REVISED GUIDELINES AND PROCEDURES IN THE ISSUANCE AND ENFORCEMENT OF SUBPOENAS DUCES TECUM AND THE PROSECUTION OF CASES FOR NON-COMPLIANCE THEREWITH

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I. BACKGROUND

Section 5 of the National Internal Revenue Code of 1997 (NIRC), as amended, vests the Commissioner of Internal Revenue with authority to obtain information, summon and examine, as well as take testimony of persons in ascertaining the correctness of any return or in determining the liability of any person for any internal revenue tax, or in collecting any such liability, or simply in evaluating tax compliance. This Order is issued to further delineate and update the procedure for the issuance and enforcement of Subpoenas Duces Tecum (SDTs) to ensure full implementation of Sections 5, 14, 266 and related provisions of the NIRC, as amended.

II. FORM

BIR Form No. 0713 shall be used in the SDTs to be issued. Every SDT to be issued shall have a serial number in accordance with paragraph “III.3.9” hereof. A sample copy of BIR Form No. 0713 is hereto attached as Annex “A”.

III. GUIDELINES AND PROCEDURES

3.1

This Order shall cover the following persons/entities enumerated under Section 5 of the NIRC, as amended, to wit:

- Person liable for tax or required to file a return or any officer or employee of such person, or any person having possession, custody, or care of the books of accounts and other accounting records containing entries relating to the business of the person liable for tax;

- Any person other than the person whose internal revenue tax liability is subject to audit or investigation, or from any office or officer of the national and local governments, government agencies and instrumentalities, including the Bangko Sentral ng Pilipinas and government-owned or controlled corporations (GOCCs);

3.2

The Head of the Revenue District Office/Large Taxpayers Audit Division/Large Taxpayers District Office/National Investigation Division/Special Investigation Division concerned or any other officer duly delegated by the Commissioner (e.g., Head of the Letter Notice Task Force) shall make a written notice to any of the persons enumerated above to provide information or the pertinent books of accounts, accounting records and particular or specific documents.

The duplicate copy of this written notice, duly acknowledged/received by the persons being served or their authorized representatives shall form part of the docket of the case.

3.3

In case the information or records requested are not furnished within the period prescribed in the written notice, or when the information or records submitted are incomplete, the concerned revenue officer conducting a verification or investigation (covered by a Memorandum Order, Mission Order, Letter of Authority, Tax Verification Notice or Letter Notice) shall request for the issuance of SDT through a Memorandum Report, stating therein the relevant facts, specifying the particular documents or records not made available to him and the taxpayer liable or the third party/office concerned.

3.4

The issuance of SDT shall be requested from the following:

- Assistant Commissioner, Enforcement and Advocacy Service, through the Prosecution Division – for the National Office;

- Assistant Commissioner, Large Taxpayers Service, through the Prosecution Division – for taxpayers under the jurisdiction of the Large Taxpayers Service, including LTDOs;

- Revenue Regional Directors, through the Legal Divisions – for the Regional Offices;

- Any other officer duly delegated by the Commissioner.

The records of the case shall be attached to the Memorandum Report.

3.5

The Prosecution Division at the National Office, the Legal Divisions at the Regional Offices, or any other officer duly delegated by the Commissioner, 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:

- Return the case to its origin for further documentation or action;

- Prepare the corresponding SDT in three copies for signature of the Assistant Commissioner, Enforcement and Advocacy Service; Assistant Commissioner, Large Taxpayers Service; Revenue Regional Director; or any other officer duly delegated by the Commissioner, as the case may be, the distribution of which shall be as follows:

Original

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to be served to the taxpayer

Duplicate

-

attached to the docket of the case

Triplicate

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action lawyer file

3.6

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In case the request for issuance of SDT is found to be meritorious, the SDT shall be issued to the person liable for tax or required to file a return, or should the information or records be in the possession of a third party or office, then in that party's name, requiring the concerned person to appear and submit before the signatory of the SDT the mandated information/documents at an appointed time, date and place.

The time to be indicated in the SDT shall be during regular business hours or from eight o'clock in the morning and five o'clock in the afternoon during the work week, excluding holidays. The venue shall be in the BIR office of the signatory of the SDT.

- In case of corporations, partnerships or associations, the SDT shall be issued to the partner, president, general manager, branch manager, treasurer, registered officer-in-charge, employee/s or other persons responsible for the custody of the books of accounts and other accounting records mandated to be submitted or information mandated to be provided.

To ascertain the names of the incumbent of the aforesaid positions, the concerned revenue officers may access, among others, the latest General Information Sheet filed by the corporation with the Securities and Exchange Commission.

- If the concerned party is the national and local government, government agencies and instrumentalities, including the Bangko Sentral ng Pilipinas and government-owned or controlled corporations (GOCCs), the SDT shall be issued to the head of such office, agency, instrumentality, political subdivision or GOCC. If the head shall comply through a representative, the latter shall present the SDT, written authorization letter from the head, and sufficient proof of identification.

3.7

The date of issuance of the SDT shall be the date when it was officially signed.

3.8

The compliance date for the submission of books of accounts and other accounting records shall be set on the fourteenth (14th) day from date of issuance of the SDT.

3.9

The Prosecution Division at the National Office, the Legal Divisions at the Regional Offices, or any other officer duly delegated by the Commissioner, 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.)

The Office Codes prescribed under existing issuances shall be followed.

3.10

The service of the SDT shall be effected by the revenue officers assigned to investigate the case. However, such service may be made by any other internal revenue officer authorized for the purpose.

3.11

The Assistant Commissioner, Enforcement and Advocacy Service; Assistant Commissioner, Large Taxpayers Service; Revenue Regional Director; or any other office duly delegated by the Commissioner, as the case may be, shall transmit the signed SDT to the requesting office which shall effect its service in accordance with the Rules

provided hereunder.

3.12

The duly issued SDT shall be served within three (3) working days from receipt by the concerned revenue officers.

3.13

The SDT shall be served through personal service by delivering personally a copy of the SDT to the party at his registered or known address or wherever he may be found. A known address shall mean a place other than the registered address where business activities of the party are conducted or his place of residence.

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In case personal service is not practicable, the SDT shall be served by substituted service or by mail.

- Substituted service can be resorted to when the party is not present at the registered or known address under the following circumstances:

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The SDT may be left at the party's registered address, with his clerk or with a person having charge thereof.

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If the known address is a place where business activities of the party are conducted, the SDT may be left with his clerk or with a person having charge thereof.

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If the known address is the place of residence, substituted service can be made by leaving the copy with a person of legal age residing therein.

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If no person is found in the party's registered or known address, the revenue officers concerned shall bring a barangay official and two (2) disinterested witnesses to the address so that they may personally observe and attest to such absence. The SDT shall then be given to said barangay official. Such facts shall be contained in the bottom portion of the SDT, as well as the names, official position and signatures of the witnesses.

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Should the party be found at his registered or known address or any other place but refuse to receive the SDT, the revenue officers concerned shall bring a barangay official and two (2) disinterested witnesses in the presence of the party so that they may personally observe and attest to such act of refusal. The SDT shall then be given to said barangay official. Such facts shall be contained in the bottom portion of the SDT, as well as the names, official position and signatures of the witnesses.

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"Disinterested witnesses" refers to persons of legal age other than employees of the Bureau of Internal Revenue.

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Service by mail is done by sending a copy of the SDT by registered mail to the registered or known address of the

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party with instruction to the Postmaster to return the mail to the sender after ten (10) days, if undelivered. A copy of the SDT may also be sent through reputable professional courier service. If no registry or reputable professional courier service is available in the locality of the addressee, service may be done by ordinary mail.

3.14

The server shall accomplish the bottom portion of the SDT. He shall also make a written report under oath before a Notary Public or any person authorized to administer oath under Section 14 of the NIRC, as amended, setting forth the manner, place and date of service, the name of the person/barangay official/professional courier service company who received the same and such other relevant information. The registry receipt issued by the post office or the official receipt issued by the professional courier company containing sufficiently identifiable details of the transaction shall constitute sufficient proof of mailing and shall be attached to the case docket.

3.15

The Head of the Office which issued the SDT shall maintain a record of the date of personal service or service by mail, identifying therein in adequate detail, the mode of service of the summons.

IV. ENFORCEMENT OF THE SDT

4.1.

The concerned revenue officers are required to be present during the appointed time, date and place set for the presentation of the books of accounts and other accounting records in order to check if the records presented are the complete records being required as stated in the SDT. Non-compliance therewith shall subject violators to administrative liability.

4.2

Upon verification by the concerned revenue officers that the records presented are substantially complete, the documents presented shall be consolidated with the records of the case and shall be referred back to the appropriate office for continuation of the investigation. The concerned revenue officer shall submit a written report to the issuing office that the documents/records indicated in the SDT have been submitted or that there was either no submission or that the documents presented were so incomplete.

4.3

In case there is no submission or incomplete presentation of 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 (5[th]) 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.

4.4

Payment of the administrative penalty shall not excuse the taxpayer/person summoned from complying with the SDT.

V. INSTITUTION OF CRIMINAL ACTION FOR FAILURE TO OBEY SDT

5.1

Within seven (7) working days from conference mentioned in Paragraph “IV.4.3” above, the action lawyer shall

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prepare a Letter- Complaint addressed to the Office of the Prosecutor, recommending the criminal prosecution of the individual taxpayer or third party; or the responsible officer/s or partner/s (in case the taxpayer or third party is a corporation, partnership, association, or office); who disobeyed the SDT for violation of Section 266 ("Failure to Obey Summons") of the NIRC, as amended, together with the Complaint-Affidavit and its supporting evidentiary documents, properly marked. If the taxpayer concerned is a corporation, an association or a general co-partnership, the sanctions mandated under Section 256 ("Penal Liabilities of Corporations") of the NIRC, as amended, shall likewise be imposed and invoked in the filing of a criminal case. The Letter-Complaint, together with the Complaint-Affidavit and its attachments, shall then be routed to the appropriate office/s for review and signature of the concerned revenue official/s.

5.2

In the preparation of the Complaint-Affidavit, the revenue officers, as the persons who have personal knowledge of the non-compliance with the SDT shall be the complainants.

5.3

In the preparation of the Letter-Complaint to the Office of the Prosecutor, the Regional Director for SDTs issued by the Revenue Regions and the Deputy Commissioner for Legal and Inspection Group for SDTs issued by the Enforcement and Advocacy Service and the Large Taxpayers Service, shall be the signatories in consonance with Revenue Delegated Authority Order No. 2-2007.

5.4

Upon return of the duly signed Letter-Complaint, together with the Complaint- Affidavit and its attachments to the originating office, it shall then be immediately filed with the Office of the Prosecutor that has jurisdiction over the case.

VI. NON-WITHDRAWAL OF CASES

The person summoned shall be accorded full notice and opportunity to comply with the SDT as detailed herein. Once the Complaint-Affidavit has been filed for violation of Section 266 ("Failure to Obey Summons") of the NIRC, as amended, no prosecuting officer of the Bureau shall cause the withdrawal or dismissal of the case, notwithstanding the subsequent submission of documents indicated in the SDT.

VII. REPEALING CLAUSE

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

VIII. EFFECTIVITY

This Order shall take effect immediately.

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

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