and garnished.

Moreover, pursuant to Section 11 of Republic Act No. 1125 - An Act Creating the Court of Tax Appeals, as amended by Republic Act No. 9282, no appeal taken to the Court of Tax Appeals from the decision of the Bureau of Internal Revenue on a disputed assessment shall suspend the payment, levy, distraint, and/or sale of any property of the taxpayer for the satisfaction of his tax liability, unless the Court of Tax Appeals suspends the collection under certain conditions.

Furthermore, when deemed proper, the Bureau of Internal Revenue or its duly authorized agent, may cause the issuance of a Notice of Tax Lien to safeguard the

interest of the national government pursuant to Section 219 of the 1997 Tax Code as well as other issuances by the Bureau of Internal Revenue.

II. ISSUANCE OF INJUNCTION OR TEMPORARY RESTRAINING ORDERS (TRO) BY COURTS

In Section 218 of the 1997 Tax Code, it is very clear and explicit that injunctions are not available to restrain collection of taxes. **No court** shall have the authority to grant an injunction to restrain the collection of any national internal revenue tax, fee or charge imposed by said Code.

By way of exception pursuant to Section 11 of Republic Act No. 1125 as amended, it is only the Court of Tax Appeals that has judicial jurisdiction to suspend the collection of taxes but only under certain conditions that is when its opinion the collection by the Bureau of Internal Revenue may jeopardize the interest of the government and/or the taxpayer and which case the Court of Tax Appeals may suspend the collection of taxes and require the taxpayer either to deposit the amount claimed or to file a surety bond for not more than double the amount being assessed.

Thus, the temporary restraining orders or injunctions issued by courts other than the Court of Tax Appeals against the Bureau of Internal Revenue contrary to the foregoing provision should be annulled and cancelled for lack of jurisdiction. The concerned legal officers of the Bureau of Internal Revenue are instructed to immediately take the necessary legal remedy to annul and cancel the temporary restraining order or injunction together with an appropriate administrative case against the erring judge whenever the circumstances so warrant. Please refer to the following cases for reference, *Zuno vs. Judge Anulfo G. Cabredo* A.M. No. RT J-0-1779 April 30, 2003; *Republic of the Philippines vs. Judge Ramon D. Caguioa* A.M. No. RTJ-07-2064 June 26, 2009; *Charles T. Burns, Jr. vs. Judge Ramon D. Caguioa* A.M. No. RTJ-07-2006 June 26, 2009.

III. ISSUANCE AND SERVICE OF WARRANTS OF DISTRAINT AND GARNISHMENT, AND/OR LEVY AND/OR NOTICE OF TAX LIENS

Upon issuance by the Commissioner or its authorized representative of the final decision on the disputed assessment against the taxpayer or upon filing of a Petition for Review before the Court of Tax Appeals in Division or En Banc of its decision upholding the assessment, Warrants of Distraint and Garnishment, and/or Levy shall forthwith be immediately issued and served pursuant to the provisions of Revenue Memorandum Order No. 39-2007 and other rules, regulations, and issuances of the Bureau of Internal Revenue when applicable.

Moreover, in order to safeguard the interest of the Government, the Tax Code under Section 206 authorizes the Bureau of Internal Revenue to place under constructive distraint the property of a delinquent taxpayer or any taxpayer who, in his opinion,

1. is retiring from any business subject to tax, or
2. is intending to leave the Philippines or
3. is intending to remove his property therefrom or
4. is intending to hide or conceal his property or
5. is intending to perform any act tending to obstruct the proceedings for collecting the tax due or which may be due from him.

IV. EFFECTIVITY

This Order takes effect immediately.

(Original Signed)
JOEL L. TAN-TORRES
Commissioner of Internal Revenue