

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

December 22, 2010

REVENUE MEMORANDUM ORDER NO. 88-2010

SUBJECT : Guidelines and Procedures in the Issuance and Enforcement of Subpoena Duces Tecum; and the Prosecution of Cases for “Failure to Obey Summons”.

TO : All Internal Revenue Officers and Others Concerned.

I. BACKGROUND

The powers of the Bureau of Internal Revenue to examine and inspect books of accounts and other accounting records and conduct investigations relating to internal revenue tax liabilities of taxpayers include the legal process of issuing “Summons” or “Subpoena Duces Tecum” (SDT) to persons enumerated under Section 5 (c) of the National Internal Revenue Code of 1997 (NIRC). The BIR may invoke the authority of the courts in case of non-compliance with the aforesaid legal processes by filing a criminal case against the taxpayer for violation of Section 5, in relation to Sections 14 and 266 of the NIRC.

Being a criminal action, the quantum of evidence required to warrant conviction in case of “Failure to Obey Summons” is proof beyond reasonable doubt. Thus, to establish proof necessary for the successful prosecution and conviction of violators of Section 266 of the NIRC, strict compliance with the guidelines and procedures provided herein is imposed upon concerned revenue officials and employees.

This Order delineates the procedure for the issuance and enforcement of SDTs to ensure full implementation of Sections 5, 14 and 266 of the NIRC.

II. FORM

The SDTs to be issued should comply with the formal requirements stated hereunder. A sample copy of the revised form is hereto attached as Annex “A”.

A. BIR Form No. 0713 is hereby amended as follows:

1. The revision date shall be changed from “JULY, 1999” to “SEPTEMBER, 2010”; and
2. The introductory provisions shall be amended to read: “*By the authority vested in me by the provisions of Section 37, Chapter 9, Book I of the Administrative Code of 1987...*” in order to correct the misquoted provision of the Administrative Code which must be Section 37 instead of Section 36.

B. Every SDT to be issued should have:

1. A serial number in accordance with paragraph “III.C.4” hereof; and
2. The number and date of the Letter of Authority (LA), Tax Verification Notice (TVN) or other official document authorizing audit investigation, which shall be appended below the date of issuance of the SDT, as illustrated in Annex “A-2”.

III. GUIDELINES AND PROCEDURES

A. Request for Issuance of SDT

1. Upon compliance with the audit procedures under Paragraph 2, sub-paragraphs 2.1 to 2.6 of RAMO No. 3-82, the Revenue Officers authorized to conduct investigation on the internal revenue tax liabilities of the concerned taxpayer shall request, through official communication, the issuance of SDT from the Prosecution Division (National Office), Legal Division (Regional Office) or any other authorized office. The records of the case shall be attached to the letter-request which shall contain the following:
 - a. Statement of material dates, consisting of the date of issuance of the Letter of Authority and the Letter Requests; and their corresponding dates of receipt by the concerned taxpayer;
 - b. The name/s and address/es of the individuals (for individual taxpayers) or the name/s and position/s of the corporate officer/s (for corporate taxpayers) who has/have control or custody over the books of accounts and other accounting records to be examined;

- c. A list of the particular books and records to be examined, excluding therefrom the documents already submitted as partial compliance with earlier request/s.
 - d. The taxable year subject of investigation.
2. The request shall be signed by the revenue officers comprising the group authorized to conduct the investigation and approved by the head of office.

B. Evaluation of the Request for Issuance of SDT

1. The Prosecution Division, Legal Division or any other authorized office, as the case may be, shall evaluate the request within two (2) working days from receipt, and on the basis thereof, undertake either of the following courses of action:
 - a. Return the case to its origin for further documentation or action; or
 - b. Prepare the corresponding SDT in accordance with the procedure laid down in the next paragraph.

C. Preparation and Issuance of SDT

1. For control and monitoring purposes, only the following are authorized to issue SDTs:
 - a. For the National Office:
 - a.1** The Assistant Commissioner, Legal Service; or
 - a.2** The following Revenue Officials, when specifically authorized in writing by the Commissioner:
 - The Assistant Commissioner, Large Taxpayers Service; or
 - The concerned Head Revenue Executive Assistant (HREA), either of Legal Service or Large Taxpayers Service; or
 - The Chief of the concerned Large Taxpayers Audit Division/District Office
 - b. For the Regional Office:
 - b.1** The Director, or in his absence, the Assistant Director; or
 - b.2** The following Revenue Officials, when authorized by the Regional Director by virtue of a Regional Delegation Order:
 - The Chief of the concerned Legal Division; or
 - The concerned Revenue District Officer

This shall not, however, preclude the Commissioner and Deputy Commissioners from exercising their authority to issue SDTs in appropriate cases, as provided under the NIRC.

2. In case of individual taxpayers, the SDT shall be issued to the same person who is the subject of audit investigation. For corporations, partnerships or associations, the SDT shall be issued to the partner, president, general manager, branch manager, treasurer, officer-in-charge, or the employees responsible for the custody of the books of accounts and other accounting records being required for audit investigation, pursuant to Sec. 253 (d) of the NIRC.
3. The date of issuance of the SDT shall be the date it was officially signed.
4. The compliance date for the submission of books of accounts and other accounting records shall be set on the fourteen (14th) day from date of issuance of the SDT.
5. The Prosecution Division, Legal Division or any other authorized office, as the case may be, shall provide a corresponding serial number for each SDT issued; to be placed on the upper right portion of the SDT. The following format shall be used:
(Office Code - Year of Issuance – Series Number, which shall begin from 01 for the first SDT, to be followed by the corresponding digit in numerical order for subsequent SDTs issued.)

For purposes of this Order, the following are the appropriate Office Codes:

K-4	For the Prosecution Division
D	For the Large Taxpayers Service
D-1	For the LTRAD 1
D-2	For the LTRAD 2
D-3	For the LTRAD 3
D-4	For the LTDO – Makati
D-5	For the LTDO – Cebu
D-6	For the LTEAD 1
D-7	For the LTEAD 2
RR1-RR19	Depending on the corresponding Regional Office Number

A sample serial number is marked as Annex “A-1” in the attached sample SDT.

- 6.** The action lawyer shall prepare 3 copies of the SDT for initial and/or signature of the concerned officials, the distribution of which shall be as follows:

Original copy - to be served to the taxpayer

Duplicate copy - to be attached to the docket of the case

TriPLICATE copy - to form part of the files of the action lawyer

- 7.** Upon return of the SDT from the issuing authority, the Prosecution Division, Legal Division or any other authorized office, as the case may be, shall immediately forward the duly issued SDT to the requesting office, which shall effect its service in accordance with the Rules provided in the next paragraph.

D. Service of SDT

- 1.** The duly issued SDT must be served within three (3) working days from receipt by the concerned Revenue Officers. Rule 14 of the Rules of Court governs the procedure to be observed in matters relating to service of SDTs. Thus, strict compliance with the following rules of procedure is hereby enjoined:

a. Whenever practicable, the SDT shall be served by handing a copy thereof to the person named therein, or, if he refuses to receive and sign for it, by tendering it to him, witnessed by another revenue officer accompanying the server.

b. If, for justifiable causes, personal service cannot be made, service may be effected:

b.1 By leaving a copy of the SDT at the dwelling place or residence of the subject individual, with some person of suitable age and discretion then residing therein, witnessed by another revenue officer accompanying the server; or

b.2 By leaving a copy at the office or regular place of business of the person named therein, with some competent person in charge thereof, witnessed by another revenue officer accompanying the server.

- 2.** The Revenue Officer should indicate a compliance date for submission of required documents which will correspond to the 14 days rule set under III.C.4 of this Order.

E. Proof of Service of SDT

- 1.** Within three (3) working days from the service of SDT, the Revenue Officers who effected the same shall furnish the issuing office the following:
 - a.** The served copy of the SDT, with the bottom portion thereof complete with the following information:
 - a.1** The name of the person upon whom it was served and the particular details required in paragraph “III.D.1.b” hereof, if applicable;
 - a.2** The date and time when the SDT was received;
 - a.3** The name and designation of the server, together with the name of the accompanying Revenue Officer who witnessed the service of SDT.
 - a.4** The date indicated as compliance date of the served SDT.
 - b.** A duly executed “Affidavit of Service” by the concerned Revenue Officers, in accordance with the form hereto attached as Annex “B”.

F. ENFORCEMENT OF SDT

- 1.** The concerned Revenue Officers conducting audit investigation are required to be present during the designated time, date and place set for the presentation of the books of accounts and other accounting records in order to verify if the records presented are substantially complete, as required by the SDT. Non-compliance therewith shall subject violators to administrative liability.
- 2.** Upon verification by the concerned Revenue Officers that the records presented are substantially complete, the records of the case shall be referred back to the assessing unit for continuation of the delayed investigation.
- 3.** In case there is failure to present the required books of accounts and other accounting records, the action lawyer assigned to the case shall request the concerned Revenue Officers for a conference. This shall be scheduled on the fifth (5th) working day from the date set for compliance with the SDT. The Revenue Officers shall work jointly with the action lawyer in documenting/gathering evidence/s for the criminal prosecution of the individual who disobeyed the SDT.

IV. FILING OF A CASE FOR FAILURE TO OBEY SDT

- A.** Within seven (7) working days from above-mentioned conference, the action lawyer shall prepare a Letter-Complaint addressed to the City Prosecutor, recommending the criminal prosecution of the individual who disobeyed the SDT for “Failure to Obey Summons”, together with the Affidavit-Complaint and its supporting evidentiary documents, properly marked. The letter-complaint, together with the Affidavit Complaint and its attachments, shall then be routed to the appropriate Office for review and signature of the concerned Revenue Officials.
- B.** In the preparation of the Affidavit Complaint, the Revenue Officers, as the persons who have personal knowledge of the non-compliance with the SDT because they are the ones who requested for the issuance of the SDT, served the same to the taxpayer, and were present during the compliance date indicated in the SDT, shall be the complainants.
- C.** In the preparation of the letter-complaint to the Office of the Prosecutor, the Regional Directors for SDTs issued by the Revenue Regions and the Deputy Commissioner for Legal and Inspection Group for SDTs issued by the Legal Service and the Large Taxpayers Service, shall be the signatories in consonance with Revenue Delegated Authority Order No. 2-2007.
- D.** Upon return of the duly signed Letter-Complaint, together with the Affidavit Complaint and its attachments to the originating office, it shall then be immediately filed with the Office of the City Prosecutor that has jurisdiction over the case.

V. DELAYED COMPLIANCE WITH THE SDT

If, during the pendency of the criminal action for “Failure to Obey Summons”, the respondent submits the required books of accounts and other accounting records, and on this basis, requests the Prosecutor’s Office or the Court for the dismissal of the case, the prosecuting officer of the BIR shall concur therewith, only upon presentation by said respondent of the following:

1. A joint certification issued by the Prosecution Division (National Office), Legal Division (Regional Office) or any other authorized office, as the case may be, and the Revenue Officers who requested the issuance of the SDT, stating that the required books of accounts and other accounting records have been received from respondent, specifically stating the date of submission.

2. A receipt evidencing payment of the penalty of Php10,000.00 imposed by Sec. 266 of the NIRC on account of the delayed compliance which deferred the ongoing audit investigation.

VI. REPEALING CLAUSE

All issuances and/or portions thereof inconsistent with this Order are hereby revoked, modified or amended accordingly.

VII. EFFECTIVITY

This Order shall take effect immediately.

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

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