REVENUE MEMORANDUM ORDER NO. 88-2010 issued on December 22, 2010 prescribes the guidelines and procedures in the issuance and enforcement of Subpoena Duces Tecum (SDT) and the prosecution of cases for “Failure to Obey Summons”.

The SDTs to be issued should comply with the following formal requirements:

a. BIR Form No. 0713 is amended as follows:
   a.1 The revision date shall be changed from “JULY, 1999” to “SEPTEMBER, 2010”; and
   a.2 The introductory provisions shall be amended to read: “By the authority vested in me by the provisions of Section 37, Chapter 9, Book I of the Administrative Code of 1987…” in order to correct the misquoted provision of the Administrative Code which must be Section 37 instead of Section 36.

b. Every SDT to be issued should have:
   b.1 A serial number in accordance with paragraph “III.C.4” of the Order; and
   b.2 The number and date of the Letter of Authority (LA), Tax Verification Notice (TVN) or other official document authorizing audit investigation, which shall be appended below the date of issuance of the SDT.

In case of individual taxpayers, the SDT shall be issued to the same person who is the subject of audit investigation. For corporations, partnerships or associations, the SDT shall be issued to the partner, president, general manager, branch manager, treasurer, officer-in-charge, or the employees responsible for the custody of the books of accounts and other accounting records being required for audit investigation, pursuant to Sec. 253 (d) of the National Internal Revenue Code (NIRC). The date of issuance of the SDT shall be the date it was officially signed. The compliance date for the submission of books of accounts and other accounting records shall be set on the 14th day from date of issuance of the SDT.

The concerned Revenue Officers conducting audit investigation are required to be present during the designated time, date and place set for the presentation of the books of accounts and other accounting records in order to verify if the records presented are substantially complete, as required by the SDT. Non-compliance therewith shall subject violators to administrative liability.

Upon verification by the concerned Revenue Officers that the records presented are substantially complete, the records of the case shall be referred back to the assessing unit for continuation of the delayed investigation.

In case there is failure to present the required books of accounts and other accounting records, the action lawyer assigned to the case shall request the concerned Revenue Officers for a conference. This shall be scheduled on the 5th working day from the date set for compliance with the SDT. The Revenue Officers shall work jointly with the action lawyer in documenting/gathering evidence/s for the criminal prosecution of the individual who disobeyed the SDT.

Within seven (7) working days from the said conference, the action lawyer shall prepare and route to the concerned revenue officials, for review and signature, a Letter-Complaint addressed to the City Prosecutor, recommending the criminal prosecution of the individual who disobeyed the SDT for “Failure to Obey Summons”, together with the Affidavit-Complaint and its supporting evidentiary documents, properly marked.

If, during the pendency of the criminal action for “Failure to Obey Summons”, the respondent submits the required books of accounts and other accounting records, and on this basis, requests the Prosecutor’s Office or the Court for the dismissal of the case, the prosecuting officer of the BIR shall concur therewith, only upon presentation by said respondent of the following:

a. A joint certification issued by the Prosecution Division (National Office), Legal Division (Regional Office) or any other authorized office, as the case may be, and the Revenue Officers who requested the issuance of the SDT, stating that the required
books of accounts and other accounting records have been received from respondent, specifically stating the date of submission.
b. A receipt evidencing payment of the penalty of Php10,000.00 imposed by Sec. 266 of the NIRC on account of the delayed compliance which deferred the ongoing audit investigation.