

[BIR REVENUE MEMORANDUM CIRCULAR NO. 46-99, June 18, 1999]

COMPUTATION OF THE CIVIL PENALTIES, CONSISTING OF SURCHARGE AND INTEREST, INCIDENT TO DEFICIENCY OR DELINQUENCY INTERNAL REVENUE TAXES, PURSUANT TO SECTION 248 AND 249 OF THE NATIONAL INTERNAL REVENUE CODE, AS AMENDED BY R.A. NO. 8424; AND SUGGESTED COMPROMISE PENALTY IN EXTRA-JUDICIAL SETTLEMENT OF A TAXPAYER'S CRIMINAL LIABILITY INCIDENT TO HIS VIOLATION OF CERTAIN PROVISION OF THE CODE, OR ANY OF ITS IMPLEMENTING REVENUE REGULATIONS, PURSUANT TO SECTION 204 THEREOF

SECTION 1. Scope. — Section 248 (A) of the National Internal Revenue Code, as amended by R.A. No. 8424, effective January 1, 1998, now provides:

"(A) There shall be imposed, in addition to the tax required to be paid, a penalty equivalent to twenty-five percent (25%) of the amount due, in the following cases:

"(1) Failure to file any return and pay the tax due thereon as required under the provisions of this Code or rules and regulations on the date prescribed; or

"(2) Unless otherwise authorized by the Commissioner, filing a return with an internal revenue officer other than those with whom the return is required to be filed; or

(3) Failure to pay the deficiency tax within the time prescribed for its payment in the notice of assessments; or

"(4) Failure to pay the full or part of the amount of tax shown on any return required to be filed under the provisions of this Code or rules and regulations, or the full amount of the tax due for which no return is required to be filed, on or before the date prescribed for its payment."

SALIENT FEATURES OF THE AMENDMENT

25% surcharge for the late payment of the tax. — That the 25% surcharge shall only be imposed (a) in case the tax due as shown on the return filed is not paid on or before the date prescribed for its payment; or (b) in case a deficiency tax assessment is not paid on before the date prescribed for its payment as shown in the notice and demand. Conversely, *no 25% surcharge shall be imposed in computing for the deficiency tax assessment.*

SECTION 2. Procedure in Computing for Applicable Surcharge, and Deficiency

Interest or Delinquency Interest. — For a uniform implementation of the provisions of Section 248 and 249 of the Code, as amended, computation and assessment of the applicable surcharge and interest for deficiency and delinquency internal revenue taxes, effective January 1, 1998, shall conform with the illustrative cases provided in this Circular.

SECTION 3. Illustrative Cases:

Scenario 1. Late filing and Late payment of the tax. — Illustration: Income tax return for the calendar year 1998 was due for filing on April 15, 1999 but the taxpayer voluntarily filed his tax return, without notice from the BIR, only on June 30, 1999. The tax due per return amounts to P100,000. In this case, the taxpayer shall be liable for delinquency penalties consisting of 25% surcharge, plus 20% interest per annum, computed from due date of the tax until date of payment, computed as follows:

Calendar Year 1998

Income tax due per return	P100,000.00
Add: 25% surcharge for late filing and late payment (P100,000.00 time 25%)	P25,000.00
20% int. p.a. from 4-15-99 to 6-30-99 (P100,000.00 times .0415524) P4,155.24	P29,155.24
Total amount due (excluding suggested compromised for late filing and late payment of the tax)	P129,155.24

Only one 25% surcharge shall be impose for late filing of the return and late payment of the tax.

Scenario 2. The tax return, without prior authorization from the BIR, is filed on time but filed through an internal revenue officer other than with whom the return is required to be filed. —

Illustration: The taxpayer's 1998 income tax return is required to be filed through the authorized agent bank under the jurisdiction of RDO East Makati. But, without prior authorization from the BIR, taxpayer filed his tax return and paid the tax through the authorized agent bank under the jurisdiction of RDO Davao City. Tax due and paid per return is P100,000.00

Calendar Year 1998

Income tax due per return	P100,000.00
Add: 25% surcharge	P25,000.00
Total amount due	P125,000.00
Less: Amount paid	P100,000.00
Amount still due	P25,000.00

Scenario 3. Late filing and late payment due to taxpayer's willful neglect. —

Illustration: The taxpayer did not file his income tax return for the calendar year 1997 which was due for filing on April 15, 1998. He was notified by the BIR of his

failure to file the tax return, for which reason, he filed his tax return and paid the tax, only after the said notice, on June 30, 1999. The tax due per return is P100,000.00.

Calendar Year 1998

Income tax due per return	P100,000.00
Add: 50% surcharge for willful neglect to file the return and late payment of the tax (P100 ,000 time 50%)	P50,000.00
20% int. p.a. fr. 4-15-98 to 6-30-99 (P100,000.00 times .2415524)	P24,155.24
P24,155.24	P74,155.24
Total amount due (excluding suggested compromise for late filing and late payment of the tax)	P174,155.24

Scenario 4. Penalty or penalties for deficiency tax. —

Illustration No. 1: Taxpayer filed on time his income tax return for calendar year 1997 and paid P100,000.00 on April 15, 1998. Upon pre-audit of his return, it was disclosed that he erroneously computed the tax due. The correct amount of tax due is P120,000.00. The taxpayer is assessed for deficiency income tax in a letter of demand and assessment notice issued on June 30, 1999.

Calendar Year 1997

Tax due per pre-audit	P120,000.00
Less: Amount assessed and paid per tax return filed	P100,000.00
Deficiency income tax	P20,000.00
Add: 20% int. p.a. from 4-15-98 to 6-30-99 (P20,000.00 times .2415524)	P4,831.05
Amount still due	P24,831.05

Illustration No. 2: ABC CORPORATION filed its final adjustment income tax return for calendar year 1997 and paid on time its income tax shown thereunder, amounting to P100,000. Said taxpayer was investigated. Upon verification of its accounting records, it was disclosed that its deduction, from gross income, of representation expenses in the amount P200,000.00 did not meet all the statutory requisites for deductibility. The corporation was duly notified of the said discrepancy through a Preliminary Assessment Notice. Based on the 35% income tax rate on corporations applicable in the year 1997, the income tax due after investigation amounts to P170,000.00. After deduction of income tax paid per return filed, the basic deficiency income amounts to P70,000, excluding penalties. Failing to protest on time against the preliminary assessment notice, a formal letter of demand and assessment notice was issued on May 31, 1999, requiring payment of the assessment not later than June 30, 1999.

Calendar Year 1997

Income tax due per investigation	P170,000.00
Less: Income tax paid per return	P100,000.00
Deficiency income tax	P70,000.00
Add: 20% int. p.a. fr. 4-15-98 to 6-30-99 (P70,000 times .2415524)	P16,908.67
Total amount still due	P86,908.67

Illustration No. 3: XYZ CORPORATION filed its final adjustment income tax return for calendar year 1997 with a net taxable income of P500,000.00. At the applicable income tax rate of 35% for the year 1997, its income tax amounted to P175,000.00. However, upon investigation, it was disclosed that its income tax return was false or fraudulent because it did not report a taxable income amounting to another P500,000.00. On its net income of P1,000,000.00, per investigation, the income tax due is P350,000.00. Deducting its payment per return filed, the deficiency, excluding penalties, amounted to P175,000.00. It was duly informed of this finding through a Preliminary Assessment Notice. Failing to protest on time against the preliminary assessment notice, a formal letter of demand and assessment notice was issued on May 31, 1999 calling for payment of the deficiency income tax on or before June 30, 1999.

In this case, said corporation is liable for the civil penalties of 50% surcharge for having filed or fraudulent return, plus 20% interest per annum on the deficiency, computed as follows:

Calendar Year 1997

Income tax due per investigation	P350,000.00
Less: Income tax paid per return	P175,000.00
Deficiency income tax	P175,000.00
Add: 50% surcharge for filing a fraudulent or false return (P175,000.00 time 50%)	P87,500.00
20% int. p.a. fr. 4-15-98 to 6-30-99 (P175,000.00 times .2415524)	P24,271.67
Total amount due	P304,771.67

Scenario 5. Late payment of a deficiency tax assessed. — In general, the deficiency tax assessed shall be paid by the taxpayer within the time prescribed in the notice and demand, such taxpayer shall be liable for the civil penalties incident to late payment.

Illustration: Based on the above Illustration No. 3, Scenario 4, assuming that the calendar year 1997 deficiency income tax assessment against XYZ CORPORATION, in the amount of P304,771.67, is not paid by June 30, 1999, the deadline for payment of the assessment, and assuming further that this assessment has already become final and collectible. In this case, such corporation shall be considered late in payment of the said assessment. Assuming, further, that the corporation pays its tax assessment only by July 31, 1999, the civil penalties for late payment shall be