



REPUBLIC OF THE PHILIPPINES
DEPARTMENT OF FINANCE
BUREAU OF INTERNAL REVENUE
Quezon City

March 8, 2010

REVENUE MEMORANDUM CIRCULAR NO. 21-2010

SUBJECT : Reiteration of the Applicable Penalties for Employers Who Fail to Withhold, Remit, Do the Year-End Adjustment and Refund Employees of the Excess Withholding Taxes on Compensation

TO : All Internal Revenue Officials, Employees and Others Concerned

This circular is issued to emphasize the obligation of the employers to withhold, remit, perform year-end adjustment on withholding taxes on compensation of their employees. In relation thereto, the applicable penalties for failure to comply with such tax obligations are also reiterated to ensure compliance with all the existing revenue laws and regulations relative to withholding tax on compensation.

Section 80(A) of the National Internal Revenue Code (Tax Code), as amended, provides that the employer shall be liable for the withholding and remittance of the correct amount of tax required to be deducted and withheld. Further, it is also required under Section 79(H) that "On or before the end of the calendar year but prior to the payment of the compensation for the last payroll period, the employer shall determine the tax due from each employee on taxable compensation income for the entire taxable year in accordance with Section 24(A). The difference between the tax due from the employee for the entire year and the sum of taxes withheld from January to November shall either be withheld from his salary in December of the current calendar year or refunded to the employee not later than January 25 of the succeeding year." Illustrative example on the year-end adjustment is shown under Section 2.79(B)(5)(b) of Revenue Regulations (RR) No. 2-98, as amended.

Failure to comply with the provisions relative to withholding taxes on compensation and its year-end adjustment may result in the following violations of the employer/withholding agent:

1. **Non-withholding** of tax – when employer fails to withhold the tax on the taxable income of the employee.

2. **Underwithholding** – when employer fails to correctly withhold the tax which should be equal to the tax due of the employee for the taxable year.
3. **Non remittance** – when employer fails to remit total amount withheld.
4. **Underremittance** – when employer fails to correctly remit total amount withheld or when the total amount of remittance is lesser than the total amount withheld.
5. **Late remittance** – when employer remits the correct amount withheld beyond the prescribed due date.
6. **Failure to refund excess taxes withheld** – when employer fails/refuses to refund excess taxes withheld to its employees.

The applicable penalties for non-compliance with the existing tax laws and regulations relative to withholding are as follows:

1. Additions to the tax (Title X, Chapter I of the Tax Code, as amended)
 - a. **Sec. 248** – a penalty equivalent to twenty-five percent (25%) of the amount due for failure to file any return and pay the tax due thereon as required on the date prescribed; in case of willful neglect to file the return within the period prescribed, or in case a false or fraudulent return is willfully made, the penalty shall be fifty percent (50%) of the tax or of the deficiency tax, in case, any payment has been made on the basis of such return before the discovery of the falsity or fraud.
 - b. **Sec. 249** – interest at the rate of twenty percent (20%) per annum on any unpaid amount of tax, from the date prescribed for payment until the amount is fully paid.
 - c. **Sec. 251** – for failure of any person required to withhold, account for, and remit any tax imposed or who willfully fails to withhold such tax, or account for and remit such tax, or aids or abets in any manner to evade any such tax or the payment thereof, shall, in addition to other penalties, be liable upon conviction to a penalty equal to the total amount of the tax not withheld, or not accounted for and remitted.
 - d. **Sec. 252** – for failure or refusal of any employer/withholding agent to refund excess withholding tax shall, in addition to the penalties, be liable to a penalty equal to the total amount of refunds which was not refunded to the employee resulting from any excess of the amount withheld over the tax actually due on their return.
2. Criminal Liabilities (Title X, Chapters II, III & IV of the Tax Code, as amended)

a. **Sec. 255** – for failure of any person required to pay any tax, make a return, keep any record, or supply correct the accurate information, who willfully fails to pay such tax, make such return, keep such record, or supply correct and accurate information, or withhold or remit taxes withheld, or refund excess taxes withheld on compensation, at the time or times required by law or rules and regulations shall, in addition to other penalties provided by law, upon conviction thereof, be punished by a fine of not less than Ten thousand pesos (P10,000) and suffer imprisonment of not less than one (1) year but not more than ten (10) years.

b. **Sec. 256** – in the case of corporations, the penal liabilities of any corporation, association or general co-partnership liable for any of the acts or omissions penalized under the Tax Code, in addition to the penalties imposed upon the responsible corporate officers, partners, or employees shall, upon conviction for each act or omission, be punished by a fine of not less than Fifty thousand pesos (P50,000) but not more than One hundred thousand pesos (P100,000).

c. **Sec. 272** – in case of public officers, the penalties imposed on every officer or employee of the Government of the Republic of the Philippines or any of its agencies and instrumentalities, its political subdivisions, as well as government-owned or controlled corporations, including the Bangko Sentral ng Pilipinas (BSP), who is charged with the duty to deduct and withhold any internal revenue tax and to remit the same is guilty of failing or causing the failure to deduct, withhold, remit, file withholding tax return or statement within the time prescribed, shall, upon conviction for each act or omission be punished by a fine of not less than Five thousand pesos (P5,000) but not more than Fifty thousand pesos (P50,000) or suffer imprisonment of not less than six (6) months and one (1) day but not more than two (2) years, or both.

d. **Sec. 275** - provides that any person who violates any provision of the Code or any rule or regulation promulgated by the Department of Finance, “for which no specific penalty is provided by law, shall, upon conviction for each act or omission, be punished by a fine of not more than One thousand pesos (P1,000) or suffer imprisonment of not more than six (6) months, or both.”

In certain instances as provided under Revenue Memorandum Order No. 19-2007 a compromise penalty in lieu of criminal liability may be imposed and collected.

(Original Signed)
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Commissioner of Internal Revenue