

**[ BIR REVENUE MEMORANDUM CIRCULAR NO. 56-2007, August 10, 2007 ]**

**PUBLISHING THE FULL TEXT OF DEPARTMENT ORDER NO. 23-07 DATED JULY 26, 2007 ENTITLED "MANDATING THE MARKING OF IMPORTED KEROSENE AND FUEL OILS WHICH ARE ENTERED TAX AND DUTY FREE TO PREVENT THE UNAUTHORIZED DIVERSION THEREOF INTO THE DOMESTIC MARKET AND FOR OTHER PURPOSES**

For the information and guidance of all internal revenue officials, employees and other concerned, quoted hereunder is the full text of Department Order No. 23-07 entitled "Mandating the Marking of Imported Kerosene and Fuel Oils which are Entered Tax and Duty Free to Prevent the Unauthorized Diversion Thereof Into the Domestic Market and for Other Purposes, as follows:

"[Department Order No. 23-07]

Mandating the Marking of Imported Kerosene and Fuel Oils Which Are Entered Tax and Duty Free To Prevent the Unauthorized Diversion Thereof Into the Domestic Market and For Other Purposes

Pursuant to Section 7 (4), Chapter 6, Book IV, Title III of Executive Order No. 292, otherwise known as the "Administrative Code of 1987," in relation to Section 100 and Section 602 (b) and other pertinent provisions of the Tariff and Customs Code of the Philippines (TCCP), as amended and the pertinent provisions of the National Internal Revenue Code of 1987, as amended, the following order is hereby issued.

*SECTION 1. Rationale* - Substantial revenues are provided by the taxes and duties collected from the importation of petroleum products, including kerosene and other fuel oils. There are reliable reports that said tax- and duty-free articles have been subsequently entered into the domestic market illegally without the payment of the proper duties and/or taxes due thereon, resulting in huge revenue losses to the government and to legitimate oil companies. Consistent with the declared policy of the State to intensify its anti-smuggling efforts, there is a need to adopt measures to ensure the due payment and/or proper collection of duties and taxes on all fuel oils which were initially entered into the Philippines on an exempt basis and to prevent the unlawful entry and diversion thereof into the domestic market. Other countries have successfully employed existing fuel marking technologies to curtail fuel smuggling activities, by utilizing fuel markers based on, among others, covert molecular recognition technology.

*SECTION 2. Scope* - This Order shall cover the implementation of the program of marking of fuel oils imported into the Philippines, and/or manufactured and/or refined in the Philippines, which under Philippine laws are exempt from the payment of duties and taxes, whether the same was by reason of importation or

manufacturing in a free zone, as proof that these fuel oils were legitimately entered into Philippine territories and/or manufactured and/or refined in the Philippines and are, by law, exempt or not required to pay duties and taxes.

*SECTION 3. Objectives* - The mandatory fuel marking program covered by this Order shall have the following objectives:

- a. to properly identify and track fuel oils entered into the Philippines without the payment of duties and taxes, whether the same are legitimately entered free and/or exempt from duties and taxes, or illegally entered into the Philippines;
- b. to plug the leakage of the duties and taxes due on fuel oils initially entered into the country without the payment of duties and taxes and which were eventually diverted to the domestic market or for other use which will subject the fuel oils to duties and taxes.
- c. to provide the necessary tool and evidence required for the prosecution of parties who do not pay the proper duties and taxes for fuel oils introduced into the domestic market.

*SECTION 4. Mandatory Marking of Kerosene and Fuel Oil Exempted/Free from Duties and Taxes* - The following shall be marked with the official marking agent designated by the Department of Finance (DOF) in accordance with existing rules:

- a. all kerosene, including dual purpose kerosene (DPK), subject to zero excise tax; and
- b. all diesel oil imported into the Philippines for which exemption from the payment of duties and taxes is claimed.

*SECTION 5. Responsibility to Mark* - In the case of kerosene subject to zero excise tax referred to in Section 4 above, the person, entity or taxpayer who owns or enters the fuel or to whom the fuel oil is consigned, or whoever brings the same into the country, shall cause the marking of said exempt kerosene/fuel oil with the official marking agent, and shall bear the cost of marking the same.

In the case of diesel oil likewise referred to in Section 4 hereof, the person, entity or taxpayer who imports, manufactures, and/or refines said diesel oil shall cause the marking thereof with the official marking agent, and shall bear the cost of marking the same.

The failure or refusal of the person, entity or taxpayer responsible for the marking of the fuel as herein required within a period of fifteen (15) days from due notice shall subject such owner, consignee or importer and the articles to such sanctions as may be imposed in accordance with the Tariff and Customs Code of the Philippines, as amended, and other relevant existing laws and rules and regulations issued in pursuance of law.

*SECTION 6. Presence of Marker; Presumption* - In the event that diesel oil containing the official market signifying exemption is found in the domestic market, or in the possession of anyone or under any situation where said diesel oil is subject to duties and taxes, it shall be presumed that the same was imported or withdrawn