

REPUBLIC OF THE PHILIPPINES
DEPARTMENT OF FINANCE
BUREAU OF INTERNAL REVENUE

January 15, 2009

REVENUE MEMORANDUM ORDER NO. 3-2009

Subject : Amendment and Consolidation of the Guidelines in the Conduct of Surveillance and Stock-Taking Activities, and the Implementation of the Administrative Sanction of Suspension and Temporary Closure of Business.

To : All Internal Revenue Officers and Others Concerned.

I. BACKGROUND

While taxpayer education and tax information campaigns have done much to increase taxpayer awareness, the role of enforcement in enhancing revenues and promoting greater voluntary compliance is of equal significance in effective tax administration.

In this regard, the BIR shall endeavor to intensify certain aspects of its enforcement operations through “Oplan Kandado”, an initiative involving the strengthening of the Bureau’s imposition of prescribed administrative sanctions for non-compliance with such essential requirements as: the issuance of receipts, filing of returns, declaration of taxable transactions, taxpayer registration, and paying the correct amount of taxes as mandated by the norms / standards of their particular industry or line of business.

II. OBJECTIVE

This Order is being issued to:

1. Amend and consolidate the policies, guidelines and procedures to be observed in the conduct of surveillance operations and the enforcement of the administrative sanction of suspension and temporary closure of business, as provided in the following Revenue Memorandum Orders (RMOs):
 - RMO No. 54-2000
 - RMO No. 20-2002
 - RMO No. 35-2007
 - RMO No. 57-2000
 - RMO No. 31-2002

2. Prescribe reporting requirements on surveillance activities and the implementation of the administrative sanction of suspension and temporary closure of business;
3. Provide for immediate imposition of penalties for offenses committed, in order to deter further commission thereof; and,
4. Maximize the degree of voluntary tax compliance, thereby increasing revenue collections.

III. DEFINITION OF TERMS

1. *A non-compliant taxpayer is defined as a taxpayer who, as a result of surveillance / stocktaking activities, has been found to have committed the violations enumerated in Item (1), Section IV of this Order, and who, notwithstanding the issuance of several notices of violations, continues to refuse to comply with the requirements provided under existing rules and regulations.*
2. For purposes of this Order, three (3) types of surveillance shall be utilized, and are hereby defined as follows:
 - 2.1. Covert Surveillance – the surreptitious and undercover watch on the business operations of a person for a certain period before the conduct of the inventory of business documents evidencing receipt of income as well as movement of goods or rendition of services; or apprehension / seizure of the aforementioned business documents and properties found to be the subject of violations of the provision of the NIRC, as amended, and its implementing regulations. (See Section 6(c), NIRC, as amended)
 - 2.2. Overt Surveillance – the type of surveillance which commences with the inventory-taking of the business documents as mentioned in 1.1 above, of the person under surveillance followed by the actual observation and close monitoring of the business activities of such person.
 - 2.3. Short-Duration Surveillance (Tax Compliance Check) – the type of surveillance wherein the business operations of the target taxpayer are observed for purposes of detecting non-compliance with the Bureau's primary and secondary registration requirements. It is an on-and-off activity which does not involve prolonged on-premises observation.

3. The “Investigating Offices” participating in the implementation of this Order shall include the following Bureau offices:
 - All Revenue District Offices
 - All Special Investigation Divisions
 - The National Investigation Division
 - The Policy Cases Division
 - The Large Taxpayers (LT) Audit and Investigation Divisions I and II
 - The LT Field Operations Division
 - The LT District Offices

IV. POLICIES

1. The National Internal Revenue Code, as amended, (hereinafter referred to as “NIRC”) empowers the Commissioner of Internal Revenue to suspend the business operations of a taxpayer on certain grounds, pertinent provisions of which provides:

“SEC. 115. Power of the Commissioner to Suspend the Business Operations of a Taxpayer. - The Commissioner or his authorized representative is hereby empowered to suspend the business operations and temporarily close the business establishment of any person for any of the following violations:

(a) In the case of a VAT-registered Person. –

- (1) Failure to issue receipts or invoices;*
- (2) Failure to file a value-added tax return as required under Section 114; or*
- (3) Understatement of taxable sales or receipts by thirty percent (30%) or more of his correct taxable sales or receipts for the taxable quarter.*

(b) Failure of any Person to Register as Required under Sec. 236. –

The temporary closure of the establishment shall be for the duration of not less than five (5) days and shall be lifted only upon compliance with whatever requirements prescribed by the Commissioner in the closure order.”

Thus, this Order shall provide the guidelines governing the enforcement of the administrative sanction of suspension and temporary closure of business relative to following provisions of the NIRC, as amended:

“SEC. 113. Invoicing and Accounting Requirements for VAT-Registered Persons. –

(A) Invoicing Requirements. - A VAT-registered person shall issue:

- (1) A VAT invoice for every sale, barter or exchange of goods or properties; and*

- (2) A VAT official receipt for every lease of goods or properties, and for every sale, barter or exchange of services.

(B) Information contained in the VAT Invoice or VAT Official Receipt. – The following information shall be indicated in the VAT invoice or VAT official receipt:

(1) A statement that the seller is a VAT-registered person, followed by his Taxpayer's Identification Number (TIN);

(2) The total amount which the purchaser pays or is obligated to pay to the seller with the indication that such amount includes the value-added tax: Provided, that:

(a) The amount of tax shall be shown as a separate item in the invoice or receipt;

(b) If the sale is exempt from value-added tax, the term "VAT-exempt sale" shall be written or printed prominently on the invoice or receipt;

(c) If the sale is subject to zero percent (0%) value-added tax, the term "zero-rated sale" shall be written or printed prominently on the invoice or receipt;

(d) If the sale involves goods, properties or services some of which are subject to and some of which are VAT zero-rated or VAT-exempt, the invoice or receipt shall clearly indicate the breakdown of the sale price between its taxable, exempt and zero-rated components, and the calculation of the value-added tax on each portion of the sale shall be shown on the invoice or receipt: Provided, That the seller may issue separate invoices or receipts for the taxable, exempt, and zero-rated components of the sale.

(3) The date of transaction, quantity, unit cost and description of the goods or properties or nature of the service; and

(4) In the case of sales in the amount of one thousand pesos (P1,000) or more where the sale or transfer is made to a VAT-registered person, the name, business style, if any, address and Taxpayer Identification Number (TIN) of the purchaser, customer or client.

(C) Accounting Requirements. – Notwithstanding the provisions of Section 233, all persons subject to the value-added tax under Section 106 and 108 shall, in addition to the regular accounting records required, maintain a subsidiary sales journal and subsidiary purchase journal on which the daily sales and purchases are recorded. The subsidiary journals shall contain such information as may be required by the Secretary of Finance.

(D) Consequence of Issuing Erroneous VAT Invoice or VAT Official Receipt. –

- (1) If a person who is not a VAT-registered person issues an invoice or receipt showing his Taxpayer Identification Number (TIN), followed by the word 'VAT':
 - (a) The issuer shall, in addition to any liability to other percentage taxes, be liable to:
 - (i) The tax imposed in Section 106 or 108 without the benefit of any input tax credit; and
 - (ii) A fifty percent (50%) surcharge under Section 248 (B) of this Code;
 - (b) The VAT shall, if the other requisite information required under Subsection (B) hereof is shown on the invoice or receipt, be recognized as an input tax credit to the purchaser under Section 110 of this Code.
- (2) If a VAT-registered person issues a VAT invoice or VAT official receipt for a VAT-exempt transaction, but fails to display prominently on the invoice or receipt the term 'VAT-exempt sale', the issuer shall be liable to account for the tax imposed in Section 106 or 108 as if Section 109 did not apply.

(E) Transitional Period. – Notwithstanding Subsection (B) hereof, taxpayers may continue to issue VAT invoices and VAT official receipts for the period July 1, 2005 to December 31, 2005, in accordance with Bureau of Internal Revenue administrative practices that existed as of December 31, 2004.

“SEC. 114. Return and Payment of Value-Added Tax. –

(A) In General. - Every person liable to pay the value-added tax imposed under this Title shall file a quarterly return of the amount of his gross sales or receipts within twenty-five (25) days following the close of each taxable quarter prescribed for each taxpayer: Provided, however, That VAT-registered persons shall pay the value-added tax on a monthly basis.

Any person, whose registration has been cancelled in accordance with Section 236, shall file a return and pay the tax due thereon within twenty-five (25) days from the date of cancellation of registration: Provided, That only one consolidated return shall be filed by the taxpayer for his principal place of business or head office and all branches.

(B) Where to File the Return and Pay the Tax. - Except as the Commissioner otherwise permits, the return shall be filed with and the tax paid to an authorized agent bank, Revenue Collection Officer or duly authorized city or municipal Treasurer in the Philippines located within the revenue district where the taxpayer is registered or required to register.

(C) Withholding of Value-added Tax. - The Government or any of its political subdivisions, instrumentalities or agencies, including government-owned or -controlled corporations (GOCCs) shall, before making payment on account of each purchase of goods and services which are subject to the value-added tax imposed in

Sections 106 and 108 of this Code, deduct and withhold the value-added tax due at the rate of five percent (5%) of the gross payment thereof: Provided, That the payment for lease or use of properties or property rights to nonresident owners shall be subject to ten percent (10%) withholding tax at the time of payment. For purposes of this Section, the payor or person in control of the payment shall be considered as the withholding agent.

The value-added tax withheld under this Section shall be remitted within ten (10) days following the end of the month the withholding was made”

SEC. 236. Registration Requirements. -

(A) Requirements. - Every person subject to any internal revenue tax shall register once with the appropriate Revenue District Officer:

- (1) Within ten (10) days from date of employment, or
- (2) On or before the commencement of business, or
- (3) Before payment of any tax due, or
- (4) Upon filing of a return, statement or declaration as required in this Code.

The registration shall contain the taxpayer's name, style, place of residence, business and such other information as may be required by the Commissioner in the form prescribed therefor.

A person maintaining a head office, branch or facility shall register with the Revenue District Officer having jurisdiction over the head office, brand or facility. For purposes of this Section, the term 'facility' may include but not be limited to sales outlets, places of production, warehouses or storage places.

(B) Annual Registration Fee - An annual registration fee in the amount of Five hundred pesos (P500) for every separate or distinct establishment or place of business, including facility types where sales transactions occur, shall be paid upon registration and every year thereafter on or before the last day of January: Provided, however, That cooperatives, individuals earning purely compensation income, whether locally or abroad, and overseas workers are not liable to the registration fee herein imposed.

The registration fee shall be paid to an authorized agent bank located within the revenue district, or to the Revenue Collection Officer, or duly authorized Treasurer of the city or municipality where each place of business or branch is registered.

(C) Registration of Each Type of Internal Revenue Tax. - Every person who is required to register with the Bureau of Internal Revenue under Subsection (A) hereof, shall register each type of internal revenue tax for which he is obligated, shall file a return and shall pay such taxes, and shall update such registration of any changes in accordance with Subsection (E) hereof.

(D) Transfer of Registration. - In case a registered person decides to transfer his place of business or his head office or branches, it

shall be his duty to update his registration status by filing an application for registration information update in the form prescribed therefor.

(E) Other Updates. - Any person registered in accordance with this Section shall, whenever applicable, update his registration information with the Revenue District Office where he is registered, specifying therein any change in type and other taxpayer details.

(F) Cancellation of Registration.

(1) *General Rule. – The registration of any person who ceases to be liable to a tax type shall be cancelled upon filing with the Revenue District Office where he is registered, an application for registration information update in a form prescribed therefor.*

(2) *Cancellation of Value-added Tax Registration. – A VAT-registered person may cancel his registration for VAT if:*

(a) *He makes written application and can demonstrate to the Commissioner's satisfaction that his gross sales or receipts for the following twelve (12) months, other than those that are exempt under Section 109 (A) to (U), will not exceed one million five hundred thousand pesos (P1,500,000.00), or*

(b) *He has ceased to carry on his trade or business, and does not expect to recommence any trade or business within the next twelve (12) months.*

The cancellation of registration will be effective from the first day of the following month.

(G) Persons Required to Register for Value-added Tax. –

(1) *Any person who, in the course of trade or business, sells, barters, or exchanges goods or properties, or engages in the sale or exchange of services, shall be liable to register for value-added tax if:*

(a) *His gross sales or receipts for the past twelve (12) months, other than those that are exempt under Section 109 (A) to (U), have exceeded one million five hundred thousand pesos (P1,500,000.00); or*

(b) *There are reasonable grounds to believe that his gross sales or receipts for the next twelve (12) months, other than those that are exempt under Section 109 (A) to (U), will exceed one million five hundred thousand pesos (P1,500,000.00).*

(2) *Every person who becomes liable to be registered under paragraph (1) of this Subsection shall register with the Revenue District Office which has jurisdiction over the head*

office or branch of that person, and shall pay the annual registration fee prescribed in Subsection (B) hereof. If he fails to register, he shall be liable to pay the tax under Title IV as if he were a VAT-registered person, but without the benefit of input tax credits for the period in which he was not properly registered.

(H) Optional Registration for Value-added Tax of Exempt Person. -

- (1) *Any person who is not required to register for value-added tax under Subsection (G) hereof may elect to register for value-added tax by registering with the Revenue District Office that has jurisdiction over the head office of that person, and paying the annual registration fee in Subsection (B) hereof.*
- (2) *Any person who elects to register under this Subsection shall not be entitled to cancel his registration under Subsection (F)(2) for the next three (3) years.*

For purposes of Title IV of this Code, any person who has registered value-added tax as the tax type in accordance with the provisions of Subsection (C) hereof shall be referred to as 'VAT-registered person' who shall be assigned only one Taxpayer Identification Number.

(I) Supplying of Taxpayer Identification Number (TIN). - Any person required under the authority of this Code to make, render or file a return, statement or other document shall be supplied with or assigned a Taxpayer Identification Number (TIN) which he shall indicate in such return, statement or document filed with the Bureau of Internal Revenue for his proper identification for tax purposes, and which he shall indicate in certain documents, such as, but not limited to the following:

- (a) *Sugar quedans, refined sugar release order or similar instruments;*
- (b) *Domestic bills of lading;*
- (c) *Documents to be registered with the Register of Deeds of Assessor's Office;*
- (d) *Registration certificate of transportation equipment by land, sea or air;*
- (e) *Documents to be registered with the Securities and Exchange Commission;*
- (f) *Building construction permits;*
- (g) *Application for loan with banks, financial institutions, or other financial intermediaries;*
- (h) *Application for mayor's permit;*
- (i) *Application for business license with the Department of Trade & Industry; and*
- (j) *Such other documents which may hereafter be required under rules and regulations to be promulgated by the Secretary of Finance, upon recommendation of the Commissioner.*

In cases where a registered taxpayer dies, the administrator or executor shall register the estate of the decedent in accordance with Subsection (A) hereof and a new Taxpayer Identification

Number (TIN) shall be supplied in accordance with the provisions of this Section.

In the case of a nonresident decedent, the executor or administrator of the estate shall register the estate with the Revenue District Office where he is registered: Provided, however, That in case such executor or administrator is not registered, registration of the estate shall be made with and the Taxpayer Identification Number (TIN) supplied by the Revenue District Office having jurisdiction over his legal residence.

Only one Taxpayer Identification Number (TIN) shall be assigned to a taxpayer. Any person who shall secure more than one Taxpayer Identification Number shall be criminally liable under the provision of Section 275 on ‘Violation of Other Provisions of this Code or Regulations in General’

“SEC. 237. Issuance of Receipts or Sales or Commercial Invoices. - All persons subject to an internal revenue tax shall, for each sale and transfer of merchandise or for services rendered valued at Twenty-five pesos (P25.00) or more, issue duly registered receipts or sales or commercial invoices, prepared at least in duplicate, showing the date of transaction, quantity, unit cost and description of merchandise or nature of service: Provided, however, That where the receipt is issued to cover payment made as rentals, commissions, compensations or fees, receipts or invoices shall be issued which shall show the name, business style, if any, and address of the purchaser, customer or client.

The original of each receipt or invoice shall be issued to the purchaser, customer or client at the time the transaction is effected, who, if engaged in business or in the exercise of profession, shall keep and preserve the same in his place of business for a period of three (3) years from the close of the taxable year in which such invoice or receipt was issued, while the duplicate shall be kept and preserved by the issuer, also in his place of business, for a like period.

The Commissioner may, in meritorious cases, exempt any person subject to an internal revenue tax from compliance with the provisions of this Section.”

“SEC. 238. Printing of Receipts or Sales or Commercial Invoices. - All persons who are engaged in business shall secure from the Bureau of Internal Revenue an authority to print receipts or sales or commercial invoices before a printer can print the same.

No authority to print receipts or sales or commercial invoices shall be granted unless the receipts or invoices to be printed are serially numbered and shall show, among other things, the name, business style, Taxpayer Identification Number (TIN) and business address of the person or entity to use the same, and such other information that may be required by rules and regulations to be promulgated by the Secretary of Finance, upon recommendation of the Commissioner.

All persons who print receipt or sales or commercial invoices shall maintain a logbook/register of taxpayers who availed of their printing services. The logbook/register shall contain the following information:

- (1) *Names, Taxpayer Identification Numbers of the persons or entities for whom the receipts or sales or commercial invoices were printed; and*

(2) Number of booklets, number of sets per booklet, number of copies per set and the serial numbers of the receipts or invoices in each booklet."

2. All surveillance activities shall be covered by Mission Orders (MOs) [Annex "A"]. The MOs shall be printed as accountable forms to be requisitioned by the Revenue Officials authorized to sign said MOs. MOs issued should be chronologically recorded in the Mission Order Register. The MOs shall be issued in triplicate / quadruplicate, to be distributed as follows:

Original : Revenue Officer(s) directed to conduct the surveillance, and to be attached to the report on surveillance after termination of the activity

2nd Copy : Investigating Office's / Division's file copy

3rd Copy : Issuing Office's file copy

4th Copy : Taxpayer's copy (in case of overt surveillance)

3. The Accountable Forms Division shall be the custodian of blank MOs, and shall maintain a register of all MOs issued to the following authorized Revenue Officials:

<u>Investigating Office / Division</u>	<u>Authorized Revenue Official</u>
3.1. Revenue District Office (RDO)	Regional Director
3.2. Special Investigation Division (SID)	- do -
3.3. National Investigation Division (NID) and Policy Cases Division (PCD)	Asst. Commissioner (ACIR), Enforcement Service (ES)
3.4. Large Taxpayers (LT) Audit and Investigation Division I (Regular LTs) / LT Audit and Investigation Division II (Excise Taxpayers) / LT Field Operations Division / LT District Offices (LTDOs)	ACIR, Large Taxpayers Service (LTS)

The Head of the Investigating Office / Division shall in turn request for MOs from the concerned Regional Director / ACIR.

4. Overt Surveillance shall be conducted for a minimum period of ten (10) days and a maximum period of thirty (30) days, unless otherwise extended in writing by the authorized signatory. A weekly progress report shall be

rendered by the concerned implementing officers to the Head of the Investigating Office / Division.

5. Round-the-clock observation / monitoring shall be done on the target taxpayer's business if the nature of the business so requires, as in the case of motels and hotels.
6. The findings may be used as the basis for assessing taxes for the other months or quarters of the same or different taxable years, and such assessment shall be deemed *prima-facie correct*.
7. Implementing officers shall not be assigned new surveillance cases until after they have reported the surveillance cases previously assigned to them.

V. GUIDELINES AND PROCEDURES

A. Surveillance Activities

1. Prelude to Surveillance

Acquiring preliminary information on the person to be placed under surveillance is necessary for an effective implementation thereof. Before the actual surveillance, the Head of the Investigating Office / Division must:

- 1.1. Acquaint himself with the business organization and economic activity of the subject of surveillance (SUBJECT), the location of the stores and outlets, the accounting records used and such other relevant information as may be available and / or necessary. This must be done with relative secrecy to prevent leakage of information to the SUBJECT.
- 1.2. Prepare the necessary MO for approval and signature of the concerned Regional Director / ACIR, as the case may be.

The number of MOs must correspond to the number of stores and outlets to be observed / monitored in case of overt surveillance. A different set of implementing officers shall be assigned for different stores and outlets of the same SUBJECT.

- 1.3. Brief the implementing officer on the acts to be performed in compliance with the MOs. The briefing shall be done within thirty (30) minutes before the actual surveillance. *To preserve the confidentiality of the surveillance operation, the identity of the*

target SUBJECT should be revealed to the implementing officers only upon arrival at the site of operations.

2. Conduct of Surveillance

- 2.1. Revenue Officer Authorized to Conduct Surveillance Activities on Business establishments for Possible Violations of Sections 113, 114, 236, 237 and 238 of the NIRC, as amended. – At least two (2) implementing officers comprised of Revenue Officers (ROs) (Assessment/Excise), Intelligence Officers (IOs) and special Investigators (SIs) assigned in the following investigating offices/divisions shall be authorized to conduct surveillance activities on identified business establishment based on a validly issued mission order signed by the concerned authorized revenue official:

Investigating Office/Division	Authorized Revenue Official
(a) Revenue District Office (b) Special Investigation Division	Regional Director
(c) National Investigation Division (d) Policy Cases Division	ACIR – ES
(e) LT Audit & Investigation Division I (Regular Large Taxpayer) (f) LT Audit & Investigation Division I (Excise Taxpayer) (g) LT Field Operations Division (h) LT District Office	ACIR – LTS

- 2.2. Mandatory Requirement for the Conduct of Surveillance and Apprehension of Business Establishments for Non-Compliance with the Provisions of Section 113, 114, 236, 237 and 238 of the NIRC, as amended. – No surveillance activities shall be conducted nor apprehension effected unless the same has been authorized by a mission order issued in accordance with the provisions of this Order.
- 2.3. Implementing officers conducting the surveillance must possess the following qualities:
- Ordinary appearance – The implementing officer must not have any outstanding physical characteristic or wear any distinctive article (e.g. any article which can readily identify him to be an employee of the Bureau, such as wearing of uniform) which may easily attract the SUBJECT's or his representative's attention. This is essential for covert surveillance.
 - Ability to act naturally under all circumstances;

- Alertness;
- Resourcefulness;
- Keen observation and good memory; and,
- Patience and endurance.

2.4. Performance of Surveillance Activities

Generally, surveillance may be either covert or overt. Covert surveillance will eventually become overt surveillance once the implementing officer informs the SUBJECT of his presence and purpose.

2.4.1. Covert Surveillance

- a. Observe the business operations of the SUBJECT. Develop leads from other sources by obtaining information from neighboring business establishments, locating additional outlets or warehouses of the SUBJECT.
- b. Take note of the suppliers and buyers, and volume of deliveries made to any by the SUBJECT. This activity should be done discreetly. The records of the supplier and buyer may thereafter be accessed and compared with the data declared by the SUBJECT.
- c. Observe and watch out for any unregistered cash register machines (CRMs) being used, especially during peak hours.
- d. Determine violations of internal revenue laws, rules and regulations committed by the SUBJECT, and the frequency of such violations.
- e. Apprehend the taxpayer by issuing on the spot an Apprehension Slip (AS) [Annex “B”], in duplicate, once caught in the act of not issuing official receipts / invoices, or issuing unregistered official receipts / invoices or otherwise, found to be in violation of the provisions of Sections 113, 236, 237 and 238 of the NIRC of 1997.
- f. Report immediately to the Head of the Investigating Office / Division the result of the apprehension not later than the following day from the issuance of the AS.

2.4.2. Overt Surveillance

The most important factor in overt surveillance is the element of surprise. The SUBJECT must be caught unaware to prevent him from committing acts which may defeat the purpose of the surveillance. Those caught in the act of committing crimes punishable under the Tax Code must be immediately apprehended.

After the covert surveillance has been undertaken, the following procedures shall be performed by the implementing officers who should always be ready to present their BIR Identification Cards:

- a. Inform the SUBJECT of the purpose and duties of the implementing officer as stated in the MO.
- b. Conduct an inventory of all unused sales invoices, official receipts and such other documents used in the movement of goods.
- c. List all the above documents in the Surveillance Form (SF) [Annex "C"].
- d. Seize unauthorized official receipts or invoices and accomplish the AS in duplicate. Issue the original copy to the SUBJECT. Report immediately to the Head of the Investigating Office / Division the results of the apprehension not later than the following day from the issuance of the AS.
- e. After all the unused official receipts / invoices are listed in the Surveillance Form, sign the first and last receipts / invoices in each booklet stating therein the date and time when the inventory was made.
- f. For official receipts or invoices from partly used booklets, sign the duplicate / file copy of the last invoice used. In case there is no chronological issuance of invoices / official receipts, list down the unused invoices / official receipts, sign the first and last pages of the un-issued invoices / official receipts in each booklet and indicate the date and time when the inventory was made.

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- g. Return all the official receipts to the SUBJECT or his authorized representative and inform him that official receipts / invoices must be issued chronologically. Request the SUBJECT or his authorized representative to sign the Surveillance Form. If acknowledgement of the Surveillance Form is refused, have the certificate signed by at least two (2) witnesses present and leave a copy of the Surveillance Form with the SUBJECT or his authorized representative.
 - h. Observe / monitor the daily sales in the stores or the daily production and daily removal from or deliveries to the factories, from the time they open to the time they close.
 - i. Summarize all the sales / official receipts at the end of each day for the entire duration of the surveillance and enter the figures on the space provided in the Surveillance Form.

The procedures outlined in this Order are general guides in the conduct of the surveillance. The implementing officer is not precluded from applying additional procedures which he may deem necessary based on his findings or initial evaluation of the case, provided that the same are carried out with due regard for the SUBJECT's legal rights.

2.4.3. Conduct of Surveillance for Taxpayers Using Cash Register Machines (CRMs) and Point-of-Sale Machines (POSs)

- a. Take an inventory of all CRMs and POSs, whether used for issuance of invoices or for internal control purposes. The number of CRMs / POSs found in the premises may later on be reconciled with the data available in the Bureau as to the number of CRMs / POSs authorized to be used.
- b. Verify whether the store / establishment using the CRM / POS has maintained a Cash Register Sales Book or electronic journal identified to each CRM / POS used.
- c. Check the permits issued and the stickers attached to each CRM / POS whether they tally with the brand and serial numbers of the CRMs / POSs authorized to issue receipts. If the serial number in the sticker does not

tally with that of the machine, request the subject to present the original copy of the permit to use CRM / POS. Likewise, request the SUBJECT or his representative to show the reserve units. If the SUBJECT or his representative refuses, look for the reserve units. If they are not found in the business premises, prepare a memorandum recommending the issuance of a subpoena for the taxpayer to produce the reserve units.

- d. Seize all unauthorized CRMs / POSs and accomplish the AS in duplicate. Issue the original copy of the AS to the taxpayer. Report immediately to the Head of the Investigating Office / Division the result of the apprehension / seizure not later than the following day from the issuance of the AS.
- e. Read through the memory of the machine by using the “Z” keys. Secure at least two (2) tapes for two (2) readings.
 - e.1. Identify whether the CRM / POS is resettable or non-resettable by means of the reading and match it with the application for permit.
 - e.2. Inquire from the CRM / POS operator how many times they read the machine in a day.
 - e.3. Enter the readings and other pertinent information in the Cash Register Machine / Point-of-Sale Machine Surveillance Form (CRM/POS-SF) [Annex “C-1”]. Said Form shall be accomplished for each CRM / POS.
- f. Sign the tape and indicate the date and time thereon before the CRM / POS is put to use for the day, if possible.
- g. Secure the machine tape showing the “Z” reading every end of the day until the last day of the surveillance.

3. Analysis of Surveillance Results

- 3.1. Extrapolate the data gathered from the surveillance by using the following formulas:

To get the Average Daily Sales:

$$\frac{\text{Total Sales During Surveillance}}{\text{Total No. of Days Under Surveillance}} = \text{Average Daily Sales (ADS)}$$

To get the Average Quarterly Sales:

$$ADS \times 30 \text{ days} \times 3 \text{ months} = \text{Average Quarterly Sales (AQS)}$$

- 3.2. Compare the extrapolated data with the recently filed monthly / quarterly internal revenue tax returns to determine significant variations in sales / revenues.
- 3.3. Determine violations of internal revenue laws, rules and regulations of the SUBJECT such as the usage of unregistered CRM / POS or invoices / official receipts and non-issuance of invoices / official receipts.

4. Action on Surveillance Results

If after the conclusion of the surveillance, there is a sufficient ground for the closure of the establishment as provided for under Section 115 of the NIRC, as amended, a recommendation shall be made to effect such closure.

If the result of the surveillance made likewise indicates that the taxpayer had not been, in fact, correctly reporting income for tax purposes, and that the veracity of his accounting records is not reliable, the Commissioner or Regional Director concerned shall issue a Letter of Authority (LA) for the investigation of the taxpayer. The Revenue Officer named in the LA shall proceed with the audit and cause the assessment of the taxpayer's internal revenue tax liabilities, based either on: (1) surveillance, pursuant to Section 6[C]; (2) best evidence rule, as provided under Section 6[B], NIRC as amended; and / or (3) the result of the tax audit.

5. In order to avoid multiple surveillance activities being conducted upon one taxpayer by several Offices of the Bureau and to clearly define which Office shall conduct surveillance activities, the following rules shall be observed:
 - 5.1. If the basis of the surveillance activities comes from information gathered from the internal sources of the Bureau, e.g., information in the tax returns, information required to be furnished by certain government agencies as well as taxpayers to the Bureau on a regular basis (e.g., BOC, LRA, BIR RELIEF System, etc.)

pursuant to Memoranda of Agreement executed with the Bureau and revenue regulations issued, the surveillance activities shall be conducted by the Revenue District Office (RDO), Large Taxpayers Audit and Investigation Division I (LTAID I), Large Taxpayers Audit and Investigation Division II (LTAID II), or Large Taxpayers District Office (LTDO) with respect to taxpayers falling under their respective jurisdictions; and

- 5.2. If the basis of surveillance activities comes from confidential information filed by an informer or from other external sources, the surveillance activities shall be conducted by the **National Investigation Division (NID) and Policy Cases Division (PCD)**. The **ACIR – Enforcement Service**, however, in consultation with the **Head of the Investigating Office**, may decide to refer the case to the Special Investigation Division (SID) or RDO/LTDO, *if the case so warrants*.

B. Suspension or Temporary Closure of Business.

1. **Grounds.** – The following shall be the only grounds for suspension or temporary closure of business:
 - (a) Failure to issue receipts or invoices by a VAT-registered or registrable taxpayer;
 - (b) Failure to file a Value-Added Tax return;
 - (c) Understatement of taxable sales or receipts by 30% or more of the correct amount thereof in the case of a VAT-registered or registrable taxpayer; or,
 - (d) Failure to register.

2. **Procedures for Recommending the Suspension or Temporary Closure of Business**

2.1. Documentary Requirements

The recommendation of the concerned head of the investigating office/division to the Regional Director or ACIR Enforcement Service (ES) or ACIR, Large Taxpayers Service (LTS), as the case may be, to suspend or temporarily close business shall invariably be accompanied by documentary proof in support of the particular violation, as follows:

2.2. Failure to Issue Value-Added Tax Invoice/Receipts

- 2.2.1. A certification by the record custodian concerned to the effect that the Taxpayer Identification Number of the taxpayer has been verified as correct;

- 2.2.2. The Mission Order issued to the apprehending officer, if any;
 - 2.2.3. Apprehension slip detailing the items seized;
 - 2.2.4. The Items seized such as the pad of invoices where duplicate and triplicates are left blank or not filled up;
 - 2.2.5. Sworn statement under oath of the apprehending revenue officer stating the circumstances leading to the apprehension; or,
 - 2.2.6. Other evidence, if available.
- 2.3. **Failure to File Value-Added Tax Returns**
 - 2.3.1. A certification by the record custodian that the Taxpayer Identification Number of the taxpayer has been verified as correct;
 - 2.3.2. A Certification from the revenue District Officer concerned and/or the accredited banks, collection agent or duly authorized Treasurer of the City or Municipality where the principal office of the offender is located that no return was filed;
 - 2.3.3. The memorandum report of the Revenue Enforcement Officer narrating the fact of non-filing, the grounds relied upon for such a conclusion, with attachments, if any; or,
 - 2.3.4. The memorandum report shall be supported by at least a preliminary finding as to the amount of sales and the tax evaded during the quarters under investigation, these to be reflected in the prescribed reportorial forms and working papers.
- 2.4. **Understatement of Taxable Sales by 30% or More**
 - 2.4.1. The return filed;
 - 2.4.2. The taxpayer's records or part thereof as will show or from which it can be shown by other competent evidence that an understatement of sales/receipt has been committed. Invariably, the investigating enforcement officer should take custody over these records under proper receipt as evidence;
 - 2.4.3. The documents or certified copies thereof obtained through access to records of third persons or entities as provided under Sec. 5 of the NIRC, as amended, which tend to show the actual sales/receipts of the taxpayer;
 - 2.4.4. The memorandum report of the investigating revenue enforcement officer; or,
 - 2.4.5. The prescribed reportorial forms, including working papers reflecting the details of the investigator's finding of understatement.

- 2.5. Failure of a Value-Added Tax Subject Person to Register**
- 2.5.1. Any one or a combination of the documents which show the line of business of the taxpayer, such as Certificate of Registration with the DTI, SEC, Treasurer's Office of the concerned LGU, BOI, BIR;
 - 2.5.2. Any one or a combination of documents showing that the annual gross sales/receipts from Value-Added Tax covered transactions of the taxpayer during the previous year exceed ***one million five hundred thousand pesos (P1,500,000.00)*** or have exceeded said amount during the current year, such as the financial statements, income and business tax returns, reports of investigation by revenue enforcement officers, and the taxpayer's own records. In the case of an importer, the letters of credit opened, import documents, or certifications from the Bureau of Customs/Bureau of Import Service, among others;
 - 2.5.3. Certification from the Revenue District Officer who has jurisdiction over the taxpayer to the effect that the latter did not register as a Value-Added Tax person;
 - 2.5.4. Late registration of business who shall have registered shall carry a penalty of Five Thousand Pesos (P5,000.00).

3. Confrontational Requirements

- 3.1. Consistent with the requirements of due process, the report of the handling Revenue Officer shall be concurred in by the Head of the investigating office. The findings of the investigating office shall be reviewed by a Review Board composed of the following:

3.1.1. For Regional Cases. – The Regional Review Board shall be composed of the following revenue officials:

*Chairman : Regional Director
Members : Chief, Assessment Division
Chief, Legal Division
RDO having jurisdiction over the taxpayer*

3.1.2. For National Office Cases. – The National Office Review Board shall be composed of the following revenue officials:

*Chairman : Asst. Commissioners (ACIRs), ES /LTS
Members : Representative, Office of the Commissioner
Representative, Office of the Deputy
Commissioner (Legal and Inspection Group)*

*Representative, Office of the Deputy
Commissioner (Operations Group)
Representative, Legal Service*

3.1.3. *The Commissioner of Internal Revenue shall serve as the Overall Chairman of the Regional Office Review Boards and the National Office Review Board.*

The Review Boards must act on reports within **five (5)** days from receipt thereof. The Review Boards shall convene, upon the initiative of the chairperson, whenever necessary.

If **a** report is approved by **a** Review Board, the concerned Regional Director or the ACIR, Enforcement Service/LTS, as the case may be, **shall, in his capacity as Chair of the Review Board, sign and issue to the taxpayer concerned a Forty-Eight (48) Hour Notice, requiring him to explain under oath within forty eight (48) hours why he should not be dealt with administratively, by suspension of business or temporary closure of his establishment, and/or criminally, for violation of pertinent provisions of the Tax Code.**

In cases concerning duly validated discrepancies in sales / purchases covered by Letter Notices under the Tax Reconciliation System or the Third Party Information Program, a Letter Notice and follow-up letters sent and duly received by the taxpayer shall be considered as sufficient compliance with the 48-Hour Notice.

3.2. Upon *the taxpayer's* submission of the explanation, or if none is submitted on or before the deadline, *the Review Board headed by the Regional Director or the ACIR, Enforcement Service/LTS, shall decide whether or not to terminate the case, or to pursue administrative / criminal action against the taxpayer, as the case may be.*

3.3. *If a Review Board deems it necessary to pursue administrative or criminal action against a non-compliant taxpayer, it shall cause the preparation of a 5-Day VAT Compliance Notice (VCN) [Annex "D"], which shall be issued in lieu of the 10-Day VCN, to expedite the resolution of the case at hand. The 5-Day VCN shall be signed by the Chair of the Review Board concerned.*

3.3.1. The 5-Day VCN, with details of the findings of the investigating office as approved by the Review Board, shall be served immediately to the taxpayer by the

Regional Director / ACIR-LTS / ACIR-Enforcement Service, as the case may be.

- 3.3.2. *The 5-Day VCN shall likewise state the particular provision(s) of the NIRC that was / were violated by the taxpayer, and for which rectification must be done, including payment of the required deficiency taxes and penalties due therefor.*
- 3.3.3. *The taxpayer may again refute the findings of the BIR within two (2) days from receipt of the VCN, and submit his response to the Review Board.*
- 3.3.4. *The Review Board shall, in turn, immediately transmit the taxpayer's response to the Investigating Office concerned, for evaluation.*
- 3.3.5. *The Investigating Office concerned shall, within three (3) days from receipt thereof, evaluate, a taxpayer's response to a 5-Day VCN, and prepare the corresponding response thereto. The response letter shall then be signed by the Chair of the Review Board.*
- 3.3.6. *Upon receipt by the BIR of the protest, the running of the five (5) – day compliance period is deemed suspended, and shall resume only upon receipt by the taxpayer of the BIR's resolution on the protest.*

C. Execution and Enforcement

1. In the event that a taxpayer --

- *Refuses, neglects or fails to submit within the prescribed period, a response to a VCN;*
- *Submitted a response that was later found to be insufficient; or,*
- *Refuses, neglects or fails to comply with the terms of the 5-Day VCN,*

the Review Board concerned shall prepare a memorandum report recommending the closure of the establishment, for the approval of the Commissioner. Said report shall include the proposed Closure Order (Annex "E"), supported by the necessary documentation, for the approval and signature of the Commissioner.

The Closure Order shall be prepared in quintuplicate (five [5] copies), to be distributed as follows:

<i>Original</i>	<i>: Taxpayer's copy</i>
<i>2nd Copy</i>	<i>: Office of the Commissioner</i>
<i>3rd Copy</i>	<i>: Office of the Regional Director / ACIR concerned</i>
<i>4th Copy</i>	<i>: Investigating Office</i>
<i>5th Copy</i>	<i>: Investigating Officer (receiving copy)</i>

Each Investigating Office must nominate at least three (3) non-compliant taxpayers per month, for issuance of Closure Orders.

2. *The signed Closure Order shall be returned by the Office of the Commissioner, together with all supporting documents, to the Review Board concerned, for immediate service to the non-compliant taxpayer.*
3. *The service of the Closure Order shall be accompanied by a copy of the memorandum report of the Review Board concerned, duly approved by the Commissioner, indicating therein the basis for the Closure.*
4. *However, if in the interim the non-compliant taxpayer rectifies the violation pursuant to Section VIII (Compliance by Taxpayer) hereof, the Chair of the Review Board concerned shall desist from implementing the Closure Order, and shall immediately communicate such information to the Commissioner.*
5. The execution of the Closure Order shall consist in the physical closing of the doors or other means of ingress of the establishment, and the sealing thereof, with *the appropriate security devices (padlocks, etc.) and* the BIR's official seal.
6. Where deemed necessary, the execution of the Closure Order shall be carried out with the assistance of elements of the Philippine National Police (PNP) or Barangay Officials in the locality, in accordance with the Memorandum of Agreement between the Bureau of Internal Revenue and the PNP or concerned Barangay Officials.
7. *To create an immediate impact on the public's consciousness, and to increase taxpayer awareness of the BIR's intensified campaign to pursue non-compliant taxpayers, the implementation of the Closure Order and Temporary Suspension for a particular taxpayer to be carried out by a team of revenue officials led by the Regional Director / the ACIR - ES/LTS, and the Head of the Investigating Office concerned, or in appropriate instances, by the Commissioner of Internal Revenue, must be widely publicized through press releases, press conferences, and, when possible, the televised coverage of the actual closure / suspension of business operations of a non-compliant taxpayer.*

- 7.1. The Taxpayer Assistance Service shall coordinate with the National Office Review Board and the Office of the Commissioner in all activities intended to publicize the operations and accomplishment of “Oplan Kandado”, utilizing all available communications media in increasing the public’s awareness of the objectives of the program.*
 - 8. All reports and documents signed by the Commissioner in relation to the implementation of this Order shall not require the concurrence of other BIR officials as mandated in previous issuances.*
 - 9. The closure and temporary suspension of business under a duly-approved Closure Order shall not preclude the Bureau from filing the appropriate charges, if evidence so warrants, against the taxpayer concerned; or in the case of corporate taxpayers, against the responsible officers of the corporation, under the Run After Tax Evaders (RATE) Program of the Bureau.*

VI. DURATION OF CLOSURE

- 1. The closure of a business establishment shall last for a period of not less than five (5) days, and shall be in force until the violation is rectified.*

Upon rectification by the taxpayer of the violation pursuant to *Section VIII* hereof, *the Review Board concerned shall prepare a memorandum report recommending the lifting of the closure order, for the approval of the Commissioner. Said report shall include the proposed Lifting of Closure Order (Annex “F”), supported by the necessary documentation, for the approval and signature of the Commissioner.*

- 2. The Lifting of Closure Order shall be prepared in quintuplicate (five [5] copies), to be distributed as follows:*

<i>Original</i>	<i>: Taxpayer’s copy</i>
<i>2nd Copy</i>	<i>: Office of the Commissioner</i>
<i>3rd Copy</i>	<i>: Office of the Regional Director / ACIR concerned</i>
<i>4th Copy</i>	<i>: Investigating Office</i>
<i>5th Copy</i>	<i>: Investigating Officer (receiving copy)</i>

- 3. In the event that the Commissioner approves a recommendation for the lifting of a Closure Order, the signed Lifting of Closure Order shall be returned by the Office of the Commissioner, together with all supporting documents, to the Review Board concerned, for immediate service to the non-compliant taxpayer.*

4. *The service of the Lifting of Closure Order shall be accompanied by a copy of the memorandum report of the Review Board concerned, duly approved by the Commissioner, indicating therein the basis for the lifting of the sanction.*

VII. COMPLIANCE BY TAXPAYER

1. The Closure Order shall only be lifted if the violation/s as stated in the 5-Day VAT Compliance Notice is rectified by the taxpayer by:
 - 1.1. Complying with the registration requirements set forth in Sections 236 and 238 of the NIRC, in case of failure to register;
 - 1.2. Complying with the invoicing requirements as set forth in Sections 113 and 237, in case of failure to issue receipts / invoices;
 - 1.3. Filing of VAT returns which have not been filed and paying the amount of taxes due thereon;
 - 1.4. Amending previously filed VAT returns to reflect the correct taxable sales/receipts which were previously understated due to the failure to issue sales invoices/receipts or due to underdeclaration of sales/receipts.
2. Nonetheless, the taxpayer is not precluded from amending/filing returns covering other tax liabilities as a result of the BIR findings as aforestated.
3. The original returns/amended returns and payment of the taxes due, inclusive of penalties, shall be filed with the AABs of the BIR Office (i.e., RDO or LTDO or LTAID I or LTAID II, whichever is applicable) where the taxpayer is registered or required to be registered. The registration of the business as well as other registration-related activities shall be made with the appropriate BIR Office where the taxpayer is required to be registered.
4. On the basis of the compliance made, the concerned BIR Office shall issue a Certification to the effect that the particular violation has been rectified by the taxpayer. Such Certification shall reflect the amount of taxes paid together with the Official Receipt Number issued by the AAB/Collection Agent and the particular returns filed or amended by the taxpayer, in case of any; or the Certificate of Registration Number/Taxpayer Identification Number (TIN) issued to the taxpayer, in case of failure to register.
5. A copy of such Certification, together with the copies of the Certificate of Registration, AAB/Collection Agent Official Receipt and/or VAT returns

filed, or other documents to prove compliance, shall be submitted to the Review Board as evidence of the subsequent compliance made which shall be the basis for the recommendation of the lifting of the closure order as provided in Section VII hereof.

6. If the amounts declared in the VAT returns filed do not tally with the computed tentative amount of underdeclaration of gross sales/receipts/other taxable base as indicated in the report of the Review Board, the taxpayer must be able to dispute the accuracy of the computed figures reported by the revenue officers and must be able to cite the reasons why the tentative figures as computed by the BIR were not the figures followed in the filed returns. The report of the investigating office as reviewed by the Review Board shall recommend the appropriate action thereon for the approval of the DCIR-Legal and Inspection Group.

VIII. EFFECT OF THE LIFTING OF THE CLOSURE ORDER

1. The lifting of the closure order shall be done in cases when there has been:
 - 1.1. Subsequent filing or amendment of returns with the payment of the tax inclusive of statutory penalties;
 - 1.2. Subsequent registration with the payment of the corresponding compromise penalties;
 - 1.3. Payment of deficiency taxes inclusive of penalties corresponding to the sales where no invoices/receipts have been issued; and,
 - 1.4. Payment of deficiency taxes inclusive of penalties corresponding to the understatement of taxable sales or receipts.
2. If there is no 100% compliance with the tentative ***amounts provided in the 5-Day VCN / Letter Notice***, but the taxpayer partially complies by amending ***his*** returns, ***wherein the amounts reflected in the amended returns*** are based on the ratio and percentages reflected in the original returns filed, such compliance shall still ***be considered as basis for the recommendation for the lifting of the closure order***, Provided that the tax payments in the amended returns filed or on returns initially filed, in case of no previously filed returns, for business tax shall not be less than the following:
 - In case of seller of services, ***ten percent (10%) of undeclared gross receipts as found by the BIR; or one hundred ten percent (110%) of the adjusted basic tax due (after considering underdeclaration), whichever is higher.***

- In case of seller of goods, *five percent (5%) of undeclared gross sales* as found by the BIR; or *one hundred ten percent (110%) of the adjusted basic tax due (after considering underdeclaration), whichever is higher.*

Provided, further, that notwithstanding compliance with the 5-Day VAT Notice and the subsequent lifting of the closure order, the taxpayer may still be subjected to audit of returns filed (original or amended returns) and records pertaining to all his tax liabilities.

3. The lifting order shall not release the taxpayer from the compliance requirements and from the penalties prescribed by the Tax Code for the violation which shall be dealt with by criminal prosecution or by compromise settlement, at the discretion of the Commissioner of Internal Revenue. In case of compromise settlement, however, the same shall be approved by MANCOM, *pursuant to Revenue Regulations No. 13-2001*. Majority vote of the members of the MANCOM shall, *with the concurrence of the Commissioner*, constitute a decision of MANCOM.

IX. REPORTORIAL REQUIREMENTS

1. On Surveillance Activities

- 1.1. The Heads of the Investigating Offices / Divisions shall prepare a Status Report on the Surveillance Activities [Annex "G"] within ten (10) days after the close of each month and shall submit the same to the following:

Investigating Office	Recipient of Reports
<ul style="list-style-type: none"> • RDOs • SIDs 	Regional Office
<ul style="list-style-type: none"> • NID • PCD 	Enforcement Service
<ul style="list-style-type: none"> • Large Taxpayers (LT) Audit and Investigation Division I (Regular LTs) • LT Audit and Investigation Division II (Excise Taxpayers) • LT Field Operations Division • LT District Offices (LTDOs) 	Large Taxpayers Service

- 1.2. The Regional Offices, the Enforcement Service and the Large Taxpayers Service shall then submit consolidated Status Reports, following the same format prescribed for the Report, and submit the same to the Office of the Commissioner, within fifteen (15) days from the close of each month.
- 1.3. In addition to the above report, the Regional Directors, and the ACIRs of the Enforcement Service and the Large Taxpayers Service shall prepare a List of Mission Orders Issued [Annex ‘‘H’’] and submit the same to the Office of the Commissioner on or before the fifth day following the end of the month of issuance.

2. On Monthly Accomplishment Reports

All Review Boards shall submit, on or before the tenth (10) day of the following month, these reports:

- Monthly Report on 5-Day VCNs Issued (Annex “I”);
 - Monthly Report on Closure Orders Issued and Served (Annex “J”);
 - Monthly Report on Lifting of Closure Orders Issued and Served (Annex “K”); and,
 - Monthly Report on the “Oplan Kandado” Program (Annex “L”).
- 2.1. The Regional Review Boards shall submit their monthly accomplishment reports to the Deputy Commissioner (Operations Group), and to the Office of the Commissioner.
 - 2.2. The National Office Review Board, however, shall submit its monthly accomplishment report directly to the Office of the Commissioner.

X. REPEALING CLAUSE

All revenue issuances inconsistent herewith are hereby repealed or modified accordingly. Unless inconsistent with the policies and guidelines herein prescribed, all other rules and policies pertaining to the enforcement of the administrative sanction of suspension and temporary closure of business shall be strictly observed and followed.

XI. TRANSITORY PROVISIONS

For closure cases initiated prior to the issuance of this Order but whose disposition have remained pending as of its effectiveness, the pertinent provisions herein shall apply to the remaining stages. Thus, in a closure case where the action left to be done prior to the effectiveness of this Order is the lifting thereof, the provisions relative to the lifting of the closure order and other procedures to be performed thereafter as herein provided shall be observed.

XII. EFFECTIVITY

This Order shall take effect immediately.

(Original Signed)
SIXTO S. ESQUIVIAS IV
Commissioner of Internal Revenue

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