

REPUBLIC OF THE PHILIPPINES
DEPARTMENT OF FINANCE
BUREAU OF INTERNAL REVENUE

Quezon City

July 31, 2006

REVENUE REGULATIONS NO. 14-2006

SUBJECT : Providing for the Revised Implementing Rules for Executive Order No. 399 (EO 399) As Amended by Executive Order No. 422 (EO 422) Directing the Bureau of Internal Revenue to Establish the "No Audit Program" (NAP) for the Purpose of Enhancing Tax Compliance and Increasing Tax Collections with Extension of the Deadline for Availment Thereof

TO : All Internal Revenue Officials, Employees and Others Concerned

BACKGROUND

On January 17, 2005, her Excellency Gloria Macapagal-Arroyo issued 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 (BIR). On April 26, 2005, Executive Order 399 was further amended and enhanced with the issuance of EO 422.

SECTION 1. SCOPE. — Pursuant to Section 6 and Section 244 of the National Internal Revenue Code of 1997 in relation to EO 399, as amended, these regulations are hereby promulgated to prescribe the policies and guidelines for the No Audit Program (NAP).

Taxpayers who qualify under the "No Audit Program", 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.

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 on which the growth rate shall be imposed 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 August 1, 2003.

Illustration:

For taxpayers who are on a fiscal year basis, if his accounting period starts on August 1, 2003, then returns filed for said period are considered returns for taxable year 2004.

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

SECTION 3. COVERAGE. — Any taxpayer registered with the BIR and who has actually filed and paid income taxes and business taxes for taxable year 2003 may participate in the NAP. If a taxpayer fails to participate and qualify for taxable year 2004, he shall no longer be allowed to participate for any year thereafter unless his business was established after year 2004. 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 BIR since 1990. In order to be qualified to participate in the NAP, he must have all the qualifications 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 remaining duration of the program, i.e., for taxable years 2005, 2006, 2007, and 2008.

A taxpayer who commences business operations and registers with the BIR 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 BIR. 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 Taxable 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 liabilities, except Overseas Communication Tax and all forms of withholding taxes, for that particular Taxable Year for which he qualifies.

SECTION 5. CRITERIA FOR QUALIFICATION TO THE PROGRAM. -
For taxpayers to qualify for the NAP he must satisfy all of the following:

- a. income tax due/tax payment for the Current Taxable Year must exceed the income tax payment for the Base Year by at least **Thirty percent (30%):**
- b. 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;

For taxpayers earning mixed income (business income and employment income), the computation of the 30% increase in the income tax payment and the ratio of income tax payment to gross sales must be based on the tax paid and income by the taxpayer from his business only by simulating tax payment on business income using the lowest tax rate as the starting rate in computing the tax thereon. Thus, the increase/decrease in the compensation income and its corresponding effect on the tax due for the current taxable year shall be excluded for purposes of computing the compliance with the required increase in income tax payment and the ratio of tax payment to gross sales/receipts.

Illustration:

Mr. X, single, dealer of automobile parts, reported the following items of income and taxes paid

	<u>2003</u>	<u>2004</u>
Gross compensation income	550,000.00	750,000.00
Gross sales	1,200,000.00	1,500,000.00
Taxable compensation income	530,000.00	730,000.00
Taxable business income	280,000.00	320,000.00
Income tax due/paid	224,200.00	301,000.00
Income tax due from business	59,000.00	71,000.00
VAT due/paid	20,000.00	30,000.00

For purposes of availing NAP, how much will Mr. X pay in order to qualify?

1. Compute for the increase in tax payment for the current year vs. base year

a. Income tax

Tax paid for the current year	71,000.00
Less: tax paid for the base year	<u>59,000.00</u>
Increase in tax payment	12,000.00
Divide: tax paid-base year	<u>59,000.00</u>
Percentage of increase	<u>20%</u>

b. VAT

VAT paid for the current year	30,000.00
Less: VAT paid for the base year	<u>20,000.00</u>
Increase in VAT payment	10,000.00
Divide: VAT paid-base year	<u>20,000.00</u>
Percentage of increase	<u>50%</u>

2. Compare the ratio of tax paid to gross sales for the base year vs. current year

a. Income tax

	<u>2003</u>	<u>2004</u>
Gross sales	1,200,000.00	1,500,000.00
Income tax due/paid from business	59,000.00	71,000.00
Income tax payment ratio	4.92%	4.73%

b. VAT

	<u>2003</u>	<u>2004</u>
Gross sales	1,200,000.00	1,500,000.00
VAT due/paid	20,000.00	30,000.00
Ratio of VAT/Percentage tax	1.67%	2.00%

3. Amount to be paid to qualify for NAP

a. Income tax

i. Required 30% increase in tax payment for the current year

Income tax paid – base year	59,000.00
Required increase	<u>130%</u>

Tax to be paid for the current year	<u>76,700.00</u>
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ii. Required ratio for the current year, at least equal to base year

Gross sales – current year	1,500,000.00
Ratio from base year	<u>4.92%</u>
Tax to be paid for current year	<u>73,800.00</u>

b. VAT – Required 30% VAT payment

Gross sales – current year	1,500,000.00
Required tax rate	<u>30%</u>
VAT to be paid for the current year	<u>45,000.00</u>

4. Required additional payment

a. Income tax

Income tax required to be paid	76,700.00
Less: income tax paid per return	<u>71,000.00</u>
Additional income tax to be paid	<u>5,700.00</u>
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b. VAT

VAT required to be paid	45,000.00
Less: VAT paid per return	<u>30,000.00</u>
Additional VAT to be paid	<u>15,000.00</u>
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Taxpayers who paid or are paying the Minimum Corporate Income Tax (MCIT) can still avail of the NAP provided that the required increase in the income tax payment and the ratio of tax payment to gross sales/receipts shall be based on the MCIT due in the base year and the MCIT due in the current year. Further, excess MCIT shall not be credited from the succeeding year's tax due, even if the normal income tax becomes higher than the MCIT. Deferred Charges-MCIT for the current year must be closed to retained earnings account.

Taxpayers enjoying the benefit of the preferential tax rates (not subject to the Normal Income Tax Rate) can still avail of the program provided that the required increase in the income tax payment and the ratio of income tax payment to gross sales/receipts as stated in letters (a) and (b) hereof are complied and shall be based on the tax due computed applying the preferential tax rate for the base year and the current year. The same rule applies, even if the taxpayer's current year is no longer entitled to the application of the preferential tax rate.

c. ratio of net VAT 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 it be less than five (5%) percent for financial institutions and (4%) for other percentage taxpayers, or thirty percent (30%) for seller of goods and fifty percent (50%) for seller of services of the Value-Added tax rate provided by law for any given period for those subject to value added tax, or the industry benchmark as may be determined from time to time by the Commissioner of Internal Revenue (Commissioner). Provided however, that starting January 1, 2006, transactions with the government shall be excluded for the purpose of computing the herein minimum VAT ratio.

VAT zero-rated transactions and VAT exempt transactions and transactions not subject to percentage tax, shall not be considered for purposes of determining compliance with the required VAT or percentage tax ratio. Provided, however, that the gross sales/receipts from the aforesaid transactions are included for purposes of qualifying with the requirements of letters (a) and (b) of this section.

Taxpayers having purely VAT zero-rated transactions or VAT exempt transactions and transactions not subject to percentage tax, shall not be required to comply with letter (c) and shall be deemed qualified for said exemption provided that the requirements of letters (a) and (b) of this section are complied with. Provided, further, that photocopies of the required documents included in the NAP Participation Form (BIR Form No. 2114 April 2006 Version) shall be presented for validation of their business tax type/s.

To qualify for the NAP, taxpayer subject to VAT in 2003 and to Gross Receipts Tax in 2004, shall comply with the criteria stated in Sec. 5 (a) and(b) hereof and the business tax actually paid in 2004 shall not be less than five percent (5%) of the gross receipts.

For purposes of determining the tax payments for the Current Taxable Year, only taxes actually paid in cash as shown in the Annual Income Tax Return, Quarterly Income Tax Return, Quarterly Value Added Tax Return, Monthly Value Added Tax Declaration and Quarterly and Monthly Percentage Tax Return shall be considered. For this purpose, creditable withholding taxes for the taxable year concerned, which are properly supported by Certificates of Creditable Tax Withheld at Source (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 in determining the tax payments for the Current Taxable Year.

However, for purposes of determining tax payments for the Base Year on 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 on 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 $P60,000/6 \times 12$ months, or P120,000.00.

Provided, further, that the growth rate and ratio provided herein shall be adjusted to reflect the effect of the increase/decrease of the tax rate resulting from legislative measures. These growth rate and ratio shall be determined by the Commissioner for every NAP participation year which shall be released through a Revenue Memorandum Circular to be issued before the deadline for filing of NAP Participation Form on a yearly basis.

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 with an additional amount corresponding to the assessment of the basic tax.

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. TAXPAYERS NOT QUALIFIED FOR THE PROGRAM. -

Taxpayers who are reporting net loss or have a Net Operating Loss Carry-over without MCIT due shall be disqualified from participating in the NAP. This includes taxpayers having net income but having no tax payable due to their deduction of personal and additional exemptions.

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 Letter Notices 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 Letter Notices may be issued by the Commissioner himself in the future as a result of information obtained from third party or from

information filed by the taxpayer himself where there appears a discrepancy in his tax payment;

c. Tax cases covered by a Letter of Authority arising from confidential information filed.

d. Those who shall fail to file all the required information returns or do not provide all the information/data required in the 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 a duly accomplished NAP Participation Form, together with the required attachments, not later than thirty (30) days from the statutory deadline for the filing of Annual Income Tax Return for the year subject of the Participation, or in the case of taxpayers whose statutory deadline for the filing of Annual Income Tax Returns occurred earlier than the date of the effectivity of these Regulations, their applications must be filed within thirty (30) days from the effectivity hereof.

However, for taxpayers whose taxable year ends on December 31, 2005 and fiscal years ending in January, February, March, or April 2006, the NAP Participation Form must be filed together with the required attachments, on or before October 1, 2006, subject to extension by the Commissioner, on meritorious grounds.

All returns and payments made by a taxpayer who applied to participate in the NAP are deemed 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.

Only taxpayers whose annual income tax returns were not amended may apply to participate in the NAP. In the event the amount of taxes paid shall not be sufficient to qualify a taxpayer for the NAP, he may still qualify by making a voluntary payment in amount not less than the deficiency required for him to qualify. Provided, that said payment shall be non-refundable nor deductible against his income. Provided, further that said voluntary payment shall form part of the base of the tax year to which it pertains, for purposes of determining his qualification for NAP in the subsequent taxable year.

Taxpayers who failed to avail and qualify for 2004 NAP availment can still avail of the Program under these Regulations by complying with the requirements herein provided; Provided, however, that neither a Final Assessment Notice nor a Letter Notice for taxable year 2004 has been issued on the date of the availment, subject to the conditions stated under Sec. 7 hereof. Additional payments, if any, must be made using BIR Form 06015-101 and NAP Participation Form must be filed not later than October 1, 2006.

SECTION 10. ISSUANCE OF CERTIFICATE OF EXEMPTION FROM AUDIT/INVESTIGATION OR NOTICE OF DISQUALIFICATION. - The application and the required attachments shall be reviewed by the NAP Review Committee composed of the following:

A. Regional Level

Head : Assistant Regional Director

Members:

1. Revenue District Officer where taxpayer is registered, or his representative
2. Chief, Assessment Division
3. Chief, Legal Division

B. Large Taxpayers

Head : HREA (Regular/Excise)

Members:

1. Chief, LTAID I / LTAID II /, LTDO where taxpayer is registered, or his representative
2. Chief, LTCED
3. Head, Audit Review Unit

The NAP Review Committee shall recommend the issuance of a Certificate of Exemption from Audit/Investigation or Notice of Disqualification which shall be signed by the Regional Director, for regional office cases, or the Assistant Commissioner, Large Taxpayers Service, for large taxpayers' cases. The Notice of Disqualification shall always mention the reason for the disqualification

Any unpaid amount found after review by the NAP Review Committee shall be paid within thirty (30) days from receipt by the taxpayer of the written notification from the RDO or Chief of concerned Large Taxpayers Division/District Office; otherwise, the taxpayer's availment shall be invalidated.

SECTION 11. APPEAL. - Taxpayers who received a Notice of Disqualification may file an appeal to the NAP Committee- National Office Level within 30 (thirty) days from receipt thereof. The composition, functions, duties and responsibilities of the NAP Committee-National Office Level shall be provided through a Revenue Special Order to be issued by the Commissioner for that purpose.

SECTION 12. TRANSITORY PROVISION. - The increase in growth rate and in ratio herein stated shall apply to taxpayers whose application will be filed after July 31, 2006.

SECTION 13. REPEALING CLAUSE. – All existing revenue issuances or portions thereof inconsistent herewith are hereby amended, repealed or modified accordingly

SECTION 14. EFFECTIVITY CLAUSE. - These Regulations shall take effect after fifteen (15) days following publication in any newspaper of general circulation.

(Original Signed)
MARGARITO B. TEVES
Secretary of Finance

Recommending Approval:

(Original Signed)
JOSE MARIO C. BUNAG
Commissioner of Internal Revenue