

**[ BIR REGULATIONS NO. 9-2003, February 17, 2003 ]**

**AMENDING CERTAIN PROVISIONS OF REVENUE REGULATIONS NO. 1-97 AND REVENUE REGULATIONS NO. 2-97 RELATIVE TO THE EXCISE TAXATION OF ALCOHOL PRODUCTS, CIGARS AND CIGARETTES FOR THE PURPOSE OF PRESCRIBING THE RULES AND PROCEDURES TO BE OBSERVED IN THE ESTABLISHMENT OF THE CURRENT NET RETAIL PRICE OF NEW BRANDS AND VARIANTS OF NEW BRANDS OF ALCOHOL AND TOBACCO PRODUCTS.**

*SECTION 1. Scope.* — Pursuant to Sections 244 and 245 of the National Internal Revenue Code of 1997 (Code) in relation to Sections 141 to 145 of the same Code, these Regulation are hereby promulgated to amend certain provisions of Revenue Regulations No. 1-97 pertaining to the excise taxation of cigars and cigarettes and Revenue Regulations No. 2-97 dealing with the excise taxation of distilled spirits, wines and fermented liquors for the purpose of prescribing the rules and procedures to be observed in the establishment of the current net retail price of new brands and variants of new brands of cigars and cigarettes, distilled spirits, wines and fermented liquors.

*SEC. 2. Classification and Manner of Taxation of Existing Brands, New Brands, Variants of Existing Brands and Variants of New Brands of Cigars and Cigarettes.* — Section 4 of Revenue Regulations No. 1-97 is hereby amended to read as follows:

*"SECTION 4. Classification and Manner of Taxation of Existing Brands, New Brands, Variants of Existing Brands and Variants of New Brands.*

*"A. Existing Brand*

*"xxx xxx xxx*

*"B. New Brand*

*"New brands shall be classified according to their current net retail price. In the meantime that the current net retail price has not yet been established, the taxpayer's suggested net retail price shall be used to determine the specific tax classification. Thereafter, a survey or any other alternative activity, as discussed hereunder, shall be conducted in 20 major supermarkets or retail outlets in Metro Manila (for brands marketed nationally) or in five (5) major supermarkets or retail outlets in the region (for brands which are marketed only outside Metro Manila) at which the product is sold on retail, three (3) months after the initial removal of the new brand to determine the actual net retail price, excluding the excise tax and value added tax, which shall then be the basis in determining the specific tax classification.*

"The current net retail price of new brands can be established by any or combination of the following:

(a) Through a survey to be conducted by the revenue officers of the Large Taxpayers Service and/or Regional Offices or any equivalent office of the Bureau of Internal Revenue having jurisdiction over excise taxpayers;

(b) Through the submission of a price list duly authenticated by the store owner or operator of the supermarkets/retail outlets carrying such items/products;

(c) Through an information submitted by an informer which has been duly authenticated and validated by the store owner/operator of the supermarket/retail outlet that issued the source-document;

(d) Through the direct purchase of such items from the supermarket/retail outlet for which a valid receipt/invoice is issued detailing the product description and the retail price thereof;

(e) Through photographs showing the item on the shelf of the supermarket/retail outlet and the corresponding price by which it is sold. The camera to be used for this purpose should have built-in day-date features to indicate the exact date and time when such pictures were taken.

"In case the current net retail price as approved is higher than the suggested net retail price, the former shall prevail. Otherwise, the suggested net retail price shall prevail. Any deficiency in specific tax due shall be assessed and collected, inclusive of increments, as provided for by the Code.

"The survey contemplated herein to establish the current net retail price on locally manufactured or imported cigarettes shall be initiated and undertaken in the following manner:

a) The Office in charge of the registration of new brands shall submit, within five (5) days immediately after the lapse of the third month following the introduction of the new brand and/or variant(s) thereof in the market, to the Commissioner of Internal Revenue (Commissioner) a list of brands the current net retail prices of which have to be determined.

b) The Commissioner shall issue Mission Orders directing the conduct of the specific activities leading to the determination of the current net retail price of exciseable products by the authorized representatives of the Office in charge of the registration of new brands and variant(s) thereof and by the Regional Offices having jurisdiction over the places where major supermarkets or retail outlets are physically located.

c) The results of the survey/other alternative activity conducted shall be submitted to the Assistant Commissioner, Large Taxpayers Service or any equivalent office that has jurisdiction over excise taxpayers for consolidation thereof. A list of the products containing the retail prices and the tax classification thereof shall be submitted for approval by the