REVENUE MEMORANDUM CIRCULAR NO. 135-2019 issued on December 11, 2019 reiterates the prescribed procedures in the availment of the Tax Amnesty on Delinquencies and clarifies the issues raised in Revenue Memorandum Circular No. 57-2019.

Per Republic Act No. 11213, the Tax Amnesty amount shall be based on the "basic tax assessed" made by the Bureau of Internal Revenue (BIR). This means that there should be an assessment of tax due made by the BIR, which should be final and executory, except in case of unremitted tax withheld and those covered by a pending criminal case. Thus, a "stop-filer" case which merely pertains to failure of the taxpayer to file the required return is not qualified for Tax Amnesty in the absence of tax assessment.

Tax Amnesty on Delinquencies can be availed if there is no Final Assessment Notice/Formal Letter of Demand/Final Decision on Disputed Assessment that has become final and executory if the tax liabilities fall under any of the following instances:

a. The tax liabilities are related to the pending criminal cases with the Department of Justice/Prosecutor’s Office or the courts for tax evasion and other criminal offenses under Chapter II of Title X and Section 275 of the Tax Code as amended; and
b. The tax liabilities pertain to unremitted tax withheld by withholding agents.

When a criminal charge pertains to “failure to obey summon”, the Legal Officer requires the Examiner to issue an assessment based on best evidence obtained. If an assessment has already been issued as of April 24, 2019, whether final or not, the basis of the Tax Amnesty would be the basic tax per such document. Otherwise, the taxpayer could not avail of the Tax Amnesty on Delinquency.

Those tax liabilities arising from failure to pay in full and non-payment of the tax due declared per tax return are not qualified for Tax Amnesty unless, prior to April 24, 2019, a letter to the withholding agent or preliminary collection letter demanding remittance/payment of taxes withheld but not remitted, as declared per return, was sent by the BIR.

Under Revenue Regulations (RR) No. 4-2019, Preliminary Assessment Notice (PAN)/Notice for Informal Conference (NIC) or equivalent document is sufficient document of the taxpayer to support the tax liabilities pertaining to unremitted tax withheld. Equivalent document can be any of the following, provided the same was issued on or before April 24, 2019, and the taxable period involved are 2017 and prior years:

a. Letter to the withholding agent demanding remittance of the amount not remitted based on the withholding tax returns filed;
b. Letter to the withholding agent demanding the remittance of tax withheld based on the Commission on Audit (COA) reports, for those subject to COA audit; and
c. Preliminary Collection Letter demanding the payment of tax withheld declared per returns filed.

For the efficient and orderly implementation of the Tax Amnesty Program, the following procedures prescribed under Revenue Memorandum Order No. 23-2019 must be strictly complied with by all concerned:

a. Tax Amnesty Return (TAR) (BIR Form No. 2118-DA) must be completely and accurately accomplished and made under oath;
b. Acceptance Payment Form (APF) or BIR Form 0621-DA must be duly endorsed by the concerned BIR officials; and
c. Certificate of Tax Delinquencies, must be issued and signed only by the authorized BIR officer and not by the taxpayer who is availing of the Tax Amnesty.

The immunity and privileges shall only apply to the particular tax type and taxable period as indicated in the TAR and paid under duly approved APF. Consequently, tax liability/ies for taxable period/s and/or tax type not included in the Tax Amnesty application will not be cancelled.
The Notice of Issuance of Authority to Cancel Assessment shall be issued by the BIR to the taxpayer availing of the Tax Amnesty on Delinquencies within fifteen (15) calendar days from submission of the APF and TAR. Otherwise, the stamped "received" duplicate copies of the APF and TAR shall be deemed as sufficient proof of availment.

BIR Revenue Officers are instructed to deal only with taxpayers themselves or their tax agents who are duly accredited with BIR. Taxpayers are likewise advised to secure only the services of tax agents included in the List of Accredited Tax Agents as posted in the BIR Website, or the services of bonafide tax lawyers, and to exercise due diligence in securing their services since those posing as accredited tax agents are providing wrong information to the detriment of the taxpayers.