

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

November 15, 2010

REVENUE MEMORANDUM CIRCULAR NO. 86-2010

Subject : **Publishing the full text of Opinion No. 48, S. 2010 of the Department of Justice**

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 **Opinion No. 48, S. 2010** issued by Secretary Leila M. De Lima of the Department of Justice.

“OPINION NO. 48, S. 2010

Republika ng Pilipinas
KAGAWARAN NG KATARUNGAN
Department of Justice
Manila

LML-L-18J10-537

18 October 2010

Commissioner Kim S. Jacinto-Henares
Bureau of Internal Revenue
BIR National Office Building
BIR Road, Diliman, Quezon City

Dear **Commissioner Henares:**

This refers to your request for clarification on the query stated therein relating to the interpretation of the provisions of Section 282 of Republic Act No. 8424, otherwise known as the “National Internal Revenue Code (NIRC) of 1997.”

Specifically, you want to be clarified on “whether or not the Informer’s Reward for providing information on violations of the tax laws amounts to ten percent (10%) of the amount collected or One Million Pesos (P1,000,000), whichever is lower as provided for under the NIRC of 1997”.

The legal provision adverted to, insofar as relevant, provides:

SEC. 282. Informer’s Reward to Persons Instrumental in the Discovery of Violations of the National Internal Revenue Code and in the Discovery and Seizure of Smuggled Goods.-

(A) *For Violations of the National Internal Revenue Code.* – Any person, except an internal revenue official or employee, or other public official or employee, or his relative within the sixth degree of consanguinity, who voluntarily gives definite and sworn information, not yet in the possession of the Bureau of Internal Revenue, leading to the discovery of frauds upon the internal revenue laws or violations of any of the provisions thereof, thereby resulting in the recovery of revenues, surcharges and fees and/or the conviction of the guilty party and/or the imposition of any of the fine or penalty, **shall be rewarded in a sum equivalent to ten percent (10%) of the revenues, surcharges or fees recovered and/or fine or penalty imposed and collected or One Million Pesos (P 1,000,000) per case, whichever is lower.** The same amount of reward shall also be given to an informer where the offender has offered to compromise the violation of law committed by him and his offer has been accepted by the Commissioner and collected from the offender: xxx.

(B) *For Discovery and Seizure of Smuggled Goods.* - **To encourage the public to extend full cooperation in eradicating smuggling, a cash reward equivalent to ten percent (10%) of the fair market value of the smuggled and confiscated goods or One Million Pesos (P1,000,000) per case, whichever is lower, shall be given to persons instrumental in the discovery and seizure of such smuggled goods.**

xxx

xxx.¹

The request, it appears, was precipitated by the unnumbered opinion issued by then Justice Secretary Raul M. Gonzales on a request filed by one Danilo A. Lihaylihay for the reconsideration of the letter-response to a request for clarification of a previous Department of Justice Opinion (No. 18, s. 2005)

¹ Stress added.

rendered upon the request of then Acting Finance Secretary Cesar V. Purisima which ruled that there is no conflict between Section 3513 of the Tariff and Customs Code, a special law, and the subject Section 282 of the NIRC of 1997, a general law.

The unnumbered opinion, which passed upon the issue of whether or not Section 1 of R.A. No. 2338, also a special law, must be upheld as against Section 282(A) of the NIRC of 1997, in part, reads:

We feel inclined to accept the stand taken by you in this regard and so hold that his case actually involved transcendental importance to the public and hereby render our opinion, thus:

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xxx

2. Section 1 of Republic Act No. 2338 still prevails over Section 282(A) of the National Internal Revenue Code of 1997 (R.A. 8424); and,

3. The 25% monetary reward as provided for under Section 1 of R.A. No. 2338 shall be the legal basis of the Government in computing the payment of informer's reward.

Hence, your instant request wherein you argue that, among other things, the informer's reward ceiling provided for under the NIRC of 1997, being the later expression of the legislative will must necessarily prevail and override R.A. No. 2338, the earlier law; and that Section 291 of the NIRC provides that laws, decrees, executive orders, rules and regulations, or parts thereof which are contrary to or inconsistent with this Code are hereby repealed, amended or modified accordingly.

Subject to the discussions herein below provided, the query is resolved in the affirmative.

Pursuant to established policy and precedents, and unless there are exceptional circumstance that warrant such step,² this Department has consistently refrained from entertaining requests for clarification/reconsideration of the opinion of the Secretary of Justice, unless requested by the government functionary for

² Sec of Justice Op. 37, s. 1939.

whom the opinion was rendered.³ Considering the facts and circumstances presented earlier, the unnumbered opinion subject for clarification should have not been issued in the first place as there appears to be no exceptional reason to warrant a second look at our Opinion No. 18, s. 2005.

It must be stressed, at the outset, that the Opinion was issued upon the request of then Acting Finance Secretary Purisima. Hence, any request for clarification and/or reconsideration thereof should have come from the Finance Secretary. While the policy is not absolute, a reading of the documents on record, does not show that the reasons advanced by Mr. Lihaylihay are exceptional enough as to justify a review of the issued opinion and the issuance of the unnumbered one.

Moreover, assuming, argumentatively, that there was indeed an exceptional circumstance for a review of Opinion No. 18, s. 2005, a careful review of the documents and the laws applicable convinced Us that the conclusion reached in the unnumbered opinion is off tangent and untenable.

It must be stressed, at the outset, that contrary to the pronouncement contained in the unnumbered opinion, the Internal Revenue Code is not a general law but, like R.A. No. 2338, a special law.⁴ Thus, and as rightfully held by the Court of Tax Appeals in the case⁵ involving the same Danilo A. Lihaylihay, R.A. No. 2338, a special law, being irreconcilable and inconsistent with P.D. No. 1158,⁶ another special law, may be deemed to have been nullified by the later law.⁷

For the same reason, and as explicitly stated by the Supreme Court: “An erroneous construction of law cannot give rise to a vested right that can be invoked

³ Ibid No. 49, s. 1984, citing opinions; No. 78, s. 2003; No. 44, 40 & 30, s. 2009.

⁴ See, Republic vs. Gancayco, 11 SCRA 380, 386; Guagua Electric Light Co. Inc. Vs. CIR, 19 SCRA 790, 796; CIR vs. Ilagan Electric and Ice Plant, Inc., 29 SCRA 634, 637.

⁵ C.T.A. Case No. 7515, Nov. 29, 2009.

⁶ National Internal Revenue Code of 1977.

⁷ Agpalo, Statutory Construction, Fifth ed., p. 399, citing cases.

by a taxpayer. The reason is obvious: a vested right cannot spring from a wrong interpretation. This is too clear to require elaboration.”⁸

Besides, the Repealing Clause of P.D. No. 1773⁹, which further amended certain sections of the 1977 NIRC, is clear and categorical, thus:

SEC. 36. *Repealing Clause.* – The provisions of Republic Act Nos. 2338 and 4713, Presidential Decree Nos. 701 and 708, Sections 158-A, 193(c), 259-A and 281-A of the National Internal Revenue Code and all laws, rules and regulations or parts thereof inconsistent with the provisions of this Act are hereby repealed or amended accordingly.¹⁰.

Undeniably, R.A. No. 2338 had been totally and expressly repealed by the 1977 NIRC, as amended by P.D. No. 1773. Stated differently, in view of provisions Section 36, above-quoted, in relation to Section 331¹¹ of the 1977 NIRC, R.A. No. 2338 ceased to exist as part of the law of the land. A total repeal revokes the statute completely while an express repeal declares in the statute, usually in the repealing clause, as the case herein, that a particular and specific law, identified by its number or title, is repealed.¹² The repealing clause of P.D. No. 1158, as further amended by P.D. No. 1773, is explicit enough that an interpretation is no longer necessary—only application¹³.

The foregoing considered, we are of the considered view that absent any subsequent law amending Section 282 of the NIRC of 1977, the informer’s reward amounts to ten percent (10%) of the revenues, surcharges or fees recovered and/or fine or penalty imposed and collected or One Million Pesos (P1,000,000) per case, whichever is lower.

⁸ Hilado vs. CIR and CTA, 100 Phil. 288, 295.

⁹ Amending Certain Sections of the National Internal Revenue Code.

¹⁰ Stress added.

¹¹ The section governs the grant of informer’s reward.

¹² Mecano vs. COA, 216 SCRA 500, 504, citing Agpalo, Statutory Construction, 1986 ed, p. 289.

¹³ Sec. of Justice Op. No. 39, 28 & 23, current series.

This supersedes the unnumbered opinion subject of the instant request for clarification. Opinion No. 18, s. 2005 is likewise amended accordingly.

Please be guided accordingly.

Very truly yours,

(Original Signed)
LEILA M. DE LIMA
Secretary”

All revenue officials and employees are enjoined to give this Circular as wide a publicity as possible.

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

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