

SyCipLaw Tax Bulletin:

Revenue Regulations No. 7-2018: Restoring the Notice of Informal Conference as a Due Process Requirement in the Issuance of a Deficiency Tax Assessment

On January 31, 2018, Finance Secretary Carlos G. Dominguez issued RR No. 7-2018 which restored the provision on Notice of Informal Conference as a due process requirement in the issuance of a deficiency tax assessment. RR No. 7-2018 was published in the Manila Bulletin on February 1, 2018 and took effect on February 16, 2018.

The Notice of Informal Conference is a written statement issued by the BIR informing the taxpayer of the discrepancies in the taxpayer's tax payments for the purpose of conducting an informal conference wherein the taxpayer will be given an opportunity to present his side of the case.

The requirement for the Bureau of Internal Revenue ("**BIR**") to send taxpayers a Notice of Informal Conference has existed since RR No. 12-1985¹ which provided for the procedure on administrative protests on assessments of the BIR. This requirement was retained when RR No. 12-1999² was issued on September 6, 1999 to implement the 1997 Tax Code provisions on assessment of taxes, penalties, and interest.

Prior to its amendment by RR No. 18-2013, RR No. 12-1999 required the BIR to issue the Notice of Informal Conference to the taxpayer if the latter disagrees with the BIR's findings based on its investigation. RR No. 12-1999 also provided that failure of the taxpayer to respond within fifteen (15) days from date of receipt of the Notice for Informal Conference, shall result in the taxpayer's default – in which case, the report will be endorsed for appropriate review and issuance of a deficiency tax assessment, if warranted.

However, on November 28, 2013, former Finance Secretary Cesar V. Purisima issued RR No. 18-2013 and amended RR No. 12-1999 to delete the requirement of Notice of Informal Conference.

RR No. 7-2018 has now restored the requirement of issuance of the Notice of Informal Conference as a due process requirement in the issuance of a deficiency tax assessment.³ However, unlike the old provision of RR No. 12-1999 which did not expressly provide for the period within which the informal conference may extend, RR No. 7-2018 now provides that the informal conference shall not extend beyond thirty (30) days from the taxpayer's receipt of the Notice for Informal Conference. Further, if the taxpayer is found to be still liable for deficiency taxes after presenting his side or if the taxpayer is not amenable, the case will be endorsed to the Assessment Division of the Revenue Regional Office or to the Commissioner or his duly authorized representative within seven (7) days from conclusion of the informal conference for issuance of a deficiency tax assessment. Finally, failure of the revenue officers to comply with the periods shall subject them to penalties as provided under existing rules and regulations.

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¹ RR No. 12-1985 was issued on November 27, 1985. Section 1 of RR No. 12-1985 reads:

SECTION 1. Post-reporting notice. — Upon receipt of the report of findings, the Division Chief, Revenue District Officer or Chief, Office Audit Section, as the case may be, shall send to the taxpayer a notice for an informal conference before forwarding the report to higher authorities for approval. The notice which is Annex "A" hereof shall be accompanied by a summary of findings as basis for the informal conference.

In cases where the taxpayer has agreed in writing to the proposed assessment, or where such proposed assessment has been paid, the required notice may be dispensed with.

² Section 3.1.1 of RR 12-1999 reads:

SECTION 3. Due Process Requirement in the Issuance of a Deficiency Tax Assessment. —

3.1 Mode of procedures in the issuance of a deficiency tax assessment:

3.1.1 Notice for informal conference. — The Revenue Officer who audited the taxpayer's records shall, among others, state in his report whether or not the taxpayer agrees with his findings that the taxpayer is liable for deficiency tax or taxes. If the taxpayer is not amenable, based on the said Officer's submitted report of investigation, the taxpayer shall be informed, in writing, by the Revenue District Office or by the Special Investigation Division, as the case may be (in the case Revenue Regional Offices) or by the Chief of Division concerned (in the case of the BIR National Office) of the discrepancy or discrepancies in the taxpayer's payment of his internal revenue taxes, for the purpose of "Informal Conference," in order to afford the taxpayer with an opportunity to present his side of the case. If the taxpayer fails to respond within fifteen (15) days from date of receipt of the notice for informal conference, he shall be considered in default, in which case, the Revenue District Officer or the Chief of the Special Investigation Division of the Revenue Regional Office, or the Chief of Division in the National Office, as the case may be, shall endorse the case with the least possible delay to the Assessment Division of the Revenue Regional Office or to the Commissioner or his duly authorized representative, as the case may be, for appropriate review and issuance of a deficiency tax assessment, if warranted.

³ Section 2 of RR No. 7-2018 reads:

SECTION 2. Amendment. — Section 3 of RR 12-99, as amended by RR No. 13-18, is hereby amended by adding Section 3.1.1 providing for the preparation of a Notice of Informal Conference, thereby renumbering other provisions thereof, and prescribing other provisions for the assessment of tax liabilities. The pertinent provisions of Section 3 of RR 12-99 shall now read as follows.

SECTION. 3. Due Process Requirement in the Issuance of a Deficiency Tax Assessment. —

3.1 Mode of procedure in the issuance of a deficiency tax assessment:

3.1.1 Notice for Informal Conference. - The Revenue Officer who audited the taxpayer's records shall, among others, state in his report whether or not the taxpayer agrees with his findings that the taxpayer is liable for deficiency tax or taxes. If the taxpayer is not amenable, based on the said Officer's submitted report of investigation, the taxpayer shall be informed, in writing, by the Revenue District Office or by the Special Investigation Division, as the case may be (in the case of Revenue Regional Offices) or by the Chief of Division concerned (in the case of the BIR National Office) of the discrepancy or discrepancies in the taxpayer's payment of his internal revenue taxes, for the purpose of "Informal Conference," in order to afford the taxpayer with an opportunity to present his side of the case.

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The Informal Conference shall in no case extend beyond thirty (30) days from receipt of the notice for informal conference. If it is found that the taxpayer is still liable for deficiency tax or taxes after presenting his side, and the taxpayer is not amenable, the Revenue District Officer or the Chief of the Special Investigation Division of the Revenue Regional Office, or the Chief of Division in the National Office, as the case may be, shall endorse the case within seven (7) days from the conclusion of the Informal Conference to the Assessment Division of the Revenue Regional Office or to the Commissioner or his duly authorized representative for issuance of a deficiency tax assessment.

Failure on the part of Revenue Officers to comply with the periods indicated herein shall be meted with penalty as provided by existing laws, rules and regulations

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