

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

REVENUE MEMORANDUM CIRCULAR NO. 67-2010

SUBJECT: Circularizing Revocation of **BIR Ruling No. DA-722-2006**.

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

For the information and guidance of all internal revenue officials, employees and others concerned, quoted hereunder is the full text of the memorandum letter to the Regional Director of Revenue Region No. 10, Legazpi City, declaring **BIR Ruling No. DA -722-2006** dated December 15, 2006, null and void, as follows:

“MEMORANDUM

TO	:	DIOSDADO R. MENDOZA Regional Director RR No. 10, Legazpi City
SUBJECT	:	Revocation of BIR Ruling DA-722-2006 dated 12-15-06; (Atlas Consolidated Mining and Development Corporation)
DATE	:	July 13, 2010

This refers to your letter dated November 24, 2008 requesting that BIR Ruling No. DA-722-2006 dated December 15, 2006 issued in favor of Atlas Consolidated Mining and Development Corporation (Atlas for brevity) be revoked on the ground of misrepresentation of facts by the subject taxpayer.

In the said letter, it was alleged that the facts are not as represented by Atlas in its request for ruling. Specifically, Atlas failed to represent that it willfully neglected to file the required excise tax returns and failed to pay the excise tax due within the prescribed period;

It must be noted that the ruling was issued with a very specific collatilla, to wit:

“This ruling is being issued on the basis of the foregoing facts as represented. However, if upon investigation, it will be disclosed that the facts are different, then this ruling shall be considered null and void.”

Finding merit in the arguments of our revenue officers and considering the blatant misrepresentation by Atlas, it is hereby declared that BIR Ruling No. DA-722-2006 dated December 15, 2006 is null and void.

For your immediate and appropriate action.

(Original Signed)

KIM S. JACINTO-HENARES

Commissioner of Internal Revenue”

In a letter dated November 21, 2006, Atlas Consolidated Mining and Development Corporation (Atlas) requested for a BIR ruling that the period to assess and collect its excise tax liabilities from July 1991 to August 1994 has already prescribed. After an evaluation of the said request, BIR Ruling No. DA-722-2006 was issued which declared that:

- (a) Atlas can no longer be subject to assessment and collection by the BIR with respect to the excise tax liabilities which it registered in its books of accounts to be due upon the gold and silver produced from its Masbate Mining Operations;
- (b) the period to assess and collect the amount of excise tax which Atlas recognized in its books of accounts to be upon the copper concentrates produced from its Toledo Mining Operations has likewise prescribed; and
- (c) the subsequent write-offs by Atlas of its tax liabilities from its books shall not result in a taxable event.

These legal conclusions were based on the representation that Atlas had filed tax returns for the taxable periods in question. By reason of this representation, it was ruled that since the assessments were made more than three (3) years after the returns were filed, the right of the BIR to assess had already prescribed applying Section 203 of the Tax Code of 1997.

After the said ruling was issued, it was discovered that Atlas did not file tax returns as it had represented in its request for ruling. This fact is relevant as the prescriptive period in cases where the taxpayer failed to file a return is ten (10) years after the discovery of the omission as pronounced under Sec. 222 of the Tax Code and not three (3) years as laid down under Sec. 203 of the same code. Applying the ten year prescriptive period, the tax assessments by the BIR were within the period allowed by law. For this reason, BIR Ruling No. DA -722-2006 dated December 15, 2006 is revoked.

The revocation of BIR Ruling No. DA -722-2006 dated December 15, 2006 is hereby circularized for the guidance and information of all revenue district offices. All concerned are hereby enjoined to report similar schemes for appropriate investigation, and to give this circular as wide a dissemination as possible.

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