

[BIR REVENUE MEMORANDUM CIRCULAR NO. 30-91, February 18, 1991]

REVENUE REGULATIONS NO. 3-90, PRESCRIBING ADDITIONAL REQUIREMENTS FOR CERTIFICATION BY INDEPENDENT CPAS, AND REVENUE REGULATIONS NO. 6-90, REQUIRING THE SUBMISSION OF ENGAGEMENT LETTERS

SECTION 1. Objectives – This Circular is issued to familiarize revenue personnel, taxpayers, and the independent CPAs with the provisions of Revenue Regulations Nos. 3-90 and 6-90. It is also the purpose of this Circular to clarify certain gray areas or doubtful provisions in the regulations.

REVENUE REGULATIONS NO. 3-90

SECTION 2. Coverage of RR 3-90 –

2.1 The submission of Certificate of Taxpayer Compliance (CTC) is optional; *ie.*, taxpayers may or may not submit the CTC with their tax returns. However, only taxpayers submitting CTCs with their tax returns may be entitled to the privilege of last priority in audit and investigation.

2.2 The privilege of last priority is limited to taxes certified to by the CPA, namely: income tax, including withholding tax, and value added tax. Thus, other national internal revenue taxes like transfer taxes under Title III, other percentage taxes under Title V, excise taxes under Title VI, and documentary stamp taxes under Title VII, all of the Tax Code, may still be audited by the BIR although the taxpayer submitted CTCs covering its income tax, withholding tax, and value added tax liabilities.

2.3 To be entitled to the privilege, the taxpayer does not have to submit CTCs for both income tax and value added tax. If the CTC submitted covers only income tax and withholding tax, the privilege of last priority does not extend to value added tax liability of the taxpayer. In other words, partial certification is allowed. However, income tax and withholding tax, while they may be covered by two separate CTCs and filed separately at different dates, should always go hand-in-hand and both certifications should be unqualified to entitle a taxpayer to the privilege of last priority.

2.4 When a CTC is submitted by the taxpayer with his tax return, he does not automatically become entitled to the privilege of last priority. The taxpayer must submit an unqualified CTC to avail of the privilege herein granted. The privilege of last priority may also be extended to the taxpayer if the deficiency tax arising from the tax audit is paid by the taxpayer before or at the time of filing of the tax return and CTC. In such a case, the fact of payment and other relevant data should be indicated in the CTC. If the deficiency tax payment is made after the filing of the

original qualified CTC, another CTC containing such payment of deficiency tax may be filed.

2.5 When the CTC attached to the VAT returns covers only the input tax aspects under RR 3-90, the privilege of last priority does not attach. The independent CPA must also certify to the correctness of the output tax for the same period covered by the CTC in order to qualify for the privilege.

2.6 The CTC is required primarily for taxpayers whose gross sales or gross receipts of the taxpayer exceeds P100,000 per annum. Since, Section 232(A) of the Tax Code requires the submission of audited financial statements when taxpayer's gross sales or receipts exceed P25,000 per quarter, and considering that RR 3-90 merely prescribes additional requirements for certification by CPAs, it follows that no such CTC is necessary to be submitted by taxpayers whose gross sales and/or gross receipts do not exceed P100,000 a year. However, a taxpayer with gross sales of gross receipts of not more than P100,000 may still avail of the benefit of last priority under RR 3-90 if he should submit an unqualified CTC.

2.7 Should the CPA discover some errors during the tax audit and the taxpayer is willing to pay the deficiency tax, the regular surcharge and deficiency interest shall be imposed and collected. The reason for this requirement is that the waiver of penalties may tempt taxpayers to underpay their tax liabilities and pay the correct tax only during the tax audit. Moreover, there is no legal basis for the waiver of penalties under said circumstances.

2.8 The regulation covers only income required to be reflected in the regular income tax return – BIR Form 1701 for individuals with business or professional income and BIR Form 1702 for corporations. It does not include gain, profit, and income covered by special (income tax) returns like the capital gains tax returns on the sale or exchange of real property and shares of stocks.

2.9 The privilege of last priority attaches only when the taxpayer files a final tax return together with an unqualified CTC. And in order to protect the interest of taxpayers who submitted unqualified CTCs with their tax returns, only the Commissioner of Internal Revenue and his Deputy Commissioners are hereby authorized to issue letters of authority to examine said taxpayers.

2.10 Withholding tax on income subject to final tax shall be included in the CTC. Only withholding tax on salaries and wages are excluded. Therefore, verification as to whether the withholding tax is withheld and remitted or not shall be made on the books of the withholding agent, not of the income earner.

2.11 When a taxpayer files with his tax return a qualified CTC with a general statement, the BIR may still verify all the items of incomes and deductions.

2.12 The privilege of last priority in audit does not apply to the following cases:

- a. Claims for refunds or tax credits;
- b. Cases covered by Sec. 235 (exceptions to the one-examination-in-a-taxable-year rule) of Tax Code;