ECONOMIC RECOVERY ASSISTANCE PAYMENT (ERAP) PROGRAM, GRANTING IMMUNITY FROM AUDIT AND INVESTIGATION OF INCOME TAX, VAT AND PERCENTAGE TAX RETURNS FOR THE TAXABLE YEAR 1998 UNDER...

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Pursuant to Sec. 6(a) in relation to Section 244 of the National Internal Revenue Code of 1997, these Regulations are hereby promulgated to establish the policy and procedures governing the availment of immunity from audit and investigation of income tax, VAT and percentage tax returns filed by certain taxpayers for the taxable year 1998.

POLICY STATEMENT

In preparation for the full implementation of a computerized tax administration, there is a necessity to clean the Bureau's backlog of unaudited tax returns in order to keep updated and be focused with the most current accounts. Toward this end, and considering the scarcity of financial and human resource as well as the time constraints within which the Bureau has to implement such an endeavor, these Regulations providing for last priority in audit and investigation of tax returns is hereby adopted to accomplish this objective without however compromising the revenue collection that would have been generated from audit and enforcement activities.

In promulgating these Regulations, policy considerations of this Bureau to maximize revenue collection with least administration costs, to encourage voluntary tax compliance, and to maintain a harmonious relation with taxpayers by minimizing inconvenience relative to investigation were given due weight. The taxpaying public are hereby granted the opportunity to assist in the economic recovery by voluntarily paying their taxes through the ERAP return in accordance with the rules herein provided.

SECTION 1. Scope and Objective. — The immunity from audit and investigation herein granted shall apply only to income tax, VAT and percentage tax returns covering the taxable year 1998, except withholding tax returns (whether for income, VAT, or percentage tax purposes). The term "Taxable Year 1998" shall include any Fiscal Year ending on the last day of any month from July 31, 1998 up to June 30, 1999.

SECTION 2. Condition for the Privilege of Immunity from Audit and Investigation. —

2.1 In order to avail of the immunity from audit and investigation for 1998 tax returns, the taxpayer shall pay or shall have paid TWENTY PERCENT (20%) or more than the tax paid in 1997 for income tax, VAT and/or percentage taxes, including basic deficiency taxes paid (in cases already audited).

For example, for the calendar year 1997:

Income tax due per return

P1,000

Less: Creditable Withholding Tax

300

Tax paid (and receipted)

P700

1998 Income tax payment must be at least P1,200 "normal income tax" to qualify for immunity from audit and investigation.

Assuming that the corporation is liable for minimum corporate income tax in the amount of P2,000 in filing its calendar year 1998 final adjustment income tax return, the total amount due shall be P2,200 computed as follows:

Additional tax (P1,000 x 20%)

P200

Add: MCIT

2,000

Total amount due

P2,200

For example, VAT payments for the 1st quarter 1997:

1st quarter return 1997, net of input taxes - P10,000

1st quarter return 1998, net of input taxes, must be at least P12,000 to qualify.

2.2 Provided, however, that, where the tax payment for 1998 for either the income, VAT or percentage tax does not exceed that of 1997 by 20% or more, the taxpayer shall be accorded immunity from audit and investigation only with respect to that tax return which complies with the 20% requirement. In such a case, the return which fails to comply with the said requirement shall still be subject to audit and investigation. For example, a taxpayer made the following payments:

Type of Tax 1997 1998 % of increase

Normal Income Tax 100,000 125,000 25%

VAT 100,000 105,000 5%

Percentage 100,000 115,000 15%

In the above illustration, his VAT and percentage tax returns shall not qualify for immunity from audit and investigation because the increase in his tax payment did not meet the 20% requirement herein prescribed. Hence, only his 1998 income tax return qualify for immunity from audit and investigation.

2.3 In computing the 20% increase, amendments in the 1997 income, VAT or percentage tax returns as well as deficiency tax payments shall be included in the computation of the 20% for purposes of the availment of this privilege. Provided, however, that with respect to deficiency tax payments, only the basic tax shall be included in the computation. Interest, surcharges and other penalties shall not be included.

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Taxable Year 1997

Income Tax Paid P100,000

Deficiency Tax Payment (basic tax only) 27,500

Total Payment in 1997 P127,500

Taxable Year 1998
To quality for immunity from audit and investigation, the 1998 tax payment must be at least P153,000 computed as follows:

Total Payment in 1997 P127,500

Increase in payment (P127,500 x 20%) 25,500

Total Payment to qualify P153,000

2.4 In case no tax was paid per the taxpayer's return for the year 1997, his 1998 tax return may qualify for immunity from audit and investigation, provided, such taxpayer complies with the following conditions:

- For income tax purposes, the taxpayer shall pay an amount equivalent to one-half of one percent (½ of 1%) based on his gross sales or receipts during the taxable year (in case of individuals) and to 2% (in case of corporations);

- For VAT and/or percentage tax purposes, since the quarterly VAT and/or percentage tax returns have already been filed as of January 25, 1999, covering the prior year 1998, the taxpayer may qualify for immunity from audit and investigation of the said returns, provided such taxpayer pays an additional amount of 20% based on the VAT and/or percentage tax paid per the said quarterly returns filed.

SECTION 3. Payment of Additional Tax(es) to Comply with the 20% Requirement

3.1 Taxpayers whose 1998 tax returns already filed as of the effectivity date of these regulations but who want to avail of the immunity from audit and investigation herein granted, may still avail of the privilege by paying additional tax(es) to cover for the 20% requirement not later than June 30, 1999 (e.g., VAT return for the 4th quarter 1998 already filed last January 25, 1999; Final adjustment income tax return for the fiscal year ended September 30, 1998 which was already filed as of January 15, 1999; etc.).

3.2 Taxpayers whose 1998 tax returns to be filed on or after the effectivity date of these regulations shall pay the additional tax(es) herein required at the same time such return is filed.

3.3 If the additional tax herein required to be paid amounts to Five Million Pesos (P5,000,000) but not more than Ten Million Pesos (P10,000,000), the same may be paid in two (2) equal installments. The first installment shall be paid at the time the return is filed, and the second installment within one (1) month thereafter. If such additional tax is more than Ten Million Pesos, the same may be paid in three (3) equal monthly installments. Provided, however, that prior approval of the Commissioner shall be secured for the installment payment of the additional tax(es) in excess of three installments.

SECTION 4. Mechanics for Availment

4.1 Having complied with the conditions under Sections 2 and 3 hereof, he shall signify his intention to avail of immunity from audit and investigation by filing his application in a BIR Form to be prescribed by the Commissioner, inclusive of the following attachments:

For Income Tax

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- Income Tax Returns filed for the year 1997 and 1998;

- In case of deficiency tax paid for 1997, a copy of the Authority to Accept Payment (ATAP)/Payment Form evidencing payment thereof.

For VAT and/or Percentage Tax Return

- VAT and/or percentage tax returns filed during the year 1997 and 1998;

- In case of deficiency tax paid for 1997, a copy of the ATAP/Payment Form evidencing payment thereof.

4.2 For those paying additional tax(es) to comply with the 20% requirement, the taxpayer shall use BIR Payment Form (BIR Form No. 0605) for the payment thereof.

4.3 The required availment form referred to in Sec. 4.1 shall be filed with the Revenue District Office having jurisdiction over the taxpayer's principal place of business.

4.4 Upon verification of the correctness of the taxpayer's availment of immunity from audit and investigation, he shall be issued with a Certificate of Qualification for the privileges herein granted.

SECTION 5. Penalty Clause

Any taxpayer who violates the provisions of these regulations shall be subjected to immediate investigation, the provisions of these regulations to the contrary notwithstanding, in addition to the imposition of penalties pursuant to the National Internal Revenue Code and other applicable laws.

SECTION 6. Effectivity

These Regulations shall take effect fifteen (15) days after publication in the Official Gazette or in any newspaper of general circulation.

Adopted: 07 Feb. 1999

(SGD.) EDGARDO B. ESPIRITU
Secretary of Finance

RECOMMENDING APPROVAL:

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

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