

[BIR REVENUE REGULATION NO. 4-94, January 14, 1994]

REPUBLIC ACT NO. 7642, AN ACT INCREASING THE PENALTIES FOR TAX EVASION, AMENDING FOR THIS PURPOSE THE PERTINENT SECTIONS OF THE NATIONAL INTERNAL REVENUE CODE, AS AMENDED

SECTION 1. Scope. - Pursuant to Section 245 of the National Internal Revenue Code (NIRC) as amended, in relation to Section 14 of Republic Act No. 7642, these regulations are hereby promulgated to implement the provisions of said Act increasing the penalties of tax evasion.

SECTION 2. General Principles on Fine. - The penalty of fine prescribed under Chapter II, Title X of the NIRC for acts constituting criminal liability of persons who have violated the provisions of the NIRC shall be imposed only by the regular courts. The fines to be imposed for such violations shall not be lower than the amount of the fines imposed herein, or twice the amount of taxes, interests, and surcharges due from the taxpayer whichever is higher.

SECTION 3. Penal Liability of Corporations. - Any corporation, association, or general co-partnership liable for any of the acts or omissions penalized under the NIRC, in addition to the penalties imposed herein upon the responsible corporate officers, partners, or employees, shall, upon conviction for each act or omission, be fined not less than fifty thousand pesos but not more than one hundred thousand pesos.

In the case of associations, partnerships, or corporations, the penalty shall be imposed on the partner, president, general manager, branch manager, treasurer, officer-in-charge, and employees responsible for the violation.

SECTION 4. Authorized Penalties for Offenses Committed by Persons in General. - Any person who commits any of the offenses/violations hereinbelow specified shall, upon conviction, be liable to the corresponding increased penalties prescribed as follows:

a. For *willfully attempting to evade or defeat the payment of any tax imposed under the NIRC* - the penalty shall be a fine of not less than thirty thousand pesos, but not more than one hundred thousand pesos and imprisonment of not less than two years but not more than four years.

b. For *willfully attempting to make it appear for any reason that he or another has in fact filed a return or statement, or actually files a return or statement and subsequently withdraws the same return or statement* after securing the official receiving seal or stamp of receipt of an internal revenue office wherein the same was actually filed - the penalty shall be a fine of not less than Ten thousand pesos

but not more than Twenty thousand pesos and imprisonment of not less than one year but not more than three years.

c. For *unlawful pursuit of business* committed by carrying on any business for which a privilege tax is imposed but without paying the tax as required by law - for each act, or omission, the penalty shall be a fine of not less than five thousand pesos but not more than twenty thousand pesos and imprisonment of not less than six months but not more than two years; Provided, That, in the case of a person engaged in the business of distilling, rectifying, repacking, compounding, or manufacturing any article subject to excise tax - for each act or omission, the penalty shall be a fine of not less than thirty thousand pesos but not more than fifty thousand pesos and imprisonment of not less than two years but not more than four years.

d) For *illegal collection of foreign payments* committed by any person who knowingly undertakes the collection of foreign payments as provided under Section 60 of the NIRC without having obtained a license therefor, or without complying with its implementing regulations - for each act or omission, the penalty shall be a fine of not less than twenty thousand pesos but not more than fifty thousand pesos and imprisonment of not less than one year but not more than two years. Thus, all persons, corporations, duly registered general co-partnerships, (compania colectivas) undertaking for profit or otherwise the collection of foreign payments of interests or dividends by means of coupons, checks, or bills of exchange shall obtain license from the Commissioner of Internal Revenue, and shall be subject to such regulations enabling the Government to obtain the information required under Title II, NIRC as the Secretary of Finance shall prescribe; and whoever knowingly undertakes to collect such payments without having obtained a license therefor, or without complying with such regulations, shall, for each act or omission, be subject to the increased penalty of a fine of not less than twenty thousand pesos but not more than fifty thousand pesos and imprisonment of not less than one year but not more than two years.

e) For *failure or refusal to issue receipts or sales or commercial invoices* committed by any person who, being required under Section 238, NIRC to issue receipts or sales or commercial invoices, fails or refuses to issue such receipts or invoices, issues receipts or invoices that do not truly reflect and/or contain all the information required to be shown therein or uses multiple or double receipts or invoices - for each act or omission, the penalty of fine of not less than one thousand pesos but not more than fifty thousand pesos and imprisonment of not less than two years but not more than four years.

f) For *failure to obey summons* committed by any person who, being duly summoned to appear to testify, or to appear and produce books of accounts, records, memoranda, or other papers, or to furnish information as required under the pertinent provisions of this Code, neglects to appear or to produce such books of accounts, records, memoranda, or other papers, or to furnish such information - the penalty shall be a fine of not less than five thousand pesos but not more than ten thousand pesos and imprisonment of not less than one year but not more than two years.

For purposes of these regulations, the term **willfully** shall mean an act done with evil intent or legal malice and without justifiable excuse. In case of statutory offenses requiring notice of demand, the term **willfully** connotes deliberate or

stubborn refusal to pay the tax after a notice of demand.

Since the privilege fixed taxes had already been abolished by/with the introduction of the value-added tax (VAT) into our tax system, for purposes of the imposition of penalties prescribed under Section 257 of the NIRC and Section 4(c) of these regulations, **unlawful pursuit of business** is committed by one who carries on any business without having previously registered as a VAT or NON-VAT taxpayer, as the case may be.

SECTION 5. Authorized penalties for Making False Entries, Records, or Reports Committed by an Independent Certified Public Accountant, and/or any person under his direction. - Any independent Certified Public Accountant engaged to examine and audit books of accounts of taxpayers under Section 232 (A) of the NIRC and/or any person under his direction who:

- a) Willfully falsifies any report or statement bearing on any examination or audit, or renders a report, including exhibits, statements, schedules, or other forms of accountancy work which has not been verified by him personally or under his supervision or by a member of his firm or by a member of his staff in accordance with sound auditing practice;
- b) Certifies financial statements of business enterprise containing an essential misstatement of facts or omission in respect of the transactions, taxable income, deduction, and exemption of his client,

shall, upon conviction for each act or omission, be punished by an increased penalty of fine of not less than thirty thousand pesos but not more than fifty thousand pesos and imprisonment of not less than two years but not more than six years.

For purposes of these regulations, the term **Independent Certified Public Accountant** is one who is engaged in the practice of public accounting. He is such if (i) he holds himself out to the public as one skilled in the knowledge, science and practice of accounting and as qualified to render professional services as a certified public accountant; or (2) he offers and/or renders to more than one client on a fee basis or otherwise, such services as the audit of verification of financial transactions and accounting records; the preparation, signing or certification for clients of reports of audits, balance sheets and other financial, accounting and other related schedules, exhibits, statements, or reports which are to be used for publication or for credit purposes, or to be filed with a court or government agency, or to be used for any other purpose; installation and revision of accounting systems; the preparation of income tax returns (when related to accounting procedures); or when he represents clients before governmental agencies on tax matters to accounting procedures and the record and presentation of financial facts or data. (Section 24, Article IV, Accountancy Act of 1967; now found in Section 3 of P.D. No. 692, the New Accountancy Law)

SECTION 6. Authorized Penalties for Making False Entries, Records or Reports Committed by Non-Certified Public Accountants. - Any person who, not being an independent certified public accountant according to Section 232 (B) of the NIRC:

- a) Examines and audits books of accounts of taxpayers; or