

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

August 30, 2013

REVENUE MEMORANDUM CIRCULAR NO. 58-2013

SUBJECT : Publishing the Full Text of the Operations Memorandum No. 4-2013 dated July 24, 2013 Relative to the Issuance of Provisionary Tax Clearance in Relation to the Provisions of Executive Order No. 398

TO : All Revenue Officials, Employees and Others Concerned

For the information and guidance of all revenue officers, employees and others concerned, quoted hereunder is the entire provision of Operations Memorandum No. 4-2013 dated July 24, 2013:

"OPERATIONS MEMORANDUM NO. 4-2013

TO : ACIR, Collection Service
ACIR, Large Taxpayers Service
All Regional Directors
All Revenue District Officers
All Chiefs, Large Taxpayers Division
All Chiefs, Regional Collection Division
Chief, Large Taxpayers Collection Enforcement Division
Chief, Accounts Receivable Monitoring Division
All Members of the TWG/REB/NEB on Compromise Settlement
All Members of the TWC on Abatement of Penalties
All Members of the ODCIR-OG Tax Amnesty Task Force
All Other Concerned Officials and Employees

SUBJECT : Amending Certain Provisions of Operations Memorandum No. 12-07-001 dated July 12, 2012

DATE : July 24, 2013

Operations Memorandum (OM) No. 12-07-001 dated July 12, 2012 is hereby amended by deleting the following instances when a Provisionary Tax Clearance (PTC) may be issued to taxpayers with pending tax liabilities:

- “1. The taxpayer has applied for compromise settlement of tax liabilities, the application of which is still pending final resolution by the Regional Evaluation Board (REB) or the National Evaluation Board (NEB), as the case may be, depending on the threshold provided under Section 204(A) of the National Internal Revenue Code of 1997, as amended, in relation to Revenue Regulations No. 30-2002;

2. The taxpayer has applied for abatement of penalties under Section 204 (B) of the National Internal Revenue Code (NIRC), as amended, and implemented by Revenue Regulations No. 13-2001, the application of which is still pending final resolution by the Commissioner of Internal Revenue;”

Accordingly, the pertinent portion of OM No. 12-07-001 shall now read as follows:

“xxx In order to prevent undue disruptions in the business operations of the concerned taxpayers, Provisionary Tax Clearances for Bidding Purposes may be issued by the Bureau in the following cases:

1. *The taxpayer availed of the Tax Amnesty Program under Republic Act No. 9480 and was issued a Certificate of Availment by the Tax Amnesty Task Force, but still awaiting the issuance of the Authority to Cancel Assessment (ATCA) by the Regional Office concerned pursuant to Operations Memorandum No. 11-12-005 dated December 20, 2011; or*
2. *The taxpayer’s case is still pending final resolution by the Court of Tax Appeals (CTA) or the Supreme Court (SC). ”*

Further, as regards the second ground provided above, it has been observed that taxpayers with record of tax liabilities with the BIR, in their desire to secure contracts with government procuring entities, resort to indiscriminate filing of appeals to the CTA or Supreme Court even after the assessment has become final, executory and demandable. Hence, such appeals are merely frivolous and dilatory in nature. For this reason, it is clarified that the issuance of a PTC in cases when the taxpayer’s case is still pending final resolution by the CTA and Supreme Court shall not be done automatically or as a matter of course. Rather, the processing office is required to evaluate each application for a PTC of taxpayers with tax liabilities which are subject of an appeal to the courts based on the following procedures and guidelines:

- 1.1. The Accounts Receivables Monitoring Division (ARMD) shall request the concerned office that issued the assessment against the taxpayer for a memorandum on the status of the case. Provided that, in instances when the case has already been endorsed to the Litigation Division at the National Office or Legal Divisions at the Regional Offices, the memorandum shall be issued by said offices.

The memorandum shall categorically state whether or not, based on the concerned office’s findings, the subject of the appeal are tax liabilities arising from an assessment which has become final, executory and demandable, due to, among others, any of the following grounds:

- i. failure to file a valid protest within thirty (30) days from receipt of the formal letter of demand and assessment notice;

- ii. failure to appeal to the Court of Tax Appeals (CTA) within thirty (30) days from date of receipt of the decision of the Commissioner of Internal Revenue (CIR) denying the protest to the formal letter of demand and assessment notice;
- iii. failure to appeal to the CTA within thirty (30) days from date of receipt of the decision of the CIR's duly authorized representative denying the protest to the formal letter of demand and assessment notice; or failure to elevate the protest to the CIR within thirty (30) days from date of receipt of the final decision of the CIR's duly authorized representative denying the protest to the formal letter of demand and assessment notice;
- iv. failure to appeal to the CTA within thirty (30) days from: (a) the lapse of the one hundred eighty (180)-day period for the CIR or his duly authorized representative to act on the protest; or (b) date of receipt of the decision of the CIR or his duly authorized representative denying the protest to the formal letter of demand and assessment notice in case the taxpayer opted to await a decision;
- v. failure to timely file a motion for reconsideration with the CTA (division or En Banc) or failure to appeal to the Supreme Court based on existing Rules of Procedure; or
- vi. taxpayer-claimant failed to receive the assessment notice/letter because it was sent to the address reflected in the filed tax return or the address indicated in the BIR's ITS-Registration System and the taxpayer-claimant failed to timely file a notice of change of address or notice of business cessation.

The concerned office shall submit the aforementioned memorandum to the ARMD within two (2) days from receipt of the request.

- 1.2 If based on the evaluation of the concerned office, the assessment for tax liabilities against the taxpayer is not yet final, executory, and demandable due to the taxpayer's timely availment of judicial remedies, the ARMD shall grant the request and process the PTC.
- 1.3 If based on the evaluation of the concerned office, the assessment for tax liabilities against the taxpayer is already final, executory and demandable notwithstanding the judicial remedies availed by the taxpayer, the ARMD shall deny the request for a PTC.

This Operations Memorandum shall take effect immediately. All issuances or portions thereof which are inconsistent herewith are hereby repealed, modified or amended accordingly.

Strict compliance herewith is hereby enjoined.

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

All revenue officers and employees and others concerned are hereby enjoined to give this Circular a wide publicity as possible.

This Circular shall take effect immediately.

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