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

Date: February 10, 2016

REVENUE REGULATIONS NO. 1-2016

SUBJECT : Amending Certain Provisions of Revenue Regulations No. 3-2005

TO : All Internal Revenue Officers and Others Concerned

SECTION 1. SCOPE. – Pursuant to Sections 7(a) and 244 of the National Internal Code of 1997, as amended, these regulations are hereby promulgated for the purpose of amending certain provisions of Revenue Regulations No. 3-2005, particularly in the issuance of Tax Clearance, one of the eligibility requirements pursuant to the Implementing Rules of Republic Act (RA) No. 9184, in relation to Executive Order (EO) No. 398.

SECTION 2. AMENDMENT. Items 2, 3 and 4 of Revenue Regulations No. 3-2005 shall be amended as follows:

"2.0 General Provisions

2.1 Latest Tax Returns as Pre-condition for Participation

2.1.1 EO 398 provides. - All persons, natural or juridical, local or foreign, desiring to enter into or participate in any contract with the government, its departments, bureaus, offices and agencies, including state universities and colleges, government-owned and/or controlled corporations, government financial institutions and local government units shall, as a pre-condition, submit, along with their proposal and/or bid, a copy of their latest income tax and business tax returns.

2.1.2 The above returns and the taxes due thereon must be filed and paid thru the Bureau's Electronic Filing and Payment System (eFPS)

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3.0 Definitions

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3.4 Tax Clearance

Refers to the clearance issued by the Accounts Receivable Monitoring Division (ARMD) (formerly Collection Enforcement Division) attesting that the taxpayer has no delinquent account and has satisfied all other criteria for the issuance of Tax Clearance as prescribed under 4.4.2 hereof.

4.0 Specific Provisions

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4.2 Acceptable Tax Return Submissions for Participation in Government Procurement- Only tax returns filed thru EFPS will be accepted as the required submission under Section 1 of Executive Order No. 398.

4.3 Validation of Tax Return and its applicable attachment/s by the Procuring Government Entity – The tax returns must be checked for authenticity by verifying from the list of Tax Clearances issued published in the BIR website www.bir.gov.ph, by accessing Tax Clearance under "announcement", then choose the applicable period of issuance. However, attachments to the tax returns (e.g., Audited Financial Statements, etc.) must be validated with the concerned Office under the Large Taxpayers Service if the bidder is classified as a large taxpayer, or with the Revenue District Office where the bidder is registered.

4.4 Tax Clearance

4.4.1 All applications for the issuance of Tax Clearance in accordance with the requirement under RA No. 9184 and EO No. 398 shall be manually filed with the Office of the ARMD, until such time that an on-line application for this purpose has been made available for use of prospective bidders.

4.4.2 Tax Clearance, with a validity period of six (6) months from the date of issuance shall be issued to any applicant who has satisfied the following criteria:

a. no unpaid annual registration fee;

b. no open valid "stop-filer" cases;

c. a regular user of the BIR's Electronic Filing and Payment System (eFPS) for at least two (2) consecutive months prior to the application for Tax Clearance ;

The required two (2) consecutive months usage of eFPS shall only apply to new applicants. For those which were previously issued Tax Clearance for bidding purposes, the requested Tax Clearance shall only be issued if they are found to be regular eFPS users from the time of enrollment up to the time of application.

d. no pending criminal charge with the Department of Justice or any competent court; and

e. no delinquent account and/or judicially protested tax assessments with decision favorable to the BIR

For purposes of this regulations, delinquent account shall refer to the outstanding tax liabilities arising from either self-assessed taxes (i.e., unpaid second installment of income tax due per income tax return filed, unredeemed dishonored check, tax payments using expired Tax Debit Memo and any unpaid tax due as declared in the tax return filed) or a result of an audit or third party information thru the issuance of an assessment notice which was not protested within the prescribed period.

Tax assessments timely protested administratively pursuant to the provisions of Revenue Regulations (RR) No. 12-99, as amended by RR No. 18-2014 and/or elevated to the Court of Tax Appeal (CTA) or to higher court within the prescribed period, and where the collection of the assessments are not yet considered final, executory and demandable, shall not be considered delinquent account. Timeliness in the filing of the administrative protest and/or the elevation of the case to the competent court must be certified by the handling office (i.e., Regional Legal Divisions, Litigation Division, Appellate Division); thus, this certification shall form part of the documentary requirements in the filing of an application for Tax Clearance.

However, indiscriminate filing of appeals to the CTA or with the higher court after the assessment has already become final, executory and demandable, is considered frivolous and dilatory in nature; and the same shall not be considered as timely filed. Hence, the concerned handling office should exercise prudence and due diligence in the issuance of the aforesaid required certification.

Applicants with tax assessments which were timely judicially protested but already covered by an earlier court decision favorable to the BIR and the same are subject of appeals or

motions for reconsideration timely filed by the taxpayers, shall be issued Tax Clearance, provided an escrow deposit shall be made with any authorized agent bank equivalent to the tax liabilities being protested. However, for pending cases with the higher court which were covered by a decision in favor of the taxpayer, there is no need for the applicant to make an escrow deposit.

For applicants with delinquent accounts but the tax liabilities involved were the subject of the applicant's application for either abatement of penalties or compromise settlement pursuant to Section 204 of the Tax Code, Tax Clearance shall also be issued, provided, the applicant shall make an escrow deposit with any authorized agent bank equivalent to the tax liabilities, including the applicable delinquency penalties (net of the amount offered for payment upon application of the abatement or compromise settlement).

4.4.3 The Tax Clearance to be issued by the Bureau, thru the ARMD, shall indicate, among others, the information regarding the taxpayer's current assets and current liabilities as indicated in the latest audited Financial Statements submitted to the Bureau. This information shall serve as reference by the Procuring Government Agency in the computation of the bidder's Net Financial Contracting Capacity (NFCC). The Tax Clearance to be issued to applicant with deficiency tax assessment which was timely protested administratively or elevated to the competent court as mentioned in Section 4.4.2.e of these regulations shall likewise have information on the details of these tax liabilities and the same shall be considered by the concerned Procuring Government Agency in the computation of the aforesaid NFCC.

4.4.4 The name of the prospective bidders/taxpayers who shall be found to have submitted a spurious Tax Clearance shall be forwarded to the Prosecution Division of the Bureau for the filing of the appropriate criminal charges. The Procuring Agency, on the other hand, shall impose the appropriate administrative penalty, in accordance with Section 69 of Republic Act No. 9184.

No Tax Clearance shall be issued to this prospective bidder, notwithstanding the satisfaction of the criteria provided under 4.4.2 of this regulations, until such time that the criminal case filed against the prospective bidder is resolved or the administrative sanctions imposed by the concerned procuring agency has been lifted, whichever is applicable.

4.5 Validation of Tax Clearance by Procuring Government Agency

A Tax Clearance obtained under paragraph 4.4 above must be verified for authenticity through the BIR website which will have a periodic updates of the list of taxpayers / participating firms with BIR-issued Tax Clearances."

SECTION 3. REPEALING CLAUSE. – All existing rules and regulations, revenue issuance, memoranda, rulings or parts thereof, which are contrary to or inconsistent with the provisions of these Regulations are hereby amended, modified or repealed accordingly.

SECTION 4. EFFECTIVITY.- The provisions of these Regulations shall take effect fifteen (15) days after publication in any newspaper of general circulation.

(Original Signed)
CESAR V. PURISIMA
Secretary of Finance

Recommending Approval:

(Original Signed)
KIM S. JACINTO-HENARES
Commissioner of Internal Revenue

J4