REVENUE MEMORANDUM CIRCULAR NO. 40-2006 issued on July 13, 2006 clarifies certain issues concerning the jurisdictions of the Large Taxpayer Service (LTS), the Enforcement Service (ES) and the Revenue Regions (RRs) including the Revenue District Offices (RDOs) and Divisions under them performing audit and investigation functions and prescribes the guidelines and procedures for the exercise of such functions and in the disposition of tax cases.

No Letters of Authority (LAs)/Audit Notices (ANs) shall be issued nor cases investigated without the prior approval of the Commissioner of Internal Revenue or of the Assistant Commissioner (ACIR), LTS or Regional Directors, as the case may be, if per Letters of Authority Monitoring System (LAMS) verification, which is now mandatory, there will be a resulting duplication of LAs/ANs. Verification with LAMS must be made before the LAs/ANs are filled up and submitted for signature of the proper signatory. The request for issuance of LAs/ANs must be accompanied with a note duly signed by the proponent that LAMS has been verified.

No new LA/AN shall be issued against any taxpayer already covered by a LA/AN issued by the Commissioner. Any conflict as to audit and investigation jurisdictions of the aforementioned offices must be reported to the Office of the Commissioner immediately after the discovery thereof. The Commissioner shall have the exclusive authority to resolve such conflict at the earliest opportunity to avoid delay in the conduct of audit or investigation. All documents related to the subject matter shall be forwarded to the Office of the Commissioner for appropriate action and decision. The 120-day rule on the revalidation of LA/AN shall be applicable in all cases.

The Commissioner shall direct the conduct of random post audit, from time to time, to determine compliance with existing issuances relative to the conduct of audit or investigation, submission of reports, etc.

No new special team shall be created without the approval of the Commissioner. The proponent for the creation of a special team shall submit to the Office of the Commissioner his proposal with required attachments, such as but not limited to the following:

a. A memorandum with justifications as to the objective/s or goals of the project;
b. The manner how the team shall conduct the audit or investigation;
c. The procedures to be adopted in implementing the project; and
d. The potential results from which the BIR will benefit from the creation of said team.

In case the proposal is approved, the proponent shall submit to the Commissioner for approval the list of Revenue Officials/Officers that will constitute the team, the list of taxpayers to be audited and the detailed audit procedures to be undertaken. The same shall be embodied in a Revenue Special Order signed by the Commissioner. Furthermore, the Commissioner shall also have the sole authority to sign the corresponding LAs/ANs, approve the reports of investigation either as a result of Informal Conference, Pre-Assessment Notice (PAN) or Final Assessment Notice (FAN) or offer of payment by the taxpayers to any proposed deficiency tax/es or those issued with FANs originating from said team.

The ACIR-LTS has the exclusive power to issue LAs/ANs to conduct audit and investigation on the internal revenue tax liabilities of large taxpayers under its jurisdiction, whether regular audit or cases developed as a result of third party
information available in the BIR, except in cases where the Commissioner directs otherwise such as:

a. Cases under the RATE Program;

b. Cases already issued LAs/ANs by Enforcement Service (ES)/National Investigation Division (NID) signed by the Commissioner as of the date of this Circular; or

c. Cases arising from duly filed confidential information by informers, in which cases, the Commissioner shall decide as to which office, whether LTS or ES/NID, shall pursue the audit and investigation and he shall be the one to sign the corresponding LAs/ANs superseding all previously issued LAs/ANs.

In the event that the Commissioner decides that LTS shall pursue the audit and investigation of the cases filed by confidential informer, the existing revenue issuances on the filing of confidential information for violations of the National Internal Revenue Code (NIRC), guidelines in the development of fraud cases and procedures and approval for claims for rewards by informers shall be strictly observed and complied with, even if the investigation is handled by the LTS.

Reports of investigation shall be reviewed by the LTS and shall be approved by the ACIR–LTS. However, cases mentioned as exceptions above shall be approved by the Commissioner. Further, cases approved by the ACIR–LTS shall be subject to random post audit as the Commissioner may, from time to time, direct.

The ES/NID shall audit and investigate only cases involving unregistered taxpayers and those qualified under the Run After Tax Evaders (RATE) Program as well as meritorious fraud cases, including cases as may be selected by the Commissioner. The existing issuances and guidelines for the development of fraud cases shall be strictly complied with.

The Commissioner shall have the exclusive authority to approve all request of ES/NID for issuance of LAs/ANs as a result of preliminary investigation based on duly filed confidential information by an informer or cases developed as a result of third-party information available in the BIR or from third-party information with prima facie evidence of fraud, including cases for the RATE Program, and to sign the corresponding LAs/ANs thereof.

If the result of preliminary investigation cannot establish the existence of fraud, the case shall be transmitted to the concerned RDO or Large Taxpayers (LT) office having jurisdiction of the taxpayer for continuation of audit/investigation of the non-fraud case. If the preliminary investigation was initiated because of confidential information duly filed by an informer, the procedures and approval for claims for rewards by informers shall nonetheless be observed even if the investigation is continued by the RDO concerned.

If after LAs/ANs have been issued to ES/NID, but in the course of investigation, fraud could not be established with the required quantum of evidence, the case shall be immediately transmitted to the concerned RDO or LT office having jurisdiction of the taxpayer for continuation of audit/investigation. If the investigation was initiated because of confidential information duly filed by an informer, the procedures and approval for claims for rewards by informers shall be observed even if the investigation is continued by the RDO concerned.
Reports of the investigation of cases with fraud, either assessment or collection, shall be reviewed by ACIR-ES and approved by Deputy Commissioner-Legal and Inspection Group (DCIR-LIG) pursuant to existing issuances. However, the final approval shall be made by the Commissioner if the resultant aggregate deficiency income and business taxes proposed to be assessed and collected is less than 60% of the aggregate basic tax due paid per return for income and business taxes for the year covered, with at least P 10 million aggregate tax due, in cases of non-large taxpayers, and at least P 50 million in cases of large taxpayers. For cases not covered by the said provision, such as but not limited to where no return was filed, approval shall also likewise be made by the Commissioner.

The provisions of Revenue Delegation Authority Order (RDAO) No. 08-01 and other issuances wherein authority to sign documents have been duly delegated shall continue to be effective with respect to pending dockets of ES/NID, except those which were already transmitted to the Office of the Commissioner as of the date of this Circular, or cases contemplated in this Circular that will have to be decided upon or approved by the Commissioner, and in instances wherein the Commissioner may, from time to time, direct otherwise are exempted. RDAO No. 08-01 is amended to the extent that the same is inconsistent with the provisions of this Circular.

The applicable Audit Program shall apply for all types of audit/investigation being undertaken by the RDOs or Special Investigation Divisions (SIDs), if there is any, except, when the Commissioner orders otherwise. Each RDO or SID of Revenue Regions shall develop at least one (1) tax fraud case per month. The procedures under existing revenue issuances shall be strictly observed (e.g., RMO No. 15-95, etc).

Existing procedures relative to review and approval of reports of investigation shall be strictly observed. However, if the resultant aggregate deficiency income and business taxes proposed to be assessed and collected is less than 40% of the aggregate basic tax due as aforementioned, with at least P 5 million aggregate tax due, the final approval thereof shall be made by the Assistant Commissioner-Assessment Service. The Commissioner shall, from time to time, direct the conduct of random post audit on terminated cases.