REPUBLIC OF THE PHILIPPINES
DEPARTMENT OF FINANCE
BUREAU OF INTERNAL REVENUE

Date: November 28, 2013

REVENUE REGULATIONS NO. 18-2013

SUBJECT : Amending Certain Sections of Revenue Regulations No. 12-99 Relative to the Due Process Requirement in the Issuance of a Deficiency Tax Assessment

TO : All Internal Revenue Officers and Others Concerned

SECTION 1. Scope. — Pursuant to the provisions of Section 244, in relation to Section 245 of the National Internal Revenue Code of 1997 (Tax Code), as amended, these Regulations are hereby promulgated to amend provisions of Revenue Regulations (RR) No. 12-99.

SECTION 2. Amendment. — Section 3 of RR 12-99 is hereby amended by deleting Section 3.1.1 thereof which provides for the preparation of a Notice of Informal Conference, thereby renumbering other provisions thereof, and prescribing other provisions for the assessment of tax liabilities. Section 3 of RR 12-99 shall now read as follows:

"**SECTION 3.** ***Due Process Requirement in the Issuance of a Deficiency Tax Assessment. —***

3.1 Mode of procedure in the issuance of a deficiency tax assessment:

3.1.1 ***Preliminary Assessment Notice (PAN)***. — If after review and evaluation by the Commissioner or his duly authorized representative, as the case may be, it is determined that there exists sufficient basis to assess the taxpayer for any deficiency tax or taxes, the said Office shall issue to the taxpayer a Preliminary Assessment Notice (PAN) for the proposed assessment. It shall show in detail the facts and the law, rules and regulations, or jurisprudence on which the proposed assessment is based (see illustration in ANNEX "A" hereof).

If the taxpayer fails to respond within fifteen (15) days from date of receipt of the PAN, he shall be considered in default, in which case, a Formal Letter of Demand and Final Assessment Notice (FLD/FAN) shall be issued calling for payment of the taxpayer's deficiency tax liability, inclusive of the applicable penalties.

If the taxpayer, within fifteen (15) days from date of receipt of the PAN, responds that he/it disagrees with the findings of deficiency tax or taxes, an FLD/FAN shall be issued within fifteen (15) days from filing/submission of the taxpayer's response, calling for payment of the taxpayer's deficiency tax liability, inclusive of the applicable penalties.

3.1.2 ***Exceptions to Prior Notice of the Assessment.*** — Pursuant to Section 228 of the Tax Code, as amended, a PAN shall not be required in any of the following cases:

(i) When the finding for any deficiency tax is the result of mathematical error in the computation of the tax appearing on the face of the tax return filed by the taxpayer; or
(ii) When a discrepancy has been determined between the tax withheld and the amount actually remitted by the withholding agent; or
(iii) When a taxpayer who opted to claim a refund or tax credit of excess creditable withholding tax for a taxable period was determined to have carried over and automatically applied the same amount claimed against the estimated tax liabilities for the taxable quarter or quarters of the succeeding taxable year; or
(iv) When the excise tax due on excisable articles has not been paid; or
(v) When an article locally purchased or imported by an exempt person, such as, but not limited to, vehicles, capital equipment, machineries and spare parts, has been sold, traded or transferred to non-exempt persons.

In the above-cited cases, a FLD/FAN shall be issued outright.

3.1.3 ***Formal Letter of Demand and Final Assessment Notice (FLD/FAN).*** — The Formal Letter of Demand and Final Assessment Notice (FLD/FAN) shall be issued by the Commissioner or his duly authorized representative. The FLD/FAN calling for payment of the taxpayer's deficiency tax or taxes shall state the facts, the law, rules and regulations, or jurisprudence on which the assessment is based; *otherwise, the assessment shall be void* (see illustration in ANNEX "B" hereof).

3.1.4 ***Disputed Assessment.*** — The taxpayer or its authorized representative or tax agent may protest administratively against the aforesaid FLD/FAN within thirty (30) days from date of receipt thereof. The taxpayer protesting an assessment may file a written request for reconsideration or reinvestigation defined as follows:

(i) **Request for reconsideration** — refers to a plea of re-evaluation of an assessment on the basis of existing records without need of

additional evidence. It may involve both a question of fact or of law or both.

(ii) **Request for reinvestigation** — refers to a plea of re-evaluation of an assessment on the basis of newly discovered or additional evidence that a taxpayer intends to present in the reinvestigation. It may also involve a question of fact or of law or both.

The taxpayer shall state in his protest (i) the nature of protest whether reconsideration or reinvestigation, specifying newly discovered or additional evidence he intends to present if it is a request for reinvestigation, (ii) date of the assessment notice, and (iii) the applicable law, rules and regulations, or jurisprudence on which his protest is based, otherwise, his protest shall be considered *void and without force and effect.*

If there are several issues involved in the FLD/FAN but the taxpayer only disputes or protests against the validity of some of the issues raised, the assessment attributable to the undisputed issue or issues shall become final, executory and demandable; and the taxpayer shall be required to pay the deficiency tax or taxes attributable thereto, in which case, a collection letter shall be issued to the taxpayer calling for payment of the said deficiency tax or taxes, inclusive of the applicable surcharge and/or interest.

If there are several issues involved in the disputed assessment and the taxpayer fails to state the facts, the applicable law, rules and regulations, or jurisprudence in support of his protest against some of the several issues on which the assessment is based, the same shall be considered undisputed issue or issues, in which case, the assessment attributable thereto shall become final, executory and demandable; and the taxpayer shall be required to pay the deficiency tax or taxes attributable thereto and a collection letter shall be issued to the taxpayer calling for payment of the said deficiency tax, inclusive of the applicable surcharge and/or interest.

For requests for reinvestigation, the taxpayer shall submit all relevant supporting documents in support of his protest within sixty (60) days from date of filing of his letter of protest, otherwise, the assessment shall become final. The term "*relevant supporting documents*" refer to those documents necessary to support the legal and factual bases in disputing a tax assessment as determined by the taxpayer. The sixty (60)-day period for the submission of all relevant supporting documents shall not apply to requests for reconsideration. Furthermore, the term "the assessment shall become final" shall mean the taxpayer is barred from disputing the correctness of the issued assessment by introduction of newly discovered or additional evidence, and the FDDA shall consequently be denied.

If the taxpayer fails to file a valid protest against the FLD/FAN within thirty (30) days from date of receipt thereof, the assessment shall become final, executory and demandable. No request for reconsideration or reinvestigation shall be granted on tax assessments that have already become final, executory and demandable.

If the protest is denied, in whole or in part, by the Commissioner's duly authorized representative, the taxpayer may either: (i) appeal to the Court of Tax Appeals (CTA) within thirty (30) days from date of receipt of the said decision; or (ii) elevate his protest through request for reconsideration to the Commissioner within thirty (30) days from date of receipt of the said decision. No request for reinvestigation shall be allowed in administrative appeal and only issues raised in the decision of the Commissioner's duly authorized representative shall be entertained by the Commissioner.

If the protest is not acted upon by the Commissioner's duly authorized representative within one hundred eighty (180) days counted from the date of filing of the protest in case of a request reconsideration; or from date of submission by the taxpayer of the required documents within sixty (60) days from the date of filing of the protest in case of a request for reinvestigation, the taxpayer may either: (i) appeal to the CTA within thirty (30) days after the expiration of the one hundred eighty (180)-day period; or (ii) await the final decision of the Commissioner's duly authorized representative on the disputed assessment.

If the protest or administrative appeal, as the case may be, is denied, in whole or in part, by the Commissioner, the taxpayer may appeal to the CTA within thirty (30) days from date of receipt of the said decision. Otherwise, the assessment shall become final, executory and demandable. A motion for reconsideration of the Commissioner's denial of the protest or administrative appeal, as the case may be, shall not toll the thirty (30)-day period to appeal to the CTA.

If the protest or administrative appeal is not acted upon by the Commissioner within one hundred eighty (180) days counted from the date of filing of the protest, the taxpayer may either: (i) appeal to the CTA within thirty (30) days from after the expiration of the one hundred eighty (180)-day period; or (ii) await the final decision of the Commissioner on the disputed assessment and appeal such final decision to the CTA within thirty (30) days after the receipt of a copy of such decision.

It must be emphasized, however, that in case of inaction on protested assessment within the 180-day period, the option of the taxpayer to either: (1) file a petition for review with the CTA within 30 days after the expiration of the 180-day period; or (2) await the final decision of the Commissioner or his duly

authorized representative on the disputed assessment and appeal such final decision to the CTA within 30 days after the receipt of a copy of such decision, are mutually exclusive and the resort to one bars the application of the other.

3.1.5 ***Final Decision on a Disputed Assessment (FDDA)*****. —** The decision of the Commissioner or his duly authorized representative shall state the (i) facts, the applicable law, rules and regulations, or jurisprudence on which such decision is based, *otherwise, the decision shall be void* (see illustration in ANNEX "C" hereof), and (ii) that the same is his *final decision*.

3.1.6 ***Modes of Service.*** **—** The notice (PAN/FLD/FAN/FDDA) to the taxpayer herein required may be served by the Commissioner or his duly authorized representative through the following modes:

(i) The notice shall be served through personal service by delivering personally a copy thereof to the party at his registered or known address or wherever he may be found. A *known address* shall mean a place other than the registered address where business activities of the party are conducted or his place of residence.

In case personal service is not practicable, the notice shall be served by substituted service or by mail.

(ii) Substituted service can be resorted to when the party is not present at the registered or known address under the following circumstances:

The notice may be left at the party's registered address, with his clerk or with a person having charge thereof.

If the known address is a place where business activities of the party are conducted, the notice may be left with his clerk or with a person having charge thereof.

If the known address is the place of residence, substituted service can be made by leaving the copy with a person of legal age residing therein.

If no person is found in the party's registered or known address, the revenue officers concerned shall bring a barangay official and two (2) disinterested witnesses to the address so that they may personally observe and attest to such absence. The notice shall then be given to said barangay official. Such facts shall be contained in the bottom portion of the notice, as well as the names, official position and signatures of the witnesses.

Should the party be found at his registered or known address or any other place but refuse to receive the notice, the revenue officers concerned shall bring a barangay official and two (2) disinterested witnesses in the presence of the party so that they may personally observe and attest to such act of refusal. The notice shall then be given to said barangay official. Such facts shall be contained in the bottom portion of the notice, as well as the names, official position and signatures of the witnesses.

"*Disinterested witnesses*" refers to persons of legal age other than employees of the Bureau of Internal Revenue.

(iii) Service by mail is done by sending a copy of the notice by registered mail to the registered or known address of the party with instruction to the Postmaster to return the mail to the sender after ten (10) days, if undelivered. A copy of the notice may also be sent through reputable professional courier service. If no registry or reputable professional courier service is available in the locality of the addressee, service may be done by ordinary mail.

The server shall accomplish the bottom portion of the notice. He shall also make a written report under oath before a Notary Public or any person authorized to administer oath under Section 14 of the NIRC, as amended, setting forth the manner, place and date of service, the name of the person/barangay official/professional courier service company who received the same and such other relevant information. The registry receipt issued by the post office or the official receipt issued by the professional courier company containing sufficiently identifiable details of the transaction shall constitute sufficient proof of mailing and shall be attached to the case docket.

Service to the tax agent/practitioner, who is appointed by the taxpayer under circumstances prescribed in the pertinent regulations on accreditation of tax agents, shall be deemed service to the taxpayer."

SECTION 3. Amendment. — Section 5 of RR 12-99 is hereby amended by modifying Section 5.5 thereof which provides for modes of procedures in computing for the tax and/or applicable surcharge. In cases of late payment of a deficiency tax assessed, the taxpayer shall be liable for the delinquency interest provided under Section 249 (C)(3) of the 1997 National Internal Revenue Code, as amended. Section 5.5 of RR 12-99 shall now read as follows:

"5.5 Late payment of a deficiency tax assessed. – In general, the deficiency tax assessed shall be paid by the taxpayer within the time prescribed in the notice and demand, otherwise, such taxpayer shall be liable for the delinquency interest incident to late payment.

Illustration 1: Based on the above Illustration No. 3, Scenario 4, assuming that the calendar year 1997 deficiency income tax assessment against XYZ CORPORATION, in the amount of P304,771.67, is not paid by June 30, 1999, the deadline for payment of the assessment, and assuming further that this assessment has already become final and collectible. In this case, such corporation shall be considered late in payment of the said assessment. Assuming, further, that the corporation pays its tax assessment only by July 31, 1999, the delinquency interest for late payment shall be computed as follows:

Calendar Year 1997

Income tax due per investigation		P350,000.00
Less: Income tax paid per return		P175,000.00
Deficiency income tax		P175,000.00
Add: 50% surcharge for filing a fraudulent or false return (P175,000.00 times 50%)		P 87,500.00
20% int. p.a. fr. 4-15-98 to 7-31-99 (P175,000.00 times .258630)		P 45,260.27
Total amount due		P307,760.27
Add: 20% delinquency interest p.a. from 7-1-99 to 7-31-99		
Basic Tax	175,000.00	
Surcharge	87,500.00	
20% int. p.a. fr. 4-15-98 to 6-30-99	42,271.67	
Total	304,771.67	
(P304,771.67 times .0166667)		P5,079.54
Total amount due (excluding suggested compromise penalty for late payment)		P312,839.81

Illustration 2: Based on the immediately preceding Illustration, assuming that the calendar year 1997 deficiency income tax assessment against XYZ CORPORATION, in the amount of P304,771.67, is not paid by June 30, 1999, the deadline for payment of the assessment but is instead timely protested. Assuming further that after exhaustion of all administrative remedies, the

assessment was upheld and became final, executory and demandable on July 1, 2000. However, payment was made by the taxpayer only on June 30, 2002. In this case, such corporation shall be considered late in payment of the said assessment. The civil penalties for late payment shall be computed as follows:

Calendar Year 1997

Income tax due per investigation		P350,000.00
Less: Income tax paid per return		P175,000.00
Deficiency income tax		P175,000.00
Add: 50% surcharge for filing a fraudulent or false return (P175,000.00 times 50%)		P 87,500.00
20% int. p.a. fr. 4-15-98 to 6-30-2002 (P175,000.00 times .841644)		P147,287.70
Total amount due		P409,787.70
Add: 20% delinquency interest p.a. from 7-2-2000 to 6-30-2002		
Basic Tax	175,000.00	
Surcharge	87,500.00	
20% int. p.a. fr. 4-15-98 to 7-1-00 (.4427397)	77,479.45	
Total	339,979.45	
(P339,979.45 times .3989041)		P135,619.20
Total amount due (excluding suggested compromise penalty for late payment)		P545,406.90

Illustration 3: Assuming that in calendar year 1997, XYZ CORPORATION filed a false or fraudulent return and was assessed of deficiency basic income tax amounting to Php100,000. Assuming further that XYZ CORPORATION timely protested the said assessment. After exhaustion of all administrative remedies, the assessment was upheld and became final, executory and demandable on April 15, 2001. However, payment was made by the taxpayer only on April 15, 2003.

In this case, such corporation shall be considered late in payment of the said assessment. The civil penalties for late payment shall be computed as follows:

Calendar Year 1997

Total deficiency income tax assessment			P100,000.00
Add: 50% surcharge for filing a fraudulent or false return			P 50,000.00
20% interest p.a. from 4-15-1998 to 4-15-2003 (P100,000 x 20% x 5)			P100,000.00
Delinquency Interest 20% interest p.a. from 4-15-2001 to 4-15-2003			
	Basic Tax	100,000.00	
	Surcharge	50,000.00	
	20% int. p.a. fr. 4-15-98 to 4-15-01	60,000.00	
	Total	210,000.00	
	(P210,000.00 x 20% x 2)		P84,000.00
Total Amount Due As of April 15, 2003 (excluding suggested compromise penalty for late payment)			P334,000.00 =========="

SECTION 4. Repealing Clause. — Any rules and regulations or parts thereof inconsistent with the provisions of these Regulations are hereby repealed, amended, or modified accordingly.

SECTION 5. Effectivity. —The provisions of these Regulations shall take effect after fifteen (15) days following 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