

GROUND AND PROCEDURES FOR THE IMPLEMENTATION OF SECTION 206 OF THE TAX CODE OF 1997 ON CONSTRUCTIVE DISTRAINT

BIR REVENUE MEMORANDUM CIRCULAR NO. 5-2001, February 19, 2001

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Pursuant to the provisions of Section 4, in relation to Section 246 of the Tax Code of 1997 (Code), this Circular is hereby issued to clarify the grounds and procedures for the implementation of Section 206 of the Code on constructive distraint.

SECTION 1. When to Issue Notice or Warrant of Constructive Distraint on the Property of a Taxpayer- In order to safeguard the interest of the government, the Commissioner, may place under constructive distraint the personal or movable property/ies of -

- a) a delinquent taxpayer, or
- b) any taxpayer who, in his opinion, is retiring from any business subject to tax, or intending to leave the Philippines, or intending to remove his property/ies from the Philippines, or intending to hide or conceal his property/ies, or intending to perform any act tending to obstruct the proceedings for collecting the tax due or which may be due from him.

SEC. 2. Specific Cases When a Notice or Warrant of Constructive Distraint over the Property/ies of a Taxpayer may be Issued

a)

When a taxpayer who applies for retirement from business has a huge amount of assessment pending with the Bureau of Internal Revenue (BIR). An assessment is huge if the amount thereof is equal to or bigger than the networth or equity of the taxpayer;

b)

When a taxpayer who is under tax investigation has a record of leaving the Philippines at least twice a year, unless such trips are justified and/or connected with his business, profession or employment;

c)

When a taxpayer, other than a banking institution, who is under tax investigation has a record, of transferring his bank deposits and other valuable personal property/ies from the Philippines to any foreign country;

d)

When the taxpayer uses aliases in bank accounts, other than the name for which he is legally and/or popularly known;

e)

When the taxpayer keeps bank deposits and owns other property/ies under the name of other persons, whether or not related to him, and the same are not under any lawful fiduciary or trust capacity;

f)

When a taxpayer's big amount of undeclared income is known to the public or to the BIR by credible means and there is a strong reason to believe that the taxpayer, in the natural course of events, will have a great tendency to hide or conceal, his property/ies. For this purpose, the term "big amount of undeclared income" means an amount exceeding thirty percent (30%) of the gross sales, gross receipts or gross revenue declared per return;

g)

When the BIR receives information or complaint pertaining to undeclared income in an amount exceeding 30% of gross sales, gross receipts or gross revenue declared per return of a particular taxpayer and there is enough reason to believe that the said information is correct as when the complaint or information is supported by substantial and credible evidence.

SEC. 3. Persons Who May Conduct the Constructive Dstraint- In general, it is only the Commissioner who may decide whether a notice of constructive dstraint on the personal property of any taxpayer may be issued. However, the Commissioner may delegate this power by specific orders since this power is not one of those which cannot be delegated as enunciated in Section 7 of the Tax Code of 1997. Thus, pursuant to aforesaid section, this power can be delegated to any subordinate official with the rank equivalent to a Division Chief or higher.

SEC. 4. Procedures in Conducting Constructive Dstraint -The constructive dstraint of personal or movable property/ies of a taxpayer shall be effected by requiring him or any person having possession or control of such property/ies to sign a receipt covering the property/ies dstrained. He shall obligate himself to preserve the same intact and unaltered and not to dispose of the same in any manner whatever without the express authority of the Commissioner. Provided, however, that if the subject of the constructive dstraint is a bank deposit, the mere services of the notice is sufficient for this purpose.

In case the subject taxpayer or the person having the possession and control of the property/ies sought to be placed under constructive dstraint refuses or fails to sign the receipt herein referred to, the Revenue Officer effecting the constructive dstraint shall proceed to prepare a list of such property/ies. He shall thereafter leave a copy of the Notice of Constructive Dstraint and the list of such property/ies dstrained in the premises where the said property/ies are located in the presence of at least two (2) witnesses, who may or may not be revenue officers, after which the subject personal or movable property/ies shall be deemed to have been placed under constructive dstraint.

SEC. 5. Repealing Clause - Any ruling inconsistent herewith is deemed revoked, amended or modified accordingly.

Adopted: 19 Feb. 2001

(SGD.) RENE G. BAÑEZ

Commissioner of Internal Revenue

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