NATIONAL ADMINISTRATIVE REGISTER · MAY 5, 1999

SALIENT FEATURES OF REVENUE REGULATIONS NO. 2-99, OTHERWISE KNOWN AS THE “ECONOMIC RECOVERY ASSISTANCE PAYMENT (ERAP) PROGRAM”, GRANTING IMMUNITY FROM AUDIT AND INVESTIGATION OF...

BIR REVENUE MEMORANDUM CIRCULAR NO. 33-99, May 05, 1999

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To further clarify remaining issues relative to the grant of immunity from audit and investigation of income tax, VAT and percentage tax returns under the ERAP Program as implemented by Revenue Regulations No. 2-99, as amended, hereunder are additional basic questions and answers.

Q-1:

Can taxpayers beginning operations in taxable year 1998 and having filed the requisite return for the first time qualify for immunity from audit as contemplated under the ERAP Program?

A-1:

The policy is now to extend the ERAP Program to new taxpayers, provisions of RMC No. 18-99 to the contrary notwithstanding. But since these taxpayers beginning business operations in taxable year 1998 would not have any basis for the comparison of their taxes paid, therefore, these taxpayers, if individuals, shall have paid or must pay at least one-half of one percent (1/2 of 1%) of his 1998 Gross sales/receipts, while if corporations, at least two percent (2%) of its 1998 Gross sales/receipts on or before July 15, 1999.

Q-2:

How is the ERAP requirement computed if the individual taxpayer, who wishes to avail, earned only compensation income in 1997?

A-2:

The basis of the ERAP requirement is the total tax paid (tax due per return) in 1997. Thus, assuming a taxpayer, married, had the following data:

1997 Taxable Compensation Income P100,000

1997 Creditable Withholding Tax 10,255

1998 Tax Due per return filed 9,000

In order to qualify for ERAP, he shall make an additional payment of P3,306.00 computed as follows:

1997: Taxable Compensation P100,000

Less Personal Exemption 18,000

Amount Subject To Tax P 82,000

Tax Due Thereon P10,255

Less Creditable W/h Tax 10,255

Tax Still Due P 0

1998: ERAP Requirement (P10,255 x 120%) P12,306

Less 1998 Tax Paid 9,000

Additional Payment P 3,306

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Q-3:

How is the ERAP requirement computed if the individual taxpayer, who wishes to avail, earned only business income in 1997?

A-3:

The basis of the ERAP requirement is the total tax paid (tax due per return) in 1997. To illustrate, assuming a taxpayer, married, had the following data:

1997 Net Taxable Business Income P170,000

1997 Creditable Withholding Tax 14,000

1998 Tax Due per return filed 12,100

In order to qualify for ERAP, he shall make an additional payment of P14,300.00 computed as follows:

1997: Net Taxable Business Income P170,000

Less Personal Exemption 18,000

Amount Subject To Tax P152,000

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Tax Due Thereon P22,000

Less Creditable W/h Tax 14,000

Tax Still Due and Paid P 8,000

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1998: ERAP Requirement (P22,000 x 120%) P26,400

Less 1998 Tax Paid 12,100

Additional Payment P14,300

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Q-4:

How is the ERAP requirement computed if the individual taxpayer, who wishes to avail, earned both compensation and business income in 1997?

A-4:

The basis of the ERAP requirement is the total tax paid (tax due per return) in 1997. Thus, assuming a taxpayer, married, had the following data:

Compensation Business

1997 Taxable Income P100,000 P170,000

1997 Creditable Withholding tax 10,255 14,000

1998 Tax Due per return filed P11,300

In order to qualify for ERAP, he shall make an additional payment of P31,726.00 computed as follows:

1997: Compensation

Taxable Compensation P100,000

Less Personal Exemption

18,000

Amount Subject To Tax P 82,000

Tax Due Thereon P10,255

Less Creditable W/h Tax P10,255

Tax Still Due P 0

Business

Net Taxable Business Income P170,000

Less Personal Exemption 0

Amount Subject To Tax P170,000

Tax Due Thereon P25,600

Less Creditable W/h Tax

14,000

Tax Still Due/Collectible P11,600

Total Tax Due and Paid P11,600

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1998: ERAP Requirement (P35,855 x 120%)

P43,026

Less 1998 Tax Paid 11,300

Additional Payment

P31,726

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The basis for computing the ERAP requirement shall be the total income taxes paid for 1997 equivalent to the combined income tax due on the compensation income and business income.

Q-5:

How can a VAT-registered person qualify for immunity from audit for VAT purposes under the ERAP Program?

A-5:

In general, a VAT-registered person may qualify for immunity from audit for his 1998 VAT returns if he has paid an output tax in 1998 of at least 20% more than his output taxes paid in 1997, provided, that this minimum increase in output taxes must have been actually paid in the quarterly returns, otherwise an amount is to be paid by the taxpayer to the extent that the receipted payments per return does not cover the required amount of minimum increase in output taxes. In fine, the minimum increase in output taxes required for availment can not be paid using input taxes. To illustrate:

Case A

1997

1998

ERAP

Output Taxes

P1,000,000

P1,200,000

P200,000

Input Taxes

900,000

800,000

VAT Paid per Quarterly Returns

P 100,000

P 400,000

-400,000

Additional Payment Required

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P 0

In the above illustration, the ERAP requirement is at least 20% of the output taxes for 1997 equivalent to P200,000. Since the entire amount was already paid through the 1998 quarterly VAT returns where the total tax paid (excluding input taxes) is P400,000, no additional payment is required from the taxpayer to avail of the program.

Case B

1997

1998

ERAP

Output Taxes

P1,000,000

P1,200,000

P200,000

Input Taxes

1,000,000

1,200,000

VAT Paid per Quarterly Returns

P 0

P 0

0

Additional Payment Required

P200,000

In Case B above, the ERAP requirement is P200,000 but this amount was not paid in the 1998 quarterly VAT returns where the entire output taxes were offset by input taxes, hence the taxpayer shall pay the P200,000 by using Form No. 0605 to avail of the program.

Case C

1997

1998

ERAP

Output Taxes

P1,000,000

P700,000

P500,000

Input Taxes

650,000

400,000

VAT Paid per Quarterly Returns

P 350,000

P300,000

-300,000

Additional Payment Required

P200,000

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In Case C, the output taxes for 1998 to meet the requirement of at least 20% more than the output taxes for 1997 is P1,200,000. The actual output taxes for 1998 is only P700,000 so that the ERAP requirement is additional output tax of at least P500,000 which must be actually paid by the taxpayer. The 1998 quarterly VAT returns only reveal payments (excluding input taxes) of P300,000 which means that the taxpayer has to pay only an additional P200,000 to avail of the program.

Case D

1997

1998

ERAP

Output Taxes

P1,000,000

P500,000

P700,000

Input Taxes

950,000

500,000

VAT Paid per Quarterly Returns

P 50,000

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P 0

- 0

Additional Payment Required

P700,000

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In Case D, total output taxes for 1998 to qualify should be P1,200,000. Since the actual output taxes amounts only to P500,000, the ERAP requirement is P700,000. This amount was not paid in the quarterly VAT returns filed for 1998, hence the taxpayer is required to pay the entire amount using Form No. 0605 to avail of the program.

Case E

1997

1998

ERAP

Output Taxes

P1,000,000

P1,500,000

P200,000

Input Taxes

950,000

1,300,000

VAT Paid per Quarterly Returns

P 50,000

P 200,000

-200,000

Additional Payment Required

P 0

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In Case E, the 1998 output taxes exceeded that of 1997 by 50%. The ERAP requirement is only 20% more or P200,000 which amount must be actually paid. The 1998 quarterly VAT returns reveal an actual payment (excluding input taxes) of P200,000 which means that no additional payment is required in order to qualify.

If there is no basis of comparison in that the taxpayer started operations or became subject to VAT only for a fraction of the period covering taxable year 1997 or the taxpayer might have been a going concern but did not have output taxes in all the quarters of taxable year 1997, then he shall pay at least ½ of 1% of 1998 gross sales/receipts (if individual), or 2% of 1998 gross sales/receipts (if corporation) to avail of the program. To illustrate, lets take the case of a corporation which is liable to Percentage Tax for the first and second quarter of 1997 and became liable to VAT for the third and fourth quarters, its ERAP requirement is computed as follows:

1997

1998

ERAP

Gross Sales/Receipts

P6,500,000

P10,000,000

Percentage Tax (1st - 2nd Qtr)

P 15,000

Output Tax (3rd - 4th Qtr)

P 600,000

Output Tax (whole year)

P1,000,000

P200,000

Input Taxes

400,000

900,000

VAT Paid per Quarterly Returns

P 200,000

P 100,000

- 100,000

Additional Payment

P100,000

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Q-6:

Will the imposition of civil penalties be waived for late filers who wanted to file returns now and avail of the ERAP program?

A-6:

No. The imposition of civil penalties (surcharge and interest) is mandatory in case of late filing of normal tax returns. However, the civil penalties will not apply to the additional tax required to be paid under the program in order to qualify. This means that the civil penalties will only apply to the tax due per return which should be actually paid even without the ERAP Program

Q-7:

If a return qualifies for the immunity from audit or investigation by complying with the minimum payment requirements and an application for immunity has already been filed by the taxpayer, can the BIR refuse to issue or delay the issuance of the Certificate of Immunity From Audit?

A-7:

No. The issuance of the Certificate of Immunity From Audit within 30 days from filing of the application with the required attachments is mandatory. If the BIR fails to issue the Certificate within this period, the same shall be deemed to have been issued, provided, that the taxpayer is qualified for immunity and has filed the application with the necessary information and supporting documents.

This Circular supplements RMO 10-99 and RMC Nos. 17-99 and 18-99. Any provision thereof, if inconsistent herewith, is hereby considered amended, modified, or revoked accordingly.

All revenue personnel are enjoined to give this Circular as wide publicity as possible.

Adopted: 05 May 1999

(SGD.) BEETHOVEN L. RUALO
Commissioner of Internal Revenue

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