REPUBLIKA NG PILIPINAS
KAGAWARAN NG PANANALAPI
KAWANIHAN NG RENTAS INTERNAS

March 4, 2005

REVENUE REGULATIONS NO. 6-2005

SUBJECT : Providing for the Implementing Rules for Executive Order No. 399 (EO 399), Directing the Bureau of Internal Revenue (BIR) to Establish the "No Audit Program" (NAP) for the Purpose of Enhancing Tax Compliance and Increasing Tax Collections.

TO : All Internal Revenue Officials, Employees and Others Concerned.

SECTION 1. BACKGROUND

Her Excellency Gloria Macapagal-Arroyo issued on January 17, 2005 Executive Order No. 399 (EO 399), which seeks to encourage taxpayers to voluntarily declare and pay higher taxes thereby reducing administrative costs that are entailed from audit and investigations conducted by the Bureau of Internal Revenue (Bureau). Under the "No Audit Program" (NAP), taxpayers who qualify under its terms and conditions shall be exempted from audit and/or investigation for the period for which they qualify. The NAP shall be in force for taxable years 2004, 2005, 2006, 2007 and 2008.

Pursuant to Section 6 and Section 244 of the National Internal Revenue Code of 1997 (Republic Act No. 8424) in relation to EO 399, these regulations are hereby promulgated to prescribe the policies and guidelines for the NAP.

SECTION 2. DEFINITIONS

(a) **Base Year** – refers to the taxable year immediately prior to the Current Taxable Year. To determine whether a taxpayer has qualified for the NAP for taxable year 2004, the Base Year from which the growth rate required to qualify shall be taxable year 2003.

(b) **Current Taxable Year** – refers to the taxable year for which qualification under the NAP is sought.

(c) **Taxable Year –** refers to any 12-month period starting on any date from July 1 of the prior calendar year to June 30 of the indicated year.

> **Illustration:** For taxpayers who are on a fiscal year basis, if his accounting period starts on July 1, 2003, then returns filed for said period, the same is considered returns for taxable year 2004.

(d) **Taxpayer –** refers to any person whether individual or corporate, earning purely business income.

SECTION 3. COVERAGE

Any taxpayer registered with the Bureau of Internal Revenue and who has actually filed and paid income taxes and business taxes for taxable year 2003 may participate in the "No Audit Program" (NAP). If a taxpayer fails to participate and qualify for the NAP for taxable year 2004, he shall no longer be allowed to participate in the NAP for any year thereafter. If a taxpayer who participates in the NAP for a Taxable Year shall fail to qualify for the NAP for any subsequent Taxable Year, he shall be disqualified from further participating in the NAP.

* * * * *

ILLUSTRATION:

Taxpayer A has been registered as a taxpayer with the Bureau of Internal Revenue since 1990. In order to be qualified to participate in the NAP, he must have all the qualification required under Section 5 for taxable year 2004. If he satisfies all the requirements for qualification, he shall enjoy the benefit of exemption from audit and/or investigation for taxable year 2004.

If Taxpayer A fails to participate or does not qualify for the NAP for taxable year 2005, his benefit of exemption from audit and/or investigation for taxable year 2004 shall continue. However, he can no longer participate in the NAP for the duration of the program, i.e., for taxable years 2005, 2006, 2007, and 2008.

* * * * *

A taxpayer who commences business operations and registers with the Bureau of Internal Revenue at anytime after the effectivity of these Regulations may apply for qualification under NAP on the subsequent Taxable Year from the taxable

year when he commenced business operations and registration with the Bureau of Internal Revenue; Provided, however, that if he fails to participate and qualify on the taxable year subsequent to the taxable year he commenced business operations, he shall be disqualified from further participating in the program.

* * * * *

ILLUSTRATION:

Taxpayer A started his business in 2004. He must participate and qualify for Tax Year 2005, otherwise, he is barred from participating in the NAP.

* * * * *

SECTION 4. TAXPAYER'S BENEFITS

Taxpayers who qualify under the terms and conditions prescribed herein shall be exempted from audit and/or investigation of his tax, except Overseas Communication Tax and all forms of withholding taxes, for that particular Taxable Year for which he qualifies.

SECTION 5. CRITERIA FOR QUALIFICATION UNDER THE PROGRAM

For a taxpayer to qualify for the NAP, he must satisfy all of the following:

a. income tax payment for the Current Taxable Year must exceed the income tax payment for the Base Year by at least 20%;

b. income tax payment for the last quarter of the Current Taxable Year must exceed the income tax payment for the last quarter of the Base Year by at least 25%;

c. income tax payment for the first quarter of Taxable Year immediately following the Current Taxable Year must exceed the income tax payment for the first quarter of the Current Taxable Year by at least 25%;

d. ratio of income tax payment to gross sales/receipts for the Current Taxable Year must be at least equal to that of the Base Year;

e. ratio of income tax payment to gross/receipts for the first quarter of the Taxable Year immediately following the Current Taxable Year must be at least equal to that of the first quarter of the Current Taxable Year;

f. ratio of net value added tax or business tax actually paid to gross sales/receipts for the Current Taxable Year must be at least equal to that of the Base Year, provided, however, that in no case shall be it be less than three percent (3%), or the industry benchmark as may be determined from time to time by the Commissioner Internal Revenue.

For purposes of determining the tax payments for the Current Taxable Year, only taxes actually paid in cash as shown in the Income Tax Return, quarterly income tax return, value added tax return and percentage tax return shall be considered. For this purpose, creditable withholding taxes for taxes withheld for the tax year concerned, which are properly supported by a Certificate of Tax Withheld (BIR Form 2307), shall be considered as cash payments. On the other hand, TCCs/TDMs, and tax credit carried over from prior years are considered non-cash items and shall be excluded from determining the tax payments for the Current Taxable Year.

However, for purposes of determining tax payments for the Base Year from which the increase in tax payments and ratio required to qualify for the NAP shall be measured, the total amount of tax due for the Base Year shall be included regardless of the mode of payment, i.e., whether paid in cash, creditable withholding tax, TCCs/TDMs, or tax credit carried over from prior Taxable Years.

In the event the taxpayer was not in operation for the whole period of the Base Year, the tax payments for that period shall be annualized, and such annualized tax payments shall be used as the tax payment of the Base Year from which the growth and ratio required shall be computed.

* * * * *

ILLUSTRATION:

Taxpayer A, who is on calendar year basis of accounting, started his business on July 1, 2003, and paid income tax amounting to P60,000.00. For purposes of computing his tax payment for the Base Year 2003, his total income tax payment shall be divided by the number of month he is in operation and then multiplied by 12 months. In this case, his annualized income tax payment for 2003 is P60,000/6 x 12 months, or P120,000.00.

* * * * *

In the event new legislative measures shall be adopted, the growth rate and ratio shall be adjusted to reflect the effect of the increase/decrease resulting from said legislative measures.

In the event a taxpayer shall have been issued an assessment that has become final and executory relating to tax payments for a Base Year, the tax payment for the Base Year shall be adjusted in accordance with the assessment.

In case the taxpayer amends his tax and information returns for any Base Year, the higher of the original amount and the amended amount shall be used as the tax payment for the Base Year for purposes of this section.

SECTION 6. WHO MAY NOT QUALIFY FOR THE PROGRAM.

The following Taxpayers may not participate in the Program:

a. Those who are reporting net loss or have a Net Operating Loss Carryover,

b. Those who are paying Minimum Corporate Income Taxes,

c. Those whose gross income, whether in whole or partially, are not subject to the regular individual/corporate income taxes,

SECTION 7. RESERVATION OF THE POWER TO AUDIT.

The provision of Section 4 of these Regulations notwithstanding, the Commissioner shall have the right to audit a taxpayer who falls in any of the following circumstances:

a. Those to whom Letters Notice have been issued, which were not disputed and which remains outstanding on the date the taxpayer filed the application required under these Regulations,

b. Those to whom Letters Notice may be issued by the Commissioner himself in the future as a result of information obtained from third party information or from information filed by the taxpayer himself that there appears to be a discrepancy in his tax payment,

c. Those who shall fail to file all the required tax and information return, or do not provide all the information/data required in the tax and information returns filed.

SECTION 8. PROCEDURES FOR AVAILMENT.

The Commissioner of Internal Revenue shall issue the necessary revenue memorandum order/circular and/or any appropriate revenue issuances for the effective and efficient implementation of the NAP.

SECTION 9. DEADLINE.

A Taxpayer must file an application form, duly accomplished, together with all its attachment, not later than thirty (30) days from the statutory deadline for the filing of first quarterly return for the succeeding year, or thirty (30) days from the effectivity of these Regulations, whichever comes later.

All returns and payments made by taxpayer who applied to participate in the NAP are deemed to be final and conclusive, and by applying to participate in the NAP, the taxpayer shall be deemed to have waived all of his rights to claim any refund pertaining thereto.

SECTION 10. ISSUANCE OF CERTIFICATE OF EXEMPTION FROM AUDIT/INVESTIGATION.

The application and supporting document shall be reviewed by a National Committee on NAP to be created by the Commissioner. The National Committee on NAP shall recommend the issuance of a Certificate of Exemption from Audit/Investigation which shall be signed by the Commissioner of Internal Revenue, or to such other office/officer as may be authorized by the Commissioner of Internal Revenue.

SECTION 11. EFFECTIVITY CLAUSE.

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)
GUILLERMO L. PARAYNO, JR.
Commissioner of Internal Revenue