REVENUE REGULATIONS NO. 18-2013 issued on November 28, 2013 amends certain sections of Revenue Regulations (RR) No. 12-99 relative to the due process requirement in the issuance of a deficiency tax assessment.

Section 3 of RR No. 12-99 was amended by deleting Section 3.1.1 thereof, which provides for the preparation of a Notice of Informal Conference, thereby renumbering other provisions thereof, and prescribing other provisions for the assessment of tax liabilities.

If after review and evaluation by the Commissioner or his duly authorized representative, as the case may be, it is determined that there exists sufficient basis to assess the taxpayer for any deficiency tax or taxes, the said office shall issue to the taxpayer a Preliminary Assessment Notice (PAN) for the proposed assessment. It shall show in detail the facts and the law, rules and regulations, or jurisprudence on which the proposed assessment is based.

If the taxpayer fails to respond within 15 days from date of receipt of the PAN, he shall be considered in default, in which case, a Formal Letter of Demand and Final Assessment Notice (FLD/FAN) shall be issued calling for payment of the taxpayer's deficiency tax liability, inclusive of the applicable penalties.

If the taxpayer, within 15 days from date of receipt of the PAN, responds that he/it disagrees with the findings of deficiency tax or taxes, an FLD/FAN shall be issued within 15 days from filing/submission of the taxpayer’s response, calling for payment of the taxpayer's deficiency tax liability, inclusive of the applicable penalties.

Pursuant to Section 228 of the Tax Code, as amended, a PAN shall not be required in any of the following cases:

a. When the finding for any deficiency tax is the result of mathematical error in the computation of the tax appearing on the face of the tax return filed by the taxpayer; or
b. When a discrepancy has been determined between the tax withheld and the amount actually remitted by the withholding agent; or
c. When a taxpayer who opted to claim a refund or tax credit of excess creditable withholding tax for a taxable period was determined to have carried over and automatically applied the same amount claimed against the estimated tax liabilities for the taxable quarter or quarters of the succeeding taxable year; or
d. When the Excise Tax due on excisable articles has not been paid; or
e. When an article locally purchased or imported by an exempt person, such as, but not limited to, vehicles, capital equipment, machineries and spare parts, has been sold, traded or transferred to non-exempt persons.

In the above-cited cases, a FLD/FAN shall be issued outright by the Commissioner or his duly authorized representative. The FLD/FAN calling for payment of the taxpayer's deficiency tax or taxes shall state the facts, the law, rules and regulations, or jurisprudence on which the assessment is based; otherwise, the assessment shall be void.

The taxpayer or its authorized representative or tax agent may protest administratively against the aforesaid FLD/FAN within 30 days from date of receipt thereof. The taxpayer protesting an assessment may file a written request for reconsideration or reinvestigation, which was defined in the Regulations.

The taxpayer shall state in his protest (i) the nature of protest, whether reconsideration or reinvestigation, specifying newly discovered or additional evidence he intends to present if it is a request for reinvestigation; (ii) date of the assessment notice; and (iii) the applicable law, rules and regulations, or jurisprudence on which his protest is based; otherwise, his protest shall be considered void and without force and effect.

If there are several issues involved in the FLD/FAN but the taxpayer only disputes or protests against the validity of some of the issues raised, the assessment attributable to the undisputed issue or issues shall become final, executory and demandable. The taxpayer shall then be required to pay the deficiency tax or taxes attributable thereto, in which case, a
collection letter shall be issued to the taxpayer calling for payment of the said deficiency tax or taxes, inclusive of the applicable surcharge and/or interest.

If there are several issues involved in the disputed assessment and the taxpayer fails to state the facts, the applicable law, rules and regulations, or jurisprudence in support of his protest against some of the several issues on which the assessment is based, the same shall be considered undisputed issue or issues, in which case, the assessment attributable thereto shall become final, executory and demandable. The taxpayer shall then be required to pay the deficiency tax or taxes attributable thereto and a collection letter shall be issued to the taxpayer calling for payment of the said deficiency tax, inclusive of the applicable surcharge and/or interest.

For requests for reinvestigation, the taxpayer shall submit all relevant supporting documents in support of his protest within 60 days from date of filing of his letter of protest, otherwise, the assessment shall become final. The 60-day period for the submission of all relevant supporting documents shall not apply to requests for reconsideration. The term “the assessment shall become final” shall mean the taxpayer is barred from disputing the correctness of the issued assessment by introduction of newly discovered or additional evidence, and the FDDA shall consequently be denied.

If the taxpayer fails to file a valid protest against the FLD/FAN within 30 days from date of receipt thereof, the assessment shall become final, executory and demandable. No request for reconsideration or reinvestigation shall be granted on tax assessments that have already become final, executory and demandable.

If the protest is denied, in whole or in part, by the Commissioner’s duly authorized representative, the taxpayer may either: (i) appeal to the Court of Tax Appeals (CTA) within 30 days from date of receipt of the said decision; or (ii) elevate his protest through request for reconsideration to the Commissioner within 30 days from date of receipt of the said decision. No request for reinvestigation shall be allowed in administrative appeal and only issues raised in the decision of the Commissioner’s duly authorized representative shall be entertained by the Commissioner.

If the protest is not acted upon by the Commissioner’s duly authorized representative within 180 days counted from the date of filing of the protest in case of a request reconsideration; or from date of submission by the taxpayer of the required documents within 60 days from the date of filing of the protest in case of a request for reinvestigation, the taxpayer may either: (i) appeal to the CTA within 30 days after the expiration of the 180-day period; or (ii) await the final decision of the Commissioner’s duly authorized representative on the disputed assessment.

If the protest or administrative appeal, as the case may be, is denied, in whole or in part, by the Commissioner, the taxpayer may appeal to the CTA within 30 days from date of receipt of the said decision. Otherwise, the assessment shall become final, executory and demandable. A motion for reconsideration of the Commissioner’s denial of the protest or administrative appeal, as the case may be, shall not toll the 30-day period to appeal to the CTA.

If the protest or administrative appeal is not acted upon by the Commissioner within 180 days counted from the date of filing of the protest, the taxpayer may either: (i) appeal to the CTA within 30 days from after the expiration of the 180-day period; or (ii) await the final decision of the Commissioner on the disputed assessment and appeal such final decision to the CTA 30 days after the receipt of a copy of such decision.

It must be emphasized, however, that in case of inaction on protested assessment within the 180-day period, the option of the taxpayer to either: (1) file a petition for review with the CTA within 30 days after the expiration of the 180-day period; or (2) await the final decision of the Commissioner or his duly authorized representative on the disputed
assessment and appeal such final decision to the CTA within 30 days after the receipt of a copy of such decision, are mutually exclusive and the resort to one bars the application of the other.

The decision of the Commissioner or his duly authorized representative shall state the (i) facts, the applicable law, rules and regulations, or jurisprudence on which such decision is based; otherwise, the decision shall be void, and (ii) that the same is his final decision.

The notice (PAN/FLD/FAN/FDDA) to the taxpayer herein required may be served by the Commissioner or his duly authorized representative through several modes specified in the Regulations.

Section 5 of RR No. 12-99 was amended by modifying Section 5.5 thereof which provides for modes of procedures in computing for the tax and/or applicable surcharge. In cases of late payment of a deficiency tax assessed, the taxpayer shall be liable for the delinquency interest provided under Section 249 (C)(3) of the 1997 National Internal Revenue Code, as amended. Section 5.5 of RR No. 12-99 shall now read as follows:

“5.5 Late payment of a deficiency tax assessed. – In general, the deficiency tax assessed shall be paid by the taxpayer within the time prescribed in the notice and demand, otherwise, such taxpayer shall be liable for the delinquency interest incident to late payment.”