

**REPUBLIC OF THE PHILIPPINES
DEPARTMENT OF FINANCE
BUREAU OF INTERNAL REVENUE**

15 September 2009

REVENUE MEMORANDUM CIRCULAR NO. 51-2009

SUBJECT: Clarification on the Requirement for the Submission of Summary Lists of Sales (SLS) / Summary Lists of Purchases (SLP); the Imposition of Penalties for Their Non-Submission; the Issuance of *Subpoena Duces Tecum*; and the Imposition of Penalties for Failure to Obey Summons, Pursuant to Revenue Regulations No. 8-2002, as Incorporated in Revenue Regulations No. 16-2005, and Revenue Memorandum Order No. 12-2009

TO: All Internal Revenue Officers and Employees and Others Concerned

For the information and guidance of all concerned, certain policies and clarifications relative to the imposition of compromise penalties and the issuance of *Subpoena Duces Tecum* to enforce the submission of the required Summary Lists of Sales (SLSs) / Summary Lists of Purchases (SLPs), are hereby promulgated / issued, to ensure the uniform application of such procedures throughout all Regional and District Offices, and the Divisions and District Offices of the Large Taxpayers Service.

1. Who are required to submit SLSs / SLPs?

All VAT-registered persons with total quarterly sales / receipts / (net of VAT) exceeding Two Million Five Hundred Thousand Pesos (P2,500,000.00) are required to submit SLSs.

All VAT-registered persons with total quarterly purchases (net of VAT) exceeding One Million Pesos (P1,000,000.00) are required to submit SLPs.

2. When and where are the concerned taxpayers required to submit SLSs / SLPs?

The quarterly SLS / SLP, whichever is applicable, shall be submitted to the Revenue District Office (RDO) / Large Taxpayers District Office (LTDO) / Large Taxpayers Audit and Investigation Division (LTAID) having jurisdiction over the concerned taxpayer, *on or before the twenty-fifth (25th) day of the month following the close of the taxable quarter (VAT calendar quarter or VAT fiscal quarter).*

3. What is the sanction for the non-submission of SLS / SLP, or the submission of erroneous / incomplete / falsified information in a particular SLS / SLP?

Any taxpayer who, under established revenue rules and regulations, fails to submit the required SLS / SLP, shall be subject to an administrative penalty in the amount of *One Thousand Pesos (P1,000.00) for each such failure*, in accordance with the provisions of Revenue Regulations (RR) No. 8-2002, as incorporated in RR No. 16-2005. For this purpose, failure to supply the required information for *each buyer or seller of goods and services* shall constitute *a single punishable act or omission*.

However, the aggregate amount of penalties to be imposed for such failures during a taxable year shall not exceed Twenty-Five Thousand Pesos (P25,000.00), in observance of Section 250 of the National Internal Revenue Code (NIRC), as amended.

In addition to the imposition of administrative penalties, the act of non-submission of an SLS / SLP in the format prescribed by the Bureau shall be tantamount to wilful failure to supply correct and accurate information, and shall be criminally punishable under Section 255 of the NIRC (as amended).

The submission of erroneous / incomplete / falsified information in a particular SLS / SLP shall be considered as an act of non-submission, and therefore subject to the aforesaid penalties.

4. What are the consequences if, despite the issuance of an official notice, the taxpayer still fails to submit the required SLS / SLP; or, notwithstanding payment of the administrative penalty discussed in Item No. 3, the taxpayer still fails to submit the SLS / SLP?

Every instance of failure on the part of the taxpayer to comply with the requirement to submit the SLS / SLP after due notice has been given shall be considered as sufficient grounds for the issuance of a *Subpoena Duces Tecum (SDT)* mandating the immediate submission of the aforesaid SLS / SLP. The issuance of the *Subpoena Duces Tecum*, however, shall not be negated by mere payment of the administrative penalty.

Moreover, upon submission of the required SLS / SLP in compliance with the *Subpoena Duces Tecum*, the concerned taxpayer must pay a compromise penalty in the amount of Ten Thousand Pesos (P10,000.00) for each non-submission of the required SLS / SLP, in accordance with the provisions of Revenue Memorandum Order (RMO) No. 12-2009.

5. What is the penalty for the non-submission of the SLS / SLP, notwithstanding the issuance of a *Subpoena Duces Tecum*?

If a taxpayer still fails to submit the required SLS / SLP, in the format prescribed by the Bureau, despite the issuance of a *Subpoena Duces Tecum*, the Revenue District Officer (RDO) / LTDO Head / LTAID Chief concerned shall recommend the filing of criminal action against the taxpayer, for violation of Sec. 255 (Failure to File Return, Supply Correct and Accurate Information), as well as for violation of Sec. 266 (Failure to Obey Summons).

If the taxpayer concerned is a corporation, an association or a general co-partnership, the sanctions mandated under Sec. 256 (Penal Liability of Corporations) of the NIRC shall likewise be imposed and invoked in the filing of a criminal case against the taxpayer.

6. Who can institute criminal action against a taxpayer for violation of the *Subpoena Duces Tecum* requiring the submission of the SLS / SLP?

The RDO / LTDO / LTAID having jurisdiction over the taxpayer who fails to comply with the duly-issued *Subpoena Duces Tecum* shall forward the necessary report to the Regional Director (Attn: The Chief, Legal Division) or to the Assistant Commissioner (ACIR), Legal Service (Attn: The Chief, Prosecution Division), as the case may be, attesting to the taxpayer's non-compliance with the *Subpoena Duces Tecum*, and recommending the filing of a criminal case against the taxpayer.

Thereafter, the Legal Division of the concerned Region or the Prosecution Division at the National Office, as the case may be, shall be responsible for the institution of criminal action against the taxpayer himself, or in cases where the taxpayer is a juridical entity, the responsible officer of the corporation / association / general co-partnership.

7. Is the late submission of SLSs / SLPs also subject to the imposition of penalties?

Yes, it is. The late submission of an SLS / SLP on or before the deadlines mandated by the Bureau is considered as tantamount to non-submission of the said document. Therefore, the late submission of an SLS / SLP is also subject to administrative penalties, in the amount of *One Thousand Pesos (P1,000.00) for each late submission*, as mandated in Item No. 3 of this Circular.

8. Can the compromise penalty be imposed, and the *Subpoena Duces Tecum* issued, for violations prior to the issuance of RMO No. 12-2009? Would this not be tantamount to the retroactive implementation of the RMO?

Compromise penalties may be imposed, and the *Subpoena Duces Tecum* issued, for violations pertaining to a period / periods prior to the issuance of RMO No. 12-2009. However, such actions cannot be construed as a retroactive implementation of the RMO inasmuch as the submission of the required SLS / SLP has yet to be complied with by the concerned taxpayer. Therefore, regardless of the period(s) involved, the taxpayer continues to be in violation of existing rules and regulations relative to the submission of SLSs / SLPs.

Moreover, RR No. 8-2002, as incorporated in RR No. 16-2005, specifically states that:

“Finally, the administrative penalty shall be imposed at all times, upon due notice and demand by the Commissioner of Internal Revenue. A subpoena duces tecum for the submission of the required documents shall be issued on the second offense. A third offense shall set the motion for a criminal prosecution of the offender.” (Sec. 5 [Penalty Provision], RR No. 8-2002; Sec. 4.114-3. (i) [Penalty Clause], RR No. 16-2005)

9. If a taxpayer who is required to submit both the SLS and the SLP fails to submit either document, is such failure considered as two separate violations, for which separate penalties will be imposed?

Yes. The imposition of the appropriate penalties shall be applicable for *every non-submission of a Summary List, whether it be an SLS or an SLP*, in the format prescribed by the Bureau. Likewise, each non-submission is considered as grounds for the issuance of a *Subpoena Duces Tecum*.

10. Can the signing of the *Subpoena Duces Tecum* be delegated to the Revenue District Officers?

Yes, this power may be delegated to the Revenue District Officers, pursuant to Sec. 7 of the NIRC (as amended), which authorizes the Commissioner to delegate the powers vested in him to “any of such subordinate officials with the rank equivalent to a division chief or higher...”

RMO No. 2-2008 (dated January 8, 2008) also identifies the following revenue officials as having the authority to issue and sign a *Subpoena Duces Tecum*:

a. For the BIR National Office:

- The ACIR, Legal Service;
- The HREA, Legal Service, or the concerned HREA, Large Taxpayers Service; or,
- The concerned LTAID Chief / LTDO Head, as may be specially authorized, in writing, by the Commissioner.

b. For the Regional Offices:

- The Regional Director, or in his / her absence, the Asst. Regional Director;
- The Chief, Legal Division; or
- The concerned Revenue District Officer, as may be authorized by the Regional Director, through the appropriate Regional Delegation Order.

11. Did RMO No. 12-2009 supersede RR No. 8-2002 relative to the imposition of penalties for the non-submission of SLS / SLP?

RMO No. 12-2009 did not supersede RR No. 8-2002. Rather, it seeks to: strengthen enforcement activities and operations against non-compliant taxpayers; strictly implement the penalty provisions for the non-submission of SLS / SLP; and, increase voluntary compliance of taxpayers and enhance revenue collections.

12. How many notices should be sent to the taxpayer before the issuance of a *Subpoena Duces Tecum*? Is one notice sufficient? Would this not be a violation of Revenue Audit Memorandum Order (RAMO) No. 3-82 (as amended by RMO No. 35-90)?

RR No. 8-2002 (as incorporated in RR No. 16-2005), mandates that two (2) notices must be sent to the taxpayer. The first notice shall notify the taxpayer of his / her failure to submit

the pertinent SLS / SLP, as well as of the imposition of the administrative penalty ranging from One Thousand Pesos (P1,000.00) to Twenty-Five Thousand Pesos (P25,000.00), and shall constitute the *first offense* of the taxpayer.

The second notice shall be sent upon the subsequent failure of the taxpayer to submit the required SLS / SLP following the issuance of the first notice, and shall contain a warning that non-compliance with the second notice shall be considered as the taxpayer's *second offense*, and that the appropriate *Subpoena Duces Tecum* shall be issued.

Since there is no provision in RMO No. 12-2009 that repeals this requirement, it is therefore considered as valid and applicable.

The provisions of RAMO No. 3-82 concern the procedures for the issuance of a Subpoena Duces Tecum in the course of investigations of internal revenue tax cases. RMO No. 12-2009, on the other hand, addresses the non-submission of SLS / SLP, with the end in view of improving the voluntary compliance of taxpayers, and ultimately increase revenue collections. The RMO, therefore, finds application even in instances when the taxpayer concerned is not the subject of an audit investigation. The perceived inconsistency, therefore, has no basis in fact, considering that the two issuances concern two distinct sources of revenue collections: voluntary compliance and audit investigations.

All revenue officials and employees are enjoined to give this Circular the most extensive publicity as possible.

(Original Signed)
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Commissioner of Internal Revenue