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TAX LAW FOR BUSINESS

*BDB Law's "Tax Law for Business" appears in the opinion section of **Business Mirror** every Thursday.*

New rules in securing tax clearance

CONTRACTORS or bidders participating in government projects, as mandated under Executive Order 398, must be mindful of Revenue Regulations (RR) 3-2005 and its amendments, the latest of which is RR 01-2016. Discussed below are the salient features of RR 1-2016, compared vis-à-vis the relevant issuances preceding it.

Under this RR 1-2016, the meaning of tax clearance was expanded and clarified as referring to the clearance issued by the Accounts Receivable Monitoring Division (formerly Collection Enforcement Division) attesting that the taxpayer has no delinquent account and has satisfied all other criteria for the issuance of tax clearance.

Pursuant to Revenue Memorandum Circular (RMC) 16-2005, the tax clearance to be issued by the Bureau of Internal Revenue (BIR) will have a validity period of one year from date of issuance. However, under RR 1-2016, a tax clearance valid for six months from the date of issuance shall be issued to any applicant who has satisfied the following criteria:

1. No unpaid annual registration fee;
2. No open valid "stop-filer" cases;
3. A regular user of the BIR's Electronic Filing and Payment System for at least two consecutive months prior to the application for tax clearance (new applicants only);
4. No pending criminal charge with the Department of Justice or any competent court; and

5. No delinquent account and/or judicially protested tax assessments with decision favorable to the BIR.

Further, provisional tax clearances were previously allowed under RMC 58-13, except to the taxpayers who applied for compromise settlement of tax liabilities or abatement of penalties. Unlike RMC 58-2013 and RR 3-2005, this RR 1-2016 now specifies the instances when the tax clearance may be issued, as well as the limitations and qualifications, as laid down in item 4.

Most notable of which are as follows:

1. Tax assessments timely protested administratively and/or timely elevated to the Court of Tax Appeals or to higher court, and where the collection of the assessments are not yet considered final, executory and demandable, shall not be considered delinquent account.
2. Applicants with tax assessments, which were timely judicially protested but already covered by an earlier court decision favorable to the BIR and the same are subject of appeals/motions for reconsideration timely filed by the taxpayers, shall be issued tax clearance, provided an escrow deposit shall be made with any authorized agent bank equivalent to the tax liabilities being protested.
3. Applicants with delinquent accounts, but the tax liabilities involved were the subject of the applicant's application for either abatement of penalties or compromise settlement, shall also be issued tax clearance, provided the applicant shall make an escrow deposit with any authorized agent bank equivalent to the tax liabilities, including the applicable delinquency penalties (net of the amount offered for payment upon application of the abatement or compromise settlement).

The above stringent but favorable revisions shall take effect after February 26.

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