

[ADMINISTRATIVE ORDER NO. 152, October 06, 1994]

**IMPOSING THE PENALTY OF DISMISSAL FROM THE SERVICE
WITH FORFEITURE OF ALL THE BENEFITS UNDER THE LAW OF
BUREAU OF INTERNAL REVENUE (BIR) REGIONAL DIRECTOR
OSMUNDO G. UMALI**

This Office is in receipt of the Resolution by the Presidential Commission Against Graft and Corruption (Commission) issued on September 23, 1994 on the administrative cases against Bureau of Internal Revenue (BIR) Regional Director Osmundo G. Umali for alleged violations of internal revenue laws and regulations committed by the respondent during his incumbency as Regional Director for Manila from November 29, 1993 to March 15, 1994 and for Makati from March 16, 1994 until August 3, 1994, to wit:

- A. Issuance of Letters of Authority (LAs) to investigate taxpayers despite the ban on investigations as ordered in Revenue Memorandum Order No. 31-93. In numerous cases, revenue officers whose names appeared in the LA's as investigating officers were unaware that such LA's were issued to them. He issued LA's to favored revenue examinees such as his Secretary, Natividad Feliciano;
- B. Termination of tax cases without the submission of the required investigation reports, thus exempting the same from examination and review;
- C. Terminated cases with reports were submitted directly to and approved by respondent Umali without being reviewed by the Assessment Division, thus, eliminating the check and balance mechanism designed to guard against abuses or errors;
- D. Unlawful issuance of LA's to taxpayers who were thereafter convinced to avail of the BIR's compromise and abatement program under RMO's 45-93, and 54-93, for which the taxpayers were made, for a monetary consideration, to pay smaller amounts in lieu of being investigated;
- E. Despite the devolution of the authority to issue LA's from Regional Directors to the Revenue District Officers under RMO 26-94, dated April 14, 1994, respondent Umali continued to issue antedated LA's in absolute defiance of the aforesaid issuance, using old LA's requisitioned by him when still Regional Director of San Pablo Region. In one instance, he issued a termination letter bearing the San Pablo Region letterhead even when he was already Makati Regional Director; and
- F. In his attempt to cover up his tracks and to muddle the real issue of his violations of the ban in the issuance of LA's and

basic revenue rules and regulations, respondent enlisted the support of other regional directors for the purpose of questioning the reorganization process being undertaken in the Bureau, particularly the devolution/decentralization of the function of the Bureau.

The dispositive portion of the Commission's 35-page Resolution states:

"From all the foregoing, this office summarizes its findings as follows:

1. On the First Charge – Respondent issued 176 Letters of Authority in gross disobedience to and in violation of RMOs 31-93 and 27-94.
2. On the Second Charge – There is insufficient evidence to establish respondent's responsibility for violation of RMO 5-86 and 37-94 as charged.
3. On the Third Charge – There is sufficient evidence of a prima facie case of falsification of official documents as defined in Art. 171, par. 2 and 4 of the Revised Penal Code, against respondent for the issuance of 9 LA's stating therein the names of Revenue Examiners who were unaware of the LA's and who did not investigate the tax cases, each LA being a separate offense.
4. On the Fourth Charge – There is insufficient evidence of wrong-doing by respondent arising from or on the occasion of the Office audit of FEP Company. However, respondent violated RMO 27-94 as well as the ban on the issuance of LA's and the investigation of tax cases under RMO 31-93. The reinvestigation of the tax case of FEP is also recommended to the BIR.
5. On the Fifth Charge – There is insufficient evidence that respondent violated any law or regulation by the "hasty termination" of the tax cases cited in this charge. In view of the on-going investigation by the BIR Audit Team to review "in-depth" the hasty closed tax cases, it would be premature at this time to rule on this charge until the result of the in-depth review are known.
6. On the Sixth Charge – There is insufficient evidence to support this charge against respondent. The alleged five "favorites" named in the charges are not parties to this proceeding, so this Commission does not rule on their alleged responsibility.
7. On the Seventh Charge – There is sufficient evidence of a prima facie case of falsification of official documents against respondent for ante-dating the four LA's cited in the charge, each LA constituting a separate offense, under Art. 171 (4) of the Revised Penal Code.
8. On the Ninth (sic) Charge – There is sufficient evidence to support a prima facie case of falsification of an Official document under Art. 171 (4) of the Revised Penal Code against respondent in the tax case of Richfield International Corp., Inc., for indicating a false date on the letter of termination he issued to the company. There is however

insufficient evidence against respondent in the other tax case of Jayson Auto Supply Co.

9. On the Ninth Charge – There is sufficient evidence of a prima facie case of falsification of official documents in each of the two tax cases cited in his charge, under the provisions of Art. 171 (4) of the Revised Penal Code, as the dates of the Termination Letters were false.
10. On the Tenth Charge – Respondent, by his own admission, violated RMO 36-87 requiring turn over of all properties and forms to his successor upon transfer as head of office, and RMO 27-94 requiring the surrender of all unused old forms of Letters of Authority. The Commission notes the defiant attitude of respondent, as expressed in his admission, towards valid and legal orders of the BIR, and his propensity to defy and ignore such orders and regulations.
11. On the Eleventh Charge – The Commission refrains from making a finding on this charge which involves the question of validity of Regional Memorandum Order 3-94 issued by respondent. The question is for the Commissioner of Internal Revenue to address and resolve.
12. On the issued raised by respondent re – the Memorandum/Petition to the Commissioner signed by Regional Directors, of whom respondent was the spokesman when it was submitted and discussed, the Commission agrees with respondent that no law, rule or regulation was violated.”

In support of its findings, the Commission adduced the following evidence in its Resolution:

“ON THE FIRST CHARGE – ISSUANCE OF LA’s IN VIOLATION OF THE BAN

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The first charge against respondent is that he issued LA’s during the period covered by the ban. The audit uncovered 35 LA’s issued by respondent in Manila (November 29, 1993 to March 15, 1994), and 141 in Makati (March 16, 1994 to August 3, 1994). Copies of the LA’s signed and issued by the respondent during the ban are attached to the Progress Audit Report (Annexes 1 and 2). Their genuineness and authenticity are not questioned by respondent. All the LA’s violated the ban as shown on the date of issuance. However, respondent claims that the LA’s in question were “actually signed and issued by his Revenue District Officer, with the respondent’s approval being ministerial.”

x x x

It can be seen [from RR No. 004730513] that respondent, the Regional Director, signed as the issuing official of the LA, which is a formal letter addressed to the taxpayer; while the Revenue District Office, Beltran A. Dy, signed under “Recommended by:”. Respondent’s claim that his approval was ministerial is not supported by the form and contents of the LA’s. He cannot escape culpability by imputing graver responsibility on his subordinate Beltran A. Dy.

Again, he claimed that the ban was lifted by implication by RMO 26-94 dated April 11, 1994 (Annex C of Progress Report). This Memorandum sets down, among others, rules for the issuance of LA's and specifically provides in Section E thereof that LA's should be issued and approved by the Revenue District Officer, and only for the tax returns which correspond with the selection criteria outlined in the authority to issue LA's. A review of the entire Order did not show any indication to repeal or modify RMO 31-93, or to lift the ban. x x x Respondent further claims that the ban was lifted by implication by Revenue Travel Authorization Order (RTAO) No. 72-93 dated November 11, 1993 which ordered the reassignment of all 19 Regional Directors, and by other RTAO's which completed the reorganization/reshuffling of personnel. This claim cannot be taken seriously. The reorganization of the Bureau of Internal Revenue does not consist merely in the reshuffling of personnel, but includes changes in policies, procedures, etc.

Respondent also questioned the fairness and wisdom of the ban. This is a matter of his opinion, which is not relevant to the question of whether or not the Memorandum or the ban was legally in effect.

x x x

ON THE THIRD CHARGE — THAT LA's WERE ISSUED UNDER THE NAMES OF REVENUE OFFICERS (RO's) WHO DISCLAIMED KNOWLEDGE OF SUCH ASSIGNMENTS TO INVESTIGATE THE TAX CASES STATED THEREIN.

Four Revenue Examiners executed sworn statements (Annexes 4, 4A and 4B) denying that they were assigned by respondent to investigate, and did not investigate, cases under LA's issued by respondent during the ban, though they are named in the LA's as the investigating officers:

1. RO Bienvenido M. Villegas

LA No. 0088176B dated Feb. 22, 1994 addressed to Henry King (Henry Trading)

LA No. 0088162B dated Feb. 8, 1994 addressed to Remal Enterprise, Inc.

LA No. 0088161B dated Feb. 25, 1994 addressed to Richfield International, Inc.

LA No. 00494934RR dated March 1, 1994 address to Merriam and Webster Bookstore, Inc.

LA No. 00494936RR no date addressed to Manila Pest Control Co., Inc.

LA No. 00494947RR dated Feb. 25, 1994 addressed to TW and Co.

LA No. 0510999RR dated Feb. 25, 1994 addressed to Golden Exim Trading and Commercial Corp.

2. RO Thelma F. Monge and Supervisor Teresita Sanchez

LA No. 0124031 dated Feb. 3, 1994 addressed to JTKC Realty Corporation.

3. RO Carmelo D. San Ramon, Jr.

Respondent's defense is that he should not be blamed if these examiners suffer loss of memory. He claims that the failure of the examiners to recall some of the LA's issued to them does not warrant a conclusion that respondent used the names of said Revenue Officers without their knowledge, and that such accusation should be based on facts and not pure speculation.

The sworn statements of the four revenue officials denying knowledge and participation in the audit under the LA's issued by respondent (during the ban) support the charge, which can no longer be considered "pure speculation". Respondent had ample opportunity to examine these sworn statements and could have refuted them if they were false, by some evidence besides bare denial.

The LA is an official document which is presented to the taxpayer and carries with it the authority of Government. Copies are filed with BIR official archives as part of the record of each tax case. Naming Revenue Examiners on the LA as the ones who would conduct the tax examination/audit, when the said officials were unaware of it, and in fact did not participate in the audit, destroys the trustworthiness and credibility of this important official document. This is an act which falls within the purview of paragraphs 2 and 4 of Article 171 of the Revised Penal Code, which provides:

"ART. 171. Falsification by public officer, employee or notary or ecclesiastic minister. — The penalty of prision mayor and a fine not to exceed 5,000 pesos shall be imposed upon any public officer, employee, or notary who, taking advantage of his official position, shall falsify a document by committing any of the following acts:

x x x

2. Causing it to appear that persons have participated in any act or proceeding when they did not act (sic) in fact so participate;

x x x

4. Making untruthful statements, in a narration of facts;

x x x

The Commission finds that there is sufficient evidence of a prima facie case of falsification of official documents by respondent, each falsified LA cited above constituting a separate offense, under Art. 171 of the Revised Penal Code."

x x x

ON THE SEVENTH CHARGE — DIRECTOR UMALI ISSUED ANTE-DATED LA's TO SUPERSEDE LA's ISSUED BY RDO's TO THE SAME TAXPAYER.